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NORTH CAROLINA LAWYERS WEEKLY > VERDICTS & SETTLEMENTS > TORT – WOODSON CLAIM – WINDOW-WASHER FELL – OSHA, INDUSTRY VIOLATIONS – FOREMAN'S ORDERS – CONFIDENTIAL SETTLEMENT ON WOODSON ACTION – \$2.28 MILLION COMP SETTLEMENT

Tort – Woodson Claim – Window-washer Fell – OSHA, Industry Violations – Foreman's Orders – Confidential Settlement On Woodson Action – \$2.28 Million Comp Settlement

Brief Statement of Claim: The plaintiff was seriously injured in a fall from a fourth-floor ledge while working as a high-rise window-washer. Both workers' compensation and *Woodson* claims were filed because of alleged OSHA and industry work-practice safety violations.

Principal Injuries (in order of severity): Multiple neck fractures; incomplete C-7 quadriplegia; permanently and totally disabled

Special Damages: Approximately \$560,613 in medical expenses and \$18,015 in rehabilitation expenses were paid by the workers' comp carrier

Tried or settled: *Woodson* claim settled after two days of mediation; comp claim settled subsequently after impasse at mediation

County where tried or settled: Wake

Case Name and number: *Woodson case: Santos Arroyo v. Scottie's Professional Window Cleaning, Inc.* (94 CvS 630); Comp claim: *Santos Arroyo v. Scottie's Professional Window Cleaning, Inc. and Hartford Accident & Indemnity Company* (I.C. File No. 383925)

Date Concluded: *Woodson* claim concluded March 13, 1997, just prior to trial date; comp settlement approved April 30, 1997, implemented September 1997. Confidentiality requirements prevented earlier report, according to the plaintiff's counsel.

Name of Judge: n/a

Amount: *Woodson*: confidential as to amount, but not fact of settlement; comp settlement with clincher: \$2,280,358

Insurance Carrier: Hartford

Expert Witnesses and areas of expertise: John B. Jarema, Raleigh, vocational/rehabilitation and life care plan; Jack Larks, occupational safety, Houston; Dr. William Hardaker, Division of Orthopedics, and Dr. E. Wayne Massey, Division of Neurology, Rehabilitation Center, Duke Medical Center

Attorneys for plaintiffs: Thomas J. White III, Daniel B. Titsworth and John M. McCabe of White Law Offices, P.A., Raleigh

Other Useful Info: Plaintiff, his co-workers and defendant's foreman were all Hispanic and spoke little English. Out of concern that by summary judgment and trial time the witnesses would be dispersed and unavailable, an interpreter was engaged immediately, the action commenced and depositions taken to preserve this testimony.

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Most Important Opinions

1. Criminal Practice – Abusive Boyfriend Convicted of Murder One

: The 4th Circuit affirms defendant's first-degree murder in the fatal shooting of his ex-girlfriend after a day of fishing and a fish fry on the reservation of the Eastern Band of Cherokee Indians; the trial court properly admitted evidence of defendant's prior violent acts and death threats against the victim, and

Critical to meeting the “substantial certainty” requirement of *Woodson* was the testimony of a co-worker that at the lunch break just before plaintiff fell, he and plaintiff were criticized by the foreman for not working fast enough because they were working without safety lines and the co-worker had to hold onto the belt of plaintiff (who had the longer arms) as he reached out to wash the “wing windows” of the protruding, cantilevered structures of the Burroughs-Welcome Administration Building at RTP, and that they were instructed by the foreman to work separately.

This co-employee testified that he told the foreman, “Santos will fall!”, to which the foreman responded “Do as I say!” Santos lost his balance and fell as he reached out to wash the very next window.

After being dismissed on a 12(b)(6) motion by the trial court, the Court of Appeals reversed and remanded; the employer’s Petition for Certiorari was granted by the Supreme Court, but subsequently remanded as improvidently granted after the case was briefed and argued. A contention by defendant under an alter ego theory that the conduct of its foreman was beyond the scope of his authority was rejected by the appellate courts.

With the settlement providing sufficient funds for plaintiff’s immediate and near term cash needs, attorney’s fees and case expenses, the workers’ compensation settlement for the most part was committed to multiple annuities providing payment for an increasing lifetime wage indemnity, funding special medical and life care needs trusts administered by a professional custodian and purchase of adaptive equipment.

Additionally, a unique “accumulation” reversionary trust was negotiated, whereby the carrier funded a separate trust which would accumulate and be used only in the event the medical needs and life care expenses were not met by the primary trust. Hartford had the coverage for both claims.

Upon reaching the second settlement (workers’ compensation), a cooperative effort by plaintiff and defense attorneys and the director of the Hartford Secured Benefits Program resulted in the above-described medical and life care trust administration documents which, according to that representative, will be used as Hartford’s model in the future.

Plaintiff’s counsel have been informed by colleagues, but have not confirmed, that the settlement is one of the largest workers’ compensation recoveries in state history.

defendant “invited error” by refusing to allow a jury instruction on a lesser-included offense.

2. Administrative – Black Lung – Evidence – Disability – Rebuttal

Mingo Logan Coal Co. v. Owens An administrative law judge did not improperly limit a coal mining company’s ability to rebut a presumption of black lung benefits for a claimant who had spent at least 15 years in an underground mine and had become totally disabled from breathing difficulties, and the 4th Circuit affirms the award of benefits.

3. Administrative – ‘Market Rate’ Debate in Black Lung Fee Award

Eastern Associated Coal Corp. v. Director, OWCP In this black lung benefits case, claimant’s lawyers had sufficient market-based evidence to support their hourly rates of \$175 to \$300 and their quarter-hour billing did not lead to billing excessive hours, but the 4th Circuit said the record did not support some fees for legal assistants; the court affirms the award of over \$32,000.

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