

# VIRGINIA LAWYERS WEEKLY

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## Verdicts & Settlements

# Injured deliveryman negotiates settlement after arbitration award

### \$750,000 settlement

Plaintiff, a 42-year-old male, was a route deliveryman for a beverage company. He had delivered beverages to defendant hospital numerous times. On the day of the incident, he had 20-gallon containers on his delivery cart and arrived on the second floor where the kitchen and storage areas were located. As he pushed his cart down the hallway, other deliveries stacked in the hall caused him to veer to the left side of the congested hallway. There were two cold storage rooms on the left side of the hallway. As plaintiff approached the second door, without notice, a cook who worked for the hospital for many years bumped the door open using her hips because her hands were full of vegetables. She failed to look down the hallway where the plaintiff was coming from. The heavy door, with a narrow thin edge on it, swung open suddenly and made contact with plaintiff's left shoulder. Plaintiff rolled over his cart and fell to the floor, complaining of pain in his left shoulder. Plaintiff reported to ER where he was diagnosed with an injury to his left shoulder and loss of range of motion.

Plaintiff received a left shoulder arthroscopy, subacromial decompression, distal clavicle resection and rotation cuff repair, followed by four months of therapy. This surgery was performed three separate times with following therapy for plaintiff to

reach maximum medical improvement. Plaintiff received a permanent impairment rating of an upper extremity of 7 percent. Plaintiff was not medically able to return to his previous employment due to his inability to lift and push heavy objects.

Defense denied liability and asserted the affirmative defenses of contributory negligence and assumption of the risk. As suit progressed depositions and discovery continued.

Plaintiff and defendants agreed to arbitrate the issues of liability, contributory negligence and assumption of the risk. The agreement provided for negotiations of settlement if plaintiff prevailed in the arbitration, but if settlement negotiations failed, the matter would be returned to the arbitrator for final determination.

The arbitrator made a finding in favor of the plaintiff and ruled against the defendants. Negotiations ensued very slowly, with no offer on the table. After much discussion and negotiation, the case was settled for \$750,000.

[13-T-132]



ZYDRON

**Type of action:** Personal injury – general liability

**Injuries alleged:** MRI revealed a small, localized full-thickness tear within the anterior distal supraspinatus tendon in his left shoulder

**Arbitrator:** E. Preston Grissom

**Date resolved:** June 10, 2013

**First offer:** None

**Special damages:** Medicals – \$131,433.20; life care plan – \$98,266; loss of wages – disputed

**Demand:** \$975,000.00

**Verdict or settlement:** Arbitration of issues of liability, contributory negligence and assumption of risk; negotiated settlement of amount of claim

**Amount:** \$750,000 (negotiated settlement after the arbitration award)

**Attorneys for plaintiff:** Bennett & Zydron, P.C., Virginia Beach, VA