

## RECENT CASES: WORKPLACE SAFETY

*Am. Natl. Bank of Cheyenne v. Hannifan*, Wyo., Campbell Co. 6<sup>th</sup> Jud. Dist., No. 25736, Feb. 26, 2007.

Butts, 31, was operating a cable-laying rig at a coal strip mine. The machine was rolling out cable to be used to run the shovels down in the mines, and Butts had to drive at the bottom of a canyon created by 300-foot highwalls of discarded dirt. Part of the highwall sloughed off, and a 1,000-pound dirt rock fell through the rig's metal roof. Butts suffered a mild to moderate closed head injury and paraplegia at T-9. His past medical expenses were about \$567,300, and his life-care plan is estimated at \$3.7 million. Butts had been a rig operator earning about \$63,300 annually, but he is now permanently disabled. His past income loss was \$454,000, and he expects to incur approximately \$2.21 million in future lost income. Workers' compensation has asserted a lien of about \$1.18 million.

Butt's bank, as his conservator, and wife, on behalf of their minor children, sued the safety manager and the mine manager. Plaintiffs alleged willful and wanton misconduct in (1) failing to have a falling object protection structure (FOPS) on the machine to keep falling objects from penetrating the vehicle, in violation of U.S. Occupational Health and Safety Administration (OSHA) regulations, and (2) operating in a part of the mine that was unreasonably dangerous because it did not have catch benches for rocks falling from the steep walls.

Defendants contended mining is dangerous work, and it was unpredictable that the rock would fall. Defendants also disputed plaintiffs' argument that OSHA required that a FOPS be put on the machine.

Under Wyoming law, Butt's employer, the mine, was immune but was listed on the verdict form.

The jury awarded the plaintiffs \$22 million, including \$2 million to each of the children, and apportioned 25 percent of fault to the mine manager, 18 percent to the safety manager, and 57 percent to the nonparty employer. The award was accordingly reduced to \$9.46 million, including \$860,000 to each child.

Plaintiffs' experts were Erin Bigler, neuropsychology, Provo, Utah; Terry Winkler, life-care planning, Springfield, Mo.; Pat Stacey, economics, Boulder, Colo.; and Robert Ferriter, mine safety, Golden, Colo.

Defendants' expert was Ben Seegmiller, mine safety, Salt Lake City, Utah.

### *Plaintiffs' Counsel*

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