

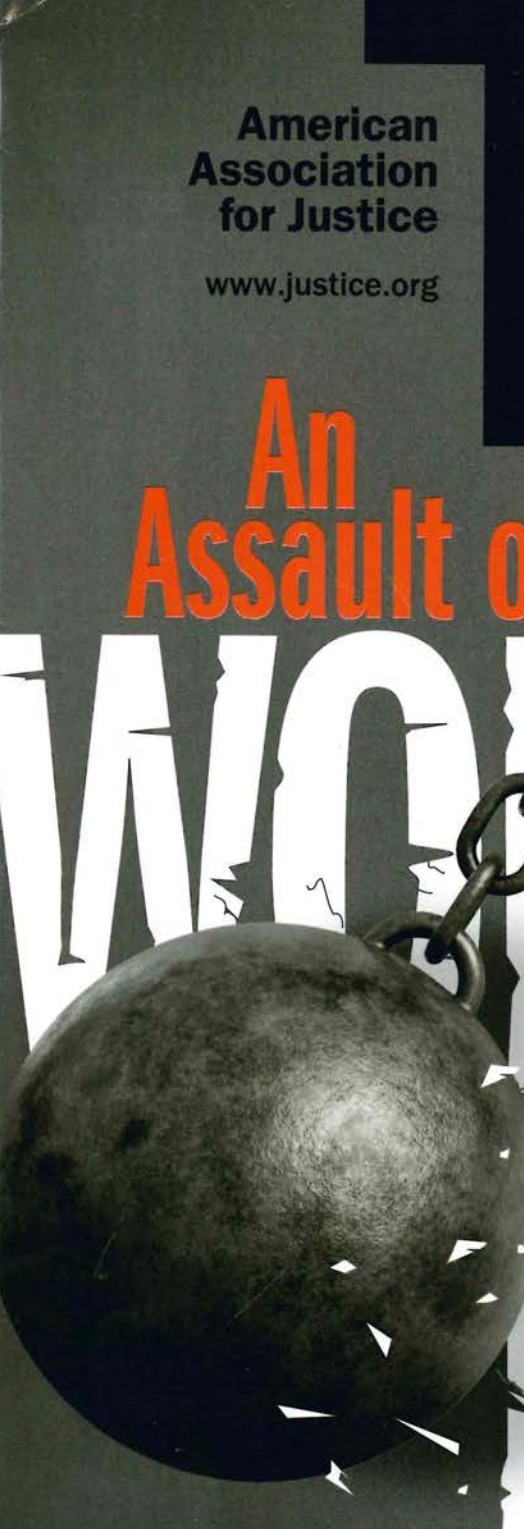
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September 2018

An
Assault on

WORKERS' RIGHTS



SCOTUS's
"Epic"
Impact
and Forced
Arbitration

Employer
Retaliation
Against
Whistleblowers

Misclassifying
Workers

ALSO

Overcome ESI
Roadblocks

PREMISES LIABILITY

Failure to conform to fire safety standards

Nina Brekelmans, 25, and Michael McLoughlin, 24, lived on the third floor of a residential building owned by Len Salas. Early one morning, a fire erupted on the first floor of the building. Brekelmans and McLoughlin, who were asleep when the fire began, later awoke and attempted unsuccessfully to exit the burning building. They were found dead on the third floor. Brekelmans, a Fulbright scholar, and McLoughlin, who was working to become an actuary, are survived by their parents.

The parents sued Salas, alleging that the building's lack of operable windows, functioning fire escapes, smoke detectors, and fire extinguishers caused their children's deaths. The plaintiffs also asserted the defendant failed to conform to the D.C. fire code, housing regulations, and other fire safety standards.

The jury awarded \$15.2 million.

CITATION: *McLoughlin v. Salas*, Nos. 2015 CA 8054 B and 2015 CA 8061 B (D.C. Super. Ct. Apr. 4, 2018). **PLAINTIFF COUNSEL:** AAJ members Denis Mitchell, Richard Bussey, Patrick Regan, Paul Cornoni, and Christopher Regan, all of Washington, D.C.

