

Kansas county-city settles over man's electrocution

By: Lawrence Viele Davidson Special to Missouri Lawyers Weekly August 13, 2015

The Unified Government of Wyandotte County and Kansas City, Kansas, agreed to pay \$1.65 million to the family of a man who was electrocuted in a public park in June 2013.

The government struck the deal June 25 in mediation rather than going to trial. The family of Nicholas Moeder sued the Unified Government in April 2014 for wrongful death after Moeder, 27, stepped on a downed high-voltage wire while playing disc golf around 3 a.m. in Rosedale Park.

The facts were not in contention as much as whether emergency responders and government personnel acted properly in the circumstances.

Moeder's death was due to "gross and wanton negligence," because the utility and emergency personnel failed to secure the wire or shut the off the power source after reports to 911 and the Bureau of Public Utilities, or BPU, that it was sparking, fiery and dancing, the plaintiffs said. The government claimed immunity under the Kansas Tort Claims Act.

Moeder's parents Wanda Christensen and Carl Moeder, who were divorced, sought \$4 million before trial, including \$4,800 for funeral expenses. Carl Moeder died of cancer before the case was resolved.

The Unified Government offered nothing before the mediation. Its employees did not act outside the scope of any policy or procedure, the government said in a motion for summary judgment. Puncturing the immunity defense requires that the employees are shown to have acted outside the rules.

The afternoon before Moeder and his friend set out to play disc golf at Rosedale Park, a severe storm hit the area, causing mass outages and downed wires. At least two calls were made about Rosedale Park, one to 911 and one to the BPU where the caller left a message according to the agency's voicemail instructions.

Once the emergency dispatcher who answered the call to 911 learned of the downed live wire, she called the BPU herself to make sure they knew, the plaintiffs said in a statement. But she didn't tell them about the caller's description of sparks and fire because she "believed that information was common knowledge," the Unified Government said in its summary judgment motion. She was in compliance with her employer's policies, the motion said.

No action was taken. Several BPU trucks were within five minutes of the park throughout the afternoon and evening of June 15, the day of the storm, plaintiff's attorney Andrew H. McCue of the Accurso Law Firm said in a written statement about the case. He and Louis C. Accurso of the Accurso Law Firm in Kansas City, represented the estate of Carl Moeder.

Moeder and his friend Stuart Rangel spent that night at a concert and then at a bar before going to the park, where a professional disc tournament was taking place in the daytime. Playing disc golf at night with glow-in-the-dark discs was a common activity at the park, the statement said.

Just as they were beginning to play, Moeder stepped on the live wire and died. Rangel attempted to rescue his friend and was shocked himself, the statement said. Rangel called 911 and within five minutes, police responded. The BPU cut the power to the line within 25 minutes, the statement said.

"The same dysfunctional government entities that could not collectively figure out that they should send even one unit to guard against a potential death, then managed to get the police on scene in less than 5 minutes," the statement said. "At least another 11 emergency responders showed up within 30 minutes of Stuart's 911 call. BPU's troubleshooter and lineman arrived within 16 minutes after BPU was first notified."

At the time of his death, Moeder was unemployed and living with his mother serving as the "man of the house," the statement said. He attended college for a time and planned to resume his studies in the fall of 2013.

M. Blake Heath represented Christensen. The lead defense attorneys for the government, John Aisenbrey of Stinson Leonard Street in Kansas City, did not return an email or voicemail message. Co-counsel Ashley Habiger of the same firm declined to comment on the case.

\$1.65 million settlement (out of state)

Type of Action: Wrongful death

Venue: Wyandotte County, Kansas, District Court

Case Number/Date: 14-CV396U/June 25, 2015

Judge: William P. Mahoney

Plaintiffs' Expert: John Ward, Prairie Village, Kansas (economics)

Last Pretrial Demand: \$4 million

Last Pretrial Offer: None

Caption: Wanda Christensen, Estate of Carl Moeder v. Unified Government of Wyandotte County and Kansas City, Kansas

Plaintiffs' Attorneys: Louis C. Accurso and Andrew H. McCue, Accurso Law Firm, Kansas City; M. Blake Heath, Kansas City

Defendant's Attorneys: John Aisenbrey and Ashley Habiger, Stinson Leonard Street, Kansas City

