

Return date: October 19, 2010

FERNANDO FERNANDEZ, SR.,	:	SUPERIOR COURT
Jael MORALES, and	:	
ANTONIO DEJESUS	:	
V.	:	JUDICIAL DISTRICT OF NEW HAVEN
	:	AT NEW HAVEN
WALSH CONSTRUCTION CO.	:	SEPTEMBER 14, 2010

COMPLAINT

COUNT ONE: Fernando Fernandez v. Walsh Construction Co. for Negligence

1. On October 30, 2009, and for some time before then, the defendant was a contractor in charge of the Quinnipiac Bridge Interstate 95 project in New Haven. As part of that project, the defendant was overseeing the construction of a concrete bridge support (“the pier”) located at the eastern side of Canal Dock Road in New Haven. The support was known as Bridge #169, Pier #1.

2. The defendant’s employees were in charge of this project.

3. The defendant employed laborers, labor foremen, and quality control inspectors. These employees were all under the supervision and control of a general superintendent, also an employee of the defendant.

4. The general superintendent had overall day-to-day supervision and control of the project. He reported at least daily to his superiors at Walsh.

5. Part of the construction of the pier involved the construction of a rebar support wall, sometimes called a rebar cage. Rebar (short for reinforcing bar) is a steel rod commonly used to add strength to a concrete structure.

6. The rebar cage consisted of many rebar rods. Some of these rods were embedded

in concrete in the ground, several inches apart, and extended vertically upwards to a height of approximately 26 feet. There were two rows of rods approximately 50 inches apart, each approximately 30 feet long.

7. In addition, the cage had numerous rods that were oriented horizontally and were connected to the vertical rods, wrapping around the outside of the vertical rods.

8. In addition, there were horizontal rods, sometimes called compression rods, running between the two rows of vertical rods and preventing them from moving in relation to each other.

9. The method of construction called for concrete to be poured into a mold or molds that surrounded the rebar cage. The result would be a concrete support that was strengthened by many rebar rods running both vertically and horizontally.

10. If sufficient horizontal force was applied to the rebar cage before the concrete was poured, the vertical rebar would tilt sideways. If the force was great enough, the cage would collapse and fall to the ground.

11. Due to the basic principle of leverage, the amount of horizontal force required to cause the cage to collapse was less and less the higher on the cage the force was applied.

12. Additionally, due to basic principles of geometry, if the cage had horizontal force applied part of the way up, the top of the cage would move further off plumb than the point where the force was applied.

13. Because of the weight of the rebar and basic principles of leverage and geometry, moving the top of the cage off plumb would itself create force tending to pull the cage further over and causing it to collapse.

14. The further the cage moved off plumb, the greater the leveraged force tending to make it collapse, so that once it started to collapse, the collapse would accelerate, feeding on itself.

15. The rebar used for the pier, as well as for other piers and structural elements that were part of the project, was fabricated to assist in stability in the case of earthquakes. Such fabrication involved making the rebar more malleable than is common for rebar.

16. The defendant knew that the rebar had been fabricated in this way and was more malleable than is common for rebar.

17. The rebar making up the cage was sufficiently malleable, and the cage was sufficiently high, that the cage swayed in the wind even though the walls of the cage consisted only of a web of rebar rods and, therefore, was less susceptible to wind forces than a continuous surface would be.

18. In or about the middle of October 2009, a field engineer on the site from another company warned the defendant that the cage was actually swaying in the wind.

19. This swaying was an obvious sign that the cage was not stable and was liable to collapse.

20. Tying off the four corners of the cage with guide wires attached to concrete blocks on the ground would prevent the cage from falling over and collapsing.

21. The use of this simple safety device is common in the construction industry and has been for many years.

22. In fact, the defendant had all the necessary components – concrete blocks, cable, and a common type of winch called a come-along – on-site and readily available to use for that

purpose.

23. Not only were all the components readily available, but, in response to the warning from other company's field engineer, that exact means of securing the cage from collapse was installed and in place. Concrete blocks with holes through them for the safety cables were placed around the cage, and the cables were attached to the concrete blocks and to the corners of the cage by means of a come-along.

24. But then, shortly after the cage was secured, the defendant deliberately removed the safety cables, leaving the concrete blocks sitting uselessly on the ground.

25. The safety cables and come-alongs are small, inexpensive, and readily available.

26. The safety cables did not interfere in any way with the work being done.

27. There was no valid reason to remove the safety cables.

28. At the time that the safety cables were removed, the defendant knew that doing so made the cage more likely to collapse. The defendant was well aware of the tendency of the collapse of a structure to accelerate and feed on itself because that is what happened in other catastrophes, such as the collapse of the World Trade Center towers.

29. At all times after the safety cables were removed, the defendant knew that the cage was more likely to collapse than it would have been with the safety devices in place.

30. Another method was also readily available to prevent the cage from collapsing. Construction of the pier involved placing forms around the cage and then pouring in concrete. When the concrete hardened sufficiently, the forms would be removed. The forms could be secured in place as the horizontal rods were attached, so that once all the horizontal rods had been attached up to a height of ten feet, eight-foot high forms could be put in place and secured.

