



KERN COUNTY

CONSTRUCTION ACCIDENTS

Laborer Brain-Damaged From Fall Settles Claim for \$1.75M

SETTLEMENT: \$1,750,000

CASE John Doe v. Roe Co., Confidential
COURT Superior Court of Kern County, Bakersfield
DATE 10/1/2001

PLAINTIFF
ATTORNEY(S) Richard B. Koskoff; Booth & Koskoff; Torrance, CA (Confidential)

DEFENSE
ATTORNEY(S) Confidential

FACTS A laborer who fell through a roof during the construction of a central California prison and suffered major injuries, including brain damage, settled his negligence claim for \$1.75 million.

On Dec. 3, 1998, a 51-year-old laborer was working on the roof of a prison-housing unit when he fell through an unprotected opening and landed 22 feet below on a concrete slab. He was wearing a hard hat and landed on his feet, fell backward and struck his head.

Pursuant to plans and blueprints, the building roofs were to be assembled with prefabricated units, which when laid, created a pattern with openings for heating, air conditioning, ventilation and skylights. Originally, the plaintiff's employer, a roofing subcontractor, provided the plywood to cover the openings until fixtures were installed. The employer began moving the plywood before installation of the fixtures in order to cover unprotected openings on the next housing unit where part of his crew was working. However, the general contractor instructed the employer to keep the coverings in place so as to avoid creating a dangerous condition on the existing roof. At that point, one of the subcontractors was assigned the job of providing plywood to cover future openings on the roofs of the new buildings to be constructed. Although the subcontractor ordered plywood for future buildings, there was a dispute as to whether or not the plywood was ever delivered, and if it was, where it was located on site.

According to witnesses, the plywood had been ordered by the formwork subcontractor to be delivered to the staging area where all the big trucks dropped loads. Because the plywood was not tagged and the people who needed it for roof coverings were reportedly not informed that it had arrived, it sat unused for several days before the accident.

One of the settling parties claimed that the plaintiff's employer had been informed when the plywood arrived on-site and where it was located. The employer denied such knowledge.

A half hour before the accident, the general contractor was inspecting the roof of the original building where the plaintiff was working, which had several uncovered openings, according to plaintiff's counsel. The general contractor reportedly ordered work to be stopped until plywood was placed over the dangerous openings. While the plaintiff's coworkers were out looking for the plywood, the plaintiff fell through one of the unprotected openings, according to testimony.

INJURIES The plaintiff suffered a closed-head diffuse brain injury, compression fracture of the lumbar spine and a calcaneal fracture of the foot. He underwent hospitalization and then rehabilitation. Long-term residuals include cognitive dysfunction, short-term memory loss and frontal lobe damage (impaired judgment, mood swings and depression). It was disputed whether or not the plaintiff needs attendant care. According to the plaintiff, he will need close monitoring, but the defense contended that he could live independently on his own.

The plaintiff also maintained that he is not employable for gain and can only occupy himself in a sheltered work environment. The defense disagreed, alleging that he can find work for gain in a controlled setting.

Specials claimed include past medicals of \$237,000, future medicals of \$400,000, past lost wages of \$40,000 and future lost wages of \$60,000.

SETTLEMENT The parties settled in a mediation held before mediator Jeffrey Kravis of First Mediation Corp. in Encino.

Torrance attorney Richard Koskoff, who represented the plaintiff, stated that the plaintiff prevailed under general principles of negligence and *Toland v. Sunland Housing Group, Inc.* (1998) 18 Cal.4th 253, despite its preclusion of vicarious general contractor liability.

The workers' compensation claim has also been settled. According to Koskoff, because of substantial negligence on the part of the plaintiff's employer (allowing people on the roof and being aware that the openings shouldn't exist), the workers' compensation lien against the plaintiff was defeated. The carrier settled its lien, which was reported to be around \$200,000, for \$10,000, waived its credit, and left open lifetime medical and disability benefits for the plaintiff.

DEMAND \$2,750,000
OFFER \$750,000

PLAINTIFF
EXPERT(S) None

DEFENSE
EXPERT(S) None

INSURER(S) ULICO Insurance Co. and other insurance entities