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**\$600,000 RECOVERY - PRODUCT LIABILITY - ALLEGED DEFECTIVE "TRUCK BODY" VAN - FAILURE TO PROVIDE DRIVER'S SIDE GRAB HANDLE - CLAIMED FALL FROM TRUCK - FRONTAL BONE FRACTURE - EPIDURAL HEMATOMA - LOSS OF SMELL.**

*Philadelphia County*

The plaintiff, a 47-year-old route driver for a dairy farm, contended that he slipped and fell from the back of a truck body van (a van with a rear truck body) manufactured by the defendant. The plaintiff claimed that the vehicle was defectively designed and manufactured and that the fall resulted from the lack of a grab bar on the driver's side rear of the vehicle. The defendant denied that the plaintiff fell from its truck. The defense also maintained that a grab bar was installed on the rear curb side of the truck, but was intentionally omitted from the driver's side to decrease the likelihood of drivers climbing out into the path of oncoming traffic.

The plaintiff was employed as a route driver for a dairy farm located in Hazelton. It was the plaintiff's responsibility to deliver milk products to customers using a truck body van manufactured by the defendant in 1988. The plaintiff's employer acquired the used milk truck in 1999.

The defendant manufacturer originally manufactured the truck equipped with a grab handle on the back of the truck on the curb side, but not on the driver's side. Less than a year before the plaintiff's accident, the plaintiff's employer contacted the defendant to have a lift gate installed on the subject truck. The plaintiff continued to use the truck after it was modified.

On December 17, 2002, the plaintiff was transferring empty milk crates from the back of his truck to the back of an 18-wheel staging trailer. The plaintiff claimed that when he was finished transferring his milk crates, he

attempted to exit the back of the truck on the driver's side. In the process of exiting, the plaintiff contended his hand slipped from the rear frame causing him to lose his balance, fall and strike his head on the ground.

The plaintiff had no recall about how his accident occurred. However, the accident was witnessed by a co-worker who testified that the plaintiff's hand slipped from the staging trailer, not from the truck body, at the time he fell. In a medical history provided to the emergency room and the plaintiff's doctor, it was also reported that the plaintiff fell from an 18-wheel trailer.

The plaintiff's experts opined that the truck body van manufactured by the defendant was defectively designed and manufactured because it was not equipped with a grab handle for the rear driver's side as well as the rear curb side. The plaintiff claimed there were a number of reasons that a driver would require a driver's side grab handle.

Additionally, the plaintiff alleged that when the defendant installed a lift gate on the truck body van less than a year before the plaintiff's accident, the lift gate was equipped with steps for both the driver's side and passenger side of the truck. The plaintiff, therefore, contended that the defendant should have known or expected that with the presence of a set of steps on the driver's side, someone would attempt to gain entry or exit into the truck from the driver's side. Furthermore, the plaintiff argued that when the defendant installed the lift gate, it covered up the original warning label it had placed on the truck cautioning users to use the grab handle bar on the curb side for entry or exit of the truck.

The plaintiff claimed that within a few weeks of the accident, he discovered he had lost his sense of smell. The plaintiff claimed his sense of taste was also altered. The plaintiff alleged his sense of smell never improved. His physicians contended that a battery of tests determined the plaintiff was completely anosymnic (without smell). The plaintiff's doctors also reported a non-displaced right frontal bone fracture and epidural hematoma associated with the fall.

The plaintiff returned to work on March 24, 2003. He continues to drive a milk truck and claimed \$11,500 in past loss of earnings. The plaintiff also claimed \$46,978 in medical expenses, which included a four-day hospitalization.

The defendant maintained, based on the testimony of the eyewitness and the medical records, that the plaintiff's accident did not occur on its truck, but rather, the plaintiff fell from the 18-wheel staging trailer to which he was transferring his crates at the time.

The defendant also claimed that grab handles were not installed on the back of the truck on the driver's side because to do so would increase the likelihood of an accident to drivers' in stepping out into traffic when getting on or off the trucks using grab handles on the driver's side. The defendant contended that the practice of the trucking industry is to provide a grab handle only on the rear curbside of trucks.

The defendant further maintained that the plaintiff's employer was a sophisticated user of truck bodies and lift gates and did not request that a driver's side grab handle be installed on the truck in question, because it did not want its drivers to climb in and out of the truck on that side.

The defendant's medical experts opined that the plaintiff made a remarkable recovery from his injuries and was able to return to work within four months of his accident without any medical restrictions or limitations. The defendant stressed that the plaintiff has had no medical treatment for the last two years. The defendant's neurologist contended that the plaintiff's sense of smell is actually improving.

The case settled for \$600,000 prior to trial.

**REFERENCE**

Plaintiff's trucking expert: Alfred Harmon from West Palm Beach, Fla. Plaintiff's safety engineer: Thomas Cocchiola from Caldwell, N.J. Plaintiff's neurologist: Michael Martin from Bala Cynwyd. Plaintiff's taste and smell expert: Beverly Cowat from Philadelphia.

Reimold vs. Defendant. Case no. 03-05-295; Judge Sandra Moss, 2- 16-05.

Attorney for plaintiff: Richard M. Jurewicz of Galfand Berger, LLP in Philadelphia.

**COMMENTARY:**

**Plaintiff's counsel in this products liability case faced the difficulty of a complete lack of recall on the part of the plaintiff regarding how his fall occurred. The plaintiff contended that his last memory was being in the back of the truck manufactured by the defendant, unloading empty milk crates and he concluded that he fell while exiting the rear driver's side which did not have a grab bar. The defendant had maintained that since the plaintiff had no memory of the accident, the only reliable information as to how the fall occurred was contained in the medical record and the testimony of the eyewitness. The medical record as well as the testimony of the eyewitness indicated that the plaintiff's hand actually slipped from the staging trailer into which the crates were being loaded, not the defendant's vehicle as alleged.**

**The plaintiff stressed evidence showing that the defendant manufacturer had installed a lift gate on the back of the truck in question. The lift gate was equipped with steps for both the driver's side and passenger side of the truck. The plaintiff claimed that the defendant was, therefore, on notice and should have known that the driver's side of the truck would be used for entry or exit. This evidence also negated the defendant's claims that the rear driver's side of the truck was not intended for ingress or egress.**

**The case settled for \$600,000 after two settlement conferences with the trial judge. □**