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Verdicts & Settlements

Fallen Shelf Caused Head Injury, Plaintiff Claims

Ng v. Turner Construction \$500,000 Mediated Settlement

The Legal Intelligencer

March 17, 2015

Date of Settlement:

February 19.

Court and Case No.:

C.P. Philadelphia, No. 001174.

Judge:

Mark I. Bernstein.

Type of Action:

Products liability.

Injuries:

Post-concussion syndrome, post-traumatic stress disorder.

Plaintiffs Counsel:

Richard M. Jurewicz, Galfand Berger, Philadelphia.

Defense Counsel:

Josh M. Greenbaum, Cozen O'Connor, Philadelphia, for Turner; John T. Donovan, Rawle & Henderson, Philadelphia, for Valley City Manufacturing Co.; Peter F. Marvin and Dianne A. Dichter, Bazelon Less & Feldman, Philadelphia, for Ballinger Co.

Plaintiffs Experts:

Ronald A. Fermano Jr., engineer, Mount Laurel, New Jersey; Dr. Michael Martin Cohen, neurology, Philadelphia; Dr. Richard Ganley, psychologist, Bala Cynwyd.

Defense Experts:

Charles E. Dagit, architect, Gladwyne; Walter E. Green, architect, Ambler; Dr. Peter Badgio, psychologist, Bryn Mawr; Dr. Barbara Ziv, forensic psychiatrist, Philadelphia.

Comment:

According to the plaintiff's mediation memorandum, on Oct. 5, 2011, plaintiff Jessica M. Ng, a scientific researcher, was standing in an aisle and talking to a co-worker at the Colket Translational Research Center in Children's Hospital of Pennsylvania, when a 32-pound wood panel fell from a tech desk and struck her on the head. According to the memo, a piece of hardware, known as a z-clip, that connected the panel to the desk, had been improperly installed. The memo said the clip was off-center, allowing it to become dislodged.

According to the memo, Ng's employer later tested an identical desk in the office, and was able to detach a panel by pressing on it. The allegedly defective panel was fixed by inserting a bolt to secure the panel, the memo said.

According to the memo, CHOP had hired the Ballinger Co. as the architect on a project that involved installing the desks, and had contracted directly with Turner Construction Co., as the general contractor and construction manager of the project. Turner had subcontracted with Valley City Manufacturing Co. for installation of the desks.

The memo said the desks had been a new and unique design that Valley City Manufacturing had never installed before. The memo also said that defendants Ballinger, Turner and Valley City Manufacturing had been required to inspect the work.

Along with the clip, Ng also contended in her memo that certain joints had not been properly glued, which allowed for unnecessary shifting.

Ng's liability expert, Ronald A. Fermano Jr., opined that the clip had not been level, which prevented it from interlocking on the end of the panel, and that the failure to properly glue the joints contributed to the incident.

Valley City Manufacturing in its memo noted that the desk had been installed, at the latest, in September 2009, and that there had not been any incidents for two years regarding the desks. Valley City Manufacturing also noted that CHOP had wanted the cabinet to be designed without any visual hardware, and therefore the clips had to be part of the overall design of the desk.

Valley City Manufacturing also noted that Ng had not provided a safer alternative design for the panel, and failed to identify what commercial standards are available for the construction of a custom desk with specific requirements to recess the attached hardware.

Ballinger, in its memo, said that the cause of the incident had not yet been identified, and Ng had not been able to establish negligence.

The defendant's liability expert, Charles E. Dagit, said Ballinger met and exceeded the standard of care for architects. The expert further opined that Fermano did not have expertise with projects similar to the one at issue, and that Fermano's conclusions were based on incorrect assumptions.

Turner, in its memo, additionally noted that its expert, Walter E. Green, said Turner had not designed or manufactured the desk, and was not contractually responsible for the desk.

Ng did not seek immediate treatment after the incident, but went to the emergency room later in the day. Ng contended in her memo that she suffered from post-concussion syndrome, a traumatic brain injury and a closed head injury. She also claimed to have sustained post-traumatic stress disorder, and bilateral occipital neuralgia.

The accident, Ng contended, led to neck pain and cognitive impairments involving executive functions, such as language.

Ng was out of work for five months, and accrued about \$18,000 in medical bills.

Plaintiffs expert Dr. Michael Martin Cohen said Ng's injuries were consistent with being hit by a 30-pound board. His prognosis for Ng was poor. He said her injuries will be permanent, and that she will require future medical treatments.

Plaintiffs expert Dr. Richard Ganley also said the injuries ended Ng's career was a "top research scientist."

"She is young and had a promising career as a research scientist and cannot advance in her career because of the cognitive injuries she suffered in this accident," the plaintiff's memo said. "This is a huge loss for her, not only financially, but also her extreme feelings of worthlessness and sadness of having her co-workers advance while she stays behind and her not being able to accomplish her dream of owning her own lab."

In their memos, the defendants disputed Ng's injuries, and noted that Ng returned to work and her salary had increased after the accident.

Dr. Peter Badgio, who had been retained by the defendants, said mild traumatic brain injury does not explain Ng's claimed symptoms. Dr. Barbara Ziv, who had also been retained by all the defendants, said Ng had the cognitive capabilities of being a research associate.

The parties agreed to settle the case during mediation for \$500,000.

Both Josh M. Greenbaum of Cozen O'Connor and John T. Donovan of Rawle & Henderson declined to comment, and calls to Peter F. Marvin and Dianne A. Dichter of Bazelon Less & Feldman were not returned.

— Max Mitchell, of the Law Weekly

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