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VERDICTS & SETTLEMENTS

Worker Injured On Forklift Manufacturer Knew Of 239 Prior Incidents



Rick D. Holtsclaw



Brad Kendall

\$6.5 Million Verdict

A warehouse worker who suffered brain and spinal cord injuries when his forklift crashed sued for products liability.

Mark Phariss worked for Associated Wholesale Grocers in Kansas City, Kan. In March 2000, Phariss was driving a stand-up forklift in an AWG warehouse when it went out of control and ran underneath a metal rack. Phariss was pinned between the forklift and the rack, causing him severe head and spine injuries.

The forklift, purchased by AWG in 1985, was manufactured by Crown Equipment Company. Phariss, 41, claimed in his lawsuit that the forklift was defective and that Crown failed to warn of the defect and notify customers of a retrofit developed in 1995. Phariss said Crown was aware of 239 other incidents of forklifts running beneath a horizontal rack — it had even categorized the events as "horizontal intrusion" injuries. It also

maintained a database that specifically coded and analyzed this type of occurrence.

Crown argued that AWG was at fault for having reversed the steering on the forklift and for failing to provide adequate training. Crown also said it gave adequate warning of potential problems in 1999 when it sent out a mass mailing to customers, including AWG.

The Jackson County court applied Kansas substantive law to the case,

which allowed Crown to ask the jury to allocate fault to AWG, a non-party, for compensatory damages only.

After an eight-day trial, the jury found for Phariss, assessing \$4,075,641.10 in compensatory damages and \$2.5 million in punitives. It also allocated 8 percent fault to Crown, 90 percent to AWG and 2 percent to Phariss.

Facts of the case

Type of Action: Products liability

Type of Injuries: Brain and spinal cord injuries

Court/Case Number/Date: Jackson County Circuit Court/02CV208580/Oct. 14, 2004

Caption: Phariss v. Crown Equipment Corp.

Judge, Jury or ADR: Jury

Name of Judge: Marco Roldan

Verdict or Settlement: \$6,575,641.10 verdict

Special Damages: \$3.6 million medical expense and lost wages

Allocation of Fault: 90 percent to defendant Associated Wholesale Grocers, 8 percent to defendant Crown Equipment Corporation, 2 percent to plaintiff

Last Demand: \$2.5 million

Last Offer: \$200,000

Attorney for Plaintiff: Duke W. Ponick Jr., Kansas City; Rick D. Holtsclaw, Holtsclaw & Kendall, Kansas City; Daniel T. DeFeo, Kansas City; Bradford C. Kendall, Kansas City

Insurer: Not disclosed

Plaintiff's Experts: Dr. Joseph L. Burton, Alpharetta, Ga. (biomechanical engineer); Dr. Steven T. Joyce, Leawood, Kan. (orthopedist); Dr. Charles Kelly, Overland Park, Kan. (rehabilitation); Dr. Samuel Mehr, Omaha, Neb. (brain imaging); Gerald Miller, Kansas City (economist); Dr. Gary Yarkony, Chicago (life care planner); Richard Ziernicki, Englewood, Colo. (design engineer)

Defendant's Experts: Catherine Ford Corrigan, Philadelphia (biomechanical engineer); Daniel Dunlap, New Bremen, Ohio (design engineer).