

1995

Louis Ortiz v. Geneva Rock Products : Brief of Appellant

Utah Court of Appeals

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Matt Biljanic, Attorney for Appellant.

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COURT OF APPEALS
BRIEF

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DOCKET NO. 950391-CA

COURT OF APPEALS
IN THE UTAH ~~SUPREME COURT~~

LOUIS ORTIZ,
Plaintiff/Appellant,
vs.
GENEVA ROCK PRODUCTS,
Defendant/Appellee.

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Appeal No. 950391-CA
Priority No. 15

BRIEF OF APPELLANT

APPEAL FROM AN ORDER IN THE THIRD JUDICIAL
DISTRICT COURT, IN AND FOR SALT LAKE COUNTY,
STATE OF UTAH, THE HONORABLE TYRONE E. MEDLEY PRESIDING

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Salt Lake City, Utah 84110

FILED

NOV 22 1996

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LOUIS ORTIZ,
Plaintiff/Appellant,

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STATEMENT OF JURISDICTION

The Supreme Court has jurisdiction to hear this appeal pursuant to Utah Code Ann. §78-2-2(3)(j) (Supp. 1995).

ISSUES PRESENTED FOR REVIEW

Issue 1: Was the jury's verdict of no cause of action so against the substantial weight of evidence that such verdict should not stand?

Standard of Review: "If there is any substantial competent evidence upon which a jury acting fairly and reasonably could make the findings it should stand. But if the findings is so plainly unreasonable as to convince the court that no jury acting fairly and reasonably could make the findings, it cannot be said to be supported by substantial evidence." Dairyland Insurance Co. v. Holder, 641 P.2d 136, 138 (Utah 1982) (citing Seybold v. Union Pacific Railroad Co., 239 P.2d 174 (Utah 1951)).

Issue 2: Did the district court err in denying the Plaintiff's Motion in Limine to exclude evidence of all previous injuries suffered by Plaintiff unless such injuries related directly to the injury or disability which was at issue in this case?

Standard of Review: "In reviewing a trial court's ruling on admissibility of evidence under Rule 403, [the Supreme

Court] will not overturn the court's determination unless it was an 'abuse of discretion.'" State v. Hamilton, 827 P.2d 232, 239 (Utah 1992). Accordingly, the Supreme Court reviews "the trial court's 403 ruling admitting or denying admission to evidence by deciding whether, as a matter of law, the trial court's decision that 'the unfairly prejudicial potential of the evidence outweighs [or does not outweigh] its probativeness' was beyond the limits of reasonability." Id. (citing State v. Ramirez, 817 P.2d 774, 781-82 (Utah 1991). "[L]ike any other evidentiary ruling, an erroneous decision to admit or exclude evidence based on Rule 403 cannot result in reversible error unless the error is harmful. Id. (citing State v. Verde, 770 P.2d 116, 120 (Utah 1989)).

DETERMINATIVE LAW

1. Determinative Law:

a. Constitutional Provisions: There are no constitutional provisions upon which the Appellant relies.

b. Statutes: There are no determinative statutes upon which the Appellant relies.

c. Case Law:

STATEMENT OF THE CASE

A. Nature of the Case

This is an appeal from an Amended Judgment entered on April 28, 1995, wherein the Court dismisses Plaintiff's complaint after the jury returned a verdict of no cause of action against the Plaintiff.

B. Course of Proceeding and Disposition

On April 21, 1992, Plaintiff, Louis Ortiz, filed a personal injury complaint against Geneva Rock Products for injuries sustained in an incident on June 4, 1991. (R. 1-4). Prior to trial, Plaintiff filed a Motion in Limine to restrict, inter alia, Defendant's introduction of any evidence relating to prior injuries suffered by Plaintiff which were not directly related to the injuries and/or disabilities complained of in the instant case. (R. 65). That motion was denied. (R.).

