

TIRE EXPLOSION

\$825,000 Settlement for Client who Suffered Traumatic Brain Injury

Attorney Kenneth Kolpan and firm member, Joseph Burke, recently obtained a significant global settlement for a client who was struck in the face when a tire exploded.

Plaintiff, an auto mechanic, was watching his co worker inflate a tire and tube on the defendant's machine, when the co-worker walked away from the machine to take a phone call, indicating the tube was overinflated. Plaintiff/employee went to defendant's machine, but before he could deflate the tire and tube, the tube exploded, sending the tire and rim skyward ten feet, smashing a light fixture, fracturing plaintiff's facial bones, catapulting him backward where he struck the back of his head against a metal work bench.

Plaintiff employee was rushed to the hospital where the surgeons inserted metal plates where facial bones were fractured, and was diagnosed with a traumatic brain injury. Plaintiff/employee has remained disabled from work since the incident to the present

Suit was brought against the Defendant manufacturer for not requiring but, instead, making optional a device designed to prevent an exploding tire and rim from being ejected off its machine. Suit was also brought against the co-Defendant independent franchisee for failing to offer the purchaser, Plaintiff's employer, the optional protective device.

Defendant manufacturer countered that its customers did not want the protective device because it slowed down the tire inflation process; the co-employee and Plaintiff improperly used defendant's machine, failing to adhere to warnings not to use an external hose to inflate a tire or tube (because an external hose, unlike defendant's machine, had no regulator to prevent over inflation); and at the time of the explosion, defendant's machine was been used as a table to rest the tire and tube, not to inflate the tire and tube.

Defendant franchisee argued, that when he sold defendant's machine to Plaintiff's employer, the franchisee did not know about the optional protective device. He furthered claimed he rarely sold this type of equipment, and relied upon the purchaser to read the defendant's promotional brochures and owner's manual, where the optional device is described. The employer-purchaser admitted he did not read the brochure or manual before purchasing or using Defendant's machine.

Plaintiff leveraged a potential Section 28 claim in his workers' compensation case to persuade the workers' comp insurer to waive its lien, and also pay him in excess of the balance of weekly workers' comp benefits due him. Ordinarily, the filing of a double compensation case should be deferred until a third-party liability case is resolved. However, the circumstances of this case were such that if the third-party defendant successfully argued that the safety device was made available to the employer, and it refused to purchase it, such egregious conduct might rise to the level of willful and wanton misconduct. Such an argument did not diminish the Plaintiff's position that no product should be sold where the sale made a protective device an option rather than standard equipment. All the parties arrived at a global settlement in the weeks following an

all-day mediation. The \$825,000 included the third-party settlement, the worker's compensation lump sum settlement and waiver of worker's compensation insurer's lien.