

CONSTRUCTION ACCIDENTS

20 TD 14TH 3

Roofer's 15-foot fall results in quadriplegia**CONSTRUCTION & INDUSTRIAL ACCIDENTS**

Fall

SAN BERNARDINO COUNTY SUPERIOR COURT

Carrillo v. Rosetti Construction Company Inc., Docket number: CIVSS817946, Central. Trial type: Settlement. Settlement date: 3/2/2011.

SETTLEMENT: \$5,300,000

\$5.3 million in settlement. Plaintiff also settled with the plaintiff-in-intervention and will receive lifetime medical care in the approximate amount of \$11 million without credits and an assignment of the workers' compensation lien.

COUNSEL

Plaintiff: Richard B. Koskoff, Booth & Koskoff, Torrance.

Defendant: W. Patrick Grimm, Grimm, Vranjes, McCormick & Graham, San Diego. Mark Vranjes, Grimm, Vranjes, McCormick & Graham, San Diego. Linda S. Bauermeister, Barber & Bauermeister, Santa Ana. Michael J. Mulhern, Barber & Bauermeister, Santa Ana. John Ellis, Kennick & Associates, Fullerton. John B. Larson, Law Offices of Larson & Gaston, Pasadena. Paul N. Jacobs, Jacobs & Dodds, Irvine.

Intervenor: Helen C. Ng, State Compensation Insurance Fund.

FACTS/CONTENTIONS

According to plaintiff: On August 6, 2007, plaintiff Victor Carrillo, a 46-year-old roofer employed by Don Luginbill Roofing Inc. dba JJ Roofing in Riverside, California, was installing fire retardant paper on the roof of a building at the West Valley Water District in Rialto, California, when he tripped and fell 15 feet to the ground below, resulting in quadriplegia. There were no witnesses to the accident. Plaintiff admitted to the Cal OSHA investigator that he stepped backwards and fell over the parapet wall. He made

the same admission to the workers' compensation treating neuropsychologist.

At the time of the incident, the West Valley Water District building was undergoing a renovation of existing structures and construction of a new building adjoining them. Defendant West Valley Water District hired Rossetti Construction Company Inc. as the general contractor. Defendant Rosetti hired Shannon Finch Inc. to do rough carpentry and framing work and also hired Don Luginbill Roofing Inc. dba JJ Roofing to install a single-ply Duro-Last membrane on the roof.

Plaintiff claimed that defendant Finch Failed to perform its rough carpentry work in accordance with the plans and specifications. As a result, there was a one-half inch depression in the roof deck adjacent to the east parapet wall. There was also a two-inch vertical gap at the base of the parapet wall.

Plaintiff and his partner were each holding an end of a 20-foot-long strip of fire retardant paper which they intended to lay along the south parapet wall. Plaintiff stated that while preparing to lay the paper, his foot got caught in the area of the depression and vertical gap. As a result, he stumbled a couple of steps toward the south wall and went over the wall backward, much like a back flip.

Plaintiff claimed that Rossetti, the general contractor, was required to take alleged necessary steps for the safety for all employees on the job site, which included assuming responsibility for job site conditions during construction. Plaintiff also contended that Rossetti was in charge of scheduling subcontractors and was the one who told the roofers where and when to begin their work. Consequently, plaintiff claimed that JJ Roofing and its employees did not have control or authority to decide where and when to work. Moreover, according to custom and practice in the industry. Rossetti admitted that when it told a subcontractor where and when to begin work, this meant that the work area was ready for the subcontractor's work, and that the area was safe for the subcontractor's employees. Mr. Rossetti admitted that, although he had previously inspected the area where plaintiff tripped, he did not recall whether or not the rough carpentry work in the area was built in compliance with the plans.

Pursuant to the master contract between the West Valley Water District and Rossetti, defendant West Valley Water District had a resident project representative on site whose duty was to ensure that the work of the subcontractors complied with the contract documents. However, the contract documents, including the plans and specifications, did not call for a one-half inch depression in the roof decking or a two-inch vertical gap at the base of the parapet wall.

Defendants claimed that the work conformed to industry standards for rough carpentry. Defendants also claimed that plaintiff and his co-workers were required to inspect the work area for tripping hazards and potentially danger-

ous conditions and accepted the work as satisfactory. Further, defendants contended, as supported by plaintiff's prior statements, that plaintiff was walking backward, in violation of company policy and safe practices, which is why he fell over the wall backward.

CLAIMED INJURIES

According to plaintiff: Partial tetraplegic. Plaintiff suffered fractures at C4, C5, and C6. He has gross movement of his arms but no control over his hands or fingers.

Sonia Carrillo: Loss of consortium.

CLAIMED DAMAGES

According to plaintiff: Plaintiff's life care plan ranged between \$5 million and \$10 million.

SETTLEMENT DISCUSSIONS

According to plaintiff: The case against defendants Rossetti and West Valley Water District resolved in mediation with Michael Moorhead at Judicate West for \$4.3 million. At that time, defendant Finch offered slightly over \$100,000 in settlement. Just prior to jury selection, defendant Finch offered its risk retention group policy limits of \$1 million, which plaintiffs accepted.

EXPERTS

Plaintiff: Morris S. Farkas, safety engineer, Santa Monica (310) 440-5588. Tamorah G. Hunt, Ph.D., economist, Formuzis, Pickersgill & Hunt Inc., Santa Ana (714) 542-8853. Carley C. Ward, Ph.D., biomechanical engineer, Biodynamics Engineering Inc., Phoenix, AZ (480) 753-5044. Robertus H. Kounang, M.D., physiatrist, Redlands. Sharon K. Kawai, M.D., physiatrist, St. Jude Medical Center, Fullerton (760) 931-5430. David R. Patterson, M.D., physiatrist, Pomona (909) 596-7733. Crit Haney, contractor. George Reis, photographer, Imaging Forensics, Fountain Valley. Jorge Mendoza, photographer, Litigation Animation Inc., San Jose.

Defendant: Edward L. Bennett, M.A., vocational rehabilitation consultant, Coast Rehabilitation Services Inc., Santa Barbara (805) 682-7020. Thomas L. Hedge, Jr., M.D., physiatrist, Northridge Hospital Medical Center, Northridge (818) 885-5342. Ted Vavoulis, M.S., economist, Vavoulis & Weiner, Los Angeles (213) 817-6600. David J. Weiner, M.B.A., economist, Vavoulis & Weiner, Costa Mesa (714) 434-2253. Eric S. Deyerl, P.E., safety/mechanical engineer, Quan, Smith & Associates, El Segundo (310) 615-2600. Henry M. Koffman, M.S.C.E., construction management expert, USC, Los Angeles.

COMMENTS

According to plaintiff: Defendant JJ Roofing dba Don Luginbill was insured by Lexington Insurance. Defendant Rossetti Construction Company was insured by North American Capacity Insurance Company. Defendant West Valley Water District was insured by the Association of California Water Agencies and John Powers Insurance

Authority. Defendant Shannon Finch Inc. was insured by National Contractors Insurance Company Inc., a Risk Retention Group.

W. Patrick Grimm and Mark Vranjes represented defendant Rossetti Construction. Linda S. Bauermeister, Michael J. Mulhern, and John B. Larson represented defendant West Valley Water District. Paul N. Jacobs represented defendant Shannon Finch Inc. John Ellis represented defendant Don Luginbill Roofing. Helen C. Ng represented the State Compensation Insurance Fund.