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## The New York Jury Verdict Reporter

**XVIII/45-20**     LABOR LAW — MAINTENANCE PERSON FALLS OFF HI-LO — LEG AND FOOT FRACTURES, FRACTURED VERTEBRAE, HERNIATED AND BULGING LUMBAR DISCS — SURVEILLANCE FILM

Errol Wilson v. M.A.S. Boulevard Associates v. Elm Freight Handlers, Inc. 030805/98 16-day trial Verdict 3/14/01 Nassau Supreme

**Judge:** Edward W. McCarty III

**Verdict:** ~~\$1,567,411~~ (6/0), subsequently settled for \$950,000, pursuant to a \$950,000/\$650,000 high/low settlement agreement. Breakdown: \$150,000 for past pain and suffering; \$300,000 for future pain and suffering (34 years); \$70,000 for past lost earnings; \$1,000,000 for future lost earnings (24 years); \$27,411 for past medical expenses (stipulated); \$20,000 for future medical expenses (5 years).

Settlement details: \$475,000 to be paid in a lump sum; \$475,000 structured to pay \$2,705 per month for life (guaranteed for 30 years), with a guaranteed benefit of \$1,448,962 and a lifetime benefit of \$1,676,220. In addition, Workers' Compensation liens of approximately \$66,000 were waived. Notice of Appeal by Deft. against Third-party Deft. on the question of contractual indemnity. Jury: 3 male, 3 female during trial, but 4 male, 2 female during deliberations (one alternate was used on deliberations).

**Pltf. Atty:** Gerard N. Misk and Hal R. Ginsburg of Kapson, Ginsburg & Misk, Queens Village

**Deft. Atty:** Henri A. Demers of Ahmuty, Demers & McManus, Albertson, for Elm Freight  
Thomas G. Lyons, Jr. of Croutier & Ryan, Garden City, for M.A.S.

**Facts:** Pltf. was a 34-year-old maintenance person at the time of the incident on 5/30/98, which occurred at Elm Freight's premises in Deer Park. Pltf. was painting while standing on a hi-lo, when the hi-lo tipped over, throwing him to the ground. On 4/24/00, Pltf. was granted summary judgment on liability under Labor Law §240(1), and this trial proceeded on damages.

Injuries: fractured left talus; fractured right calcaneus requiring open reduction and internal fixation with an 8-inch Steinmann pin; fractures at T-12 and L-1; herniated lumbar disc at L5-S1; bulging lumbar disc at L4-5. Pltf. claimed that he will require a subtalar fusion of the right foot. He has a permanent limp. Deft. produced a surveillance film of Pltf. walking, and claimed that it appeared that Pltf. was walking without apparent difficulty. Demonstrative evidence: enlargements of X-rays and photographs of Pltf. in the hospital; enlargements of MRI and CAT scan; models of the spine and foot; surveillance film. Offer: \$750,000 structured settlement, \$900,000/\$500,000 high/low offered during trial. Jury deliberation: 2 hours. Carrier: Hartford.

**Pltf. Experts:** Dr. Mitchell Goldstein, orth. surg., Valley Stream; Dr. David Zelefsky, physiatrist, Valley Stream; Brian Sullivan, Ph.D., economist, Philadelphia, Pennsylvania; Edmund Provder, vocational rehabilitation, Hackensack, New Jersey.

**Deft. Experts:** Dr. Leon Sultan, orth. surg., Franklin Square; James Pascuiti, vocational rehabilitation, Springfield, New Jersey. H