



Construction worker sustained multiple fractures in fall from roof

Type: Mediated Settlement

Amount: \$1,500,000

State: New York

Venue: Westchester County

Court: Westchester Supreme, NY

Injury Type(s):

- *back* - lower back; upper back; bulging disc; fracture, back; fracture, L1; fracture, back; fracture, T1; fracture, back; fracture, T2; fracture, back; fracture, T3; fusion, lumbar; herniated disc; fusion, thoracic; fracture, vertebra; fracture, L1; fracture, vertebra; fracture, T1; fracture, vertebra; fracture, T2; fracture, vertebra; fracture, T3; bulging disc, lumbar
- *head* - headaches; concussion
- *neck* - bulging disc; herniated disc; fusion, cervical; herniated disc, cervical; herniated disc at C5-6; herniated disc, cervical; herniated disc at C6-7; fusion, cervical, two-level
- *chest* - fracture, rib
- *other* - fracture; chiropractic; hypervigilance; unconsciousness; physical therapy; hardware implanted; compression fracture
- *surgeries/treatment* - discectomy
- *mental/psychological* - insomnia; flashbacks; emotional distress; cognition, impairment; post-concussion syndrome; post-traumatic stress disorder

Case Type:

- *Construction* - Accidents; Labor Law
- *Slips, Trips & Falls* - Fall from Height
- *Worker/Workplace Negligence* - Labor Law

Case Name: David Santiago and Michelle Santiago v. Hanley Group, Inc., Serrano Construction, Inc., Dan Cohn-Sfetcu and Joanna Gressin, No. 67948/2018

Date: October 24, 2023

Plaintiff(s):

- David Santiago, (Male, 38 Years)
- Michelle Santiago, (, 0 Years)

- Plaintiff Attorney(s):**
- Sophia Soraya; Varcadipane & Pinnisi, P.C.; New York NY for David Santiago
 - Michael LoGiudice; Michael LoGiudice, LLP; for David Santiago
- Plaintiff Expert(s):**
- Angel E. Macagno M.D.; Orthopedic Surgery; Westbury, NY called by: Sophia Soraya
- Defendant(s):**
- Joanna Gressin
 - Dan Cohn-Sfetcu
 - Hanley Group Inc.
 - Serrano Construction Inc.
- Defense Attorney(s):**
- Francis B. Mann; Malapero Prisco & Klauber, LLP for Hanley Group Inc.
 - Chikodi E. Emerenini; Correia, Conway & Stiefeld for Serrano Construction Inc.
 - None reported for Dan Cohn-Sfetcu, Joanna Gressin
- Defendant Expert(s):**
- Andrew N. Bazos M.D.; Orthopedic Surgery; New York, NY called by: for Chikodi E. Emerenini
 - Connie Kane Standhart M.S., C.R.C.; Vocational Rehabilitation; Middleburgh, NY called by: for Francis B. Mann, Chikodi E. Emerenini
- Insurers:**
- State Farm Insurance Cos.
 - Liberty Mutual Insurance Co.

Facts: On June 16, 2018, plaintiff David Santiago, 38, a construction worker, was working on the roof of a newly constructed home in Rye. During the course of his work, Santiago would lie on his stomach and lean over the edge of the roof so he could hold window framing in place. However, as he attempted to climb off the roof, he slipped and fell 25 feet to the ground. Santiago alleged injuries to his neck, back, ribs and head.

Santiago sued the general contractor for the project, Hanley Group Inc., and the company Hanley subcontracted to perform exterior carpentry work, Serrano Construction Inc. (Serrano hired Santiago's direct employer.) The lawsuit alleged that the defendants failed to provide a safe workplace and that their failure constituted a violation of the New York State Labor Law.

The lawsuit also initially included a claim against the homeowners, Dan Cohn-Sfetcu and Joanna Gressin, but they did not appear in the action.

Hanley filed a cross-claim against Serrano, seeking indemnification. Hanley's counsel then moved for summary judgment against Serrano, and the motion was granted.

