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U.S. FEDERAL COURT OF UTAH / SPECIAL VERDICT

Gas cans plus open fires don't mix and cost lives

"I have a Blitz can in my basement. I didn't know these things either.

It's like holding a bomb in your hands."

—Donald Winder

Claudia MH Culmone

On Nov 11th, 2010 a Utah federal court jury awarded over \$6 million to Utah resident, David Calder, in a special verdict. A special verdict gives a jury the opportunity to go over a list of questions if they find a company liable for damages. In the special verdict, the jury held that an Oklahoma company, Blitz U.S.A., was at fault for the death of a child and the severe burns that Calder suffered in a horrible accident.



In December of 2005, the plaintiff took his three children to a family cabin. It was cold. Calder tried to start a fire in their wood burning stove, but the wood was too wet. There was a little bit of gas sitting in a red gas can nearby. He picked it up and attempted to ignite the fire with the gas. The can exploded, setting him and his two-year old daughter on fire.

Calder's two older sons helped extinguish the fire on their father but it was too late to help the little girl. She died. Calder himself suffered third degree burns on over 30 percent of his body. In the following months, Calder attempted to come to a settlement with the manufacturer of the gas can, Blitz U.S.A. When settlement talks fell through, Calder filed a lawsuit in federal court. In the lawsuit, Calder claimed that Blitz failed to warn consumers of the risks in relation to their product. Blitz responded, saying there were sufficient warnings on the can and filed a counterclaim of user misuse. Calder filed another claim saying the misuse was foreseeable.

Calder hired the Anderson Law Firm of Wichita Falls, Texas, and Winder & Counsel in Salt Lake City to represent him. The Anderson Law Firm specializes in burn cases and defective products, including gas cans. Donald Winder of Winder &

Counsel and lead co-counsel says: "There are a number of things they [Blitz] aren't telling us. Did you know that the less gas there is in the can the more likely it is to explode? What you're dealing with is the volatility of the gasoline fumes inside the can. If there's less gas, there's more space for fumes. The counter-intuitive part is that you would think if there wasn't much gas in the can, it's safer. Did you know that if it's colder, that it's more volatile? Did you know that the older the gas is, the more likely it is to blow? Older gas condenses, producing more fumes. Up to 20 percent of people that use these gas cans do what David Calder did. No one knows these things. I have a Blitz can in my basement. I didn't know these things either. It's like holding a bomb in your hands."

In the state of Utah, the Utah Product Liability Act (78B6703) states rebuttable presumption that a product is free of defect if it is manufactured in conformity with government standards established for that industry. The challenge for Winder and the legal team was to show that Blitz's gas can was dangerous to the consumer. They had to prove that Blitz knew of the dangers, knew of a solution to the dangers, and failed to take action.

Winder says: "The gas can manufacturer has done studies and knows that 20 percent of consumers who buy these gas cans use them to accelerate fires. They [Blitz] don't tell you that it costs less than a nickel to put in a wire mesh spark arrester in the spout. What happened is, to save a nickel, they allow the consuming public to use these cans for accelerating fires, knowing they're going to do that, and they kill people and burn them – all to save a nickel."

There is a warning stamped into the gas can at the time of manufacturing. However, it's red on red and Winder says is not prominent. The warning reads, 'warning – vapors are dangerous' and 'keep away from open flame.'

Winder says: "It does not say the can could explode. David admitted that he shouldn't have done this but he didn't know that he was holding a bomb. We were the only ones who accepted responsibility. We presented a letter from the Blitz president stating, 'we're in the business to make profits and for no other purpose.' They're picking profits over people."

The jury agreed.

Calder was found to be 30 percent to blame for the December 2005 explosion, but Blitz was found to be 70 percent at fault. The jury awarded \$3 million for the loss of Calder's daughter, \$2 million for the Calder's pain and suffering, and one million for loss of earning capacity and medical expenses – past and future. "I believe the judgment was the size it was because the jury got mad at them [Blitz]," Winder says.

The Calder lawsuit is not the first lawsuit to be filed against Blitz, and Winder says it won't be the last. The company has made no public announcement that they will install the spark arresters in their product. Winder expects them to file an appeal.