

REGIONAL NEWS

\$3 Mil. Settlement Reached in Railroad Car Fatality

BY AMARIS ELLIOTT-ENGEL

Of the Legal Staff

A \$3 million settlement has been reached in the case of a man whose head was crushed in a railroad car accident at a Coatesville, Chester County, steel mill.

Brian Pluck, 24, was killed in December 2006 when he slipped and fell from a railcar carrying scrap metal and Pluck's body was caught under the railcar, according to the plaintiff's mediation memorandum.

Pluck's widow, Denise Hiten-Pluck, sued, among other defendants, ArcelorMittal, the owner of the steel mill, mediation papers said.

Pluck v. ArcelorMittal Plate, a case pending in Philadelphia Common Pleas Court, settled Feb. 5 following a mediation with Diane M. Welsh, a retired U.S. magistrate judge, according to the memorandum of understanding in the case.

Richard Jurewicz and Henry Yampolsky of Galfand Berger were plaintiff's counsel, according to papers. Defendant's counsel were Bridget E. Montgomery, Adam M. Shienfold and Kevin M. Skjoldal of Eckert Seamans Cherin & Mellott's Harrisburg office, according to papers.

The ArcelorMittal defendant made no admission of liability, according to the agreement. Pluck's employer waived its statutory lien under the Worker's Compensation Act and Etien-Pluck waived her right to workers' compensation, the agreement said.

The plaintiff argued that ArcelorMittal was negligent because the railcar under which Pluck was crushed did not have federally

mandated foot stirrups and grab bars on the side of the railcar, the plaintiff's memorandum said. The plaintiff also argued that ArcelorMittal stopped its railroad inspection program at the Coatesville mill.

The processing of



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scrap at the steel mill's furnace was a joint effort between ArcelorMittal and MultiServ, Pluck's employer, which leased one of two scrap yards at the steel mill, the plaintiff's memorandum said. Scrap was moved to the furnace through a railway system owned and operated by ArcelorMittal, the plaintiff's papers said.

ArcelorMittal did have an on-site safety representative who inspected the scrap yards weekly, but with 400 railcars in the steel mill the safety representative could not inspect each and every railcar weekly, the plaintiff's memorandum said.

Both ArcelorMittal and MultiServ employees commonly rode the first railcar being pushed by a locomotive train from the scrap yard to the furnace building, the plaintiff's memorandum said.

Pluck worked as a brakeman for MultiServ, and he was responsible to communicate to the locomotive operator when to stop the railcars so the ground switch could be set for the railcars to travel on the right tracks, the plaintiff's memorandum said.

The plaintiff theorized that Pluck lost his balance and fell to the ground from the lead railcar due to the train jolting into motion;

without grab handles and a foot stirrup, Pluck was not able to maintain at least three points of contact with the train car, the plaintiff's memorandum said.

The plaintiff's papers theorized that Pluck fell parallel to the lead railcar and had his torso trapped between the ground and the journal box, which contains the train's brakes. The plaintiff's papers further said that Pluck was unable to get out under the journal box, so his head became wedged between the rail track and the front wheel of the railcar, leading to Pluck's head being crushed and his headless body being dragged by the train.

ArcelorMittal called the plaintiff's theory "speculative," according to the defense mediation statement. ArcelorMittal said that its railroad safety expert found that the railcar from which Pluck allegedly fell allowed a rider to have at least a three-point contact with the car because a rider could stand on the car's original floor and hold onto the top edge of the steel bucket.

ArcelorMittal said if Pluck fell while riding the car it was not due to the railcar's condition and if Pluck fell while trying to mount the car he was contributorily negligent for mounting a moving railcar.

ArcelorMittal also said in its mediation statement that Pluck's employer was an independent contractor responsible for the safety of its employees and responsible for maintaining the railcars owned by ArcelorMittal.

ArcelorMittal argued that the removal of handholds, sill steps and ladders from its rail cars was because of a settlement agreement between the preceding owner

of the steel mill, Lukens Steel, and the federal Occupational Safety and Health Administration because of a 1996 fatal accident at the steel mill, defense papers said.

The settlement was a good recovery, Jurewicz said, because the evidence supported that Pluck's death was instantaneous, Pluck and his wife did not have children, the defendant was pursuing a theory of contributory negligence and employees were not supposed to ride railcars.

While Pluck's employer was an independent contractor, Jurewicz said he argued that ArcelorMittal had some liability because ArcelorMittal owned the railcars and retained some control over the railcars, including having to give permission for OSHA and Pluck's employer to enter a settlement agreement for handholds and stepills to be reinstalled on the bucket cars.

"Who controlled the use of the grab bars?" ArcelorMittal, Jurewicz said.

ArcelorMittal noted the settlement agreement with OSHA in its papers, but it argued that the condition of the railcars was exactly the same as in 2000, when Pluck's employer inspected and accepted the cars.

ArcelorMittal's motion for summary judgment was denied, the plaintiff's memorandum said.

The other defendants, former lessees of the scrap yard Connell Industries, Connell's Luria Brothers division, Philip Services Corp. and Philips Metals, were voluntarily dismissed, defendant's memorandum said. Defense counsel Montgomery could not be reached for comment. •