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Man Paralyzed in Warehouse Accident Awarded \$12.4 Mil.

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Of the Legal Staff

When Leroy Rice's products liability claim went to trial on the issue of damages for the second time, Rice was awarded over \$1.5 million more than the first time his claim went to a jury.

A Philadelphia Common Pleas jury awarded \$12.4 million last week to Rice, a forklift operator who was partially paralyzed in a warehouse accident, according to court papers.

Rice was previously awarded \$10.6 million in damages during a trial in 2006. The state Superior Court reversed the verdict in *Rice v. 2701 Red Lion Road Associates* and remanded the case for a new trial in a June 26 unpublished opinion.

Philadelphia Common Pleas Judge Joseph A. Dych presided over the second trial, and Judge Eugene E.J. Maier presided over the first trial.

With delay damages, the entire award could wind up being \$17.4 million, said plaintiff's counsel Thomas J. Duffy Jr. of Duffy & Partners.

Rice operated a forklift at a frozen food warehouse where the food was stored on racks made by defendant Interlake Material Handling Inc., court papers said. Rice alleged that the racking was not affixed to the wall and stabilizing floor bolts had been sheared off. Rice, now 45, knocked into the racking while operating his forklift and walked away to get help.

As he walked away, the racking broke and frozen food was dropped onto Rice, who suffered massive spinal cord injuries from being crushed under thousands of pounds of frozen food, the plaintiff's pretrial conference memorandum said.

Interlake Material Handling appealed the



Tom Duffy



Ken Fulginiti

first verdict. Superior Court Judge Richard B. Klein, writing for the three-judge panel, said that Interlake should have a new trial on damages and on Interlake's cross-claims for indemnity and contribution against the other defendants. Interlake's liability was not allowed to be retried, Duffy said.

Before the trial, Rice reached a collective settlement of \$3.38 million with defendants 2701 Red Lion Associates, the warehouse owner; Walter A. Schmidt Inc., which installed the racking system; and Warehouse Technologies and Curtisservice Inc., which performed maintenance on the racking, *The Legal* previously reported.

The settlement shifted the nature of the case, Klein said, so the plaintiff only needed to establish liability against Interlake.

On a plaintiff motion, Maier barred Interlake from presenting evidence to consider the claims against the settling defendants. Interlake also was barred from calling two damages experts retained by defendant Schmidt, Klein said.

Klein wrote that it was an error to exclude testimony from witnesses listed on the plaintiff's and other defendants' pre-trial lists because Interlake had reserved the right to call those witnesses.

Interlake did not call the witnesses the Superior Court said Interlake should have been able to call as live witnesses, and Interlake instead relied upon deposition and trial testimony from those witnesses, Duffy said.

Interlake has cross-claims against warehouse owner 2701 Red Lion Associates, Walter A. Schmidt Inc. and Stokes Equipment Company Inc., the company that sold the original racking and assisted in the installation of the racking in 1979, court papers said.

The jury found in favor of those defendants, according to the trial work sheet.

Dych only allowed the plaintiff to put on evidence used during the first trial, Duffy said.

According to Duffy, retrying Interlake's cross-claims and the issue of damages took two days. If Interlake had been successful on its cross-claims, then the recovery under the verdict would have been reduced, Duffy said.

Duffy said he thought the jury might have awarded more in damages during the retrial because Rice's condition has worsened over the last three years.

The plaintiff's memorandum, dated from 2006, said that Rice's past and future medical bills, lost wages and fringe benefits totaled \$8.7 million.

Rice sued Interlake on a strict liability theory, and sued the other defendants on a negligence theory, Klein said.

Interlake is insured with Chartis with a \$50 million policy, Duffy said.

Plaintiff's counsel also included Kenneth F. Fulginiti of Duffy & Partners.

Defense counsel included Robert M. Hanlon Jr. and Matthew R. Shindell of Goldberg Segalla and Teresa Ficken Sachs of Post & Schell, none of whom could be reached for comment. •