

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

August 4, 2010

Lyle W. Cayce
Clerk

No. 09-51121

Summary Calendar

BENANCIO RODRIGUEZ, doing business as Big Ben and Son Trucking,

Plaintiff-Appellee

v.

MARTIN MARIETTA MATERIALS, INC.; LABOR READY, INC.;
JESUS HERNANDEZ,

Defendants-Appellants

Appeal from the United States District Court
for the Western District of Texas
USDC No. 5:08-CV-419

Before JONES, Chief Judge, and WIENER and PRADO, Circuit Judges.

PER CURIAM:*

The court has carefully considered appellants' twin arguments — (1) whether defendants' negligence proximately caused the torn rotator cuff injury asserted by Appellee Rodriguez although he had had a torn rotator cuff previously; and (2) whether the trial court's separate monetary awards for physical impairment and pain and mental anguish impermissibly overlap. Even if these issues were properly preserved, they are founded on the interpretation

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

of evidence before the trial court, which rendered clear and comprehensive findings in support of its legal conclusions following the bench trial. The court's findings on these issues manifest neither clear error nor manifest miscarriage of justice.

Consequently, the judgment is AFFIRMED.