

CONSTRUCTION

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

Worker broke spine in fall at unfinished building**SETTLEMENT** \$935,000**CASE** Vladimir Derjavine and Ekaterina Derjavina v. 1221 50th St LLC and Success Custom Builders, LLC, No. 11713/08**COURT DATE** Kings Supreme
3/14/2011**PLAINTIFF ATTORNEY(S)** Adam M. Orlow, The Orlow Firm, Flushing, NY**DEFENSE ATTORNEY(S)** Stephen Gellar, McManus, Collura & Richter P.C., New York, NY

FACTS & ALLEGATIONS On March 20, 2008, plaintiff Vladimir Derjavine, 46, a masonry foreman, worked at a construction site that was located at 1221 50th St., in the Borough Park section of Brooklyn. During the course of the day, Derjavine ascended to the second floor of an unfinished building. A wooden railing barricaded a hole that opened to the first floor. The hole would later house a stairway. The railing collapsed while Derjavine was leaning on it, and Derjavine fell into the hole. He plummeted about 10 feet, and he sustained injuries of his back and a wrist.

Derjavine sued the premises' owner, 1221 50th St. LLC, and the project's general contractor, Success Custom Builders Inc. He alleged that the defendants violated the New York State Labor Law.

Derjavine's counsel claimed that the incident stemmed from an elevation-related hazard, as defined by Labor Law § 240(1), and that Derjavine was not provided the proper, safe equipment that is a requirement of the statute. He also claimed that the site was not properly safeguarded, as required by Labor Law § 241(6), and that the defendants violated the general safety provisions of Labor Law § 200.

Defense counsel contended that Derjavine was impaired by alcohol. A witness claimed that Derjavine's breath smelled of alcohol, and defense counsel claimed that Derjavine had been known to consume alcoholic beverages while working.

INJURIES/DAMAGES *closed reduction; fracture, L1; fracture, vertebra; fracture, wrist; fusion, lumbar; fusion, thoracic; hardware implanted; laminectomy; nerve impingement; physical therapy*

Derjavine sustained a fracture of his right wrist, a burst fracture of his L1 vertebra and fractures of other vertebrae. The displaced L1 vertebra caused impingement of a spinal nerve.

Derjavine's fractured wrist was addressed via closed reduction. His spinal injuries were addressed via surgery

that included a laminectomy, which involved the excision of the posterior arch of his L1 vertebra; fusion of the posterior portion of his spine's T11, T12, L1, L2 and L3 levels; and the implantation of stabilizing rods. He subsequently underwent fusion of two additional levels of his spine, and he also underwent physical therapy.

Derjavine claimed that he suffers permanent residual pain that prevents his resumption of work, and he contended that additional medical treatment is necessary. He sought recovery of his past and future medical expenses, his past and future lost earnings, and damages for his past and future pain and suffering. His wife presented a derivative claim.

RESULT The parties negotiated a pretrial settlement. The defendants' insurer agreed to pay \$935,000, from a policy that provided \$1 million of coverage.

INSURER(S) Arch Insurance Group for both defendants

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.

—Elvira Veksler