A jury trial was conducted from September 21-23, 1995, in the case at bar. At the conclusion of the case, Plaintiff moved for a directed verdict on the issue of liability. (R. 667). The trial court denied that motion. (R. 668). The jury returned a special verdict, finding no negligence on the part of the Defendant. (R. 213-15). Plaintiff made a Motion for Judgment Notwithstanding the Verdict or, in the alternative, Motion for New Trial. (R. 279-286). The trial court denied

that motion. (R. 292-94). An Amended Judgment dismissing Plaintiff's complaint was entered by the District Court on April 28, 1995. (R. 310-12). Plaintiff filed a Notice of Appeal on May 4, 1994. (R. 341-42).

STATEMENT OF FACTS

On June 4, 1991, Plaintiff, Louis Ortiz, worked as an employee of Lowell Construction Company pouring and forming concrete for sidewalks. (R. 378-79). While pouring cement that morning, the chute on the cement truck "froze up" and therefore could not be moved from side to side or around objects. (R. 383). The "lead man" on the project, Gary Cisneros, notified the driver of the truck that the chute needed to be fixed immediately or another truck was required. (R. 384).

Upon moving the truck to the next location, the driver and a mechanic commenced working on the chute controls, attempting to fix or unstick the controls. The driver was in the cab of the truck and the mechanic was leaning in the driver's side window. (R. 386). During this time, the Plaintiff stood in the work area, which is a reasonable and appropriate location for a cement worker to stand while waiting for a pour. (R. 385, 398, 412, 417). Without any warning from the truck driver or the mechanic (R. 389, 401, 653), the chute suddenly swung around and hit the Plaintiff across the back, knocking him over the forms.

The force of the blow lifted Ortiz off his feet, and catapulted him approximately ten (10) feet onto a nearby lawn. (R. 387-88).

It is not common practice to work on the controls of the cement truck while the truck is "fully chuted." Instead, it is generally accepted that the chute should be "broken down" prior to attempting repairs on the controls, or the truck should be removed from the site. (R. 389-90, 415, 417, 659). Further, the cement truck driver is responsible for the location of the chute and it is his responsibility to keep the chute out of the workers' area. (R. 399, 417, 656-57).

Here, the mechanic and the driver were looking inside the cab of the truck and neither they, nor anyone associated with them, were watching the chute while they experimented with the controls. (R. 390, 391, 659). The mechanic had no experience in driving a cement truck or finishing cement (R. 656); and he did not view the situation previously described as "dangerous" and therefore did not attempt to warn the Plaintiff to move from the area. (R. 653). Finally, the mechanic acknowledged that the driver of the truck bore the ultimate responsibility for controlling the cement chute (R. 656-57), and that the chute could have been "broken down" or taken apart before he and the driver began blindly manipulating the controls. (R. 659).

As a result of the foregoing, the Plaintiff suffered extensive injuries to his spine which resulted in long term disability (R. 490, 495-96) as well as extreme and ongoing pain. (R. 493). Consequently, the Plaintiff has been unable to work in the construction field since June 4, 1991.¹ (R. 554-55).

SUMMARY OF ARGUMENTS

Issue 1. The jury disregarded the overwhelming and uncontroverted evidence that the Defendant was negligent in: (1) attempting to repair the cement truck chute in close proximity to the Defendant and other employees; and (2) failing to warn those employees within the purview of the chute of the dangerous condition that existed; and that as a direct and proximate result of such negligence, Plaintiff suffered permanent and irreparable injuries.

Issue 2. Any evidence regarding Plaintiff's prior accidents/injuries that are not somehow related to the injuries sustained in the instant case should have been excluded pursuant to Rule 402 and Rule 403 of the Utah Rules of Evidence. Accordingly, the district court abused its discretion in denying Plaintiff's Motion in Limine.

¹ The Plaintiff testified that the construction field is all that he knew. (R. 555).

ARGUMENT

POINT I

THE JURY DISREGARDED THE ONLY COMPETENT EVIDENCE AS TO DEFENDANT'S NEGLIGENCE, CONSEQUENTLY, THE VERDICT CANNOT STAND.

It is well settled that:

Determination of facts is left exclusively to the jury . . . [and] [t]he only limitation thereon is that if findings [or verdict] are made which are not supported by any substantial evidence, or the evidence is so clear that all reasonable minds would find one way, so that a verdict contrary thereto must have resulted from passion or prejudice, or misconception of the law or the evidence, or in arbitrary disregard thereof, the court will exercise its inherent supervisory powers to administer justice, and will set the verdict aside.

