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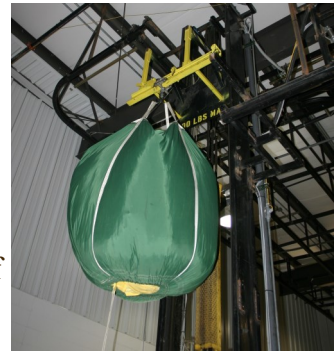
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FROM THE PLAINTIFF'S SIDE

Overcoming Technical Defense to Achieve Justice

No one should have to work in a dangerous factory. But that is what happened to James, who was employed in an industrial laundry. He was permanently paralyzed when his neck was broken. A 200 lb bag of laundry hit him on the head after falling 15 feet from an overhead lifting device.

The lift was manufactured by a Charlotte company called Gardner. It was designed to raise bags of laundry vertically toward the ceiling of the plant where a stationary monorail system of track would allow the laundry to be directed to a particular washer. The laundry bag was suspended from a "trolley" with wheels. The trolley was mounted on a lifting rail which would move upward. Once the lifting rail with its suspended load mated with the overhead monorail, the trolley was supposed to roll by gravity off the lifting rail onto the stationary monorail. As designed, the lifting rail could not lower to accept a new load until the laundry bag and trolley were safely on the overhead monorail system and on its way to the washer. If the lifting rail was allowed to lower before an effective transfer of the trolley and laundry bag, the trolley and its 200 lb load would simply roll off the 3 foot long lifting rail and fall to the ground below. Gardner included a \$50 safety device to prevent premature lowering of the lifting rail.



Above: 200 lb suspended bag of laundry



Orange lifting rail mates with black overhead monorail

... see *Laundry Lift* p 2

A Successful Tale of Medicaid Lien Reduction

We recently represented a family who learned shortly after the birth of their 2nd child that their son may have sustained injuries during birth through the negligence of the physicians and healthcare providers. The child is now 5 years old, but has received a very large amount of medical care throughout his life. South Carolina Department of Health & Human Services qualified the young boy for Medicaid benefits and so his medical expenses were covered. We successfully resolved the medical malpractice case for the family and then turned our attention to the process of negotiating a lien reduction with Medicaid.

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...cont'd The Laundry Lift

James was a model employee, with excellent reviews, who worked for UniTech in Barnwell. UniTech was a wholly owned subsidiary of UniFirst Corporation. Our investigation revealed that UniFirst installed the Gardner lift in the Barnwell plant. UniFirst failed to install the safety device that was designed to prevent premature lowering of the lifting rail. UniFirst chose to locate the lift controls in a location such that an operator would be directly under the overhead load. James was standing at the bottom of the lift and pushed the up button to raise a bag of laundry. The lifting rail rose up and attempted to mate with the stationary overhead monorail, much like an elevator is designed to stop flush with the floor when the elevator stops. Unfortunately, the lifting rail stopped just short of the monorail, forming a lip. The lip caused the trolley and its load to stop. The trolley never got onto the monorail. No one on the ground noticed the problem. James pressed the button to bring the lifting rail down. Because UniFirst located the down button at the base of the lift, James was right under the load. Because UniFirst failed to install the safety device, the lifting rail was able to descend without an effective transfer. The lifting rail descended. The trolley and the 200 lb bag of laundry simply rolled off the lifting rail, fell 15 feet, and struck James. His neck was instantly broken. He was completely paralyzed. James lived another three years and then died from complications arising from his injuries.

UniFirst violated basic safety and engineering standards. The injury was utterly preventable. UniFirst never made a serious attempt to defend its installation of the lift; they did not attempt to defend themselves for not installing the safety device and they did not attempt to show that James' did anything wrong. UniFirst defended our lawsuit claiming the "statutory employer" defense. UniFirst argued that James' only remedy was workers' compensation, since UniFirst was really the employer in the matter, being the parent of the wholly owned subsidiary, UniTech. They were claiming that UniFirst and UniTech were really one and the same. UniFirst believed that since a worker cannot sue his employer, James' lawsuit should be dismissed.

The Technical Defense

The matter came up before the Honorable Judge Jack Early in Barnwell, who on UniFirst's motion to dismiss or motion for summary judgment. The judge denied the motion and refuse to dismiss the case. We were able to demonstrate the "separateness" of the two companies by virtue of separate business activities, separate boards of directors, separate tax returns, and separate corporate offices. Perhaps, most telling was that UniTech paid the workers compensation loss and not UniFirst. The case then proceeded forward on its merits. The matter was ultimately settled in our favor.

You can read the entire order at www.kassellaw.com under the Recent Cases section.

"There is evidence that UniFirst consciously and deliberately embarked on a system to shield itself from the liability risks associates with being in the nuclear laundry business."
Judge Early in his Order Denying Motion to Dismiss

CASE CLOSED

Highlights from recently resolved cases

Premises Liability Case Open Storm Drain

Our client was running through a local park on his normal route one evening when he fell into a large hole. He had stepped into a 20 ft deep storm drain hole where the 2' x 3' cover was missing. Despite having a Grade 1 open tibial fracture he managed to get himself out of the hole, crawled 400 feet to his car and went to the hospital. The accident happened very close to the property division line between a school and a

public city park so we filed suit against the school district and the City. While the two defendants were busy placing blame on the other as to who was responsible for the open storm drain hole, we were able to prove that both the



school district and the City had been made aware of the open hole 5 days prior to our client's injury. On top of that, it took them another 10 days to correct the hazard!

We resolved this case successfully for our client.

Case Closed-
It took the
defendant 15 days
to fix the hazard
after they were
made aware of it.

...cont'd Medicaid Lien Reduction

We filed suit in federal court alleging that Medicaid's position seeking reimbursement of its lien violated federal Medicaid statutes and the principles announced in *Arkansas Dept of Health and Human Services v. Ahlborn*, 547 U.S. 268, 126 S.Ct. 1752 (2006). *Ahlborn* states that Medicaid can only go after that portion of a plaintiff's settlement representing past medical expenses.

We filed a Motion for Summary Judgment asking the Court to reduce the Medicaid lien in compliance with *Ahlborn*. South Carolina Medicaid sent us a letter saying it has now revamped its policies to be in compliance with *Ahlborn*. We were able to resolve the case before an order was issued and settled the lien for less than 3% of the total lien asserted.

Call us or visit our website www.kassellaw.com for a copy of the letter from SC Medicaid.



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News & Events

Congratulations to our paralegal, Susanne Ellington who obtained her Certified Paralegal designation from the National Association of Legal Assistants. Susanne took it upon herself to study independently for the national exam. The two-day test sounds a lot like the bar exam to us and we are very proud of her accomplishment.

Our areas of practice include:

*Medical Malpractice
Nursing Home Injury & Neglect
Products Liability
Motor Vehicle/Trucking Accidents
Premises Liability
Insurance Bad Faith
Wrongful Death
Residential Construction Defects*

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