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THE DOLAN COMPANY

Verdicts & Settlements

Load of plywood falls on masons in elevator shaft

$3.24 million verdict

A framing subcontractor dropped a load of plywood four stories down an elevator shaft onto three men working as masons at the base of the shaft.

Plaintiffs' counsel claimed that although liability as to the subcontractor and general contractor was clear, no settlement offer was made until just before trial, when one offer was made to one of the plaintiffs and a much smaller offer was made to resolve the other claim.

Plaintiffs' counsel opined that the smaller offer may have been based on the fact that the plaintiff in question was able to return to work after missing only one week of work and that the injuries from which he was suffering, which included lower back disc bulges, were substantially similar to those he had suffered in a different accident five years earlier.

However, the plaintiff's treating physician attributed a 5-percent total body loss of function to the injuries he sustained in the more recent incident.

Plaintiffs' counsel theorized that the failure to present any offer to the other mason may have been based on similar facts, except that he was unable to return to work and his prior accident had occurred seven years earlier. As with the other plaintiff, the treating physician attributed a 5-percent total body loss of function, as well as an inability to return to the masonry trade.

That plaintiff also claimed that he suffered a significant loss of earning capacity, as he was making $30 an hour as a mason and only $10 an hour as a janitor following his return to employment three years later.

The defendants contended that any continuing disability was due to his earlier injury.

The suit was filed against the general contractor and subcontractor. The defendants filed answers to the complaint as well as a third-party complaint against the manufacturer of the plywood. They claimed that the only reason the wood fell was that the straps used to bundle the plywood by the manufacturer were incorrectly fastened and gave way when the subcontractor lowered the load to the roof.

The plaintiffs eventually amended their complaints to name the third party as direct defendants, but kept their main focus on the liability of the general contractor and subcontractor, utilizing the services of an expert witness to support their claims.

Although the third-party defendants eventually offered to contribute to a settlement, their offer represented a nominal or "cost-of-defense" type of offer and was not sufficient toward resolving the claims.

After a three-week trial during which the defendants repeatedly refused to accept any responsibility for causing the accident, the jury found the plaintiffs' damages to be significant and the loss of earning capacity claim to be valid.

They also found that the defendants' negligence was a significant contributing cause of those damages and that the third-party defendant was in no way responsible for having caused the accident.

Action: Negligence & tort

Injuries alleged: Back injury, loss of earning capacity

Case name: Costa, et al. v. J.K. Scanlan Co. Inc., et al.

Court/case no.: Middlesex Superior Court, Nos. 07-782, 07-3725 and 07-4064

Jury and/or judge: Jury/Thomas P. Billings

Amount: $3.24 million

Date: December 2010

Attorneys: Adam H. Becker, Sheff Law Offices, Boston; Todd White and Katy Hynes, Adler, Pollock & Sheehan, Providence, R.I. (for the plaintiffs)