

# Verdicts & Settlements

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**EDITOR'S NOTE:** Barring unusual circumstances, Lawyers Weekly publishes all verdict and settlement reports submitted to the newspaper by both plaintiffs' lawyers and defense counsel. The information published here is taken directly from the submitting lawyer's summary.

## \$3.1 million settlement Machinist suffers closed head injury in 9-foot drop

The plaintiff worked for a manufacturer of large semi-conductor machines. On the date of the incident, he was in the process of nailing down the top of a shipping crate with a nail gun when he fell off the crate, landing approximately nine feet below and receiving a closed-head injury.

The incident occurred on the employer's solely owned premises at a packing and loading area. At the time of the incident, the plaintiff was not being supervised by any of the defendant's employees. He had been performing the work for several years before the incident. The employer had a safety program that addressed specific risks, including the need to provide fall protection through powered lifts, harnesses, etc., in accordance with this program in other parts of the plant.

The plaintiff alleged that the defendant, a third-party vendor that had been hired to perform packing and crating services for the em-

ployer, was responsible for safety and providing fall protection in the packing and loading area.

The defendant contended that it was the employer alone that was responsible for the safety of its own employees, claiming that it had nothing to do with crating the types of machines on which the plaintiff was working and that it had been retained exclusively to work on smaller crates where fall protection was not an issue.

The plaintiff's co-employees and supervisors were consistent in their support of the defendant's position. They testified that the defendant did not control the area where the injury occurred, had no authority to supervise their workers and that the plaintiff was in no way subject to the defendant's direction. They stated that it was the employer that should have provided fall protection.

The defendant produced the plaintiff's supervisors in the packing and crating area for depositions wherein they stated that they, and not the defendant, were supervising the plaintiff at the time of the accident.

Plaintiff's counsel produced as witnesses each of the defendant's prior employees who had previously supervised the area in question, as well as ex-employees of the employer from around the country. These witnesses established that the defendant did share in control of the subject area and that the plaintiff worked in part, under the defendant's direction.

Plaintiff's counsel used the defendant's own invoices as evidence that it was involved in a packaging process requiring fall protection. Additionally, a clause in the contract between the employer and defendant requiring the defendant to comply with the employer's safety regulations was presented as evidence.

The plaintiff was examined by a prominent neuropsychologist and rehabilitative neurologist. Both physicians were prepared to testify at trial that the plaintiff's quality of life would greatly benefit from exposure to intensive and expensive therapies designed to provide him with greater focus, clarity and structure. Prior to the mediation of the third-party

claim, the workers' compensation portion of the case was resolved (against the same insurer) for a lump sum settlement of \$275,000. The parties agreed to settle the case for \$2.8 million, just shy of the \$3 million in available insurance. Furthermore, counsel negotiated the workers' compensation lien from over \$1 million to \$300,000 and was able to convince the workers' compensation carrier to cap its Hunter Offset to \$25,000 for 10 years.

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| Type of action:             | Negligence & tort   |
| Injuries alleged:           | Brain injury  |
| Name of case:               | Withheld  |
| Court/case no.:             | Withheld  |
| Tried before judge or jury: | N/A (mediated)  |
| Amount of settlement:       | \$3.1 million   |
| Date:                       | Jan. 21, 2009   |
| Attorneys:                  | Douglas K. Sheff and Frank J. Federico Jr., Sheff Law Offices, Boston (for the plaintiff) |

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