



# OSHA 30/30®

A thirty minute update  
on OSHA law every thirty days

with  
**Manesh Rath**

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## Fifth Circuit Addressed "Industry Custom" Defense in Machine Guarding Case

August 20, 2025

# Manesh Rath



Manesh Rath is a partner in Keller and Heckman's litigation and OSHA practice groups. He has been the lead amicus counsel on several cases before the U.S. Supreme Court. He has been called to testify before Congress in several hearings relating to OSHA law.

Mr. Rath is a co-author of three books in the fields of wage/hour law, labor and employment law, and OSHA law. He has been interviewed in The Wall Street Journal, Bloomberg, Smart Money, Entrepreneur, on PBS's Nightly Business Report, and C-SPAN.

Mr. Rath served on the Board of Advisors for the National Federation of Independent Business (NFIB) Small Business Legal Center and on the Society For Human Resources (SHRM) Special Expertise Panel for Safety and Health law for several years.

He was voted by fellow members to The Best Lawyers in America 2016-2025 (in 2023, was voted as Lawyer of the Year); selected by Super Lawyers 2016 – 2023; and by corporate counsel as the 2017 Lexology winner of the Client Choice Award.



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# Benjamin Idzik



Benjamin (Ben) Idzik advises Keller and Heckman clients on regulatory compliance matters under state and federal environmental, occupational safety and health, transportation, and employment laws.

Specifically, Ben assists clients on issues arising under the Occupational Safety and Health (OSH) Act, Federal Motor Carrier Safety Administration (FMCSA) regulations, and U.S. Environmental Protection Agency (EPA) regulations, such as the Toxic Substances Control Act (TSCA) and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Prior to joining Keller and Heckman, Ben focused on regulations affecting trade associations and their members. While in law school, Ben served as a legal intern for an advanced nuclear reactor and fuel company and was the Note & Comment Editor for the Catholic University Law Review. He also completed a clerkship at the Montgomery County Circuit Court.



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# Topics to Be Discussed

- ◆ Facts of *Mar-Jac Poultry v. Sec'y of Lab.*
- ◆ Mar-Jac's Defenses
- ◆ History of the Contest
- ◆ OSHA's Arguments at Appeal
- ◆ Fifth Circuit's Decision
- ◆ Reference to Industry Custom and Practice
- ◆ What Employers Should Do



# Background

- ◆ Mar-Jac is a poultry processor
- ◆ Hattiesburg, Mississippi facility
- ◆ Utilizes Meyn Maestro eviscerators
- ◆ Machine featured two emergency stops
  - ◇ A red safety cord that encircled the rotating carousel
  - ◇ A stop button on the machine
- ◆ Two eviscerators:
  - ◇ Line 1 had a metal doors that enclosed the rotating carousels
  - ◇ Metal doors were not interlocked



# The Incident

- ◆ “B.B.” was employed as a Floor Person
  - ◇ Housekeeping, washing floors and equipment
- ◆ On May 31, 2021, floor person “B.B.” was assigned to work around the Line 2 machine
- ◆ B.B.’s left sleeve cuff was caught and entangled. BB was pulled into the machine
- ◆ Co-worker speculated the accident may have occurred when B.B. tried to clear a jam while the machine was running.
- ◆ Post-mortem toxicology: alcohol, marijuana, methamphetamine





# Machine Guarding Citation

- ◆ OSHA alleged:
  - ◆ The carousel on the Line 2 machine was unguarded to prevent worker access to the hazard
  - ◆ Emergency stop cord was ineffective
  - ◆ Clearing jams without stopping was a practice known by Mar-Jac
    - Workers (incl supervisors) routinely accessed eviscerator's zone of danger to remove material from carousels by hand