Failure to maintain playground equipment

Carl Thompson, 15, was visiting a friend who lived in a gated community. While sitting on a swing in one of the community's common areas, the swing's 42-pound steel crossbar broke, striking Thompson in the head. He suffered a traumatic brain injury, resulting in memory loss, headaches, anxiety, and depression. At 20, he is also showing signs of dementia.

Thompson sued Lamplight Village Homeowners Association, alleging it failed to maintain or inspect the swing set. The plaintiff alleged that the defendant declined to pay for a monthly safety and inspection plan offered by the

swing set manufacturer and installer despite the fact that other swing sets had failed on the premises due to lack of maintenance.

The plaintiff also sued the swing set manufacturer and distributor. The parties reportedly settled for an undisclosed sum.

The jury awarded \$20 million, including \$10 million in punitive damages. Posttrial motions are pending.

CITATION: *Thompson v. Lamplight Village Homeowners Ass'n*, No. A-14-697688-C (Nev. Dist. Ct. Clark Cnty. Feb. 5, 2018).

PLAINTIFF COUNSEL: AAJ member Sean Claggett, Sam Harding, AAJ member Albert Lasso, and Evan Simonson, all of Las Vegas. **PLAINTIFF EXPERTS:** Jeffrey Markham, neuroradiology, Corinth, Texas; and Stuart Kaplan, neurosurgery, Enrico Fazzini, neurology, and Louis Mortillaro, neuropsychology, all of Las Vegas. **DEFENSE EXPERTS:** David Ginsburg, neurology, Lewis Etcoff, neuropsychology, and O. Steven Grimm, metallurgy, all of Las Vegas.

SCHOOLS

Failure to train coaches on concussion protocol

Rashaun Council, 14, played football at Monte Vista High School. During a game, his teammate notified one of the coaches that Council did not seem right. Despite this observation and Council's irregular behavior, the coaches let Council stay in the game. Afterward, a coach asked Council whether he was all right. Council responded that he was; however, he later began vomiting and collapsed near the locker room. A coach summoned Council's parents to the scene.

His parents rushed him to a hospital, where he underwent a craniotomy to reduce brain swelling. Council now suffers from a severe traumatic brain injury, which limits his education and work prospects and prevents him from living independently.

Council sued the school district, alleging it failed to properly train its

coaches on concussion protocol and failed to ensure the coaches timely completed state-mandated concussion training.

Suit also alleged the defendant failed to obtain medical care for Council, identify his head injury, or have medical personnel at the football game. The plaintiff also sued the undisclosed football helmet manufacturer.

The manufacturer settled confidentially before trial. The jury awarded approximately \$7.13 million.

CITATION: *Council v. Grossmont Union High Sch. Dist.*, No. 201400021895 (Cal. Super. Ct. San Diego Cnty. Apr. 2018). **PLAINTIFF COUNSEL:** Brian Gonzalez, San Diego, and AAJ member John Courtney, Los Angeles.

WORKPLACE SAFETY

Failure to provide safety equipment, training

Bronson Ganka, 40, was a maintenance worker for Apartments Downtown, Inc., a private company that builds and owns apartments in Iowa City. While drilling holes into a building, he fell off a ladder and hit the ground 12 feet below.

Ganka suffered head injuries and died several days later. He is survived by his wife, a minor child, and two adult children.

Ganka's wife sued the son of the company's owners—who was also Ganka's co-employee and supervisor and could therefore be named under state law—alleging gross negligence for the failure to provide safety equipment, such as hard hats, and safety training. Suit did not claim lost income.

The defense argued that Ganka should have used an on-site scissor lift instead of climbing the ladder.

The jury awarded \$7 million, finding Ganka 20 percent at fault.

CITATION: *Ganka v. Clark*, No. LACV077993 (Iowa Dist. Ct. Johnson Cnty. Feb. 6, 2018). **PLAINTIFF COUNSEL:** AAJ member Pressley Henningsen and Brian Ivers, both of Cedar Rapids, Iowa.