

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

MARY ANN ANTHONY, Individually and §
As Representative of the Estate of LEROY §
ANTHONY, and BRENDETTA ANTHONY §
SCOTT §

VS. §

GENIE INDUSTRIES, INC. d/b/a TEREX §
AERIAL WORK PLATFORMS and TEREX §
CORPORATION §

CIVIL ACTION NO. 4:18CV235-MPM-RP

JURY REQUESTED

PLAINTIFFS' ORIGINAL COMPLAINT

Comes now Plaintiffs, Mary Ann Anthony, Individually and as Representative of the Estate of Leroy Anthony, and Brendetta Anthony Scott, by and through their attorneys, ABRAHAM, WATKINS, SORRELS, AGOSTO, & AZIZ, and would respectfully show as follows:

I. INTRODUCTION

1.1 This is a civil action for the wrongful death of Leroy Anthony, and for the related claims of Mary Ann Anthony and Brendetta Anthony Scott (collectively "Plaintiffs") against Defendants, Genie Industries, Inc. d/b/a Terex Aerial Work Platforms, and Terex Corporation (collectively "Defendants"). This action arises out of an incident that occurred on January 2, 2018, at the Leflore County Civic Center in Leflore, Mississippi, in which the Genie® TZ™ 34/20 Trailer Mounted Boom Lift that Leroy Anthony was operating suddenly collapsed fatally injuring him. Defendants' negligence in manufacturing the lift was a proximate cause of Plaintiffs' injuries.

II. PARTIES

2.1 Plaintiff Mary Ann Anthony is a resident of Greenwood, Mississippi, and is the wife of decedent Leroy Anthony.

2.2 Plaintiff Brendetta Anthony Scott is a resident of Sugar Land, Texas, and is the daughter of decedent Leroy Anthony.

2.3 Defendant Genie Industries, Inc. (Genie) is a Washington corporation whose principle place of business is located in Redmond, Washington, and may be served through its registered agent, Corporation Service Company, at 300 Deschutes Way SW, STE 304, Tumwater, WA 98501.

2.4 Defendant Terex Corporation (Terex) is a Delaware corporation whose principle place of business is located in Westport, Connecticut, and may be served through its registered agent, Corporation Service Company, at 5760 I-55 North, Suite 150, Jackson, MS 39211.

III. SUBJECT MATTER JURISDICTION

3.1 Plaintiff Mary Ann Anthony is and was a resident and citizen of the State of Mississippi at all times relevant to this case. Also, Plaintiff Leroy Anthony was a citizen of the State of Mississippi at all times relevant to this case.

3.2 Plaintiff Brendetta Anthony Scott is and was a citizen of the State of Texas at all times relevant to this case.

3.3 Defendant Genie Industries, Inc. is incorporated under the laws of Washington and has its principle place of business in Washington.

3.4 Defendant Terex Corporation is incorporated under the laws of Delaware and has its principle place of business in Connecticut.

3.5 This court has subject matter jurisdiction over this action under 28 U.S.C. § 1332 because complete diversity of citizenship exists between the parties and the amount in controversy is greater than \$75,000.

IV. PERSONAL JURISDICTION

4.1 Defendant Terex operates a manufacturing plant in Southaven, Mississippi. Defendant Terex has therefore availed itself to business dealings in the State of Mississippi and could reasonably expect to respond to complaints therein.

4.2 Defendant Terex acquired Genie Industries, Inc. in 2002.

4.3 Defendant Genie sold lifts into the stream of commerce through the use of third-party retailers located throughout the State of Mississippi. Genie knew at all times during the manufacture and sale of these lifts that the lifts in question would travel among and through each and every state, including Mississippi.

4.4 Moreover, the website of Defendant Genie directs potential Mississippi customers to the locations of dozens of retailers throughout the State of Mississippi where Defendant's lifts can be purchased. In doing so, Defendant Genie established contacts with the state of Mississippi, and this action arises out of those contacts.

4.5 Additionally, and in the alternative, Defendant Genie purposefully availed itself to business dealing in the State of Mississippi and could reasonably expect to respond to complaints

therein. Defendant Genie's purposeful availment of the benefit and protection of the laws of Mississippi is sufficient to support proper exercise of personal jurisdiction over Genie.

