

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JOSEPH Q. MIRARCHI	:	CIVIL ACTION
Plaintiff,	:	
	:	
vs.	:	
	:	NO. 04-5078
WEAVER ENTERPRISES, INC.	:	
Defendant.	:	

DUBOIS, J.

AUGUST 31, 2005

MEMORANDUM

I. INTRODUCTION

This case arises out of an accident which occurred at the property of Weaver Enterprises, Inc. (“Weaver”), 400 West Basin Road, New Castle, Delaware, on November 18, 2002. On that date, plaintiff, Joseph Q. Mirarchi (“plaintiff” or “Mirarchi”), was a full-time employee of Weaver, pursuing his duties as a marble and granite fabrication laborer, when a slab of granite fell and injured his right leg. As a result of the accident, plaintiff incurred substantial medical bills and loss of income.

At the time of plaintiff’s accident, Weaver did not have Workers’ Compensation insurance coverage required by the Delaware Compensation Act, Delaware Code Ann. Tit. 19, §§ 2304, 2306 and 2371-72. As a result of Weaver’s failure to provide such coverage, Weaver is liable in an action at law for plaintiff’s injuries pursuant to Delaware Code Ann. Tit. 19, § 2374.

The Complaint was properly served on Weaver on January 4, 2005. Weaver failed to respond to the Complaint as required by law. Accordingly, a default was entered by the Clerk pursuant to Federal Rule of Civil Procedure 55(a) on March 11, 2005.

The matter was presented to the Court on Motion for Default Judgment pursuant to

Federal Rule of Civil Procedure 55(b)(2). The Court conducted a hearing on plaintiff's Motion on August 11, 2005. Notwithstanding notice to Weaver, Weaver did not appear at the hearing. At the hearing, Mirarchi testified and presented Affidavits from two witnesses, Anthony Foglia and Walter Phillip Cumbie, Jr., two former Weaver employees.

The Court makes the following findings of fact and conclusions of law based on the evidence presented at the hearing:

II. FINDINGS OF FACT

1. Mirarchi is, and was at the time suit was instituted, an individual who is a citizen, resident, and domiciliary of the Commonwealth of Pennsylvania, residing at 1808 Jackson Street, Philadelphia, Pennsylvania, in the Eastern District of Pennsylvania.

2. Weaver is, and was at the time suit was instituted, a Delaware Corporation with its principal place of business in Delaware.

3. On November 18, 2002, Mirarchi was employed by Weaver at its facility located at 400 W. Basin Road, New Castle, Delaware.

4. Weaver regularly conducts business in the Eastern District of Pennsylvania, and did so at the time suit was instituted on October 29, 2004. This finding is based on the following:

(a). Weaver solicited business within the Commonwealth of Pennsylvania at the time suit was instituted.

(b). Weaver contracted to supply goods and/or services within the Eastern District of Pennsylvania at the time suit was instituted.

(c). Employees of Weaver, including Anthony Foglia, fabricated kitchens and/or other tile, marble and granite for customers in Lansdale, Pennsylvania, Avondale,

Pennsylvania, and Germantown, Pennsylvania, as of the time suit was instituted.

(d). Weaver purchased materials and dispatched employees to pick up materials from suppliers located within the Eastern District of Pennsylvania, including Orlandini Tile Supplies, Inc., Walnut and Pine Streets, Marcus Hook, Pennsylvania; “Stonehenge”, a quarry located in West Chester, Pennsylvania; H. Winter & Company, Inc., 890 N. Gilmore Street, Allentown, Pennsylvania 18103; Bayard Sales Corporation, 3300 Richmond Street, Philadelphia, Pennsylvania 19134.

5. Mirarchi sustained serious personal injuries to his lower right leg in a work-related accident which occurred on November 18, 2002, while engaged in the course and scope of his employment at Weaver in New Castle, Delaware.

6. At the time the accident of November 18, 2002, Weaver, as Mirarchi’s employer, was required to maintain Workers’ Compensation Insurance in accordance with the Delaware Workers’ Compensation Act.

7. Weaver failed to maintain the required Workers’ Compensation coverage.

8. On November 18, 2002, while in the course of his employment, Mirarchi was injured when a slab of granite tipped from an overloaded “A-Frame,” resulting in a direct traumatic injury to his lower right leg.

9. Weaver was negligent in causing the accident of November 18, 2002, in the following respects:

(a). The “A-Frames” used to support the inventory of marble and granite slabs were overloaded creating a dangerous and hazardous work environment for its employees, including Mirarchi.

(b). Weaver failed to employ the appropriate safety devices to prevent accidents such as that which occurred resulting in injury to Mirarchi.

(c). Weaver failed to properly supervise and control its employees to prevent the overloading situation and hazardous work environment which caused this accident.

10. Immediately after the accident, Mirarchi requested medical attention which was rendered at the Limestone Medical Center, Inc.

