

# VIRGINIA LAWYERS WEEKLY

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## Mechanic injured while servicing brakes

### \$160,000 Verdict

The plaintiff was a 71-year-old mechanic working as an independent contractor for the defendant contracting company. On Sept. 24, 2007, the truck driver for the defendant returned to the garage with a dump truck that needed the air brakes adjusted.

The driver backed the dump truck up to the garage door and testified that he left the truck in first gear because the truck was on a slight incline. The driver did not inform the plaintiff the truck was left in first gear. The plaintiff put a woodblock in front of the left rear tandem tires. Then the plaintiff proceeded to make the necessary brake adjustments on the driver side of the dump truck before moving to the passenger side to make an adjustment to the rear brakes.

Plaintiff instructed the truck driver to start the engine in order to build up the air pressure in the airbrake line.

The truck driver failed to climb completely into the truck and started the engine while standing on the running board and failed to put the vehicle in neutral before starting the engine. The driver testified he forgot the truck was in first gear and did not use the clutch, which allowed the truck to jump forward.

The plaintiff was underneath the dump truck waiting to make the brake adjustments when the truck was started. When the truck jumped forward, the rear tires rolled onto the plaintiff's chest before the engine stalled and rolled backwards off of the plaintiff.

The plaintiff was transported to VCU Medical Center



**DURRETT**

where he was hospitalized for two days. No surgery was performed. After being discharged, the plaintiff was seen by an orthopedic surgeon for complaints of shoulder pain.

An MRI revealed the plaintiff had a partial torn rotator cuff. The plaintiff received two months of physical therapy, which resolved the plaintiff's complaints of shoulder pain without requiring surgery. The plaintiff's only residual complaints at trial were of slight loss of arm and grip

strength. The plaintiff returned to work for the defendant after approximately six months.

At trial, the defendant argued the plaintiff was guilty of contributory negligence for remaining underneath the truck after he had instructed the defendant to start the engine. The plaintiff testified the defendant did not have any safety rules, policies or regulations regarding how the mechanics were to perform their job.

Plaintiff further testified he had been a mechanic for over 50 years and the manner in which he performed the brake adjustments on the day of the accident was consistent with the manner and practice he always used in adjusting the brakes on a commercial vehicle.

The jury deliberated for less than an hour before returning with a verdict for the plaintiff in the amount of \$160,000.

[10-T-190]

**Type of case:** Personal injury - automobile accident

**Injuries alleged:** Multiple spinous process fracture in the thoracic spine, a coronoid process fracture, rib fracture, torn rotator cuff, lung contusion and facial abrasions

**Name of case:** Wise v. Buchanan & Rice Contractors Inc.

**Court:** Richmond Circuit Court

**Special damages:** \$30,514.26 past medicals; \$18,143 lost wages

**Highest offer:** \$30,000

**Lowest demand:** \$120,000

**Verdict or Settlement:** Verdict

**Amount:** \$160,000

**Date:** Aug. 27, 2010

**Plaintiff's attorney:** David E. Durrett, Richmond