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REGIONAL NEWS

Man Strikes \$2.35 Mil. Accord in Workplace Injury Case

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Of the Legal Staff

A union glazier who says he became permanently disabled because he had to dive to get out of the way of a crate of glass being unloaded by a crane has obtained a \$2.35 million settlement because of his workplace injuries.

The settlement was reached late last month.

Michael Baird, of Trevoise, Bucks County, was helping to unload 2,000-pound crates of glass from a flatbed trailer June 13, 2008, when he said one of the crates was swung in his direction by the crane operator and he needed to jump off a 5-foot-high truck to avoid being crushed between crates, the plaintiff's pretrial conference memorandum said.

Baird broke his left heel, tore his Achilles tendon, partially tore his meniscus fibrocartilage in his knee, sprained his left knee and contused his left hip, the plaintiff's papers said. Baird was not able to return to work as a glazier and

needed surgery on his knee, heel and Achilles tendon, the plaintiff's papers said.



Tom Duffy

Driver Craig Lipsie, an employee for defendant Freeport Transport Industries Inc., was delivering the glass to the work site of a high school renovation, but it was the first time Lipsie had unloaded crates of glass and there were no warning labels or instructions on Freeport's crane on how to safely unload the company's truck, the plaintiff's papers said.

Baird was a member of Glaziers Union, Local 252, the plaintiff's papers said.

Crane operators unloading glass are supposed to wait for the glaziers' hand signals — the first indicating that the crate has been strapped to the crane and the crate should be lifted slightly to test that the crate can be unloaded safely, and the second indicating that the crate can be swung off the truck to the ground, the plaintiff's pretrial memorandum said.

According to Freeport Transport's pretrial conference memorandum, neither the plaintiff nor his co-workers observed Lipsie operate the hand controls at the moment the crate swung toward the plaintiff.

Lipsie was not told about the accident, Lipsie said he did not see the accident and he did not know anyone had been injured, the defense papers said.

Four witnesses saw the accident, the plaintiff's papers said.

Baird said his damages were \$4.72 million, including \$52,500 in past medical expenses, \$265,000 in past wage losses, \$2.78 million in future wage losses and \$1.62 million in future medical care, the plaintiff's papers said.

Plaintiff's counsel Tom Duffy's firm in Philadelphia said two-thirds of the \$4.7 million estimate involved the worst-case scenario of the medical damages that Baird might need if

he were going to need total ankle, hip and knee replacements.

"Nobody was saying he needed those things, but you need to project them out," the firm said.

Baird demanded \$5 million, which is Freeport's policy limits with National Union Fire Insurance, in order to be able to make a bad faith claim if a jury verdict was reached above \$5 million, the firm said. There is a \$175,000 workers' compensation lien, the firm said.

Freeport argued that Baird could have returned to work in a sedentary position that does not involve heavy lifting or physical exertion, and that Baird had not made the effort to obtain such a position, the defense papers said.

"While there is no dispute that plaintiff sustained an injury to his heel, foot, and lower leg, plaintiff's claimed damages are an extreme display of overreaching," the defense papers said. "Plaintiff contends he is permanently disabled and unable to return to the workforce and has made no effort whatsoever to do so, yet the evidence will show that he is fully capable of holding employment that does not require significant physical exertion."

The defense conducted surveillance of Baird, including observing him go into bars and play pool, which led to the defense argument that if Baird could sit in a bar for six hours that he could sit at a computer screen for six hours, the firm said.

"His position is that, 'That's great that the doctors said I can work light duty but I don't have another skill set. I've been a union glazier my entire life,'" the firm said.

Freeport's legal representation changed from the law firm of Zimmer Kunz to Swartz Campbell.

The firm said it thinks that the defendant's position changed from a posture of fighting his client's claims no matter what to one of settlement after L. John Argento of Swartz Campbell in Pittsburgh came into the case. The firm said it was his opinion that the defense conceded liability to try to gain a better footing on damages because he said Lipsie's claim that no accident occurred at the site was "implausible" because of, among other evidence, the testimony that his client landed within feet of where Lipsie was operating the crane. If a jury did not believe Lipsie's version of events, the defense also could have lost credibility on the issue of damages and the jury could have been inspired to render "a verdict fueled by anger," the firm said.

Argento did not respond to *The Legal's* requests for comment.

The defense originally said in its answer that the accident may not have occurred and they asked for the court to award them their counsel fees because of the frivolous claim.

Defendants Louisville Plate Glass Co., which entered a contract to perform services related to the glass, PDC Glass & Metal Services Inc., from which the glass was purchased, and United Glass Corp., the glass' manufacturer, were dismissed by stipulation from the case, the plaintiff's papers said.

Baird is unmarried and cares for his adult brother who is mentally disabled, the plaintiff's papers said.

"When a guy is out of work and he takes care of his handicapped brother and had done so for most of his life a settlement like this allows him to know that he and his brother will be taken care of for the rest of their lives," the firm said.