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Jury Awards \$3.1 Million for Injuries in Fall From Rail Car

Type: Personal Injury, product liability, railcars.

Facts: On June 30, 1992, the plaintiff, Jose Carrillo, a 38-year-old truck driver, was working on top of a "hopper car" manufactured by the defendant, American Car and Foundry Industries ("ACF"), when he fell. The particular railcar involved was a covered hopper car designed in the late 1960s by ACF. Like all other hopper cars in service on United States rail lines, ACF's hopper car was not equipped with any fall protection which could be used by a person required to work on top of it. Rail line and other workers must climb to the top of these railcars, which are at least 15 feet in height, to insert hoses into the top of the railcars through which products can be deposited. The plaintiff alleged that when he fell from the hopper car, he sustained serious injuries. The plaintiff brought this action against the defendants, ACF and the owner/operator of the premises where the accident occurred (which defendant settled before trial). The plaintiff's action against ACF was based on strict product liability, breach of warranty, defective design and failure to warn theories of recovery. The plaintiff's action against the defendant owner (who settled before trial) was based on a premises liability theory of recovery.

Contentions: The plaintiff contended (and his expert, Dr. Borowick, testified) that in the 1960s, when the railcar was designed, technology existed which would have allowed for safety guardrails to be located on the top of the railcars. The plaintiff also contended that warnings of the danger in working without fall protection should have been provided. ACF contended that designing safety guardrails to be located on the top of railcars would not be feasible as the proposed guardrails would be subject to deterioration in the weather; guardrails protruding into the air would put the height and width of the hopper cars out of compliance with Federal Railway Administration guidelines; and if ACF were to put such a device on its product, it would result in non-uniformity.

Injuries: The plaintiff alleged that he sustained a comminuted fracture of his left wrist, a comminuted fracture of his lower left leg, a simple fracture to his right foot and numerous abrasions and puncture wounds as a result of the accident. He also alleged that he was required to undergo eight surgeries; had a very difficult rehabilitation course; suffered a shortened left leg; and had numerous residual problems.