

Negligence -

Amount: \$206,258

Type: Verdict-Plaintiff

State: Texas

Venue: Harris County

Case Type: Negligence -

Case Name: Ellis Lewis Pharis vs. Krueger Engineering & Manufacturing Company, Inc.

Date: October 30, 2000

Parties

Plaintiff(s): Ellis Lewis Pharis (Male, 70 Years)

Plaintiff Attorney(s): Matthew J. M. Prebeg; Glover, Lewis & Prebeg, P.C.; Houston, TX, for Ellis Lewis Pharis Scott J. Davenport; Glover, Lewis & Prebeg, P.C.; Houston, TX, for Ellis Lewis Pharis

Plaintiff Expert(s): David Mack M.D.; orthopedic surgery; called by: Ellis Lewis Pharis Donald Baxter ; orthopedic surgery; Houston, TX called by: Ellis Lewis Pharis

Defendant(s): Krueger Engineering & Manufacturing Company, Inc.

Defense Attorney(s): Peter J. Bambace; Holm, Bambace & Cotton, L.L.P.; Houston, TX, for Krueger Engineering & Manufacturing Company, Inc. Robert McCabe; Holm, Bambace & Cotton, L.L.P.; Houston, TX, for Krueger Engineering & Manufacturing Company, Inc.

Defendant Expert(s): Bill Ensel truck loading expert; Houston, TX for Krueger Engineering & Manufacturing Company, Inc.

Insurer(s): Admiral

Injury:

Ellis Lewis (Bob) Pharis was a 70-year-old truck driver for Admiral Truck Services. On March 18, 1997, he was dispatched to Krueger Engineering to pick up two round heat exchanger bundles. During the loading process, one of the bundles rolled; Mr. Pharis fell to the ground and broke his ankle. He had been working for Admiral for seven months prior to the accident. After recuperating from surgery, Mr. Pharis started his own hot-shot delivery service that he operates today. Mr. Pharis contended that after loading the first bundle at the front-center of the trailer, Krueger's crane operator set the second bundle on the trailer at the rear before alerting Mr. Pharis, which caused the first bundle to roll and bump him. Krueger had four eyewitnesses testify that Mr. Pharis inappropriately directed Krueger to load the bundles side-by-side at the front of the trailer, and that at the time of the accident, the crane operator did not move the bundle. Krueger witnesses testified that Mr. Pharis caused the bundle to roll when he was strapping the bundle. Krueger had several witnesses, including a former supervisor with Admiral, testify that Mr. Pharis was instructed to use coil racks in loading the bundles, but refused to do so. The Krueger witnesses testified that had Mr. Pharis used the coil racks, the bundle could not have rolled. Plaintiff had an independent eyewitness that corroborated his story and testified that using coil racks was not necessary.

Dr. Mack, Plaintiff's treating physician, testified that Plaintiff had a severely comminuted intra-articular fracture of his right ankle (crushed ankle). Mr. Pharis underwent an open reduction with internal fixation of the right distal tibial fracture combined with external fixation. He underwent a second surgery two months later to remove the fixator. Dr. Baxter testified that Mr. Pharis may need a possible ankle fusion with future medical of \$30,000. Mr. Pharis had \$48,758.40 in past medical expenses. He was unable to work for approximately seven months. He made \$20,000 the prior year, and Krueger alleged he never made more than \$13,000 per year before that. He made no claim for future earnings. Plaintiff alleged lost wages of 14 months at \$38,000 based on the seven months prior to the accident at which time he earned \$26,000.

Result:

Jury apportioned 75% negligence on the Defendant and 25% on the Plaintiff. Awarded: \$206,258.40 actual damages. (\$154,693.80 after reduction for comparative negligence) 11 - 0 (5 day trial) Total judgment with prejudgment interest is estimated to be \$213,261. Verdict date: 11-03-2000 Pre-trial demand: \$150K paid by Krueger plus assign all rights against Admiral, Texarkana Insurance, and Admiral's agent; Krueger allows judgment to be entered against it for \$450,000 in favor of Pharis; Admiral assigns all rights to Pharis for claims it has against Texarkana Insurance and Admiral's agent, and signs affidavit that it instructed the agent to name Krueger as additional insured, agent represented that he did and agent represented that the policy would have provided coverage for this type of incident for Krueger; Admiral allows judgment to be entered against it for Krueger's claim of indemnity and breach of promise to obtain insurance; Pharis agrees to suspend execution against Krueger until resolution of claims against agent and carrier and will not execute if can not collect from Admiral thereafter; and Pharis returns the first \$150,000 he collects from agent or carrier to Krueger. Asked of jury: \$450K Pre-trial offer: \$ 30K Carrier: Chubb

\$0

**Actual
Award:**

Trial Information:

Judge: Sherry Radack

Trial Length: 5