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Trial

June 2013

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Verdicts & Settlements

NEGLIGENCE

Jury Finds Company Negligent in Installing 13-Year-Old Tire

MARIO OLGUIN, 51, bought a set of used, mismatched tires, including a 13-year-old Michelin tire, from A-Car Wrecking Salvage Lot. Olguin took the tires to Twin's Tires and Wheels, which installed them on his vehicle. Eleven days later, while Olguin was a passenger in the vehicle on a highway in Mexico, a tread on the Michelin tire separated. The driver lost control of the vehicle, which rolled over.

Olguin suffered a spinal fracture at C2, a mild traumatic brain injury, and significant wounds to his head and both arms. He was transported to a hospital in Mexico, where he was placed in a halo brace and underwent skin grafting for the wounds. He also underwent epidural and nerve-block injections for pain. He continues to suffer chronic pain in his neck and back. He also suffers from depression, mood disorder, and cognitive problems that affect his decision-making and thought-processing skills. Once independent and spontaneous, he now relies on his family for everything. His past medical expenses totaled about \$307,000, and his future medical expenses and life-care costs are estimated at \$1.5 million.

At the time of the incident, Olguin owned and operated a landscape company. He returned to work in a different capacity. There were no claims for lost earnings.

Olguin sued A-Car and Twin's Tires and Wheels, alleging that the companies were negligent in selling and installing a tire that was 13 years old and showed signs of weather cracking.

The plaintiff also sued Michelin North America, Inc., which designed the tire.

Michelin argued that it recommends its tires be removed from service after seven years and that the tire had been removed from service at the time it was sold by the salvage lot.

The plaintiff settled with Michelin before trial for a confidential amount and with A-Car for \$800,000. Trial continued against Twin's Tire.

The jury found Twin's Tire 100 percent at fault and awarded \$7.9 million.

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CITATION: *Olguin v. Michelin N. Am., Inc.*, No. BC456659 (Cal., Los Angeles Co. Super. July 12, 2012).

PLAINTIFF COUNSEL: AAJ member Daniel M. O'Leary and Robert T. Simon, both of Los Angeles.

PLAINTIFF EXPERTS: Cal Lucas, tires, Long Beach, Calif.; Troy Cottles, tires, Tony, Texas; Fardad Mobin, neurosurgery, Marina del Rey, Calif.; Marcel Ponton, neuropsychology, Pasadena, Calif.; and Hyman Gross, neurology, Santa Monica, Calif.

DEFENSE EXPERTS: Jacob Tauber, orthopedic surgery, Beverly Hills, Calif.; Martin Levine, neurology, Encino, Calif.; Dean Delis, neuropsychology, La Jolla, Calif.; Alan Waxman, nuclear medicine, West Hollywood, Calif.; and Sharon Kawai, life-care planning, Fullerton, Calif.

RAILROADS

Lack of Safe Railroad Equipment

PAUL JUNOD, a 51-year-old machinist for Illinois Central Railroad, was standing on an elevated platform changing the shock absorbers on a train engine. Junod was working with his hands over his head, using a breaker bar and wrench to loosen a nut while applying leverage with his feet. As the nut came loose, he lost his balance and fell two to three feet to the cement below.

Junod suffered multiple fractures to his left, nondominant wrist and nerve injuries to his left hand and arm. He underwent open reduction internal fixation surgery with implantation of a plate and screws. He later developed traumatic arthritis in his wrist, resulting in a lost range of motion and chronic pain. Junod will require nerve decompression release surgery and a possible wrist fusion. His future medical expenses are estimated at about \$71,500.

Although Junod returned to work

after 11 months, he is no longer able to perform many aspects of his job, and he may be forced to retire earlier than planned. His physicians also believe that his traumatic arthritis may deteriorate rapidly, making it difficult for him to perform any kind of work. His past lost earnings totaled about \$90,800, and his future lost earning capacity is estimated at about \$467,800.

