

Plaintiff claimed he could not return to work as longshoreman – Defense Verdict

By: Jordan Bondurant February 23, 2017



Shawn Voyles

Plaintiff longshoreman and defendant truck driver collided at a T-intersection on Norfolk International Terminal. Plaintiff was driving a yard hustler. Each vehicle was driving bobtail.

The truck driver was turning left out of a chassis corral and hit plaintiff coming from his left (southbound). Plaintiff testified that the truck driver failed to yield the right-of-way. The truck driver maintained that the two lanes coming from his left were stacked up with stopped truck traffic and that plaintiff had jumped into the northbound lane to bypass traffic, but still going south, thereby causing the accident.

During his deposition, plaintiff testified that he was in a third lane going south. Google Earth photos – not shown to plaintiff during his deposition – established that there were only two lanes going south. At trial, plaintiff attempted to dispute his deposition testimony and explain his confusion and lack of memory regarding the accident scene.

Following the accident, plaintiff treated at an urgent care facility and then began seeing Arthur Wardell, M.D. two weeks after the accident where he underwent various injections and 112 physical therapy appointments. Dr. Wardell came live to trial at \$1,800 per hour and testified that, as a result of his injuries, plaintiff could no longer return to work as a longshoreman. Peder Melberg came live to trial and testified that plaintiff, 50-years-old and who earned \$135,000.00 the previous year as a longshoreman, had a \$1.3 million future wage loss.

Multiple co-workers, the plaintiff's wife, and the responding police officer also testified for the plaintiff, as well as the owner of the trucking company, adversely, to attempt to establish agency.

For the defense, the truck driver testified, using a dry erase marker on a laminated Google Earth aerial photograph of the accident scene. The former general manager of the terminal also testified regarding the traffic pattern and applicable rules and procedures. Dr. Skidmore (IME neurosurgeon) and Stephen Schall (IME physical therapist) testified by video. Finally, excerpts of the plaintiff's deposition were read into the record in defendant's case-in-chief to rebut his inconsistent testimony at trial.

The jury returned in one hour with a defense verdict.

[17-T-028]

Type of action: Personal Injury

Injuries alleged: Cervical, thoracic, and lumbar strains; permanent damage to intra-articular cervical cartilage; knee contusion. Plaintiff's treating physician testified that he could not return to work as a longshoreman.

Name of case: Kevin Jones v. Christopher Merrick and A&J Express, LLC

Court: Norfolk Circuit Court

Case no.: CL16-1405

Tried before: Jury

Name of judge: Hon. Jerrauld C. Jones

Date resolved: January 20, 2017

Special damages: \$36,136.60 past medicals; \$150,000.00 past wage loss; \$1,300,000.00 future wage loss; \$75,000.00 future medicals.

Demand: \$3,000,000.00 ad damnum

Offer: \$25,000

Verdict or settlement: Defense Verdict

Attorneys for defendant: Shawn A. Voyles, Virginia Beach

Plaintiff's experts: Arthur Wardell, M.D. (treating orthopedist); Peder Melberg (vocational consultant)

Defendant's experts: Grant Skidmore, M.D.

Insurance carrier: AIG

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