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VERDICTS & SETTLEMENTS

Truck driver was not permitted to help supplier with loading

\$800,000 Settlement

Plaintiff was employed as a supply clerk in Chesterfield. In August 2011, the defendant driver was in the course of his employment as a truck driver for a major national and international intermodal freight transport company, making a pick-up of products in order to make a delivery at a Walmart store in North Carolina.

Per the terms of the defendant driver's employment, any and all loads that he carried in the company truck were "no touch loads." This means that he is not permitted to touch the load unless given express authority to do so from the trucking company. The driver testified in deposition that he understood that he had no different authority on the date of the incident. For reasons known only to him, while the plaintiff was loading a pallet jack loaded with 400 pounds of freight into the truck, the defendant driver attempted to "assist" the plaintiff by pushing forcefully on the pallet. The plaintiff repeatedly and loudly protested while the defendant driver, who had hearing impairments, pushed the pallet. Despite plaintiff's protestations, the driver continued to push until plaintiff was forced backward and was "slammed" into the wall of the trailer. Plaintiff suffered three herniated discs in his neck necessitating emergency surgery. He was completely disabled from work from the time of his injury through the present day.

Deposition testimony in this case was critical to defeating the defendants' claims regarding liability, including that the defendant driver was not an employee of the



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trucking company and that the plaintiff was contributorily negligent. The defendant driver testified that the trucking company controlled nearly every aspect of his work. He further unequivocally stated he pushed a 400 pound "no touch load" on a pallet into the plaintiff without being asked. He identified no facts in support of contributory negligence.

The deposition of the defendant trucking company's corporate designee revealed that the company was, in fact, the driver's employer, despite the trucking company's denials. When this lawsuit was filed, the defendant trucking company originally answered the lawsuit by conceding that it was the defendant driver's employer. It was only after more than six months of discovery that the trucking company sought to amend its answer and change its position. Because of this change in position, plaintiff deposed the corporation. The deposition of the corporate designee was revealing on the issue of control and employment. The defendant driver was controlled in every aspect of his work and was therefore an employee under Virginia law.

Defendants did not assert the defense of contributory negligence in their original

Type of action: Negligence

Injuries alleged: Cervical radiculopathy requiring emergency anterior cervical discectomies at three levels from C3-C5

Court: Chesterfield County Circuit Court

Mediator: Michael Allen

Date resolved: Oct. 10, 2014

Special damages: Past medical bills - \$186,723; past wage loss - \$89,200.54

Demand: \$2,000,000

Verdict or settlement: Settlement

Amount: \$800,000

Attorneys for plaintiff: Seth R. Carroll, Richmond; Jonathan E. Halperin, Glen Allen

Attorneys for defendants: Terrence L. Graves and Sarah Warren Smith, Richmond

answers nor their amended answers. This lawsuit was filed in July 2013, and for the 14 months that this case was litigated, defendants did not assert the defense of the contributory negligence. It was not until the eve of close of discovery in September 2014 that defendants first sought to assert this defense. Plaintiff filed a motion to strike the defense of contributory negligence, a hearing on which was held the day before the scheduled mediation in this case. The motion to strike (though ultimately denied) was still pending at the time of settlement.

[14-T-175]