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Man burned in plant explosion settles suit for \$9.2M

■ BY BILL CRESENZO

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A former manufacturing plant janitor who was severely burned after a machine exploded has confidentially settled a lawsuit against the plant's owner for \$9.2 million.

The victim successfully argued that he was an employee of the temporary employment agency that gave him his assignment, rather than the plant itself, allowing him to both collect a workers' compensation claim and pursue a third-party lawsuit against the plant's owner, his attorneys report.

The case hinged on whether the victim, whose name was withheld, was a "borrowed servant"—that is, whether he was an employee of the temp agency or the North Carolina plant where he had worked for several months before the 2017 explosion, said Forest Horne of Martin & Jones in Raleigh, one of his attorneys.



Forest Horne

The victim suffered second- and third-degree burns to more than one-third of his body, including his back, his lower extremities, and part of his face and head.

He was airlifted to the UNC Burn Center, where he underwent extensive surgery and stayed for more than two months. He also suffered a head injury, post-concussive syndrome, traumatic tinnitus, and shock trauma.

He was later diagnosed with post-traumatic stress disorder and depression.

His family initially contacted the firm to handle a workers' compensation claim. Steven Corriveau, also of Martin & Jones, said that the contracts between the temp agency and the plant would determine whether a third-party claim could also be pursued, depending on

whether the agency or the plant was considered his employer.

The defense counsel for the workers' compensation carrier was "dismissive" about the prospects of a third-party claim, Corriveau said, claiming that no signed contract between the temp agency and the factory owner existed and that a workers' compensation claim was the victim's only option.

Horne said that because the defense counsel was "uncooperative," the client filed a third-party lawsuit against the plant owner.

"We decided to take the borrowed servant issue head-on and filed the third-party lawsuit affirmatively alleging that the plaintiff was not an employee or borrowed servant of the factory owner, the defendant," he said. "We also alleged that the defendant negligently failed to maintain and monitor its machines, and that this caused the explosion and fire resulting in the plaintiff's injuries."

The plaintiff's attorneys sifted through more than 50,000 pages of discovery documents and found that a signed copy of a contract between the temp agency and the factory did indeed exist.

"That signed contract contained very helpful language that, along with admissions we obtained in depositions from defendant's witnesses, allowed us to make arguments that would have likely defeated the borrowed servant defense," Horne said. "The contract between the employer and



Steven Corriveau



Hunt Willis

SETTLEMENT REPORT – NEGLIGENCE

Amount: \$9.2 million

Injuries alleged: Third-degree burns, head injury and post-concussive syndrome, traumatic tinnitus, shock trauma, PTSD, and depression

Case name: Withheld

Court: Withheld

Date of settlement: May 31

Attorneys for plaintiff: Forest Horne, Steven Corriveau, and Hunt Willis of Martin & Jones in Raleigh

Attorneys for defendant: Withheld

the business said the injured employee was the employee of his employer. The contract did not, however, state explicitly that the employee was not an employee of the business. The business argued because the contract was silent on that point, that they could still argue the injured party was a joint employee and the borrowed servant doctrine applied."

The defense also contended that the explosion and fire was caused by an unforeseeable and unpreventable mechanical failure. Engineering experts paid on-site visits to the plant to piece together what happened.

"When you have a case like this, you really need to have experts explain the manufacturing process, then go to the scene, and participate with your experts in determining what happened," Horne said. "The defense assembled an equally impressive roster of engineering and safety experts who opined that the defendant did all they could, and this was a tragic but unforeseeable event."

The plant filed a motion for summary judgment on the borrowed servant doctrine defense, but with the motion pending, the parties sides settled resolved the third-party lawsuit for \$8 million.

"While we were confident in our case had it proceeded to trial, with the offer

that was made at the second mediation, my client decided to accept and settle, as he knew the risk of a bad decision on the employer immunity issue," Horne said.

The attorneys then filed a motion to dissolve the workers compensation lien, citing the insurance carrier's insistence that no signed contract existed between the employer and factory owner, the carrier's refusal to provide assistance with third-party cases expenses, and the carrier's numerous actions that frustrated the third-party claim, said Hunt Willis, also of Martin and Jones.

The carrier agreed to waive the lien and pay an additional amount which exceeded \$1.25 million, so the total settlement was \$9.25 million.

Horne said his client continues to undergo laser treatment for scar tissue resourcing. He also lost part of his left ear and wears a stocking cap, long sleeves and long pants wherever he goes.

"He's actually using the opportunity to go back to school and get some sort of technology degree because he can no longer work outdoors or any environment that is not temperature controlled," he said. "Frankly, he doesn't like to go out in public a lot."

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