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REGIONAL NEWS

\$3.75 Mil. Accord Reached in Suit Over Port Accident

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Of the Legal Staff

A former security guard at a port in Delaware County received \$3 million from a trucking company whose tractor trailer ran over her leg and foot and \$750,000 from the entities that owned and operated the port.

Susan Sawyer was working at the defendant Penn Terminals Inc. port facility in Eddystone, Pa., Aug. 3, 2008, and she was responsible for verifying that trucks and trailers matched the associated paperwork, according to the plaintiff's pretrial memorandum.

Sean O'Neal, who was driving a tractor trailer on behalf of defendant Crete Carrier Corp., was using a cellphone and had his dog on his lap when exiting through the port's entrance gate in his tractor trailer, the plaintiff's papers said.

O'Neal began to pull away while Sawyer was still verifying his tractor trailer's information, and the rear truck tires drove over Sawyer's foot and ankle, the plaintiff's papers said.

But the police report of the incident said, "Sawyer reported that she was checking the number on the truck," she waved the driver of the vehicle to go ahead and "Sawyer said that her right foot was out past her left and she was run over by the driver-side rear tire," Crete Carrier Corp. and O'Neal's mediation memorandum said.

"The distinction is immaterial, as even if he was authorized to leave the lot, a truck driver does not do so if someone is next to their vehicle," the plaintiff's papers said.

Plaintiffs counsel Kenneth F. Fulginiti of Duffy + Partners in Philadelphia said the issue of whether Sawyer authorized O'Neal to drive away was the most important issue in the case. If a jury thought that she gave O'Neal the OK to leave, then the jury might have placed all the culpability for the accident on her, Fulginiti said.

"Our position was, whether she did say or didn't say it, the truck driver should not have left" until he saw in his mirrors that she was clear of the radius of the truck, especially considering he had his dog on his lap and he had a cellphone to his ear, Fulginiti said.

When doing the accident recreation with an expert, there was no position in which Sawyer



Tom Duffy



Ken Fulginiti

would not have been visible from the tractor trailer's mirrors, Fulginiti said.

Thomas J. Duffy of Duffy + Partners was co-counsel.

Douglas B. Marcello, of Marcello & Kivisto of Carlisle, Pa., represented the trucking company.

Mary Elisa Reeves, of Reeves McEwing in Philadelphia, represented the port defendants.

Sawyer's injuries included fractures in her foot and ankle bones, stripping of the skin from her leg to her toes, and depression, the plaintiff's papers said.

The plaintiff's theory against the port was that guards were placed in a position of danger. Because on the weekends trucks had to exit through an entrance gate, the driver's side of exiting trucks was on the opposite side of the guard station and required guards to walk around the trucks in order to talk with the drivers, the plaintiff's papers said.

Defendant Penn Terminals, which operated the terminal, Penn Port LLC, co-property owner, and B & P General, co-property owner, said in their papers that the lane closure was "open and obvious. Plaintiff's job was to check trucks entering and leaving the port through the front gate after hours and on weekends. She cannot seriously argue that she was unaware of the lane closure."

The settlement tenders the limits of both defendants' remaining insurance, Fulginiti said.

The port entities had a "wasting policy," which was reduced by \$275,000 expended on counsel fees and costs, Fulginiti said.

Sawyer's gross workers' compensation lien is probably about \$600,000, Fulginiti said. Fulginiti said the lien will likely settle for a promise to not seek any future workers'

compensation payments. The settlement also will need to be structured to have a Medicare set-aside, Fulginiti said.

The firm always agrees to the language defendants want to insert regarding Medicare, which is that the plaintiff will indemnify the defendants in terms of any future claim by Medicare, Fulginiti said.

Sawyer agreed she would not sue the client of her employer, Wackenhut Co., for any injury covered by workers' compensation through the security firm, defendant Penn Terminals, Penn Port and B & P General's mediation memorandum said.

Philadelphia Court of Common Pleas Judge William J. Manfredi granted Penn Terminals' motion that Sawyer had waived her right to recoup economic damages from the port entities, according to papers in the case.

Crete Carriers and O'Neal raised cross-claims against the port, Penn Terminals' defense papers said.

Sawyer, while able to walk with a cane, is going "to have pain for the rest of her life," Fulginiti said. "She's never going to be the athletic person she was before this accident."

He also said Sawyer can have trouble getting out of bed on some days.

While Crete Carrier raised the issue that Sawyer had substance-abuse problems in the past and had "prescription medication misuse," Fulginiti said he did not think that issue impacted the case in a meaningful way because, under the law in Pennsylvania, a defendant is liable for aggravating a plaintiff's pre-existing condition. The Penn Terminals defendants also said Sawyer had pre-existing substance-abuse issues.

Defense counsel were not immediately available for comment.

The settlement in *Sawyer v. Crete Carrier Corp.* was struck June 13.

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