

JOHNSON & WARD

NEGLIGENT FAILURE TO SECURE LOAD; CONTRIBUTORY
NEGLIGENCE/ASSUMPTION OF RISK: FRACTURED HIP, BROKEN LEG;
SETTLEMENT

James L. Davis, et. al. vs. Fiberweb North America, Inc., A
Delaware Corporation

U.S. District Court Civil Action File No. 2:94-CV-0093-WCO
October 13, 1995

Settlement of \$450,000.00 for a truck driver who suffered a fractured right hip and broken leg when struck by a bale of cotton fiber waste, which fell from his trailer after he unlatched the rear door.

On the 11th day of March, 1994, James L. Davis, age 50, drove a tractor truck, owned by him but on permanent lease to Dahlonga Transport, Inc., pulling an empty trailer, to a facility owned by Fiberweb North America, Inc. in Simpsonville, South Carolina, where his trailer was to be loaded with cotton fiber waste for transport to the Sundance Company in Gainesville, Georgia. While he waited at the dock, employees of Fiberweb loaded his trailer with highly compressed cotton bales of fiber waste. Thereafter, Mr. Davis sealed the unit and drove directly to Gainesville, Georgia. Upon arrival at the Sundance Company, preparatory to backing his rig to a loading dock for unloading, he unsealed the trailer and unlatched one rear door. Immediately thereafter, a rectangular bale, weighing approximately 652 pounds, fell from the trailer crushing him to the ground. As a result of this incident, Mr. Davis suffered a shattered right hip and an injury to his lower back, necessitating approximately \$35,000.00 in medical and related expenses, and causing him to be out of work through June 11, 1994. He had a plate and screws

permanently implanted in his hip, and was assessed a 10 percent permanent partial disability by an independent physician.

Throughout the course of the ensuing litigation, Fiberweb contended that the load had been properly packed according to a loading plan established by it which had been used to load similar fiber waste for many years without incident. Moreover, it was asserted that it was Mr. Davis' duty to inspect the load and request reloading if there was anything unsafe or unusual about it. Finally, it was contended that Mr. Davis had been contributorily negligent and had assumed the risk of his injury by standing directly behind the rear door of his trailer when he unlatched it with knowledge that loads often shift during transport. In connection with these defenses, Fiberweb produced a printed copy of its loading plan reflecting that the compressed cotton bales, with dimensions of 64 inches long, 56 inches wide, and 32 inches high, were to be laid rectangularly and uniformly from the front to the rear of the trailer, with nine rows of five bales each.

Plaintiffs' discovery revealed that Mr. Davis' manifest indicated he had been provided with 45 bales of compressed cotton of greatly varying weights, with the heaviest bale weighing 684 pounds and the lightest, 438 pounds, or a difference of almost 250 pounds, thus indicating great disparities in size and corresponding difficulties in conforming to the precise measurements employed in Fiberweb's loading plan. Moreover, it was determined that Fiberweb's loading plan had only been promulgated in written fashion after the incident in which Mr.

Davis was injured, and that no supervisor of Fiberweb was responsible for inspecting or checking its trucks after they had been loaded for compliance with the loading plan; the Fiberweb employee assigned to the dock area, who actually loaded the trailers, had no direct supervision in this regard. Indeed, Fiberweb was unable to determine the specific individual who had loaded James Davis' trailer - all of the dock personnel responsible for such duties were deposed, with each indicating that he only followed the specified loading plan, but that he had not been responsible for the loading of Mr. Davis' trailer.

Two passersby in an automobile who witnessed the incident, were located by plaintiffs, who confirmed that as soon as the door was unlatched, it flew open and a bale immediately fell out, thus suggesting that a bale had been improperly placed on end at the rear of the trailer, and during transit had come to lean against the rear doors, forcing them open and permitting its fall, a condition that could not have occurred had the bales been laying rectangularly as contended by Fiberweb. Finally, plaintiffs were prepared to present testimony from several other truck drivers that it was not their responsibility to load, unload or inspect the load, but that they were simply responsible for its transport. Moreover, all agreed that they were not aware of any loading plan utilized by Fiberweb, and would not have recognized an unsafe load in this regard even if they had examined it.

The case was settled after the entry of a Consolidated Pre-Trial Order during the course of an agreed upon non-binding mediation proceeding.

[Plaintiffs were represented by ATLA and GTLA members William C. Lanham and Clark H. McGehee of Atlanta, Georgia.]