

JO-ANN

McNAMARA \$2,000,000 past loss of services

OWEN

McNAMARA \$4,000,000 past pain and suffering
\$1,000,000 future pain and suffering
 \$5,000,000

TRIAL DETAILS Trial Deliberations: 2 days
 Jury Composition: 1 male, 5 female

PLAINTIFF

EXPERT(S) Lawrence Kushins, M.D., anesthesiology,
 Riviera Beach, FL
 Harvey Shanies, M.D., critical care,
 Poughkeepsie, NY
 Robert Shuman, M.D., cardiothoracic
 surgery, Long Beach, CA

DEFENSE

EXPERT(S) Alexander Nacht, M.D., anesthesiology,
 New York, NY
 Anthony Tortolani, M.D., cardiothoracic
 surgery, New York, NY

POST-TRIAL Post-trial motions are pending.

EDITOR'S NOTE This report is based on information that was provided by plaintiffs' counsel. Defense counsel did not respond to the reporter's phone calls.

—Jaclyn Stewart

CONSTRUCTION

Labor Law — Accidents — Slips, Trips & Falls — Fall from Height

Plaintiff was struck by falling debris while working on ladder

VERDICT **\$1,922,215**

CASE Kun Sik Kim v. State Street Hospitality, LLC., NYTEX Development, Inc., Dan's Hauling & Demo, Inc. and Martin Environmental Services, Inc., No. 21167/08

COURT Queens Supreme
 JUDGE Phyllis Orlikoff Flug
 DATE 11/9/2010

PLAINTIFF

ATTORNEY(S) Edward V. Sapone (lead), New York, NY
 Paul H. Schietroma, New York, NY

DEFENSE

ATTORNEY(S) Marguerite D. Peck, Downing & Peck, New York, NY (Martin Environmental Services Inc., NYTEX Development Inc., State Street Hospitality LLC)
 None reported (Dan's Hauling & Demo Inc.)

FACTS & ALLEGATIONS On Sept. 20, 2005, plaintiff Kun Sik Kim, 62, an asbestos removal worker, was injured while performing demolition work on the fifth floor of the building located 74 State St., in Albany.

The building in question was being converted from an office building to a hotel. At the time of his accident, Kim was standing on the fourth rung of a 6-foot-tall ladder and in the process of demolishing a wall. Kim claimed that debris created by his manual demolition fell onto his ladder, knocking it, and him, to the floor below, resulting in a variety of injuries.

Kim sued the premises' owner, State Street Hospitality; the project's general contractor, NYTEX Development Inc.; and two subcontractors, Martin Environmental Services Inc. and Dan's Hauling and Demo Inc. He alleged that the defendants violated the New York State Labor Law.

Kim claimed that he was not provided proper scaffolding and safety devices for the work he was performing. Kim's counsel contended that the incident stemmed from an elevation-related hazard, as defined by Labor Law § 240(1), and that Kim was not provided the proper, safe equipment that is a requirement of the statute.

The defendants denied having any contact with Kim and contended they had neither directly hired him to work on the site nor supervised his activities while at the work site.

In September 2010, Judge Allan Weiss dismissed the case against Dan's Hauling but granted summary judgment in Kim's favor as to liability as to the remaining defendants. The matter proceeded to a trial on damages.

INJURIES/DAMAGES *arthroscopy; herniated disc at C3-4; herniated disc at C4-5; herniated disc at L3-4; herniated disc at L4-5; physical therapy; post-concussion syndrome; steroid injection; tooth loss; torn meniscus; torn rotator cuff; unconsciousness*

Kim claimed that his fall from the ladder knocked him unconscious for several minutes and led to dental damage that ultimately required the removal of five teeth. He was later treated for herniated discs at the C3-4, C4-5, L3-4 and L4-5 levels; a torn rotator cuff in the right shoulder; and a torn meniscus in the right knee.

Kim underwent arthroscopic procedures for his knee and shoulder injuries, while his neck and back injuries have been unsuccessfully treated with steroid injections and physical therapy, and, Kim claimed, may necessitate surgery in the future.

