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\$3M punitive award is back after appeal

1st District restores jury's finding that conduct was willful

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The 1st District Appellate Court on Thursday reinstated \$3 million in punitive damages revoked by a judge after a forklift-injury trial.

The appeals court's decision restores the full \$15.2 million jury verdict awarded to plaintiff Thomas Neuhengen.

Cook County Circuit Judge Lorna E. Propp rescinded the \$3 million punitive damages award in January 2016 post-trial proceedings after finding Neuhengen failed to prove a defendant's conduct leading to his injury was willful and wanton.

Global Experience Specialists employed Frederick Neirinckx, the forklift operator who ran over Neuhengen's foot at the September 2012 International Manufacturing Technology Show at McCormick Place, causing a degloving injury.

On appeal, the 1st District panel found Neuhengen presented enough evidence to show GES' conduct — assigning an insufficiently trained worker to use the Versa-Lift model forklift — was egregious.

"The evidence presented at trial and the rational inferences to

be drawn from them sufficiently set forth all elements required to establish that GES' failure to have a process to ensure all forklift operators were certified and trained, its deliberate actions in ignoring this failure after two previous violations in the same regard, and its failure to ensure that Neirinckx was trained in the operation of the Versa Lift proximately caused plaintiff's injury," Justice Margaret Stanton McBride wrote.

The panel cited Neirinckx's admission that he had never been trained to operate a Versa-Lift, which was "notorious" for having blind spots in the front and back.

Testimony during the trial established a Versa-Lift driver should have at least one spotter around him; when Neirinckx ran over Neuhengen's foot, no one was spotting for him.

"We cannot say that there was 'a total failure or lack of evidence to prove any necessary element' and we do not find that there was a lack of evidence of proximate cause," McBride wrote.

According to the Daily Law Bulletin's report on the verdict in 2015, the defendants admitted negligence in Neirinckx's forklift operation just before the start of trial. But they denied that their driver wasn't properly trained and contended the negligence did not cause a severe injury.

Unlike compensatory damages, punitive damages are typically excluded from coverage in insurance policies.

GES and Neirinckx raised multiple issues on appeal, asking for



Margaret Stanton McBride



Patrick A. Salvi II

both a new trial and a reduction in the compensatory damages award. The 1st District panel rejected those arguments.

The panel noted Neuhengen, who was 35 at the time of the trial, has "endured extensive pain, surgeries and physical therapy" and lost both his career in the Wisconsin National Guard and the job he had at the time of the incident.

"Given this evidence, we cannot say that the jury's assessment of compensatory damages resulted from passion or prejudice or bears no reasonable relationship to the loss suffered by the plaintiff," McBride wrote.

Neuhengen's attorney, Patrick A. Salvi II of Salvi, Schostok & Pritchard P.C., said his client will experience pain for the rest of his life.

"Every year, when someone moves forward with a serious injury, there is learning and adapting. But at the end of the day, he has daily pain," Salvi said.

Salvi said he felt vindicated by the panel's decision to reinstate the punitive damages.

The defendants were represented by Dominick W. Savaiano and Jack J. Murphy of Nielsen, Zehe & Antas P.C.; Adrian Mendoza and Edward R. Sherman of Lillig & Thorsness Ltd. in Oak Brook; and Melissa A. Murphy-Petros of Wilson Elser Moskowitz Edelman & Dicker LLP. They did not return requests for comment.

Neuhengen was also represented by Patrick A. Salvi, Jeffrey J. Kroll and Aaron D. Boeder of Salvi, Schostok & Pritchard, and Robert G. Black of the Law Offices of Robert G. Black.

Justices Robert E. Gordon and David W. Ellis concurred with the opinion.

The case is *Thomas Neuhengen v. Global Experience Specialists, Inc., et al.*, 2018 IL App (1st) 160322.

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