V. VENUE

5.1 Venue is proper in the Northern District of Mississippi, Greenville Division, because Defendants reside in this District and are subject to personal jurisdiction herein. 28 U.S.C. § 1391(a)(1), (c)(2). For the purposes of venue, corporate Defendants are deemed to reside in any district in which their contacts support the assertion of personal jurisdiction if all Defendants reside in the same state. *Id.*

5.2 Defendant Terex is subject to personal jurisdiction in Mississippi because: (1) Terex operates a manufacturing plant in Southaven, Mississippi, which constitutes continuous and systematic contacts; and (2) Terex is a registered corporation with the Mississippi Secretary of State.

5.3 Defendant Genie is subject to personal jurisdiction in Mississippi because by the manufacture and sales of lifts and other utility vehicles, Defendant Genie placed products into the stream of commerce in Mississippi and knew or should have known that its vehicles would travel throughout Mississippi. A lift that Defendants placed into the stream of commerce in Mississippi fatally injured Leroy Anthony in the Northern District of Mississippi, and therefore, Defendants are subject to personal jurisdiction in this District.

5.4 In the alternative, venue is proper in the Northern District of Mississippi because a substantial amount of the events or omissions giving rise to this claim occurred in Leflore County. 28 U.S.C. § 1391(b)(2).

VI. CLAIMS AGAINST DEFENDANTS

A. PRODUCTS LIABILITY - DESIGN DEFECT

6.1 The lift that caused Mr. Anthony's death was originally designed, manufactured, and sold by Defendant Genie. Genie is a subsidiary of Terex. At the time the lift in question was sold, Defendants were in the business of designing, manufacturing, selling, and/or otherwise placing lifts, such as the one in question, into the stream of commerce.

6.2 At the time the lift in question was designed, manufactured, and sold by Defendants, it was defective in design and unreasonably dangerous. The defective and unreasonably dangerous condition of the lift in question was a direct and proximate cause of Mr. Anthony's death.

6.3 The lift reached Mr. Anthony in the condition expected and intended by Defendants.

6.4 Mr. Anthony used the lift for its intended and foreseeable purpose.

6.5 The defects regarding the subject lift include, but are not limited to the danger posed by a faulty anti-rotation pin that is used to hold the lift in position when it is extended.

6.6 Safer alternative designs existed other than the one used, which were economically and technologically feasible and would have prevented or significantly reduced the risk of accident and/or injury in question without substantially impairing the lift's utility.

6.7 The anti-rotation pin within the lift was defectively designed because it was unable to support the weight of the fully extended lift while Mr. Anthony was using it. Due to

this defect, the anti-rotation pin snapped and popped out, causing the lift to collapse, and thereby proximately causing Mr. Anthony's death.

6.8 Specifically, Defendants could have placed a plate over the anti-rotation pin that would have prevented it from popping out.

6.9 The alternative design for the above identified defect was available in the market and was technologically and economically feasible at the time the lift was manufactured and would not have impaired the utility of the lift.

6.10 Further, at the time the lift in question was sold, the defective design caused the product to unexpectedly fail to function in a manner reasonably expected by an ordinary consumer. The defective and unreasonably dangerous design of the lift was a producing cause of Mr. Anthony's injuries.

6.11 At the time of the accident, the lift was in the same or substantially similar condition as it was at the time when it left Defendants' control and was placed into the stream of commerce. Any alterations to the lift were made by a dealer and/or agent of Defendant.

B. MANUFACTURING DEFECT

6.12 The lift Mr. Anthony was operating was originally designed, manufactured, and sold by Defendants. At the time the lift in question was sold, Defendants were in the business of designing, manufacturing, selling, and/or otherwise placing lifts, such as the one in question, into the stream of commerce.

6.13 The lift reached Mr. Anthony in the condition expected and intended by Defendants.

6.14 Mr. Anthony used the lift for its intended and foreseeable purpose.

6.15 When it left the control of Defendants, defects in the manufacture of the lift rendered it defective and unreasonably dangerous in that it had an anti-rotation pin that was prone to fail in a foreseeable accident.

