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Mason Injured in 12-Foot Fall Settles Case for \$2.5 Mil.

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Of the Legal Staff

In a construction-accident lawsuit where the presence of multiple defendants made it difficult to point the finger of liability, a mason has secured a seven-figure settlement, his attorney said.

In *Millevoi v. Wellcraft Construction*, plaintiff John Millevoi fell 12 feet through a hole that none of three defendants took responsibility for cutting.

Millevoi accepted an offer of \$2.5 million collectively from the three defendants after a one-day mediation session on July 19 with JAMS mediator Diane Welsh, a former magistrate judge.

Millevoi worked for his wife's company, Dawn Millevoi Masonry, and was subcontracted by contractor Wellcraft Construction for a job the construction company was handling for R&R Produce, according to court documents.

Wellcraft was hired to handle the HVAC and masonry work, and contractor Thomas Lindstrom & Co. was hired to erect the steel frame of the new building in Northeast Philadelphia, Wellcraft said in court documents. Al Stevenson, an employee of R&R Produce, was acting as the construction manager for the project.

Lindstrom installed a metal deck roof on Oct. 7, 2004, and on the morning of Oct. 8, 2004, Millevoi went onto the roof to pour concrete. He stepped on a sheet of unmarked plywood while on the roof and fell through a hole to a concrete floor below. The hole had been cut to install the HVAC systems, according to court documents.

Millevoi sustained a fractured hip, head laceration and some internal injuries to his liver, lung and spleen. In the years since the

accident, he has had follow-up surgeries and has been treated for depression. He is now 35 and can no longer work as a bricklayer, according to his attorney, John T. Dooley of Pennsauken, N.J.

R&R Produce, Wellcraft and Lindstrom all denied that they were responsible for cutting the hole, which didn't comply with Occupational Safety and Health Administration standards because it was cut well before the HVAC units were available to install and because the plywood was not marked to warn of the hole beneath it, Dooley said in court documents.

After conferring with his construction expert, Stephen A. Estrin of Florida, Dooley said the pictures of the hole indicated that Lindstrom had been the defendant who cut the hole.

Lindstrom and Wellcraft said in their court documents that all evidence pointed to Stevenson as the person who cut the hole.

Stevenson's employer, R&R Produce, settled a few weeks before the mediation for its policy limits of \$1 million.

He said that once a plaintiff settles with one defendant, it is common for the remaining defendants to point the finger at the one who settled.

It was in the midst of depositions that Dooley was asked whether he would take the case to mediation. The parties and their insurance carriers eventually settled on Welsh as mediator, he said.

By the end of the day on July 19, Dooley said he told Wellcraft and Lindstrom that he would settle with whomever got to \$750,000 first and would take the other defendant to trial. Dooley said it was basically a battle of who had better cell phone reception to get a hold of insurance carriers.

Wellcraft, represented by Robert G.

Kelly Jr. of Marshall Dennehey Coleman & Goggin, came back first with \$750,000. Dooley said Welsh asked him, out of professional courtesy, to also accept the \$750,000 from Lindstrom rather than taking the company to trial. While he said he thought Lindstrom should have paid more, Dooley said his client was happy with the \$2.5 million in total payments from the defendants. Millevoi's original demand was \$4.8 million, according to court documents.

Not having a clear target to blame for cutting the hole could have played out a few different ways for his client, Dooley said.

"I think it would have helped us with the jury because the jury would have been inflamed" that no one took responsibility, he said. "However, I don't know what the judge would have done."

Because it was clear that the creation of the hole, as it was, violated OSHA standards, Dooley said he would have asked the judge to enter a judgment as a matter of law. The jury, he said, might have then had trouble deciding which defendant or defendants were negligent.

Kelly said it was firm policy not to comment on such cases and Lindstrom's attorney, Elyse G. Crawford of Deasey Mahoney & Bender, did not return a call for comment.

Lindstrom's expert witness was forensic civil engineer Serge V. Borichevsky and Wellcraft's construction safety expert was Al Cohen, Dooley said.

The case was originally brought in Philadelphia Common Pleas Court.

Gary S. Williams, attorney for R&R Produce, did not return a call for comment. •