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Trial

November 2011



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UTILITIES

Child Burned by Energized Power Line after Car Crash

XAVIER MASSEY, 13, was riding as a passenger in an SUV when the driver struck a utility pole during a rainstorm, downing the power lines. On impact, two of the three lines shut down as designed, but the third line remained energized.

As Massey emerged from the collision uninjured, he accidentally contacted the live line. He suffered electrical burns to about 4 percent of his body, including severe burns to both feet, requiring amputation of three toes on one foot and two toes on the other. He also suffered electrical burns to his left hand and elbow.

Massey underwent reconstructive surgeries on his feet and will likely require additional surgery. He has pain and difficulty walking and has had to alter his gait. He will also require special orthotics. His past medical expenses totaled about \$600,000, and his future medical expenses and life-care costs are estimated at \$3 million.

Massey's mother, on his behalf, sued the power company that maintained the utility pole and lines, alleging that the safety system failed to shut down one of the power lines on impact, as required by the National Electric Safety Code. The plaintiff contended that the third line had an overly large fuse, which prevented it from shutting down.

After the incident, the power company removed the two smaller fuses and left the larger fuse in place, failing to preserve it as evidence. The company also allegedly discarded the other two fuses to the lines that shut down. The plaintiff moved for an instruction on spoliation. The trial court granted the motion and instructed the jury that it could infer that the missing evidence would have been unfavorable to the power company unless the company could explain why the evidence was missing.

The jury found the power company 100 percent at fault and awarded \$4.4 million. The parties subsequently settled for a confidential amount.

CITATION: *Massey v. Duke Power Co., LLC*, No. 2009-CP-23-7220 (S.C., Greenville Co. Com. Pleas Mar. 11, 2011).

PLAINTIFF COUNSEL: AAJ members William P. Walker Jr., Lexington, South Carolina; and Robert P. Foster, Greenville, South Carolina.

PLAINTIFF EXPERTS: Gregory Booth, electrical engineering, Raleigh, North Carolina; Shelene Giles, life-care planning, Hendersonville, North Carolina; and Richard Thompson, economics, Clemson, South Carolina.

NEGLIGENCE

Teacher Strikes Head while Descending Stairwell

HIGH SCHOOL TEACHER William Kelly, 42, was descending an interior stairwell in the school when he struck his head on a soffit hanging from the stairwell ceiling. Kelly, who is just over 6'4" tall, suffered damage to a cervical disk in an area where he had undergone fusion surgery more than 20 years earlier. He underwent a two-level fusion surgery below the area of the previous fusion. He continues to suffer neck pain and will likely need additional fusion surgery within the next two to three years. He also suffered temporary post-concussive symptoms.

Kelly's past medical expenses totaled about \$110,000, and his future anticipated medical expenses are estimated at about \$176,000. He was earning about \$80,000 annually at the time of the incident and was out of work for just over two years.

Kelly sued the general contractor that built the school and the contractor that provided the stairwell's underlying steel frame and steel structural support. The plaintiff alleged that the stairwell's construction was deficient in that it lacked the requisite 6'8" of headroom clearance required by applicable building codes and industry standards. The plaintiff contended that the overhead soffit intruded into the required headroom clearance by about 2½ inches.

The plaintiff also sued the architect on the project, alleging he designed the stairwell without adequate headroom clearance, and the project inspector, alleging he failed to discover the defect during an inspection.

The school district, which had a lien for payment of workers' compensation

benefits, intervened in the case to recover benefits paid.

Before trial, the plaintiff and school district settled with the architect and project inspector for \$560,000.

The jury awarded just over \$1.64 million, apportioning liability at 75 percent to the general contractor; 15 percent to a bankrupt ceiling contractor, which was a nonparty; and 10 percent to the stairwell contractor. The trial court ruled that the general contractor is responsible for the ceiling contractor's share of liability because the general contractor had assumed certain nondelegable duties for the project.

