

In the
United States Court of Appeals
For the Seventh Circuit

No. 12-2984

BRANDON STOLLINGS,

Plaintiff-Appellant,

v.

RYOBI TECHNOLOGIES, INC. and ONE
WORLD TECHNOLOGIES, INC.,

Defendants-Appellees.

Appeal from the United States District Court for the
Northern District of Illinois, Eastern Division.
No. 08 C 4006 — **Gary S. Feinerman**, *Judge*.

ARGUED APRIL 4, 2013 — DECIDED AUGUST 2, 2013

Before MANION, TINDER, and HAMILTON, *Circuit Judges*.

HAMILTON, *Circuit Judge*. On May 9, 2007, Brandon Stollings lost an index finger and portions of other fingers in a table saw accident. Stollings sued the saw manufacturer, Ryobi Technologies, alleging that Ryobi defectively designed the saw because it failed to equip the saw with either of two safety features: a riving knife—a small blade that holds the cut in the wood open to prevent kickbacks—and automatic braking technology—a

safety system that automatically stops the saw blade upon contact with human tissue. Stollings contends either safety feature would have prevented the accident. A jury returned a verdict in favor of Ryobi. Stollings has appealed.

Stollings argues that the district court made three reversible errors: (1) failing to stop Ryobi's counsel from arguing to the jury that Stollings's counsel brought the case as part of a joint venture with the inventor of the automatic braking technology to force saw manufacturers to license the technology, and admitting hearsay evidence to support this improper argument; (2) excluding the testimony of one of Stollings's expert witnesses; and (3) giving two erroneous jury instructions. We find that Ryobi's joint venture argument was improper and prejudicial, so we vacate the judgment and remand for a new trial. Because the remaining issues are likely to resurface if the case is retried, we address them and conclude that the court erred in excluding the expert testimony and in giving the jury a sole proximate cause instruction where Ryobi was not asserting a comparative fault defense or blaming a third party.

I. *The Improper Attack on Counsel's Motives*

A. *The Accident and Power Saw Safety*

We address first Ryobi's improper attack at trial on the motives of plaintiff's counsel, which requires us to provide the background on the accident and power saw safety. Stollings was injured while operating a Ryobi Model BTS20R table saw. The immediate cause of the injury was a common woodworking hazard known as a kickback. A kickback occurs when the kerf, the gap in the wood created by a saw's cut, closes around the saw blade in such a way that the force of the

spinning blade throws the wood back at the user. If the saw operator is holding onto the wood, the unexpected movement can sometimes force the operator's hand into the spinning saw blade. This is what happened to Stollings.

Saw manufacturers include safety features to help protect users from kickback injuries. Ryobi equipped the saw with a "3-in-1" guard safety system. This safety system has three components: a splitter, anti-kickback pawls, and a blade shield. The splitter is a piece of plastic that rests behind the saw blade to prevent the kerf from closing around the saw. The anti-kickback pawls are serrated pieces of metal attached to the sides of the splitter that rest on the wood as it moves through the cut to prevent the wood from moving backwards. And the blade shield is a piece of plastic that covers the top of the blade to prevent the user's hands from coming into contact with the blade. This system complied with the applicable guarding standards published by Underwriters Laboratory—a private company that sets industry safety standards—and the applicable federal Occupational Safety and Health Administration regulations.

The 3-in-1 system is effective at reducing injuries when used correctly, but it has shortcomings. The principal problem is that many saw users deliberately disable the 3-in-1 guard system. There are two reasons for this. The plastic guard makes certain cuts more difficult to complete, and the guard can become clouded by sawdust and other material, thus obstructing the user's view of the saw blade as it cuts. The 3-in-1 system is also interconnected. When a user removes the guard, he must also remove the splitter and the anti-kickback pawls, leaving the saw blade without any kickback protection. That is

what Stollings did. Despite warnings on the saw about the dangers of operating the saw without the guard, Stollings removed the guard and operated the saw without the safety protection. Before a reader concludes that this fact decides the case, though, we should note that Ryobi's former chief engineer testified that he had removed the 3-in-1 system on his own home saw and had instead installed a riving knife.

The jury heard evidence that Ryobi could have equipped its saw with two alternative safety features. The first is a riving knife, which is a cheap piece of metal or plastic similar to a splitter. Like a splitter, a riving knife rests behind the blade and holds the kerf open. Unlike the splitter in the 3-in-1 guard system, a riving knife is typically positioned closer to the saw blade, making it more effective at preventing kickbacks. Most important, it is independent of the guard system, so the user has no reason to remove it.

The second additional safety feature is an automatic braking system, colorfully known as flesh detection technology. The automatic braking system prevents injury by stopping and retracting the blade at the moment the blade contacts flesh. The technology works by detecting the human body's electrical current. When an operator's flesh contacts the blade, the body's electrical current triggers the safety system, which applies a brake and retracts the blade beneath the cutting surface. The saw stops within a few milliseconds, fast enough in most cases to leave the operator with only a minor, superficial wound. The technology, however, is not cheap. It would add somewhere between \$50 and \$150 to the cost of a table saw.

Stephen Gass developed the automatic braking system in 1999. Gass patented the technology and then attempted to license it to table saw manufacturers, including Ryobi. Gass and Ryobi entered negotiations over a licensing agreement, but the negotiations fell through and Ryobi never licensed Gass's technology. Stollings maintains that Ryobi and other manufacturers decided not to license Gass's technology for fear of product liability exposure on saws that did not have the technology. Ryobi contends Gass's terms were unreasonable and the technology was too expensive and unproven. In 2005, Gass founded a competing company named SawStop to manufacture and sell table saws that include his automatic braking system. Gass testified at trial as one of Stollings's expert witnesses about the feasibility and effectiveness of the automatic braking system. He did not ask for or receive compensation for his testimony.

B. The Trial Attack on Plaintiff's Counsel

In addition to the arguments one would expect Ryobi to make—that the saw complied with industry safety standards and that Stollings was responsible for his injury because he failed to use the 3-in-1 safety system—Ryobi framed the case for the jury as a joint venture between Gass and Stollings's attorneys—Mr. Carpinello and Mr. Sullivan—to coerce Ryobi and other saw manufacturers to license and use Gass's automatic braking technology. The district judge referred to this as Ryobi's "conspiracy" theory, though the word conspiracy was not used in the presence of the jury.

Ryobi's attack on the motives of Stollings's counsel began in its opening statement. More than half of it was dedicated to

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