



Worker fell from ladder, claimed he suffered disabling injuries

Amount: \$3,375,000

Type: Settlement

State: New York

Venue: Queens County

Court: Queens Supreme, NY

Injury Type(s):

- *back* - fracture, back; fracture, L1; fracture, back; fracture, L2; fracture, back; fracture, L3; fusion, lumbar; fracture, vertebra; fracture, L1; fracture, vertebra; fracture, L2; fracture, vertebra; fracture, L3; bulging disc, lumbar; bulging disc, thoracic; herniated disc, lumbar; herniated disc at L5-S1; herniated disc, thoracic; herniated disc at T1-2; herniated disc, thoracic; herniated disc at T5-6; herniated disc, thoracic; herniated disc at T6-7; herniated disc, thoracic; herniated disc at T7-8; herniated disc, thoracic; herniated disc at T9-10; herniated disc, thoracic; herniated disc at T10-11
- *neck* - fusion, cervical; herniated disc, cervical; herniated disc at C3-4; herniated disc, cervical; herniated disc at C5-6; herniated disc, cervical; herniated disc at C6-7; fusion, cervical, two-level
- *elbow* - fracture, elbow; fracture, radial head
- *other* - corpectomy; neurolysis; acupuncture; facetectomy; microdiscectomy; physical therapy; hardware implanted; compression fracture; tendinitis/tendinosis; foraminotomy/foraminectomy
- *wrist* - fracture, wrist
- *shoulder* - rotator cuff, injury (tear); rotator cuff, injury (non-tear)
- *surgeries/treatment* - discectomy; laminectomy; laminectomy, lumbar
- *mental/psychological* - insomnia

Case Type:

- *Construction* - Labor Law; Scaffolds and Ladders
- *Workplace* - Workplace Safety
- *Slips, Trips & Falls* - Fall from Height

Case Name: Gustavo Rodriguez v. Extell 4110 LLC Gilbane Building Company, No. 708570/17

Date: April 22, 2020

Plaintiff(s): • Gustavo Rodriguez (Male, 42 Years)

Plaintiff Attorney(s): • Adam M. Orlow; The Orlow Firm; Flushing NY for Gustavo Rodriguez

Plaintiff Expert(s): • Jason M. Gallina M.D.; Orthopedic Surgery; New York, NY called by: Adam M. Orlow
• Conrad Berenson Ph.D.; Economics; Woodbury, NY called by: Adam M. Orlow
• Joseph Carfi M.D.; Physical Rehabilitation; New Hyde Park, NY called by: Adam M. Orlow

Defendant(s): • Extell 4110 LLC
• Gilbane Building Co.

Defense Attorney(s): • Mary Beth Harmon; Malapero Prisco & Klauber, LLP; New York, NY for Extell 4110 LLC, Gilbane Building Co.

Defendant Expert(s): • Paul Lerner M.D.; Neurology; New Hyde Park, NY called by: for Mary Beth Harmon
• Daniel S. Arick M.D.; Otolaryngology; Brooklyn, NY called by: for Mary Beth Harmon
• Edmond Provder; Vocational Rehabilitation; Lodi, NJ called by: for Mary Beth Harmon
• Ernest J. Gailor P.E.; Engineering; Malta, NY called by: for Mary Beth Harmon
• Bradley D. Wiener M.D.; Orthopedic Surgery; Middletown, NY called by: for Mary Beth Harmon

Facts:

On June 10, 2017, plaintiff Gustavo Rodriguez, 42, a union-affiliated tapper, worked at a construction site that was located at 555 10th Ave., in Manhattan. Rodriguez was sanding an upper area of a wall, some 12 feet above floor level. He was standing on a ladder that was leaning against the wall. The ladder slid, and Rodriguez plummeted to the floor. He claimed that he suffered injuries of his back, an elbow, his neck, a shoulder and a wrist.

Rodriguez sued the premises' owner, Extell 4110 LLC, and the construction project's general contractor, Gilbane Building Co. The lawsuit alleged that the defendants negligently failed to provide a safe workplace. The lawsuit further alleged that the defendants' failure constituted a violation of the New York State Labor Law.

