

## Texas Justices Order New Trial In \$9.6M Oil Rig Injury Case

By **Michelle Casady**

Law360 (March 2, 2018, 2:38 PM EST) -- Citing the improper exclusion of video evidence that shows an injured oil rig worker performing manual labor, the Texas Supreme Court on Friday ordered a new trial in the case that originally resulted in a \$9.6 million jury verdict against Diamond Offshore Services Ltd.

The Texas Supreme Court wrote in its opinion on Friday that it was an abuse of the trial court's discretion to exclude the video — which shows Willie David Williams working on a vehicle, operating a mini excavator and doing other activities involving bending and lifting — without having watched it first.

According to the opinion, the trial court excluded the video under Texas Rule of Evidence 403, which requires balancing the probative value of the evidence against concerns that it could unfairly prejudice or mislead the jury. The high court wrote that except in rare circumstances, a trial court must actually view the video before making a determination about its admissibility.

"While trial courts have discretion in making evidentiary rulings, we cannot defer to discretion that was not actually exercised," the opinion said. "The video here should not have been excluded, and its exclusion was harmful because it went to the heart of the defendant's case. We therefore reverse and remand for a new trial."

The court also noted that a dissenting judge on lower appellate panel that upheld the award would have reversed and remanded the case for a new trial.

Williams, who filed suit in 2011, was a longtime offshore oil rig worker who worked as a mechanic on a Diamond rig off the coast of Egypt. On Jan. 7, 2008, he injured his back while working on a set of elevators, according to court documents.

The pain became chronic after he left the rig, and a doctor performed a microdissectomy in April 2008 and a fusion surgery in February 2009 to try to correct the problem. Williams later sued, claiming that as a result of the injury, he was totally disabled and unable to work, according to court documents.

The jury in the case awarded Williams \$1.56 million in past damages and \$8.12 million in future damages. The trial court entered a final judgment of roughly \$8.5 million — after factoring in the jury's finding that Williams was 10 percent at fault — and certain advance payments made by Diamond.

Diamond tried to offer into evidence a surveillance video taken by an investigator about five years after the accident. The video, filmed over the span of three days in December 2012, was a little more than an hour long.

Diamond argued that the video was admissible both as impeachment evidence and as substantive evidence that was relevant to Williams' condition after the accident.

In July 2015, a Houston court of appeals affirmed the trial court's judgment, holding that there was

no Texas precedent for the admissibility of post-accident video being used as either substantive or impeachment evidence and saying that the trial court's judgment must be deferred to.

Connie Pfeiffer, who represents Diamond Offshore, told Law360 on Friday that the court's ruling is "meticulous and compelling" and will help to advance the "fairness and accuracy of jury verdicts."

"This ruling is good for both sides of the bar," she said. "It will help plaintiffs and defendants alike get highly probative visual evidence before the jury. Trials are meant to be a search for truth, and we can absorb so much more with our eyes than with our ears. Giving juries visual evidence is much more powerful and helpful than testimony alone."

Counsel for Williams did not immediately respond to a request for comment on Friday.

The opinion was written by Justice Eva Guzman.

Diamond is represented by Constance H. Pfeiffer, Kyle A. Lawrence and David M. Gunn of Beck Redden LLP.

Williams is represented by Jeffrey L. Oldham of Bracewell LLP, Michael Patrick Doyle of Doyle LLP Trial Lawyers and Walter Z. Steinman of Law Offices of Walter Steinman.

The case is Diamond Offshore Services Ltd. et al. v. Willie David Williams, case number 16-0434, in the Texas Supreme Court.

--Editing by Stephen Berg.