Lemmon v. Denver and Rio Grande Western Railroad Co., 341 P.2d 215, 220-21 (Utah 1959); accord Rees v. Intermountain Health Care, Inc., 808 P.2d 1069, 1079 (Utah 1991); Batty v. Mitchell, 575 P.2d 1040, 1043 (Utah 1978); Onyeabor v. Pro Roofing, Inc., 787 P.2d 525, 529 (Utah App. 1990).

In the instant case, the overwhelming and virtually uncontroverted evidence was that the Defendant and/or its employees or agents were negligent as alleged by the Plaintiff in his complaint. Specifically, the only competent evidence adduced at trial is that Defendant's employees negligently attempted to repair a cement truck chute in close proximity to the Plaintiff and other employees and that in the process of

doing so negligently allowed the chute to swing and strike the Plaintiff without any warning whatsoever. In an effort to demonstrate the prodigious evidence that was introduced at trial, the Plaintiff will marshall all the evidence that goes to the specific issue of negligence.

First, Gary Cisneros, the lead man on the project, testified as follows:

Q. [By Plaintiff's counsel]. And when you finished pouring -- excuse me -- strike that. Did you have any difficulties with the chute at that time when you were pouring down the street?

A. [Cisneros} Yeah, we had just started pouring and the chute froze up so we couldn't move it from side to side or around objects. This particular area where we were working down the street has more trees and there was more vehicles that were in the way and that is why I notified the driver that we needed to either get another truck there or get the chute fixed cause we can't, you know, move it by hand.

.

Q. Now would you describe for the jury at the time the chute struck Mr. Ortiz, where were you?

A. I was approximately where the X is, sitting on the grass.

.

Q. Where was Mr. Ortiz?

A. Mr. Ortiz was in the pour area. He was like racking mud for us and you get a lot of concrete on your boots and stuff and a lot of people in the neighborhood frown when you are standing on their lawn with concrete on your shoes and it will kill their lawns with the lime and what not in it you know. He

was in his work area in between two points, which is very close to where this is. . . .

Q. Now at the time just prior to the time that the chute hit Mr. Ortiz, did you know where the driver and the mechanic were?

A. Yeah I do.

Q. Where were they?

A. The driver was in the cab, which is in the center of the truck, and the mechanic was in his, which would be his driver's side window, and they were playing with the controls or trying to fix the controls, get them unlocked.

Q. Would you describe what happened when this chute began to move or just prior to its moving. Would you describe to the jury what you remember about this incident?

A. I remember the mechanic and the driver messing with the controls inside and it did not move any or nothing. And then I looked up cause I seen the chute coming across, and what I seen -- I think I was talking to Mr. Ortiz at the time and I seen the chute coming behind him. And it just swung free. It swung free and hit him, knocked him over the forms and then the mechanic and the driver were concerned if he was all right, saying that they didn't think the chute would swing that far.

. . . .

Q. Did you hear the driver or the mechanic tell you or Mr. Ortiz to move out of this area?

A. No, I did not.

Q. What in your judgment should have been done to avoid this problem with the chute?

A. Well, if it was me personally, I would have broke the chute down knowing that you were going to work on it cause I know it is not a common practice to

be fully chuted and working on your truck. It should have been broke down to the end chute, which could only swing in front of the truck and not even barely clear the bumpers.

Q. Now you say that is common practice. Why is that?

A. You don't want to be fully extended in the instance of hitting things. I mean, even like in an instance like that, if it went the other way it would have swung out into traffic or, you know, it is just a big hazard. You can hit cars. You need to break them down if you are going to work on them.

Q. In this case that was not done?

A. No, it wasn't.

Q. Both individuals were in the truck. Were they looking outside the vehicle at all?

A. No, they were both looking inside of the vehicle which is probably another thing I would have done is got one of them out of there instead of having four people dealing with something, four hands dealing with something, there would only be two.

.

Q. Did you hear any warning from those individuals?

A. No, I hadn't.

Q. About the chute breaking loose?

A. No.

(R. 383-392).

