



Construction

Worker's 20-foot fall caused fractures of elbow, wrist

Verdict: (P) \$2,433,500.00

Case Type: Labor Law, Construction - Accidents, Slips, Trips & Falls - Fall from Height

Case: Kerwin Park v. The City of New York, East 8th Street Equities, Inc., Artimus Construction Co. Inc., Philip Smith, Individ. & d/b/a Smith Construction, and Smith Construction, Individ., No. 122075/01

Venue: New York Supreme, NY

Judge: Nicholas Figueroa

Date: 04-01-2008

PLAINTIFF(S)

Attorney:

- Rory M. Shectman; Law Offices of Kenneth A. Wilhelm; New York, NY, for Kerwin Park

Expert:

- Leonard Harrison Jr.; Orthopedic Surgery; New York, NY called by: Rory Shectman

DEFENDANT(S)

Attorney:

- None reported; null, null, for Philip Smith, Smith Construction
- Saadia C. Luzzi; Assistant Corporation Counsel, Michael A. Cardozo, Corporation Counsel; New York, NY, for City of New York
- Steven M. Distler; Epstein, Harms & McDonald; New York, NY, for Artimus Construction Co. Inc., East 8th Street Equities Inc.

Expert:

- Robert Israel M.D.; Orthopedics; New York, NY called by: Steven Distler

Insurer:

- Nationwide Mutual Insurance Co. for Artimus Construction

Facts:

On Sept. 7, 2000, plaintiff Kerwin Park, 37, a construction worker, was a member of a crew that was renovating a residential building that was located at the intersection of St. Nicholas Avenue and West 119th Street, in Manhattan. During the course of the day, Park entered the structure's first floor. The floor's surface included a series of planks that had been placed across the beams of the basement. One plank collapsed beneath Park's feet, and Park plummeted a distance of about 20 feet. He sustained injuries of an elbow and a wrist.

Park sued the premises' owner, the city of New York; the project's general contractor, Artimus Construction Co.; a company that shared Artimus Construction's principal officers, East 8th Street Equities Inc.; another contractor who was alleged to have been involved in the renovation, Philip Smith; and Smith's company, Smith Construction. Park alleged that the defendants violated the labor law.

Smith and Smith Construction defaulted. The matter proceeded against the remaining defendants.



VERDICT SEARCH

Park's counsel claimed that the incident stemmed from an elevation-related hazard, as defined by Labor Law § 240(1), and that Park was not provided the proper, safe equipment that is a requirement of the statute.

Park's counsel moved for summary judgment of liability, and it was determined that the city was strictly liable for the accident. However, the city was indemnified by Artimus Construction.

Injury:

Park sustained a displaced, comminuted, intra-articular fracture of his right elbow's olecranon, which is the elbow's bony tip. He also sustained a fracture of his left wrist. He was transported to the emergency room of Harlem [N.Y.] Hospital Center. His fractures were treated via open reduction and the internal fixation of pins. His hospitalization lasted seven days, and he subsequently underwent about eight months of physical therapy. He also underwent removal of his fixation hardware.

Park claimed that he performs a prescribed regimen of therapeutic exercises, but he contended that he suffers constant residual pain that stems from his right elbow and his left wrist. He claimed that he cannot lift heavy objects, and, thus he contended that he cannot perform rigorous construction work. He also bears a permanent 6-inch-long scar of his right elbow.

Park's treating orthopedic surgeon opined that Park suffers a residual reduction of his right arm's range of motion. The surgeon also opined that Park will develop traumatic arthritis of his right elbow, and he determined that additional surgery will be necessary.

Park sought recovery of his past and future medical expenses. He also sought recovery of damages for his past and future pain and suffering.

The defense's expert orthopedist acknowledged that Park's surgeries were necessary.

Verdict Information The jury found that Artimus Construction and East 8th Street were liable for the accident. It determined that Park's damages totaled \$2,433,500.

Kerwin Park

\$53,500 Personal Injury: Past Medical Cost

\$80,000 Personal Injury: future medical cost (32.7 years)

\$1,500,000 Personal Injury: past pain and suffering (7.5 years)

\$800,000 Personal Injury: future pain and suffering (32.7 years)

Post-Trial: The liable defendants' counsel moved for reductions of the awards for Park's pain and suffering. Judge Nicholas Figueroa did not reduce the award for Park's future pain and suffering, but he conditionally reduced the \$1.5 million award for Park's past pain and suffering. The adjusted award totals \$600,000. If Park does not accept the award, a new trial will address that element of damages.

Plaintiff's counsel appealed. He is seeking an increase of the award for Park's past pain and suffering.

Editor's Comments This report is based on information that was provided by plaintiff's counsel and counsel of Artimus Construction, the city of New York and East 8th Street Equities. The remaining defendants' counsel was not asked to contribute.