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An ALM Publication

TEXAS**FEATURED VERDICT****HIDALGO COUNTY****WORKER/WORKPLACE NEGLIGENCE**

Forklift — Negligent Training — Negligent Supervision

While standing in loading bay, trucker's foot crushed by forklift**VERDICT** **\$7,887,361****CASE** Mario Trevino Mendoza v. Farmers Best International LLC and Marco Salinas, No. C-1377-16-J**COURT** Hidalgo County District Court, 430th, TX**JUDGE** Israel Ramon, Jr.**DATE** 1/22/2018**PLAINTIFF****ATTORNEY(S)** Candelario S. Trevino Jr. (lead), Trevino Injury Law, San Antonio, TX
Billy Loredo, Loredo Law Firm PLLC, Edinburg, TX
Andrew E. Toscano, Gene Toscano Inc., San Antonio, TX**DEFENSE****ATTORNEY(S)** Jaime A. Saenz (lead), Colvin, Saenz, Rodriguez & Kennamer, Brownsville, TX
Alison W. Colvin, Colvin, Saenz, Rodriguez & Kennamer, Brownsville, TX

FACTS & ALLEGATIONS On Feb. 25, 2016, plaintiff Mario Trevino Mendoza, 36, an international truck driver, was at a McAllen produce distribution center owned and operated by Farmers Best International LLC. Mendoza was delivering produce in the loading bay. Marco Salinas, a warehouse floor supervisor for Farmers, backed a forklift into Mendoza, knocking him to the ground, and ran over Mendoza's left foot. Mendoza claimed that he was

standing in the area designated for truck drivers to stand and wait while their trucks were being unloaded.

Mendoza sued Farmers and Salinas for his negligent forklift operation, including failing to keep a proper lookout and backing unsafely; and for the company's negligence and gross negligence in entrusting forklifts to Salinas; and in retaining him as a forklift operator and floor supervisor partially responsible for the safety of the warehouse floor. Mendoza also alleged that the warehouse was negligently designed and operated with disregard for basic safety, and the company failed to provide adequate safety training, supervision, equipment, policies and procedures.

Two former employees testified by deposition, stating that Salinas regularly operated forklifts under the influence of alcohol and cocaine. One of these witnesses testified that he had told two warehouse managers about Salinas' drug use.

Farmers did not perform a post-accident drug or alcohol screening on Salinas.

The defendants denied negligence. Salinas contended that he verified his path was clear before backing up and that Mendoza must have walked into the forklift's path. Salinas also maintained that the point of impact was outside the designated standing area.

The defense denied that Salinas ever operated forklifts under the influence of drugs or alcohol. The defense argued that the two former employees were disgruntled, had an axe to grind and were not credible.

The defense also argued that Mendoza was walking in an area where he should not have been and he wasn't paying adequate attention. Mendoza acknowledged that he had

seen Salinas enter and back out of the loading bay at least twice that day, and that he heard the back-up alarm when the forklift was in reverse.

The defense also argued that the warehouse had signs posted reminding truck drivers to be aware of forklifts and remain in designated areas.

INJURIES/DAMAGES *allodynia; amputation, toe; arthritis, traumatic; atrophy; complex regional pain syndrome; contusion; crush injury, foot; debridement; decreased range of motion; depression; fracture, ankle; fracture, foot; fracture, malleolus; fracture, metatarsal; fracture, toe; hardware implanted; internal fixation; laceration; limp; metatarsal phalangeal joint; nerve damage, foot; nerve damage/neuropathy; numbness; open reduction; paresthesia; phantom pain; physical therapy; pins/rods/screws; post-traumatic stress disorder; scar and/or disfigurement; scar tissue; skin graft; swelling*

Mendoza was taken by ambulance to the hospital. He sustained a crush injury to the left foot. The injury included a fracture of the medial malleolus of the left ankle, an open fracture of the base of the first metatarsal extending to the first tarsometatarsal joint spaces, a fracture of the proximal phalanx of the first toe with comminution and disruption of the interphalangeal joint, fractures of the distal phalanx of the first toe with comminution, fractures of the distal phalanx of the second and third toes of the left foot, and a minimally displaced medial malleolus fracture of the left ankle. There was also extensive laceration, swelling, bruising and bleeding.