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■ \$10.8 MILLION SETTLEMENT

Family settles confidentially over asbestos wrongful death

WRONGFUL DEATH, ASBESTOS

- **Venue:** Confidential Missouri state court
- **Case number/date:** Confidential/Oct. 6, 2014
- **Mediator:** Mark T. Kempton
- **Plaintiffs' experts:** Dr. Arthur Frank, Philadelphia, Pennsylvania (occupational medicine); Ronald Gordon, New York (asbestos analysis); Dr. James A. Strauchen, New York (pathology); Barry I. Castleman, Washington, D.C. (environmental consultant); Michael Ellenbecker, Lowell, Massachusetts (industrial hygiene); Richard W. Clapp, Boston (epidemiologist); Kurt V. Krueger, Prairie Village, Kansas (economics)
- **Defendants' experts:** Jennifer Pierce, Chicago (industrial hygiene); Dr. Victor Roggli, Durham, North Carolina (pathologist); Dr. James McCluskey, Tampa, Florida (occupational medicine); Dr. Noel Weiss, Seattle, Washington (epidemiologist); Christopher Pflaum, Overland Park, Kansas (economist); Dr. Andrew Churg, Vancouver, British Columbia (pathologist); Dr. James Crapo, Englewood, Colorado (pulmonary specialist); Dr. M. Eric Gershwin, Davis, California (immunology); Charles Blake, Kennesaw, Georgia (industrial hygiene); Dr. Suresh Moolgavkar, Bellevue, Washington (epidemiology); Dr. J. David Godwin, Seattle, Washington (radiology); Mark Banden, Independence (industrial hygiene); Edwin Hecker, Lawrence, Kansas (law professor)
- **Caption:** Confidential
- **Plaintiffs' attorneys:** Louis C. Accurso, Burton S. Haigh and Cory L. Atkins, The Accurso Law Firm, Kansas City
- **Defendants' attorneys:** Confidential

BY SCOTT LAUCK
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The family of a 45-year-old man who died after allegedly suffering asbestos exposure as a young adult settled their case for \$10.8 million, according to their lawyer.

The decedent was a former mechanic who died in 2012, three months after he was diagnosed with mesothelioma, said Louis C. Accurso of The Accurso Law Firm in Kansas City. He said a confidentiality provision of the settlement agreement barred him from disclosing the parties' names.



Louis C. Accurso



Burton S. Haigh



Cory L. Atkins

According to Accurso, the man worked as a mechanic for approximately two years following high school and had no known asbestos exposure.

In a wrongful death suit, the man's family alleged he had been exposed to asbestos-containing brake dust 25 years previously and said his former employers were negligent for failing to maintain a safe work place. The suit also made claims for premises liability and strict liability.

The settlement benefited the man's spouse, their three children, his parents and an adult child from a previous marriage.

Attorneys for the defendants didn't return calls seeking comment.

Accurso said he believes the case marks the largest asbestos settlement for a single victim in Missouri and one of the largest asbestos friction-product death settlements in the country. Accurso had set the previous record in Missouri with a \$10.4 million settlement in 2011 for the family of a woman who allegedly contracted mesothelioma while working at the Jackson County Courthouse. ■

Jackson County asbestos case settles for \$10M

Class action suit over exposure is still pending

BY SCOTT LAUCK
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A wrongful death claim over asbestos in the Jackson County Circuit Courthouse ended in a more than \$10 million settlement.

The plaintiff's attorney, Lou Accurso, of The Accurso Law Firm in Kansas City, said the settlement appears to be the largest in Missouri in an asbestos case.

Plaintiff Nancy Lopez, a former Division 7 judicial administrative assistant, filed suit in March 2010, alleging she suffered from mesothelioma as a result of asbestos exposure from 1983 to 2007 in the building. Lopez died Oct. 9, 2010, at age 56.

"This poor lady did nothing but serve the public as a loyal employee, a loyal public servant," Accurso said. "The only mistake she made was to show up to work every day."

Following Lopez's death, her mother, Ruth Lopez, was substituted as the main plaintiff.

The \$10 million payment comes from U.S. Engineering Co., which performed renovation and demolition work for Jackson County. James Griffin, of Husch Blackwell, an attorney for the company, confirmed details of the settlement. He said U.S. Engineering did not admit fault.

Although the lawsuit was filed in Jackson County, it was handled by Judge Patrick Robb of Buchanan County. He approved the settlement on Nov. 18. It had been set for a two-and-a-half week trial beginning Dec. 5.

