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Regional News

RECORD PRODUCER WINS \$1 MILLION IN SUIT ALLEGING HEARING LOSS FROM FALLING
CANOE

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A Philadelphia record producer who suffered hearing damage when he was struck by a falling canoe at the Westtown Friends School was awarded more than \$1 million in a Philadelphia Court of Common Pleas courtroom Wednesday.

Jurors deliberated for eight hours before returning the \$1,069,850 verdict; the figure was an average of the jurors' individual awards, plaintiff's counsel Joel D. Feldman of Anapol Schwartz Weiss Cohan Feldman & Smalley said.

Thomas M. Close of Connor Weber & Oberlies in Paoli, who represented the Westtown Friends School, had no comment on the case.

On Oct. 6, 1996, record producer Edward Drinkwater -- whose work has garnered him several Grammy award nominations -- was participating in Autumn Day, an annual back-to-school event, at the Chester County school where his child was a student. One of the day's activities was canoeing on the school's lake.

Drinkwater, then 48, was returning canoes to the school-owned boathouse after the activity when a canoe balanced on the wooden canoe rack fell and struck him on the head, Feldman said.

No one witnessed the boat's seven-foot fall.

At trial, Feldman said he traced the accident to a rotten pole near the canoe rack, a vestige of a former rack design. The 12-foot long pole was jostled, he said, causing it to swing and hit the canoe, which had to be pushed only a few inches before falling from its supports.

"There were no witnesses. That made it a really hard case. There was no direct evidence of the post moving," Feldman said. "I had to convince the jury I had ruled out all other possible causes."

According to Feldman, Drinkwater suffered a closed head injury which caused minor cognitive impairment, a herniated disc which required surgery and high-frequency hearing loss and tinnitus, or ringing of the ears.

For a record producer, the latter injury, which affected his ability to hear treble sounds such as cymbals, high-pitched singing and some electric guitar notes, was of special concern.

According to Feldman, the defense claimed that the plaintiff's hearing loss

was caused by noise damage from his days of playing guitar and drums in local bands. The defense also argued there was no proof of tinnitus -- for which there is no medical test -- and reminded the jury that the claim of severe back pain came six months after the injury.

Although the defense did agree Drinkwater had suffered some cognitive impairment, the lawyer argued that Drinkwater had a responsibility to undergo rehabilitation, which may have lessened the damage.

Judge Mark Bernstein asked the jury to consider this responsibility, charging them to decide if plaintiff's failure to make a reasonable effort to seek rehabilitation should mitigate potential damages.

Both parties agreed that the parents were business invitees of the school as volunteers at the event, but many other issues in the trial were hotly contested, Feldman said.

The defense made several offers prior to the six-day trial, Feldman said, including a \$250,000 offer the day before the trial, a \$300,000 offer following the first day of testimony and a \$350,000 offer after the second day.

Because his client did not wish to settle, proving the extent of Drinkwater's injury and connecting the circumstantial evidence to show the conditions under which it occurred were key for Feldman.

The jury was very much in tune with Philadelphia music, which made his job easier, Feldman said. Jurors heard testimony from a local record producer and a sound engineer, as well as from Philadelphia entertainment lawyer Lloyd Zane Remick of Remick Martone & Downey, who explained the advance and royalties method of payment common in the industry.

Although Drinkwater was forced to turn away several projects following the injury, he has since returned to producing records, including the recent Jennifer Love Hewitt release, often with the assistance of a co-producer.

Feldman also convinced the jury that circumstantial evidence -- that the canoes were being brought in, that no one was touching the canoe and that the rotten post had moved four or five inches after the accident -- made a solid case.

For that, he turned to his own two children, ages 9 and 11. After finding muddy sneaker footprints on the carpet in his home a few days before closing arguments, Feldman followed the tracks through the house, up the stairs and into his son's bed room to uncover the culprit. Following the verdict, jurors told him the example had been convincing.

"I showed then circumstantial evidence could be used," Feldman said. "People make judgments on circumstantial evidence all the time."