

Missouri Lawyers WEEKLY

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Premises liability case results in defense verdict

Plaintiff's leg amputated after fall from stairs



Steve Kuenzel

A Franklin County jury found in favor of a construction company that was sued by a subcontractor's employee for faulty craftsmanship of an unfinished stairwell.

In April 2003, Keith Ash was working for concrete subcontractor Terry Schatz in the construction of a new home in Sullivan. He began walking down a set of unfinished stairs, built by Krone Construction Inc., into the basement. Three other men on the crew had used the stairs before Ash.

When Ash was beginning to walk down the stairs, subcontractor Schatz lifted them to prepare the floor for concrete pouring. The stairs collapsed. Ash fell and fractured his right ankle in two places.

Ash had multiple surgeries after the accident but the bones of his ankle never rejoined. He also developed an infection and cellulitis in the ankle. Four years after the fall, Ash decided to have his right leg amputated below the knee because of chronic pain.

At trial, Ash claimed that Krone had been negligent in the construction of the stairs. He claimed the stairs were attached to the header board partly with staples when they should have been attached with nails. He claimed that if the stairs had been

attached with nails, they wouldn't have failed even when Schatz lifted them to pour the concrete.

Ash also claimed he was permanently disabled by the fall. His vocational expert, Tim Lalk, said that Ash would have trouble finding gainful employment following the amputation of his lower leg.

The defense claimed that Krone had set up a large plywood barricade at the top of the stairs to prevent the use of them until sidewalls were constructed. Michael Krone of Krone Construction said that another contractor on the job site must have removed the barricade.

In terms of the construction of the stairs, the defense claimed that Schatz may have lifted the stairs higher than he should have, which would have weakened their support. Krone also suggested that Ash fell because he was unaware that Schatz was lifting the stairs and stepped on them while they were being lifted.

Additionally, the defense brought up several factors that eroded Ash's credibility. The defense presented medical records that showed Ash had been ordered to quit smoking multiple times while he was recovering from the stair accident, as smoking hinders bone healing. Medical records showed that Ash did not quit smoking, however, and had missed his doctor visits on multiple occasions. On cross-examination, he admitted he could not legally drive to his visits because he had lost his license for a felony DWI conviction.

The defense presented additional evidence of Ash's history, including three misdemeanor DWIs, three misdemeanor convictions for driving with a suspended or revoked license and a robbery.

Plaintiff attorney Robert Goldson was unaware of the robbery — for which Ash served five years in prison — until trial. He said it occurred one year before CaseNet records were available, but that it would have

shown up on a background check, which defense attorney Steven Kuenzel conducted.

Goldson said he might have been better off had he done a background check. However, he said that maybe there's a larger point about credibility.

"If you think you need to do those things for your client, maybe you shouldn't take the client."

On cross-examination, the plaintiff's vocational rehabilitation expert, Lalk, admitted there were many jobs that the plaintiff could do that require little to no movement. Upon being presented with the full details of Ash's criminal history, Lalk also stated that Ash's past would make it hard for him to get a job, regardless of his prosthetic device.

Finally, the defense claimed that

if Ash was in fact permanently and totally disabled, it was because of an automobile accident that happened five years after his fall on the stairs. In that accident, Ash suffered a brain injury, fractures to his upper right leg and fractures to his left leg.

In closing arguments, Ash requested the jury award him \$1.55 million from Krone Construction. The Ash did not request a verdict against defendant Schatz, who did not have insurance. After more than three hours of deliberations, the jury returned a verdict in favor of the defendant.

"Everybody on the jury understood that a person with a prosthesis was not totally disabled," said Kuenzel.

— Anna Vitale

Defense jury verdict

PREMISES LIABILITY

■ **Court:** Franklin County Circuit Court

■ **Case Number/Date:** 07AB-CC090290/Oct. 23, 2009

■ **Judge:** Stanley Dale Williams

■ **Plaintiff's Experts:** Gordon MacKenzie, St. Louis (construction), Dr. Leroy Grossman, St. Louis (economist), Dr. John Welmer, St. Louis (surgical specialties), Tim Lalk, St. Louis (vocational rehabilitation)

■ **Defendants' Experts:** Phil Pilgram, Union (Franklin County building inspector)

■ **Special Damages:** \$107,000 (gross), \$59,041 (paid)

■ **Last Pretrial Demand:** \$1 million

■ **Last Pretrial Offer:** \$200,000

■ **Insurer:** American Family for defendant Krone Construction Inc.

■ **Caption:** Keith Ash v. Krone Construction Inc. and Terry Schatz

■ **Plaintiff's Attorney:** Robert Goldson, The Goldson Law Firm, Webster Groves

■ **Defendants' Attorneys:** Steven P. Kuenzel, Eckerkamp Kuenzel, Washington, for Krone Construction Inc.; Robert L. Davis, Brinzel, Davis & Hottel, Sedalia, for Terry Schatz