



VERDICTSEARCH

NEW YORK

QUEENS COUNTY

CONSTRUCTION

Labor Law — Accidents — Scaffolds and Ladders

Worker fell five feet after ladder shifted

SETTLEMENT **\$2,112,000**

CASE Gerard DaSilva Theresa DaSilva v. Citnalta Construc. Corp, the City of NY and New York City School Construction Authority J & J Pirro, Inc., J & J Mechanical Inc., a/k/a J & J Pirro Inc., John Pirro, Ind, & as "President" of J & J Pirro, Inc. & as an "Officer" of J & J Mechanical, Inc. a/k/a J & J Pirro, Inc., No. 13095/03

COURT Queens Supreme
JUDGE Robert J. McDonald
DATE 10/28/2005

PLAINTIFF
ATTORNEY(S) Leland S. Beck, Beck & Strauss, Uniondale, NY

DEFENSE
ATTORNEY(S) Adam Greenberg, Cozen O'Connor, New York, NY

FACTS & ALLEGATIONS On March 27, 2003, plaintiff Gerard DaSilva, 42, a laborer, participated in a renovation project at Public School 268, in the Jamaica section of Queens. DaSilva was standing on an A-frame ladder, inspecting the fire dampers inside a duct. The ladder shifted, and he fell about five feet. He sustained shoulder and wrist injuries.

DaSilva sued the project's general contractor, Citnalta Construction Corp.; the property's owner, the city of New York; the property's managing agent, the New York City School Construction Authority; a subcontractor, J & J Pirro Inc.; and an officer of J & J Pirro, John Pirro. He alleged that the defendants violated the labor law.

Prior to the trial, DaSilva discontinued his claims against Pirro and J & J Pirro. The matter proceeded against the remaining defendants.

DaSilva's counsel claimed that the incident stemmed from an elevation-related hazard, as defined by Labor Law § 240(1), and that the work area was not adequately protected, as required by the statute. He moved for pretrial summary judgment of liability, and Judge Marguerite Grays granted the motion. The trial addressed damages.

INJURIES/DAMAGES *fracture, wrist; internal fixation; open reduction; physical therapy; torn rotator cuff*

DaSilva was placed in an ambulance and transported to Mary Immaculate Hospital, in Jamaica. Doctors determined that he had sustained fractures of both wrists and a tear of his left (non-dominant) shoulder's rotator cuff. The following week, at North Shore University

Hospital in Manhasset, he underwent open reduction and internal fixation to repair his right-wrist fracture, release the wrist's carpal tunnel, and fuse the wrist. The left-wrist fracture was repaired via open reduction and external fixation, while his shoulder was repaired via an arthroscopy. He underwent physical therapy thrice weekly until the beginning of the trial and did not return to work.

DaSilva's treating hand surgeon testified that DaSilva has a permanent partial disability and might require future surgery.

DaSilva's expert economist estimated that DaSilva's future lost earnings and benefits would total \$1 million to \$1.3 million. At the time of the accident, his annual salary was \$60,000.

DaSilva sought recovery of a total of \$4.5 million for his past and future lost wages and benefits and his past and future pain and suffering. His wife, Theresa, presented a loss-of-services claim.

The defendants' vocational-rehabilitation expert opined that DaSilva's injuries healed well and that he could return to work in a sedentary capacity, earning about \$50,000 a year.

RESULT During the sixth day of the trial, the parties agreed to a structured settlement that had a total value of \$2,112,000.

DEMAND \$2,000,000
OFFER \$300,000

INSURER(S) Liberty Mutual Insurance Co. for Citnalta Construction, city of New York and New York City School Construction Authority

PLAINTIFF
EXPERT(S) John J. Leppard III, hand surgery, Huntington, NY
 Richard J. Schuster, Ph.D., vocational rehabilitation, New York, NY
 Frank D. Tinari, Ph.D., economics, South Orange, NJ

DEFENSE
EXPERT(S) Joel B. Grad, M.D., hand surgery, New York, NY
 Joseph Pessalano, vocational rehabilitation, Westbury, NY

EDITOR'S NOTE Counsel for Pirro and J & J Pirro were not asked to contribute to this report.

—Peter Hayes