Q. [By Defense counsel]. Did Mr. Ortiz need to be standing where he was because concrete was being poured?

A. [By Mr. Cisneros]. No, he didn't. He was just standing in the sidewalk where we were getting ready to pour, like I had mentioned previously. . . . He was in his work area and that is where he needed to be.

Q. So let me understand this. You say it is whose responsibility to the end of the chute?

A. It would be the driver's.

Q. And is it your responsibility to stay out of the way of the chute as a worker?

A. Not as much as it is the driver's responsibility to watch for workers.

. . . .

Q. When a truck is broken though, don't you think you ought to take a little more caution for yourself? The truck is broken and you are trying to get it to swing one way or the other. Isn't that outside the normal circumstance you had of foresight?

A. No, because I have dealt with a lot of broken trucks before and some of the drivers break their chutes down if it is the chute that is broke. Or our biggest instance is with Geneva. We get rid of the truck and get another one there.

Q. And if he doesn't break his chute down, do you move out of the way?

A. Generally not.

(R. 394-402).

Further, George Padgen, a former employer of the Plaintiff as well as a superintendent of concrete for twenty-three years, testified:

Q. [Plaintiff's counsel]. Assume, if you will, that that is the pour area where this vehicle is going

to be pouring next. Would you do that? And assume further that the vehicle itself and the employees, the driver and the employees were having trouble, a problem with this chute in moving it back and forth, assume that they were having some difficulty with that chute. And assume further that a mechanic was called from Geneva Rock and he was going to work with or try to repair this chute so that it could be moved to continue the pour. Do you have an opinion, Mr. Padjen, as to whether or not it would be unreasonable for an individual to be standing in the pour area at the time they are working on part of the vehicle chute?

.

A. I see nothing wrong with anybody standing there unless the driver or the mechanic was to say, "Get out of the way." But on one of my particular jobs and that was my truck, I wouldn't wait for them to bring a mechanic out. I would have shipped the truck off and told them to bring me another one, and when they got this fixed to bring it back, but I won't even allow it to be there.

(R. 411-12)

Q. [By Defense counsel]. In this case [the truck] wasn't removed and Mr. Ortiz chose to stand in an area where the chute could hit him while they are trying to repair it. You don't see a problem with that?

A. Not if he wasn't warned. You never know on one of these trucks. I have had a lot of chute problems over the years. I have seen chutes run through forms. I have seen them hit people. Up until 15 years ago, we used to run our own chutes. Now the driver runs them. We used to run our own chute. The driver is the one that returns the chute now, so you are at his mercy as far as him running the chute when you are pouring.

(R. 417).

Finally, the Defendant testified as follows:

Q. [By Plaintiff's counsel]. There are some marks on that exhibit, but would you briefly in your own words tell the jury what happened just prior to that chute striking you in the back. Tell the jury where you had been and what happened?

. . . .

A. [By Plaintiff]. Well, I had -- the mechanic had come on the job and they said they were going to fix the chute. I just walked in my work area. That is where I worked. That is where I raked, that is of my work area and I was just sitting on the shovel, had my back to the truck and after that I don't know where the mechanic was. I don't know where the driver was. All I know is the chute hit me, and I flew over the forms. I did fly over. I don't know how high off the ground I went. I ended up landing right there.

. . . .

Q. What did the driver, mechanic, you don't recall any conversation from them?

A. The only thing I recall was after the chute had hit me, I don't know which one it was, had ran up to me and asked if I was all right. They said they had pulled a pin, from somewhere on the chute they had pulled a pin and the chute started swinging and they thought it was going to stop and it did not stop and that is when it hit me, I guess.

Q. Did you hear anybody attempt to warn you of the movement of the chute?

A. No, I did not.

Q. When you moved into the location in the sidewalk area where you have got "me" designated, next to that "X" on Exhibit P-2, did the mechanic tell you not to stay in that area?

A. No.

Q. Did the driver tell you not to stay in that area?

A. No.

Q. Did they tell you what they were going to do?

A. Yes, I knew they were going to work on the chute, yes.

Q. Did they tell you specifically what they were going to do?

A. They didn't tell me what they were going to do to fix the chute. They just mentioned they were going to work on the chute, yes, that is all.

