

Worker falls 35 feet through unprotected opening

Brain injury diagnosed two years after accident

\$3 million settlement

On Oct. 20, 2008, a 37-year-old construction worker fell 35 feet from an unprotected opening on the arrival/departure ramp at Logan International Airport to the roadway below. He sustained multiple trauma, including a traumatic brain injury that was diagnosed two years after the accident.

Suit was filed against the general contractor, which subsequently filed a third-party claim against the plaintiff's employer. The parties agreed to mediate the plaintiff's claims, including four loss-of-consortium claims for the plaintiff's spouse and three minor children.

Plaintiff's counsel retained an ex-



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pert behavioral neurologist to perform Diffuse Tensor Imaging, used to visually demonstrate the plaintiff's diffuse brain injury, and an award-winning cinema photographer to produce a "trial preview" DVD showing expert witness interviews. Testimony of the treating orthopedic surgeon, neuropsychologist, expert life-care planner, family members, and physical and speech therapists

was proffered.

The case settled following a full day's mediation. The court approved the parties' joint petition under G.L.c. 152, §15, including a *Curry* allocation of 58 percent to the injured worker, 42 percent to his wife and three minor children, and a workers' compensation lien reduction of \$378,000.

Action: Negligence & tort

Injuries alleged: Multiple orthopedic trauma and traumatic brain injury

Case name: Withheld

Court/case no.: Withheld

Jury and/or judge: N/A (mediated)

Mediator: John Fitzgerald

Amount: \$3 million

Date: June 4, 2013

Attorney: Kenneth I. Kolpan, Boston (for the plaintiff)

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