

\$6,500,000 RECOVERY – PRODUCT LIABILITY – DEFECTIVE ROCK CRUSHING MACHINE – DECEDENT FALLS INTO ROCK CRUSHER – WRONGFUL DEATH AT AGE 22.

U.S.D.C. - Middle District of Pennsylvania

This action arose in December, 2011, when the 22-year-old decedent was killed when he fell into the rock-crushing machine he was operating at a Lanesboro Quarry in Susquehanna County, Pennsylvania. The decedent's estate brought suit against the companies and individuals that owned and operated the quarry and portable rock crushing plant, the landowner and the manufacturer of the rock-crushing machine. The plaintiff asserted claims of product liability, negligence, wrongful death and survival actions and sought punitive, as well as compensatory damages. The defendants asserted affirmative defenses of assumption of risk and contributory negligence.

The decedent's co-workers reported that they last saw the decedent operating the rock-crushing machine and, shortly thereafter, found him dead inside the machine. There were no eyewitnesses to the decedent's fall into the machine. The decedent was pronounced dead at the scene from blunt force trauma to the head.

A U.S. Department of Labor Mine Safety and Health Administration ("MSHA") investigation concluded that the decedent left the confines of the protective railing system of the platform to access the areas adjacent to the jaw feeding opening and that safe access to that area was not provided. The MSHA investigation also found that the accident was due to the management's failure to establish policies and procedures ensuring the safety of workers.

A key plaintiff's witness, a quarry employee, testified at deposition that the quarry defendants required workers to climb over the mouth of the running jaw crusher. The plaintiff's biomechanical expert offered several

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SUMMARIES WITH TRIAL ANALYSIS

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scenarios of how the decedent fell into the crusher. The plaintiff maintained that all scenarios demonstrated a lack of safety features and absence of safety protocols. The defendant maintained that the plaintiff could not establish how and why the plaintiff fell and that he may have been sitting on a railing and lost his balance.

The case was settled after jury selection for a total of \$6,500,000. The defendant manufacturer contributed \$2,500,000 and the defendant quarry agreed to pay \$4,000,000.

REFERENCE

Plaintiff's biomechanical engineering expert: Brian Benda from Philadelphia, PA. Plaintiff's engineering expert: Jeffrey Lawnicki from Milwaukee, WI. Plaintiff's mine safety expert: Jack Spadaro from Hamlin, WV.

Estate of Wesley Sherwood, Jr. vs. B.S. Quarries, Inc., et al. Case no. 3:13CV3006; Judge James Munley, 10-11-17.

Attorneys for plaintiff: Michael Pisanchyn, Douglas Yazinski and Bradley Moyer of the Pisanchyn Law Firm in Philadelphia, PA.

COMMENTARY

This case involved multiple defendants and complicated legal issues on many levels. Plaintiff's counsel worked diligently on the case for four years, including review of countless corporate docu-

ments, numerous deposition and extensive discovery. Even though the decedent had only a few seconds of pain and suffering, very little economic damages and no medical expenses; plaintiff's counsel was able to increase the value of the case substantially by stressing the defendant's egregious conduct so as to allow the jury to consider punitive damages.

There was a significant issue as to whether the decedent was employed by the defendant quarry or the portable rock crushing plant which operated there. Both companies had common ownership. The court granted summary judgment in favor of the plaintiff to pierce the corporate veil and estopped the defendants from invoking worker's compensation immunity. The court stressed that the plaintiff had dismissed a previous lawsuit in reliance on an affidavit attesting that the decedent worked for the company being dismissed. The defendant quarry owner testified that the affidavit was not accurate and he had not read the document before signing it. In light of these favorable rulings, and the body of evidence amassed by plaintiff's counsel, the defendants ultimately resolved the case for a substantial \$6.5 million, avoiding what was scheduled to be a three-week trial in federal court.

The decedent's family reportedly found some additional comfort in the fact that the lawsuit resulted in modifications to the rock crushing machine, including a different guard, better ANSI complaint warning labels and an improved users' manual to, hopefully, prevent similar accidents in the future.