

FEATURED VERDICT

Medical Malpractice

Gastroesophageal surgery doomed by sutures, suit alleged

Verdict \$60,000,000

Nelson v. Narwal

Kings County Supreme Court

Plaintiff's Attorney James Wilkens;
Duffy & Duffy, Esqs.; Uniondale, N.Y.

Defense Attorney Paul J. Karp; Wilson Elser
Moskowitz Edelman & Dicker LLP; New York

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CONSTRUCTION

Labor Law — Accidents — Slips, Trips & Falls — Fall from Height

Worker's fall from scaffold caused face and spine fractures**VERDICT** \$2,086,000**CASE** Roberto Freddy Espin & Mercedes Lopez v. Alez Gouzos & Anthousis Nicolaos, No. 300057-KTS-2010**COURT** Kings Civil**JUDGE** Johnny L. Baynes**DATE** 10/21/2011**PLAINTIFF****ATTORNEY(S)** Scott A. Steinberg, Greenberg & Stein P.C., New York, NY**DEFENSE****ATTORNEY(S)** Raymond Aab, Koehler & Isaacs LLP, New York, NY (Alex Gouzos)
None reported (Anthousis Nicolaos)

FACTS & ALLEGATIONS On March 28, 2003, plaintiff Roberto Freddy Espin, 43, a laborer, worked at a construction site that was located at 250 51st St., in Brooklyn. During the course of the day, Espin ascended to the top of a scaffold and began to assemble the framework for a second scaffold. The already-constructed scaffold's platform collapsed beneath him, and he plummeted a distance of 12 to 15 feet. He claimed that he sustained injuries of his face, his head, his mouth and his neck.

Espin sued the premises' owner, Alex Gouzos, and another party who was involved in the construction project, Anthousis Nicolaos. Espin alleged that the defendants violated the New York State Labor Law.

Nicolaos could not be served, so the matter proceeded against Gouzos.

Espin claimed that the scaffold's platform was composed of unsecured planks. He contended that the planks shifted and caused his fall.

Espin's counsel claimed that the incident stemmed from an elevation-related hazard, as defined by Labor Law § 240(1), and that Espin was not provided the proper, safe equipment that is a requirement of the statute.

Espin's counsel moved for summary judgment of liability, and the motion was granted. The trial addressed damages.

INJURIES/DAMAGES *closed reduction; craniotomy; diminished cognitive ability; epidural hematoma; fracture, C6; fracture, C7; fracture, facial bones; fracture, sinus; fracture, skull; hematoma; loss of teeth; physical therapy; psychiatric impairment*

Espin sustained a fracture of his sinus and fractures of other facial bones, a fracture of his skull, fractures of his C6

and C7 vertebrae, a loss of several teeth, and an injury of his head. The latter injury produced an epidural hematoma and brief unconsciousness.

Espin was placed in an ambulance, and he was transported to Lutheran Medical Center, in Brooklyn. He underwent closed reduction of his spinal fractures, but his head's injury necessitated a craniotomy and plastic surgery. His hospitalization lasted about 14 days.

Espin subsequently underwent about four years of physical therapy that was typically rendered three times a week. He also underwent several years of psychiatric treatment.

Espin's expert neuropsychiatrist opined that Espin suffers residual brain damage that causes diminishment of cognitive functions such as his memory and his abilities to concentrate and retain information. Espin's expert orthopedic surgeon opined that Espin suffers residual pain that stems from his back and neck. Espin claimed that his injuries prevent his resumption of work.

Espin sought recovery of his past and future medical expenses, his past and future lost earnings, and damages for his past and future pain and suffering. His wife, Mercedes Lopez, sought recovery of damages for her loss of consortium and services.

Defense counsel contended that Espin achieved a good recovery and that Espin can resume work.

RESULT The jury found that the plaintiffs' damages totaled \$2,086,000.

ROBERTO ESPIN \$86,000 past medical cost
\$300,000 future medical cost
\$200,000 past lost earnings
\$200,000 future lost earnings
\$300,000 past pain and suffering
\$300,000 future pain and suffering
\$1,386,000

MERCEDES LOPEZ \$700,000 loss of consortium

DEMAND \$700,000 (total, by both plaintiffs, from Gouzos)

OFFER \$225,000 (total, for both plaintiffs, by Gouzos)

TRIAL DETAILS Trial Length: 5 days
Trial Deliberations: 3 hours
Jury Composition: 3 male, 3 female

PLAINTIFF EXPERT(S) Kim Busichio, M.D., neuropsychology, New York, NY
Mark S. McMahon, M.D., orthopedic surgery, New York, NY

DEFENSE EXPERT(S) None reported

EDITOR'S NOTE This report is based on information that was provided by plaintiffs' counsel. Gouzos' counsel did not respond to the reporter's phone calls, and Nicolaos' counsel was not asked to contribute.

