

**WORKERS' COMPENSATION****Workers' Comp Non-Subscriber, Workplace - Construction Site****Employer Claimed It Not Responsible For Ankle Break**

VERDICT **Defense**

CASE Julio Antonio Hernandez v. Ashe Construction Company, No. 00-04717-F

COURT Dallas County District Court, 116th, TX

JUDGE Carlos Lopez

DATE 01/31/2003

PLAINTIFF

ATTORNEY(S) Michael R. Cramer, Cramer Law Offices, Mesquite, TX

DEFENSE

ATTORNEY(S) Robert J. Reagan, Reagan & McLain, Dallas, TX

FACTS & ALLEGATIONS On June 25, 1998, plaintiff Julio Antonio Hernandez, 35, broke his ankle while working within the scope of his employment for Ashe Construction Co. Hernandez was installing crown moulding to a house. He and another employee separated their ladder into two pieces and then turned one upside down for use. According to the second employee, Hernandez was moving quickly up the ladder while holding a nail gun when he slipped and fell badly on an ankle, suffering a compound fracture.

Hernandez sued Ashe, a workers' compensation non-subscriber, alleging that as his employer it had failed to properly instruct him in the use of a ladder. He further argued that Ashe provided inadequate supervision.

Ashe contended that the use of a ladder under these circumstances was at least to some degree a matter of common sense, and that although the Texas Workers'

Compensation Act prohibits an employer from raising common law defenses, nevertheless the plaintiff had to prove by a preponderance that it was negligent. Ashe alleged that this evidence was insufficient to show it was negligent.

INJURIES/DAMAGES The plaintiff claimed damages resulting from a compound fracture of an ankle, as well as from disfigurement, pain and suffering. Hernandez claimed medical expenses of \$3,441.45, lost wages of \$15,000, and asked the court to award \$50,000 total.

VERDICT INFORMATION In a bench trial the court rendered a verdict of no negligence by the defendant Ashe Construction.

PLAINTIFF

EXPERT(S) James Bengé, workplace safety, Dallas, TX

DEFENSE

EXPERT(S) None

POST-TRIAL Judgment final; plaintiff did not appeal.