Q. You ever have an occasion when Geneva Rock has taken a truck off of the location for repair under these same circumstances?

A. I don't know if it was for repairing the chute but they have. In my previous experience they had backed up away from where everybody was working and worked on the truck, yes.

Q. What facts, if any, did you have at that time which would make you concerned about the chute at all?

A. I had no idea it was going to swing. I was just in my work area. I had no idea. I know it swings back and forth, yes, I am not stupid of that, but I had no idea it was going to swing at that time, you know, freely like it did.

(R. 534- 541).

The foregoing testimony along with corroborative evidence was the only competent testimony that went solely to the issue

of Defendant's negligence.² In fact, each of the witnesses consistently testified that the employee's actions in attempting to repair the broken chute in the work area was not within accepted or industry standards and that the more appropriate remedial measures would have been to break the chute down or remove the truck from the work area during the repair. Further, not only did the fact witnesses testify that it was wholly acceptable for the Plaintiff to remain in the work area while the truck was undergoing repair, but that it would have been incumbent on the driver of the truck or the mechanic to safeguard against any accidents involving the cement truck and workers. Finally, the witnesses, including those associated with the defense, consistently testified that neither the driver

² The only scintilla of evidence introduced by the defense was the testimony of Stephen Barnes, the mechanic, who was called in to repair the broken chute. The only relevant testimony on the issue of negligence is that: (1) he did not see a crew in the work area (R. 646); and (2) he did not believe that he had any duty to check to see if any workers were in the area. (R. 653).

Notwithstanding the foregoing, the mechanic acknowledged that it would have been wiser had the sections been broken down (R. 659) and that no warnings were ever provided to the Plaintiff by him or the driver.

nor the mechanic ever warned the Plaintiff that a pin had been pulled and the chute was swinging.³

Inasmuch as the testimony and evidence in this case was uniform and uncontradicted as to Defendant's negligence, the verdict in the instant case was certainly reached as a result of a misconception of the factual evidence or an arbitrary disregard thereof. Accordingly, this court should vacate such verdict and enter one consistent with the uncontroverted evidence at trial.

POINT II

THE DISTRICT COURT ABUSED ITS DISCRETION IN DENYING PLAINTIFF'S MOTION IN LIMINE TO EXCLUDE EVIDENCE OF OTHER INJURIES SUSTAINED BY THE PLAINTIFF IN UNRELATED INCIDENTS WHICH WERE NOT SOMEHOW RELATED TO THE INJURY SUFFERED BY THE PLAINTIFF IN THE CASE AT BAR.

In his Motion in Limine, Plaintiff argued that the foregoing evidence should be excluded under Rule 402 and Rule 403 of the Utah Rules of Evidence. (R. 665-670). The court denied that motion.

Rule 402 of the Utah Rules of Evidence provides:

All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States of the Constitution of the state of Utah,

³ In fact, the mechanic testified that he watched the chute swing and hit the Plaintiff without ever providing any form of warning.

statute, or by these rules, or by other rules applicable in courts of this state. Evidence which is not relevant is not admissible.

Utah R. Evid. 402 (emphasis added).

Further, Rule 403 of the Utah Rules of Evidence provides:

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

Utah R. Evid. 403.

In the instant case, Plaintiff had, prior to the accident of June 4, 1991, suffered injuries to his ankle, shoulder and upper neck. However, as argued in Plaintiff's Motion in Limine, none of these injuries had affected Plaintiff's lower back, the injury at issue in the case at bar, and none of the injuries had rendered the Plaintiff unable to work.⁴ Notwithstanding, the court denied Plaintiff's Motion in Limine and ultimately allowed the evidence to be adduced at trial.

Here, inasmuch as the injuries sustained by the Plaintiff in prior incidents were wholly unrelated to the injury at issue in this case, namely Plaintiff's lower back injury, such evidence is not relevant and therefore inadmissible under Rule 402 of the Rules of Evidence. Notwithstanding, in the event

⁴ These facts were confirmed by witnesses at trial.

that the court determined that such evidence had some limited relevance, the only purpose that introduction of the same would accomplish would be unfair prejudice, confusion of the issues, and misleading the jury. In other terms, such evidence would only be introduced as a smoke screen to shift the focus from the medically substantiated injury sustained by the Plaintiff to other unrelated injuries which are not dispositive of the issues at the heart of this case.