—Elvira Veksler

CONSTRUCTION

Labor Law — Trip and Fall

Contractor rejected blame for worker's fall on pipe

VERDICT	Defense
CASE	Zbigniew Sliowski and Anna Sliowska v. City of New York, No. 1100/08
COURT	Kings Supreme
JUDGE	David B. Vaughan
DATE	6/29/2011
PLAINTIFF	
ATTORNEY(S)	Gregory J. Cannata, Gregory J. Cannata & Associates, New York, NY
DEFENSE	
ATTORNEY(S)	Edward J. White, Cartafalsa, Slattery, Turpin & Lenoff, New York, NY (City of New York) Randy S. Faust, Faust Goetz Schenker & Blee LLP, New York, NY (Gilston Electrical Contracting Corp.)

FACTS & ALLEGATIONS On July 11, 2007, plaintiff Zbigniew Sliowski, 32, a union-affiliated mason, was injured when he tripped on a piece of piping in a corridor at the construction site for the Newtown Creek Water Pollution Control Plant, in the Greenpoint section of Brooklyn.

Sliowski sued the project's overseer, the city of New York. He alleged that the city violated the New York State Labor Law.

The city impleaded one of the project's subcontractors, Gilston Electrical Contracting Corp. The city alleged that Gilston Electrical Contracting's workers had supplied the pipe that caused Sliowski's accident.

Sliowski claimed that he had been working at the site for more than 12 months at the time of his accident and that, during that time, he regularly passed by the area in which he fell. He contended that the piping in question had not been lying on the floor during previous trips through that area of the fourth floor. Sliowski informed his supervisor of the accident shortly after it occurred.

Sliowski's counsel contended that the site was not properly safeguarded, as required by Labor Law § 241(6).

Gilston Electrical Contracting's counsel contended that the type of piping on which Sliowski had slipped was not one that it had used during the construction of the Newtown

Creek plant. Management personnel from the general contractor and Gilston Electrical Contracting were called to the stand; the witnesses gave differing opinions as to whether the piping in question was used for electrical purposes during the project.

INJURIES/DAMAGES *arthroscopy; physical therapy; torn medial meniscus*

The trial was bifurcated. Damages were not before the court.

Sliowski sought medical treatment shortly after the accident and was treated for a torn medial meniscus in his left knee. He underwent arthroscopic surgery on the knee within two months of the accident, then spent a month attending physical therapy sessions three times a week.

Sliowski missed a total of about six weeks of work following the accident. He claimed that his left knee is permanently damaged, making it difficult for him to kneel and squat at work or when performing household chores.

Sliowski's treating orthopedic surgeon concluded that Sliowski's knee symptoms had been caused by the accident. Sliowski's counsel estimated Sliowski's past lost earnings at \$6,000. Sliowski's suit also sought damages for past and future pain and suffering. Sliowski's wife, Anna Sliowska, had a derivative claim for loss of services.

The defense retained experts in orthopedic surgery and neurology, who determined that Sliowski had made a full recovery and that there was no medical reason for him to be suffering any residual effects.

RESULT The jury rendered a defense verdict. The jurors found that although the city's general contractor had violated the labor law, the violation had not been a substantial factor in causing Sliowski's accident.

DEMAND	\$275,000 (total, from both defendants)
OFFER	\$50,000 (city of New York); \$50,000 (Gilston Electrical Contracting)
INSURER(S)	Zurich North America for city of New York Harleysville Group Inc. for Gilston Electrical Contracting
TRIAL DETAILS	Trial Length: 2 days Jury Vote: 5-1 Jury Composition: 3 male, 3 female
PLAINTIFF	
EXPERT(S)	Scott Gray, M.D., orthopedic surgery, Brooklyn, NY (treating doctor; did not testify)
DEFENSE	
EXPERT(S)	Marshall Keilson, M.D., neurology, Brooklyn, NY (did not testify) Martin E. Wolpin, M.D., orthopedic surgery, Brooklyn, NY (did not testify)