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Permanent left leg pain brings \$2.5M

Construction worker settles suit alleging employer negligence

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A man who experiences permanent pain in one of his legs after tearing his meniscus in muddy construction conditions has settled his lawsuit for \$2.5 million.

The agreement came Thursday in plaintiff Brian delaTorre's negligence suit.

He sued construction property owner Lake Effect Development III LLC, general contractor DJW-Ridgeway Consultants Inc. and Johnsburg-based Jason The Mason Inc. in Lake County Circuit Court in 2010, alleging the entities failed to inspect worksite conditions before instructing him to transfer his work through unsafe ground conditions in April 2008.

DelaTorre was working to install two elevators at the site of what is now the Village Commons in downtown Lake Bluff when DJW ordered his colleagues and him to transport their necessary materials through the front of the building — the same area where bricklayers were also working with an 8-foot-wide, 22,000-pound Lull telescopic forklift.

He was carrying a 20-foot-long, 100-pound hydraulic pipe on his shoulder and trying to keep track of his co-workers and surroundings when he stepped on a rut left by the forklift and twisted his left leg.

The incident tore delaTorre's

meniscus and required surgery, something delaTorre received about a month later, said Sean C. Burke, owner of Sean Burke Law LLC in Lake Forest, who represented delaTorre.

He has since developed complex regional pain syndrome in the leg, which Burke says gives off a burning sensation and has stayed swollen and discolored, remaining a dark shade of purple.

"Even in the winter he wears shorts because he can't tolerate the pain that comes with his pants rubbing against his leg," Burke said. "The whole disorder throws your normal pain receptors or pain sensation out of whack, so the lightest things can cause extreme pain."

DelaTorre has attempted several different methods of treating his pain but has only found relief from a pump that injects pain medicine directly into his spine.

"I don't know if it makes (the pain) manageable, but it makes it less than it was," Burke said.

He also cannot work because he cannot stand or sit for long periods of time, and even sedentary work is difficult for him to perform, Burke said.

The defendants denied the allegations in delaTorre's lawsuit. In an affirmative defense, DJW contended he failed to exercise ordinary care for his safety. It argued he didn't watch where he was walking and failed to observe the construction site's "open and obvious" ground condition.

Lake County Circuit Judge Margaret J. Mullen granted summary judgment for the defendants in May 2014, finding that the way the forklift was operating didn't appear to be the cause of delaTorre's injury.



Sean C. Burke

But a 2nd District Appellate Court panel unanimously reversed Mullen's ruling in February 2015, acknowledging that delaTorre's attention had to be split between several safety hazards while transferring his work materials.

Burke said the parties litigated the case for another year and had gotten into expert discovery when they agreed to settle.

"He has a real severe dangerous injury, so they had incentive," Burke said, noting that delaTorre's injury is permanent. "I think the defense attorneys were hoping this would just be a rut case from a construction site ... but the reality is it's a construction company creating multiple safety hazards for a worker to deal with."

DJW will contribute \$2.32 million to the settlement. DelaTorre's employer, Lakeland Larsen Elevator Corp, will contribute \$225,000 as a third-party defendant. And workers' compensation insurance has waived his \$840,000 lien and agreed to pay the medical expenses related to his injury for the rest of his life.



Stephan D. Blandin

John H. Huston, a partner at Tressler LLP who represented DJW, said his client's contribution does not serve as an admission of liability.

"It's the sympathy aspect and the horrendous nature of the injury, and the lack of predictability of how juries respond to (complex regional pain syndrome cases)," he said, noting that the settlement represents about 10 percent of what a jury could have awarded delaTorre had his case gone to trial.

Burke said his client is pleased with the result of his case.

"He knows that he's going to be taken care of medically and he has financial security that will allow him to make the best of a really bad situation," he said.

Stephan D. Blandin, a partner the Law Offices of Romanucci & Blandin, also represented delaTorre.

James P. Kasper, a partner at Gunty & McCarthy who represented delaTorre's employer, could not be reached for comment.

The case is *Brian delaTorre v. Lake Effect Development III, LLC et al.*, 10 L 487.