Missouri Lawyers WEEKLY
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Top Verdicts Of 1999 (114691)

By: MO Lawyers Media Staff February 28, 2000

After smoke detector manufacturer BRK was slapped with a $50 million verdict, the plaintiff's attorney Anthony S. Bruning hoped that the verdict would act as a catalyst, forcing the company to market more responsibly to consumers.

In the verdict's aftermath, Bruning has noticed BRK commercials urging consumers to purchase "combination" smoke detectors, rather than just ionization detectors like the one involved in Bruning's case one that failed to sound after a fire started in an apartment and resulted in the deaths of three children.

Ironically, Bruning did not have his sights trained on BRK when he initially filed suit on behalf of the mother who lost two children in the fire. But by moving quickly to preserve the accident scene and conducting a thorough investigation, Bruning concluded that the smoke detector designed to warn occupants of a fire had failed.

Early Morning Blaze

On April 8, 1997, a fire broke out around 8:00 a.m. in a second floor apartment. A 5-year-old boy, his 4-year-old sister, a 4-year-old cousin, an infant, and Tim Gordon, the infant's father, were in the apartment. It began in the front room, where the three older children were watching TV. The husband was behind a closed door in the back room with the infant, attempting to put the child to sleep.

The husband heard the sound of screaming and emerged to find the apartment filling with smoke. He put the children into the back room and attempted to put out the fire, but failed.

All exits from the apartment, including the one in the back bedroom, had dead bolts which required a key to unlock. The husband made several attempts to find his keys but was unable to do so because of the thick smoke. He tried without success to break out a rear window before he was overcome. The three older children died. The husband survived but suffered cuts, burns and smoke inhalation. The infant also survived. It was later presumed that the fire was started by one of the children playing with a lighter.

Bruning first became involved in the case after he received a telephone call from a friend of the victim's family approximately two days after the fire.

"I went up to the hospital to speak to Mary Gordon, the mother of two of the children who died and the wife of Tim Gordon," Bruning said. "It was extremely difficult, especially after this incredible tragedy.

"I had just completed a case where we sued a landlord because the locks and latches in an apartment violated the code. I knew the landlord would be a defendant in the case, but we needed to file suit immediately to preserve the scene."

Injunction

Gordon agreed and Bruning filed suit against the landlord in the city of St. Louis. He also sought an injunction to preserve the fire damaged apartment and to prevent its destruction. The court granted his request.

"After getting the injunction, we were able to hire an expert who examined the scene. He determined that the smoke detector did not sound."

In fact, the expert concluded that the husband came out of the back room about 2 1/2 minutes after the fire began and 90 seconds after a properly functioning alarm would have sounded. The expert asserted that if the fire alarm had gone off when it was designed to, the father would have been able to put out the fire.

Supporting the expert's conclusion that the alarm failed to sound were two neighbors and Tim Gordon.

Bruning then added BRK as a defendant, and conducted further investigation into the company and its smoke detector. He was also able to settle his suit against the landlord, which enabled him to concentrate his efforts on building a case against BRK.

"We were able to uncover 357 complaints against the manufacturer due to the smoke detector's failure to go off, or to sound in a timely manner," Bruning said.

The investigation also put him in contact with an Iowa lawyer representing a man in a similar suit against BRK that eventually resulted in a $16 million verdict. This contact was crucial, because during the Iowa case, the plaintiff's lawyer received anonymous voice mail messages from an individual who claimed that the Underwriters Laboratory's testing of the detector had been "doctored."

"The man providing the tips left enough information about himself in the messages so that I was able to hire a private investigator to track him down," Bruning said.

The informant was located the weekend before trial and turned out to be a former BRK employee who was in charge of getting UL approval for the detector. UL approval was critical, for without it, the smoke detector would not meet building code requirements, Bruning said.

"The particular detector in this case was an ionization detector. The former employee informed us that the first time he submitted an ionization detector for testing by UL, it failed the analysis because the contact points were corroding," Bruning said.

