

PERSONAL INJURY**PREMISES LIABILITY****Construction Site Accident**

SETTLEMENT: \$1,250,000.

CASE/NUMBER: John Oester v. Martin Brothers/Marcowall Inc., Hathaway Dinwiddie Construction Company, et al. / SC044937.

COURT/DATE: Ventura Superior / Feb. 2, 2007.

ATTORNEYS: Plaintiff - Roger E. Booth (Booth & Koskoff, Torrance) for John Oester; Davil R. Vasquez (Adelson, Testan & Brundo, Santa Ana) for plaintiff-in-intervention American Home Assurance.

Defendant - Richard W. Vanis, Jr., Anne L. Bigley (Archer Norris, Los Angeles) for defendant Martin Brothers/Marcowall Inc.; Nicholas A. Cipiti, David A. Van Dam (Walsworth, Franklin, Bevins & McCall, LLP, Orange) for defendant Hathaway Dinwiddie Construction Company; Joseph L. Stark (Law Offices of Joseph L. Stark & Associates, Santa Clarita) for cross-defendant Strocac Inc..

MEDICAL EXPERTS: Plaintiff - Douglas Jackson, M.D., orthopedics, Long Beach; Steven Nagelberg, M.D., orthopedics, Downey.

Defendant - Kevin Ehrhart, M.D., orthopedics, Santa Monica.

TECHNICAL EXPERTS: Plaintiff - Morris Farkas, safety engineer, Santa Monica; Tamorah Hunt, Ph.D., economics, Santa Ana; John Marinnet, construction safety, Carlsbad; Sandra Schneider, vocational rehabilitation, Los Angeles.

Defendant - Ted Baumgardner, construction safety, San Diego; Brian S. Iler, Cal-OSHA standards, San Diego; Ted Vavoulis, M.S., economics, Los Angeles; Edward Workman, Ph.D., vocational rehabilitation, San Clemente.

FACTS: At the time of the Sep. 2, 2004 accident, plaintiff, John Oester, was a 54-year-old ironworker employed by cross-defendant Strocac at a project at the Reagan Library in Simi Valley. Defendant Hathaway Dinwiddie was the general contractor on the project, and defendant Martin Brothers/Marcowall was a subcontractor responsible for fireproofing.

While in the process of retrieving a tool, Oester approached an elevator shaft that was still under construction. The shaft was surrounded by a guardrail, but the guardrail had been partially opened, and the shaft was covered with a plastic tarp used for fireproofing. Oester believed that the opening was covered with wooden planks because he had seen other openings covered with planks, because he could see some planks sticking out from beneath the tarp and because someone had apparently intentionally opened up the guardrail. He therefore proceeded into the area. However, the shaft was not covered, and as Oester walked past the guardrail, he fell into the shaft and landed 20 feet below.

PLAINTIFF'S CONTENTIONS: The plaintiff contended that defendants created a dangerous trap by camouflaging the elevator shaft opening and creating the appearance that it was safe to enter the area. Moreover, defendants violated applicable Cal-OSHA regulations that require covers or guardrails for floor openings during construction.

The plaintiff further contended that the defendants created the opening in the guardrail and had actual or constructive notice of the opening because (according to the testimony of an inspector on the job) it had been open for at least a day before the accident.

DEFENDANT'S CONTENTIONS: The defendants contended that the plaintiff caused the accident by entering the elevator shaft area without first looking under the tarp to see if the shaft was covered. The defendants disputed that the guardrail had been opened prior to the accident, and their employees testified that they had seen the guardrail intact just a short time before the accident. The defendants suggested that plaintiff had in fact opened up the guardrail himself in order to get access to the area because no one else had any reason to enter the area.

The defendants further contended that, even if the guardrail had been open when plaintiff approached it, it was only open about one foot and was not open in such a way as to suggest that it was safe to enter the area.

DAMAGES: Oester sustained multiple ligament ruptures in both knees, underwent reconstructive surgery and is likely to need knee replacements in the future.

Oester returned to work as an ironworker approximately seven months after the accidents. However, after being back to work for approximately nine months, he went back out on disability because of ongoing pain and instability in his knees and out of a desire to delay as long as possible the need for knee replacement surgery.

Oester's medical bills total \$79,065, and, according to plaintiff's experts, he will incur lifetime earnings losses of approximately \$900,000. The defendants contended that the plaintiff is capable of returning to work as an ironworker supervisor or inspector and will thus incur minimal future earnings losses.

RESULT: The case settled for a total of \$1.25 million. Of that amount, plaintiff-in-intervention American Home Assurance will receive \$50,000 in settlement of its workers' compensation lien, and Oester will receive the remainder.

Both defendants Martin Brothers/Marcowall and cross-defendant Strocac were obligated to indemnify defendant Hathaway pursuant to their contracts with Hathaway. Due to the express indemnity obligator, Strocac contributed \$350,000 towards the settlement and Martin Brothers contributed the remaining \$900,000 with no contribution directly from Hathaway.