

CONSTRUCTION

Labor Law — Accidents — Slips, Trips & Falls — Fall from Height

Worker hurt back, hip, leg, pelvis in 30-foot fall from beam**SETTLEMENT** \$3,375,576**CASE** Han Soo Lee and Soon Ok Jang v. Riverhead Bay Motors, Riverhead Pooh, LLC, Yoda, LLC, Manhattan Skyline Mgmt. Corp. and Queens Iron Works & Store Front, Inc., No. 113585/03**COURT** New York Supreme
JUDGE Saliann Scarpulla
DATE 11/23/2010**PLAINTIFF****ATTORNEY(S)** Kenneth A. Wilhelm, Law Offices of Kenneth A. Wilhelm, New York, NY**DEFENSE****ATTORNEY(S)** J. Gregory Lahr, Sedgwick, Detert, Moran & Arnold LLP, New York, NY (Riverhead Pooh, LLC, Yoda, LLC)
Michael A. Miranda, Miranda Sambursky Slone Sklarin Verveniots LLP, Mineola, NY (Yoda, LLC)
Edward L. Owen III, Nicoletti Gonson Spinner & Owen, LLP, New York, NY (Riverhead Pooh, LLC, Yoda, LLC)
None reported (Manhattan Skyline Management Corp., Queens Iron Works & Store Front Inc., Riverhead Bay Motors)**FACTS & ALLEGATIONS** On Dec. 2, 2002, plaintiff Han Soo Lee, 49, an ironworker, worked at a commercial construction site that was located at 1521 Old Country Road, in Riverhead.

During the course of the day, Lee crawled onto a horizontal beam that was situated some 30 feet above the ground. The beam fell while Lee was working, and Lee plummeted to the ground. He sustained injuries of his back, a hip, a leg and his pelvis.

Lee sued the premises' owner, Riverhead Pooh, LLC; the tenant that would ultimately occupy the premises, Riverhead Bay Motors, LLC; a related entity, Manhattan Skyline Management Corp.; the project's general contractor, Yoda, LLC; and one of the project's subcontractors, Queens Iron Works & Store Front Inc. Lee alleged that the defendants violated the New York State Labor Law.

Lee's counsel ultimately discontinued the claims against Manhattan Skyline Management and Queens Iron Works & Store Front, and Judge Doris Ling-Cohan dismissed the claim against Riverhead Bay Motors. The matter proceeded against Riverhead Pooh and Yoda, which were indemnified by Lee's employer, Queens Stainless Inc.

Lee claimed that the incident occurred while he was removing crane hooks that were attached to the beam. He contended that he had not been given a harness or any other type of device that could have prevented his fall. Lee's expert engineer opined that a spreader chain would have allowed the task to have been performed without Lee having to have crawled onto the beam. Lee's counsel contended that the incident stemmed from an elevation-related hazard, as defined by Labor Law § 240(1), and that Lee was not provided the proper, safe equipment that is a requirement of the statute.

Lee's counsel moved for summary judgment of liability, and the motion was granted. The matter proceeded to damages.

INJURIES/DAMAGES *crush injury, leg; fracture, acetabulum; fracture, hip; fracture, leg; fracture, pelvis; fracture, tibia; fusion, lumbar; herniated disc at L4-S; herniated disc at L5-S1; internal fixation; intramedullary fixation; open reduction; plate; screws*

The beam fell onto Lee's right leg, and he sustained a crushing fracture of the leg's tibia. He also sustained a fracture of his pelvis; a fracture of his right hip's acetabulum, which is the rounded cavity that receives the head of the right femur; and herniations of his L4-5 and L5-S1 intervertebral discs.

Lee's right hip's fracture was addressed via open reduction and the internal fixation of a plate, screws and an intramedullary rod. His herniations were addressed via fusion of the associated area of his spine.

Lee claimed that he suffers permanent residual pain and limitations that prevent his resumption of work and many of his typical daily tasks. Lee's treating orthopedist and treating orthopedic surgeon determined that Lee will likely have to undergo additional surgery that would address his spine and his right hip, but Judge Robert Lippmann precluded their testimony in that regard, based on improper foundation and improper pleading. Lee had intended to seek recovery of the cost of those surgeries and other future medical expenses, but Lippmann struck that claim.

Lee also intended to seek recovery of his past and future lost earnings, and Lee's counsel intended to present an expert economist to establish Lee's past and future lost earnings. However, Lippmann precluded the expert, opining that the expert did not provide a proper foundation for his testimony. Lippmann also held that Lee's status as an undocumented immigrant precluded his recovery of lost earnings. He advised the jury that Lee could not recover lost earnings.

Lee sought recovery of his past and future medical expenses and damages for his past and future pain and suffering. His wife, Soon Ok Jang, sought recovery of damages for her past and future loss of services.

The defense's expert neurologist and expert orthopedic surgeon opined that Lee exaggerated the severity of his residual injuries.

RESULT On Dec. 19, 2006, the jury determined that the plaintiffs' damages totaled \$1,226,000, which included \$126,000 for Lee's past medical expenses, \$350,000 for his past pain and suffering, \$650,000 for his future pain and suffering, and \$100,000 for his wife's past loss of services.

Plaintiffs' counsel appealed Lippmann's striking of the claims for future medical expenses, past lost earnings and future lost earnings, and the appellate division, First Department, reversed Lippmann's rulings. The court also opined that the Lee's case was prejudiced by Lippmann's instruction that Lee could not recover lost earnings. The First Department suggested that Lippmann should have contemporaneously issued a curative instruction that specified that Lee's immigration status did not bar his recovery of the other damages that were being sought. Plaintiffs' counsel did not contest the awards for past medical expenses and past loss of services, so those awards stood. The remaining damages claims were remanded for a new trial.

During the second week of the retrial, and after the presentation of all proof, the parties negotiated a settlement in which the plaintiffs recovered \$3,375,576.20. Lee's share totaled \$3.25 million, and his wife's share totaled \$125,576.20. Yoda's insurer tendered its policy, which provided \$1 million of coverage; Lee's employer's primary insurer tendered its policy, which also provided \$1 million of coverage; and Lee employer's excess insurer agreed to contribute \$1,375,576.20, from a policy that provided \$2 million of coverage.

INSURER(S) United National Insurance Co. for Yoda
First Specialty Insurance Corp. for Lee's
employer (primary insurer)
National Union Fire Insurance Company of
Pittsburgh, PA for Lee's employer (excess)

**PLAINTIFF
EXPERT(S)** Nicholas Divaris, M.D., orthopedics,
East Setauket, NY (treating doctor)
Stanley H. Fein, P.E., engineering,
Syosset, NY (did not testify)

Yong H. Kim, M.D., orthopedic surgery,
Flushing, NY (treating doctor)

**DEFENSE
EXPERT(S)**

Adam N. Bender, M.D., neurology,
New York, NY
Stephen Crane, M.D., orthopedics,
Livingston, NJ

EDITOR'S NOTE This report is based on court documents and information that was provided by plaintiffs' counsel. Counsel of Manhattan Skyline Management, Queens Iron Works & Store Front, and Riverhead Bay Motors were not asked to contribute, and the remaining defendants' counsel did not respond to the reporter's phone calls.

—Asher Hawkins