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Two Tort Cases Net \$6.5 Million Worker, Wife Win \$4.5 Mil. Award

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Of the Legal Staff

A man who suffered head, back, arm and knee injuries when a municipal pipe plug exploded in close proximity was awarded \$4 million in a products liability action by an eight-member Philadelphia jury late last week.

By a 7-1 vote, the jury in *Straub v. Cherne Industries* also awarded \$500,000 to the injured man's wife. The trial was before Judge Ricardo Jackson.

Plaintiffs' attorney Thomas J. Duffy of Duffy & Keenan said the case was particularly interesting because Douglas Straub's brain injury was not apparent on a computerized axial tomography, magnetic resonance imaging or electroencephalogram.

"I think the jury was persuaded by the lay witnesses, who talked a lot about how the injury affected [Straub,]" Duffy said.

According to Duffy, though the defense for Cherne presented numerous experts, the all-female jury placed more weight on the testimony of the plaintiffs' experts, Carol Straub and the couple's pastor.

"They truly believed he had a traumatic brain injury," Duffy said.

Court documents state that Straub, a construction worker, was installing sewer pipe at a job site in Chester County at the time of the accident. He was using a 36-inch inflatable Muni-ball Pillow Plug manufactured by Cherne and distributed by defendant Dealers Service Co. Dealers Service was exonerated by



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the jury, Duffy said.

The pipe plug was intended to prevent debris or water from entering or draining from the pipe while Straub was working. The plug was outfitted with a pressure gauge to indicate its level of inflation.

the plaintiffs' pretrial memorandum states. Too little air would prevent the plug from adequately sealing the pipe; too much air might cause the plug to explode.

In their memorandum, the plaintiffs asserted that the pressure gauge was not working on the day the accident occurred.

"At the time of the incident," the memorandum states, "because the pressure gauge was not working, Mr. Straub was looking at the ball, waiting for the water to stop passing around it, to ensure that the ball was sufficiently inflated. Before the plug even stopped the water from passing, the ball catastrophically failed. ... The force of the explosion broke bones in Straub's face and arms, herniated discs, caused serious knee injuries and has resulted in closed-head injuries."

The plaintiffs contended that the plug was defective and lacked adequate warnings, their memorandum states. Specifically, they argued that despite being only one month old, the unusually sensitive gauge was broken. Further, they pointed to the instruction manual that came with the plug: It was a 1992 manu-

al covering all of Cherne's products, but the pipe plug was not invented until 1994.

According to the memorandum, the plaintiffs alleged that in lieu of the gauge, the plug could have been fitted with either a pressure relief valve or a pressure whistle. In the alternative, they contended, the plug could have been equipped with a breakaway patch, which permits a controlled failure of a small area rather than a failing of the entire plug.

According to the company's pretrial memorandum, Cherne asserted that "the inflatable plug was equipped with numerous warnings, a pressure gauge and a safety instruction manual all within plain sight of the plaintiff."

Straub knew the gauge was broken and was aware of the obvious risk and danger involved in attempting to inflate a pipe plug without a working pressure gauge, the memorandum states.

In addition, Cherne contended that Straub knew there were spare gauges readily available on the job site, but nevertheless decided to guess whether the plug was properly inflated by standing in front of the sewer pipe and watching the water.

"As a result of plaintiff's actions, plaintiff over inflated the pipe plug causing it to burst," the memorandum states.

"The product was safe for its intended use as it was designed and manufactured and placed into the stream of commerce," the defendants argued in their memorandum. "Additionally, the product had attached to it a warning tag, a warning plate and a safety manual. ... Plainly,

plaintiff assumed the risk of his injuries and caused his own injuries by standing in the zone of danger.”

Duffy speculated that in terms of liability, the jury was persuaded by the defendant’s failure to test the plug before releasing it to the public.

In their pretrial memorandum, the plaintiffs claimed that Straub is still unable to work.

“He has daily pain in both knees,” the memorandum states. “He suffers from

severe headaches with a tremendous mood change from his pre-accident state of health. He suffers from forgetfulness and a lack of concentration. ... When he gets older, [he will] require a bilateral knee replacement. His disc injuries will similarly continue to deteriorate.”

The defendant, in contrast, asserted in its memorandum that Douglas Straub’s injuries had been resolved, and that Carol Straub’s loss of consortium

was not caused by a defect in the pipe plug.

According to Duffy, the defendant offered \$600,000 before trial and \$800,000 on the last day of trial.

Thomas F. Reilly of Swartz Campbell & Detweiler represented Cherne. He could not be reached for comment prior to press time. Michael S. Mikulski Jr. of Connor Weber & Oberlies served as counsel for Dealers Service. •