

# Missouri Lawyers

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## WEEKLY

### ■ \$1.2 MILLION SETTLEMENT

# Injured worker settles co-employee negligence case

## NEGLIGENCE

- **Venue:** Jackson County Circuit Court
- **Case Number/Date:** Confidential/June 19, 2015
- **Special Damages:** \$36,000 in past medical
- **Caption:** Confidential
- **Plaintiff's Attorneys:** Brian Timothy Meyers and Brian C. McCart, The Law Offices of Brian Timothy Meyers, Kansas City
- **Defendants' Attorneys:** William E. Corum and Megan A. Scheiderer, Husch Blackwell, Kansas City; Lee M. Baty and Matthew J. Westering, Baty, Holm, Numrich & Otto, Kansas City; Douglas P. Hill, Sanders Warren & Russell, Overland Park, Kansas

### BY SCOTT LAUCK

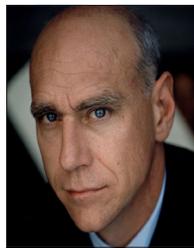
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An injured Jackson County man recently settled with two co-employees and a third-party staffing company for \$1.2 million, according to his attorneys.

On June 8, 2009, the plaintiff, a 47-year-old machinist, was injured while operating a lathe. The plaintiff alleged that a co-worker — a temporary employee — pulled the lever that activated the energized lathe as the plaintiff removed a piece of metal, causing the part to be thrown at the plaintiff and lacerating his forearm.

The plaintiff underwent several surgeries on his arms and wrists and incurred about \$36,000 in medical expenses, which were paid by the workers' compensation carrier. He was left with permanent physical restrictions that prevent him from returning to work as a machinist.

The injured worker sued the co-worker who activated the machine, his direct super-



Brian Timothy Meyers



Brian C. McCart

visor and a staffing company that provided the co-employee.

For decades, Missouri caselaw said workers couldn't sue their co-workers for on-the-job injuries. But following a Missouri Court of Appeals Western District ruling on the effects of the 2005 overhaul of the state's workers' compensation system, workers could file such suits for several years, until a law passed in 2012 clarified that such injury claims must be handled exclusively through workers' compensation.

The case was initially filed in Jackson County Circuit Court but was removed when the defendants asserted the supervisor was fraudulently joined to defeat diversity. Once in federal court, the supervisor filed a motion to dismiss on the grounds that he was immune from suit as a co-employee, but the case was eventually remanded to state court without a ruling on the issue.

The plaintiff alleged the co-employee was negligent for pulling the lever that caused the injury, and that the supervisor was negligent because he failed to tell the plaintiff the temp was not qualified to operate a lathe. The co-employee and supervisor both filed summary

judgment motions arguing that the plaintiff's sole remedy was workers' compensation because his injury was caused by the employer's nondelegable duties.

The plaintiff also sued the staffing company and alleged that it knew the co-worker was not qualified and had misrepresented his qualifications to the employer in order to get him hired, including by modifying the co-worker's résumé to make him appear qualified to operate a lathe. The staffing company also sought summary judgment, arguing there was no causation between the plaintiff's injury and its alleged actions.

The defendants contended that the plaintiff failed to use proper safety equipment and failed to turn off the machine prior to removing the part with his bare hands. The defendants also argued the plaintiff's injuries were related to a pre-existing condition for which he had already undergone surgery, as well as a car wreck that occurred while the case was being litigated.

A global \$1.2 million settlement was reached just prior to trial, according to Brian Timothy Meyers and Brian C. McCart of The Law Offices of Brian Timothy Meyers in Kansas City.

Douglas P. Hill, an attorney for the supervisor, said in an interview that his client's share of the total was less than 5 percent, and that his client maintained he had no liability and would have prevailed on his legal defenses. Attorneys for the other defendants couldn't be reached for comment. MO