

LEONEL A. CANALES AND CARMEN CANALES V. BEHNAM RAFALIAN, PARAMOUNT SCAFFOLD, INC., ROYA AKHAVAN, AZIZ ESHAGIAN, IMPERIAL LIGHTING & WHOLESALE ELECTRIC AND ALM NEW CONSTRUCTION

No. BC 275634

DATE OF VERDICT/SETTLEMENT: November 7, 2003

TOPIC: CONSTRUCTION - SCAFFOLDS AND LADDERS - PREMISES LIABILITY - DANGEROUS CONDITION - CONSTRUCTION - ACCIDENTS MANUAL LABORER FELL 25-FEET FROM A ROLLING SCAFFOLD

**SUMMARY:**

AWARD: \$888,000

RESULT: Settlement

The case was settled at trial for \$888,000 of which the insurance carrier for Paramount Scaffold Inc. paid \$7,600 to Carmen Canales and \$30,400 to Leonel Canales, and the insurance carriers for Imperial Lighting and Wholesale Electric each paid \$85,000 to Carmen Canales and \$340,000 to Leonel Canales.

**EXPERT WITNESSES:**

Plaintiff: [Stephen C. Wexler, Ph.D.](#), P.E.; Safety; Marina del Rey, CA

Defendant: [Arthur Kreitenberg](#), M.D.; Orthopedic Surgery; Los Angeles, CA [Bill Starr](#); OSHA Regulations; Palmdale, CA Jack Neal; Platforms; San Dimas, CA

**ATTORNEYS:**

Plaintiff: [Arash Homampour](#); Homampour and Associates; Beverly Hills, CA

Defendant: [Meegan Moloney](#); Lewis, Brisbois, Bisgaard and Smith; Los Angeles, CA [George Baltaxe](#); Law Offices of George Baltaxe; Encino, CA Edward J. Riffle; Bullard Brown and Beal; Fullerton, CA

JUDGE: Daniel P. Ben-Zvi

RANGE AMOUNT: \$500,000-999,999

STATE: California

COUNTY: Los Angeles County

**INJURIES:** Canales claimed to suffer a permanent disabling fracture of his left wrist and post-traumatic stress disorder, among other significant injuries. Canales claimed that the wrist injury resulted in the loss of 75% of the strength in his dominant left hand, therefore making it impossible for him to return to work as a framer. All of his medical expenses were paid by workers' compensation.

**SUMMARY:**

Insurance Carrier: Fireman's Fund for Imperial Lighting & Wholesale Electric and Behnam Rafalian

**FACTS:**

On June 29, 2001, plaintiff Leonel A. Canales, a 46-year-old manual laborer and framer working for ALM New Construction, had been hired to help construct a two-story commercial warehouse and office building on the site of a partially-constructed

one-story building, which had been severely damaged due to a fire. The property was owned by Behnam Rafalian and his wife, Roya Akhavan.

While working on a rolling scaffold, one of the wheels of the scaffolding went through a hole in the plywood floor, causing the scaffolding to tip over and Canales to fall 25 feet.

The scaffold had been leased from Paramount Scaffold Inc. and provided to Canales by Rafalian, the owner and builder of the project, and Aziz Eshagian, an unlicensed general contractor. At the time of the accident, Rafalian worked for Imperial Lighting and Wholesale Electric.

Canales and his wife, Carmen, a 40-year-old laundry worker, sued Rafalian, Akhavan, Paramount Scaffold Inc., Eshagian, and Imperial Lighting and Wholesale Electric, alleging premises liability and negligence.

Canales contended that Rafalian and Eshagian had leased the scaffolding from Paramount Scaffold Inc., improperly erected the scaffolding and made it available for use by their own employees, as well as the employees of the various subcontractors, including ALM New Construction.

Canales argued that the defendants knew that there was damage to the floor of the property because prior to the accident, they had directed employees to fix certain areas of the floor. He added that the defendants, through Eshagian, later advised ALM employees that the defective flooring had been repaired.

Canales claimed that the defendants, through Eshagian, then directed ALM New Construction employees to mark overhead beams in order to expedite the welding contractor's work. He claimed that the defendants permitted and knew that ALM's employees would use the scaffolding to perform this task.

Canales argued that the defendants knew that their premises were in a dangerous condition starting in June 2001, as a result of the previous fire. He noted that the plywood flooring on the second floor had splits, holes and cracks, posing a hazard to any items moved on the flooring, and that this dangerous condition was within the property owner's control. He argued that Rafalian exercised this control in a manner that affirmatively contributed to his injuries.

Canales specifically contended that Imperial Lighting & Wholesale Electric knew, or should have known the following: 1) they failed to ensure that the plywood flooring on the second floor was in good condition and not loaded in excess of its designed capacity before directing him to perform the tasks requested; 2) the scaffold obtained, installed and provided by the defendants was improper for its intended uses, the condition of the premises and for the tasks requested of him; 3) they failed to properly secure and/or tie the scaffold; 4) they failed to provide railings for the scaffold; 5) they failed to provide proper bracing for the scaffold; 6) they allowed their employees to erect the scaffold under the supervision of Eshagian, when none were qualified to do so; 7) the platform planks used on the scaffold did not have an effective method of preventing them from slipping off; 8) the clearance between the platform and inside uprights was more than five inches; 9) they used improper lumber for the scaffold; and 10) they failed to provide a safe and unobstructed means of access for the scaffold platforms.

Furthermore, Canales claimed that Rafalian and Imperial Lighting were liable for the wrongful acts of Aziz Eshagian under respondeat superior/actual agency/ostensible agency theories, since Eshagian was an unlicensed contractor who performed activities that required a license. Lastly, Canales argued that Paramount Scaffold Inc. was liable for Canales' damages under both strict products liability and negligence theories as the scaffold was assembled improperly by Imperial Lighting and was inappropriate for its intended uses.

The defendants contended that Canales was solely responsible for his injuries as he knew he should not have stayed on the scaffolding while it was being moved. They also argued that his employer had an obligation to provide him with some kind of fall protection.

Carmen Canales brought a claim for loss of consortium.