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\$5.4M award for slip, fall on fuel spill

UP rail yard worker stood over slick as he fixed diesel leak

BY LAURAANN WOOD
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A Cook County jury awarded \$5.4 million to a man who suffered lower back and groin injuries after slipping on a diesel slick at a rail yard.

The verdict, which was reduced from \$9 million for contributory negligence, came Thursday in plaintiff Andreas Bakopoulos' case against Union Pacific Railroad Co. He sued the railroad in 2013 alleging it failed to provide him proper tools and a safe workplace while he was repairing a leak in April 2011.

Bakopoulos, who worked as a diesel mechanic in the railroad's Global I yard at 1425 S. Western Ave., was performing a federally required inspection when he found a "pretty significant leak" in a locomotive's fuel preheater, said Christopher M. Norem, a partner at Parente & Norem P.C. who represented the plaintiff.

The leak created a fuel-covered area on which Bakopoulos had to stand while he tried to remove a flare nut on the locomotive's tubing system using a pipe wrench.

But that was an improper tool to use for such a job, Norem said, because a pipe wrench is designed to clamp tightly on objects from two sides and would only fasten the flare nut tighter as he pulled on the tool.

"Effectively, the harder you pull, you actually make it harder for yourself to bust it free," he said.

Norem said although soap and water is the best method to clean fuel on the ground, the railroad's water system was not functional where he was working. Bakopoulos also asked supervisors several times for help with the repair, he said, but none came to his assistance.

"He thought this needed to go into a diesel shop, and he just kept getting told to go fix it," Norem said. "... Basically, the railroad's position was someone with Andy's experience should be able to handle this no problem."



Christopher M. Norem

Bakopoulos put one foot inside the locomotive's engine bay and kept another on the outside of it while he continued to pull on the wrench until the nut finally broke free. But as that happened, Norem said, his body twisted and he slipped and fell on the fuel that had pooled from the leak.

Norem said Bakopoulos heard something tear, felt nauseated and immediately felt pain in his back.

"He thought he had ripped his jeans," he said.

Bakopoulos suffered a left inguinal hernia that was surgically repaired shortly after the incident.

As he continued to heal from the surgery, Norem said, he noticed his lower back pain had not improved and consulted a spine specialist who ordered physical therapy and spinal injections for treatment. He returned to work that fall, Norem said, but he couldn't operate any machinery as he was still taking narcotic pain medication for his back pain.

In August 2012, Bakopoulos suffered a shattered right ankle after his vehicle was involved in an unrelated car crash. That injury required two surgeries, physical therapy and more than six months of healing before he could return to bearing his weight on the ankle. He has not returned to any kind of work since the collision, Norem said.

Bakopoulos settled his lawsuit resulting from the crash for \$2.9 million in April 2014. That case is *Andreas Bakopoulos v. Grand Warehouse Distribution Corp. and Scott Lee Ridenour*, 2012 L 011551.



Amanda M. Martin

But his back pain persisted throughout his ankle's healing process, Norem said, so he consulted another spine specialist who eventually performed a two-level fusion in his lower back.

The procedure resolved the radiating pain Bakopoulos felt in his right leg, Norem said, but he still experiences back pain and had a spinal cord stimulator installed to help manage it.

"So you have a guy who's now 41 years old, has the fusion, doesn't have the leg pain but still has the back pain and he shuffles around like an old man," he said.

In denying Bakopoulos' allegations, the railroad contended he overexerted himself when trying to loose the flare nut, failed to properly secure his own safety while working and failed to use oil-absorbing pads to clean the leaked fuel.

But Bakopoulos contended those pads were not available to him at the time, and even if they were, repairing a locomotive while standing on top of one "would have been like working while standing on top of a banana peel," Norem said.

Union Pacific also contended Bakopoulos' back issues stemmed from his 2012 car crash, Norem said. But it was important to highlight for the jury when Bakopoulos started feeling the back pain, when he began seeking treatment and how that pain had not resolved at all through his recovery from the collision, he said.

"They wanted to try to create as much doubt as they could with respect to his back," he said. "Fortunately, the jury understood the



Matthew J. Coleman

medicine and saw right through it." Brody E. Dawson and Thomas A. Hayden, Union Pacific's in-house counsels, could not be reached for comment.

The parties did not engage in any settlement negotiations before they were assigned to trial before Circuit Judge Thomas V. Lyons II "because it was clear that they weren't interested," Norem said. They answered his \$3 million demand with a \$50,000 offer during a pretrial conference with Lyons, he said, "and that was the end of discussions at that point."

The defendants also offered a high-low settling agreement ranging from \$100,000 to \$300,000 while the jury was deliberating, which Bakopoulos also rejected.

After a nearly two-week trial, the jury awarded \$9 million to Bakopoulos — the exact amount he requested — for past and future pain and suffering and loss of a normal life. But it reduced the award by 39.5 percent, bringing his net recovery to \$5.445 million.

Norem said his client was pleased with both the jury's award and the progress he's made with the spinal cord stimulator because it's allowed him to take less of the narcotic pain medication he was prescribed.

Parente & Norem associates Amanda M. Martin and Matthew J. Coleman also represented Bakopoulos.

"All things considered, he's doing better than he had been," he said.

The case is *Andreas Bakopoulos v. Union Pacific Railroad Co.*, 13 L 2997.