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VERDICTS & SETTLEMENTS

Worker struck by forklift suffered crush injury

\$2,000,000 Settlement

The plaintiff, who was 58 at the time of the accident, was working for a company that provided port-a-potties. He was delivering water tanks to a construction site for use on a temporary construction trailer, and was standing at the open tailgate of a work truck when a fork lift operated by another company backed into him and crushed him against the open tailgate. Amazingly, he did not suffer any fractures or injuries to any of his internal organs, and he did not require surgery. He was ultimately diagnosed as having suffered a crush injury, which degloved the muscle from the other tissue in his abdomen and in the area of his right buttock. This injury resulted in tissue necrosis and internal buildup of fluid, as well as a crush injury to his sciatic nerve,

resulting in permanent nerve damage and loss of function of the muscles controlled by the affected nerves.

Plaintiff was initially hospitalized for seven days and was then transferred to a skilled nursing care facility, where he remained for an additional 10 days. Upon discharge to home, he had in-home nursing care. He underwent extensive physical therapy for in excess of a year. He suffered permanent scarring, disfigurement and deformity to his stomach and right buttock. He had recurring thoughts and nightmares about the accident, for which he was diagnosed with PTSD. Following the injury, he was in need of a right hip replacement. However, there was dispute as to whether this was as the result of the injury itself or would have been necessary regardless as the byproduct of pre-existing degenerative



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processes. The injury rendered him ineligible for a hip replacement, and there was controversy as to whether he would require a hip fusion surgery instead, which would have a significant effect on his functional abilities.

Plaintiff had previously been a very active person, but due to the injury, he has a noticeable limp and ambulates with a cane. He was unable to return to work following the injury. He had previously worked in management for another company earning a salary in excess of \$60,000. However, at the time of the accident, he was working in a position where he made approximately \$28,000 per year, and there was controversy as to the value of his past and future lost wages for this reason. The defendant admitted liability for the accident in the course of discovery, but the defendant had asserted a plea in bar that the plaintiff's exclusive remedy should be limited to the workers' compensation system. The plea in bar became a focal point of the case, and was extensively briefed by the parties and was the subject of an evidentiary hearing. The court ultimately overruled the defendant's plea in bar, after which the focus of the case became the issue of damages.

The case settled at mediation a few months prior to trial.

[13-T-177]

Type of action: Personal injury

Injuries alleged: Crush injury with degloving of the muscle from the other soft tissue in the abdomen and right buttock and associated necrosis and buildup of fluid; permanent injury to the sciatic nerve and other nerves in the right lower extremity; permanent scarring, disfigurement and deformity of the stomach and right buttock; PTSD

Mediator: Jerome Friedman

Date: Sept. 23, 2013

Special damages: Past medical bills of \$82,525.08; past and future lost wages in a range from approximately \$200,000 to \$530,000 (disputed)

Verdict or settlement: Settlement

Amount: \$2,000,000

Attorneys for plaintiff: John E. Basilone and John O. Goss, Norfolk

Plaintiff's experts: Fredric Bricka, LCSW; Stephen G. Cunningham, M.D., psychiatrist; Anthony J. DiStasio II, M.D., orthopedic surgeon; Tad E. Grenga, M.D., plastic surgeon; Maria N. Nguyen, M.D., pain management; Bonnie J. Nock, D.O., physical medicine and rehabilitation; Scott F. Reed, M.D., trauma surgeon/critical care; Evelyn G. Robert, BSN, RN, CLCP, life care planner; Raymond S. Strangways, Ph.D., economist; Robin Stromberg, M.Ed., CRC, vocational consultant; Leonard J. Weireter, M.D., trauma surgeon/critical care

Defendant's experts: Barbara K. Byers, M.A., CRC, vocational consultant; John A. Williamson, M.D., orthopedic surgeon