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Foreman settles for \$1.4 Mil. After Fall

Byline: Gina Passarella, of the Law Weekly

Court and Case No.: C.P. Philadelphia, August Term 2007, No. 003084.

Mediator: Ed Edelstein, ADR Options.

Type of Action: Negligence, unsafe work environment.

Injuries: Closed head injury.

Plaintiff's Attorneys: Fredric Eisenberg, Eisenberg Rothweiler Winkler Eisenberg & Jeck.

Plaintiff's Experts:

Stephen A. Estrin, liability, Cooper City, Fla.; Donald E. Jennings, vocationalist, Feasterville, Pa.; Laurie Browngoehl, physical therapy and rehabilitation, Haverford, Pa.; Bunin Associates, economic, Wynnewood, Pa.

Defense Counsel:

Victoria Komarnicki of Bennett Bricklin & Saltzburg for defendant Richard H. Haase Jr.; Paul R. Brady III of Marshall Dennehey Warner Coleman & Goggin for Edge Product Development.

Comment:

Defendant Richard Haase Jr. was the contractor hired to build an addition to a property owned by Edge Product Development. He hired plaintiff James Burt to act as foreman.

Eisenberg, who sought around \$2 million going into settlement talks in February, said settlement seemed like the best option given the obstacles his client would have faced at trial regarding contributory negligence.

Burt decided, against advice of all on the job site, to go up 18 and a half feet to install roof rafters that were about 14 feet long on a day when there were winds in excess of 30 miles per hour. All he had to stand on was a ledge 8 and a half inches wide, **Eisenberg** said.

Burt argued the site should have had fall protection and said both Haase and Edge Product Development were responsible for providing the proper safety equipment.

According to the settlement release, the case settled a few days after mediation for \$1.4 million. Eisenberg and Haase's attorney, Komarnicki, said Haase would pay \$925,000 and Edge Product Development would pay \$475,000.

There was a significant venue dispute in the case that went up to the Superior Court and back. All of the parties lived and worked in Bucks County and the accident took place in Bucks County. Eisenberg was able to secure venue in Philadelphia by arguing that the products created by Edge Product Development, an industrial research and development firm for everything from Johnson & Johnson to the Department of Homeland Security, were ultimately sold by companies who had operations in Philadelphia.

Philadelphia Common Pleas Court Judge William Manfredi overruled the defendants' preliminary objections to the case being held in Philadelphia, finding Edge regularly conducted business in the city given its products were eventually sold there. Because Manfredi did not certify the question to go up to the Superior Court as an interlocutory appeal, the Superior Court denied the appeal.

Edge argued at settlement that it had no control over the job site and should not be held responsible because Haase was the general contractor, Komarnicki said. Haase argued Burt contributed to his own injuries and said there was a carpenter's bracket scaffold available for Burt's protection. She said that Burt argued the scaffold was too short and Haase argued that a union-trained carpenter like Burt could have built the scaffold to the necessary height.

Komarnicki said \$2 million was the lowest demand going into settlement talks. She said it took some creative work by mediator Edelstein to convince Edge that it would face exposure under Pennsylvania's joint and several liability laws if the verdict came in over Haase's \$1 million policy limits.

Edge's attorney Brady didn't want to comment on the case.