

VERDICTS & SETTLEMENTS

Construction injury case reached settlement after mistrial

\$1,350,000 Settlement

The plaintiff was 19 years old when he was injured on July 31, 2007. He was working as a groundsman in Winchester, where his job was to change the massive auger on a piece of heavy equipment called a LoDril (which drills to depths of 60 feet), made by Bay Shore Systems. Plaintiff's employer leased the LoDril from NESCO Sales & Rentals. When NESCO did not have the LoDril available, rather than lose a lucrative contract, they purchased a LoDril sight-unseen and "as is, where is" from Sun Electric in Texas, and shipped the equipment directly from Texas to the job site in Winchester just a few days before plaintiff's injury.

NESCO did no pre-delivery inspection to determine the condition of the unit before they shipped it to the job-site. They had no warranties from the seller, as the purchase was specifically "as is, where is." If NESCO had

spent \$200, they could have had a local technician perform a safety inspection prior to shipping it to Winchester. They did not.

On the date of the accident, the plaintiff prepared to change the auger. The LoDril operator, as was required, signaled that his hands were off the controls and it was safe to proceed. The plaintiff signaled that he would change the auger. The LoDril and auger should remain in place and never move without operator input. As the plaintiff tried to change the auger, a component known as the kelly bars failed due to deteriorated condition, causing the 5,000 pound bars to drop on the plaintiff's hand, trapping him in the machine. The ground crew used a backhoe to extricate the plaintiff. Before he could remove his mangled hand, the kelly bars slammed back down on his hand again. Plaintiff was airlifted to Union Memorial Hospital for emergency surgery to save his hand, but ultimately required a partial amputation of his hand and fingers. He underwent multiple surgeries and lost two fingers, a portion of his thumb and a portion of his palm.

Bay Shore denied any responsibility for plaintiff's injuries. NESCO argued that the plaintiff was contributorily negligent and entitled to no recovery.

The case was mediated in early 2011. Bay Shore Systems, having minimal liability, settled their portion for \$250,000. The case against NESCO went to trial in April 2011 in Frederick County before Judge James V. Lane.

Plaintiff's case focused on NESCO's negligence in failing to inspect heavy equipment prior to sending it to a job site, and their spoliation of evidence. NESCO, despite having been informed of the injury and having been requested to preserve all evidence, destroyed the kelly bars after the complaint was filed. Judge Lane granted an adverse inference instruction due to the spoliation.

Jonathan Halperin and Brody Reid presented the plaintiff's case, and Carol Stone and Robert Hardy defended NESCO. NESCO argued contributory negligence, alleging the plaintiff's hand shouldn't have been



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where it was, and argued that the plaintiff "really wasn't in such bad shape." After three days, the case went to the jury, who were quickly deadlocked. While the jury was out, NESCO made an offer of \$350,000, which the plaintiff rejected.

After several hours, Judge Lane gave the jury an Allen charge. They returned to deliberate, and soon had to call the bailiff, as the lone dissenter felt threatened. The jurors were split 6 to 1 (in favor of the plaintiff), with no chance of their opinions changing. Judge Lane was forced to declare a mistrial.

After the mistrial, NESCO retained Carl Schwartz to defend the case. Halperin continued to represent the plaintiff. A new trial was set for March 27, 2013.

Two years, several motions, a few hearings and a second failed mediation later, both sides were preparing for trial, yet Halperin and Schwartz continued negotiations on behalf of their clients, settling NESCO's liability for \$1,100,000 just two days before trial, for a total recovery of \$1,350,000.

[13-T-077]

Type of action: Personal injury - construction accident

Injuries alleged: Crush injury to left hand; traumatic amputation of two fingers, part of palm, part of thumb; psychological and social problems

Name of case: Blessing v. NESCO Sales & Rentals and Bay Shore Systems

Court: Frederick Circuit Court

Case no.: CL09-0971

Tried before: Jury

Judge: James V. Lane

Date resolved: March 25, 2013

Verdict or settlement: Settlement

Amount: \$1,350,000 (\$1,100,000 from NESCO; \$250,000 from Bay Shore Systems)

Special damages: Approximately \$85,000 in medical damages

Attorneys for plaintiff: Jonathan E. Halperin, Oilville; Brody Reid, Richmond

Attorneys for defendants: Carol Stone and Robert Hardy, Fairfax; Carl Schwartz, Tysons Corner