11. Following emergency treatment at Limestone Medical Center, Inc., Mirarchi missed seventeen (17) days from work on physician's orders and never returned to work for Weaver.

12. Mirarchi obtained substitute employment after the accident of November 18, 2002; he did not return to work for Weaver. The period of earnings loss attributable to the accident was seventeen (17) work days of eight (8) hours. At an hourly rate of \$11.00, this loss of earnings totals \$1,496.00.

13. As a result of his work related injury, Mirarchi was also unable to continue his employment at Marra's Restaurant on Passyunk Avenue in Philadelphia, and lost twenty-three (23) days from work at an average income of \$100.00 a day for a total of \$2,300.00.

14. Following his treatment at the Limestone Medical Center, Inc., Mirarchi came under the care of Healthmark, Inc., a provider which specializes in workers' compensation injuries, and remained under the care of Healthmark, Inc., from November 25, 2002, until March 10, 2003, at a cost of \$1,861.03.

15. During the time he was under the care of Healthmark, Inc., Mirarchi required two hospitalizations, the first at Thomas Jefferson University Hospital from January 9, 2003, through January 14, 2003, at a cost of \$25,357.19; and the second at Methodist Hospital from January 15,

2003, until January 18, 2003, at a cost of \$15,849.75, for treatment of injuries and complications from the injuries sustained in the accident of November 18, 2002.

16. Mirarchi also required treatment by Dynamic Rehabilitation Services, Inc., from June 2, 2003, until September 29, 2003, at a cost of \$4,010.00, and from Diamond Trauma and Pain Management, P.C., from June 2, 2003, until September 29, 2003, at a cost of \$805.00, for treatment of injuries and complications resulting from the work related accident of November 18, 2002.

17. In addition to the medical facilities referred to above, Mirarchi required medical treatment and diagnostic studies from other healthcare providers as set forth on the Schedule of Special Damages (Exhibit P-3).

18. The medical care and treatment received by Mirarchi following the November 18, 2002 accident, was reasonable, necessary and the charges for that treatment are reasonable and customary for the services in the area where the services were rendered.

19. Because of Weaver's failure to maintain the Workers' Compensation coverage required by the Delaware Workers' Compensation Act, § 2374, Mirarchi is liable for the cost of the medical care he received, and he has been pursued by the medical providers for payment of medical bills.

20. Mirarchi continues to suffer residual effects from the injury sustained in the accident of November 18, 2002, including:

(a). Recurrent swelling in his lower right leg.

(b). A limitation in his ability to run, jog, climb steps and utilize his right leg in the manner in which he used it before the accident.

(c). Intermittent extreme itching when his right leg is exposed to cold temperatures.

(d). Possible nerve damage to the affected portion of his lower right leg.

21. As a result of this ongoing condition of his right lower leg, Mirarchi is required to soak his leg for a period of approximately twenty minutes each morning; engage in stretching exercises to avoid cramping; and is unable to pursue the athletic activities, including jogging which he pursued before the accident.

22. Mirarchi is 37 years of age, having been born September 19, 1967. Because the residual affects of his injuries have continued for more than two (2) years since the accident, it is likely that they will continue for some time into the future.

III. CONCLUSIONS OF LAW

1. The Court has jurisdiction based upon diversity of citizenship. 28 U.S.C. § 1332.

2. Weaver is subject to the jurisdiction of this Court since, at the time suit was instituted, it regularly conducted business in the Eastern District of Pennsylvania.

3. Weaver is in violation of the Delaware Workers' Compensation Act, § 2374, for failing to provide Workers' Compensation coverage for Mirarchi, and is therefore subject to suit at common law.

4. Weaver was negligent and such negligence was the proximate cause of Mirarchi's accident of November 18, 2002, resulting in serious personal injury to Mirarchi.

5. Mirarchi is awarded \$53,859.46 for past medical expenses.

6. Mirarchi is awarded \$3,796.00 for past loss of earnings.

7. Mirarchi is awarded \$150,000.00 for past, present and future for pain and suffering and all related damages.

An appropriate Order follows.

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	:	
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	:	
WEAVER ENTERPRISES, INC.	:	
Defendant.	:	

ORDER

AND NOW, this 31st day of August, 2005, based on the attached Findings of Fact and Conclusions of Law, **IT IS ORDERED** that **JUDGMENT IS ENTERED** in **FAVOR** of plaintiff, Joseph Q. Mirarchi, and **AGAINST** defendant, Weaver Enterprises, Inc., in the total amount of \$207,655.46.

IT IS FURTHER ORDERED that, in addition to counsel for plaintiff, a copy of this Order shall be served by the Deputy Clerk on defendant, Weaver Enterprises, Inc., at 400 W. Basin Road, New Castle, Delaware 19720-6408.

BY THE COURT:

JAN E. DUBOIS, J.