

# The Legal Intelligencer

THE OLDEST LAW JOURNAL IN THE UNITED STATES 1843-2014

PHILADELPHIA, THURSDAY, JULY 24, 2014

VOL 250 • NO. 17

An **ALM** Publication

## In 10-Story Fall Death Case, Parties Reach \$4.45 Mil. Settlement

BY GINA PASSARELLA

*Of the Legal Staff*

The estate of a cellular infrastructure technician who died after falling 10 stories from a Philadelphia rooftop has been settled with several defendants for a total of \$4.45 million.

Stanley Zarzecki, who was 32 years old at the time of his death and a married father of two children, was working on top of a 10-story building at 6250 Walnut St. on a stormy night as part of efforts to upgrade Clearwire's cell antennae that were on top of the building.

Clearwire had contracted with Excalibur Communications to serve as general contractor of the upgrade project and Excalibur hired Zarzecki's employer, Champion Communications, to help with the project, according to court documents in *Zarzecki v. Walnut Park Plaza*.

The Walnut Park building was owned by Walnut Park Plaza LLC, which had contracted with cellphone companies Clearwire, Sprint and Cingular to place antennae, dishes and other cell equipment on the building's rooftop, according to court documents.

Zarzecki had been on top of the building before as part of the overhaul, but had not worked on the building at night. On the night he died, Zarzecki got to the building shortly after a storm had ended and had just a few hours to finish a project before Clearwire was set to shut off service and switch to new systems, according to Kenneth F. Fulginiti of Duffy + Partners. Fulginiti represented Zarzecki's wife, Cara Zarzecki, both as administrator of her husband's estate and in her own capacity.

When the Champion workers went onto the roof, they noticed the storm created some damage and had knocked a flagpole onto a fiber cable. The workers didn't have their radios and so they had to shout to one another across the rooftop to work to get the flagpole moved so they could do their job, according to court documents.

One of the workers testified in the case that he saw Stanley Zarzecki stand up as if to yell something to the worker and then fell backwards off of the roof, which had no fall protection. He died immediately upon impact, according to court documents, which said Zarzecki would have experienced "profound fear of imminent death" during the approximately 2.4 seconds it took him to fall.



Tom Duffy

Ken Fulginiti

Fulginiti said the main argument from the defendants, aside from pointing the finger at one another, was that Zarzecki was familiar with the roof and should have been more careful. Fulginiti said the defendants pointed out that Zarzecki was the foreman on the job and had held a safety meeting before the workers went onto the roof during which he noted that the roof had a low wall.

Fulginiti said his argument was that the roof was difficult to navigate at night and that it didn't matter if Zarzecki knew of its dangers. Fulginiti said he argued the building owner and property manager—both of which earned fees from granting the cell companies access to the roof—should have had fall prevention in place on the roof. Fulginiti said he argued Clearwire and Excalibur should have ensured fall prevention equipment was available to its workers, noting Zarzecki was not wearing any sort of harness.

The defendants were Walnut Park Plaza, property management company Equity Management II LLC, Clearwire and Excalibur.

Philadelphia Court of Common Pleas Judge John Milton Younge called all of the parties' counsel to his chambers July 17, the day before jury selection was slated to begin. Fulginiti said Younge was both instrumental in getting the parties to agree on a settlement figure palatable to everyone and in getting the defendants to agree to dismiss any contractual or cross-claims against one another.

According to a transcript of the July 17 hearing placing the terms of the settlement on the record, Excalibur's insurer will pay \$3 million toward the settlement on behalf of both Excalibur and Clearwire. Walnut Park Plaza and Equity Management will pay a combined total of \$950,000 toward the settlement. Fulginiti

said that on the day of the hearing, Walnut Park Plaza's parent company, Walnut Park Plaza 2003 Limited Partnership, represented by separate counsel, attended the hearing and put an additional \$500,000 toward the settlement.

Fulginiti said there was a significant issue of a lien in the case that required the settlement figure reach a certain point. Cara Zarzecki, who had married Stanley Zarzecki a month prior to the accident after years of dating, was receiving death benefits from Champion, Fulginiti said. Those benefits would have lasted for life as long as Cara Zarzecki complied with certain provisions, including one that she not remarry.

Fulginiti said the settlement had to be enough to pay back the benefits Zarzecki had been receiving since her husband's June 2010 death, equal what she would have earned over a lifetime from the death benefits and include enough to set up funding for school for the couple's two children. Fulginiti said there was a \$2 million offer during the case that Zarzecki rejected because she would have received that from the death benefits over time.

Fulginiti tried the case with his partner, Thomas J. Duffy.

Gary Gremminger of German, Gallagher & Murtagh represented Excalibur. Leonard A. Busby and John G. Papianou of Montgomery McCracken Walker & Rhoads represented Clearwire. Michael J. Dunn of the Law Offices of Michael J. Dunn represented Walnut Park Plaza and Equity Management. Francis J. Deasey of Deasey, Mahoney & Valentini represented Admiral Insurance Co., the primary carrier of Walnut Park Plaza. Louis A. Bove of Bodell Bove represented American Guarantee and Liability Insurance Co.

Dunn declined to comment on the settlement. The other defense attorneys were not immediately available for comment.

*Gina Passarella can be contacted at 215-557-2494 or at [gpassarella@alm.com](mailto:gpassarella@alm.com). Follow her on Twitter @GPassarellaTLI.*