Plaintiff's counsel contended that the accident stemmed from an elevation-related hazard, as defined by Labor Law §240(1), and that Santiago was not provided the proper, safe equipment that is a requirement of the statute. Counsel also contended that the defendants failed to provide or ensure reasonable and adequate protection, as required by Labor Law

§241(6). Plaintiff's counsel further contended that the defendants violated Labor Law §200, which defines general workplace-safety requirements.

Plaintiff's counsel specifically argued that Santiago was not provided with nor told about any available harnesses, scaffolds or other safety equipment.

Plaintiff's counsel moved for summary judgment on the issue of liability against Hanley on the claims regarding Labor Law §§ 240(1) and 241(6). The motion was granted.

Hanley's counsel appealed the decision, asserting that Santiago was the sole cause of his injuries. Hanley's counsel argued that Santiago knew there was safety equipment available yet opted not to use it. Counsel further argued that Santiago was told not to go on the roof without safety equipment.

In response, Santiago's counsel maintained that the safety equipment was in Hanley's locked trailer. Santiago claimed that since he didn't work directly for Hanley, he had no way of knowing the equipment was there. He further claimed that none of Hanley's employees told him about this equipment either.

The appellate court upheld the summary judgment ruling.

Serrano's counsel, meanwhile, moved for summary judgment on Santiago's direct claim against the subcontractor, Serrano. Counsel argued that Serrano provided Santiago with workers' compensation benefits after the fall and, therefore, Santiago was Serrano's employee. The motion was granted, and the matter proceeded to damages against Hanley only.

Injury:

Santiago sustained blunt force trauma to his head and lost consciousness at the scene. He was transported to a hospital, where he was diagnosed with an L1 burst fracture; compression fractures at T1, T2 and T3; and fractured ribs. He was also determined to have sustained a concussion. Santiago claimed he also sustained bulging lumbar discs at the L2-3, L4-5 and L5-S1 levels, along with herniated cervical discs at the C5-6 and C6-7 levels. Santiago alleged that as a result of his head injury, he developed post-concussion syndrome.

Santiago underwent an immediate T12-L2 fusion with instrumentation. He later underwent chiropractic care and physical therapy. He also saw numerous doctors, including an orthopedist, a pain management specialist and a neurologist. In March 2023, Santiago underwent an anterior cervical discectomy and fusion at C5-6 and C6-7. He claimed he will eventually need adjacent-level surgeries to his neck and back.

Santiago alleged that he developed post-traumatic stress disorder and major depressive disorder as a result of the fall. He saw a psychotherapist and a psychiatrist for these conditions. He alleged that his head injury additionally caused auditory hallucinations, cognitive deficits, insomnia, hypervigilance, flashbacks, paranoia, lethargy, mood disturbances, panic attacks and emotional distress.

Santiago never returned to work, and he claimed he is fully disabled from employment. He alleged that he continues to suffer from daily pain and migraines. He alleged that as a result, he could no longer bend, lift heavy objects or walk long distances.

Santiago sought recovery of past and future medical expenses, past and future lost earnings, and damages for his past and future pain and suffering. His wife at the time of the accident, Michelle Santiago, filed a derivative claim, but she later dropped her claim when the couple got divorced.

Serrano's orthopedic surgery expert opined that David Santiago's neck injuries were not related to the fall. While the expert admitted the fall caused the lumbar burst fracture and the rib fractures, the expert opined that those injuries had resolved.

The defendants' vocational rehabilitation expert opined that Santiago is still able to perform sedentary, light-duty or medium-duty jobs.

Result:

The parties negotiated a pretrial settlement, which was established via the guidance of mediator Mark Bass. Serrano's insurer, Liberty Mutual Insurance Co., tendered its primary policy, which provided \$1 million of coverage. Hanley's insurer, State Farm Insurance Cos., agreed to pay an additional \$500,000 from a policy that provided \$2 million of coverage. Thus, the settlement totaled \$1.5 million.

Michelle Santiago

David Santiago

Trial Information:

Judge: Mark Bass

Trial Length: 0

**Trial
Deliberations:** 0

**Editor's
Comment:** This report is based on information that was provided by plaintiff's counsel, and defense counsel for Hanley Group. Additional information was gleaned from court documents. Counsel for Serrano Construction did not respond to the reporter's phone calls.

Writer msiegel2