



DALLAS COUNTY

WORKERS' SAFETY

Workers' Comp Non-Subscriber — Slips, Trips & Falls

Alarm technician missed rung on ladder, fell eight to ten feet

VERDICT	Defense
CASE	Bobby Hagood v. Fishborn Inc. d/b/a Custom Integrated Systems, No. 04-1125-I
COURT	Dallas County District Court, 162nd, TX
JUDGE	Lorraine Raggio
NEUTRAL(S)	Mark Gilbert
DATE	3/23/2007
PLAINTIFF	
ATTORNEY(S)	David A. Schiller (lead), The Schiller Firm PLLC, Plano, TX Chris Duvall, The Schiller Firm PLLC, Plano, TX
DEFENSE	
ATTORNEY(S)	Robert J. Reagan (lead), Reagan & McLain, Dallas, TX LaKisha P. Lee, Reagan & McLain, Dallas, TX

FACTS & ALLEGATIONS On June 3, 2003 in early afternoon, plaintiff Bobby Hagood, 39, an alarm system technician, was working alone, tracing and repairing a fire alarm circuit at a Girl Scouts' facility on Hampton Road in Dallas. Descending a vertical fixed ladder with his hands full, he missed a rung with one hand and fell about eight to 10 feet onto a plywood deck, injuring himself.

Hagood sued his employer, Fishborn Inc. operating as Custom Integrated Systems, Carrollton, a workers' compensation non-subscriber, alleging that defendant failed to provide a safe workplace; properly train him; provide sufficient help and equipment, safety or otherwise, to do his job; properly supervise him; and provide proper safeguards for equipment that was used.

Maintaining that it was not negligent, the defendant put on evidence that its practices were in keeping with industry standards. In contrast, there was little or no evidence as to inadequacy of staffing, equipment or supervision. The defense argued that Hagood had 13 years' experience as an alarm system technician, and that an employer who had worked with an employee for many years was entitled to rely on his experience and common sense. The defense contended that plaintiff's acts were the sole proximate cause of the injury, or it was an unavoidable accident.

INJURIES/DAMAGES *compression fracture; compression fracture spinal cord; fracture, wrist; wrist*

Hagood broke both wrists. He also suffered a compression fracture of his vertebra but no paralysis. He was cleared for light duty in February 2004 and returned to work in a lower-paying office job that the defendant created for him. During his time off, the defendant paid him full salary, less the amount he was normally paid for use of his tools and truck.

The jury was made aware that defendant paid some of Hagood's medical specials, but the collateral source rule prevented the jury from hearing specifically that Hagood was carried on his wife's health insurance policy and that the defendant paid the deductible.

Hagood filed suit in November 2004 and continued working for the defendant until March 1, 2006.

He asked the jury for \$75,000 in medical specials; \$670,000 in future medical expenses for pain management and rehabilitation; and \$20,000 in lost income (the difference between his earnings before and after the accident, at the lower-paying position), plus an unspecified amount for pain and suffering.

RESULT As a worker's comp non-subscriber, the defendant was not entitled to a proportionate responsibility jury submission.

The jury found that the negligence, if any, of the defendant was not the proximate cause of plaintiff's injury.

DEMAND \$675,000 plus unspecified amount for pain and suffering; \$75,000 at mediation
OFFER \$10,000 (cost of defense at time of mediation); no subsequent offers

TRIAL DETAILS Trial Length: 5 days
Trial Deliberations: 5.75 hours
Jury Vote: 10-2
Jury Composition: 5 male, 7 female

PLAINTIFF EXPERT(S) Richard Jones, M.D., pain management, Plano, TX (pain management and rehabilitation)
James T. Knorpp, P.E., C.S.P., employee safety, Keller, TX (OSHA safety standards and regulations)

DEFENSE EXPERT(S) Malcolm Reed, safety compliance, Dallas, TX (Alarm industry work and safety practices)

POST-TRIAL A take-nothing judgment was signed April 5. Plaintiff's motion for new trial denied on May 31, 2007.

EDITOR'S NOTE This report is based on information that was provided by defense counsel. Plaintiff's counsel did not respond to the reporter's phone calls.

—Don Maines