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Mediation off, Tropicana garage collapse case goes in court

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ATLANTIC CITY - Superior Court Judge William Todd said there has been no successful mediation in the wrongful death and personal injury lawsuits involving the 2003 Tropicana parking garage collapse and no future mediation has been scheduled.

The judge told all parties that as the civil case progresses, if they feel they need to return to mediation, it would be a good idea.

For now, however, mediation is off after months of talks with families of the four workers who were killed and the 21 other men who were injured when 10 floors of the parking garage collapsed Oct. 30, 2003.

Liability depositions will begin June 13 and run four days a week through November. The plaintiffs' counsel has until May 27 to supply the defendants with a list of people who will be deposed and the order in which they will be deposed.

Todd also will issue a new order containing dates for monthly meetings beginning Aug. 4 and running through Feb. 23, 2006.

The judge made it clear that he wants to keep things rolling in an efficient manner. He gave attorneys off the last two weeks of August, but after that, if an attorney cannot be at a deposition, someone has to go in his or her place.

Eric Zajac, of the law firm Eisenberg Rothweiler, who represents three injured workers, said, "I think we all agree that we value Judge Todd's management style. He is a quiet, efficient leader."

But as for the failed mediation, the attorney said, "It was a disappointing experience as an attorney trying to resolve the cases. From my own perspective as one of the plaintiffs' attorneys, we were led to believe that there would be some understanding of the magnitude of the loss that the victims suffered, but I was not convinced that that was the case during mediation."

Fabi Construction Inc. was the concrete subcontractor for the parking garage. Keating Building Corp. was the lead contractor for Tropicana Casino and Resort parking garage project.

Zajac represents three Fabi employees: John Caldwell, Dan Doughery and Leon Treat. They are receiving workers' compensation.

"You see these guys on the outside and they look fine, but then you find out that their necks were fused or their ankles were plated or that their wrists have nerve damage," **Zajac** said. "One of the guys was operated on from head to toe."

On April 29, 2004, the U.S. Occupational Safety and Health Administration, or OSHA, released information regarding a report on the collapse. OSHA blamed structural problems for the collapse, including the lack of steel reinforcements in the concrete and inadequate shoring, or supports, for drying concrete floors. It also cited negligence by private inspectors who didn't identify basic problems.

OSHA issued citations and notifications of penalties with fines totaling \$119,000 to four contractors involved in the planning and construction of the parking garage.

The violations included a \$70,000 "willful violation" to concrete subcontractor Fabi Construction Inc., of Egg Harbor Township. Fabi also received \$28,500 in fines for other violations.

Project general contractor Keating Building Corp., of Bala Cynwyd, Pa., faces a \$7,000 violation OSHA calls "serious," as do Mitchell Bar Placement Inc., of Sewell, and Site Blauvelt Engineers, of Mount Laurel. Fabi also faces five additional serious violations. Keating and Fabi are fighting the OSHA fines.

Nancy Wittland, 57, whose husband, Michael, was killed and son, Edward, was seriously injured in the collapse, said Thursday afternoon that watching the civil case play out in court has been an excruciating waiting game.

"Nothing will bring back Mike, and my son will never be able to work again. Ed is lucky if he goes out the door and remembers where he is going," Wittland said. "No matter how long or how many trials, I will be there until the bitter end."

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