Finally, in the event that introduction of the foregoing evidence was to prove that Plaintiff suffered from a pre-existing condition which was aggravated by the accident of June 4, 1991, such would not be sufficiently relevant to overcome the limitations set forth in Rules 402 or 403 of the Utah Rules of Evidence.

The rule is well settled that when a defendant's negligence aggravates or lights up a latent, dormant, or asymptomatic condition, or one to which the injured person is predisposed, the defendant is liable to the injured person for the full amount of damages which ensue, notwithstanding such diseased or weakened condition. In other words, when a latent condition itself does not cause pain, but that condition plus an injury brings on pain by aggravating the pre-existing condition, then the injury, not the dormant condition, is the proximate cause of the pain and disability. A plaintiff, therefore is entitled to recover all damages which actually and necessarily follow the injury.


Biswell v. Duncan, 742 P.2d 80, 88 (Utah App. 1987).

In the case at bar, even had the defense offered the foregoing evidence to demonstrate that Plaintiff suffered from a pre-existing condition, it would not necessarily be relevant to the instant case since under Biswell, the Defendant would still be liable for the full amount of damages sustained by Plaintiff as a result of its negligence. Accordingly, all such evidence relating to injuries sustained by Plaintiff in previous unrelated accidents should have been excluded.

CONCLUSION

Based on the foregoing, the jury's verdict and the court's amended judgment should be set aside. Alternatively, this court should determine that the court abused its discretion in denying Plaintiff's Motion in Limine and remand this case for a new trial with instructions to bar all such evidence relating to injuries sustained by Plaintiff in previous unrelated accidents.

DATED this 22nd day of November, 1996.



MATT BILJANIC
Attorney for Plaintiff/Appellant

CERTIFICATE OF MAILING

I hereby certify that on the 22nd day of November, 1996, I mailed a true and correct copy of the foregoing **BRIEF OF APPELLANT**, postage prepaid thereon to:

George T. Naegle, Esq.
Attorney for Appellee
RICHARDS, BRANDT, MILLER & NELSON
Key Bank Tower, Seventh Floor
50 South Main Street
P.O. Box 2465
Salt Lake City, Utah 84110

A handwritten signature in cursive script, appearing to read "Mark R. Bishop", is written over a horizontal line.

ADDENDUM A

SEP 23 1994

SALT LAKE COUNTY
[Signature]
County Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

LOUIS ORTIZ,	:	SPECIAL VERDICT
Plaintiff,	:	CASE NO. 920902256
vs.	:	
GENEVA ROCK PRODUCTS, INC.,	:	
Defendant.	:	

MEMBERS OF THE JURY:

Please answer the following questions from a preponderance of the evidence. If you find the evidence preponderates in favor of the issue presented, answer "yes." If you find the evidence is so equally balanced that you cannot determine a preponderance of the evidence, or if you find that the evidence preponderates against the issue presented, answer "no." Also, any damages assessed must be proven by a preponderance of the evidence.

1. Was the defendant, Geneva Rock Products, negligent as alleged by plaintiff?

ANSWER: Yes _____ No X

2. Was defendant's negligence a proximate cause of the injuries sustained by the plaintiff?

ANSWER: Yes _____ No _____

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3. Was the plaintiff contributorily negligent, as alleged by the defendant?

ANSWER: Yes _____ No _____

4. Was the plaintiff's negligence a proximate cause of the plaintiff's injuries?

ANSWER: Yes _____ No _____

5. If you have answered both Questions 1 and 4 "yes," then, and only then, answer the following question: Assuming all the negligence that proximately caused the plaintiff's injuries to total 100%, what percentage of that negligence is attributable to:

A. Plaintiff Louis Ortiz _____%

B. Defendant Geneva Rock Products _____%

TOTAL _____100_____%

6. If you have answered Questions 1 and 2 "yes," state the amount of special and general damages, if any, sustained by the plaintiff as a proximate result of the injuries complained of. If such questions were not answered "yes," do not answer this question.

