

**\$1,183,183 VERDICT - NEGLIGENT OPERATION OF TRACTOR- TRAILER - TRUCK PULLS AWAY FROM LOADING DOCK WHILE PLAINTIFF IS ON DOCK PLATE - FALL FROM LOADING DOCK - COM-MINUTED FRACTURE OF TIBIA PLATEAU - MEDIAL COLLATERAL LIGAMENT RUPTURE - CHONDRO-MALACIA - FUTURE KNEE REPLACEMENTS.**

*U.S. District Court, Western District of Pa.*

The plaintiff, a 35-year-old female material handler at the time of injury, alleged that the defendant's tractor-trailer driver negligently pulled the truck away from the loading dock while she was on the dock plate, causing her to fall. The plaintiff claimed to have sustained multiple injuries in the fall including a fracture of the tibia plateau and rupture of the medial collateral ligament which totally disabled her from employment.

The defense disputed the extent of the injuries sustained by the plaintiff in the accident and contended that she failed to mitigate her damages by seeking sedentary employment of which she was capable.

On January 24, 1994, the plaintiff was employed as a materials handler for St. Marys Carbon Company located in St. Marys, Pennsylvania. The plaintiff's responsibilities included loading and off-loading products and merchandise being delivered and picked up by outside vendors. On the day of the accident, the plaintiff was assigned to load hazardous waste onto a tractor-trailer owned and operated by the defendant.

After another truck had been loaded and left the only loading dock, the defendant's truck driver backed his tractor-trailer into the loading dock. The plaintiff testified that she believed that the defendant's tractor-trailer was flush with the loading dock and that driver had shut the engine off. The plaintiff dragged a 125-pound metal dock plate into place on the back of the trailer between the loading dock and the bed of the trailer. As the plaintiff attempted to walk on the dock plate to enter the trailer, the tractor-trailer pulled away from the loading dock causing the dock plate and the plaintiff to fall four feet to the ground.

The plaintiff alleged that the defendant's driver failed to properly and safely dock the tractor-trailer and was negligent in pulling away from the loading dock without warning or notifying the plaintiff.

The plaintiff's orthopedic surgeon testified that the plaintiff sustained a severely comminuted fracture of her left tibia plateau and complete rupture of her left medial collateral ligament in the fall. While hospitalized, the plaintiff underwent an open reduction. Several months later, an arthroscopy was performed on an out-patient basis and grade IV chondromalacia was diagnosed, according to evidence offered. The plaintiff's orthopedic surgeon opined that because of the complexity of the plaintiff's injuries, she will eventually undergo at least two and possibly three future knee replacements in her lifetime. This expert also testified that the plaintiff is limited to sedentary work and can never return to manual labor.

The plaintiff's economist testified that given the rural area where the plaintiff resided (Elk County), and her severe physical impairments and lack of transferable skills, she was totally disabled for all intents and purposes.

The defendant argued, based on the testimony of the plaintiff's treating physician, that the plaintiff's disability was confined to her left knee and represented only a 13% impairment of her whole body. The defense contended that the plaintiff's massive obesity was a detrimental factor in her rehabilitation and recovery. The plaintiff was, in fact, employable and had not attempted to mitigate her damages by seeking alternative employment within her restrictions and limitations, according to defense arguments.

After a three-day trial, the jury found the defendant 100% negligent and awarded the plaintiff \$1,183,183.

**REFERENCE**

Plaintiff's orthopedic surgeon: Steven Gick from St. Marys. Plaintiff's labor economist: Jay Jarrell from Pittsburgh.

Bon vs. Northeast Environmental Services, Inc. Case no. 94-277; Judge Sean McLaughlin, 2-7-96.

Attorney for plaintiff: Richard M. Jurewicz of Galfand, Berger, Lurie, Brigham, Jacobs, Swan, Jurewicz & Jensen in Philadelphia; Attorney for defendant: Edwin A. Young of Pittsburgh.

**COMMENTARY:**

The defendant attempted to undermine the severity of the plaintiff's injuries and the effect that those injuries have had and will have on her life. The defense argued, based on the testimony of the plaintiff's own treating physician, that her continuing injuries were confined solely to her left knee and represented only a 13% impairment of her entire body. Further, although the plaintiff had not been released to return to her pre-injury job, evidence showed that she had been cleared to perform sedentary work. The defense used this evidence to argue that the plaintiff had made no effort to look for sedentary employment since the date of the accident. Through cross-examination of the plaintiff's labor economist, the defense contended that according to labor market studies and statistics, there were numerous employment opportunities for the plaintiff without retraining or further education. However, to negate the statistical evidence, the plaintiff stressed the lack of employment opportunities in the rural area where she resided. □