

VERDICTS&SETTLEMENTS



Truck Driver Settles Suit Over Tipped Freight Accident *Staton v. Bengal Converting Services Inc.*

\$1.1 Million Verdict

Date of Settlement: August 12, 2009.

Court and Case No.: C.P. Philadelphia, February Term 2008, No. 001245.

Judge: Howland Abramson.

Type of Action: Negligence.

Injuries: Herniated disc.

Plaintiffs' Attorneys: Ken Fulginiti, Duffy + Partners, Philadelphia.

Plaintiffs' Experts: Frank Costanzo, liability, Chester Springs, Pa.; Keith Krupiewski, liability, Trooper, Pa.; Irene Mendelsohn, vocational, Penn Valley, Pa.; David Hopkins, economics, King of Prussia, Pa.

Defense Counsel: Greg A. Ray, Comeau & Bunker, Philadelphia.

Defense Experts: Jason Walker, vocational, King of Prussia, Pa.; Chad Staller, economics, Philadelphia; Neil Kahanovitz, orthopedics, Illinois.

Comment: A truck driver has settled a negligence suit against the company responsible for loading his tractor trailer.

The \$1.1 million award comes after truck driver Stacy Staton alleged Bengal Converting Services failed to load his tractor trailer in the proper manner, causing it to tip onto its side during a slow right turn.

Stanton, according to plaintiffs' pretrial conference memorandum, was driving a truck for XTL Transportation in March 2006 when the accident occurred. The defendant, Bengal Converting Services, had loaded the trailer but failed to secure the items, causing them to shift to the left. The movement in weight caused the trailer and truck to tip onto its left side, according to plaintiffs' memorandum.

Bengal's negligence was rooted in the fact that it failed to load the items, which were on skids, using a proper method, according to plaintiffs' memorandum.

Of particular note, according to plaintiffs' memorandum, was that Bengal loaded the plastic skids on a new wooden floor — the equivalent of "an ice skating rink," according to the reporting police officers — in the truck.

Plaintiffs' attorney Ken Fulginiti said he felt the deposition of the reporting police officers, who happened to be specialists in truck enforce-



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ment, was helpful to his clients' case.

"At the scene, they gave a citation to my client and his company for not securing the load within the truck," Fulginiti said. "During the deposition, as I think more facts were explained to the police officers, they expressed the opinion that the company that loaded the truck was really negligent for a number of reasons."

Those reasons included the use of plastic skids on a new wooden floor.

"On top of that, the defendants' witnesses from Bengal did not support that the defendants followed the proper procedure in loading the truck," Fulginiti said. "We got them to concede that they deviated on a couple of levels from how the truck should have been loaded."

"The loaded skids were not secured by lateral braces, airbags, dunnage or anti-skid mats — all acceptable forms of securement," Fulginiti wrote in plaintiffs' memorandum. "The Bengal designee testified that they simply try to load the skids themselves in a manner that they will brace themselves. Such is a completely improper method of loading."

Bengal, though, argued they were not solely responsible for the accident.

In defendants' settlement conference memorandum, Bengal argued Stanton had "an opportunity and a duty" to inspect the trailer before leaving XTL's property.

XTL had trained Stanton to refuse to accept or transport certain loads, according to defendants' memorandum. Stanton was also aware of his duty to inspect commercial freight, because it was part of his commercial drivers license test, according to defendants' memorandum.

Bengal also noted in the defendants' memorandum that Staton had previously rolled a truck and suffered a back injury.

A third party, who drove the truck from Bengal's property to XTL's property before Stanton began driving the truck, also failed to inspect the load, despite having the same duty, according to defendants' memorandum.

Fulginiti argued Stanton had no responsibility to inspect the load, because the load had been locked and sealed in the trailer by the time he came into contact with it. Bengal, according to plaintiffs' memorandum, could offer no witness to the contrary.

"Nevertheless, even assuming the load was not sealed, and even assuming Mr. Staton had an obligation of some sort to check the load, such

does not absolve Bengal from its responsibility to properly load the truck," Fulginiti wrote in plaintiffs' memorandum.

As a result of the accident, Staton suffered herniated discs and required a left laminectomy/discectomy. He also suffered generally from the aggravation of previous asymptomatic degenerative changes, according to plaintiffs' memorandum.

"Prior to the incident, Mr. Staton was a healthy, active unimpaired tractor-trailer operator," Fulginiti wrote in plaintiffs' memorandum. "While his surgery helped, he has not recovered, and still suffers from pain and limitations. He is unable to drive a truck, which, unfortunately, was his only real skill set. While he has tried security guard positions, the jobs have required lengthy walking and standing, which is problematic for Mr. Staton's back condition."

According to plaintiffs' memorandum, Staton sought a \$5 million settlement.

Bengal offered nothing, contesting the severity of Staton's injury, his loss of earning power and his actual economic loss.

According to defendants' memorandum, Staton had surgery for one of his herniated discs in October 2006, but failed to continue treating with his surgeon after December 2006. He did, however, have "three or four visits" with another doctor. Staton also purchased a motorcycle shortly after the accident and surveillance videos "clearly depict the plaintiff riding his motorcycle, walking, lifting and bending without distress," according to defendants' memorandum.

Defense attorney Greg A. Ray said the surveillance footage and "five or six other small factors that would have come out at trial" helped his client's case.

"I don't think it makes your case look that good if you're a plaintiff saying, 'I can't work ever again,'" Ray said. "We had enough jabs to make the extent of the plaintiff's injuries ... to put some doubt in the jury's mind."

"Plaintiff's alleged continuing complaints of lumbar sacral pain can be attributed to his own failure to properly care for his health including purchasing and riding a motorcycle within five months of the lumbar surgery despite the fact he was not working and/or allegedly employable," Ray wrote in defendants' memorandum. "Further there is no objective proof that the plaintiff is continuing to suffer anything more than minimal lumbar pain."

— Leo Strupczewski, of the Law Weekly