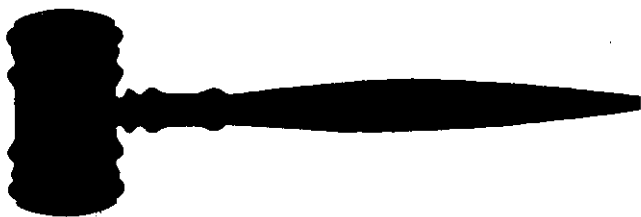
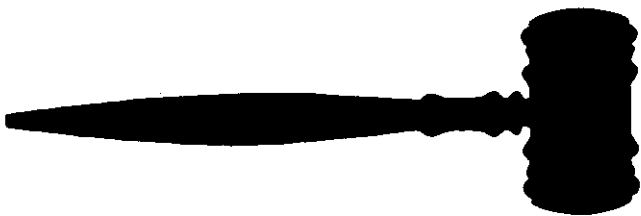
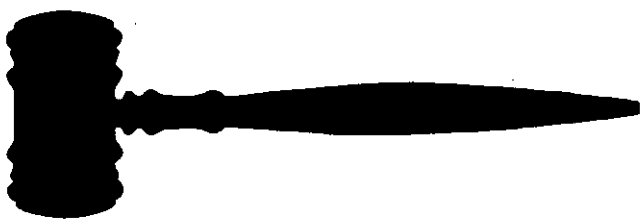
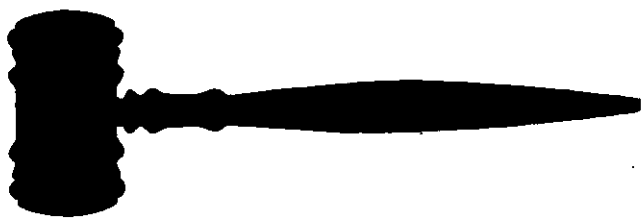


The Trial Reporter



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Yavapai County Superior Court Jury Trials

THE TRIAL REPORTER

December 31, 1987

12/11/87 - Judge JAMES HANCOCK - 44771
- JOY (Nicholas A. Mocerri, Jr.) v PARTRIDGE ENTERPRISES (William J. Downey) - PERSONAL INJURY - CONSTRUCTION SITE - SCAFFOLDING MISHAP. Plntf, male, age 36, employed as a carpenter by a framing and roofing subcontractor erecting a Midas Muffler shop in Prescott. Dfnt, the general contractor. After the slab was poured and the walls were erected, straw was placed on the concrete slab so that it would cure properly. Straw covered holes left in the slab for installation of hydraulic lifts. Masonry subcontractor left job without completing the grouting work and Plntf's employer was hired to finish the grouting and framing. Plntf and another co-worker were on the third level of the sixteen-foot-high scaffolding, performing the grouting work. Two subcontractor employees on the ground rolled the scaffolding away from the wall so that it could be rolled to the next ungrouted portion of wall, when scaffolding wheel allegedly rolled into a hydraulic lift hole and collapsed, throwing Plntf to the floor. Plntf alleged Dfnt, the general contractor, who retained control, negligently failed to provide a safe workplace. Further, Plntf alleged that other subcontractor's employees were acting as Dfnt's agents and negligently caused the scaffolding to roll into the hydraulic lift hole. Plntf called Vaughn P. Adams, Ph.D., safety engineer and accident reconstructionist, who testified that the general accepted practice was to cover openings in a floor and that said covers were not to be removed. It was his opinion that the accident occurred because one wheel of the scaffolding rolled into the hole. Plntf also called Dan Horton, P.E., safety engineer and construction expert, who testified that Dfnt general contractor breached its duty when it failed to cover the floor openings. Further, it was his opinion that the scaffolding was unstable due to its height and that the accident most likely occurred when the scaffolding rolled into the hole, causing it to collapse. Dfnt called Terry Thomas, P.E., mechanical engineer, who built an identical model of the scaffolding and filmed a reconstruction of the accident. It was his

