

## WORKSITE ACCIDENTS

### 51. \$3,000,000 Settlement In Suit Arising From Impalement On Gate

Plaintiff Fernando Sanchez, 53, worked as a plumber for Grimmway Farms, a large carrot processing operation. On the morning of Dec. 8, 2010, he was driving a forklift when a 20-foot-long metal pole gate that had been left open, directly in his path, impaled him. The end of the gate went through the front of the forklift, through Sanchez's body and exited out the back of the forklift.

The gate was ordinarily closed, and on the limited occasions when it was opened, it was to be opened towards the east and secured with a pin, flush against a large structure. At the time that Sanchez encountered the gate, however, it was pointing towards the southwest and unsecured.

No one saw who opened the gate. A Grimmway safety supervisor testified that she saw the gate in a closed position approximately 45 minutes before the accident. A trail of water showed that a truck had driven through the area normally closed off by the gate, around the time of the accident. A driver employed by defendants, Vicente Pena, admitted that he had driven through there, but denied that he touched the gate. He testified that the gate was already open (facing to the east) when he drove through.

Plaintiff contended that Pena opened the gate in order to drive his truck through the restricted area because the route that he normally took to exit the area where he would load his truck with carrots was blocked. Records kept by Grimmway showed that Pena exited the plant at around the time of the accident, which placed him at the subject gate approximately 10 minutes before the accident. Plaintiff contended that there was no one else who had any reason to open the gate during that time period. Moreover, Pena's time records showed that he had worked almost two days without a real break and therefore was most likely tired and susceptible to lapses in judgment.

Defendants contended that Pena did not open the gate. Defendants also contended that Pena had never been given clear instructions about whether or not he could open the gate or drive on the driveway that was normally closed off by the gate.

**General Injury:** One of Sanchez's kidneys was destroyed in the accident, and the other was badly damaged. He also suffered substantial damage to his legs and is still very limited in his ability to walk. Sanchez spent a year in the hospital and is now on dialysis three times per week, awaiting a kidney transplant.

**Result:** \$3 million settlement. Of that amount, \$2,750,000 will go to Sanchez, and \$250,000 will go to Grimmway Farms to satisfy its workers' compensation lien.

**Settlement Negotiations:** Prior to any settlement discussions between the parties, plaintiff's counsel and counsel for plaintiff's employer (Grimmway Farms) participated in a mediation before Alan Saler. Grimmway had paid over \$2 million in workers' compensation benefits and was asserting a lien in that amount. As a result of the mediation, Grimmway agreed to accept \$250,000 to resolve its lien, plus a \$100,000 credit in the ongoing workers' compensation case.

**Plaintiff's Attorney:** Roger E. Booth, Booth & Koskoff, Torrance, Cal.

**Defendant's Attorney:** Patrick S. Schoenburg, Wood, Smith, Henning & Berman LLP, Fresno, Cal.

*Sanchez v. Agri-Mix Transport Inc., Juarez Brothers Trucking Inc.*, No. S-1500-CV-277330-LHB (Kern Cty. Superior Ct. Cal. Sept. 24, 2014)