

COOK COUNTY
JURY VERDICT REPORTER

Cook County Jury Verdict Reporter

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WORK INJURY--FATHER AND SON BURIED IN TRENCH COLLAPSE--ONE LIVES, ONE DIES
(CCC 25/1) *Herman Calloway, Jr., Estate of Herman Calloway, Sr., deceased v Bovis Lend Lease Inc.* 06L-2005 consol.
w/05L-8589 Tried Jan. 14-27, 2011 (6)

Verdict: \$9,607,598: \$8,587,598 to Herman Calloway Jr.; \$1,020,000 after 49% off \$2,000,000 to Herman Calloway Sr.'s Estate.

Judge: Clare E. McWilliams (IL Cook-Law)

Pltf Attys: Craig P. Mannarino and Amanda L. Brasfield of *Kralovec, Jambois* for Herman Jr. Demand: HC \$4,500,000 Asked: HC \$12,500,000, D. Jeffrey Comeau of *O'Connor & Nakos* for Herman Sr.

Deft Atty: James S. Smith, III of *Ryan, Ryan* (Waukegan) (West Bend Mutual; Zurich) Offer: none

Pltf Medl: Dr. Steven Louis (Orthopedist) and Dr. Timothy E. King (Pain Management) for Herman Jr.

Pltf Expert: Stephen E. Fournier, P.E., Robson Forensic Inc., 215 E. Bay St., #400, Charleston, SC (843-722-0119) (Civil Engineer) for both pltf's

June 6, 2005, pltf's Herman Calloway Sr. and Herman Calloway Jr. (father and son) were working for Hamilton Construction, a sewer subcontractor for a construction project at Wheaton Warrenville South High School. Deft Bovis Lend Lease was the construction manager for the project with overall management authority and multiple supervisory personnel on site daily. The Calloways were installing storm pipes and working at the bottom of a 12 to 14-foot deep trench when one of the trench walls caved in, burying them alive. More than an hour after the collapse, fellow workers (including Herman Jr.'s brother) and rescue teams were able to extract Herman Jr. from the trench. He was in critical condition with a severely crushed pelvis and was airlifted to Good Samaritan Hospital. M-52 Herman Jr. sustained an "open-book" pelvic fracture, left foot drop, and neuropathic pain, requiring multiple surgeries, prolonged hospitalization, and extensive rehabilitation; he can now walk short distances with a cane. His treating physicians testified that he was permanently totally disabled from working in any capacity. M-72 Herman Sr. died in the trench and his body was extricated several hours later (survived by seven children). Pltf's contended Bovis failed to properly supervise and ensure workplace safety, it had a duty to ensure that the subcontractors were performing work in a safe manner, it had the right and responsibility to halt any work being done in an unsafe manner, and it negligently allowed the men to work in the trench without shoring in violation of OSHA guidelines and Bovis' own site-specific safety plan. OSHA requires trenches to be protected from cave-in by some form of support system, most commonly by using a trench box (a large steel frame lowered into the trench to prevent collapse of side walls). However, the Hamilton Construction crew ran into problems that prevented them from using the trench box: first, the presence of an existing manhole structure immediately adjacent to the excavation which did not afford enough room to place the box in the hole, and secondly, markings indicating the presence of a buried large caliber ComEd electrical line. For these reasons, the Hamilton crew removed the box, but no substitute protection system was employed (such as steel plates and hydraulic jacks to brace the side walls). Pltf's asserted two Bovis superintendents observed the men in the unprotected trench shortly before the collapse without stopping the work or admonishing them to place proper shoring. The defense denied liability and argued pltf's were contributorily negligent for working in the unprotected trench. Herman Sr. was the crew foreman and the jury found him 49% contributorily negligent. The defense further disputed the extent of Herman Jr.'s injuries and disability, maintaining he might be able to return to work in some capacity.