Wining And Dining

The employee then claimed he was instructed by BRK to do "whatever it takes" to get the detector to pass the test. According to Bruning, the employee embarked on a mission of wining and dining UL employees as well as sending gifts. UL agreed to test the detector again, and once more it failed.

"The employee then doctored the smoke detector by putting drops of lubricant oil on the corroding electrical contact points. This time the detector passed the test, and BRK received its UL sticker," Bruning said. "The problem is BRK then sold 100 million of these ionization detectors to the public without drops of lubricating oil on the electrical contact points."

Although the employee was discovered on the eve of trial, Bruning was able to get his testimony in at trial.

"The defense counsel did not send interrogatories requesting us to identify trial witnesses or expert witnesses. And unlike the federal rules, there is no duty to disclose their identity to the other side under Missouri rules unless it is requested during discovery. So the judge didn't take their claim of surprise to seriously," Bruning noted.

Bruning also believes that the judge's willingness to permit the late testimony was influenced by the conduct of BRK's defense counsel.

Cocky Philadelphia Lawyer

"During the first year of litigation, BRK retained an extremely competent St. Louis defense lawyer who knows St. Louis juries and judges well. But then the company opted to use its national counsel out of Philadelphia to defend the suit," Bruning said. "The Philadelphia lawyer came in with a very cocky attitude and tried to use litigation tactics that may be popular on the East and West Coasts but they sure aren't popular in St. Louis. In the end, the lawyer ended up alienating both the judge and the jury."

In addition, Bruning thinks that the defense made a strategic error by filing a motion for summary judgment shortly before the trial.

Bruning used a legal theory – post-sale failure to warn – which had not yet been recognized in Missouri, but was approved in several other states and cited in the Restatement of Torts 3d.

"When the defense filed the motion for summary judgment, we were forced to respond. And we viewed our response as an opportunity to educate the judge on our somewhat novel post-sale failure to warn theory."

The tactic paid off because the court rejected the summary judgment motion and accepted the theory at trial.

Another step Bruning took to smooth the path to a plaintiff's verdict was to submit the case to two focus groups made up of 12 individuals each, two or three weeks before trial.

"Through our focus group presentation, I was able to explore the defenses BRK was likely to assert, expose our weaknesses, and argue the strengths of the case. We found that there really wasn't any 'bad' juror, but that the best jurors would be mothers with small children."

And the focus group outraged by the manufacturer's conduct advised Bruning that $10 million dollars for each of the five victims was a fair request.

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Then drawing upon his focus groups' recommendations, Bruning asked for $50 million from the jury during the closing argument.

"My first indication that the case might be going our way occurred during jury deliberations," Bruning said. "The foreman was a Presbyterian minister. A member of his congregation called while the jury was deliberating and advised the court that one of the church members was at the hospital dying."

The judge and lawyers agreed that the foreman could leave the deliberations if he chose to in order to minister to the dying person.

