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## Electric Cart Accident Case Settled for \$2 Mil.

Zack Needles

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A settlement of more than \$2 million has been reached in a case in which a man was struck and injured by an unoccupied electric cart after a cardboard box fell onto and pressed down the cart's accelerator.

In *Sigmund v. Trico Equipment Inc.*, John Sigmund was working as a rigger at the Pennsylvania Convention Center on April 20, 2005, when the box fell onto the accelerator of an electric cart used to carry heavy loads, according to the plaintiff's mediation memorandum.

The cart moved forward unexpectedly at about 10 to 15 mph before knocking Sigmund into a counter and causing him to injure both shoulders, his lower back, his left knee and his left hand and thumb, the plaintiff's memorandum said.

According to the plaintiff's memorandum, Sigmund's injuries included a "right rotator cuff tear, left rotator cuff tear, left knee medial and lateral meniscus tears, left trigger thumb, lower back strain and left hand injury."

The plaintiff's memorandum said Sigmund has already undergone a number of surgeries and will require a total left knee replacement and total right hip replacement.

The plaintiff alleged in his memorandum that defendants Motrec Inc., a Canadian company that manufactures and sells the electric carts, and Trico Equipment Inc., the corporation that leased and supplied the Motrec E-320 cart that allegedly injured Sigmund, were both subject to strict products liability.

### 12 Hours of Mediation

With trial scheduled to begin in the Common Pleas Court of Philadelphia June 8, the parties agreed to a Saturday mediation session on May 16.

After a 12-hour session before retired U.S. Magistrate Judge Diane M. Welsh that plaintiffs lawyer

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John T. Dooley said was punctuated with spirited argument, Trico and Motrec agreed to pay \$1 million each.

At the outset of litigation, Sigmund had settled with General Exposition Services, which oversaw work being done at the Convention Center, for \$75,000.

The entire value of the settlements is \$2.075 million.

Prior to the mediation session, Trico had offered to settle for \$350,000 and Motrec had offered \$325,000, according to the plaintiff's memorandum.

According to the plaintiff's memorandum, Louis Payeur, the president of Motrec, admitted that the E-320 cart involved in this case did not have any warning labels on it when it left the Motrec factory.

The plaintiff's memorandum said that Motrec didn't start putting warnings on all of its products until 2004 and that warning labels were purchased by Trico from a company called Creative Signs eight months after Sigmund's accident.

The plaintiff also alleged in his memorandum that if the load backrest behind the driver's and passenger's seats had been higher it would have prevented boxes from falling from the back of the cart to the front.

Motrec and Trico also provided the wrong instructions with the cart, with the manual for the Motrec E-320 describing a three-position key switch when the actual cart's key switch only has two positions, the plaintiff's memorandum said.

Additionally, no key was included in the cart provided by Trico, the plaintiff's memorandum said, and the cart lacked sufficient safety features such as a "deadman seat switch," which would have prevented the cart from shifting into drive when there was no one in the driver's seat.

Motrec said in its own settlement statement that the American National Standards Institute, or ANSI, only requires such switches on vehicles that perform tasks other than transportation, such as tillers, lawnmowers and snow plows.

Motrec also said that heightening the backrest in the carts "would only increase the likelihood of boxes being stacked in a dangerous fashion."

Motrec also said in its statement that Trico was responsible for the care and upkeep of the cart and that Trico records show that its maintenance man adjusted the parking brake between the date of purchase and the date of the accident, thus altering it from its "as sold" condition.

Trico said the defects were in Motrec's design and manufacture of the cart and that the operators of the cart at the time of the accident were at fault for not properly administering the parking brake.

But Dooley, of the Law Offices of John T. Dooley in Pennsauken, N.J., said he went to Trico's facility in Vineland, N.J., and tested the effectiveness of the Motrec E-320's parking brake. He said he found that it did not prevent the cart from moving if the accelerator was pressed.

"We got it on videotape. They put on the parking brake and pressed the accelerator and the thing goes

flying down the facility with the brake lights on," Dooley said.

The plaintiff's memorandum said that as a result of his injuries Sigmund "suffers from constant pain in his back, groin and both shoulders. His left knee throbs constantly. The base of his left thumb is painful and scarred. The intensity of pain varies and increases with activity."

According to the plaintiff's memorandum, Mona Yudkoff of Mona Yudkoff Rehab Consultants estimated Sigmund's lifetime care costs at in excess of \$1 million.

Sigmund's total loss of past and future earnings was calculated by Verzilli & Verzilli and Consultants Inc. at being between nearly \$750,000 to more than \$1.8 million, according to the plaintiff's memorandum.

The plaintiff's memorandum also included claims for past and future pain and suffering, past and future loss of life's pleasures, permanent scarring and disfigurement, punitive damages and a loss of consortium claim for Sigmund's wife, Rita.

Motrec, in its statement, said Sigmund had sustained knee and shoulder injuries prior to the incident with the cart.

Trico, in its own mediation statement, challenged the severity of Sigmund's injuries, claiming a video of Sigmund attending his daughter's May 2007 wedding showed him "dancing to 'Wildwood Nights,' doing the 'Twist,' tossing a basketball and generally ambulating without any difficulty."

### **Liability to Bystander**

Dooley said one of the biggest issues at the mediation session was the defendants' claim that Sigmund would not be entitled to strict products liability because he was a bystander rather than a user of the cart.

But Dooley said he had no doubt that Sigmund would be entitled to a strict products liability claim, citing the 2008 case *Schmidt v. Boardman*, in which the state Superior Court OK'd an award of distress damages to bystanders who witnessed the injury and death of family members who were struck by an allegedly defective hose dangling from a firetruck driving by.

Dooley said the main reason John and Rita Sigmund decided to settle was to avoid several years in appellate court.

Dooley's partner, William J. Coppel, also worked on the case.

Trico's attorney, Richard B. Wickersham Jr. of Post & Schell in Philadelphia, could not be reached for comment, nor could Motrec's attorney, Peter Lentini of Marshall Dennehey Warner Coleman & Goggin in Cherry Hill, N.J. •