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NEW JERSEY

WORKPLACE SAFETY**Forklift—Premises Liability—Parking Lot—Motor Vehicle—Truck****Forklift pins man against his truck while loading supplies****SETTLEMENT** **\$850,000**

CASE Gary Potenzone v. Annin & Co., Penn National Insurance, No. ESX-L-8186-03

COURT Essex County Superior Court, NJ

JUDGE Honorable Merkelbach

DATE 01/27/2006

PLAINTIFF

ATTORNEY(S) Edward C. Lutz, Law Office of Edward Lutz, Denville, NJ

DEFENSE

ATTORNEY(S) Joseph Michalowski, Chase Kurshan Herzfeld & Rubin, Livingston, NJ
Kenneth Portner, Weber Gallagher Simpson Stapleton Fires & Newby, Philadelphia, PA

FACTS & ALLEGATIONS On May 22, 2003, plaintiff Gary Potenzone, 23, a worker for his family's flag business, went to pick up an order at Annin & Co. in Roseland. An Annin employee, Le Tran, loaded Potenzone's boxes on a wooden pallet, picked them up with a forklift and headed towards Potenzone's truck in the parking lot. As Potenzone loaded the boxes into his truck, the forklift rolled forward and pinned Potenzone bilaterally below the knee against his bumper. Potenzone screamed and Tran pulled the forklift away, only for it to re-pin Potenzone in the same position. Potenzone lost consciousness, fell to the ground and went into shock.

Potenzone sued Annin & Co., claiming that the employee's negligent operation of the forklift caused personal injuries. Both parties were unable to find Tran, and therefore, he never gave a deposition regarding the incident.

Defense counsel for Annin stipulated to liability and impleaded Potenzone's insurance carrier, Penn National, pursuant to the loading/unloading doctrine in his policy provision.

Defense counsel for Penn National argued that Annin & Co. was not entitled to coverage under the loading/unloading provision of the policy.

INJURIES/DAMAGES Potenzone temporarily lost consciousness and was taken via ambulance to the hospital where he was treated for leg trauma and released the same day. He also suffered injuries to his lower back, for which he underwent surgery. He treated with a chiropractor for several months and underwent physical therapy and received three different nerve block epidural injections. He missed a total of five months of work immediately following the accident, where he was making about \$600 a week.

Potenzone's medical bills were covered by insurance and he sought an award for past lost earnings of about \$12,000 and an unspecified amount for past and future pain and suffering.

Defense counsel argued that Potenzone's surgery was unrelated to the incident and related to a congenital condition.

Defense counsel for Penn National argued that if Annin & Co. was entitled to insurance coverage, the applicable limit was \$15,000.

VERDICT INFORMATION The matter settled for \$850,000, with Annin's carrier covering \$350,000 and Penn National covering \$500,000. The coverage issue was appealed.

INSURERS Atlantic Mutual for Annin & Co.

PLAINTIFF
EXPERT(S) Nabil Yazgi, Neurology, Wayne, NJ

DEFENSE
EXPERT(S) None reported

POST-TRIAL Penn National is appealing the trial court's determination that its applicable limit was \$500,000, not \$15,000.