



## Driver Struck By Heavy Door Gets \$400K

### Defense tried to stop jury from hearing about plaintiff's sick wife

By **THOMAS B. SCHEFFEY**

**E**dward Sherman *v. Polymer Resources Ltd.* A driver for a Glastonbury trucking company, Edward Sherman, was struck on the shoulder by an overhead loading door in Farmington. He was picking up pallets of plastic raw materials from Polymer Resources Ltd., which owned and was responsible for maintaining the 170-pound door, manufactured by Overhead Door Inc.

Michael D'Amico, of Watertown's D'Amico, Griffin & Pettinacci, represented Sherman – who sustained injuries to his back and spine – in the negligence action against Polymer, a Farmington supplier of industrial plastics and resins.

D'Amico hired an engineering expert who had previously worked for Overhead Door, which was also a defendant. The company was represented by attorney David J. Mathis of Hartford, who did not return a call seeking comment. Polymer Resources' defense lawyer is Anita M. Verunas, of Hartford.

The defense wanted the plaintiff to specifically identify the defective part that caused the injury. His engineer didn't do that, but he did conclude the door fell due to a lack of preventive maintenance. Polymer had a crew of three maintenance personnel, said D'Amico. One testified that the company's practice was to work on the door only when it ceased to function. D'Amico argued that "management by crisis" was a form of negligence. "Every six months, it's recommended that a professional examine the door and make sure the cables that lift the door are in good condition, that the motors and the chain drive are working properly." He asked, rhetorically, "Do you wait for your car to break before you fix it, or do you bring it in for routine oil changes?"

In three days of settlement talks before

Hartford Superior Court Judge Marshal Berger, Polymer offered \$75,000, and as the case approached trial in Waterbury, increased its offer to \$130,000. Sherman's lowest offer to settle, \$250,000, was rejected.

Picking a jury was more difficult due to the economic downturn, D'Amico said.

"Normally, it would take us three days or so to pick a jury. But many people said they were laid off, or had fears of being laid off, and could not take two weeks to sit through a jury trial."

After a two-week trial before Waterbury Superior Court Judge Dennis Eveleigh, the jury returned a verdict of \$400,000.

Polymer's lawyer, Verunas, had filed eight motions to preclude potentially harmful testimony. Sherman's wife, who had a loss of consortium claim, also had serious health problems. Verunas asked to keep out any reference to her cancer, heart or stroke problems to avoid inflaming juror sympathy. D'Amico argued successfully that her illness should be admissible generally to show that Sherman's damages included the stress of having to care for a seriously ailing spouse.

Verunas also argued that Sherman should not be allowed to claim future medical costs for treatment that had less than a 50 percent chance of being needed. Sherman's physicians testified that there was a 30 percent likelihood that he would need to have subsequent spinal fusions. D'Amico prevented those costs from being entirely eliminated.

"It's clear this comes in under non-economic damages," D'Amico said, "and that [the plaintiff] should be able to introduce it as his fear of future medical complications and the resulting economic losses."

Both sides were concerned that the jury might improperly adjust its verdict on a hunch. Verunas asked the judge to forbid any reference to Sherman having received work-



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**Watertown attorney Michael D'Amico argued that the defendant's policy of not maintaining a 170-pound overhead door until it ceased to function was 'management by crisis,' and a form of negligence.**

ers' compensation payments.

Verunas, contacted for comment, deferred comment pending clearance from her client. D'Amico had no such constraints. "The concern of defense counsel in such cases," he explained, "is that the jury will be generously cover what needs to be paid back for workers' compensation, and leave enough over and above that to make the verdict count. I have never found it to have that effect."

On the contrary, D'Amico's fear is that a jury will resent an injured client asking for a second payment from one injury. "So I always ask the judge to give an instruction that while people may receive workers' compensation benefits, or that their bills may have been paid through other types of insurance, the jury is not to consider that," D'Amico said. "It must treat all the losses as being uncompensated." ■