Junod sued Illinois Central under the Federal Employers Liability Act (FELA), alleging that the railroad failed to provide him with a reasonably safe place to work by supplying adequate equipment for the job. Specifically, the plaintiff contended that the railroad had supplied an impact gun, which makes it much easier to remove nuts from shock absorbers, but had failed to supply the impact sockets that must be used with the gun, despite his repeated requests. As a result, the plaintiff claimed, he was forced to use the breaker bar and box wrench, which required him to exert a great amount of force and caused him to lose his balance.

The plaintiff also alleged that the elevated work platform lacked the safety handrails and tow board required by the railroad's own internal rules and regulations.

The defense argued that Junod should not have used the breaker bar and wrench if he was aware that doing so was dangerous, and that he should have again requested the proper equipment. The railroad also disputed the nature and extent of the plaintiff's injuries.

The jury allocated fault at two-thirds to the railroad and one-third to the plaintiff and awarded about \$1.15 million. The railroad is responsible for about \$750,000.

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CITATION: *Junod v. Ill. C. R.R.*, No. 09 L 066009 (Ill., Cook Co. Cir. Oct. 16, 2012).

PLAINTIFF COUNSEL: AAJ member David W. Conover and Otto J. Shragal, both of Valparaiso, Ind.

PLAINTIFF EXPERTS: Michael Triester, orthopedic surgery, Chicago; and Neal Labana, orthopedic surgery, Flossmoor, Ill.

PREMISES LIABILITY

Toddler Burned by Scalding Shower Water

ALYAHIX JACKSON, 2, was at home in his mother's apartment being supervised by her boyfriend. He placed the child in the shower and adjusted the water to a comfortable temperature. While the boy was standing under the water, it fluctuated suddenly from room temperature to scalding hot. He suffered second- and third-degree burns to his back and buttocks, resulting in permanent scarring. His past medical expenses were paid by Medicaid.

Alyahix's mother, on his behalf, sued the companies that owned and managed the apartment building, alleging they failed to adequately monitor the hot water heater and maintain the water at a safe temperature.

The lawsuit also named the plumbing company that had installed a valve that regulated the temperature of the building's water. The plaintiff contended that the company negligently installed the valve without a thermal loop—a component that prevents hot water from migrating to the water heater's cold water tank. The plaintiff was prepared to present expert testimony that the shower water's temperature occasionally surged to 160 degrees Fahrenheit, even when the control knobs were adjusted to settings that appeared safe.

The plaintiff sought future medical expenses of about \$1 million for cosmetic surgery.

The defendants argued that the incident resulted from improper supervision

of the child and that future surgery would not effectively reduce the scarring.

The plumbing company impleaded the valve manufacturer, alleging that it failed to warn of the dangers of installing the valve without a thermal loop. The manufacturer countered that the valve's instructions clearly warned against installing the valve without a thermal loop.

The parties structured a settlement with a present value of \$4 million, which included cash plus the purchase of an annuity that will provide additional payments over the child's life, bringing the full value of the settlement to \$8 million. The building owner and manager's insurers paid \$2.15 million, the plumbing company's insurer paid \$1.55 million, and the valve manufacturer's insurer paid \$300,000.

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CITATION: *Jackson v. Three Nickels, LLC*, No. 11680/09 (N.Y., Kings Co. Sup. June 20, 2012).

PLAINTIFF COUNSEL: AAJ member Jonathan S. Damashek, New York City.

PLAINTIFF EXPERT: Daniel Caruso, burn medicine, Phoenix.

DEFENSE EXPERT: Roger Salisbury, burn medicine, Valhalla, N.Y.

Patron Slips in Liquid on Supermarket Floor

JANE DOE, 54, was shopping at a large supermarket and pushing a shopping cart down one of the aisles when she noticed a cone on the floor next to a red liquid. She moved to the other side of the aisle and kept walking, but as she continued, she slipped on a slick patch and fell.

Doe suffered a comminuted fracture to the right knee with three bone fragments. She underwent open reduction internal fixation surgery followed by multiple manipulations, including