Securing the forms from falling over would also prevent the rebar cage from falling over.

31. This method would not only prevent the rebar cage from collapsing but would also make it easier to complete erecting the cage by assisting in keeping it plumb as it was built.

32. Advance Steel's original plan was to use this method to erect the rebar cage, and shortly before October 30, Advance Steel sent the defendant an email requesting that this method be used.

33. However, to save a small amount of money, the defendant ordered Advance Steel and its own employees not to use this safer approach to build the cage but instead to build it without any intermediate support to guard against collapse.

34. On October 30, 2009, plaintiff DeJesus was working on the rebar cage and plaintiff Fernando Fernandez was on the ground below, assisting.

35. At approximately 9:50 a.m., the rebar cage start tilting over.

36. By basic principles of leverage, the more the cage tilted, the greater the force making it continue to tilt and then collapse.

37. The cage collapsed completely, so that the rebar was lying on the ground. Because the rods were so malleable, they did not fracture as the cage collapsed but simply bent near the base.

38. When the cage collapsed, it fell directly on plaintiff Fernando Fernandez, who was in the path of the collapsing rebar.

39. Plaintiff Fernando Fernandez tried to flee from under the wall of steel above as it fell toward him but could not escape in time and was struck by the falling 26-foot high steel cage.

40. When the cage collapsed, plaintiff DeJesus, who was on scaffolding next to the cage that was attached to the cage, fell to the ground along with the cage.

41. The defendant was at all relevant times well aware of its obligation to comply with applicable OSHA standards, including the requirement in 29 CFR 1926.703(d)(1) that reinforcing steel for walls, piers, columns, and similar vertical structures shall be adequately supported to prevent overturning and to prevent collapse.

42. Although the defendant was well aware of that requirement and well aware that the requirement expressed a fundamental safety principle, the defendant ignored its obligation to comply with that basic safety precaution.

43. The plaintiff's injuries and losses were caused by the negligence of the defendant in one or more of the following respects; in that:

- a. it failed to secure the rebar cage so that it would not collapse;
- b. it ignored fundamental safety regulations that it was well aware of and that would have prevented the collapse and resulting injuries if the defendant had followed them;
- c. it had all the equipment and safety devices present on the job site to prevent the wall from collapsing site yet failed to use them at the time of the wall collapse, although it knew or should have known that the safety devices were necessary;
- d. it had appropriate safety devices in place but deliberately removed them, leaving the plaintiffs and any other persons near the rebar wall in grave danger of serious physical injury or death;
- e. it chose not to use a safer method of constructing the wall, despite being urged by Advance Steel and its workers on the scene – including the plaintiff DeJesus – to use a

safer method;

f. it took no measures to address the additional safety hazards resulting from using a more malleable type of rebar;

g. it ignored warning signs that the rebar wall was subject to collapse;

h. it failed to have necessary safety devices in place to prevent a collapse, even after being specifically warned of the danger of collapse;

i. it removed safety devices necessary to prevent a collapse, even after being specifically warned of the danger of collapse;

j. it failed to warn workers such as the plaintiff that the rebar being used was more malleable and subject to collapse than ordinary rebar.

44. As a result of the collapse and the conduct of the defendant that caused it, plaintiff Fernando Fernandez sustained grave injuries, which are painful and disabling and have impaired his ability to engage in the activities of life and will continue to do so in the future. The full extent of these injuries is not yet known, but they include the following: terror as he tried to flee from under the collapsing steel cage; post-traumatic stress disorder; traumatic brain injury; cortical blindness; multiple bone fractures; multiple hematomas; damage to multiple internal organs; functional deficits associated with traumatic brain injury and internal organ damage; and lacerations and other external injury.

45. As a further result of the collapse and the conduct of the defendant that caused it, plaintiff Fernando Fernandez required hospitalization, medical and surgical treatment, and nursing care; he incurred expenses for necessary and appropriate care and treatment; and he will require further care and treatment and incur further expenses in the future.

46. As a further result of the collapse and the conduct of the defendant that caused it, plaintiff Fernando Fernandez required modifications of his living environment, with associated expenses, and may require further modifications in the future.

47. As a further result of the collapse and the conduct of the defendant that caused it, plaintiff Fernando Fernandez was and continues to be unable to perform the duties of his employment, and his earning capacity has been gravely impaired or destroyed.

COUNT TWO: Fernando Fernandez v. Walsh Construction Co. for Recklessness

1- 42. Paragraphs 1-42 of Count One are hereby incorporated by reference the same as if fully set forth in this Count Two.

