

PERSONAL INJURY**PREMISES LIABILITY****Negligence**

SETTLEMENT: \$800,000.

CASE/NUMBER: William Lewis v. Ralph Cimarusti, Rocky's Food Distributors, James Asher, AFT Trading / BC271551.

COURT/DATE: Los Angeles Superior Central / Jan. 22, 2004.

ATTORNEYS: Plaintiff - Roger E. Booth (Booth & Koskoff, Torrance).

Defendant - Charles A. Palmer (Law Offices of Linda M. Libertucci, Brea) for Ralph Cimarusti, Rocky's Food Distributors; Richard A. Hofman (Law Offices of Richard A. Hofman, Encino) for Cimarusti Trust; Steven K. Cambi, Helmar-Ann Hancock (Michelman & Robinson, LLP, Encino) for James Asher; Walter B. Hill Jr., Jennifer M. Renaud (Booth, Mitchel & Strange, LLP, Orange) for AFT Trading.

TECHNICAL EXPERTS: Plaintiff - Morris S. Farkas, safety engineer, Santa Monica; Sandra Schneider, vocational rehabilitation, Los Angeles; Tamorah Hunt, Ph.D., economist, Santa Ana.

Defendant - Michael V. Nicholas, safety consultant, La Verne; Richard W. Rauseo, safety engineer, San Dimas; Scott Vivian, construction, Riverside; Steven Molina, Ph.D., vocational rehabilitation, Santa Ana; David Weiner, economist, Los Angeles.

MEDICAL EXPERTS: Plaintiff - Julio Taleisnik, M.D., hand surgeon, Orange; James S. Hamada, M.D., orthopedist, Torrance.

Defendant - Kendall S. Wagner, M.D., orthopedist, Fullerton; John J. O'Hara, M.D., orthopedist, Torrance.

FACTS: On June 10, 2001, the plaintiff, a 57-year-old maintenance worker, was working in the attic of a meat processing plant. Suddenly, the floor of the attic gave way and he fell approximately 20 feet to the floor of the room below.

PLAINTIFF CONTENTIONS: The plaintiff contended that the defendants weakened the floor of the attic by removing a wall in the room below, without obtaining a permit, several years before. The plaintiff also contended that the defendants violated Cal-OSHA regulations by failing to provide safe work platforms in the attic.

DEFENDANT CONTENTIONS: Defendants Rocky's, Cimarusti and AFT, which previously owned and leased space in the building (but were not there anymore at the time of the accident) contended that there was no connection between the removal of the wall and the

accident. They also contended that it was impractical to provide work platforms in the attic.

Defendant Asher, who owned the building at the time of the accident and also owned the company for which the plaintiff worked, contended that there was a connection between the wall removal and the accident and that, therefore, the prior owners were at fault.

He also contended that he was not liable because he was in effect the plaintiff's employer (his summary judgment motion on that issue was denied). In addition, he contended that he was unaware of any use of the attic by his employees and that, since he only owned the building for three months prior to the accident, he did not have sufficient time to undertake extensive renovations of the building for safety purposes.

The defendants also argued that the plaintiff and his employer were at fault for failing to provide the plaintiff with fall protection on the day of the accident.

INJURIES: The plaintiff sustained severe fractures of his spine and both wrists, requiring six surgeries and approximately \$275,000 in medical bills.

SETTLEMENT DISCUSSIONS: All defendants were insured by CNA, which paid the entire sum. In addition to the third party settlement, the plaintiff retained his future workers' compensation benefits.

The case was settled for \$800,000 at a mediation session before Michael D. Moorhead.