

The Legal Intelligencer

THE OLDEST LAW JOURNAL IN THE UNITED STATES

ALM

Phila. Lawyer's Client Wins \$14 Million Verdict in Delaware

BY ASHER HAWKINS

Of the Legal Staff

A 26-year-old roofer represented by a Philadelphia attorney has received a \$14 million verdict from a Wilmington, Del., jury in a workplace injury action filed after the man suffered a debilitating spinal injury while on the job in January 2003.

However, a 24 percent comparative negligence finding has effectively reduced Pablo Urena's award to \$10.64 million, and a \$500,000 policy limit as to the one of two defendants seen through to verdict in *Urena v. Lee* could force the Costa Rican national to engage in more litigation if he hopes to recover the remainder of his awarded damages.

Though not paralyzed, according to court papers filed in the matter, Urena has lost his sexual function and the control of his bladder and bowels as a result of his injury.

Stephen Casarino of Casarino Christman & Shalk in Wilmington, who represented Rising Sun Contractors Co. head Mun Seok Lee in the matter, said he will file post-trial motions seeking either a new trial or JNOV.

Urena's attorney, Mark LeWinter of Anapol Schwartz Weiss Cohan Feldman & Smalley in Philadelphia, suggested two options available to his client should he choose to seek the portion of his award that Rising Sun's \$500,000 policy with Cumberland Mutual Fire Insurance Co. cannot cover.

LeWinter said "there is a question" as to whether or not the insurer acted in good faith in not tendering the policy limits after Urena had made a demand for \$500,000 well before trial. (Casarino declined to comment on pre-trial negotiations.)

LeWinter raised the possibility that Rising Sun could assign to Urena its right to sue its carrier for bad faith, but noted that it would be some time before that option could be pursued.

LeWinter also said his client might choose to appeal the decision to grant summary judgment to the case's other original defendant, Capano Homes Inc., which served as general contractor



LEWINTER

for the project Urena was working on when he was injured and was let out of the case two weeks before trial.

Capano Homes has "considerable coverage," LeWinter said he believes.

Court papers filed in *Urena* indicate that the key dispute in the mat-

ter centered on whose duty it was to ensure that the roofers working on the underlying project used proper fall protection — something Urena had not been doing at the time of his accident.

As general contractor for a development called The Preserve at Lafayette Hills, Capano Homes subcontracted parts of the needed work — including the roofing — out to Rising Sun, which then subcontracted the roofing labor to Urena's employer, Jose Hernandez.

Urena stated in court papers that Rising Sun provided the necessary materials for the work — including several safety harnesses — and that a Rising Sun employee oversaw detailed aspects of the roofing team's work.

Urena also called attention to statements made by Rising Sun head Lee to the effect that although Rising Sun was aware that Urena and his co-workers were not wearing safety harnesses, Rising Sun didn't do anything about the problem because the team was getting the roofing work done so quickly.

As such, Rising Sun voluntarily assumed the duty to enforce the work site's compliance with standards promulgated by the U.S. Occupational Safety and Health Administration, Urena asserted.

But Rising Sun countered in court papers that the duty to ensure the use of fall protection by the roofers fell to their direct employer, Hernandez. They stated that Hernandez had a good professional reputation, and that Rising Sun had no reason to believe that he was incompetent when they hired him.

The subcontractor also pointed out that Urena

and his co-workers knew there were safety harnesses available for their use, but specifically chose not to wear them.

According to Casarino and LeWinter, the trial was held before New Castle County Superior Court Judge Susan C. Del Pesco; it began on June 12, a Monday, and ended that Friday after an hour and a half of deliberations. The 12-member panel was not polled, they said.

Unlike in Pennsylvania, it is not customary for attorneys to speak with jurors after a verdict has been handed up, they also said.

According to LeWinter, Del Pesco had ruled prior to trial that it would be too prejudicial to tell the jury that Urena is not a U.S. citizen, although she did allow for cross-examination as to the fact that the plaintiff had never paid taxes.

"It obviously didn't trouble the jury too much," he said.

LeWinter also said that the defense called no witnesses, and that Urena called to the stand medical experts but no liability expert witness. The damages were not contested by the defense, he added.

Casarino said he strongly feels the evidence in *Urena* makes clear that Rising Sun was not in control of oversight of Urena's work.

"I have a lot of faith in the jury system, but for some reason, the jurors did not decide this [case] on the evidence," he said.

Lee is a Korean immigrant, and Rising Sun is a small, family-run roofing and siding business, according to Casarino.

LeWinter said he believes the jury appreciated the fact that Urena, despite his injuries, still works full-time in order to provide for his wife and two kids.

He also said he believes a work site's contractors need to ensure that individual workers comply with OSHA regulations in order to "protect these workers from themselves," even if it means, for example, forcing roofers to wear cumbersome fall protection gear.

"They're going to [naturally] choose the means of working that helps them make the most money," LeWinter said of laborers like his client. •