opinion that the scaffolding was inherently unsafe and that Plntf and his co-worker pushed off from the wall, exerting a force to the top of the scaffolding, which caused the scaffolding to collapse. It was also Mr. Thomas' opinion that fifty pounds of force applied at the top of the scaffolding could topple it over, and that failure to cover the holes played no part in the accident. Plntf sustained a fractured right knee. Plntf used video tape deposition of Edward D. Campbell, Jr., M.D., orthopod, who performed three surgeries on Plntf's knee. It was Dr. Campbell's opinion that Plntf had a thirty percent permanent disability of the extremity and had residuals of reflex sympathetic dystrophy and profound quadriceps atrophy. It was also Dr. Campbell's opinion that Plntf is unable to engage in any strenuous occupation, strenuous exercise, or physical activity. Additionally, Plntf called Robert Prestwood, M.C., C.R.C., vocational rehabilitationist, who testified that the occupations left to Plntf were those paying a minimum wage. Plntf called Larry D. Stokes, Ph.D., economist, who testified that the present value of Plntf's future lost earnings and lost earning capacity was \$250,000. Dfnt called Culley K. Christensen, M.D., orthopod, who testified that, though Plntf has residuals of mild causalgia and an eight percent impairment of the extremity, Plntf could still lift seventy-five pounds and could, therefore, perform some carpentry tasks. It was Dr. Christensen's opinion that Plntf was motivated by secondary gain. Dfnt also called Thomas M. Mitchell, M.C., C.R.C., vocational rehabilitationist, who testified that Plntf could transfer to sales and would most likely earn more in sales than he did as a carpenter. Additionally, Dfnt called John E. Buehler, Ph.D., economist, who was of the opinion that Dr. Stokes' calculations were incorrect and that the present value of Plntf's future lost wages, if he worked in an entry level job, was \$154,000. However, Dr. Buehler also testified that, if Mr. Mitchell's assessment was correct, then Plntf had no loss of earning capacity. DIRECTED VERDICT FOR DFNT ON THE ISSUE OF NEGLIGENT RETAINED

CONTROL. Jury to consider whether Dfnt provided an unsafe workplace and if the movers of the scaffolding were Dfnt's agents. Prayer: Just and reasonable compensatory damages; \$27,500 medical expenses; unspecified amount for past lost wages; plus \$250,000 future lost wages and impaired earning capacity. Workers' compensation lien of \$62,000 filed. Plntf made pretrial demand of \$450,000 - Dfnt offered \$30,000 (per D) or \$80,000 (per P) (P & D). (Carrier: Transamerica.) During closing arguments Plntf's counsel asked jury to award Plntf \$494,000 and find that Dfnt was one hundred percent at fault for the accident. Defense counsel argued that the accident did not occur as a result of Dfnt's negligence, or, in the alternate, argued, if the jury found Dfnt negligent, a verdict of \$81,000 was more than reasonable and should be reduced by at least one-third because Plntf was at least one-third at fault for the accident. Six day trial. Jury out one hour. FOUND FOR DFNT. UNANIMOUSLY.

Mohave County Superior Court Jury Trials

December 31, 1987

12/10/87 - Judge GARY R. POPE - 26199 - GIPSON (Daniel J. Oehler) v ESTATE OF CASON (Robert Brooks) - CONSTRUCTIVE TRUST - REAL PROPERTY DISPUTE. Plntf, in her early sixties, and decedent, male, also in his sixties, retired, began cohabitating in the late 1970's. Decedent died in 1986. Plntf alleged that Plntf and decedent entered into an agreement to improve the residence in which they resided, which was held in decedent's name. Further, Plntf alleged that, throughout the time she and decedent resided together, they pooled their funds to build and improve the family residence. Plntf, but for one year of the relationship, was always employed either part-time or full time. After decedent's death, decedent's son filed suit against Plntf for forcible entry and detainer and sought to remove Plntf from the property. Plntf alleged that decedent's son held the property as personal representative of the estate and sought compensation for her equity in the home. Dfnt denied that the property was being held in constructive trust and alleged Plntf was a 'hold over' tenant and sought the reasonable rental value for the rent from the time of decedent's death to the time of Plntf's removal. Prayer: Just and reasonable general damages. Plntf made pretrial demand for half the value of the property, which she alleged was worth approximately \$42,000 - Dfnt offered \$5,000 to \$8,000 (P). Two day trial. Jury out one hour. FOUND PLNTF WAS ENTITLED TO A CONSTRUCTIVE TRUST IN THE PROPERTY. UNANIMOUSLY.

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