

VERDICT SEARCH'S TOP NY VERDICTS of 2008

CONSTRUCTION

Suspended worker fell 15 feet when 800-pound wall unit fell

Verdict: \$44,706,444.

Case Type: Labor Law, Construction - Accidents, Slips, Trips & Falls - Fall from Height
Case Name: Dmitry Okraynets and Tatania Okraynets v. The City of New York, Metropolitan Transportation Authority, MTA New York City Transit, MTA Capital Construction Company, and New York City Transit Authority, No. 06 CV 7910

Venue: U.S. District Court, Southern District, NY

Judge: Colleen McMahon

Plaintiffs' Attorneys: Jaroslawicz & Jaros by trial counsel Bradley A. Sacks & Jeffrey L. Koenig

Experts: Eric Goldsmith M.D., Psychiatry; Robert Schuster Ph.D., Life Care Planning; Guy Fried, M.D., Physical Rehabilitation; Donald Wetsch, Economic Analysis.

On Aug. 24, 2006, plaintiff Dmitry Okraynets, 31, a carpenter, worked at South Ferry Terminal, in lower Manhattan. One of the terminal's concrete walls was covered by an 800-pound unit of forms, and Okraynets was wearing a safety harness that was attached to the unit. The forms detached from the wall, and Okraynets fell to the ground. The 800-pound unit fell onto him, and he sustained spinal injuries.

Okraynets sued the terminal's owner, the City of New York; the terminal's operator, the Metropolitan Transportation Authority; and several of that entity's subsidiaries, MTA Capital Construction Co., MTA New York City Transit and the New York City Transit Authority. Okraynets alleged that the defendants violated the labor law.

The City cross-claimed against the remaining defendants. It sought indemnification. However, Okraynets discontinued his claim against the City. The matter proceeded against the remaining defendants.

Okraynets' counsel claimed that the defendants negligently failed to ensure that Okraynets' harness was attached to a safe, secure structure. Alternatively, they contended that the defendants should have ensured that the forms were adequately attached to the wall. They claimed that the incident stemmed from an elevation-related hazard, as defined by Labor Law

§ 240(1), and that Okraynets was not provided the proper, safe equipment that is a requirement of the statute. They also claimed that the site was not properly safeguarded and that, as such, it violated Labor Law § 241(6). They further claimed that the site violated the general safety provisions of Labor Law § 200.

On the day before jury selection defense counsel conceded that Labor Law § 240(1) was violated. Thus, the matter proceeded to a trial that addressed damages.

Injury:

Okraynets fell about 15 feet, and the 800-pound unit fell onto him. He sustained spinal fractures that included a burst fracture of his spine's T12-L1 level. He claimed that the latter fracture severed his spine and caused permanent unstable paraplegia.

Okraynets' physical-rehabilitation expert contended that Okraynets recently developed residual syrinx—a buildup of the spinal cord's fluid. The expert claimed that the buildup is expanding the cervical portion of Okraynets' spine, and he opined that the condition will gradually erode the upper extremities' sensory ability. He contended that the condition could cause tetraplegia, but that it may be stalled by surgical drainage of the fluid.

Okraynets claimed that he suffers residual injuries that include extreme pain, incontinence of his bladder and bowel, impairment of his sleep, mental anguish, and emotional distress. He contended that he is confined to a wheelchair, that he must perform daily self-catheterizations, that he cannot resume any type of work, and that he will always require eight to 10 hours of daily, in-home assistance.

Okraynets sought recovery of his past and future medical expenses, a total of about \$14 million for his past and future care-related expenses, a total of about \$9 million for his past and future lost earnings and benefits, and damages for his past and future pain and suffering. His wife sought recovery of damages for her past and future loss of services.

Defense counsel contended that Mr. Okraynets suffers stable paraplegia and that his condition necessitates about two hours of daily, in-home assistance. Thus, they claimed that his past and future

TOP 25 NEW YORK VERDICTS IN 2008

	CASE**	DATE	COURT	TYPE OF ACTION	PLAINTIFF'S COUNSEL	AMOUNT
5	Okraynets v. City of New York	March 12	U.S. District Court, Southern District	Construction: Suspended worker fell 15 feet when 800-pound wall unit fell	Bradley A. Sacks, New York & Jeffrey L. Koenig of Jaroslawicz & Jaros, New York	\$44,706,444

*This chart is based on cases reported by VerdictSearch New York, an affiliate of the New York Law Journal. The verdicts are reported as issued after trial. The summaries and listings do not include whether post-trial motions or appeals have been decided or are pending.
**The list includes awards involving injuries only to one plaintiff in each case and claims that derive from those injuries.

care-related expenses should total about \$4 million. They also claimed that he does not suffer psychological sequelae.

The defense's physical-rehabilitation expert opined that diagnostic tests indicated that Okraynets' syrinx is not progressive or symptomatic. She claimed that Okraynets' treating neurologist shared that diagnosis.

Verdict Information:

The jury found that the plaintiffs' damages totaled \$44,706,444.

Dmitry Okraynets

\$498,376 Personal Injury: Past Medical Cost
\$129,150 Personal Injury: Past Lost Earnings Capability
\$5,000,000 Personal Injury: Past Pain And Suffering
\$33,049 Personal Injury: past loss of fringe benefits
\$15,000,000 Personal Injury: future pain and suffering (39 years)
\$5,261,135 Personal Injury: future lost earnings (30 years)
\$4,214,734 Personal Injury: future loss of fringe benefits (30 years)
\$2,100,000 Personal Injury: future medical costs (39 years)
\$1,000,000 Personal Injury: future cost of medication (39 years)
\$4,250,000 Personal Injury: future health-care expenses (39 years)
\$780,000 Commercial: home modifications and transportation (39 years)

\$1,500,000 Commercial: future cost of adaptive equipment, personal care & supplies (39 years)

Tatania Okraynets

\$1,000,000 Personal Injury: Past Loss Of Services
\$4,000,000 Personal Injury: future loss of services (39 years)

Post Trial:

Defense counsel contended that the pain-and-suffering awards were excessive, that the future damages erroneously include inflation-based enhancements, that the lost-earnings awards must be subject to the application of collateral-source offsets, and that the future-medical-expenses and future-care-related-expenses awards must be subject to the application of insurance-related offsets. They have indicated that they will move for remittitur and/or a new trial.

Editor's Comments:

This report includes information that was gleaned from court documents and interviews of plaintiffs' and defense counsel.

CONSTRUCTION SITE INJURIES / LABOR LAW

	CASE	DATE	COURT	TYPE OF ACTION	PLAINTIFF'S COUNSEL	VERDICT
1	Okraynets v. City of New York	March 12	U.S. District Court, Southern District	Construction Site Injury: Suspended worker fell 15 feet when 800-pound wall unit fell	Bradley A. Sacks, New York, and Jeffrey L. Koenig of Jaroslawicz & Jaros, New York	\$44,706,444