The school district asserted a workers' compensation lien of \$224,000.

CITATION: *Kelly v. F.H. Paschen*, No. YC057622 (Cal., Torrance Co. Super. Nov. 18, 2010).

PLAINTIFF COUNSEL: AAJ member Joel Krissman, Long Beach, California.

PLAINTIFF EXPERTS: Mack A. Quan, mechanical engineering, El Segundo, California; and Marshall L. Grode, neurosurgery, Los Angeles.

DEFENSE EXPERTS: Stan Bruce, construction practices/industry standards and codes, Mountain Center, California; Taryn Johnson, safety engineering, Playa Del Rey, California; and Martin Cooper, neurosurgery, Los Angeles.

GOVERNMENT LIABILITY

Bus Runs over Teen

ERNEST LEWIS, 13, was attempting to board a 60-foot articulating bus in New York City. He ran alongside the bus before it began to move and hit the side of the vehicle to alert the driver of his presence. As Lewis approached the bus's middle wheels, he tripped, and his legs fell under the bus. The bus began moving and rolled over his legs.

Lewis suffered a degloving injury to

his right lower leg and fractures to his fibula and heel bone. He underwent numerous surgeries and required several months of rehabilitation. His medical expenses were about \$283,200.

Lewis's mother, on his behalf, sued the New York City Transit Authority, alleging its bus driver failed to note that Lewis was near the bus and negligently moved the vehicle while he was in the zone of danger.

The jury awarded the plaintiff about \$6.78 million.

CITATION: *Lewis v. N.Y.C. Transit Auth.*, No. 101833/2007 (N.Y., New York Co. Sup. Mar. 3, 2011).

PLAINTIFF COUNSEL: AAJ member Richard A. Gurfein, New York City.

PREMISES LIABILITY

Store Patron's Head Hits Low-Hanging Gate

VITO SUMMA, 60, entered a supermarket through an adjoining liquor store, which was separated by an overhead metal rolling gate. He struck his head on the gate, which was not fully secured in the "up" position and was protruding downward about one foot.

Summa suffered aggravation of a preexisting herniated disk at C5-6 and underwent fusion surgery. His past medical expenses of about \$20,000 were paid by insurance. He continues to suffer some limited range of motion in his neck.

Summa sued the liquor store, alleging that an employee who had opened the gate that day was negligent in failing to push it all the way up.

The plaintiff also sued the company that manufactured the gate, alleging that it was defectively designed in that it lacked a simple mechanism that would have locked it in place at the top of its track.

Summa did not claim future medical expenses or lost earnings.

The defendants argued that the plaintiff was comparatively negligent for failing to notice that the gate was hanging down.

The parties settled the case for \$265,000, including \$215,000 from the liquor store and \$50,000 from the gate manufacturer.

CITATION: *Summa v. Foodtown Supermkt. of Toms River*, No. MON-L-5752-08 (N.J., Monmouth Co. Super. Jan. 26, 2011).

PLAINTIFF COUNSEL: John G. Mennie, Ocean, New Jersey.

RAILROADS

Railroad Fails to Repair Dangerous Crossing

SHELBY WILSON, 10, was riding in the back of a car driven by a family friend. As the car traversed a railroad crossing equipped with passive warning devices, it collided with a Burlington Northern Santa Fe Railway Co. (BNSF) train. Wilson died in the crash and is survived by her mother.

Wilson's mother sued BNSF, alleging it failed to install proper warnings at the crossing. The plaintiff claimed that a year before the accident, the state ordered the defendant to install lights and gates at the crossing, but the defendant failed to complete the work. Suit also charged that the defendant had violated a Missouri common law duty to have a reasonably safe crossing in that a line of vegetation impeded driver visibility.

The jury awarded \$4 million in compensatory damages and reconvened to discuss punitive damages. During these deliberations, the defendant agreed to pay the full judgment and forego an appeal.