



CHEROKEE COUNTY

WORKPLACE

Worker burned in flash fire caused by gasoline

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VERDICT
of the **WEEK**

Workplace

**Worker burned in
flash fire caused by
gasoline****\$3,021,000***Chavez v. Gardner Oil Inc.*

Cherokee Co. Dist. Ct.

Plaintiff Counsel Jacques G. Balette,
Marks, Balette & Giessel, P.C., Houston;
David Hill, Law Office of David Hill,
Henderson; Kenneth L. Connor, Marks,
Balette & Giessel, P.C., Leesburg**Defense Counsel** Preston W. McGee,
Flowers Davis PLLC, Tyler**Full report on page 11****VERDICT** **\$3,021,000**
ACTUAL **\$3,179,446****CASE** Alvaro Chavez v. Gardner Oil Inc.,
No. 2008-10-641
COURT Cherokee County District Court, 2nd, TX
JUDGE Dwight L. Phifer
DATE 5/28/2010**PLAINTIFF**
ATTORNEY(S) Jacques G. Balette (lead), Marks, Balette & Giessel, P.C.,
Houston, TX
David Hill, Law Office of David Hill, Henderson, TX
Kenneth L. Connor, Marks, Balette & Giessel, P.C.,
Leesburg, VA**DEFENSE**
ATTORNEY(S) Preston W. McGee, Flowers Davis PLLC, Tyler, TX**FACTS & ALLEGATIONS** On Jan. 11, 2008, while refueling a logging loader in Rusk, plaintiff Alvaro Chavez, 52, a truck driver, used his cigarette lighter to check the fuel gauge and was engulfed in a flash fire. His employer's fuel contractor was Gardner Oil Inc. of Cherokee County

Chavez sued Gardner Oil for negligence and breach of express and implied warranties for delivering gasoline-contaminated fuel instead of pure diesel fuel. Handling pure diesel is very different than handling gasoline. Diesel cannot cause a flash fire and will put out a match (as was demonstrated to the jury), whereas gasoline is very volatile and will flash fire very easily.

The express warranty claim was for the quality of the fuel. The implied warranty claims were for merchantability and fitness for a particular purpose.

Gardner contended that it delivered pure diesel fuel and that the flash fire was possibly caused by gasoline from a gasoline tank that was located in the back of the truck, by gasoline on Chavez's clothes, or by some other contamination of the fuel from another source. The defendant further argued

that Chavez was responsible for the flash fire because he lit a lighter while refueling and that his employer was responsible for failure to train and supervise Chavez and others at the worksite.

INJURIES/DAMAGES *burns; face; hand; neck; scar and/or disfigurement, facial; second-degree burns*

Chavez sustained second-degree burns to the face, neck and hands. He required therapy and treatment for about a year and was released to full duty on April 20, 2009. Chavez claimed that he had to endure painful debridement of his wounds. He has permanent disfigurement, permanent vision damage and permanent high-frequency hearing loss in one ear. He was left with scarring below his neck, his attorneys said. Defense counsel said Chavez's ear and forehead were also scarred. Chavez claimed that he could not find "competitive employment" as a result of his injuries.

Gardner Oil contended that Chavez completely healed from his burns; he has no permanent injuries; and he can perform any manual labor job. The defense argued that all the physicians testified that Chavez could return to work. He did return to his previous job until the logging economy declined.

RESULT The jury found negligence and breach of warranties by Gardner and no negligence by Chavez, awarding \$3,021,000. Plaintiffs' counsel stated that it appears to be the largest personal injury verdict reported in Cherokee County in 20-plus years.

ALVARO CHAVEZ \$237,000 past medical cost
 \$60,000 future medical cost
 \$125,000 past physical impairment
 \$125,000 future physical impairment
 \$64,000 past lost earnings
 \$160,000 future lost earnings
 \$1,000,000 past pain and suffering
 \$1,000,000 future pain and suffering
 \$125,000 past disfigurement
\$125,000 future disfigurement
 \$3,021,000

TRIAL DETAILS Trial Length: 5 days
 Jury Vote: 12-0

**PLAINTIFF
 EXPERT(S)**

Andrew T. Armstrong, Ph.D., chemistry, Fort Worth, TX
Rachel A. Feit-Leichman, M.D., eye trauma/injury, Los Angeles, CA (treater)
David N. Herndon, M.D., burn medicine, Galveston, TX (treater)
Viola G. Lopez, LPC, CRC, vocational rehabilitation, Houston, TX
Thomas Mayor, Ph.D., economics, Houston, TX
William D. Parker, flammable liquids, Olathe, KS
William D. Strinden, M.D., plastic surgery/reconstructive surgery, Lufkin, TX (treater)

**DEFENSE
 EXPERT(S)**

Michael Graves, fuel quality, Houston, TX

POST-TRIAL Final judgment was \$3,179,446.20, including prejudgment interest and taxable costs. The dintends to file a motion for new trial and to appeal.

—John Schneider