



SUFFOLK COUNTY

CONSTRUCTION

Labor Law

Worker Fell Into 35-Foot Hole When Ground Collapsed

SETTLEMENT **\$4,270,000**

CASE Morgan Edwards v. C & D Unlimited, Inc. and Antorino Sewer and Drain, No. 2355/98

COURT Suffolk Supreme

JUDGE Melvyn Tanenbaum

DATE 4/7/2003

PLAINTIFF

ATTORNEY(S) I. Bryce Moses, Eisenberg, Margolis, Friedman & Moses, New York, NY

DEFENSE

ATTORNEY(S) Wade T. Dempsey, Hammill, O'Brien, Croutier, Dempsey & Pender, P.C., Smithtown, NY

FACTS Plaintiff Morgan Edwards, 40, was supervising the installation of concrete drainage rings at a construction site located at 739 Park Avenue in Huntington, N.Y. The rings were to be placed far below ground level, so Antorino Sewer and Drain Inc. was contracted to dig holes.

After the first hole was created, Edwards attempted to determine if the hole was of sufficient depth. He claimed that he walked to within three feet of the hole's edge, and attempted to toss the weighted end of a tape measure into the hole. Testimony indicated that the ground collapsed beneath his feet, causing him to fall to the bottom of the 35-foot hole. Edwards added that he had not been

provided with a safety belt or a lifeline, and that there were no guardrails surrounding the excavation.

Edwards brought a Labor Law action against C & D Unlimited Inc., which the owned the property. He also brought a common-law negligence action against Antorino Sewer and Drain. The latter action was dismissed by the court, which found that Antorino Sewer and Drain did not direct or control the digging of the hole. The decision was affirmed on appeal. See *Edwards v. C & D Unlimited Inc. and Antorino Sewer and Drain*, 735 N.Y.S.2d 141.

Edwards made a motion for summary judgment against C & D Unlimited Inc., under Labor Law § 240(1). The motion was denied because the court found that the incident did not involve an elevation-related risk. Edwards then made a motion for summary judgment pursuant to Labor Law § 241(6). He alleged violations of the industrial code. The trial court granted summary judgment, because it found no evidence that Edwards was comparatively negligent. On appeal, the Second Department reversed, because it found issues of fact regarding Edwards' negligence. See *Edwards v. C & D Unlimited Inc.*, 743 N.Y.S.2d 876.

At trial, the defense argued that Edwards was a seasoned contractor with his own construction business, and that he had years of experience installing drainage rings. C & D Unlimited's president testified that he had no knowledge of drainage-ring installation, and that Edwards was hired to perform that specific function. He contended that Edwards was standing at the edge of the hole — not three feet away

from it — when he attempted to perform the depth measurement. An eyewitness corroborated this point.

The defendant also contended that Edwards was not told to measure the hole, and that there was no apparent reason or need for him to measure its depth.

INJURIES *fracture, T9, incontinence, paraplegia*

Edwards suffered a burst fracture at T9. He also sustained fractures to the left transverse process from T8 through T11. He underwent fracture-decompression surgery, and also underwent a spinal fusion from T6 through L2. He suffers from paraplegia at and below the T9 level.

Edwards is incontinent and must perform self-catheterizations. He is assisted by a home health aid for a few hours every day. He treats with a physiatrist periodically.

C & D Unlimited would have disputed Edwards' claimed need for future full-time care, as well as the claimed cost of such care. The defense also would have contended that Edwards' claimed future lost earnings are mitigated by the fact that he is receiving a firefighter's pension.

RESULT The jury found that C & D Unlimited was responsible for the accident. It also found that Edwards was negligent, but it determined that his negligence was not the proximate cause of his injuries.

Prior to the damages trial, the parties settled for \$4 million, plus the waiver of a \$270,000 workers' compensation lien.

MORGAN

EDWARDS \$4,000,000 settlement
\$270,000 waived workers' compensation lien
 \$4,270,000

DEMAND \$4 million, plus the waiver of a workers' compensation lien

OFFER \$3 million, plus the waiver of a workers' compensation lien.

PLAINTIFF

EXPERT(S)

Frank D. Tinari, Ph.D., economics, Livingston, NJ (would have testified)

Richard Schuster, Ph.D., vocational rehabilitation, New York, NY (would have testified)

Jeffrey Kornreich, M.D., physical medicine, Great Neck, NY (would have testified)

Thomas Mango, M.D., orthopedic surgery, Stony Brook, NY (performed surgery, would have testified)

DEFENSE

EXPERT(S)

Frederick Mortati, M.D., neurology, Huntington, NY (would have testified)

INSURER(S)

CNA Insurance Co.
 for C & D Unlimited Inc.

Sue Huners