



20 Trials Digest 7th 1 (Cal.Superior), 2003 WL 23519262
For Dockets See SCVSS68623

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Superior Court, San Bernardino County, California.

Lomeli vs. Kalmar Industries AB

TOPIC:

Synopsis: SETTLEMENT--Construction worker suffers skull fracture

Case Type: Construction Accidents; Falling Object; Product Liability; Tools/Equipment/Machinery; Heavy Equipment

DOCKET NUMBER: SCVSS68623

STATE: California

COUNTY: San Bernardino

Verdict/Judgment Date: December 8, 2003

JUDGE: Frank C. Gafkowski, Jr.

ATTORNEYS:

Plaintiff: **Richard B. Koskoff**, Law Offices of Booth & Koskoff, Torrance.

Defendant: L. Victor Bilger, Wilson, Elser, Moskowitz, Edelman & Dicker, Los Angeles.

SUMMARY:

Verdict/Judgment: Settlement

Verdict/Judgment Amount: \$5,055,000

Range: \$5,000,000-\$999,999,999

Trial Type: Not Applicable

Trial Length: Not Applicable

FOR RELATED TRIAL DOCUMENTS SEE:

Answer to Complaint: 2000 WL 34513974

Defendants Kalmar Industries Ab and Kalmar Industries Sverige Ab's First Amended Answer to Plaintiff's Unverified First Amended Complaint: 2002 WL 32842120

Cross-Defendants Kalmar Industries Ab and Kalmar Industries Sverige Ab's First Amended Answer to Cross-Complainant Power Lift LLC's Cross-Complaint: 2002 WL 32842121

Defendants Kalmar Industries Ab and Kalmar Industries Sverige Ab's Cross-Complaint For: (1) Total Implied Indemnity; (2) Partial Comparative Indemnity; and (3) Declaratory Relief: 2002 WL 32842122

TEXT:
CASE INFORMATION
FACTS/CONTENTIONS

According to Plaintiff: A construction worker suffered frontal lobe brain damage and seizure activity when his skull was fractured by the load on the forks of a lift truck. The plaintiff was Carlos Lomeli. The defendants were Kalmar Industries AB and Kalmar Industries Sverige AB. Plaintiff was employed by Martinez & Turek, a job shop that had contracted with NASA for the design and construction of a large metallic structure to be used in space as part of a sophisticated data-gathering mission. The Martinez & Turek work included sandblasting the metallic structure. Plaintiff was asked to assist in loading a 13-foot-tall tank that held the sand for blasting, even though this was not his normal job function. The manufacturers of the sand tank had created specific equipment, including a vacuum system, to load the sand into the hopper, but Martinez & Turek opted to load the sand manually by using a forklift to position a box of sand directly over a funnel that rested on the opening at the top of the tank. Plaintiff and his co-worker were instructed to climb the ladders on opposite sides of the tank, position themselves under the load, and balance the funnel on the small opening of the tank so that the sandblasting material could flow from the box through the funnel and into the tank below. Due to the fact that the funnel was rectangular in shape and the hole at the top of the sandblasting tank was circular, the funnel did not properly fit into the tank, causing it to be unstable. Although the workers had thought that the tank was empty when they started to fill it, it turned out that the tank was already partially filled with sand. Consequently, after the tank filled up, the funnel filled up as well, acquiring a weight of approximately 1,000 pounds. Neither plaintiff nor his co-worker could balance the funnel on top of the tank opening. When the co-worker attempted to close the bottom of the box, plaintiff lost control of the funnel, which fell eight feet below and severed a hydraulic line on the lift truck. The forklift was designed with backflow devices to control the rate of the descent of the forks, and the forks descended at a rate in accordance with ANSI standards. Still, the forks and their load fell approximately four feet, ultimately pinning plaintiff's head against the sand tank.

Plaintiff alleged that the hydraulic lines were needlessly exposed. Defendants contended that the forklift met all ANSI standards at the time of manufacturing and possessed the required fail-safe mechanisms to control the rate of descent of the forks. Plaintiff suggested velocity fuses, which act like circuit breakers, to protect against a catastrophic drop of the forks. Defendants contended that such fuses had never been utilized on large lift trucks and were not feasible under the circumstances.

CLAIMED INJURIES

According to Plaintiff: Frontal lobe brain damage, affecting mood, anger control, judgment, and behavior. Plaintiff made a remarkable recovery with no discernible significant cognitive impairment according to independent testing by his workers compensation neuropsychologist. Within two years of the accident, plaintiff developed a seizure disorder related to the traumatic brain injury.

CLAIMED DAMAGES

According to Plaintiff: Approximately \$280,000 past medical; future medical costs per life care plan reduced to present value in the range of \$2 million; approximately \$75,000 past earnings loss; approximately \$500,000 future earnings loss; past and future earnings losses discounted to present value were disputed because of plaintiff's negligible earnings history for two years prior to the accident (around the time he was convicted for sale of cocaine).

SETTLEMENT DISCUSSIONS

According to Plaintiff: Not reported.

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