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WORKPLACE**Labor Law—Slips, Trips & Falls—Fall from Height****Rappeller plummeted 50 feet when line failed****VERDICT** \$8,950,000

CASE Mary Kay Steakin, as g/a/l of Michael Recine, and Mary Kay Steakin, Ind. v. Voicestream Wireless Corp., T-Mobile USA, Inc., T-Mobile Inc., Omnipoint Communications, Inc., Deutsche Telekom AG, Cross State Construction, Inc. and Lawrence Erra / Cross-State Construction Corp v. Electrical Communication Svcs / Lawrence Erra v. Electrical Communication Svcs,
No. 124093/02, 590071/03, 590845/03

COURT New York Supreme, NY**JUDGE** Debra A. James**DATE** 04/08/2008

PLAINTIFF ATTORNEY(S) Michael P. Vessa, Vessa & Wilensky, P.C., Uniondale, NY

DEFENSE ATTORNEY(S) Brian J. Greenfield, Greenfield, Pusateri & Ruhl, Uniondale, NY (Cross State Construction Inc., Lawrence Erra)
Scott P. Taylor, Quirk & Bakalor, New York, NY (Electrical Communication Services Inc.)
Stephen M. Cohen, Fabiani, Cohen & Hall, New York, NY (Voicestream Wireless Corp., T-Mobile USA Inc., T-Mobile Inc., Omnipoint Communications Inc., Deutsche Telekom AG)

FACTS & ALLEGATIONS On Aug. 20, 2002, plaintiff Michael Recine, 21, a cellular telephone equipment installer for Electrical Communication Services Inc., was working on a project to install and upgrade cellular telephone equipment on top of the five-story residential apartment building located at 514 Richmond Terrace, in Richmond County. T-Mobile leased the space in the building, owned by Lawrence Erra, for placement of its equipment and contracted with Cross State Construction Inc. to perform the expansion of the cellular site in 2002. Cross State Construction then subcontracted the work to Electrical Communication Services.

While Recine was working on the installation, his rappel rope, which supported him over the side of the building, became dislodged, causing him to fall more than 50 feet to the sidewalk below and sustain catastrophic injuries.

Mary Kay Steakin, acting individually and as Recine's guardian ad item, sued Voicestream Wireless Corp., T-Mobile USA Inc., T-Mobile Inc., Omnipoint Communications Inc., Deutsche Telekom AG, Cross State Construction Inc. and Erra. She alleged that the defendants violated the labor law.

Cross State Construction and Erra each presented a third-party action against Electrical Communication Services, seeking indemnification.

Recine claimed that the defendants failed to properly maintain the work site and that they failed to properly place the rappelling ropes and safety harness. Recine's counsel contended that the incident stemmed from an elevation-related hazard, as defined by Labor Law § 240(1), and that Recine was not provided the proper, safe equipment that is a requirement of the statute. He also contended that the site was not properly safeguarded and that, as such, it violated Labor Law § 241(6). He further contended that the site violated the general safety provisions of Labor Law § 200.

The defendants contended that Recine improperly tied off the rope and that he failed to tie off his secondary line. They claimed that Recine had been warned by his supervisor prior to the accident to tie off the secondary line, but that he failed to do so. The defendants also contended that Recine was a recalcitrant worker and that it was his own culpable conduct that was the sole proximate cause of the accident.

INJURIES/DAMAGES Recine sustained multiple closed head injuries and a traumatic brain injury, including a diffuse axonal injury with fractures in the anterolateral left frontal calvarium. He was in a partially induced coma for four days. He also sustained multiple facial fractures, a fracture of the C7 vertebra, an open comminuted fracture of the right patella, a right lower deep vein thrombosis, and calcification of the left knee and other joints by virtue of the brain injury. Recine's mother, Mary Kay Steakin, claimed that the Recine's closed head trauma and TBI caused him to suffer spastic right hemiparesis and significantly diminished and decreased motor function, causing a complete inability to ambulate, as well as a significant deficit in expressive language skills and organization of ideas. She alleged that Recine also suffered short- and long-term memory deficits and left him with significantly impaired cognitive, neuropsychological and behavioral functions, as well as significantly flattened affect, diminished recall, intellectual function, and psychological function. She also alleged that Recine suffered impaired visuospatial organization, demonstrated amnesic syndrome, lethargy elevated blood pressure and inner ear syndrome, impaired vision, and multiple contusions, bruises and disfigurements as a result of the accident. Steakin further contended that as a result of his injuries, Recine suffered pneumonia,

meningitis, fungus to the blood, sepsis, left leg thrombosis, bowel and bladder incontinence, and significant emotional trauma, including pre-impact terror.

