

NEW YORK

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LABOR LAW

Fall from Height, Construction - Trip and Fall, Construction - Labor Law, Damages - Indemnification, Construction - Scaffolds and Ladders

Worker paralyzed in 12-foot fall from scaffolding

VERDICT **\$50,591,035**

CASE Daniel J. Savillo v. Greenpoint Landing Associates L.L.C. and Greenpoint Storage Terminal L.L.C. / Greenpoint Landing Associates L.L.C. and Greenpoint Storage Terminal L.L.C. v. All Safe Heights Contracting Corp.,
No. 114418/07; 590014/08

COURT New York Supreme, NY

JUDGE Emily Jane Goodman

DATE 12/21/2010

PLAINTIFF

ATTORNEY(S) David B. Golomb, Law Offices of David B. Golomb, New York, NY
Roy R. Jaghab, Jaghab, Jaghab & Jaghab, P.C., Mineola, NY

DEFENSE

ATTORNEY(S) Edward Lomena, Wade Clark Mulcahy; New York, NY, for Greenpoint Landing Associates L.L.C., Greenpoint Storage Terminal L.L.C.
Michael R. Manarel, Jones Hirsch Connors & Bull P.C., null, null, for All Safe Heights Contracting Corp.
Scott E. Miller, Jones Hirsch Connors & Bull P.C., New York, NY, for All Safe Heights Contracting Corp.

FACTS & ALLEGATIONS On Feb. 12, 2007, plaintiff Daniel Savillo, 29, a scaffold worker and member of the bricklayer's union, was working at a job site at 171 West Street in Greenpoint, Brooklyn. Savillo had been hired by scaffolding rental company All-Safe Height Contracting Corp. Savillo and a co-worker were laying corrugated metal sheets on the top of a storage structure being erected at All-Safe's storage yard. According to his co-worker, Savillo fell about 12 feet to the ground after inadvertently stepping on an unsecured short sheet. The co-worker was the only witness. Savillo wasn't wearing any safety device. He landed on the back of his neck and shoulders and was rendered a paraplegic.

Savillo sued the storage-yard's property owner, Greenpoint Landing Associates, and the property's managing agent, Greenpoint Storage Terminal. Savillo alleged that the defendants had violated Sections 240(1) and 241(6) of the New York State Labor Law by failing to provide any fall protection equipment to Savillo.

The Greenpoint defendants filed a third-party action against All-Safe, seeking indemnification and contribution.

During depositions, All-Safe's owner and head foreman both acknowledged that they had neither instructed Savillo and other workers to wear fall-protection equipment nor provided them with any such equipment.

The defense contended that Savillo's fall had been the result of his poor judgment while maneuvering around the top of the storage structure. They noted that Savillo had been drinking alcohol the night before his accident.

On Sept. 7, 2010, Judge Emily Jane Goodman granted Savillo's motion for summary judgment on the Section 240(1) claim, and also granted the Greenpoint defendants' motion seeking summary judgment on their claim against All-Safe for common-law indemnification.

The trial proceeded on damages. Plaintiff's counsel successfully requested that Goodman preclude the parties from referring at trial to the fact that Savillo had been drinking the night before his accident.

INJURIES/DAMAGES Savillo, who lost consciousness for approximately 10 minutes after falling to the ground, was taken by ambulance to Bellevue Hospital Center, where he was treated for a fracture of the T11 vertebra, several skull fractures, a contusion of the right frontal brain lobe, and subdural and subarachnoid bleeding. Three days after his accident, Savillo's treating neurosurgeon performed a spinal operation in which screws were placed into each vertebra between the T7 and L2 levels, along with vertical rods connecting each of the screws, and the vertebrae were fused.

Savillo was at Bellevue for 14 weeks, a longer stay than first anticipated because he developed kidney infections. After his release, Savillo moved to south Florida to live with relatives. He began a physical rehabilitation program, but was forced to miss many of his appointments over the following 10 months because he developed multiple bedsores. One bedsore, on his right buttock, necessitated a two-week hospitalization, during which necrotic tissue and bone were removed.

Savillo, who has no sensation or movement below the waist, self-catheterizes to void urine, and uses a special device to manually evacuate stool.

Savillo claimed that he's permanently disabled. Plaintiff's counsel argued that his future employment prospects, limited to manual labor even before the fall because he never completed high school, were further reduced by cognitive deficits as a result of injuries to his brain.

Before the accident, All-Safe had taken steps to ensure that Savillo would become a member of the carpenters' union, according to plaintiff's counsel. Therefore, he would have earned better wages and more generous benefits than he had received as a union bricklayer, he claimed. All-Safe's secretary testified that All-Safe's owner had stated on numerous occasions that Savillo would one day become a member of the carpenters' union.

The plaintiff's expert economist testified that as a member of the carpenters' union, Savillo would have enjoyed earnings and benefits totaling approximately \$5.6 million over the course of his remaining working years. Savillo's economic expert also testified that, based on the life-care plan created by his physical rehabilitation expert, the cost of future care would total more than \$9.2 million over a remaining life expectancy of 42 years.

Plaintiff's counsel asked the jury to award \$35 million for past and future pain and suffering.

The defense neuropsychology expert acknowledged that Savillo's fall resulted in cognitive damage, but opined that he could still be retrained to work.

All-Safe argued that Savillo's membership in the carpenters' union was not guaranteed at the time of his fall, and its economics expert testified that Savillo, if not a member of the carpenters' union, would have earned roughly \$2.3 million before reaching retirement age. The life-care plan estimated by All-Safe's rehabilitation expert was \$8.12 million.

VERDICT INFORMATION: The jury awarded \$50,591,035.

PLAINTIFF

EXPERT(S) **Joseph Carfi**, Physical Rehabilitation; Lake Success, NY called by: David Golomb, Roy Jaghab
Anthony Frempong-Boadu M.D., Neurosurgery; New York, NY called by: David Golomb, Roy Jaghab
David Payne M.D., Neuroradiology; New York, NY called by: David Golomb, Roy Jaghab
Alan Leiken Ph.D., Economics; Stony Brook, NY called by: David Golomb, Roy Jaghab

DEFENSE

EXPERT(S) **Patrick Gaughan Ph.D.**, Economics; New York, NY called by: Michael Manarel, Scott Miller
Caren Jahre M.D.; Neuroradiology; New York, NY called by: Michael Manarel, Scott Miller
Kristjan Ragnarsson M.D.; Physical Rehabilitation; New York, NY called by: Michael Manarel, Scott Miller
Rose Scherr Ph.D.; Neuropsychology; New York, NY called by: Michael Manarel, Scott Miller
Jane Mattson Ph.D., Life Care Planning; Norwalk, CT called by: Michael Manarel, Scott Miller

EDITOR'S NOTE This report includes information that was gleaned from court documents and interviews of plaintiff's counsel and defense counsel. All-Safe was incorrectly identified in the original case caption as "All Safe Heights Contracting Corp."