

## 7th Circuit upholds defense verdict over trucking accident

By [Grace Barbic](mailto:gbarbic@lawbulletinmedia.com) gbarbic@lawbulletinmedia.com

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John Z. Lee

A man who claimed a trucking accident exacerbated his pre-existing back problems lost a bid for a new trial over issues related to pretrial rulings, jury instructions and a denial of his post-trial motions.

A panel of the 7th U.S. Circuit Court of Appeals declined to reverse a federal jury's verdict in favor of the defendant, Richland Refrigerated Solutions LLC.

In a written opinion Wednesday, Circuit Judge John Z. Lee affirmed the ruling of Chief Judge James D. Peterson of the U.S. District Court for the Western District of Wisconsin, upholding the defense verdict.

Felix Franco, a commercial truck driver, was asleep in the bunk bed of his parked semi-trailer truck on April 10, 2019 when he was hit by another truck, driven by a Richland employee.

Franco was thrown into the air on impact and his back hit the corner of a small refrigerator, court documents stated.

Franco alleged this incident injured his back and caused him severe pain, despite the fact that he had a history of degenerative back problems before the accident.

Franco had stenosis, a degenerative narrowing of the low-back spinal canal, as well as neurogenic claudication, an increase in pain during activity caused by buildup and narrowing in the lower spinal canal.

He required surgery for his lower spine in 2021.

Franco sued Richland in the U.S. District Court for the Western District of Wisconsin, alleging that its negligence caused the injury to his back.

Richland acknowledged its employee's negligence caused the accident, but the company disputed that the accident was the source of Franco's injury.

Franco contended his pre-existing back issues had stabilized before the 2019 accident.

The case went to trial, and a jury returned a verdict in Richland's favor.

On appeal, Franco challenged the district court's pretrial rulings, jury instructions and denial of his post-trial motions.

After the verdict was returned, Franco filed, for a second time, a motion under the Federal Rules of Civil Procedure Rule 50(b) on judgment as a matter of law.

He argued that based on the trial evidence, no reasonable jury could have found the accident was not a cause of his injuries.

The panel examined whether there is "a legally sufficient evidentiary basis" for the jury's verdict.

Franco argued that the evidence only supported the conclusion that the accident led to his back pain, surgery and the associated damages.

Lee recalled the trial testimonies of medical experts in the case.

He first pointed to the testimony of Dr. Dzung Dinh, the neurosurgeon who performed Franco's back surgery.

Dinh testified that Franco's MRIs from 2017, 2019 and 2021 revealed the progressive nature of his conditions prior to the accident. He concluded the accident did not have a direct causal effect on Franco's condition requiring surgery.

One of Richland's medical expert's, Dr. Jerry Bauer, came to a similar conclusion.

After examining Franco and reviewing his medical history, Bauer suggested that Franco's degenerative back condition made him a candidate for the surgery as early as 2017, which was two years before the accident occurred.

"In fact, both Dr. Dinh and Dr. Bauer noted explicitly that Franco would have needed the surgery regardless of the accident," Lee wrote.

Lee also noted that Franco's own expert, Dr. Alexander Ghanayem, testified that the accident was a contributing cause to Franco's back condition, but not the sole cause.

Causation was the key question in this case, Lee noted.

"Because a reasonable jury could find from the evidence that the accident did not cause the condition that led to Franco's eventual surgery, the district court did not err in denying his Rule 50 motions," Lee wrote.

Franco also claimed that he is entitled to a new trial under Rule 59.

He argued that Richland presented no evidence in rebuttal to his theory that the accident was the cause of his spinal injury.

"But merely pointing to a smattering of favorable evidence, while wholly ignoring contrary facts, does not demonstrate that the jury's verdict was contrary to the manifest weight of the evidence," Lee wrote.

Regardless, Lee found that Franco did not develop his argument for a new trial before the district court or the 7th Circuit.

"Accordingly, we are under no obligation to address it," Lee wrote.

Franco additionally challenged the court's preliminary and post-trial jury instructions, as well as the special verdict form.

Again, Lee found Franco failed to raise these arguments at the district court level.

Despite this fact, Lee said it found no error as the court's instruction and the explanation of causation on the special verdict form "accurately states Wisconsin law for negligence cases."

The panel also reviewed whether the district court abused its discretion by excluding two of Franco's demonstrative exhibits.

During the final pretrial conference, Franco sought to admit into evidence four medical illustrations.

The district court denied his request, but allowed two of the illustrations to be used as demonstrative exhibits.

Franco took issue on appeal with the court's refusal to allow the other two illustrations to be used as demonstratives.

He argued those illustrations were key in relation to his expert's testimony and would have been helpful to the jury.

The district court, however, found the illustrations it allowed would be sufficient to provide the jurors with an "orientation" of the anatomy of the spine and that they were "more than is necessary," documents stated.

The panel found the district court made a reasoned decision that was "well within its discretion."

The other members of the panel included Chief Judge [Diane S. Sykes](#) and Circuit Judge [Joel M. Flaum](#).

Flaum died Dec. 4, 2024, and did not participate in the decision of this case, which is being resolved under 28 U.S.C. Sec. 46(d) by a quorum of the panel, documents stated.

Franco is represented by [Emmanuel F. Guyon](#) of [Guyon Law Office](#). He said he plans to file a petition for rehearing on the basis that "the pre-existing condition is different than the injury [allegedly] caused by the defendant's actions," which resulted in Franco being out of work for a long period of time.

Richland is represented by [Francis P. Cuisinier](#) and [Edward D. Mizera](#) of [Ruberry Stalmack & Garvey LLC](#).

"It was a classic jury question," Cuisinier said. "The jury was out for about 10 minutes and came back with a verdict for the defendant. It is pretty straightforward."

The case is [\*Felix Franco v. Richland Refrigerated Solutions LLC\*](#), No. 22-3271.

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