



P E N N S Y L V A N I A

JURY VERDICT®

REVIEW & ANALYSIS

SUMMARIES WITH TRIAL ANALYSIS

Volume 18, Issue 6
May, 2000

A monthly review of Pennsylvania State and Federal Civil Jury Verdicts with professional analysis and commentary.

The Pennsylvania cases summarized in detail herein are obtained from an ongoing monthly survey of the State and Federal Courts in the State of Pennsylvania.

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\$565,000 RECOVERY - PREMISES LIABILITY - WORKSITE ACCIDENT - COLLAPSE OF WOODEN LOADING DOCK STEPS - FOUR-FOOT FALL TO CEMENT FLOOR - ROTATOR CUFF AND ELBOW TENDINITIS - DETACHED DELTOID MUSCLE - CERVICAL RADICULOPATHY - SHOULDER AND ELBOW SURGERY PERFORMED.

Montgomery County

The plaintiff was a 43-year-old long haul truck driver who claimed that the wooden steps to the defendant's loading dock collapsed causing him to fall some four feet to a cement floor. The plaintiff alleged that the defendant failed to maintain the steps in a safe condition. The defendant admitted negligence, but disputed the nature and extent of the damages which the plaintiff claimed to have incurred as a result of the accident.

The plaintiff routinely hauled paper from the defendant's premises to a newspaper using a two-trailer system. On the day in question, the plaintiff claimed that he docked an empty trailer in a narrow wooden dock at the defendant's premises next to a loaded trailer. The dock was barely large enough to accommodate the two trailers simultaneously, according to testimony offered. The plaintiff testified that he walked up a set of wooden steps to go on the loading dock so he could check the adjacent trailer's load before hooking up his truck. The plaintiff alleged that he

was descending the steps and was on the first tread when the steps collapsed and he fell some four feet to the cement loading dock floor.

The plaintiff's engineer reported that the steps were improperly affixed to the loading dock and were not properly secured to the cement floor area, causing the collapse. The plaintiff contended that he struck his head, neck and back before hitting the floor, pinning his right arm underneath him. He was ultimately found to suffer from right rotator cuff tendinitis and a detached right deltoid muscle. The plaintiff claimed that he also developed cervical radiculopathy and injured his right elbow in the fall. He was diagnosed as suffering from right elbow tendinitis. The plaintiff underwent shoulder surgery and right elbow surgery. He also underwent nerve block injections to his neck to treat cervical radiculopathy.

The plaintiff contended that he was unable to return to work as a truck driver. After a three year period of total disability, he obtained a job as a store monitor. The plaintiff claimed medical bills of \$56,872. His treating orthopedic surgeon reported that the plaintiff needed possible neck surgery and treatment for his elbow in the future.

Past lost wages claimed were approximately \$169,000. The plaintiff's rehabilitation expert opined that the plaintiff could no longer work as a truck driver nor perform anything beyond sedentary work as a result of the injuries he sustained in the subject fall. The plaintiff's future lost earning capacity was estimated to be between \$373,672 and \$511,316.

The defense argued that the plaintiff's prior medical history showed he had broken the same ankle more than five times before the subject fall and suffered from pre-existing knee problems. The defendant's medical expert testified that, despite this accident, the plaintiff would not have been able to continue as a truck driver or perform heavy work due to his pre-existing conditions. The defendant's vocational expert contended that the plaintiff could have been retrained through continued education. The defendant argued that the plaintiff was given the opportunity to undertake classes at a local college but did not take advantage of that retraining opportunity. The defense also ar-

gued that the plaintiff failed to mitigate his damages by not obtaining employment sooner or undertaking retraining when offered.

The case settled immediately before trial for \$565,000.

REFERENCE

Plaintiff's engineer: Len McCuen from Philadelphia.
Plaintiff's treating orthopedist: Vernon Morris, Jr. from Pottstown.
Plaintiff's vocational economist: Robert P. Wolf from Cherry Hill, N.J.

Seaman vs. Defendant. Case no. 95-4411; Judge n/a, 10-99.

Attorney for plaintiff: Arthur L. Bugay of Galfand Berger in Philadelphia.

COMMENTARY:

This action stemming from a work-related accident settled just before trial was scheduled to begin. The defendant initially contended that the plaintiff had struck and damaged the wooden steps when he backed an empty trailer into the narrow loading dock. The defense produced a witness who not only testified to observing the plaintiff struck the wooden stairs, but claimed that the plaintiff ripped the door off his trailer in the process. The defendant contended that the plaintiff assumed the risk of injury by walking on the steps which he had just damaged. However, the plaintiff was able to utilize the services of an expert engineer to establish that it was physically impossible for the plaintiff to have made contact with the steps given the physical configuration of the dock area. In light of this evidence, the defense stipulated to liability at the time this case was set for trial and focused on its dispute regarding damages. The defense particularly maintained that the plaintiff was given an opportunity for reeducation which he rejected and that he could have returned to work sooner than three years post-accident if he so desired. In addition, the defendant's expert testified that the plaintiff would have been prohibited from continuing his employment as a truck driver, regardless of the happening of this accident, due to pre-existing medical conditions. The settlement includes partial waiver of the subrogation lien. □