43. The collapse and plaintiff's injuries were caused by the recklessness of the defendant in one or more of the following respects:

a. it failed to secure the rebar cage so that it would not collapse when there was a grave risk of collapse that was obvious to any construction contractor who knew that the rebar was deliberately made more malleable than normal, and when the defendant knew that a collapse would be highly likely to cause serious injury or death;

b. it knowingly ignored fundamental safety regulations that it was well aware of and that it knew were essential to preventing a collapse that would be highly likely to cause serious injury or death;

c. it had all the necessary equipment and safety devices to prevent the wall from collapsing present on the job site yet failed to use them at the time of the wall collapse although it was obvious that the devices were important in preventing a grave and imminent risk

of collapse that would be highly likely to cause serious injury or death;

d. it took affirmative steps to increase the danger that the rebar cage would collapse, creating a grave risk of serious injury or death;

e. it had appropriate safety devices in place that were obviously essential in preventing a grave risk of imminent collapse of the cage, but it deliberately removed them, leaving the plaintiffs and any other persons near the rebar wall in grave danger of serious physical injury or death;

f. it chose not to use a safer method of constructing the wall, despite being urged by Advance Steel and its workers on the scene – including the plaintiff DeJesus – to use a safer method, when it was obvious to anyone who knew that malleable rebar was being used that failure to use a safer method created an imminent risk of collapse, serious injury, and death;

g. it took no measures to address the additional safety hazards resulting from using a more malleable type of rebar, although it was fully aware of the fact that the rebar it was using was less resistant to collapsing and causing serious injury or death;

h. it failed to have necessary safety devices in place to prevent a collapse even after being specifically warned of the danger of collapse;

i. it removed safety devices necessary to prevent a collapse even after being specifically warned of the danger of collapse;

j. although it knew that it was using a more malleable form of rebar; and it was warned by an engineer that the rebar cage was moving and swaying in the wind and in danger of collapsing; and it was asked by Advance Steel to use a safer method of constructing the wall that involved installing forms earlier in the construction process; and as of several days

before October 30 an effective safety device consisting of tying off the corners of the cage was actually in place; and there was no valid need or reason to remove the guide wires, thereby disabling the safety device; and it knew that collapse of the rebar cage would be highly likely to cause serious injury or death; and it knew that removing the safety device dramatically and needlessly increased the risk of collapse and resulting serious injury or death; nevertheless it deliberately removed the safety device and substituted nothing in its place; it knowingly left the the rebar cage unprotected from collapse for several days; and it deliberately ignored warning signs that the rebar wall was liable to collapse and cause serious injury or death.

44-47. Paragraphs 44-47 of Count One are incorporated by reference the same as if fully set forth herein.

COUNT THREE: Jael Morales v. Walsh Construction Co. for Negligence and Loss of Consortium

1-47. Paragraphs 1-47 of Count One are hereby incorporated by reference the same as if fully set forth in this Count Three.

48. Plaintiffs Fernando Fernandez and Jael Morales are married and were married at the time of the events described above.

49. As a result of the defendant's conduct, the collapse of the rebar cage, and the resulting injuries to her husband, plaintiff Jael Fernandez has lost the care, companionship and consortium of her husband, Fernando Fernandez.

COUNT FOUR: Jael Morales v. Walsh Construction Co. for Recklessness and Loss of Consortium

1- 47. Paragraphs 1-47 of Count Two are hereby incorporated by reference the same as if fully set forth in this Count Four.

48. Plaintiffs Fernando Fernandez and Jael Morales are married and were married at the time of the events described above.

49. As a result of the defendant's conduct, the collapse of the rebar cage, and the resulting injuries to her husband, plaintiff Jael Fernandez has lost the care, companionship and consortium of her husband, Fernando Fernandez.

COUNT FIVE: Antonio DeJesus v. Walsh Construction Co. for Negligence

1-43. Paragraphs 1-43 of Count One are hereby incorporated by reference the same as if fully set forth in this Count Five.

44. As a result of the collapse and the conduct of the defendant that caused it, plaintiff Antonio DeJesus suffered the following injuries, which are painful and have impaired his ability to engage in the activities of life, and some of which may be permanent: post traumatic stress disorder; depression; anxiety; right knee contusions and abrasions; right knee internal injury; lumbar spondylosis; traumatic arthropathy; soft tissue cervical injury; soft tissue lumbar injury; and left arm trauma.

45. As a further result of the collapse and the conduct of the defendant that caused it, plaintiff Antonio DeJesus was forced to incur expenses for medical care and treatment, and he may be forced to incur further such expenses in the future.

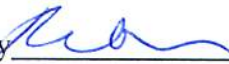
46. As a further result of the collapse and the conduct of the defendant that caused it, plaintiff Antonio DeJesus was has been unable to perform the duties of his employment, and he may be unable to do so in the future, all to his financial loss.

COUNT SIX: Antonio DeJesus v. Walsh Construction Co. for Recklessness

1- 43. Paragraphs 1-43 of Count Two are hereby incorporated by reference the same as if fully set forth in this Count Six.

44-46. Paragraphs 44-46 of Count Five are hereby incorporated by reference the same as if fully set forth in this Count Six.

THE PLAINTIFFS

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WHEREFORE, the plaintiffs claim compensatory damages in excess of the sum of fifteen thousand dollars exclusive of interest and costs, as well as punitive damages for recklessness.