Surgeries included irrigation and debridement, open reduction and internal fixation, skin graft and great-toe amputation. Complications and permanent problems included unstable scar tissue, gait instability, nerve injury, paresthesias, post-traumatic ankle arthritis, post-traumatic stress disorder, depression, chronic pain, impaired activities of daily living, loss of ankle and digit motion, allodynia, atrophy and complex regional pain syndrome.

On Feb. 27, he underwent irrigation and debridement of the left forefoot, internal fixation to the left foot, and open reduction and internal fixation of the medial malleolus with a 46-millimeter bone screw with washer.

On Feb. 29, he underwent debridement of the left foot dorsum and application of a 27-square-centimeter split-thickness skin graft.

On March 1, he was discharged home with prescriptions for pain medication and was advised to use crutches for two weeks.

He followed up with several specialists over the next few weeks. On March 29, he underwent wound debridement and amputation of the left great toe.

He underwent extensive physical therapy and rehabilitation.

On Feb. 9, 2017, he went to an orthopedic surgeon and complained of ongoing problems. They included constant pain in the left ankle radiating to the calf, numbness in the left foot, inability to move his toes, a burning sensation at bedtime and phantom toe pain. He was also using a cane to walk due to an unbalanced gait.

Mendoza introduced a \$503,657 life care plan. It included a neurological consultation, an electromyogram and nerve conduction velocity study, a plastic surgery consultation and Doppler arterial, venous flow studies of the left lower extremity and left foot, and a customized diabetic orthotic shoe.

Mendoza was making about \$12,500 a year at the time of the incident. His vocational expert opined that Mendoza is unable to work and will probably remain so.

Mendoza sought \$562,878.31 for past medical expenses; \$503,657 for future medical expenses; \$24,483 for past lost earnings; and \$600,000 for future lost earnings. He also claimed past and future physical pain and mental anguish, past and future physical impairment and past and future disfigurement. His attorneys asked the jury for \$6,268,748.31 in actual damages and \$5 million in punitive damages.

The defense argued that Mendoza would not have to pay (and that the jury therefore should not award) 100 percent

of the charges. The defense also argued that, as a Mexican citizen, Mendoza could have obtained less expensive care in Mexico.

The defense vocational expert (who also testified as a life-care planning expert) opined that Mendoza would be able to return to work as a truck driver.

Defense counsel asserted that if the jury found the defendants negligent, it should award \$446,000 in past medical expenses, \$50,000 in future medical expenses, and \$550,000 in noneconomic actual damages, for a total of \$1,046,000.

RESULT The jury found negligence and comparative responsibility of 90 percent on Farmers and 10 percent on Salinas and awarded Mendoza \$7,887,361.31. During trial, the parties reached a high-low agreement with confidential parameters.

Afterward, counsel spoke with nine jurors, including the presiding juror. The presiding juror said that the jury believed Farmers had disregarded the safety and well-being of its employees and visitors. Although the jury did not believe that Salinas was under the influence or regularly operated forklifts while under the influence, the jury believed the former employees' testimony was credible evidence of the culture of the warehouse. Regarding the amounts awarded, the presiding juror said, "We wanted to send a message to Farmers Best and all warehouse operators in Hidalgo County that it's cheaper to be safe."

MARIO TREVINO

MENDOZA \$562,878 past medical cost
\$400,000 future medical cost
\$750,000 past physical impairment
\$350,000 future physical impairment
\$24,483 past lost earnings
\$300,000 future lost earnings
\$250,000 past disfigurement

\$250,000 future disfigurement
\$3,750,000 punitive damages
\$750,000 past physical pain and mental anguish
\$500,000 future pain and mental anguish
\$7,887,361

DEMAND \$1,750,000

OFFER \$1,300,000

INSURER(S) Hanover Insurance Co. for both defendants

TRIAL DETAILS Trial Length: 6 days

Trial Deliberations: 1 day

PLAINTIFF

EXPERT(S) Thomas E. Burns, P.E., safety,
Longview, TX

Donna Johnson, M.Ed., vocational
assessment, Corpus Christi, TX

Angel Roman, M.D., life care planning,
San Antonio, TX

Erick Santos, M.D., orthopedic surgery,
Corpus Christi, TX (treater)

John A. Swiger, Ph.D., economics,
San Antonio, TX

DEFENSE

EXPERT(S) Emma Y. Vasquez, CLCP, vocational
rehabilitation, Houston, TX

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

—John Schneider