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Top Verdicts of 1999

$50 Million Verdict Awarded Against Smoke Detector Manufacturer

#2 Plaintiff's Verdict

By Geri L. Dreiling and Chris Brown

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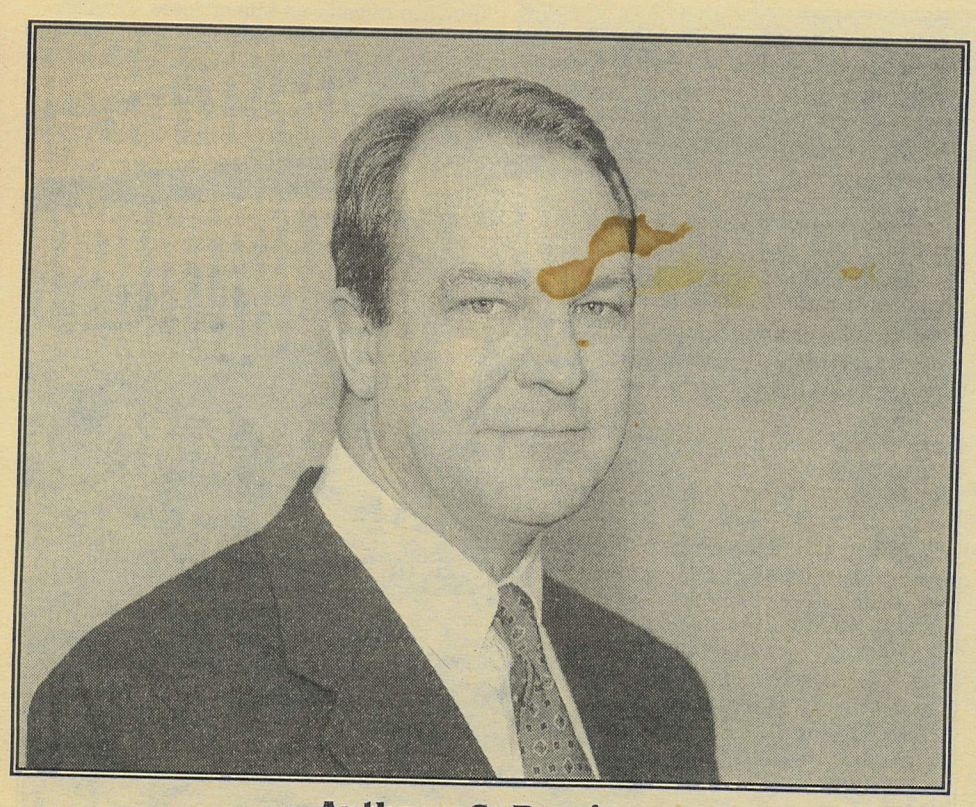

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MLW

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— by Anthony S. Bruning

At-A-Glance

Size of Verdict: $50 million

Status: Confidential settlement

Special Damages: None

Type of Case: Products Liability

Length of Trial: Two weeks

Jury Deliberation: 1 1/2 days

Case Name: Gordon v. BRK Brands Inc.

Court: St. Louis City, Judge Margaret Hill

Plaintiff's Attorney: Anthony S. Bruning, Litz, Plunkert & Bruning, St. Louis

Insurance Carrier: Lexington Insurance Co., Royal Insurance Co., Steadfast Insurance Co., Travelers Insurance Co.

Headline: # MAN WHO LOST SOME SIGHT WINS SUIT VS. 5 DOCTORS\ JURY AWARDS $2.25 MILLION AFTER FINDING PHYSICIANS MADE SERIES OF ERRORS

Correction:

PubDate: Thursday, 11/27/2003

Section: METRO

Page: D1

Byline: By Tim Bryant\Of The Post-Dispatch

Text: A St. Louis Circuit Court jury awarded $2.25 million to a man who underwent back surgery and ended up losing nearly all the vision in one eye.

The damage award for Evan Montgomery, 39, came after a chain of events that Montgomery said started with a misdiagnosis and a set of complications that set him on a perilous course involving life-threatening surgery. An attorney for two of the defendants argued that Montgomery's doctors did all they could under difficult circumstances. On Tuesday evening, after a seven-day trial, the jury found in favor of Montgomery in his medical malpractice case against two radiologists, two anesthesiologists and a neurosurgeon.

On Wednesday, Montgomery said, "I know it was difficult surgery, but I didn't expect coming out of it blind in my left eye."

Said Montgomery's lawyer, **Anthony Bruning**, "I just think this case is about doctors who don't take responsibility for their mistakes."

Ray Fournie, a lawyer for the anesthesiologists, said the jury award is unsupported by the evidence and will be appealed.

Montgomery, who makes electronic maps in his job with the Metropolitan St. Louis Sewer District, said he went to Dr. David Kennedy in late 1994 because of back pain.

Montgomery and **Bruning** gave this account:

Under questioning by Kennedy, Montgomery speculated the pain might have come from helping his father pick up a 10-point buck they shot on his grandmother's farm near Ellington, Mo.

Surgery by Kennedy in June 1995 to correct a slightly bulged disc and follow-up treatments provided no pain relief.

