

LANCASTER COUNTY

WORKER/WORKPLACE NEGLIGENCE

Motor Vehicle — Truck — Contributory Negligence

Plaintiff's foot was run over twice by truck's rear tire

VERDICT \$15,795
ACTUAL \$9,477

CASE Luis E. Marrero v. Morgan Corp. and Jose Rodriguez, No. CI-07-12938
COURT Lancaster County Court of Common Pleas
JUDGE David L. Ashworth
DATE 10/3/2012

PLAINTIFF
ATTORNEY(S) Dennis P. Ortwein,
Dennis P. Ortwein PC,
Easton, PA

DEFENSE
ATTORNEY(S) Sean E. Summers,
Summers Nagy Law Offices,
York, PA

FACTS & ALLEGATIONS On Sept. 25, 2006, plaintiff Luis E. Marrero, 63, a truck driver, was on the property of Morgan Corp. in Ephrata. Morgan Corp. places aluminum storage boxes onto trucks for long-distance shipping and transportation, and Marrero was at Morgan's property for the purpose of picking up a truck in the course and scope of his employment, having been hired by an unrelated company to transport the vehicle to Virginia. The truck in question was not fitted with an aluminum box portion.

When Marrero arrived at the property, he was driven by Jose Rodriguez, a Morgan employee, to the location of the truck that was designated to be transferred. Marrero, Rodriguez and another individual then attempted to start the truck, but the vehicle would not start. The three men determined that additional tools were needed to start the vehicle, and Rodriguez agreed to drive the truck back to the shop to retrieve additional tools.

Marrero alleged that when Rodriguez began to drive away, his right foot was run over by a rear tire, causing him to fall to the ground. Rodriguez, apparently hearing Marrero's scream but not knowing what was wrong, allegedly backed up and ran over Marrero's foot a second time. Marrero sustained multiple fractures to his toes.

In his suit against Rodriguez and Morgan Corp., Marrero maintained that Rodriguez had failed to pay attention to Marrero's location before driving off in the truck.

Morgan Corp. maintained that when Rodriguez began to drive away, Marrero walked toward the truck and placed

himself in the middle of the open chassis, between the cab and tires. Therefore, Marrero was comparatively negligent with respect to the accident, the defense argued.

INJURIES/DAMAGES *foot; fracture, displaced; fracture, foot; fracture, toe; fusion, toe; hardware implanted; internal fixation; open reduction; physical therapy; pins/rods/screws; sutures; toe, dislocation*

Marrero was taken by ambulance from the accident scene to Ephrata Community Hospital, where he was diagnosed with a right mid-foot fracture-dislocation, and metatarsal fractures of bones two through four. He was admitted, and underwent open reduction and primary fusion of the intertarsal fracture-dislocation and open reduction internal fixation of the metatarsal fractures.

On Oct. 9, Marrero's sutures were removed, and he was placed in a short-leg cast and told to remain non-weight-bearing. On Oct. 30, his pins were removed, and he was placed back into a short leg cast and again instructed to remain non-weight-bearing. On Nov. 28, his cast was substituted for a cam walker and he started a course of limited physical therapy.

By early 2007, Marrero was back to full capacity and discharged from care. His suit sought to recover \$16,555.34 for past medical expenses, and \$13,480.54 for lost wages, having missed 19 weeks of work post-accident.

Marrero's treating surgeon related Marrero's foot injuries and subsequent treatment to the accident at the Morgan property. Marrero testified that he continues to experience discomfort in his foot, which is exacerbated when he is driving long distances. His suit further sought to recover unspecified amounts of non-economic damages, for past and future pain and suffering.

The defense called attention to Marrero's deposition testimony, in which he seemed to attribute his period of missed work to age-related and economic circumstances, rather than to his foot injuries.

RESULT The jury found that Marrero had been 40 percent negligent with respect to the accident, and that Rodriguez/Morgan Corp. had been 60 percent negligent.

Marrero's total damages award of \$15,795 was accordingly reduced to \$9,477.

LUIS
MARRERO \$9,295 past medical cost
\$6,500 past lost earnings
\$15,795

DEMAND \$150,000

TRIAL DETAILS Trial Length: 1 day
Trial Deliberations: 2 hours

PLAINTIFF
EXPERT(S) Alan S. Tuckman, M.D.,
orthopedic surgery,
Ephrata, PA (treating)

DEFENSE

EXPERT(S) None reported

EDITOR'S NOTE This report is based on court documents and on information that was provided by plaintiff's and defense counsel.

-Aaron Jenkins