

XVI/3-4 LABOR LAW SCAFFOLD LACK OF TOE BOARDS OR HANDRAILS ON STAIRWELL  
CUT-OUT TORN MENISCUS AND HERNIATED LUMBAR DISC

Evaristo and Violeta Padro v. Bertlesmann Property, Inc. and Lehr Construction Corp. v. RCC Concrete Corp.  
6233/94 3-week trial Verdict 6/26/98 Bronx Supreme

Judge: Barry Salman

Verdict: \$1,120,000 for Evaristo P. (6/0). Breakdown: \$200,000 for past pain and suffering; \$200,000 for future pain and suffering; \$20,000 for past medical expenses (stipulated); \$100,000 for future medical expenses; \$200,000 for past lost earnings; \$400,000 for future lost earnings.

\$25,000 for Violeta P. for past loss of services.

Liability: Lehr Construction 10%; Third-party Def. RCC Concrete 90% negligent. Jury: 1 male, 5 female.

Post-trial motions were denied on 1/8/99.

Pltf. Atty: Richard N. Slater of Cardali & Cardali, Manhattan

Def. Atty: Gerard Chiesa of Brian S. Lent, Pearl River, for Bertlesmann

Paul S. Gruvman of Armienti & Brooks, P.C., Manhattan, for Lehr Construction

Thomas M. Laquercia of Smith & Laquercia, Manhattan, of counsel to James P. O Connor, Manhattan, for Third-party Def. RCC Concrete

Facts: Pltf., a 47-year-old concrete laborer employed by Third-party Def. RCC Concrete Corp. (90% liable), brought this action for injuries he suffered on 9/22/93 while working on a building located on Broadway in Manhattan. Pltf. was working on the top level of a fifth floor exterior scaffold in the front of the building. Pltf. claimed that there were no toe boards or handrails around a stairwell cutout on an internal staircase of the scaffold. He testified that on the date of this accident, he and a co-worker were carrying plywood past the cut out area when his left leg fell into the opening up to his groin. His right leg remained on the platform. Pltf. brought this action claiming violations of Labor Law §§240(1) and 241(6). RCC Concrete s foreman denied that the accident happened and claimed that it was not reported to him. Pltf. produced the co-worker who was with him at the time of his fall, who corroborated Pltf. s account, and testified that the foreman was notified of the accident. RCC contended that Lehr was responsible for the supervision, maintenance, and control of the scaffold, and that that it was supervised and inspected daily by Lehr. Lehr contended that the scaffold was safe and that RCC s foreman was responsible for the supervision and safety of RCC s employees at the site. After hearing the evidence, the court directed a verdict in Pltf. s favor on the Labor Law § 240(1) claim, but left the issue of whether the accident happened in the manner that Pltf. claimed for the jury to decide, as well as common law negligence issues.

Injuries: torn medial and lateral menisci of the right leg; herniated lumbar disc at L5-S1. Pltf. received emergency room treatment at Lincoln Hospital on the date of the accident. He claimed that he informed the hospital staff that he injured his back as well as his knee. Def. argued that the hospital records only show complaints of the knee injury. Pltf. underwent arthroscopic surgery on the knee 2½ years after the fall, after a Workers Compensation claim was resolved. Pltf. subsequently suffered re-tears of the same knee, and may require future surgery. Def. Lehr argued that Pltf. s back injury is a small herniation with no impingement, and is not causally related to the fall. Pltf. claimed that his injuries are permanent, and he has not worked since the date of the accident. Testimony indicated that Pltf. has an 8th grade education, and has only worked in the construction field. Defs. argued that Pltf. can be retrained in another field. Demonstrative evidence: models of the knee and back; chart of the knee. Offer: \$ 500,000 (\$350,000 from Lehr; \$150,000 from RCC; \$0 from Bertlesmann); demand: \$950,000. Jury deliberation: 2½ hours. Carriers: State Insurance Fund for RCC Concrete; American Motorists Ins. Co. for Lehr Construction; Zurich Commercial for Bertlesmann.

Pltf. Experts: Dr. Louis Rose, treating orth. surg., Bronx; David Stein, Ph.D., vocational rehabilitation, New Jersey; Lester Buchell, Jr., construction expert, Glen Cove; Richard Ruth, Ph.D., economist, Summit, New Jersey.

Def. Experts: Dr. James Morrissey, orth. surg., Yonkers; Dr. John Rigney, radiologist, Rye; Dr. Joseph Pessalano, vocational rehabilitation, Jordan Rehab. Svces., Westbury; James Cannizzo, engineer, Robson Lapina, Inc., Manhattan.