# Mar-Jac's Defenses

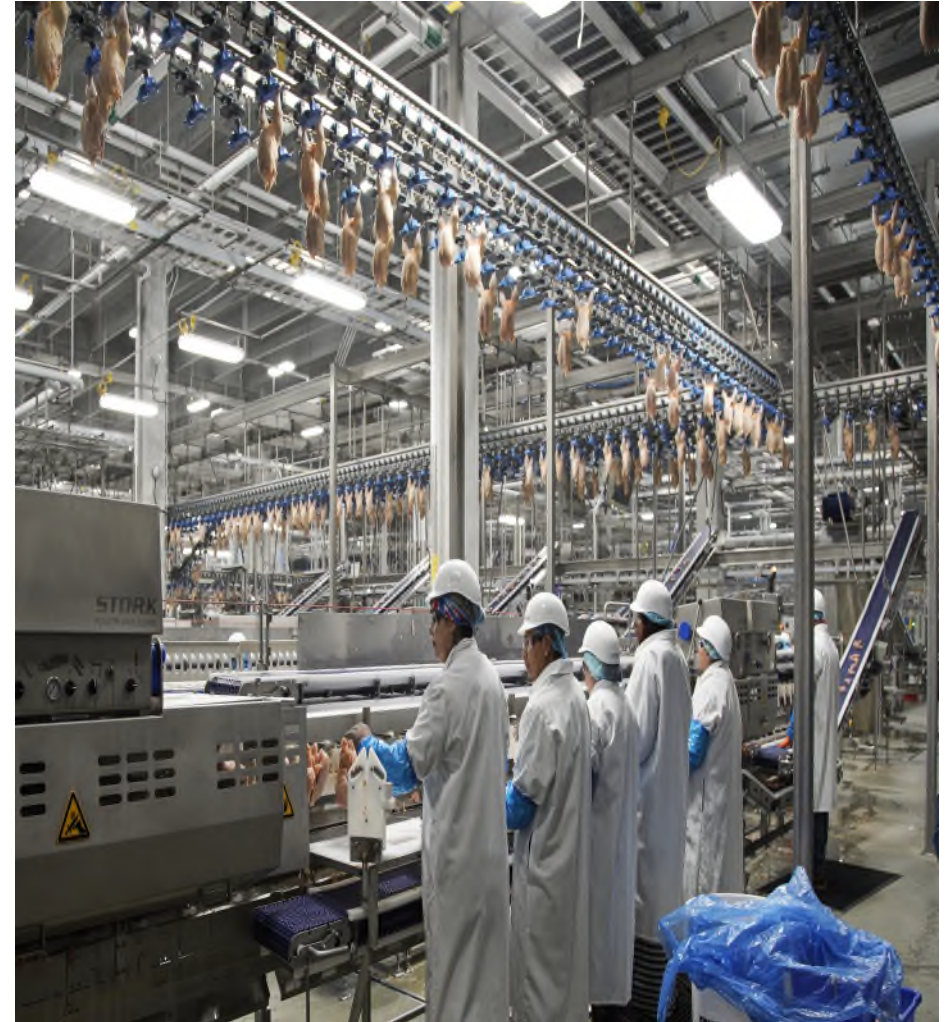
- ◆ Line 2 Machine did not present a known hazard
- ◆ Machine cleaning occurred after processing stopped. B.B. only supposed to engage in housekeeping, upkeep of area
- ◆ B.B.'s action triggered the unpreventable employee misconduct doctrine
  - ◇ Safety rules in place, included in training
  - ◇ Under the influence
- ◆ The Line 2 machine was adequately guarded consistent with industry custom and practice
  - ◇ Location of carousel
  - ◇ Pull cord and stop button





# History of the Contest

- ◆ 2021 OSHA issued citation under Machine Guarding Standard
- ◆ Mar-Jac contested.
- ◆ ALJ found alleged violation
- ◆ 2023 Commission affirmed ALJ decision
- ◆ Mar-Jac appealed to Fifth Circuit



# OSHA's Arguments at Appeal

- ◆ The Line 2 machine posed an obvious hazard; Mar-Jac had actual knowledge
- ◆ Unpreventable employee misconduct doctrine did not apply
  - ◇ Mar-Jac's rules were not effectively communicated, monitored, or enforced
- ◆ Industry custom is irrelevant to establishing that the Machine Guarding Standard was violated
- ◆ OSHA: plenty of evidence that workers routinely, by hand, removed entangled material, while the carousels were moving



# Fifth Circuit's Opinion

- ◆ Substantial evidence supports OSHA's finding that Mar-Jac had knowledge that the rotating carousel posed a hazard
- ◆ The ALJ properly rejected Mar-Jac's appeal to the unpreventable employee misconduct doctrine
  - ◇ The safety rules were openly violated
  - ◇ Insufficient evidence to conclude that B.B.'s intoxication caused impairment
- ◆ OSHA need not present evidence of industry custom and practice for machine guarding





# Reference to Industry Custom and Practice

- ◆ Guarding on the Line 2 Machine was inadequate
  - ◇ No physical barrier
  - ◇ Pull cord was too high if putting hand into moving carousel
- ◆ Other machine had doors covering rotating part
- ◆ Standard interpreted as requiring barriers when feasible, rather than guarding by distance
- ◆ Mar-Jac submitted no evidence that complete inaction was industry custom or practice





# What Employers Should Do

- ◆ Ensure that machines are properly guarded; consult safety professionals
- ◆ Cross-check equipment manuals against existing practice
- ◆ Enforce workplace safety rules consistently. Maintain enforcement records
- ◆ Ensure that supervisors are properly trained on workplace safety
- ◆ Review, refine, drug and alcohol policy to reduce workplace injuries





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at 1:00 p.m., Eastern Time

**September 17<sup>th</sup>, 2025**

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Please join us at 10:00 AM Eastern U.S.  
August 27<sup>th</sup>, 2025  
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Please join us at 1:00 PM Eastern U.S.  
October 1<sup>st</sup>, 2025  
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# Thank You

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