

Missouri Lawyers WEEKLY

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Family recovers \$2.4M for worker's fatal fall

Claimed liability under the 'something more' exception to workers' comp exclusivity



Brian Franciskato

The family of an employee who died in a 600-foot fall from a cellphone tower has reached a \$2.4 million global settlement of its Jackson County case against the decedent's supervisor.

The plaintiffs alleged the supervisor was liable under the "something more" doctrine — an exception to workers' compensation exclusivity, said lead plaintiffs' attorney Brian S. Franciskato, of Nash & Franciskato in Kansas City.

Kevin Keeling, 33, was working as an apprentice for Structural Inspections Inc., a Blue Springs-based company that installed radio frequency equipment on cellphone towers.

On July 10, 2007, a hydraulic winch was hoist-

ing Keeling in a bucket to a spot about 800 feet high on a tower outside Lawrence, Kan. Jerry Case, the 54-year-old owner of Structural Inspections and Keeling's supervisor, also was in the bucket.

The plaintiffs claimed the steel cable in the rigging was too small and came out of the pulley. The cable jammed and shredded, causing the bucket to fall about 600 feet. Both Keeling and Case died in the fall.

Keeling's mother and minor children filed a wrongful death action in April 2008.

An early legal issue pertained to which state's law would apply to the case — Missouri's, which recognizes the "something more" doctrine, or Kansas', which does not recognize it.

The plaintiffs argued that Missouri law should apply because Kevin Keeling, his family and the defendant all lived in Missouri. The defense argued that Kansas law applied because the accident occurred in Kansas. The court ultimately ruled that Missouri law applied.

The ruling enabled the "something more" argument to proceed.

The plaintiffs alleged that Case violated numerous Occupational Safety and Health Administration regulations and equipment

warning labels when he rigged the hoisting system for the bucket. In doing so, the plaintiffs argued, Case had breached a personal duty of care he owed Keeling.

The defense argued the allegations only amounted to a failure to provide a safe working place. Thus, the defense contended the case did not meet the "something more" exception to workers' compensation exclusivity, said defense attorney John Waldeck, of Waldeck Matteuzi & Sloan in Kansas City.

Jackson County Circuit

Court Judge John M. Torrence denied the defendant's motion for summary judgment on this issue.

The plaintiffs initially demanded \$7.5 million. The defense rejected that demand and offered \$200,000.

During mediation 10 days before trial, Scottsdale Insurance Co. agreed to pay \$1.2 million, Travelers agreed to pay \$1 million and workers' compensation carrier AIG agreed to pay \$125,000 and waive subrogation interest valued at \$75,000.

— Anne C. Vitale

\$2.4 million settlement

WRONGFUL DEATH

- **Court:** Jackson County Circuit Court
- **Case Number/Date:** 0816-CV11608/Aug. 28, 2009
- **Judge:** John M. Torrence
- **Mediator:** Richard Modin
- **Plaintiffs' Experts:** Ken Blundell, Kansas City (engineering); Ernest Jones, Evansville, Ind. (OSHA/tower rigging standards)
- **Insurer:** Travelers; Scottsdale Insurance Co.; AIG
- **Caption:** Ruby Keeling, Kolton D. Keeling, by his next friend Kimberly D. Williams, and Cheyann A. Keeling, by her next friend Kimberly D. Williams v. Jerry A. Case
- **Plaintiffs' Attorney:** Brian S. Franciskato, Nash & Franciskato, Kansas City; Bruce C. Jackson, Arnold Newbold Winter & Jackson, Kansas City (for Ruby Keeling); Randall J. Reichard, Lowther Johnson Law Firm, Springfield (for Kolton and Cheyann Keeling)
- **Defendant's Attorney:** John Waldeck, Waldeck Matteuzi & Sloan, Kansas City