Lack of Guidance on Operation and Safe Use Of Rental Equipment Results in Serious Injury

Everything was going very well for Tom Johnson (not his real name), a very active, healthy, 70-year-old, retired U. S. Army command sergeant major living in Tallahassee, Florida. Though he was retired from the Army, he remained very active remodeling houses and volunteering as handyman at his church and as a volunteer bus driver for its youth group. He was the rock of his family.

In August 2009, Tom decided to help his daughter and son-in-law remove some pine trees in the backyard of their home. He called ABC Rentals (not its real name) and asked if they had equipment that would help in the project. ABC's representative said yes and recommended an aerial basket crane also known in the industry as a boom lift. Tom was quite experienced in removing trees, but not very experienced in using aerial lift equipment. He talked to ABC's rental clerk about a towable boom lift, one that was manufactured by XYZ Industries (not its real name). The lift looked like just the right kind of equipment for the project, so Tom rented it for the weekend. Unfortunately, when Tom rented the boom lift, ABC's clerk failed to provide Tom some very specific safety bulletins and familiarization training on what type of fall-protection (safety harness) was needed and how to correctly attach it to the boom. This failure to provide the necessary safety guidance was in direct violation of ABC's own rental policy and contrary to guidance issued by the American National Standards Institute, the organization that sets industry guidelines for the safety and health of consumers using various devices like boom lifts.

The next day, Tom arrived at his daughter's home and set up for the project. He climbed into the basket of the lift and raised the boom to the top portion of a tall pine tree. He tied ropes to the upper part of the tree to help guide the cut portion of the tree down to the ground in the right direction. Below the ropes, he used his chain saw to cut a pie wedge into the tree trunk that would cause the top section to fall in the direction Tom intended. Then he maneuvered the boom and basket to the opposite side of the tree trunk and, using his chain saw, proceeded to cut the tree in half. When the upper portion of the tree fell, the "cut" end kicked back and down onto the rail of the basket of the lift. The basket broke apart and detached from the boom's telescopic arm. Tom fell 20 feet to the ground, landing flat on his chest.

Tom suffered a lacerated right kidney and spleen, as well as a collapsed lung. Several of his teeth were shattered from the impact. Tom was rushed into surgery to stop internal bleeding from his lacerated kidney. The surgeons saved Tom's life, but the damage to his kidney was too severe. As a result, Tom lost his right kidney. He spent several days in an intensive care unit, followed by a week in a rehabilitation hospital.

Tom and his family sought representation from SDSBS attorneys **James Gustafson** and **Cameron Kennedy** in an effort to hold ABC and XYZ accountable for their negligence and the defective product. Mr. Kennedy advanced negligence claims on the part of ABC in not providing mandatory guidance on operation and safe use of the equipment, and in improperly and incorrectly directing the user on the safety features regarding the safety harness. Mr. Kennedy also advanced a defective product claim against XYZ's manufacture of the equipment by establishing design flaws inherent in the lift's platform and basket. Discovery revealed that XYZ had no pre-manufacturing testing data to review the failure rate of the metal alloys used in the construction of the light-weight platform and basket.

On the eve of trial, both the rental corporation and the manufacturer settled for a confidential amount under a non-disclosure agreement. ◆

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