

Westlaw

2006 WL 986269

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For Dockets See NC034927

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Superior Court, Los Angeles County, California

Robert and Nancy Orr v. Maersk Inc. and APM Terminals North America

No. 034927

DATE OF VERDICT/SETTLEMENT: March 15, 2006

TOPIC: TRANSPORTATION - TRUCKING - NEGLIGENCE - MOTOR VEHICLE - TRACTOR-TRAILER
TRUCK'S CARGO STRUCK OVERPASS, LANDING ON TOP OF SEDAN

SUMMARY:

Award Total: \$2,000,000

RESULT: Settlement

The defendants settled for \$2 million.

EXPERT WITNESSES:

Plaintiff: David Huff, M.B.A.; Financial Analysis and Assessments Edwin C. Amos, III, M.D.; Neurology; Santa Monica, CA F. David Rudnick, M.D.; Psychiatry; Santa Monica, CA Lawrence Majovski, Ph.D.; Neuropsychology; Fircrest, WA Robert J. Sbordone; Neuropsychology; Irvine, CA Sandra Schneider; Vocational Rehabilitation; Los Angeles, CA Steven Nagelberg, M.D.; Orthopedic Surgery; Downey, CA Tamorah Hunt; Economics; Santa Ana, CA Walter A. Guntharp; Cargo/Shipping Industry
Defendant: Edward Workman, M.D.; Vocational Rehabilitation Merlyn Robert Wilson; Transportation; San Bernardino, CA Robert Freundlich, M.D.; Neurology Ted Vavoulis, Ph.D.; Economics

ATTORNEYS:

Plaintiff: **Richard B. Koskoff**; Booth & Koskoff; Torrance, CA

Defendant: Theodore H. Adkinson; Baker and Hostetler; Long Beach, CA

JUDGE: Michael Moorhead

RANGE AMOUNT: \$2,000,000-4,999,999

STATE: California

COUNTY: Los Angeles

INJURIES: Robert Orr sustained a skull fracture, a subarachnoid hemorrhage and fractures to his spine at T6-12. He also claimed a diffuse axonal brain injury causing cognitive defects. Following the accident, he missed one month of work at his \$200,000-per-year job as CFO of a radiological management group. However, he was terminated from his job nine months later during a shareholder takeover of his company in which all senior person-

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nel were fired. Orr claimed that he was fired due to poor performance caused by his cognitive defects and physical pain from his accident injuries. He further claimed that after losing this job, he was not able to find comparable work, instead finding work as a bookkeeper at an annual salary of \$65,000. He anticipated that he would be unable to find employment comparable to his CFO position before reaching retirement age. He sought \$65,000 for medical expenses, about \$200,000 for past lost earnings, and unspecified amounts for future lost earnings and pain and suffering.

FACTS:

On March 19, 2003 plaintiff Robert Orr, 56, a chief financial officer, was driving a sedan with his wife, plaintiff Nancy Orr, 50s, a bookkeeper on a transition road between northbound U.S. Highway 710 and eastbound U.S. Highway 91 in Los Angeles. A tractor-trailer carrying a generator was also on the transition road. The generator fell on top of their car after it struck the bottom of an overpass.

The Orrs sued Maersk Inc. and APM Terminals North America. Maersk, an international shipping company based in Europe that owns APM Terminals in Los Angeles, had hired an independent trucking company to transport the generator a short distance within the Los Angeles harbor area. The independent trucking company hired an independent contractor truck driver. The height of the cargo exceeded the applicable limitations for shipping by truck, making a permit necessary.

When the truck driver arrived at the harbor terminal where he had been directed to deliver the load, he was turned away due to congestion at the harbor. He then contacted the trucking company that had hired him and was instructed to deliver the cargo instead to the company's own yard. This trip included some freeway driving, where overpasses make driving with overheight cargo dangerous and a violation of the California Vehicle Code.

The plaintiffs' counsel argued that Maersk was negligent in failing to inform the trucking company or the driver that the load was overheight, as Maersk knew that a permit was required to transport a load of this size through the streets of Los Angeles. The driver had never hauled an overheight load and was unaware of the applicable permit requirements. The plaintiffs further argued that it was Maersk's custom and practice to inform shippers it hired when a load was overheight and would require a permit. The plaintiffs' counsel contended that the independent trucking company wouldn't have instructed the driver to take a route that included freeway driving had Maersk informed it that the cargo was overheight.

The defense argued that the truck driver was negligent per se because he violated a statute prohibiting carrying loads over a certain height on the freeway and also because it should have been obvious to the trucker that the load was overheight. Maersk denied that it was its custom and practice to inform trucking companies it hired when a load was oversized, asserting that although it had done so on one or two occasions in the past, that was not sufficient to establish custom and practice.

Nancy Orr sustained a compression fracture at T-12 and a wrist fracture. She underwent open reduction internal fixation surgery on her wrist. She sought \$25,000 for medical expenses and an unspecified amount for pain and suffering.

The defense argued that Robert Orr's loss of his CFO position had nothing to do with his injuries, as it was in connection with a shareholder takeover of his company. They further argued that the reason he has been unable to find comparable work since then is likewise unrelated to his injuries and is likely due to his age, as it is difficult for a man in his late 50s to be hired as a CFO.

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PUBLISHED IN: VerdictSearch California Reporter Vol. 5

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