

MISSOURI LAWYERS WEEKLY

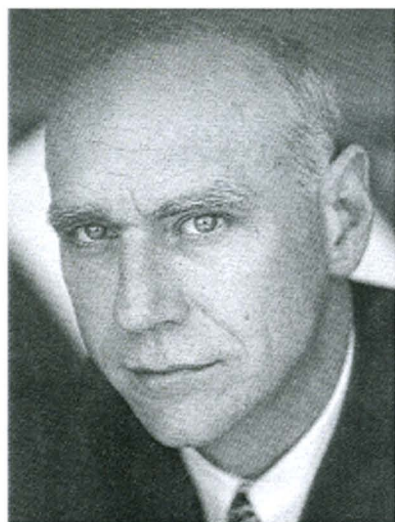
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VERDICTS & SETTLEMENTS

Landlord settles negligence claims for \$1 million

Tenant claimed defective balcony railing caused two-story fall



Brian Timothy Meyers

\$1 million settlement

A tenant who fell from a second-story balcony has reached a \$1 million settlement in his Jackson County premises liability case against his landlord.

On Nov. 28, 2004, Joel Turner was hanging Christmas lights on the railing of the second-story deck of a home he rented in Kansas City. As he leaned against the wood railing, it gave way, and he fell 18 feet.

Turner, 44, suffered fractures to his pelvis and left wrist requiring surgery and the placement of plates and screws. While recovering from surgery, he developed a deep vein thrombosis that required hospitalization.

Turner alleged that his landlord, James Smith, created the dangerous condition when he repaired the deck and railing several months earlier. Smith filed a motion for summary judgment

based on an exculpatory clause in the lease that released claims of future negligence. The court denied the motion.

In defense, Smith argued comparative fault because Turner had leaned into the railing, causing it to give way. Smith also claimed Turner made a good recovery because he returned to full-time employment as a hair stylist in 2005.

Plaintiffs countered with testimony from Turner's treating physician stating that his injuries would result in total disability by 2011. Although Turner weaned himself from pain medication and had been back to work full time for more than two years, the doctor testified that the pain from his injuries would ultimately disable him. This testimony allowed Turner to present evidence of future lost wages.

At mediation just before trial, the parties settled for Smith's \$1 million policy limits.

Kansas City attorney Brian T. Meyers

said his co-counsel, Leonard L. Meyer, of Independence, secured evidence of the defective railing and got witness statements immediately after the fall. That effort, coupled with the expert testimony regarding future disability, "pushed the case to settlement," he said.

Defense attorney Dana M. Harris, of Kansas City, confirmed the settlement information without further comment.

— Anne C. Vitale

Turner v. Smith

Type of Action: Premises liability

Type of Injuries: Pelvic and left wrist fractures; deep vein thrombosis

Court/Case Number/Date: Jackson County Circuit Court/0616-CV-27375/Nov. 12, 2007

Judge, Jury, or ADR: Mediation

Judge: Justine E. Del Muro

Verdict or Settlement: \$1 million settlement

Special Damages: \$178,000 medical expenses; \$449,000 future lost wages

Allocation of Fault: N/A

Attorneys for Plaintiff: Brian Timothy Meyers, The Law Offices of Brian

Timothy Meyers, Kansas City; Leonard L. Meyer, Law Office of Leonard L. Meyer, Independence

Attorney for Defense: Dana M. Harris, Harris McCausland, Kansas City

Insurance Carrier: American Family Insurance

Plaintiff's Experts: Jim Gilpin, Prairie Village, Kan. (building code); Bruce Kauk, Kansas City (internal medicine); Kurt Krueger, Overland Park, Kan. (economist)

Defendants' Experts: None