

\$8 Mil. Settlement in Fatal Manayunk Paper Mill Case

By Asher Hawkins
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An \$8 million settlement has been reached in a Philadelphia workplace death case that sparked a hard-fought dispute over the identities of various corporate defendants named in the action.

Steven Green, 43, left behind an adolescent son when he died in July 2002 after apparently falling into a high-temperature pulping pit at the Manayunk paper mill at which he was employed. There were no witnesses to Green's accident.

Court exhibits show that the hydropulper's mouth was essentially a 10-foot hole in the concrete floor of the mill's basement.

According to court papers, co-workers had trouble pulling Green out of the neck-deep pool of boiling pulp because his skin was sloughing off as a result of the extreme heat. He died in the hospital the next day.

Barnes-Green v. Jefferson Smurfit Corp. was filed by wife Robin, from whom Green was separated at the time of his death. Named as defendants in the action were Rhoads Industries Inc., a contractor said to be involved in servicing the safety guarding around the hydropulper in question, as well as roughly a dozen corporate entities allegedly involved in the ownership and oversight of the paper mill.

Plaintiff's attorney Andrew Stern of Kline & Specter, who handled the case with fellow firm member Carol Dembe, said that Rhoads settled for \$2 million before the trial got underway, while the corporate entity defendants that ultimately went to trial agreed to a \$6 million settlement as the jurors in *Barnes-Green* deliberated.

Philip Priore of McCormick & Priore, who defended Rhoads in the case, did not immediately respond to a call seeking comment.

The corporate entity defendants allegedly related to the paper mill were represented in the matter by Robert Mulhern Jr. of Swartz Campbell and John Snyder of Rawle & Henderson.

Mulhern deferred comment on the case to his client. Tom Lange, spokesman for St. Louis, Mo.-based Smurfit-Stone Container Corp., said his company has been frustrated that no cause of the accident was ever determined.

"We're obviously saddened by the death of Mr. Green," Lange said, adding later, "We go to great lengths to try to ensure the safety of our employees."

According to Stern, the key corporate entity defendants that went to trial were Smurfit-Stone Container Corp. and Jefferson Smurfit Corporation (U.S.).

Stern said that the defense contended at trial that Jefferson owned the plant itself and, as Green's employer, was immune from liability under Pennsylvania's workers' compensation laws. The defense further argued that Smurfit-Stone was a separate entity involved in the management of stock portfolios, and did not have direct oversight concerning the Manayunk mill's operations, according to Stern.

But Stern said the plaintiff's side was able to gather evidence, some of which came from internal documents indicating that Smurfit-Stone had hands-on involvement with operations at the mill.

The plaintiff's side had alleged in court papers that both corporate entities were liable as a result of negligent implementation of safety standards with respect to the hydropulper. They noted that in 1996, the mill had been cited by the Occupational Safety and Health Administration for problems with its hydropulper safety guarding.

Stern said he argued to the jurors that whichever corporate entity was found to be Green's employer at the time of his death, the other would be on the hook for Green's death.

"Part of my opening was, 'Watch the corporate dance,'" Stern said.

"On the other hand, this was a difficult case for us because [the defense] had a fair amount of evidence," including Securities and Exchange Commission filings, "showing [Smurfit-Stone] was truly a holding company," he said.

The defense contended in court papers that "the fact that, for marketing purposes, the [mill] was often referred to anecdotally as 'Smurfit-Stone Container Corp.' or 'Smurfit-Stone' is not sufficient to create liability for a parent corporation that did not own the premises, operate the business or control any of the employees."

Stern said he believes two pieces of evidence significantly buttressed the plaintiff's claims that Smurfit-Stone was involved in direct oversight of the mill's operations.

Several days after Green's death, Stern said, his family received a letter from a human resources manager, on paper bearing Smurfit-Stone's letterhead, that identified Green as an employee of Smurfit-Stone.

In addition, Green had been sent tax documents on which his employer was listed as "Jefferson Smurfit Corp. (U.S.) d/b/a Smurfit-Stone Container Corp.," Stern said.

The plaintiff's demand early in the litigation for \$75 million, including punitive damages, did not prompt any settlement offers from the defendants, Stern said.

The jury was picked Jan. 12 before Judge Nitza I. Quinones Alejandro, who presided at trial. The day before the trial began, Rhoads agreed to the \$2 million settlement, Stern said. The trial went from Jan. 17 to Jan. 26.

Stern said that while evidence at trial of a plaintiff's receiving workers' comp benefits is often considered problematic by plaintiffs attorneys, that wasn't the case in *Barnes-Green*.

Stern said that the plaintiff, Green's wife, has been receiving Green's workers' comp payments since his death, and has been unemployed for several years.

Stern said the concern from his perspective was that "the jurors might think, 'She's getting workers comp, she was separated from this guy, and she hasn't been working for several years.'"

When Jefferson's corporate designee took the stand at trial, Stern said, the defense reached a point when it was on the verge of introducing evidence that corporate entity had paid the premiums on the workers' comp coverage from which Green's family has been benefiting.

That would have not only strengthened the defense argument that Jefferson was actually Green's employer, Stern said, but also called the jury's attention to the fact that Barnes-Green was receiving the workers' comp payments.

Before that evidence was touched upon during direct examination of the Jefferson corporate designee, the judge called a sidebar, Stern said. Quinones Alejandro explained to the attorneys that under state Supreme Court precedent, a workplace injury action defendant is permitted to bring up evidence of workers' comp payments if the identity of the plaintiff's statutory employer is at issue in the case.

Stern said he told Quinones Alejandro and the defense counsel that he wouldn't object to the defense's line of questioning, but cautioned that it would open the door for him to show the jury evidence from Green's workers' comp documents that would have had a negative effect on the defense's corporate-identity arguments.

Stern said that Smurfit-Stone had appeared as Green's employer for the purposes of workers' comp proceedings stemming from Green's death.

He also said that when Barnes-Green was first sent letters notifying her of a workers' comp lien, Smurfit-Stone was listed as the insured. After the litigation was initiated, Stern said, subsequent letters to Barnes-Green concerning the lien listed Jefferson as the insured on the relevant workers' comp policy.

"I was like, 'Go ahead, make my day, bring it up,'" Stern said, adding that the defense ultimately did not introduce any evidence of Barnes-Green's receipt of workers' comp payments.

Pursuant to the settlement agreement, he said, Barnes-Green will receive those benefits until the day she receives the \$6 million from the corporate entity defendants. The \$200,000 workers' comp lien currently in place against her has also been waived.

Stern said that as the trial progressed, the corporate entity defendants' offers increased from roughly \$2 million on Jan. 18 to \$6 million on Jan. 26, after the jury had been deliberating for several hours. Stern said that while it's nice to "thump your chest" about a huge punitive damages award, \$8 million was nearly eight times the highest estimate of the case's compensatory damages, and his client was inclined to settle.