

Premises Liability – Traumatic Brain Injury

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Premises Liability

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A commercial property owner in a traumatic brain injury lawsuit filed in the Norfolk Superior Court was successfully defended.

The plaintiff's employer, a roofing contractor, was hired by the defendant to shovel snow off the defendant's roof during the heavy snowfall in the Winter of 2015. The plaintiff, who was the foreman of his crew, fell 30 feet from the roof and sustained a severe traumatic brain injury which required Medflight treatment and multiple surgical procedures, including a hemicraniectomy. The plaintiff also sustained injuries to his left arm that resulted in a permanent partial impairment. At trial, the plaintiff offered approximately \$900,000 in medical bills and testimony from an expert neuropsychologist regarding the cognitive and behavioral changes that the plaintiff experienced post-accident, which were permanent in nature. The settlement demand from the plaintiff's attorney during trial was \$6 million.

The primary disputed issues in the case were control over the work to be performed and relative fault of the parties. The plaintiff relied heavily on a theory of control based on expert testimony and interpretation of the OSHA Multi-Employer Citation Policy. The BSL attorneys successfully moved in limine to preclude any reference to OSHA as the Multi-Employer Citation Policy is merely a directive, not a regulation, and OSHA regulations were inapplicable to a business owner with regard to an employee of an independent contractor. After a two week trial, the jury returned a defense verdict.