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## Construction Companies Agree to \$7M Accord for Worker Who Fell

BY MAX MITCHELL

*Of the Legal Staff*

Several construction companies have agreed to pay an injured worker \$7 million to compensate him for severe brain injuries he suffered after falling through an improperly covered hole in the floor of a construction site.

The defendants in *Fitzpatrick v. Toll Brothers* agreed to the accord Jan. 3, a few days before the case was set to go to trial in the Philadelphia Court of Common Pleas.

According to Duffy & Fulginiti partner Kenneth Fulginiti, who, along with Sarah Dooley, represented Vincent Fitzpatrick, the sympathetic plaintiffs and a recent decision by the state Superior Court expanding the application of joint and several liability factored into the settlement.

“Every one of them had their fingerprints on this, so it was really just going to be a question of



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whose were the deepest and the darkest,” Fulginiti said. “In light of the *Spencer [v. Johnson]* decision, since there wasn’t going to be any comparative fault, there could be joint and several liability, so they each had to worry about that.”

The 2021 decision in *Spencer* deals with the Fair Share Act, which says that, unless a defendant is found more than 60% liable in a case, they can only be responsible for the percentage of damages for which they have been found liable. The decision

said the FSA only applies in situations where plaintiffs are comparatively at fault, and that in situations where the FSA doesn’t apply, joint and several liability, which provides that a defendant found liable for any percentage of an incident can be made to pay the entire award, takes effect.

Along with that change, Fulginiti said the defendants were also motivated by the injuries Fitzpatrick suffered, as well as an advanced cancer diagnosis that Fitzpatrick’s wife recently received.

“She really wanted to go through trial to make sure Vinny would be taken care of for the rest of his life. She is a spectacular person and witness,” Fulginiti said. “I respected and appreciated what defense counsel did here to work together to get this resolved. They all commented how badly they felt for Mrs. Fitzpatrick, and that this would help ease their minds.”

According to Fitzpatrick’s pre-trial memo, the then-54-year-old insulation installer was on a job site in Lehigh County in October 2019 when he fell through an unmarked and improperly covered hole.

The memo said that, as he was setting up a scaffolding, he saw trash and a piece of plywood on the floor that was in the way. Assuming the plywood was scrap, he picked it up without realizing there was a hole underneath it, and then he fell about 20 feet to the basement floor below. The memo said he landed on his head and shoulder, resulting in a traumatic brain injury, broken bones and nerve damage.

The memo noted that the Occupational Safety and Health Administration requires hole covers to be marked with the word “HOLE,” and to be secured and immobile.

According to the memo, Toll Brothers was the general contractor and construction manager on the project, L&W Supply Corp. was the drywall supply company, Advanced Drywall Systems was the subcontractor and Johnston Built LLC was the service tech.

The memo said there was conflicting testimony about the defendants’ specific roles and the reasons for why the hole had been cut, but some testimony indicated the hole had been cut to move drywall into the basement and that Toll Bros. had ordered a worker with Johnston Built to cut the hole.

In their pretrial memos the defendants denied liability, with some of the companies contending they had been unaware the hole had been cut, others contesting their alleged duty to cover the hole, while others also indicated their workers were not the last ones to touch the plywood covering the hole.

The defendants also contested Fitzpatrick’s injuries, arguing that he had made a strong recovery.

Fulginiti agreed Fitzpatrick has made a good recovery, but he said expert testimony from the plaintiffs established that he continues to suffer difficulties and is at an increased risk for dementia.

“There is a lot more road ahead than behind him,” Fulginiti said.

Matt Zabel of McCormick & Priore represented Johnston Built. John Livingood of Margolis Edelstein represented L&W Supply. Seth Schwartz of Marshall Dennehey Warner Coleman & Goggin represented Toll Bros. Andrew Benedict of BBC Law represented Advanced Drywall Systems.

None of the defense attorneys returned a call seeking comment.

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