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Two deck collapse cases each settle for nearly \$1 million

BY PETER VIETH

Two recent Virginia deck failure cases each resulted in recovery of nearly all of the property owners' available \$1 million policy limits.

In the most recent report, a Petersburg man collected \$950,000 for severe injuries suffered when he stepped onto a second-story deck that promptly collapsed. The owner's agent allegedly regarded the rental property as "like trash," so she hired anybody available to do repairs.

A Lynchburg man's death produced a \$900,000 settlement in August, reported in the Sept. 7 edition of Virginia Lawyers Weekly. The victim had leaned against a railing that gave way, causing him to fall 12 feet onto concrete.

The two cases, and others reported over the past 16 years, highlight the dangers of poorly constructed and poorly maintained decks and porches.

"It's a prevalent problem," said Jay Tronfeld of Richmond, who, along with Wiley J. Latham IV, represented the victim in the Petersburg case.

When decks fall or railings detach, very serious injuries are common, Tronfeld said.

"They're dangerous. You're falling from a height sufficient to cause significant problems," he said.

The Petersburg victim leased an apartment in a five-unit property. A common hallway allowed access to a small deck on the back.

When the renter ventured onto the deck for the first time, it immediately



DECK COLLAPSE IN PETERSBURG

collapsed. The fall broke three bones in his right ankle, requiring emergency surgery.

Doctors gave the victim a 20 percent disability rating and predicted the need for future surgery. Medical bills were \$154,220.81 with estimated future medical expenses of \$15,000 to \$26,000.

The man lost wages of \$27,765.60 with future lost earning capacity of \$333,000, Tronfeld reported.

The victim also reported effects of a concussion.

The deck was long neglected, Tronfeld said. A handyman who did repairs on the building said he had advised the owner's agent that the deck was unsafe.

Tronfeld said the owner's agent testified at a deposition that she was not choosy about the people who did repairs:

"It was really just guys that was down there, around there," she said. "If somebody told me this guy did this or that that guy did that, I let them do the job, because to me, those places were like trash. So I just had anybody do it."

A \$900,000 offer followed two days after that deposition, and the case settled a day later at \$950,000, Tronfeld reported.

A railing failure two years earlier produced a settlement almost twice that amount for Tronfeld's firm.

David Durrett recovered \$1.85 million for a man who fell 19 feet onto concrete when a third-story wooden railing came loose. That victim was smoking a cigarette when he leaned against the railing.

The plaintiff suffered traumatic brain injury and orthopedic injuries.

In his settlement report [12-T-163], Durrett reported he hired a structural engineer who found a number of building code violations. Tronfeld said the railing was attached with nails, not screws.

Witnesses claimed they had reported problems about the railing to the property management company, Durrett reported.

The case settled during mediation with the late Frank C. Cowan, Durrett said.



TRONFELD