

NEW YORK

NEW YORK COUNTY

CONSTRUCTION

Labor Law — Construction — Accidents — Construction — Scaffolds and Ladders — Slips, Trips & Falls — Fall from Height — Civil Practice — Summary Judgment

Parties debated extent of fallen carpenter's injuries

Verdict (P) \$60,000

Case Gareth Walsh v. Bowlmor Lanes, LLC., Strike Holdings, LLC., The Cobalt Group, LLC., 12 and University, LLC & Benenson Investment Company, No. 100137/04

Court New York Supreme

Judge Edward H. Lehner

Date 1/24/2008

Plaintiff

Attorney(s)

Jeanne Cosgrove, Schofield, Schofield & Cosgrove, New York, NY

John P. Schofield, Schofield, Schofield & Cosgrove, New York, NY

Paul Schofield, Schofield, Schofield & Cosgrove, New York, NY

Defense

Attorney(s)

Carmen A. Nicolaou, Havkins, Rosenfeld, Ritzert & Varriale, LLP, New York, NY

Facts & Allegations

On March 19, 2001, plaintiff Gareth Walsh, 34, a carpenter, worked at Bowlmor Lanes, a bowling alley that is located in lower Manhattan. Walsh was installing plasterboard in an unfinished stairwell. During the course of his work, he climbed the ladder of a 6-foot-high Baker's scaffold that had been placed on the unfinished staircase. The scaffold collapsed, and Walsh claimed that he fell 15 to 20 feet. He contended that he sustained injuries of his back, his head, a knee, his neck and a shoulder.

Walsh sued the bowling alley's operator, Bowlmor Lanes, LLC; the bowling alley's owner, Strike Holdings, LLC; that company's majority owner, The Cobalt Group, LLC; the building's owner, Benenson Investment Co.; and the building's lessor, 12 and University, LLC. Walsh alleged that the defendants violated the labor law.

Walsh's counsel claimed that the incident stemmed from an elevation-related hazard, as defined by Labor Law § 240(1), and that Walsh was not provided the proper, safe equipment that is a requirement of the statute.

Defense counsel contended that, during his deposition, Walsh acknowledged that his feet were not more than 3 feet off of the ground.

Walsh's counsel moved for pretrial summary judgment of liability, and the motion was granted. The trial addressed damages.

Injuries/Damages

dislocated shoulder; head; neck; radiculopathy; aggravation of preexisting condition; herniated disc, cervical; back; nerve damage; vision impairment; arthroscopy; chiropractic; physical therapy

Walsh claimed that he sustained an injury of his head, a dislocation of his left shoulder, a herniation of a cervical intervertebral disc, an injury of his left knee and an aggravation of a preexisting injury of his lower back. He contended that his injuries resulted in radiculopathy and damage of roots of the cervical and lumbar regions of his spine. He also contended that his head's injury blurred his vision and produced a hemisensory deficit, though he later specified that his head's injury subsided within a year. However, his treating neurologist, who diagnosed the hemisensory deficit in 2006, opined that the condition lingers.

Walsh's left shoulder's injury was addressed via arthroscopic stabilization, and his left knee's injury was addressed via arthroscopic surgery that was performed in August 2006. He also underwent chiropractic treatment and physical therapy.

Walsh possesses a bachelor's degree in biocenology. After the accident, he returned to Ireland, where he obtained a master's degree in biotechnology. He subsequently was hired by a pharmaceutical company as a research analyst. He claimed that he was unemployed for four years and that his pay as a research analyst did not equal or exceed his pay as a carpenter. However, he admitted to having worked off of the books, and, thus, he could not provide records to substantiate recovery of lost earnings.

The parties stipulated that Walsh's past medical expenses totaled \$40,000. Walsh sought recovery of that amount and a total of \$850,000 for his past and future pain and suffering.

Defense counsel contended that post-accident MRI scans revealed that Walsh was not suffering any abnormality of his head. Walsh's treating neurologist, who diagnosed the hemisensory deficit, acknowledged that nerve compression was not evidenced in MRI scans that Walsh underwent in 2001, 2005 and 2007. Thus, defense counsel argued that Walsh did not suffer radiculopathy.

Walsh's treating orthopedist was subpoenaed by defense counsel and admitted that there was nothing to substantiate Walsh's complaints of pain. The expert also opined that many of Walsh's complaints of pain could be correlated to poor diet, lack of exercise and the pending lawsuit.

Defense counsel also contended that an MRI scan performed about three months after the accident showed no swelling, inflammation or bruising of the bones of Walsh's left shoulder. He contended that those symptoms would have been present three months after such an injury, and, thus, he argued that Walsh did not sustain a dislocated shoulder.

Defense counsel further contended that Walsh's knee injury was merely a product of the natural aging process.

Result

The jury found that Walsh's damages totaled \$60,000.

Plaintiff(s)

Gareth Walsh

\$20,000 past pain and suffering

\$40,000 past medical cost (stipulated)

\$60,000 plaintiff's total award

Demand \$550,000 (total, from all defendants)

Offer \$200,000 (total, by all defendants)

Insurer(s)

TIG Insurance Co. for all defendants

Trial Details

Trial Length: 7 Days

Jury Deliberations: 2 Hours

Jury Poll: 6-0

Jury Composition: 5 male, 1 female

Plaintiff

Expert(s)

Jerry Lubliner, M.D., orthopedics, New York, NY (John P. Schofield)

Lyzette Velasquez, M.D., neurology, Bronx, NY (Jeanne Cosgrove, John P. Schofield, Paul Schofield)

Defense

Expert(s)

Adam N. Bender, M.D., neurology, New York, NY (Carmen A. Nicolaou)

Maurice C. Carter, M.D., orthopedics, New York, NY (Carmen A. Nicolaou)

Post-Trial

Plaintiff's counsel has moved for a new trial.

Editor's Note

This report is based on information that was provided by defense counsel. Plaintiff's counsel did not respond to the reporter's phone calls.

Written By Eddie Vega

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