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Worker Awarded \$6.5 Mil. for Ladder Fall

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Of the Legal Staff

A Philadelphia jury awarded \$6.5 million to a union glazer and his wife because the glazer was injured by a fall from a ladder at an allegedly disorderly strip mall construction site.

Frank Voce, 49, of Philadelphia was injured from a fall at the Centerton Square Project in Mount Laurel, N.J., on Aug. 4, 2004, according to the plaintiffs' pretrial memorandum.

Voce was awarded \$5 million in the jury verdict last Tuesday in *Voce v. Sweeney*, plaintiffs' attorney Thomas Duffy said. Voce's wife, Theresa, a part-time teacher, was awarded \$1.5 million in a loss of consortium claim. Philadelphia Common Pleas Judge Annette Rizzo presided over the six-day trial.

Duffy and Kenneth Fulginiti, both of Duffy & Keenan, handled the case for the plaintiffs. Kevin Ruane, of Francis R. Gartner & Associates and who handled the case for the defense, did not respond to a request for comment.

Voce argued that International Management Consultants (IMC), the general contractor, and Sweeney, H.T. and Son Inc., the concrete subcontractor, violated New Jersey's Uniform Building Code and Construction Safety Code and federal OSHA regulations by not guaranteeing general work-site safety, including that ladders were placed on flat surfaces, the plaintiffs' pre-trial memorandum said.

Duffy said that his client faced a tough choice of refusing to work on a job with debris and lack of concern for workers' safety, or losing work that would support his seven children.

"You can't take workmen where they're between a rock and a hard place," Duffy said.



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"They either quit their job and don't feed their families, or they're forced to work in unsafe conditions."

The defense in its pretrial memorandum argued that Voce should not have worked in the area if he was concerned that it was unsafe to place his ladder there; that Voce was comparatively negligent by not seeking to have the area taken care of by others on the site; and that IMC and Sweeney personnel did not believe a large excavation of the type described by Voce existed on the site.

Voce said he placed his 10-foot ladder on two-by-four lumber laid over a 2-foot-deep excavation and in an unlevelled area with broken rocks, trash, pallets and cinder blocks; he was using the ladder to install rubber stripping around windows that had already been installed, according to court papers and Fulginiti. Voce tried to use plywood to level his ladder, the plaintiffs' memorandum said.

The construction site was muddy from several days of rain, and Voce's leveling plywood slipped and caused the ladder and Voce to fall; Voce fell onto cement blocks and broken pallets, the plaintiffs' memorandum said.

Voce's left shoulder and hip were injured. His shoulder injury was repaired with surgery, but asymptomatic arthritis in his hip was aggravated by his fall. His hip now inhibits



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Voce from working and a hip replacement has been recommended, according to court papers.

Voce's past loss was \$250,000, his future wage loss was \$1.5 million, the past medical expenses were \$100,000 and the future medical expenses was \$1,036,769, the plaintiffs' memorandum said.

The plaintiffs did not present the medical claims at trial, Fulginiti said. According to the defense memorandum, Voce had pre-injury degenerative arthritis and had recovered sufficiently to be able to work.

"He walks with a limp and lives in daily pain," the plaintiffs' memorandum said. "Today, Mr. Voce is incapable of gainful employment. With a 10th grade education, and a lifetime career [sic] in construction, Mr. Voce's employment horizons are not favorable."

Sweeney settled for \$100,000 after jury selection and prior to any evidence being presented, Duffy said.

IMC's insurance coverage is up to \$10 million, Fulginiti said. The six-female, six-male jury were unanimous and deliberated for about a half hour, Duffy said.

IMC offered \$225,000 before the trial and \$650,000 during the trial, Duffy said. Plaintiffs demanded \$5 million.

Plaintiff expert witnesses included William Poznak, a safety and OSHA professional engineer of Oakhurst, N.J., and Murray Brand, Voce's family doctor of Philadelphia.

Defense expert witnesses included Stephen Bosacco of the Hahnemann Multi-Specialty Services' Department of Orthopedic Surgery in Philadelphia, and Royal and David Bunin of Bunin Associates, actuarial-economic consultants based in Wynnewood, Pa.

Beletz Brothers, the glazing subcontractor for the project, employed Voce.