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Jury Awards Roofer \$6.8 Mil. After Fall From Ladder

BY GINA PASSARELLA

Of the Legal Staff

A roofer who fell 30 to 40 feet off of a ladder while working for a contractor at Lafayette College was awarded \$6.8 million by a Philadelphia jury for injuries to his foot and for lost and futures wages.

The total award received by plaintiff David Beil will be about \$4 million, which includes the settlements of two defendants and 35 percent of the overall award, which was attributed to the third and only remaining defendant. Beil was also found 5 percent negligent, which will be subtracted from the overall award, according to his attorney, John T. Dooley of Pennsauken, N.J.

The trial was held before Philadelphia Common Pleas Court Judge Matthew D. Carrafiello. The eight-member jury was selected Friday, Oct. 20, the trial began Monday, Oct. 23, and concluded the following Friday after the jury deliberated for almost four hours. Carrafiello polled the jury and the verdict was unanimous, Dooley said.

Telesis Construction, which was the construction manager of a large renovation project at the college in 2003, and a separate contractor hired by the college, Masonry Preservation Services, each settled before the case went to the jury. Lafayette College was the only remaining defendant during deliberations.

Masonry Preservation, the company responsible for setting up the scaffolding and ladder, settled before the trial started for \$900,000, according to its attorney, Robert Ruzzi of the Law Offices of J. Mark Pecci II in Philadelphia.

Telesis Construction settled midway through the weeklong trial for \$900,000,



DOOLEY

Dooley.

David Beil worked for Kunsman Roofing, a subcontractor of Telesis Construction. Masonry Preservation Services was a separate contractor hired by the college, according to court documents.

On a rainy day on which much of the work had stopped, Beil was walking up a mounted scaffolding ladder that had been erected by Masonry Preservation when he fell. He was carrying flashing while climbing the ladder, according to court documents.

There was a point of debate as to whether Lafayette College allowed the construction workers to use a stairway and elevator within the college to gain access to the roof.

The college and other defendants argued that the workers were allowed to use the stairway if they first cleaned off their shoes, according to court papers.

Dooley said the workers were told they could not use the stairwell, and argued that if it were an option for Beil to do so, he would have chosen that route as opposed to climbing up a ladder that had no fall protection.

Dooley, Ruzzi and Telesis' attorney Thomas L. Delevie each said that Masonry Preservation was the "target" defendant going into trial.

according to Dooley. They were combined with another named defendant, Irwin and Leighton Inc. because it was said that Irwin's employees worked for Telesis on the project, according to

"Once that occurred, it began a whole new ball game," Delevie said of Masonry Preservation's settlement.

Delevie then moved his focus to figuring out the best settlement options for his client, he said. He settled on the Wednesday morning in the middle of the trial, but would not confirm that it was for \$900,000.

After Masonry Preservation settled, the focus for Dooley was on Telesis, and when that company settled, he said he had to redirect his focus to Lafayette College.

The college was arguing that it was not liable for anything because it hired outside contractors to handle the whole project, according to court documents.

Dooley said he argued that the college was liable because it had control over the job site in terms of whether to allow workers to use the stairway. The building in question was also still in use by professors and students, he said.

According to Dooley, if the school had requested work done for a new building off site, its argument would have been valid, but because the school was using the building and controlling the flow of foot traffic through it, he said it was responsible.

All three defendants argued that Beil was solely responsible for his injuries because he walked up the wet, muddy ladder during the rain without permission and while no one else was working, according to court documents.

Ruzzi said that because his client settled, the percentages of liability apportioned to each defendant were much different than expected.

Telesis was found 50 percent negligent, Lafayette College was found 35 percent negligent, Masonry Preservation was found 10 percent negligent and Beil was found 5

percent negligent, according to court papers.

At trial, Lafayette College called liability expert Stanley Pulz, who, Dooley said, argued that the ladder was not subject to Occupational Safety and Health Administration requirements because it was attached to scaffolding and lost its status as a ladder. Dooley said that argument did not resonate well with the three or four jurors he spoke with after the trial.

Dooley called OSHA expert Stephen Estrin of Florida, vocational expert Timothy Brussey of Allentown and economist Andrew C. Verzilli of Lansdale as expert witnesses.

As of July 2006, Beil's doctor said he would still recommend at least a partial amputation of Beil's leg to stop the continuing pain. According to Dooley, Beil has been and will be unable to return to work. Dooley said Beil has decided not to go through with an amputation.

As part of the \$6.8 million award, \$400,000 was awarded to Beil's wife, Cheryl, for loss of consortium, according to court documents. Beil is currently in his early 50s. The original demand, according to court papers, was for \$7 million.

Dooley said he plans on seeking delay damages in the amount of approximately

\$115,000.

Thomas J. O'Malley of Marshall Dennehey Warner Coleman & Goggin represented Lafayette College and did not return a call for comment by the time of publication.

Jonathan Dryer of Wilson Elser Moskowitz Edelman & Dicker served as co-counsel with O'Malley toward the end of trial and said there would most likely be post-trial motions filed on behalf of Lafayette College. He said he couldn't comment further. •