

collapsed lung, and injuries to her lumbar spine and sacroiliac joints. She also has been diagnosed as having post-traumatic stress disorder. She attempted to return to work but was unable to continue. She estimates her economic losses at approximately \$871,200.

Boyd sued the railroad, alleging liability under the Federal Employers' Liability Act (FELA). The jury awarded more than \$5.02 million, and the verdict was later reduced to approximately \$4.54 million. An intermediate appellate court affirmed the trial court's order on the jury verdict, rejecting the defense argument that the trial court had erred in failing to grant a new trial based on the jury's finding that Boyd was not contributorily negligent.

**CITATION:** *Boyd v. BNSF Ry. Co.*, No. CT-000605-15 (Tenn. Cir. Ct. Shelby Cnty. June 24, 2017), *aff'd*, 2018 WL 6620266 (Tenn. Ct. App. Dec. 17, 2018). **PLAINTIFF COUNSEL:** AAJ member Jeffrey E. Chod, Denver; Stephen R. Leffler, Memphis; and Robert M. Frey, Ridgeland, Miss.

## WORKPLACE SAFETY

### Failure to provide fall protection

During the construction of a four-story building, Jeff Thulin, 46, was working on the fourth floor connecting joists to steel beams. While walking on an open steel beam, he slipped and fell 14 feet and landed on the concrete floor below. He suffered two fractured wrists and a ruptured spleen, necessitating multiple surgeries. His medical expenses totaled approximately \$200,000. As a result of his injuries, Thulin now suffers from arthritis and pain. An ironworker who had been earning \$72,000 annually, he has not returned to work.

Thulin sued Dynacom Consulting Inc., the general contractor; Imed Campus Inc., the owner of the building; and Kingery Steel Fabricators Inc., which hired Thulin's employer to erect

steel at the site. Suit claimed that the defendants negligently failed to provide fall protection, such as a scissor lift.

The defense argued that OSHA regulations do not require fall protection for heights under 15 feet.

The parties settled for \$2.1 million.

**CITATION:** *Thulin v. Dynacom Consulting Inc.*, No. 15-L-377 (Ill. Cir. Ct. Cook Cnty. Dec. 2018). **PLAINTIFF COUNSEL:** AAJ members Steven A. Berman and Brian Teven, both of Chicago. **PLAINTIFF EXPERT:** Frank Burg, OSHA and safety, Woodstock, Ill. **DEFENSE EXPERTS:** James Stanley, safety, Franklin, Tenn.; Gary Skoog, economics, Glenview, Ill.; Jeffrey Hardison, safety, Rockford, Ill.; and James Radke, vocational rehabilitation, Northbrook, Ill.

### Failure to secure window at work site

Deno Pestic was working as a painter at a renovation site when a six-foot window that was stored upright at the site fell over, striking him. He suffered numerous injuries, including herniated disks at C5-6, C6-7, L4-5, and L5-S1. He underwent physical therapy and also required arthroscopic surgery on his left ankle and leg. Pestic, 49, still suffers from residual pain and has difficulty with daily living activities. He has not returned to work. His medical expenses were approximately \$295,000.

He sued general contractor Stern Projects, LLC; premises owner 825 Fifth Ave Corp.; subcontractor Key Wood Installers Inc.; and Zeluck Inc., which delivered the window, alleging failure to properly secure the window and safely store it before its installation. The plaintiff did not claim past lost income.

The defense argued that the window had been secured with a plywood cleat, which ensured it was level and stable.

The parties settled for \$4.3 million. **CITATION:** *Pestic v. Stern Projects, LLC*, No. 18828/12 (N.Y. Sup. Ct. Kings Cnty. Dec. 18, 2018). **PLAINTIFF COUNSEL:** AAJ member Judd F. Kleeger, New York City.

**PLAINTIFF EXPERT:** Steven Touliopoulos, orthopedic surgery, Astoria, N.Y. **DEFENSE EXPERTS:** Marc Katzman, radiology, Lindenhurst, N.Y.; and Roger Bonomo, neurology, and Jeffrey Spivak, orthopedic surgery, both of New York City.

### Improperly maintained scissor lift

George Petrosian, 72, was performing general repairs on an elevated parking system. While he was standing on a scissor lift, the lift's work platform fell 25 feet, causing him to suffer a torn ligament in his left ankle and bilateral torn rotator cuffs. He underwent six surgeries and now suffers from complex regional pain syndrome and carpal tunnel syndrome. His medical expenses were \$500,000. He is no longer able to work and has incurred \$100,000 in lost income.

Petrosian and his wife sued the corporate property owners and one of the property owners individually, alleging failure to maintain the scissor lift. The plaintiff alleged that the lift had been stored outside and became rusty and worn. Suit also alleged failure to provide safe equipment in violation of N.Y. Labor Law §240(1) in that the lift was missing safety bars.

The court granted the plaintiffs' motion for summary judgment on liability and the jury awarded \$13.65 million, including \$10 million in punitive damages.

**CITATION:** *Petrosian v. B&A Warehousing Inc.*, No. 15209/12 (N.Y. Sup. Ct. Kings Cnty. Jan. 31, 2019). **PLAINTIFF COUNSEL:** Gil Zohar, Brooklyn, N.Y. **PLAINTIFF EXPERTS:** Mark Galperin, pain management, and Vladimir Shur, orthopedic surgery, both of Brooklyn; and Joseph Pessalano, vocational rehabilitation, Garden City, N.Y. **DEFENSE EXPERTS:** Beth Lee Greenbaum, life care planning, Potomac, Md.; Martin Wolpin, orthopedic surgery, Brooklyn; and Jessica Berkowitz, radiology, Suffern, N.Y.