"I was going through hell for a long time, " Montgomery said. "My wife was very frustrated."

Judith Montgomery eventually took her husband's MRI film to a radiologist friend who immediately spotted what appeared to be a tumor.

"At least, we were relieved to find the cause of the pain but terrified of what it could be, " Evan Montgomery said.

On Dec. 8, 1995, a doctor at St. Louis University did a biopsy of the tumor and removed it. Montgomery's pain went away. But the biopsy revealed the tumor was

malignant.

Defense lawyers said Montgomery had one of only eight documented cases of epithelioid osteosarcoma of the sacrum, or tailbone. Montgomery is said to be the only survivor.

On May 6, 1996, Montgomery had surgery to remove the cancerous tissue and half his tailbone. That was when he lost nearly all sight in his left eye.

Montgomery's suit said excessive pressure on his left eye shut off blood to an optic nerve during surgery and produced the blindness. **Bruning** contended that Montgomery was placed wrongly on the operating table and that anesthesiologists failed to monitor him properly.

In his closing argument Tuesday, Fournie told jurors that Montgomery is "very lucky" to be alive. The risky surgery was so grueling that doctors had to replace all of Montgomery's blood during the 10-hour operation.

Fournie denied that a face pad for Montgomery was placed improperly during surgery and said the defendant anesthesiologists - Drs. William Turnage and Ata Siddiqui - did nothing wrong.

Jurors ordered Turnage and Siddiqui each to pay Montgomery $400,000 in damages. Kennedy and two radiologists at South County Radiologists Inc. - Drs. Edward Habert and Jeffrey Judd - were ordered to pay a total of $1.45 million. Judd and Habert failed to recognize "a sacral mass" on Montgomery's MRIs in 1995, jurors found.

Bruning said Montgomery is a victim of unnecessary disc surgery and now partially blind because of "doctor mistakes."

"The doctors who mistreated him did not save his life, " **Bruning** added. "They caused his blindness, and the jury believed that it took his wife to find out what the problem was."

Fournie said the case could be bad for the city, where jurors may tend to award plaintiffs large judgments.

"People who will learn of (Montgomery's case) will have grave second thoughts staying in medical practice or wanting to locate in the city, " he said. "What will eventually happen is that more and more independent medical professionals will leave the area."

Montgomery, who lives in south St. Louis County, said he is happy with the jury's decision but noted that his partial blindness is permanent.

"I can live with it, but it's tough, " he said.

He and his wife have 13-year-old twins - a boy and a girl - and a son, 7. Their Thanksgiving today will be like those before - dinner today with his in-laws and dinner Friday with his parents.

"I'm doing OK, " Montgomery said. "It's been a long time for this to come to an end. I'm just glad it's behind us. It was all about principle with me. Dollars can't bring my eyesight back."

Headline: # Rental store must pay in fatal fire blamed on power cord

Correction:

PubDate: Friday, 2/17/2006

Section: Metro

Page: C4

Byline: By Robert Patrick
ST. LOUIS POST-DISPATCH

Text: A St. Louis jury ordered a rental store this week to pay $500,000 to the mother of two children killed by an early morning fire in 2001 that was blamed on a faulty power cord. Two of Dawn Driggott's children, 12-year-old Jonathan Pettengill and 10-year-old Katherine "Katie" Pettengill, died from a fire that started while Driggott was at work.

Jonathan and Katie stayed up after their mother left that July 23, watching TV, hanging out with friends and playing on a computer which had been a Christmas present, according to court testimony. Jonathan called his mother at about 3:30 a.m. and said he was going to bed. At around 6 a.m., Katie called her mother, who told her it was time to go to bed. Investigators believe the fire started about 30 minutes later.

The apartment quickly filled with suffocating smoke, Driggott's attorney, **Anthony Bruning**, told jurors. Jonathan collapsed in his mother's room. Katie tried to escape, making it inches from the front door before dropping, **Bruning** said. Her body later blocked a neighbor's efforts to kick in the door and rescue the children.

