

Elevator mechanic trips over air handler cover: Failure to replace cover: Spinal injuries: Verdict.

Malloy v. Stellar Mgmt., N.Y., New York Co. Sup., No. 109054/05, Feb. 11, 2008.

Malloy, 51, was an elevator mechanic assigned to maintain the elevators in an office building. While walking through an elevator machinery room, he tripped over an air handler cover that building engineers had left on the floor after servicing the handler. Malloy's hand got caught in the pulley belts of the air handler, and he was thrown several feet into some stairs. Malloy suffered an injury at L3-4, aggravating a previous fusion. He underwent another fusion, adding hardware at L3-4, but he continued to suffer severe pain. After branch blocks did not work and a spinal cord stimulator worsened his pain, doctors implanted an intrathecal pump into his spine, which gives him a flow of narcotics into his spinal canal at all times.

Malloy's past medical expenses were \$80,000, and his estimated future medical costs are \$160,000. He had been earning \$90,000 annually but is now permanently disabled. He incurred past lost income of about \$343,900 and expects to incur about \$719,800 in future lost income and about \$298,900 in lost benefits.

Malloy and his wife sued the owner of the building and the company that operated it, alleging they were responsible for the negligence of the engineers in leaving the air handler cover on the floor.

Defendants contended Malloy was comparatively negligent in failing to see the cover before he tripped over it. Defendants also argued that Malloy was capable of sedentary work. At trial, during plaintiffs' cross-examination, one of defendants' medical experts admitted that he had been told by the service that retained him for an "independent" evaluation of Malloy to "be silent on causal relationships" between the incident and Malloy's injuries.

The jury awarded plaintiffs about \$3.26 million. Defendants are united in interest for the amount.

Plaintiffs' expert witnesses in this case were Alan Leiken, economics, East Setauket, N.Y.; John J. Labiak, spinal surgery, Smithtown, N.Y.; and John M. Stamatos, anesthesiology, Syosset, N.Y.

Defendants' experts were Harvey Goldberg, psychiatry, Bay Shore, N.Y.; William Buck, vocational rehabilitation, Friendsville, Pa.; and Douglas Cohen, neurosurgery, New York, N.Y.

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