

NEW YORK

FEATURED VERDICT

NEW YORK COUNTY

WORKER/WORKPLACE NEGLIGENCE

Labor Law — Workplace — Workplace Safety — Slips, Trips & Falls

Fall from scaffold ended career, worker claimed

VERDICT \$11,899,469
ACTUAL \$5,000,000

CASE Manuel Cruz Barbecho v. City of New York, New York City Housing Authority, M.A. Angelides, Inc., Hudson Meridian Construction Group, L.L.C. and Stonewall Contracting Corp., No. 101970/07

COURT New York Supreme
JUDGE Robert David Kalish
DATE 11/14/2016

PLAINTIFF
ATTORNEY(S) David H. Peregman (lead), The Peregman Firm, P.L.L.C., New York, NY
 Carissa M. Peebles, The Peregman Firm, P.L.L.C., New York, NY

DEFENSE
ATTORNEY(S) Vincent P. Pozzuto, Cozen O'Connor, New York, NY

PLAINTIFF
EXPERT(S) Kristin K. Kucsma, M.A., economics, Livingston, NJ
 Igor Cohen, M.D., neurology, Jamaica, NY (treating doctor)
 David Payne, M.D., radiology, New York, NY
 Richard J. Schuster, Ph.D., vocational rehabilitation, New York, NY
 John S. Vlattas, M.D., pain management, Bayside, NY (treating doctor)

DEFENSE
EXPERT(S) Jerome M. Block, M.D., neurology, New York, NY

Robert S. Goldstein, M.D., orthopedic surgery, New York, NY



Kristin Kucsma
 Chief Economist
 Sobel Tinari Economics Group

FACTS & ALLEGATIONS On Aug. 17, 2006, plaintiff Manuel Cruz Barbecho, 40, a union-affiliated asbestos-abatement specialist, worked at a renovation site that was located at 30 Ave. D, in the East Village section of Manhattan. During the course of his work, Barbecho fell off of a suspended scaffold. He fell a distance of some five feet, and he landed on the ground. He claimed that he sustained injuries of his back.

Barbecho sued the premises' owners, the city of New York and the New York City Housing Authority; the renovation project's general manager, M.A. Angeliades Inc.; and two of the project's subcontractors, Hudson Meridian Construction Group LLC and Stonewall Contracting Corp. Barbecho alleged that the defendants violated the New York State Labor Law.

Plaintiff's counsel discontinued the claim against the city of New York. The matter proceeded against the remaining defendants.

Barbecho claimed that the incident occurred while he was climbing off of the scaffold, to reach the ground. He claimed that he had not been provided a safer means of descending to the ground. Plaintiff's counsel contended that the incident stemmed from an elevation-related hazard, as defined by Labor Law § 240(1), and that Barbecho was not provided the proper, safe equipment that is a requirement of the statute. Plaintiff's counsel also contended that the defendants failed to provide or ensure reasonable and adequate protection, as required by Labor Law § 241(6).

Defense counsel claimed that a ladder had been provided, but that Barbecho did not use the device. He claimed that

Barbecho instead attempted to climb onto an adjacent building.

Plaintiff's counsel moved for summary judgment of liability, and the motion was granted. Judge James D'Auguste found that the defendants violated Labor Law § 240(1). The trial addressed damages.

INJURIES/DAMAGES *bone graft; decreased range of motion; discectomy; epidural injections; fusion, lumbar; hardware implanted; herniated disc at L3-4; herniated disc at L4-5; herniated disc at L5-S1; laminectomy; laminectomy, lumbar; physical therapy; pins/rods/screws; radiculopathy; trigger point injection*

Barbecho was placed in an ambulance, and he was transported to Bellevue Hospital Center, in Manhattan. He claimed that his back, his head and his neck were painful. He underwent radiological studies and minor treatment.

Barbecho ultimately claimed that he sustained herniations of his L3-4, L4-5 and L5-S1 intervertebral discs. He also claimed that his L3-4 disc caused impingement of a spinal nerve and resultant radiculopathy. He underwent physical therapy, the administration of epidural injections of steroid-based painkillers, and the administration of painkilling trigger-point injections. The physical therapy was rendered sporadically, as approved by a workers' compensation insurer, and it lasted until March 2010, when Barbecho underwent surgery. The surgery included a discectomy, which involved excision of the L3-4 disc; a laminectomy, which involved excision of portions of the L3 and L4 vertebrae; fusion of the spine's L3-4 level; and the implantation of stabilizing hardware. Barbecho later underwent revisionary surgery that included a discectomy—which involved removal of the L4-5 and L5-S1 discs—fusion of the spine's L3-4, L4-5 and L5-S1 levels, implantation of stabilizing hardware, and application of a graft of bony matter.

Barbecho worked briefly during the immediate aftermath of the accident, and he performed several months of work in 2007, but he has not worked since September 2007. He claimed that he suffers permanent residual pain, that he suffers a residual diminution of his back's range of motion, and that his residual effects prevent his resumption of work. He also claimed that he will require further physical therapy and two additional surgeries.

Barbecho sought recovery \$252,922.94 for past medical expenses, \$980,000 for future medical expenses, a total of \$650,000 for past and future loss of earnings, damages

for future loss of employer-provided medical benefits, and unspecified damages for past and future pain and suffering.

The defense's expert neurologist and expert orthopedist opined that Barbecho suffered bulges of discs—not herniations—that the injuries were degenerative conditions, and that Barbecho's surgery was not necessary.

The parties negotiated a high/low stipulation: Damages could not exceed \$5 million, but they had to equal or exceed \$3.25 million.

RESULT The jury found that Barbecho's damages totaled \$11,899,468.90, but Barbecho recovered the stipulated limit: \$5 million.

MANUEL

BARBECHO \$252,923 past medical cost
\$526,654 future medical cost
\$153,000 past lost earnings
\$416,892 future lost earnings
\$3,750,000 past pain and suffering
\$6,500,000 future pain and suffering
\$300,000 future loss of employer-provided
insurance benefits
\$11,899,469

INSURER(S) Zurich North America for all defendants

TRIAL DETAILS Trial Length: 3 weeks
Trial Deliberations: 2 hours
Jury Vote: 6-0
Jury Composition: 2 male, 4 female

EDITOR'S NOTE This report is based on information that was provided by plaintiff's and defense counsel. Additional information was gleaned from court documents.

–Jack Deming

