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Panel Upholds $17 Mil. Judgment in Warehouse Accident

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Of the Legal Staff

The state Superior Court has upheld the $17.3 million judgment in a Philadelphia products liability case entered against the manufacturer of a racking system used in a frozen food warehouse.

Plaintiff Leroy Rice, a forklift operator, was partially paralyzed when several 90-pound boxes of frozen food stored on the racking system fell on him, according to the Feb. 22 memorandum decision in *Rice v. 2701 Red Lion Road Associates LP*.

The first time the case went to trial, damages were assessed at $10.6 million and molded to $12.27 million. The second time the case went to trial, damages were assessed at $12.4 million and molded to $17.34 million.

Judge John L. Musmanno wrote the opinion for the unanimous panel of Judge Jacqueline O. Shogan and Senior Judge James J. Fitzgerald III.

Interlake Material Handling Inc., as well as three other related defendants, appealed the second judgment molding the $12.27 million verdict to $17.34 million to reflect delay damages, Musmanno said.


Tom Duffy


Ken Fulginiti

The warehouse racking system used by Rice's employer, Refrigerated Food Distributors, was made by Interlake in the 1970s and installed at 2701 Red Lion Road, Philadelphia, by another party, according to the opinion.

Penn Maid Foods, the owner of Refrigerated Food Distributors' building, purchased the Interlake racking system from Stokes Equipment Co., according to the opinion.

Rice also sued the owner of the warehouse, 2701 Red Lion Road Associates; the purchaser of the shelving system, Stokes; the installer of the shelving system, Walter A. Schmidt Co.; and the servicer of the shelving system, Warehouse Technologies Inc., Musmanno said.

These parties settled with Rice prior to trial, but Interlake filed cross-claims against those defendants for contribution and/or indemnity and unsuccessfully sought to present witnesses or other evidence concerning its cross-claims, according to the opinion.

Interlake also was precluded from including the settling co-defendants on the verdict sheet.

During the case's first trip to the state Superior Court, that panel said in an unpublished opinion that it was an error by the trial judge to preclude Interlake from introducing evidence related to its argument that the settling co-defendants were negligent, Musmanno said.

Interlake argued that when the case was remanded for a new trial it was entitled to a complete new trial, not just a trial on damages, because a damages-only trial "resulted in the failure of the trial court to correct any of the errors identified by this court," Musmanno said.

When the first Superior Court panel to consider the case remanded for a new trial, "in its only reference to the parameters of the new trial, this court held that Interlake was entitled to a 'new trial on damages,'" Musmanno said. "This holding was made in the context of this court's conclusion that the trial court erred in preventing Interlake from presenting evidence arising out of its cross-claims regarding the negligence of the settled co-defendants as Interlake

was seeking to allocate responsibility among the defendants."

Teresa Ficken Sachs, Interlake's attorney with Post & Schell, said: "We are surprised and disappointed that we still have not gotten the trial that the first Superior Court panel ordered. We think that Pennsylvania law is clear that a limited new trial is only granted in limited circumstances that were not present in this case. The first Superior Court, among their [other] holdings, held that we were entitled to jury instructions on some of the defenses to the product liability claim and despite that we were never allowed to try the product liability claim."

It was impossible to try only some of the issues because all the issues were intertwined, Sachs said.

Interlake is considering its appellate options, Sachs said.

During the second trial on damages only, Rice filed a motion for nonsuit on Interlake's cross-claims against the other defendants, Musmanno said. The nonsuit was granted.

Interlake argued that the cross-claims should have been submitted to the jury, according to the opinion. Regarding its cross-claim against the installer of the racking system, Schmidt, Interlake said that Rice's expert, Jeffrey Ketchman, testified that the installation of the deflector portion of the racking system was defective, and that the owner of the purchaser of the racking system, Stokes, testified that he did not know whether the system had been properly installed, Musmanno said.

Regarding its cross-claim against the owner of the warehouse, 2701 Red Lion, Interlake argued that the racking was in terrible shape and that 2701 Red Lion had responsibility for the property and 2701 Red Lion's control of the warehouse was a question for the jury, Musmanno said.

"With regard to Interlake's claims related to Schmidt and 2701 Red Lion, the trial court has thoroughly addressed these claims and found them to be without merit," the panel said.

In a footnote, the panel said that Ketchman was not an expert on industrial racking installation and that Interlake did not demonstrate he was qualified to provide expert testimony on installing the racking system.

When Rice was working in the warehouse, his forklift bumped one of the racking's columns, according to the opinion. The racking only moved and tilted initially, but it collapsed shortly afterward, just as Rice decided to leave his forklift to warn his supervisor, Musmanno said.

Rice is now able to move with the help of braces, but he still must use a wheelchair, Musmanno said.

Plaintiff's counsel Thomas J. Duffy Jr. of Duffy + Partners said the latest opinion by the Superior Court "proves you should never surrender and never give up."

Duffy said he sees little chance that Interlake will be able to appeal to an en banc Superior Court or seek allocatur with the state Supreme Court.

But the downside of the long life of the case "is that the clients who really need treatment and help don't get it while everybody keeps filing paper," Duffy said.

While the settlement with the other defendants was $3.4 million, that amount was reduced by attorney fees and costs and a workers' compensation lien and did not add up to much when compared to Rice's life care plan of $6 million to $7 million, Duffy said.

The judgment is recoverable, Duffy said, because a bond of $22 million was posted, Duffy said.

Interlake's insurer is AIG, but the judge required that the bond be obtained from other companies because of AIG's past financial problems, Duffy said.

Co-counsel on the appellate brief were Ken Fulginiti of Duffy + Partners and Howard Bashman, a Willow Grove, Pa., solo practitioner, Duffy said. Bashman writes a column on appellate issues for *The Legal*.

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(Copies of the 13-page opinion in Rice v. 2701 Red Lion Road Associates LP*, PICS No. 12-0452, are available from* The Legal Intelligencer. *Please call the Pennsylvania Instant Case Service at 800-276-PICS to order or for information.)* •