Recine was taken to St. Vincent's Hospital Medical Center of Staten Island following the accident, where he was admitted until Sept. 23, 2002. While at the hospital, he underwent various surgeries for multiple fractures, as well as multiple procedures for closed head trauma. He was then transferred to Kessler Institute for Rehabilitation in East Orange, N.J., where he remained until Dec. 18, 2002, when he was discharged to his mother's care and attended rehabilitation at the institute as an outpatient. On March 15, 2005, Recine underwent open reduction and internal fixation to the patella and arthroscopic surgery to his right knee at University Hospital in Newark, N.J., and in April 2006, he underwent a spinal fusion at Columbia Presbyterian Hospital, in Manhattan. Following the surgeries, Recine was transferred back to Kessler Institute, where he was an inpatient for approximately four weeks, before being transferred to Bancroft Rehabilitation in Haddonfield, N.J., where he resided in a supervised care facility while he underwent various modalities for rehabilitation on a full-time basis.

Steakin claimed that as a result of her son's injuries, he was completely dependent in all areas of activities of daily living and that although he made functional improvements over time, Recine requires a supported living environment on a permanent basis. She further alleged that Recine is permanently disabled and does not possess requisite cognitive abilities or learning capacity to utilize any skills in employment, making him unable to obtain gainful employment.

The plaintiffs' economics expert determined that Recine's lost earnings totaled \$3,969,000. The plaintiffs' economics and life-care planner experts further determined that the annualized cost of Recine's supervised living facility, as well as the day program and daily therapies, totaled \$224,500. They opined that combined with the other costs of medications, prescriptions, future procedures, and based on Recine's life expectancy, the future value of Recine's total medical and living care would be \$66,381,000.

Recine's counsel alleged that the total medical specials and lost earnings covered by workers' compensation were in the approximate sum of \$1.2 million. The plaintiffs sought recovery for Recine's past and future pain and suffering, future medical expenses and lost earnings, as well as a waiver of the workers' compensation lien. Steakin also presented a derivative claim.

T-Mobile and Cross State Construction acknowledged that Recine's traumatic brain injuries and related injuries precluded him from participating in gainful employment on a permanent basis, but they argued that he possessed a quality of life that would enable him to function independently. They claimed that, given Recine's excellent functional improvements in his physical capabilities, as well as mental abilities, he would be able to enjoy a quality of life despite his inability to obtain gainful employment. All of the defendants contended that Recine would be able to enjoy a quality of life better than that alleged by Recine's counsel.

In addition, all the defendants argued that the cost of a supported living environment, as well as future medical treatment, would be substantially less than the amounts claimed by plaintiff's counsel.

The defendants also disputed Recine's need for spinal surgery, claiming that it was causally related to a fall he had while in the shower at home and that it was not related to the accident in question.

VERDICT INFORMATION Voicestream Wireless, its affiliates and Erra were determined to be indemnified by Cross State Construction.

During jury selection, the remaining parties agreed to a structured settlement with a present-day value of \$8.95 million, plus a waiver of the \$1.2 million workers' compensation lien. Of the total settlement, Steakin received \$250,000 for her loss and Recine received a \$3.7 million up-front payment, with an annuity funded with the remaining \$5 million.

Of the total \$8.95 million settlement, Electrical Communication Services contributed \$8.6 million, including the \$5 million that will be paid through a structured payout, and Cross State Construction contributed \$350,000.

According to plaintiff's counsel, the total value of the settlement, assuming Recine's life expectancy of 73-years-old is met, would be \$20,381,679.

INSURER

Utica National Insurance Group
(Cross State Construction)
American Equity Insurance Co.
(Electrical Communication Services)
Travelers Property Casualty Corp. (T-Mobile,
T-Mobile USA and Voicestream Wireless)

PLAINTIFF EXPERT(S)

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EDITOR'S COMMENTS This report is based on information that was provided by plaintiffs' counsel and counsel of Erra and Cross State Construction. Electrical Communication Services' counsel did not respond to the reporter's phone calls, and the remaining defendants' counsel was not asked to contribute.