



# VERDICTSEARCH

## NEW YORK

### ROCKLAND COUNTY

#### CONSTRUCTION

##### Accidents

## Worker was buried after trench collapsed

##### MEDIATED SETTLEMENT

**\$1,850,000**

##### CASE

Alvaro Lopez v. Rockland County Solid Waste Management Authority v. William F. Cosulich Associates v. Hudson Canyon Construction, Inc., No. 1055/01

##### COURT

Rockland Supreme

##### JUDGE

George M. Bergerman

##### DATE

7/18/2003

##### PLAINTIFF

##### ATTORNEY(S)

**Andrew W. Tully**, Tully & Burns,  
Yorktown Heights, NY

##### DEFENSE

##### ATTORNEY(S)

**Stephanie K. Cervoni**, Thomas M. Bona,  
White Plains, NY (Rockland County Solid Waste Management Authority)  
**Braden H. Farber**, Milber, Makris, Plousadis & Seiden, Garden City, NY (William F. Cosulich Associates)  
**Keith V. LaRose**, LaRose & LaRose,  
Poughkeepsie, NY (Hudson Canyon Construction, Inc.)

**FACTS & ALLEGATIONS** Alvaro Lopez, 33, a laborer for Hudson Canyon, was working at the Rockland County Solid Waste Facility in Ramapo, N.Y. on Oct. 4, 2000, when the wall of the 11-foot-deep earthen trench in which he was standing collapsed and buried him in three cubic yards of clay up to his waist. The trench was being dug for the installation of a sanitary sewer pipe. Lopez claimed that he was standing at the bottom of the trench without a drag box, that the trench was unshored and unsheeted, and that the sides of the trench were not sloped or benched. Lopez argued that defendants violated Labor Law §241(6) and New York State Industrial Code §23-4.2(a)(b), which states that where there is a trench more than five feet deep, there must be sheeting or shoring, or that if there is no sheeting or shoring, the sides must be sloped to the degree of repose.

Rockland County Solid Waste Management Authority, which owned and operated the Rockland County Solid Waste Facility, had an engineering contract with William Cosulich Associates and a construction contract with Hudson Canyon. Rockland County claimed that it was William Cosulich's responsibility, as the onsite

inspecting engineer, to ensure that Hudson Canyon did not violate the Labor Law or Industrial Code. William Cosulich and Rockland County Solid Waste sought contractual indemnification from Hudson Canyon pursuant to their general contract. Affirmative defenses included Lopez' culpable conduct.

**INJURIES/DAMAGES** *fracture, femur; fracture, pubic ramus; fracture, vertebra; torn meniscus*

Lopez sustained fractured transverse processes of the lumbar vertebrae at L1-L2, L2-L3, and L3-L4. He also sustained fractured bilateral pubic rami, a severely fractured left femur, requiring an open reduction and internal fixation, and a meniscal tear of the left knee, requiring surgery. His left leg is one centimeter shorter than the right leg. Lopez claimed that he has chronic pain in the left hip, and that he is unable to lift, climb, or perform construction. He never returned to construction work.

**RESULT** The case settled for \$1,850,000 at a mediation before trial through the Rockland County Supreme Court's mediation program. Redland Insurance paid \$141,666.75; CNA paid \$191,666.75; Hartford paid \$91,666.75; INSCORP paid \$1,000,000; Ohio Casualty paid \$283,333; and Transportation Insurance paid \$141,666.75. Hartford also paid \$50,000 to Cosulich for defense costs as part of the settlement.

##### INSURER(S)

**Redland Insurance** for Rockland  
**INSCORP** for Rockland and Hudson Canyon  
**Transportation Insurance Company** for Rockland  
**Ohio Casualty** for Hudson Canyon  
**CNA** for Cosulich  
**Hartford** for Rockland

##### PLAINTIFF

##### EXPERT(S)

**Nicholas Bellizzi, P.E.**, trenches, Holmdel, NJ  
(would have testified)  
**Frank D. Tinari, Ph.D.**, economics, South Orange, NJ (would have testified)  
**Charles A. Kincaid, Ph.D.**, vocational rehabilitation, Springfield, NJ

##### DEFENSE

##### EXPERT(S)

**Joseph Pessalano**, vocational rehabilitation, Westbury, NY (would have testified)

—Nancy Deluca