Plaintiff's counsel asked the jury to award Kim damages totaling \$1.5 million, including nearly \$85,000 for past medical costs, \$345,000 for future medical costs and \$294,000 for future physical therapy costs.

The defense noted that when Kim was taken to an emergency room following his accident, he only complained of an injury to his mouth. Plaintiff's counsel responded by calling attention to the fact that Kim could only speak Korean.

A defense expert in radiology testified that any injuries in Kim's neck, knee, shoulder and back pre-existed the accident and were degenerative in nature. An expert in orthopedics opined that Kim had suffered no disability and could return to work whenever he chose.

Judge Phyllis Orlikoff Flug did not allow Kim's claim for lost earnings to go to the jury.

Defense counsel introduced evidence that would have allowed the jury to infer that Kim was not in need of money for medical care. Records of Kim's gambling activity at the Empire City Casino at Yonkers Raceway appeared to show that Kim had bet as much as \$1,200 in a single session. In response, plaintiff's counsel called to the stand the casino's financial officer, who explained that, because of internal bookkeeping methods, it was possible that the figures contained in the gambling records subpoenaed by defense counsel would appear larger than the amounts Kim may have bet during any single visit to the casino.

Defense counsel also retained a surveillance firm to capture video of Kim. The video showed Kim walking seemingly without pain and engaging in typical daily activities such as buying coffee and reading a newspaper in a park. The video was not presented to the jury during the defense's case-in-chief, though the jurors were allowed to view it during their deliberations.

RESULT The jury found that Kim's damages totaled \$1,922,214.52.

KUN SIK KIM	\$83,215 past medical cost \$500,000 past pain and suffering \$700,000 future pain and suffering \$294,000 cost of future physical therapy <u>\$345,000 remaining future medical cost</u> \$1,922,215
DEMAND	\$650,000 (total, from Martin Environmental Services, NYTEX Development and State Street Hospitality)
OFFER	\$100,000 (total, by Martin Environmental Services, NYTEX Development and State Street Hospitality)
INSURER(S)	Hudson Insurance Group for Martin Environmental Services, NYTEX Development and State Street Hospitality
TRIAL DETAILS	Trial Length: 11 days Trial Deliberations: 4 hours Jury Vote: 5-1 Jury Composition: 3 male, 3 female

**PLAINTIFF
EXPERT(S)**

Morton Finkel, M.D., neurology,
New York, NY (treating doctor)
Louis C. Rose, M.D., orthopedic surgery,
Bronx, NY (treating doctor)
Yong S. Tak, M.D., physical rehabilitation,
Flushing, NY (treating doctor)

**DEFENSE
EXPERT(S)**

Robert S. April, M.D., neurology,
New York, NY
Edward S. Crane, M.D., orthopedic surgery,
White Plains, NY
David A. Fisher, M.D., radiology,
Roslyn Heights, NY

POST-TRIAL Defense counsel has moved for a mistrial.

EDITOR'S NOTE This report is based on information that was provided by plaintiff's counsel. Dan's Hauling's counsel was not asked to contribute. The remaining defendants' counsel declined to contribute, citing the pending motion for a mistrial.

—Asher Hawkins

CONSTRUCTION

Labor Law — Accidents — Slips, Trips & Falls — Fall from Height

Demo worker claimed fall caused permanent injuries

SETTLEMENT **\$1,800,000**

CASE Jose Taylor Castillo v. 62-25 30th Ave & Realty, LLC, Zahmel Restaurant Supply Corp, d/b/a Zahner's Cash & Carry, No. 27819/02

COURT Queens Supreme
JUDGE Phyllis O. Flug (liability)
Duane A. Hart (damages, first trial)
Darrell L. Gavrin (damages, second trial)

DATE 10/20/2010

PLAINTIFF

ATTORNEY(S) Mariangela Chiaravalloti, Friedman & Friedman, New York, NY

DEFENSE

ATTORNEY(S) Sim R. Shapiro, Baxter Smith & Shapiro, P.C., White Plains, NY

FACTS & ALLEGATIONS On June 18, 2001, plaintiff Jose Castillo, 36, a laborer, fell 10 to 12 feet off of scaffolding at a site in Elmhurst while he was completing demolition work. He sustained injuries of his back, his head, a knee and his neck.