

WORKPLACE SAFETY

Steel Rail Falls From Excavator Load, Striking Worker

OMAR ROMERO, a 21-year-old laborer employed by Reiman Corp., was working on a project that included building a retaining wall between a highway and a streambed that was well below the road grade. Romero helped rig up a one-ton load of steel rails to an excavator lift's boom bucket.

Reiman's foreman, sitting in the excavator cab, directed the work and watched Romero connect the rails to the excavator bucket. Satisfied with the rigging, the foreman began lifting the rails. When they began sliding out of the rigging, the

foreman suddenly accelerated the lift in an attempt to stop the slide. A rail weighing at least 160 pounds fell out and struck Romero in the chest. He was propelled over a guardrail and onto a cement slab more than 10 feet below.

Romero's left shoulder and upper back struck the slab, and he was knocked unconscious. When he regained consciousness, the foreman cancelled a 911 call for an ambulance and directed that Romero be driven in a pickup truck to a nearby walk-in clinic. Once there, he was airlifted to a hospital, where staff diagnosed a fracture to his left, nondominant wrist and surgically set the fracture with hardware.

Romero later began experiencing severe low back pain. About 17 months after the injury, an orthopedic surgeon diagnosed disk protrusions at L3-5, which were attributed to the fall. Because of Romero's young age, the physician recommended postponing lumbar fusion, which will be necessary in the future. Romero's spinal condition and physical restrictions prevented him from returning to heavy labor, and he now works at a lower-paying job as a fast-food cook.

Because Romero's status as an illegal immigrant made him ineligible for workers' compensation, Reiman had no immunity from tort liability. Romero sued Reiman, alleging that it was vicariously liable for the foreman's negligence in failing to clear the area before lifting the load, use a spotter or signalman while operating the excavator, and keep the load under control, among other things.

The defense argued that Romero was at fault for not getting out of the way and for negligently securing the load.

Romero responded that he had rigged the load in the way he had been trained and directed and that he was standing where he had been directed to stand.

The jury allocated fault at 90 percent to Reiman and 10 percent to Romero and awarded \$1 million. The defendant

is responsible for \$900,000. The judgment has been paid.

CITATION: *Romero v. Reiman Corp.*, No. 2:11-cv-00216 (D. Wyo. May 24, 2012).

PLAINTIFF COUNSEL: AAJ member James E. Gigax and Kara Jensen Snow, both of Denver.

PLAINTIFF EXPERTS: Stephen A. Estrin, construction practices, Sarasota, Fla.; Pamela Knight, orthopedic surgery, Denver; and Helen Woodard, vocational rehabilitation, Lakewood, Colo.