



VERDICT

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CASE NOTE OF INTEREST

Stephen Rudzik, et al. v. Benjamin Foods, et al.

Court and Case Number:
PCCP 141000025

Judge:
Honorable Lisa Rau

Facts: Stephen Rudzik, Andrew Phipps, Mark Yakscoe, Andrew DiFazio, James McGinnis, Richard Rowland, David Domarasky, Kevin Kelly and Eric Corbin were all employed by the Pennsylvania Turnpike Commission and were part of a maintenance operation crew that was dispatched on June 1, 2014 for embankment stabilization of the shoulder on the Pennsylvania Turnpike roadway westbound near Downingtown.

There were various turnpike vehicles parked on the shoulder of the road including an early warning truck, pick-up truck, stake body truck, two triaxle dump trucks and a Gradall loader. The right lane of the turnpike had been closed by the placement of posted work zone signage and traffic cones.

Defendant Efrain Jensen was driving a 53 ft. tractor/trailer on behalf of Defendant Benjamin Foods. Defendant Jensen had been assigned to work at Defendant Benjamin Foods by Co-Defendant Trusted Transportation, a commercial driver employment agency that supplies commercial drivers for long term driving assignments. Defendant Jensen was operating his tractor/trailer in the left lane proceeding westbound and upon turning a sharp corner on the Pennsylvania Turnpike roadway immediately before where the Pennsylvania Turnpike vehicles were located,

came upon a slower moving vehicle and veered into the right lane striking and instantly killing a co-worker of Plaintiffs that was kneeling down in the right lane of travel.

Upon hearing the impact, some of the Plaintiffs had to move out of harm's way of being potentially struck by the passing commercial vehicle as it entered back into the left lane of travel. Plaintiffs Phipps, Yakscoe and McGinnis were seated in their turnpike vehicles. The remaining Plaintiffs heard and saw the commercial vehicle pass by their work area.

Plaintiff Phipps was the employee that got out of his truck and covered up his co-worker's body with cardboard immediately while waiting for police to arrive. None of the nine Plaintiffs actually witnessed their co-worker being struck by the tractor/trailer and some of the Plaintiffs were located behind their trucks and did not even see the tractor/trailer pass by. Nevertheless, after Defendant's commercial vehicle came to a stop, the nine Plaintiffs were in fact aware that their fellow employee had been fatally injured.

Liability: The real challenge in this case was for Plaintiffs' counsel to impress upon Defendants' counsel and their carriers that an emotional distress claim (PTSD) was equally as compensable as Plaintiffs' physical injuries, which the Plaintiffs (with the exception of Rudzik) did not suffer. Since several of the Plaintiffs (McGinnis, Rowland and DiFazio) had no wage loss claims and none

of the Plaintiffs, with the exception of Rudzik, had any medical expenses, Plaintiffs' counsel was forced to be creative in convincing Defendants' carriers that the claims should not be evaluated

based on the typical "boardable specials" evaluation typically done in personal injury cases. Consequently, Plaintiffs' counsel was able to develop some compelling evidence from the Plaintiffs themselves, who all returned to work, of the constant fear and worry that they now have that they could face the same fate that their co-worker did by being back out on the turnpike roads doing roadway maintenance and repair. The fear and uncertainty that Plaintiffs now experience while working was also based in part by the fact that on the day of the accident they believed that they were protected and could do their work safely without fear of vehicles entering their work area based on lane closure signage that had been placed on the turnpike roadway well before where the accident occurred. Despite following the proper lane closure protocol, which still did not prevent the fatal injuries suffered by their co-worker, all Plaintiffs now feel emotionally vulnerable that they are at risk that the same thing could happen to them now.

While not denying liability, Defendants' strategy was to point out that all Plaintiffs had returned to work and were able to do their pre-accident jobs, which would negate any claims that they still continue to suffer from Post-Traumatic Stress Disorder. Plaintiffs' response to

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this was that there was not one working day when they were out on the roadway that they were not re-living what had happened to their fellow employee and wondering whether the next time it would be their turn where their spouse or significant other would receive a call that they too have been killed in a work related roadway maintenance accident. For these Plaintiffs, they now feel that they have a "bull's eye" on their back each time they step out onto the turnpike roadway to do their job and this fear can be as debilitating as any physical injury that prevents them from doing their job properly.

Outcome of the Case: \$2,000,000.00 for claims of emotional distress involving 9 turnpike workers.

Plaintiffs' Experts:

Dr. Christina L. Herring (Rudzik psychiatrist), Richard M. Ganley, Ph.D. (Phipps psychologist), Vincent LaSorsa, Ph.D. (Yakscoe psychologist), Jane Kassel, Psy.D. (McGinnis & DiFazio psychologist), Gerald Cooke, Ph.D. (Rowland psychologist), Angelika Sadr, M.A. (Domarasky psychologist), Barbara Watson, Psy.D. (Kelly psychologist), Chad Staller JD & James Markham, Ph.D. (Phipps economist), Robert Toborowsky, M.D. (Corbin psychiatrist), Robert Toborowsky, M.D. (DiFazio psychiatrist).

Defendant's Experts:

Curt D. Miller, M.D. (Rudzik), Robert M. Toborowsky, M.D. (Rudzik, Corbin, DiFazio, Domarasky, Kelly, McGinnis,

Rowland, Phipps, Yakscoe - psychiatrist).

Plaintiffs' Attorney:

Richard M. Jurewitz, Galfand Berger LLP, Philadelphia.

Defendants' Attorneys:

Glenn A. Ricketti, Margolis Edelstein, Philadelphia, for Defendant Benjamin Foods

James D. Hilly, Marshall, Dennehey, Philadelphia, for Defendant Trusted Transportation
Andrew Benedict, Weber Gallagher, Philadelphia, for Defendants Benjamin Foods and Efrain Jensen. ♦