$1,000,001 Verdict - Supermarkets Negligent Failure to Maintain Portable Loading Dock

Date: 4/10/2006

A New Jersey jury awarded a man $1,000,001 for an on-the-job injury -- the result of a poorly maintained loading dock. George Badey and Michael DiGenova represented the plaintiff.

The plaintiff was 43 year old; a self-employed produce wholesaler/distributor who was delivering a load of produce to the Fine Fare Supermarket on October 17, 2000. While pulling a hand truck loaded with 350 pounds of produce off of his truck and onto the portable loading dock, the plaintiff reached out and grabbed the railing to help him heft the load over the hump between his truck and the dock. As he yanked the hand truck, the railing of the loading dock came loose, which caused the plaintiff to awkwardly twist his lower back, injure his left shoulder, and caused abrasions to his arm and side. The abrasions and left shoulder injury healed, but his lower back continued to cause him severe radiating pain in his back and into his right leg. He was unable to continue working and was forced to close his business, which had been in operation for 18 years. Due to educational limitations, dropping out of school in 9th grade and limited literacy skills, he was unable to return to work and was awarded Social Security disability benefits, workers compensation benefits and private disability insurance benefits.

Plaintiff argued that since he was a business invitee, the defendant failed to warn or protect him from the dangerous condition of the dock. Plaintiff established through deposition testimony that there was no person designated by the supermarket as being responsible for inspecting and maintaining the dock.

The president of the corporation, the store manager and several employees testified at deposition that there was no one at the supermarket responsible to make sure that the dock was regularly inspected and maintained. In addition, maintenance records showed that an outside contractor had repaired the dock over 14 months prior to the incident, but they were only asked to perform a specific repair, as the supermarket refused to purchase a regular inspection and maintenance contract.

Maintenance records of the outside contractor indicated that the damage to the deck which they repaired over 14 moths prior had to have resulted in the breaking of the bolt which secured the railing to the dock. The supermarket only asked them to perform that specific repair and did not ask for or pay for an inspection or routine maintenance. Such routine maintenance would have uncovered the broken bolt and prevented the accident.

Plaintiff argued that he was a business invitee and that the supermarket owed a duty of care to inspect and maintain the dock.

Plaintiffs theory against the manufacturer was that it used a grade two bolt instead of a grade eight bolt to secure the railing and that the bolt was not strong enough to withstand the occasional bump of a truck backing into the loading dock. Plaintiff also maintained that the dock should have been designed with reinforced steel along the railing side, to prevent exactly the type of deformation that allowed the railing to become disengaged from the dock.

In addition to the store employees and his own testimony, Plaintiff presented testimony from a mechanical engineer, Douglas Chisholm, Ph.D. on both theories. Also, the two engineers presented by Bishamon in defense of the design blamed the complete lack of inspection and maintenance by the supermarket as the cause of the accident and injuries.

As a result of the incident, plaintiff suffered a reaggravation of a right-sided herniated disc at the L5-S1 level of his low back which permanently forced him out of work.

On damages, plaintiff presented the testimony of Ronald B. Greene, M.D. an orthopedic specialist, Allan Cooperstein, Ph.D. a psychologist and vocational specialist, and Brian Sullivan, Ph.D., an economist who estimated future wage losses in the range of $201,139 to $242,928. Past medical expenses of $18,512.39 were claimed, but the claim for future medical expenses was withdrawn prior to submission of the case to the jury.

Defendant supermarket presented three witnesses: the produce manager, the plaintiffs ex-wife and an examining physician. The produce manager, Eugene Brown, only addressed the issue that the plaintiff was working less and making fewer deliveries than in the past, as a way to minimize the wage loss claim. He did not discuss liability.

The Defendant also obtained the deposition of the plaintiffs ex-wife, who testified that the plaintiff was working fewer hours and fishing more prior to his injuries.

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The defendants examining physician testified that either the plaintiff was malingering because certain tests were inconsistent, or in the alternative, any problems he was suffering from related to the fact that he had a herniated disc in 1988. On this point, there were no records of treatment or missed time from work for more than 10 years prior to the 2000 injury and plaintiff claimed that his back had been healed for a long time.

Defendant Bishamon presented the testimony of two mechanical engineers that the dock was properly designed and that it was the lack of maintenance that resulted in the accident.

Defendant supermarket also argued that he plaintiff was comparatively negligent since he frequently used the dock in the 14 months prior to his accident.

The jury deliberated approximately four hours over two days before finding the defendant supermarket 100% negligent and the plaintiff 0% negligent. The jury also found that he product was not defectively designed. Plaintiff was awarded a total verdict of $1,000,001.00. This was broken down by the jury as follows: past medical expenses - $18,512.39: past wage losses - $78,000.00: future wage losses - $150,000: and pain and suffering - $753,488.61. The addition of pre-judgment interest by order dated April 26, 2006, brought the award to $1,130,415.27.

REFERENCE
Plaintiffs design and maintenance expert, Douglas R. Chisholm, Ph.D. Lovettsville, Virginia; Plaintiffs orthopedic expert Ronald B. Greene, M.D., Philadelphia, PA. Plaintiffs vocational expert, Allan Cooperstein Ph.D., Philadelphia, PA, Plaintiffs economist, Brian Sullivan, Ph.D. Defendants orthopaedic expert, Gary Goldstein, M.D. Voorhees, NJ, Defendant Bishamons design experts Clyde Richard, Ph.D. Annapolis, MD., Robert Stone, Ph.D.Ontario, California.

Carl DiLullo v. PTJ, Inc. (t/a/ Fine Fare Supermarket) and Bishamon Industries, Inc.

Superior Court of New Jersey, Monmouth County: Case No. L-4567-02. Honorable Louis Locascio. March 29 - April 10, 2006.

Attorneys for Plaintiff: George J. Badey III and Michael H. DiGenova of Sheller, Ludwig & Badey in Philadelphia, Attorney for Defendant supermarket: Gary McDonald of the Law Offices of Salvatore Alessi in Cherry Hill, NJ. Attorney for defendant Bishamon Industries,Corp., Thomas Kelly, of Tansey, Fanning, et al. Of Woodbridge, NJ.

COMMENTARY
The trial judge issued a ruling at the outset of the case which impacted on it throughout. Over plaintiffs objections, he ruled that the jury should hear that the plaintiff had received $90,000 in private disability insurance an that the plaintiff was receiving Social Security disability insurance. While defendants thought that this would help with the defense of the case, plaintiff used it to bolster the validity of his damages case.

The supermarkets strategy of attacking the plaintiffs work habits apparently backfired, since the plaintiff presented himself as a person who had his own company and had the right to take days off to go fishing or hunting. The plaintiffs wage loss claim was also based on a modest $31,200 per year in income, which was on the low end of his earnings history but which enhanced his credibility with the jury. The fact that the plaintiff was a 9th grade dropout with very limited literacy skills, yet with an 18 year business history further enhanced his credibility. The 1988 herniated disc argument advanced by the supermarket was undercut by the fact that there were no treatment records throughout the 1990s and that the plaintiff had gross sales of produce of over $5 Million dollars in that period. The fact that he essentially lifted $5 Million worth of produce without any problem for over 10 years prior to the injury undermined the defense position on damages.