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Delaware Jury Awards \$1.6 Mil. for Fractured Wrist

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A New Castle County jury on Oct. 2 awarded \$1.6 million to a 44-year-old mechanic and truck driver who claimed he suffered lost wages after his wrist was fractured in a forklift accident.

Plaintiff's attorney Kenneth Fulginiti of Duffy & Keenan in Philadelphia said he believed the 11-member jury rendered its unanimous verdict for Michael Cole not only because Cole faced lost earnings, but also because he could no longer do the work he had always enjoyed.

Fulginiti told the *Delaware Law Weekly* that he showed the jury Cole's high school yearbook, which specifically mentioned his plans to become a diesel truck driver and mechanic. For 21 years Cole had been driving trucks by day and repairing them at night, but that after a permanent injury to his wrist, Cole could perform only light-duty work, Fulginiti said.

"I think the evidence came across pretty clearly that if [Cole] could drive a truck or be a mechanic based upon his yearbook and his entire life, he would be doing that," Fulginiti said. "He had purchased a brand new Mack Truck before the accident. I had a picture of it ... covered in dust, and he started crying when I showed the picture [in court.]"

According to court documents, defendant Diamond State Port Corp. stipulated to liability for the forklift accident, which occurred at a Port of Wilmington loading dock, but argued that Cole could in fact continue driving his truck and performing substantial mechanical work.

At the time of the accident, Cole was self-employed as a truck driver and mechanic, court papers state. Fulginiti said the plaintiff had owned his own business, Michael Cole Enterprises, since 1997. Prior to that time, Cole worked for West Chester, Pa., trucking company A. Duie Pyle Co. for 17 years, Fulginiti said.

Cole's complaint states that the accident



Fulginiti

occurred on March 22, 2001, while Cole was standing at one of Diamond State's loading docks waiting to have his truck loaded. According to the plaintiff's pretrial statement, a Diamond State employee drove a forklift through the loading dock's doorway and struck its door and doorframe, causing a 500-pound door hanging overhead to fall 15 feet and land on Cole.

Fulginiti said the door mainly landed on Cole's wrist, but also caused broken ribs on his left side as well as abrasions and bruises. The attorney said Cole's most serious injury was that the two bones that make up the forearm near the wrist were shattered.

Cole wore a cast for nine months, Fulginiti said, but his medical expert, Dr. Randall Culp, diagnosed plaintiff with post-traumatic arthritis after the bones failed to heal properly. According to Fulginiti, the defense's orthopedic expert, Dr. Errol Ger, said the bones had not healed normally, but did not diagnose arthritis.

Fulginiti said Cole has little strength or range of motion in his left hand and that Culp predicted that the wrist's condition would deteriorate over time, eventually requiring a wrist fusion. The fusion, the attorney said, would not be reversible and would consist of affixing a plate and eight screws across the back of the hand and forearm, eliminating 100 percent of the wrist's motion.

According to Fulginiti, the main issues at trial were whether the plaintiff could return to truck driving and the extent to which he could work as a truck mechanic. The attorney said his client had not driven a truck since the accident and that he was unable to perform more profitable mechanical work such as transmission and engine repairs.

While the plaintiff's medical expert testified that Cole should never drive a truck again, the defense expert opined that he could drive using only his right arm, Fulginiti said. And in contrast to the

plaintiff's claim that he could no longer earn a good income as a mechanic, the defense argued in court papers that Cole was capable of substantial mechanical work.

"Dr. Culp testified that even as a light-duty mechanic, every time [Cole] moves his wrist, he is wearing it out and making a mistake by continuing to be a mechanic," Fulginiti added.

The plaintiff's vocational expert, Irene Mendelsohn, testified that as a full-time truck driver and part-time mechanic, Cole's earning potential pre-accident was approximately \$56,000 per year, Fulginiti said. Post-accident, Mendelsohn said the plaintiff could earn about \$28,000 per year.

According to the plaintiff's attorney, economic expert David Hopkins projected lifetime lost earnings ranging from \$500,000 to \$900,000, reduced to present value and depending on retirement age.

The plaintiff did not make any claim for medical bills or other economic losses. Fulginiti said that the defendant offered \$300,000 during jury selection and that no other settlement offers were made after that time.

The jury was out about three and one-half hours, Fulginiti said. The case was tried before Superior Court Judge Jan R. Jurden.

The plaintiff will request post-judgment interest amounting to \$300 per day, his attorney said.

Kathleen Jennings-Hostetter of Oberly Jennings & Rhodunda in Wilmington served as local counsel for Cole. Richard Hollstein and Lynne Parker of Hollstein Keating Cartell Johnson & Goldstein in Philadelphia and Wilmington, respectively, represented the defendant. Hollstein declined to comment on the matter.

Fulginiti noted that the good news on Oct. 2 did not end for him with Cole's verdict; when the attorney phoned his wife, Cozen O'Connor litigator Rhonda Fulginiti, to tell her about the verdict, she had some news of her own. In a Philadelphia bench trial that had started on the same day as Cole's trial, Rhonda wrapped up a commercial contract dispute with a \$650,000 ruling for her client, plus a grant of prejudgment interest and \$250,000 in counsel fees. The couple went out to celebrate on Friday night. ●