

# Injury to warehouse worker nets \$1 million verdict

The plaintiff was a 59-year-old warehouse worker from Broadnax in Brunswick County. On Oct. 16, 2002, he was working at Pecht Distributors in Lawrenceville when a delivery from the Budweiser brewery in Williamsburg was made. The defendant Commercial Carrier Corporation and its driver, defendant Larry Blizzard, delivered the beer. The driver had great difficulty backing the tractor-trailer into position at the loading dock. After approximately 30 to 35 minutes, he finally had the truck aligned square and flush with the loading dock. During this time period, the plaintiff and another warehouse worker were standing outside the warehouse watching the driver attempt to back the truck into position. When the driver was finally in position, the plaintiff went into the warehouse and prepared to inspect the load of beer for damage. To do this, the plaintiff drove a forklift to the garage-type metal retracting trailer door. He then lifted a heavy diamond plated steel loading ramp and dropped into the placer. The purpose of this ramp was to create a level surface to drive the forklift across. The plaintiff then went into the trailer to inspect the load for damage. As he was removing several retaining load bars, the driver suddenly and without warning moved the truck forward, causing the plaintiff to be thrown from the back of the trailer. By evidence of the witness and the plaintiff, the time elapsing between driver positioning the truck at the warehouse door and the plaintiff being thrown from the truck was approximately four to five minutes.

The plaintiff sustained an avulsion fracture of the left calcaneus (heel) bone wich articulated into the subtalar joint. The plaintiff required multiple hospitalizations, including two open reduction and internal fixation surgeries. He also developed necrosis at the site of the surgical entry wound, initially requiring conservative treatment which was unsuccessful. He was ultimately admitted inpatient to MCV for two weeks of vacuum

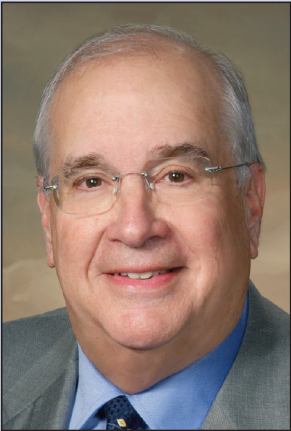
pump assisted therapy to heal the tissue over his Achilles tendon and to avoid further necrosis.

The plaintiff was rated with 20 percent permanent impairment of his left foot with resulting inability to walk on uneven surface without pain or swelling. Prior to the accident, the plaintiff worked an average of 60 hours or more per week. His treating physician restricted him to 30 hours per week due to the fact that after six hours his foot began to swell and became painful.

The orthopedic surgeon that performed the two surgeries testified live at trial that this injury would cause excruciating pain and limit the range of motion and function of plaintiff's ankle by 20 percent. He further testified that the plaintiff may require a future fusion of the subtalar joint approximately 10 years down the road, which would result in further restriction of the range of motion and function of his left foot. Both treating orthopedic surgeons testified the plaintiff had developed post-traumatic arthritis in the subtalar joint as a result of this fracture.

Plaintiff's total special damages were \$42,131.66 in medical bills and \$151,657.44 lost wages (\$84,796.15 past lost wages and \$66,861.29 future). These damages were uncontested. Although defense counsel hired Dr. Howard Stern to review plaintiff's medical records, Dr. Stern agreed that all of plaintiff's medical treatment and bills were reasonable and related to the accident. He further agreed that plaintiff had sustained a permanent injury. The defense did not call Dr. Stern to testify at trial.

During the opening statement and closing argument, plaintiff's counsel utilized a Power Point presentation to describe in detail the location of the accident, the positions of the parties and witnesses, and medical damages (with photographs of the scene, x-rays and medical illustrations). Plaintiff's



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medical illustrations were prepared by Medivisuals.

Plaintiff's theory of negligence was that due to the length of time between the driver positioning the vehicle and Mr. Lawson getting on the trailer, the driver was negligent for failing to ensure no one was in the trailer before moving forward again. The theory was supported by the testimony of the plaintiff and the witness as to the normal practices and procedures at the warehouse. Plaintiff has worked at the warehouse since 1986. Defense counsel stipulated that the trailer would not have moved forward absent some action by the driver.

The defense argued that the driver was not negligent and that plaintiff was contributorily negligent for getting on the truck.

Plaintiff and defense counsel both hired expert witnesses to testify regarding commercial motor vehicle safety. However, the court excluded both experts prior to the trial on grounds that the jury was competent to determine the issues in the case without expert assistance.

Plaintiff sued for \$1,000,000.00 and asked the jury in closing to return a verdict in that amount. The jury deliberated approximately an hour and a half before returning its verdict of \$1,000,000.00.

<b>Type of Action:</b> Trucking accident	<b>Court:</b> Circuit Court of the County of Brunswick	<b>Settlement/Verdict:</b> Verdict	Newby and Jay Tronfeld, Richmond
<b>Injuries Alleged:</b> Left calcaneus fracture	<b>Special Damages:</b> \$42,131.66 medicals; \$151,675.44 lost wages (\$84,796.15 past lost wages and \$66,861.29 future)	<b>Amount:</b> \$1,000,000.00	<b>Plaintiff's Experts:</b> Dr. Jed Vanichkachorn, Dr. Ronald Patterson, Dr. Andrea Pozez, David Stopper (proffered but not called)
<b>Name of Case:</b> Lawson v. Blizzard and Commercial Carrier Corporation	<b>Trial Date:</b> March 1 and 2, 2006	<b>Last demand before trial:</b> \$750,000.00	[06-T-75]
		<b>Top offer:</b> \$3,000.00	
		<b>Plaintiff's Attorneys:</b> John	