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DEFENSE VERDICT



Jon Michael Dumont

Simon v. Abele Tractor & Equipment, et al. Supreme Court of New York for Westchester County, NY

Plaintiff, a Teamster, was operating a John Deere 300C dump truck on April 25, 2005 at the Sprout Brook landfill in Westchester County, New York. While near the top of the landfill, plaintiff attempted to make a three-point turn. After putting the dump truck in reverse, it started to roll backwards. Plaintiff claimed that he could not stop the machine as it proceeded to roll down the side of the landfill because the brakes failed, and as a result, he was thrown from the vehicle and sustained injuries. Plaintiff claimed he sustained a traumatic brain injury with cognitive impairment, scalp lacerations, broken left ankle and ribs, scarring, post-traumatic stress disorder and depression. He never returned to work after the accident.

Plaintiff alleged that Abele Tractor & Equipment negligently failed to detect and fix the brake problem despite the fact that plaintiff and his co-worker complained about intermittent problems with the brakes just prior to the accident. Abele Tractor retained the manufacturer's authorized representative, Nortrax, to repair the brakes prior to the accident. Nevertheless, plaintiff's attorney argued that Abele Tractor was negligent in its maintenance and repair of the brakes. Plaintiff's attorney also argued that Abele Tractor was strictly liable for a defect in the brake system.

Plaintiff's final settlement demand was \$4.5 million. Abele Tractor made no settlement offer and took the position that the accident resulted from driver error, not a problem with the brakes. While Abele Tractor & Equipment asserted a cross-claim against the manufacturer, John Deere Construction & Forestry Company, and its authorized service provider, Nortrax, for indemnity or contribution, at trial Abele Tractor joined the co-defendants in arguing that plaintiff's negligence caused the accident. Abele also joined the co-defendants in arguing that there was no defect in the brakes of the John Deere 300C and that they functioned properly at the time of the accident.

At trial, we offered evidence showing that the brakes were properly serviced and maintained, and that they functioned properly on multiple occasions before and after plaintiff's accident. We also offered evidence showing that plaintiff was unfamiliar with the vehicle and was uncomfortable operating it on the steep landfill terrain. Plaintiff's counsel was unable to show that a defect in the design or manufacture of the brake system of the John Deere 300C dump truck caused the accident, and at the close of plaintiff's case, the court granted John Deere's motion for a directed verdict. Thereafter, the jury was asked to determine whether the negligence of the remaining defendants, Abele Tractor and Nortrax, caused plaintiff's accident and the resulting injuries and damages.

On behalf of Abele Tractor, we argued that plaintiff's own negligence caused the accident. Furthermore, Abele Tractor acted reasonably in relying upon the manufacturer's authorized service provider, Nortrax, to repair the brakes, and indeed, the brakes functioned properly at the time of the accident. After a two-week trial, the jury unanimously concluded that Abele Tractor was not negligent.

PHILADELPHIA

Mortuary Removal Services, Inc. v. Lancer Insurance Company, et al. **Court of Common Pleas for Philadelphia County, PA**

We obtained a defense verdict in favor of our client at a bench trial before Judge Gary S. Glazer in the Philadelphia Court of Common Pleas. The plaintiff corporation filed this declaratory judgment action to obtain an Order declaring that it was entitled to a defense and indemnity under the defendant insurer's commercial auto policy as a result of a motor vehicle accident involving plaintiff's vehicle. The insurer denied coverage and contended that the policy was cancelled for non-payment of premium prior to the accident. When we were retained for the defense, the discovery period had elapsed without any discovery being conducted, and the case was scheduled to be placed in the trial pool in less than sixty (60) days. At trial, we presented testimony and documentation showing that our client had properly cancelled the policy at issue in accordance with Pennsylvania law and the terms of the policy. After the parties closed, Judge Glazer found in favor of our client.

Jon Michael Dumont, a partner, earned his B.A. and M.A. in economics from Boston University *magna cum laude* in 1989. He received a Juris Doctorate from Villanova University School of Law in 1993.

Jon focuses his practice on the defense of the transportation industry and its insurers. He is admitted to practice in the state and all federal courts of Pennsylvania, New York and New Jersey as well as the U.S. Court of Appeals for the Third Circuit.

Jon is a member of the Trucking Industry Defense Association, Defense Research Institute, Pennsylvania Motor Truck Association, New York State Bar Association and the American Bar Association.

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