6.16 The defective manufacture of the lift directly and proximately caused Mr. Anthony's death.

C. STRICT LIABILITY

6.17 The lift Mr. Anthony was operating was originally designed, manufactured, and sold by Defendants. At the time the lift in question was sold, Defendants were in the business of designing, manufacturing, testing, assembling, monitoring, selling, and/or otherwise placing lifts into the stream of commerce, including the subject lift and its defective condition which was the proximate cause of the subject incident.

6.18 The lift reached Mr. Anthony in the condition expected and intended by Defendant.

6.19 Mr. Anthony used the lift for its intended and foreseeable purpose.

6.20 Due to the lift's design and manufacture, the lift was not reasonably suitable for its intended use; the lift collapsed while extended causing Mr. Anthony to fall to his death. The failure to appropriately design and construct the lift, which caused the lift's internal failure, was the direct and proximate cause of Mr. Anthony's injuries and damages. As such, Defendants should be held strictly liable.

6.21 Defendants placed the defective lift into the stream of commerce and expected or could reasonably foresee the use of said lift by individuals, such as Mr. Anthony, in the condition in which the subject lift was designed, manufactured, and sold.

6.22 The subject lift was designed, manufactured, and assembled so that the defective condition was undiscoverable until such time as an accident occurred.

6.23 The defective condition of the subject lift was not observable by Mr. Anthony who relied upon Defendants to design, test, manufacture, sell, and deliver the subject lift in a condition fit for use for the purposes intended.

6.24 As a direct and proximate result of the failure of Defendants to properly design, test, manufacture, sell, and deliver the subject lift, Mr. Anthony lost his life.

D. NEGLIGENCE

6.25 Defendants committed acts of omission and commission, which collectively and severally constituted negligence, and that negligence proximately caused Mr. Anthony's injuries and damages.

6.26 Defendants' acts or omissions constituting negligence include,

- a. failing to properly design the lift;
- b. failing to properly manufacture the lift;
- c. failing to adequately test the lift;
- d. failing to recall the lift or, alternatively, to warn consumers of a known danger/defect in the lift;
- e. failing to disclose post-sale information known about dangers or defects in the lift;
- f. concealing known dangers associated with the lift;

- g. failing to meet or exceed internal corporate guidelines; and
- h. failing to design the product so its anti-rotation pin would not fail and cause the lift to collapse.

VII. DAMAGES

7.1 For the above causes of action, Plaintiffs are entitled to recover actual damages for past and reasonably probable future economic loss, including, but not limited to: medical care and expenses; lost earnings and wage-earning capacity; physical pain and mental anguish; physical impairment and mental incapacity; disfigurement, and conscious pain and suffering after the collapse of the lift.

7.2 Plaintiffs seek compensatory damages from Defendants arising from the loss of maintenance, services, advice, counsel, reasonable contributions of pecuniary value, love, loss of consortium, comfort and companionship, which otherwise would have been received from Leroy Anthony, mental anguish, and other resulting damages sustained in the past and that in reasonable probability will be sustained in the future.

7.3 Plaintiffs seek pre-judgment and post-judgment interest as provided by law.

7.4 Plaintiffs seek any and all other relief which the Court may deem appropriate.

VIII. PRAYER

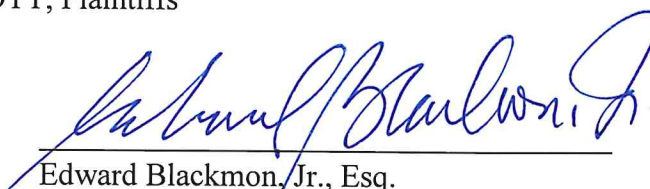
For the foregoing reasons, Plaintiffs pray that the Defendants be cited to appear and answer herein. Upon final trial by a jury, which is hereby demanded, Plaintiffs are entitled to have judgment against Defendants, and request that the Court award money damages as listed

above, in such amounts that the jury may deem appropriate and are allowable by law, along with any and all other relief the Court may deem appropriate.

Respectfully submitted,

MARY ANN ANTHONY, Individually and As
Representative of the Estate of LEROY
ANTHONY, and BRENETTA ANTHONY
SCOTT, Plaintiffs

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