

Monday, June 26, 2006

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From the May 09, 2005 Michigan Lawyers Weekly.

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'No Cause' For 'Bizarre' Lumber Yard Accident

Shopper's Injury Was 'Unforeseeable Occurrence'

The plaintiff was shopping in the defendant's lumber yard on an extremely windy day when he claimed to have been struck on the back of his right elbow by a piece of plywood dislodged by the wind.

The plaintiff underwent surgical decompression of the ulnar nerve but claimed it did not relieve his symptoms. Because he was unable to return to work as an assembler in a furniture factory, he was terminated. As such, the plaintiff alleged wage loss in excess of \$600,000.

The defendant contended it was not liable because the accident had been unforeseeable.

Defense counsel said the key to winning was convincing the jury the defendant had not been negligent because the occurrence was bizarre, unexpected, and unforeseeable.

Defense counsel noted that the case evaluation of \$150,000 was rejected by both sides. The defendant has agreed to waive sanctions (MCR 2.403) in exchange for the plaintiff's agreement not to appeal.

Type of action: Negligence; premises liability

Type of injuries: Ulnar neuritis; decompression surgery; resultant loss of job

Name of case: [Winicki v. Menard, Inc.](#)

Court/case no./date: Muskegon County Circuit Court; #03-42398-NO; Nov. 19, 2004

Name of judge: Timothy Hicks

Verdict amount: \$0 (no cause of action)

Attorney for the plaintiff: Withheld

Attorney for the defendant: Robert B. Aardema

Name/city of most helpful experts: Paul Luce, M.D., hand surgeon, Grand Rapids; John Petrovich, vocational rehabilitation, Grand Rapids

Insurance carrier(s): Zurich North American Insurance Co.

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