

**WORKERS' COMPENSATION****Employee Status — Subrogation — Gross Negligence****Man hit by falling steel pipe rendered quadriplegic, died****SETTLEMENT** **\$1,240,000 + undisclosed amount**

CASE Continental Casualty Company as Subrogee of and Servicing Carrier for Alfredo Reyes, Plaintiffs, and Alfredo Reyes and Hortencia Reyes, individually and a/n/f of Luis Enrique Reyes, Geraldo Reyes and Omar Reyes, minor children, Plaintiff-Intervenors v. Texas United Cement Group, L.L.C., and New Terminal Stevedores, Trendsetter Staffing Inc., Advance Corporation and Tubos del Caribe, S.A., No. 2000-44160

COURT Harris County District Court, 151st, TX

JUDGE Caroline E. Baker

DATE 9/4/2003

PLAINTIFF ATTORNEY(S) **Loren R. Smith** (lead), Kelly & Smith, Houston, TX (Continental Casualty Co.)
Michael D. Miller (co-lead), Glover, Miller, Lewis & Prebeg, Houston, TX (Alfredo Reyes, Estate of Alfredo Reyes, Gerardo Reyes, Hortencia Reyes, Luis Enrique Reyes, Omar Reyes)
Darlene Payne Smith, Crain, Caton & James, Houston, TX (Estate of Alfredo Reyes)

DEFENSE ATTORNEY(S) **Cameron T. Cook**, Roberts, Markel & Folger, Houston, TX (Texas United Cement)
Theresa DeFord, Rathwell & Nizialek, The Woodlands, TX (Arrow Trucking Co. Inc., Armido Marcia)
Russell C. Ducoff, Law Offices of Russell C. Ducoff, Bellaire, TX (Trendsetter Staffing Inc.)
Ewell H. Jackson, IV, Rymer, Moore, Jackson & Echols, Houston, TX (Tubos del Caribe S.A., Advance Corp.)

Lyle R. Rathwell, Rathwell & Nizialek, The Woodlands, TX (Arrow Trucking Co. Inc., Armido Marcia)

Marc J. Wojciechowski, Wojciechowski & Associates, Houston, TX (Texas United Cement, James Church)

FACTS & ALLEGATIONS This case was originally brought by plaintiff Continental Casualty Co. to resolve potential subrogation interests in the case of intervenor Alfredo Reyes, an illegal alien, who was injured by a falling steel pipe and died two years later. Continental Casualty was the workers' compensation carrier for Trendsetter Staffing, the company that hired Reyes as a day laborer on June 27, 2000, and sent him to Texas United Cement Group.

Texas United then sent Reyes and co-worker James Church to assist with unloading steel pipe that had been picked up at its warehouse and transported by Arrow Trucking Inc. to a warehouse leased by Advance Corp. Church operated an overhead crane to unload the pipes. During the process, a load of pipes fell. One landed on Reyes, rendering him quadriplegic.

Reyes contended that he was an employee of Trendsetter Staffing and Texas United and covered by Trendsetter's workers' compensation policy pursuant to its contract with Texas United. Continental Casualty denied Reyes' claim, arguing that Reyes was a borrowed servant of Advance Corp.

Texas United carried a \$1,000,000 commercial general liability policy and had no workers' compensation policy except through its contract with Trendsetter. Advance Corp. had no workers' compensation policy and only carried a \$1,000,000 comprehensive general liability policy.

Continental Casualty sued Trendsetter Staffing; Texas United Cement Group; and Advance Corp., all of Houston; Arrow Trucking Inc., Tulsa, Okla., and Arrow's employee, Armido Marcia, asserting potential subrogation interests. Continental Casualty argued that Reyes was an employee of Advance Corp. at the time of the accident, and that the Staff Leasing Act did not bar its claim against Texas United and Trendsetter Staffing.

Alfredo Reyes, his wife, Hortencia, and his minor children, intervened against all the defendants and added Tubos del Caribe S.A., of Columbia, Advance Corp.'s parent company. In order to secure

future medical coverage, the intervenors contended that Reyes was an employee of Trendsetter and Texas United and was not a borrowed servant of Advance Corp.

After a January 2002 benefit review conference found that Reyes was covered by the workers' compensation policy issued to Trendsetter, Trendsetter and Texas United were nonsuited.

Tubos del Caribe made a special appearance, claiming that it did no business in Texas and that Advance Corp. was a separate corporate entity, not its alter ego. Tubos and Advance settled with the plaintiff and intervenors.

The Reyes family reached a settlement with Continental Casualty about the workers' compensation lien, ensuring that the future medical specials would continue to be paid without a future credit. The settlement permitted Continental Casualty to take a larger-than-normal portion of the settlement proceeds in exchange for the carrier's agreement to waive the future credit on any settlement proceeds paid to the family.

On March 20, 2002, Alfredo Reyes died. The Reyes family amended and re-joined Texas United and added Church as a defendant, contending that the defendants' gross negligence had caused Reyes' death. The liability coverage for Texas United for this claim was also issued by Continental Casualty. The settlement with Advance Corp. and Tubos del Caribe had not been approved by the court or funded prior to Reyes' death, so the Reyes family and Continental Casualty entered into new negotiations that eventually included a release of the gross negligence claims against Texas United and Church in exchange for a different allocation of the settlement proceeds. This settlement was funded in December 2002.

The negligence claims against Arrow Trucking and Marcia arose out of statements, made by Church shortly after the accident, that Marcia had assisted in rigging the load of the steel pipes that fell on Reyes.

Arrow and Marcia denied any negligence. Marcia was steadfast in denying that he had assisted in rigging any loads on the day of the accident. Arrow and Marcia argued that, even if Marcia had assisted in rigging the load that fell, his actions would not have been a proximate cause of Reyes' injuries. Arrow and Marcia contended that Reyes' injuries resulted from Church's negligence in operating the crane; Reyes' negligence in placing himself underneath the load; and Advance Corp.'s negligence in providing defective straps that were used to rig the load.

INJURIES/DAMAGES *death; quadriplegia*

Alfredo Reyes was rendered a ventilator-dependent C2 quadriplegic and was completely reliant on continued medical care. Reyes' incurred past medical specials exceeded \$2 million and his future medical specials were initially calculated to be an additional \$5 million.

RESULT The settlements by the plaintiff and intervenors with Advance, Tubos del Caribe, Texas United and James Church totaled \$1,240,000.

On Sept. 4, 2003, the plaintiff and intervenors reached a confidential settlement with Arrow Trucking and Marcia.

INSURER(S) Continental Casualty Co. for Texas United Cement
Admiral Insurance for Advance Corp. and Tubos del Caribe
Liberty Mutual (primary and excess) for Arrow Trucking and Marcia

PLAINTIFF EXPERT(S) Robert B. Halvorsen, M.D., life care planning, Sarasota, FL
Kenneth Parsons, M.D., physical rehabilitation, Houston, TX
Edward R. Ziegler, P.E., C.S.P., safety, Houston, TX (crane operations)
Kenneth G. McCoin, Ph.D., economics, Houston, TX
Way Johnston, safety, Houston, TX (crane operations)

DEFENSE EXPERT(S) Robert D. Voogt, Ph.D., life care planning, Virginia Beach, VA
Gary S. Nelson, Ph.D., safety, Bryan, TX
Ed Bailey, safety, Houston, TX

EDITOR'S NOTE The ad litem for the minor children was J. L. "Larry" Hinojosa of Houston.

—B. K. Silva

Attorney's Fees \$364,000
Expenses \$139,000
The remaining \$737,000 was paid to the client and medical providers, if any.