

## **Scaffolding Collapse Results in \$3.5 Mil. Settlement**

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A scaffolding collapse has resulted in settlements totaling \$3.5 million for two plasterers and a truck driver.

The settlements in *Markey v. Toll Naval Associates* and *Jagger v. Toll Naval Associates* were both reached on the morning of June 17 at the end of a joint mediation session with Ed Edelstein of ADR Options that had lasted all of the previous day.

Jury selection in Philadelphia trial court was scheduled for the second week of July.

According to the joint pretrial memorandum of plasterers Brian Shaw and John Markey, the two men were working on top of scaffolding as part of a housing development project in Toll Naval Square in Philadelphia. Co-workers were hoisting buckets of mud and stucco up to them using a pulley system.

According to the memorandum, the movement caused by the hoisting and pulling of the buckets in conjunction with a lack of adequate tie-ins used to counterbalance the weight of the movement caused the collapse.

Shaw and Markey fell 12 to 14 feet to the wooden deck below, according to the memorandum.

Shaw's family doctor, Dr. Jay Grossman, diagnosed him with acute strain and sprain of the cervical and lumbar spine, post-traumatic stress syndrome, carpal tunnel syndrome, ulnar nerve compression and left knee bruises, the memorandum said.

Markey was first examined at Ritner Medical Center by Dr. Vincent Baldino, who determined Markey incurred injuries including lumbar radiculopathy and sciatica.

The defendants named by all three plaintiffs were site owner and developer Toll Naval Associates and construction manager/general contractor for the site J.J. DeLuca.

Truck driver Robert Jagger's suit also included a claim against Markey's and Shaw's employer All Surfaces' Plastering Inc.

Jagger, according to his own mediation memorandum, was struck by the falling scaffolding while making a delivery to the job site.

According to Jagger's memorandum, Guy Fried, a doctor at Magee Rehabilitation Hospital, confirmed Jagger's injuries as including traumatic brain injury with closed head injury leading to dysphonia and multiple speech deficits, as well as a right hip contusion, lumbar pain, hematoma and a number of emotional disturbances.

But all three defendants argued in their memorandums that the workers' compensation appeals board collaterally estopped Jagger from claiming a closed head injury in this litigation.

All three plaintiffs alleged in their memorandums that Toll and DeLuca violated OSHA regulations by failing to inspect the scaffolding for safety.

According to Markey's and Shaw's memorandum, Terry Cofer, who was in charge of ensuring job site safety for DeLuca, testified that he did not inspect the scaffolding because he was unqualified to do so.

All three plaintiffs alleged in their memorandums that construction of the model homes in the development was on an accelerated schedule. Mark Zimmerman, DeLuca's project executive for the Toll Naval Square project, testified that, when it entered into its contract with DeLuca, Toll said the construction of the model homes would be on an accelerated schedule and "implied to do whatever was necessary to get the job done, even though they hadn't delivered the materials in a timely fashion," according to Markey's and Shaw's memorandum.

DeLuca said in its own pretrial memorandum that it was not required to inspect the scaffolding.

But Toll, in its own pretrial memorandum, said its contract with DeLuca made it clear that ensuring job site safety was DeLuca's responsibility.

DeLuca said in its memorandum that All Surfaces erected the scaffolding and had used it the day before the incident at issue without any problems.

DeLuca also said in its memorandum that All Surfaces tied in the scaffolding and that any error in doing so would not have been readily apparent to DeLuca's superintendents during their regular site walk-throughs.

Jagger alleged in his memorandum that All Surfaces erected and tied in the scaffolding with "no knowledge" of OSHA regulations and without consulting the All Surfaces safety manual.

All Surfaces in its own mediation memorandum said that its co-owner, John Boyle, testified that a truck owned and operated by another subcontractor working nearby had impeded the plasterers' ability to properly hoist the buckets up to the top of scaffolding.

Jagger settled for \$1 million, while Markey and Shaw settled for \$1.25 million each.

According to Markey's and Shaw's attorney, I.

Michael Luber of Luber Law in Philadelphia, Selective Insurance agreed to pay \$2,495,000, Zurich American Insurance Co. agreed to pay \$505,000 and Virginia Surety Co. Inc. agreed to pay \$500,000.

Luber said he did not know how this breakdown affected each individual defendant because Toll brought an indemnification action against all of the other defendants and their insurers following the settlement agreement.

Luber also said that Seravalli Inc., the excavation contractor that was Jagger's direct employer, was joined as a defendant at some point "well into" the case, but that he was unsure what role the company played in the settlement agreement.

DeLuca's attorney, Glenn M. Campbell of Gibley & McWilliams, said he and his client were "definitely pleased" with the settlement.

"In light of the circumstances, we were pleased," he said.

Luber said he was satisfied with the settlement and was glad a "fair portion" of the workers' compensation lien against Markey and Shaw was waived.

"My clients were happy with the settlement," he said. "I might have preferred to try the case, but they thought it was a very fair settlement."

Toll's counsel, Scott W. Reid of Cozen O'Connor in Philadelphia, could not be reached at press time, nor could All Surfaces' attorney, John D. Kearney of Romando Tucker Zirulnik & Sherlock in Philadelphia.

Seravalli's attorney, Frederick T. Lachat Jr. of Margolis Edelstein in Philadelphia, and Jagger's attorney, Andrew R. Duffy of Saltz Mongeluzzi Barrett & Bendesky in Philadelphia, also could not be reached for comment.