



2005 WL 3804522

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For Dockets See 2:03cv09219

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United States District Court, C.D. California, Western Division.

SEAN KUYKENDALL, JOHN MAHONEY, JENNIFER KUYKENDALL AND ROSEMARY MAHONEY V.
DOE COMPANY

No. CB 03 9219CAS

DATE OF VERDICT/SETTLEMENT: November 15, 2005

TOPIC: CONSTRUCTION - ACCIDENTS - NEGLIGENCE - NEGLIGENT SUPERVISION - WORKPLACE
SAFETY BAD INSTRUCTIONS LED TO SCAFFOLDING ACCIDENT

SUMMARY:

AWARD: \$7,000,000

RESULT: Mediated Settlement

The parties settled the case during mediation for the total \$7 million, including \$4 million for the Kuykendalls
\$3 million for the Mahoneys.

EXPERT WITNESSES:

Plaintiff: Brad P. Avrit, P.E.; Safety; Marina del Rey, CA Darrell Hays; Construction; Santa Barbara, CA David
Hopper; Civil; Redondo Beach, CA Edwin C. Amos; Neurology; Santa Monica, CA F. David Rudnick, M.D.;
Psychiatry; Los Angeles, CA Farshid Fred Hekmat, M.D.; Orthopedic Surgery; Los Angeles, CA Jay Williams;
Alcohol Toxicology; Ojai, CA Larry Braff, M.D.; Emergency Medicine; Los Angeles, CA Lawrence V. Ma-
jovski; Neuropsychology; Tacoma, WA Morris S. Farkas; Safety; Culver City, CA Sandra Schneider; Vocation-
al Rehabilitation; Los Angeles, CA Sharon K. Kawai; Life Care Planning; Fullerton, CA Steven J. Nagelberg;
Orthopedic Surgery; Downey, CA Steven M. Belknap; Pharmacology; Los Angeles, CA Tamorah Hunt, Ph.D.;
Economics; Santa Ana, CA Thomas L. Hedge; Spinal Injury/Trauma; Northridge, CA

Defendant: Ann T. Vasile; Physical Rehabilitation; Los Angeles, CA David M. Lechuga, Ph.D.; Neuropsychol-
ogy; Mission Viejo, CA Donald George Barceloux, M.D.; Alcohol Toxicology; Pomona, CA Edward L. Work-
man; Vocational Rehabilitation; Los Angeles, CA Michael Wiener, M.D.; Neurology; Sherman Oaks, CA Ray-
mond C. Kelly; Pharmacology; Los Angeles, CA Ronald E. Glousman; Orthopedic Surgery; Los Angeles, CA
Ted Vavoulis; Economics; Pasadena, CA Via R. Spiehler; Toxicology; Los Angeles, CA

ATTORNEYS:

Plaintiff: J. Shaffer Smith; Law Offices of J. Shaffer Smith and Associates; Beverly Hills, CA **Richard B.
Koskoff**; Law Offices of Booth and Koskoff; Torrance, CA

Defendant: Counsel not disclosed; Law Offices of Ronald M. Pappell; Los Angeles, CA

JUDGE: Christina A. Snyder

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RANGE AMOUNT: \$5,000,000-999,999,999

STATE: California

COUNTY: Not Applicable

INJURIES: Kuykendall suffered a burst fracture of the T-12/L-1 vertebral body and was rendered an incomplete paraplegic with partial loss of movement in his limbs.

FACTS:

On Nov. 4, 2002, the day after a concert was held at the Hollywood Bowl, plaintiffs Sean Kuykendall, 29, and John Mahoney, 55, employed by the Los Angeles Philharmonic Association as a carpenter and rigger, respectively, were dismantling a structural tower, located on the stage, which had speakers, video screens and lighting on it.

Their supervisor for the day, who was employed by the defendant scaffolding company that provided the staging and scaffolding for the concert, requested the removal of a specific ratchet strap from a structural beam. (The defendant's name is being kept confidential as per the settlement.)

Kuykendall was standing on an elevated beam within a grid of beams. When he removed the ratchet strap, the beam he was standing on, which was connected to the strap, rolled under his foot, causing him to fall 45 feet to the ground. Meanwhile, Mahoney, who was working 10 feet below Kuykendall, was struck by the falling beam, and he too fell to the ground.

Claiming serious permanent injuries, Mahoney and Kuykendall sued the scaffolding company for negligent supervision.

The defense brought a motion for summary judgment based on the special-employment doctrine (arguing that it exercised the right of control over them) and that the plaintiffs should therefore be barred from maintaining a third-party lawsuit against it. The court initially denied the motion, but was reconsidering it at time of settlement.

Citing toxicological evidence that showed Kuykendall had extremely high amounts of methamphetamine in his system while working on the structure, defense counsel also argued that he was 100% responsible because he was not of a sound mind to be working on such a project at the time.

The defense also contended that both plaintiffs were negligent because they had unhooked their safety lanyards and were not tied off to the structure.

Kuykendall was hospitalized for approximately five weeks and was released home before entering rehabilitation.

He is wheelchair-bound and requires assistance performing routine household tasks. His medical specials were \$600,000 and he was earning \$20,000 per year.

Mahoney suffered multiple fractures of the right femur, a fracture of the right hip and other fractures. He claimed to have persistent knee and hip soreness, requiring a knee replacement. He walks with a cane.

Mahoney's specials were \$150,000 and his salary was \$50,000 per year.

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Both men's wives sought loss of consortium.

ALM Properties, Inc.

United States District Court, C.D. California, at Los Angeles

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