The case also garnered a \$400,000 settlement from Jackson County, which approved the payment on May 2. In addition, two third-party defendants, Lippert Mechanical Service Corp. and Johnson Controls, paid \$20,000 each in a settlement approved in September. U.S. Engineering brought those companies into the suit for their work on the courthouse.

The settlement allocates attorneys' fees and expenses of about \$4 million to The Accurso Law Firm.

The lawsuit has been a touchy subject at the courthouse, where officials last year posted notices stating that the courthouse's air quality met state and federal standards.

A separate class action lawsuit, which alleges asbestos exposure for anyone who has worked in, visited, or conducted business in the courthouse since 1983, remains pending before Judge Jack Peace, a visiting circuit judge from Mercer County.

Accurso, who is handling that case as well, said the case awaits class certification. Some of the discovery materials from the Lopez case are also being used in the class action suit.

"This problem was not confined to [Nancy Lopez's] desk," he said. ■

■ \$10,440,000 settlement

WRONGFUL DEATH, ASBESTOS EXPOSURE

■ **Breakdown:** \$10 million from U.S. Engineering; \$400,000 from Jackson County; \$20,000 from Lippert; \$20,000 from Johnson Controls

■ **Venue:** Jackson County Circuit Court

■ **Case Number/Date:** 1016-CV07996/Nov. 18, 2011

■ **Judge:** Patrick Robb

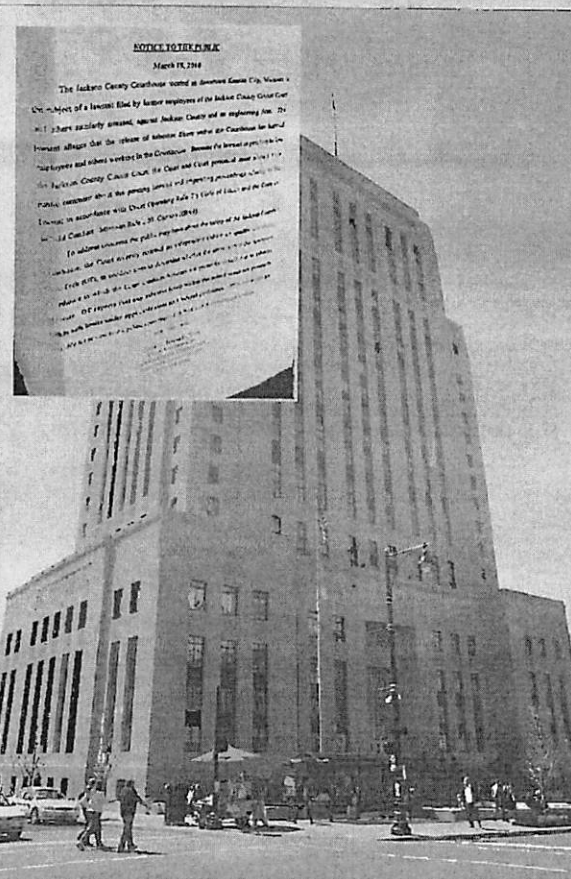
■ **Plaintiff's Expert:** Stan Smith, Chicago (economics)

■ **Caption:** Ruth Lopez, individually and on behalf of Nancy Lopez v. U.S. Engineering Co., Jackson County, Mo., Lippert Mechanical Service Corp. and Johnson Controls Inc.

■ **Plaintiff's Attorneys:** Louis Accurso, Ann Wright and Burton Haigh, The Accurso Law Firm, Kansas City

■ **Defendant's Attorneys:** James D. Griffin and Maggie Neustadt Nigro, Husch Blackwell, Kansas City, and Gino Battisti, Foley & Mansfield, St. Louis, for U.S. Engineering; Dennis Dobbels, Polsinelli Shughart, Kansas City, for Jackson County; Robert Numrich, Baly, Holm, Numrich & Otto, Kansas City, for Johnson Controls; Joseph Roper, Foland, Wickens, Eisfelder, Roper & Hofer, Kansas City, for Lippert

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The Jackson County Courthouse was the site of a trial over whether workers were harmed by asbestos at the Jackson County Courthouse. Above, a notice informs the public that the air in the courthouse has cleared state and federal standards. Photos by Scott Lauck.

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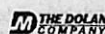
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CORRECTION

St. Louis firm Senniger Powers was left off a ranking of the largest intellectual property practices in the Corporate Counsel Desk Book, included with the Nov. 7 issue of Missouri Lawyers Weekly. With 35 intellectual property attorneys, the firm should have ranked sixth. We regret the error.



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