

SOUTH CAROLINA Lawyers Weekly

\$2.1M verdict for worker with crushed foot

📌 By: Phillip Bantz 📅 October 1, 2014

A Marlboro County jury has awarded \$2.1 million to a man whose foot was crushed in an accident at the local Flakeboard plant.

"This was a case about the defense lawyers misvaluing the claim," said David Yarborough Jr. of Yarborough Applegate in Charleston, who represented the plaintiff, James Brake.

"They did not properly evaluate this case from start to finish," he added.

Yarborough was referring to attorneys for McCarter Electrical, a contractor that was doing work at the plant. Its employee and co-defendant, Matthew Morris, was behind the wheel of the truck that ran over Brake's foot.

Brake had just stepped out of the cab of his truck, which was parked on a weigh scale at the plant entrance, when Morris drove by and crushed his foot. Brake subsequently underwent four surgeries and developed a chronic pain syndrome that prevents him from doing many physical activities, according to Yarborough, who tried the case with law partner Douglas Jennings.

Brake claimed more than \$800,000 in medical costs and about \$950,000 in lost wages for a damages total of about \$1.75 million. McCarter had \$6 million in available insurance coverage, according to Yarborough.

McCarter's attorneys, Michael Gibson and Clay Campbell of Dean, Gibson, Hofer & Nance in Charlotte, argued that the contractor was not vicariously liable for Morris because he was not working at the time of the accident. He had left the jobsite earlier in the day, but was returning to the plant to retrieve his tools when he hit Brake.

McCarter and Morris also contended that Brake was to blame because he failed to look both ways before exiting his truck. However, Morris later admitted partial fault and offered to settle for his \$50,000 liability policy.

Brake and Yarborough rejected the offer – if they released Morris they would also have to release McCarter. McCarter had turned down Brake's settlement offer of \$750,000, countering with \$125,000. McCarter later offered \$300,000 the week before trial.

"I wish Matthew's case would have settled before going to a jury, but that wasn't possible," said Morris' attorney, Robert King of King, Love & Smith in Florence.

Campbell, who defended McCarter, declined to discuss the verdict. "There was a difference in valuation on the case," he said. "That's it."

Yarborough said of McCarter and its attorneys, "They just denied, denied, denied. They were so stuck on this argument that their guy was not in the course and scope of employment. They really could not see around it."

Following a weeklong trial in late August, the jury returned with a \$3 million verdict against McCarter and Morris, but found that Brake was 30 percent at fault for the accident, which reduced the award to \$2.1 million.

Brake had entered into confidential settlements with several other premises defendants before trial. The deals offset the verdict against McCarter and Morris by \$375,000, further reducing the total to \$1.75 million, plus \$25,000 in

prejudgment interest, which covers Brake's medical costs and lost wages.

"In the end," King said, "I think it was a pretty fair verdict."

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PERSONAL INJURY – WORKPLACE ACCIDENT

Case name: *James Brake v. Matthew Morris and McCarter Electrical Company*

Court: Marlboro County Circuit Court

Judge: Clifton Newman

Date of verdict: Aug. 29

Amount: \$3 million, reduced to \$2.1 million for comparative fault

Attorneys for plaintiff: David Yarborough Jr. and Douglas Jennings of Yarborough Applegate, Charleston

Attorneys for defendants: Robert King of King, Love & Smith, Florence, for Matthew Morris; Clay Campbell and Michael Gibson of Dean, Gibson, Hofer & Nance, Charlotte, for McCarter Electrical.

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