

WORK INJURY--ROAD FLAGGER'S LEG AMPUTATED BY ALTERED CONCRETE CUTTER

(08 Ap/1) *Bobbi Jo Craver v Vermeer Sales & Services of Central Illinois Inc. v G.M. Sipes Construction Inc.* 04L-11 Tried Mar. 31-Apr. 8, 2008 (6)

Verdict: \$14,605,200 v both defts (\$5,000,000 past and future disability; \$5,000,000 past and future pain and suffering; \$2,500,000 disfigurement; \$1,500,000 past and future medical expenses; \$605,200 past and future lost income). Liability apportioned 75% v 3rd-party deft Sipes and 25% v deft Vermeer. Verdict is subject to set-offs for pltf's settlements of \$1,144,992 with Vermeer Manufacturing Company (manufacturer of machine) and \$50,000 with Tobey's Construction & Cartage (general contractor on the job).

Judge: Harold J. Frobish (IL, Livingston 11th Jud Cir)

Pltf Atty: Robert J. Napleton of *Motherway & Napleton* (Chicago) for Craver Demand: \$1,200,000 Asked: \$13,918,377

Deft Attys: James F. Best and Scott D. McKenna of *Best, Vanderlaan* (Chicago) for Vermeer Sales & Services of Central Illinois Inc. (Zurich) Offer: \$500,000 withdrawn; Charles D. Knell and Terrance Nofsinger of *Knell & Kelly* (Peoria) for G.M. Sipes Construction Inc. (Virginia Surety)

Pltf Medl: Dr. Jeffrey Stedwill (Rehab/Physical Medicine), Dr. Eric Elwood (General Surgeon), Dr. Samir Gupta (General Surgeon), Todd McAllister (Prosthetist) and Jay Tallis, O.D. (Optometrist) for Craver

Pltf Experts: John P. Tierney, Ph.D. (Vocational Economics Analyst), John W. Michael (Prosthetist) and Ben Burra, 26 Washtenaw Ave., Algonquin, IL (847-354-9919) (Heavy Equipment) for Craver

Deft Experts: William G. Switalski, P.E. (Mechanical Engineer) and James I. Radke (Vocational Rehabilitation) for Vermeer Sales & Services of Central Illinois Inc.

September 3, 2002, pltf F-31 was a flagger on a construction crew working on a portion of I-55, near mile marker 194 on the outskirts of Pontiac, IL, when a concrete cutter climbed out of an area it was cutting up in a closed southbound lane and went out of control in reverse. Pltf was holding a slow/stop sign about 40 feet north of the cutter with her back to it when it ran her over before going into the live lane twice, striking a passing tanker truck and finally coming to rest against a parked semi/dump truck. She suffered below-the-knee amputation of her right leg, lacerations and road rash on her left cheek area, and loss of five teeth (\$159,254 medl., \$47,000 LT 2 years). Pltf alleged the cutter could not be stopped because her employer Sipes, who owned the machine, had rigged open the fuel solenoid in the engine with wire to keep it running (this was uncontested), rendering the emergency stop button inoperable. Pltf further claimed Vermeer, who performed repairs on the cutter on August 23, 2002, was negligent in failing to remove the rigging and recommend that Sipes take the machine out of service until the underlying engine problem was fixed. Pltf argued that Sipes' history of bypassing safety features on its cutters required Vermeer to affirmatively prevent these practices from occurring. Vermeer maintained that its technician removed the wire from the solenoid during the August 23 service, noting this on his repair order, so Sipes must have re-rigged it after that, making Sipes solely responsible for the accident. It presented evidence that it advised Sipes in the past that such rigging was dangerous and resulted in bypassing the safety features and instructed the company on how to safely hold open the fuel solenoid manually if a cutter was stuck and had to be moved. Further, the defense contended the operator panicked, did not hit the e-stop, was not properly trained to check the functionality of the e-stop daily before operating the machine, and did not shut down the machine in accordance with the manual. Finally, Vermeer asserted that pltf, who received worker's compensation benefits of \$220,000, was allowed to return to light or sedentary work two years post-accident and was not damaged to the extent claimed. During trial, Vermeer offered a high/low of \$1,800,000 (net after set-offs)/\$200,000; pltf's last demand was \$4,500,000/\$250,000. The jury deliberated 1 hour and 2 minutes to arrive at the highest Livingston County verdict ever reported by Jury Verdict Reporter. Following the verdict, the case settled for \$10,500,000 plus an assignment to the pltf of Vermeer's judgment on its third party claim. For report of earlier settlements, see Settlements by Category, SWW f/31.