

Nail Gun Complaint Facts

On February 1, 2017, a complaint was filed because the plaintiff suffered serious and permanent injuries to his left eye when a nail misfired, and/or a nail fractured and misfired, from the Hitachi NV83A2 coil nailer purchased from Auxiliary Service, Inc. (ASI), which is also known as a “nail gun”. The nails in the Hitachi NV83A2 nail gun had been purchased by Carmago Construction from ASI, and supplied to use on the construction project. The nameplate on the subject Hitachi NV83A2 nail gun indicates that it is a 3¼” coil nailer, air pressure 70-120 psi, nail length x diameter 2” x 0.099” - 3¼” x .131”. The nameplate identifies the subject Hitachi NV83A2 nail gun was a “Hitachi Koki” that was “Made in Japan”. The plaintiff was using the above mentioned tool while working for Carmago Construction as a carpenter/framer at the construction project located in Philadelphia, Pennsylvania. At the time of the incident, sunglasses were being worn for eye protection. The construction project on which the incident occurred, was owned and controlled by BMK Properties, LLC. The general contractor for the project was hired and retained by BMK. The contractor was responsible for the overall safety and working conditions at the construction site for all workers involved with the project, including contractors, subcontractors, employees and the agents. Braz and/or Carmago Construction was contracted by the general contractor for carpentry and framing work , including materials and labor for wood framing and studding at the construction project. These contractors and/or subcontractors were responsible for providing and maintaining a safe and hazard-free workplace.

While using the aforementioned Hitachi NV83A2 nail gun with the nails supplied by Carmago Construction on the construction site on February 1, 2017, the nail gun caused, permitted, and/or allowed a nail or fractured nail to be misfired into Plaintiff’s left eye and retina, resulting in sudden, unexpected, and immediate injury. Aside from normal use, the subject Hitachi NV83A2

nail gun was in its original condition, and had not been substantially changed, modified, or altered from its original design and manufacture from the time the Plaintiff purchased the nail gun from ASI. The Hitachi NV83A2 nail gun was defectively designed, manufactured, assembled, inspected, tested, distributed and sold, and was unreasonably dangerous to users because the nail gun violated the reasonable expectations to perform and operate in an expected and intended manner (*i.e.*, to properly feed and fire nails; and not improperly misfeed and/or misfire nails sideways at excessive speeds and pressure causing injury), and also created serious hazards and risks of injury through normal use and operation, which outweighed the burden of making the nail gun safe through an alternative design. The design and manufacture of the subject Hitachi NV83A2 nail gun fails both the “consumer expectation” and “risk utility” tests, and therefore the nail gun is defective and unreasonably dangerous, resulting in strict liability against Hitachi Koki Co., Ltd. (designer and manufacturer), as well as Hitachi Koki U.S.A., Ltd. and ASI (product sellers in the chain of distribution of Hitachi nail guns).

Moreover, Hitachi Koki Co., Ltd. and Hitachi Koki U.S.A., Ltd., knew and were aware of the defective and unreasonably dangerous conditions of the Hitachi NV83A2 nail gun because there had been many prior substantially similar incidents in which Hitachi nail guns contained a defective and faulty feeder which allowed nails to be ejected sideways, thereby posing a serious injury hazard to users or bystanders. As of March 2010, Hitachi Koki Co., Ltd. and Hitachi Koki U.S.A., Ltd. had become aware of at least 37 reports of nails being ejected sideways from the NV83A2 coil nailers, with at least 15 reports of injury. The severity of the injuries were significant, as the injuries occurred primarily in the eye region, with 5 reports of partial blindness. Knowledge of the 37 reports of nails being ejected sideways, and 15 reports of injuries including partial blindness, led Hitachi Koki Co., Ltd. and Hitachi Koki U.S.A., Ltd. to issue a recall of the NV83A2

coil nailers due to serious injury hazard. Approximately 50,000 Hitachi NV83A2 coil nailers were subject to the recall, and are identified as those being manufactured from approximately October 2002 until September 2005.