Special Damages:

A. Past Special Damages \$ _____

B. Future Special Damages \$ _____

General Damages: \$ _____

TOTAL \$ _____

DATED this 23 day of September, 1994.

James G. Porter
FOREPERSON

ADDENDUM B

APR 28 1995

SALT LAKE COUNTY
By S. Henaly Deputy Clerk

GEORGE T. NAEGLE [A5001]
RICHARDS, BRANDT, MILLER & NELSON
Attorneys for Defendant
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IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

LOUIS ORTIZ, Plaintiff, vs. GENEVA ROCK PRODUCTS, INC., Defendant.	<i>Amended TOM</i> JUDGMENT Civil No. 920902256 PI Judge Tyrone E. Medley
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This matter came on for a trial by jury on September 21 through September 23, 1994 with the Honorable Tyrone E. Medley presiding. The jury heard the evidence of the respective parties and the argument of counsel, and having been submitted a Special Verdict and having answered the questions contained on the Special Verdict Form as follows:

MEMBERS OF THE JURY:

Please answer the following questions from a preponderance of the evidence. If you find the evidence preponderates in favor of the issues presented, answer "Yes." If you find the evidence is so equally balanced that you cannot

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determine a preponderance of the evidence, or if you find that the evidence preponderates against the issue presented, answer "No." Also, any damages assessed must be proven by a preponderance of the evidence.

1. Was the defendant, Geneva Rock Products, negligent as alleged by the plaintiff?

ANSWER: Yes _____ No X

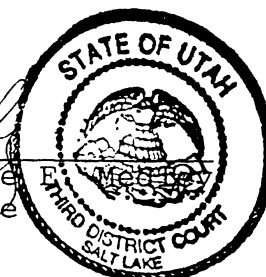
Having answered "No," to Question No. 1, the jury answered no further questions on the Special Verdict Form and it was signed by Mr. Porter who was acting as foreperson.

Accordingly, the jury has returned a verdict of no cause of action and judgment is entered in accordance with that jury verdict for no cause of action. The plaintiff's Complaint against the defendant is hereby dismissed with prejudice and upon the merits, and the prevailing party, the defendant is hereby awarded costs of \$ 7.

DATED this 28 day of April, 1995.

BY THE COURT:

Tyrone E. Medley
The Honorable Tyrone E. Medley
District Court Judge



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing instrument was mailed, first-class, postage prepaid, on this 11th day of April, 1995, to the following:

Matt Biljanic
7355 South 900 East
Midvale, Utah 84047
Attorney for Plaintiff

Sharon Parben

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ADDENDUM C

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MATT BILJANIC A0323
Attorney for Plaintiff
7355 South 9th East
Midvale, Utah 84047
Phone: 255-3576

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IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY
STATE OF UTAH

LOUIS ORTIZ, :
Plaintiff, and Appellant : NOTICE OF APPEAL
vs. : Case No. 920902256PI
GENEVA ROCK PRODUCTS, INC., : (Trial Court)
Defendant. and Appellee. : Judge Tyrone E. Medley

1. Notice is hereby given that Plaintiff and Appellant, Louis Ortiz, through counsel, Matt Biljanic, appeals to the Utah Supreme Court the final judgment of the Honorable Tyrone E. Medley entered in this matter on the 6th day of December, 1994.

2. The appeal is taken from the entire judgment, including the Court's ruling on Plaintiff's Motion for Judgment Notwithstanding the Verdict or New Trial and judgment for costs entered April 5, 1995 and the subsequent judgment entered April 28, 1995.

DATED this 4th day of May, 1995.

Matt Biljanic
MATT BILJANIC

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CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing Notice of Appeal and Undertaking on Appeal to George T. Naegle, Attorney for Defendant, Key Bank Tower, Seventh Floor, 50 South Main Street, P.O. Box 2465, Salt Lake City, Utah 84110, postage prepaid, this 4th day of May, 1995.

Matt Biljanic
MATT BILJANIC