

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

CR

Plaintiff,

STATEMENT OF FACTS

vs.

ATTACHMENT B

ADAMS THERMAL
SYSTEMS, INC.,

Defendant.

STATEMENT OF FACTS

Adams Thermal Systems, Inc. makes the following statements and admissions:

1. Adams Thermal Systems, Inc. (Adams Thermal) is a South Dakota corporation with its principal place of business at 47920 Fifth Street, Canton, South Dakota 57013. Its business is the design and manufacture of radiators for use in on- and off-road motor vehicles.
2. Adams Thermal's main manufacturing facility is located at 47920 Fifth Street, Canton, South Dakota 57013 (the Canton facility).
3. In August of 2011, Adams Thermal took delivery of a machine called the Matrix Core Builder (the Matrix) at its Canton facility. The Matrix was a machine specifically designed for Adams Thermal for the manufacture of radiator cores.
4. Adams Thermal contracted with Gefit Livernois Engineering (Gefit) to make the Matrix. The Matrix was intended to automate and speed up the process of making radiator cores, a process Adams Thermal had previously done, and continued to

do, with manual core builders. Manual core builders could make approximately three to ten radiator cores per hour. The Matrix was designed to make 30 radiator cores per hour.

5. The Matrix had a number of pinch points that created amputation and crush hazards for employees. Gefit designed a guarding system to keep employees away from these hazards. The guarding system included a barrier cage with access doors containing interlocks (the barrier guard) and a light curtain.

6. Gefit had difficulties getting the Matrix to work properly and was late in its promised delivery of the Matrix. Because of Gefit's difficulties and delays, Adams Thermal decided to have Gefit deliver the Matrix before Gefit resolved the difficulties. As a result, when Gefit delivered the Matrix to Adams Thermal, it did not work properly.

7. Adams Thermal installed the Matrix on the production floor of its Canton plant, and assigned a group of employees and third parties, including representatives from Gefit, to get it working.

8. In 2011, Adams Thermal's business was expanding rapidly, and it was having difficulty meeting customer demand using manual core builders. In the late summer and fall of 2011, because the Matrix was not able to produce radiator cores, Adams Thermal acquired numerous additional manual core builders in order to continue to meet customer demand. At the same time, Adams Thermal's management also put pressure on employees to get the Matrix working properly and to use the Matrix to produce radiator cores.

10. Once the Matrix was installed on Adams Thermal's production floor, Adams Thermal had difficulties getting the Matrix to operate properly. While still working on resolving these difficulties, Adams Thermal manufactured radiator cores on the Matrix,

monitored the Matrix's production on a daily basis, and set production goals for the Matrix.

In November of 2011, the production goal for the Matrix was 15 radiator cores per hour.

11. In an effort to get the Matrix operating properly and producing more radiator cores, Adams Thermal instructed and authorized its employees to work inside the barrier guard while the Matrix was energized, cycling, and producing cores. This exposed the employees to the danger of amputation and being crushed in the Matrix's moving parts.

12. To facilitate its employees working inside the barrier guard, Adams Thermal disabled the interlocks on the doors to the barrier guard.

13. As the Matrix was designed and operated, no employees should have been inside the barrier guard while the Matrix was operating, without first implementing additional safety controls, and at all times relevant, Adams Thermal knew this. Adams Thermal developed additional safety controls in the form of a written Safety Control Measure, but Adams Thermal's management employees knowingly did not implement the controls, and continued to allow employees to work inside the barrier guard.

14. On November 7, 2011, Larry Kinzer, an Adams Thermal engineering technician assigned to the group working on the Matrix, was crushed to death between the core press and the header press of the Matrix. At the time, Mr. Kinzer was inside the Matrix's barrier guard adjusting a fin on a radiator core that was being produced by the Matrix. He was doing this to keep the Matrix running, and to assist the production process. At the time of Mr. Kinzer's death, the Matrix was being operated to manufacture radiator cores.

15. At the time of his death, Mr. Kinzer was inside the barrier guard of the Matrix, a place that Adams Thermal had instructed and authorized him to be, to perform work authorized by Adams Thermal.

16. Adams Thermal, by bypassing the barrier guard and instructing its employees to work inside the barrier guard, violated 29 C.F.R §1910.212(a)(1), a regulation of the Occupational Safety and Health Administration (OSHA).

17. Section 1910.212(a)(1) provides in relevant part:

One or more methods of machine guarding shall be provided to protect the operator and other employees in the machine area from hazards.

18. Section 1910.212(a)(1), applied to the Matrix while Mr. Kinzer was performing the activity he was performing at the time of his death. Mr. Kinzer was crushed in a place that should have been guarded under §1910.212(a)(1), but was not guarded because Adams Thermal had knowingly bypassed the barrier guard in violation of §1910.212(a)(1).

19. Before and until Mr. Kinzer's death, Adams Thermal knew that its employees were working inside the Matrix's barrier guard.

20. Before and until Mr. Kinzer's death, Adams Thermal knew that its management employees instructed and authorized its employees to work inside the Matrix's barrier guard.

21. Before and until Mr. Kinzer's death, Adams Thermal knew that its employees had disabled the interlocks on the doors to the Matrix's barrier guard.

22. Before and until Mr. Kinzer's death, Adams Thermal knew that its management employees instructed and authorized its employees to disable the interlocks on the doors to the Matrix's barrier guard.

23. The interlocks on the doors to the Matrix's barrier guard were disabled at the time of Mr. Kinzer's death.

24. Adams Thermal's violations of the requirements of §1910.212(a)(1), as described above, were committed in furtherance of its efforts to get and keep the Matrix running.

25. Adams Thermal's violation of §1910.212(a)(1) was willful.

26. Larry Kinzer's death was the direct result of being crushed between the Matrix's core press and header press.

27. If Adams Thermal had not bypassed the Matrix's barrier guard and had not instructed and allowed Mr. Kinzer to work inside the barrier guard, he would not have been crushed to death between the core press and the header press on November 7, 2011.

28. Adams Thermal's violation of §1910.212(a)(1) caused the death of Larry Kinzer.