

S01-08-01

**Negligence: Roofer Falls Through Roof Opening**Settlement: **\$9,400,00**

**Plf Attorney:** for Yarnall: Lawrence R. Booth, Roger E. Booth, Richard B. Koskoff  
& Johnna J. Hansen (Booth & Koskoff) Torrance (310) 515-1361  
for Intervenor: Scott Miller  
(Goldstein, Gurvitz, Marlowe & Miller) Encino (818) 788-3220

**Def Attorney:** Edwin J. Richards  
(Haight, Brown & Bonesteel) Santa Ana (714) 754-1100

**Court:** Central Civil West/Los Angeles County Date: 4/19/01

**Ins. Co.:** Confidential

**Case:** Michael Yarnall and CNA Insurance v. S.K. Management Company and the  
Appel Family Trust, et al. LC 045 847

**Facts:** 9/16/97, Plaintiff, a 28-year-old roofer employed by Pegnato & Pegnato Roofing Company, was sent to an apartment complex in Sherman Oaks for the purpose of doing an estimate on possible roof repairs. The complex consisted of ten, more or less identical buildings, each two stories in height with flat roofs. Every building had outside stairways that provided access to the second floor apartments. Directly above the stairwells were roof openings of approximately 7' x 3' in dimension. These roof openings were unguarded and uncovered. Plaintiff was provided access to the first building by means of a fixed vertical ladder in the back of the building. He was on the roof for approximately five minutes when a tenant found him unconscious at the bottom of the stairwell on a concrete slab. Plaintiff had fallen 20 feet, fracturing his arm when he hit the banister and suffering a severe head injury upon impact with the concrete floor. There were no witnesses to the accident and Plaintiff has no recollection of the accident. Defendants are the professional management company and the owners of the complex. Plaintiff-in-Intervention, CNA Insurance, paid close to \$1,000,000 in medical and disability payments. It sought reimbursement of the workers' compensation lien.

**Contentions:** **Plaintiffs claimed** that the roof openings were incomplete skylights that did not comply with the building code. Pursuant to OSHA regulations and customary safety requirements, the openings should have either been covered or guarded with a guardrail. Plaintiff was unaware of the opening because it was white and the roof was white, thus, it was difficult to see, especially in the summer at 3:00 p.m. in the afternoon. The roof had tripping hazards consisting of seams in roofing material and various types of debris, which could have caused the accident. Evidence was produced that children had access to the roof because of various toys that were found on the roof, including a plastic bubble gum container, half of which was found next to the opening and the other half found on the cement walkway next to Plaintiff after the accident. The unlocked ladder and chain link fence did not prevent children from getting on the roof and, therefore, the opening presented a hazard not only to workmen, but also to children. The plastic bubble gum container may have well caused Plaintiff to slip into the opening. Plaintiff was earning \$40,000 per year at the time of the accident and argued that his income would have dramatically increased in the near future due to an expected promotion. The cost of future medical expenses, particularly the cost of a qualified companion over his lifetime, would equal \$3,000,000.

**Defendants argued** that the openings were large, open and obvious. The accident was primarily due to the fault of Plaintiff, who was an experienced roofer. These openings had existed on all ten of the buildings for 30 years without prior accidents related to them.

**Injuries:** Severe brain damage with complete retrograde amnesia, severe short-term and long-term memory loss, epileptic seizures, fractured arm. **Treatment:** Hospitalized, neurological testing, surgery for fractured arm, insertion of a nerve stimulator. Nurse's aide monitors him 8 hours a day, 5 days a week. **Residuals:** Permanent brain damage. Lives with his parents. Plaintiff has no

physical disabilities and is able to converse and act fairly normally but is not able to exercise proper judgment and, therefore, needs someone with him at all times. Plaintiff is totally unemployable.

**Specials:** Medical Costs \$826,000 past, \$3,000,000 future. Loss of Earnings \$185,000 past, \$1,800,000 future.

**Negotiations:** **1st Demand:** \$11,000,000      **1st Offer:** \$1,000,000

**Settlement:** \$9,400,000 (less reimbursement to Intervenor of \$564,000)

**Note:** This case was settled between the parties without a mediator. There was an early mediation two years before the settlement with Paul Fritz of Santa Barbara, and a more recent mediation with Justice John Trotter of JAMS.

<b>Plf Experts:</b>	Edwin Amos, M.D.	Neurologist	Santa Monica
	Joel Rosen, M.D.	Physiatrist	Northridge
	Lawrence Majovski	Neuropsychologist	Tacoma, Washington
	Morris Farkas	Safety	Santa Monica
	Richard Chylinski	Building Code	Los Angeles
	Mark Sanders	Human Factors	Encino
	Sandra Schneider	Vocational Rehabilitation	Los Angeles
	Gerry Aster, R.N.	Medical Care Costs	South Pasadena
	Joyce Pickersgill, Ph.D.	Economist	Santa Ana
<b>Def Experts:</b>	Arnold Purisch, M.D.	Neuropsychologist	Irvine
	Wayne Lancaster	Economist	Fullerton
	Gene Bruno	Rehabilitation	Los Angeles
	Martin M. Balaban	Safety Engineer	Encino
	Richard Spina	Building Code	Los Angeles

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**S01-08-02**

**Labor Law Violations: 1,500 Shoe Store Managers Denied Overtime Pay**      **Settlement: \$4,000,000**

**Plf Attorney:** **Joseph Antonelli**  
 (Law Office of Joseph Antonelli) West Covina      (262) 917-6228  
**Kevin Barnes**  
 (Law Office of Kevin Barnes) Los Angeles      (323) 549-9100

**Def Attorney:** **Paul Grossman**  
 (Paul, Hastings, Janofsky & Walker) Los Angeles      (213) 683-6000  
**Michael Hood & Glenn Briggs**  
 (Paul, Hastings, Janofsky & Walker) Costa Mesa      (714) 668-6200

**Court:** Santa Ana/Orange County Superior Court      **Judge/Mediator:** Stuart Waldrip  
 Date: 9/8/00

**Ins. Co.:** None

**Case:** Leoncio Martins, Maurice John, Michael Mason and Autumn Black, individuals on behalf of themselves and all others similarly situated v. Payless Shoesource, Inc.      814585