Rodriguez claimed that a mechanical lift had been available during the day that preceded the accident, but that the lift was missing during the day of the accident. He claimed that the ladder, which was a detached segment of a two-piece extension ladder, was unsteady because its feet lacked cleats. He also claimed that a supervisor had indicated that the ladder was available for use. Other ladders and a scaffold were at the work site, but Rodriguez claimed that they were inadequate or the property of another contractor. Rodriguez's counsel contended that the accident stemmed from an elevation-related hazard, as defined by Labor Law § 240(1), and that Rodriguez was not provided the proper, safe equipment that is a requirement of the statute.

The defense contended that other, safer ladders and a scaffold were available, but that Rodriguez instead chose to utilize the halved extension ladder.

Rodriguez's counsel moved for summary judgment of liability, and the motion was granted. The matter proceeded to damages.

Injury:

Rodriguez was retrieved by an ambulance, and he was transported to Bellevue Hospital Center, in Manhattan. Radiological studies revealed that he suffered a compression fracture of his L1 vertebra, a fracture of his left, nondominant wrist's scaphoid, which is a small bone that is situated in the lower portion of the palm of the hand, and an intra-articular fracture of his left arm's elbow. The left elbow's fracture involved the head of the left arm's radius. A cast was applied to Rodriguez's left arm. The cast was removed after some three months had passed.

Rodriguez claimed that he also suffered a partial tear of his left shoulder's rotator cuff; fractures of his L2 and L3 vertebrae; herniations of his C3-4, C5-6, C6-7, L5-S1, T1-2, T5-6, T6-7, T7-8, T9-10 and T10-11 intervertebral discs; and trauma that produced bulges of his L2-3, L3-4, L4-5 and T3-4 discs. He further claimed that his left shoulder's rotator cuff developed tendinitis.

Rodriguez underwent acupuncture and physical therapy, but he claimed that the treatment did not relieve pain and limitations related to the accident. In April 2018, he underwent surgery that included a discectomy, which involved excision of his C5-6 and C6-7 discs; a corpectomy, which involved excision of portions of his C5, C6 and C7 vertebrae; a foraminotomy, which involved enlargement of a passage that housed a spinal nerve; fusion of his spine's C5-6 and C6-7 levels; and implantation of stabilizing hardware. The surgery was followed by another course of physical therapy.

In October 2018, Rodriguez underwent surgery that addressed his spine's L4, L5 and S1 levels. The procedure included a foraminotomy; a microdiscectomy, which involved excision of portions of his L4-5 and L5-S1 discs; a hemilaminectomy, which involved excision of portions of vertebrae; a facetectomy, which involved decompression of the root of a spinal nerve; fusion of his spine's L4-5 and L5-S1 levels; and neurolysis; which involved ablation of roots of his spine's L4, L5 and S1 nerves. The surgery was followed by another course of physical therapy.

Rodriguez estimated that his first surgery alleviated about 80 percent of the pain that his neck was experiencing, but he claimed that his back remains painful, that the pain necessitates his use of a cane, and that his pain prevents his performance of manual labor. He has not worked since the accident. He also claimed that his pain prevents independent performance of some personal-hygiene activities, such as showering; that his pain causes insomnia; and that his pain hinders his ability to unseat himself. He claimed that he will require twice-weekly physical therapy for the remainder of his life.

Rodriguez sought recovery of past medical expenses; a total of \$3,397,876 to \$4,509,744 for future medical expenses, past lost earnings and future loss of earnings; and unspecified damages for past and future pain and suffering.

The defense contended that Rodriguez's medical history documents pre-existing herniations of the discs of the spine's cervical region, radiculopathy that stemmed from the spine's cervical region, and prior instances of pain stemming from the back and neck.

The defense also contended that Rodriguez recovered well and can perform some type of work.

Result: The parties negotiated a pretrial settlement. The defendants' insurer agreed to pay \$3,375,000, from a policy that provided \$5 million of coverage.

Trial Information:

**Editor's
Comment:** This report is based on information that was provided by plaintiff's and defense counsel.