Jurors heard graphic descriptions of the burns the children suffered. Katie lived until the next day. She was burned over 90 percent of her body, **Bruning** said.

In 2002, Driggott sued the computer maker, Compaq, and National Rent-To-Own, where she got the computer, claiming a faulty electrical cord that came with the equipment sparked the fire.

Under Missouri law, a retailer can be held responsible if a product it sells is defective. The seller can also bring other parties into the case. National Rent-To-Own brought its distributor, BDI-Laguna, and the printer manufacturer, Canon USA, into the lawsuits as co-defendants, the store's lawyer Susan Herold said Thursday.

Michele Sowers, a lawyer for Canon, said all parties except National Rent-To-Own settled the case before the trial but would not comment on the settlement amounts. Based on court records that were later sealed, KMOV (Channel 4) reported last month that Compaq settled the case for $250,000.

National Rent-To-Own denied that the power cord was faulty. Herold also said the malfunction that was claimed would not have started a fire unless there was adequate fuel and challenged Driggott's qualities as a parent.

After Driggott moved to St. Louis, she left her children with their baby sitter in Chicago for four years before bringing them here, according to court documents and testimony.

Photo Unique IDs:

Cutline:

Jury awards $500,000 in suit over defective power cord

Emily Umbright

Two children

died in fire

A St. Louis City jury brought closure to the mother of two children who died in a July 2001 house fire ignited by a wire connected to a printer bought from National-Rent-to-Own.

Despite the jury's $500,000 award against the local business, Anthony Bruning, an attorney with Leritz Plunkert & Bruning who represented plaintiff Dawn Driggott, said he is contemplating requests for a new trial.

While we are disappointed in the amount of the verdict, we are very happy the jury answered the question of what caused the fire, he said. Now, Ms. Driggott can have closure.

Bruning asked the jury on Wednesday to award Driggott $20 million for the loss of her children. After about two hours of deliberations, nine out of 12 jurors returned awards of $300,000 for the death of Katie Pettengill, age 10, and $200,000 for the death of her brother, Jonathan, age 12.

We felt that one suffered more than the other, explained a juror who requested anonymity.

The fire occurred around 6:30 a.m. on July 24, 2001. After neighbors unsuccessfully tried to save the kids, who were home alone, firefighters entered the south St. Louis duplex, where they found Katie on the floor near the front door and Jonathan on the floor of the bedroom.

Ambulances rushed Jonathan to Barnes Hospital, where he died shortly after doctors declared him brain dead from lack of oxygen, according to Bruning's opening statements. Emergency vehicles took Katie to Children's Hospital, where she suffered from third-degree burns on 90 percent of her body before dying a day and a half later.

Driggott filed her lawsuit three and half years ago, naming National-Rent-To-Own, Compaq Computers, Canon and BDI Laguna as defendants.

For seven days, the jury heard highly technical testimony as well as positive and negative character witnesses before reaching its verdict.

Bruning maintained in court that National-Rent-To-Own sold Driggott a defective power cord, which over time, melted and eventually ignited, but defense attorney Susan Herold of Rynearson, Suess, Schnurbusch & Champion denied the defect, claiming the evidence did not support the notion the cord started the fire.

It's a bit like trying to put together a puzzle, Herold told the jury in closing arguments. Only in this case, it's more difficult because we're missing some pieces.

But all the evidence was there, according to Bruning, who pointed out the St. Louis fire department and numerous other investigators found the fire started in the same place: behind the computer desk in the corner of the living room. Bruning's theory relied upon expert testimony that heat caused the copper wiring to form an arc, which ignited and caused the fire to spread through the room.

However, the speed at which the fire formed was too fast for Herold, whose own expert testified the computer still had power at the same time the neighbors said they saw smoke.

What we know is this computer still had power at 6:35 a.m., Herold argued. That gives us an eight-minute window for the cord to arc, find a fire source, ignite and spread.

Bruning contended the evidence did not support the idea that the fire moved slow.

This fire happened rapidly in a manner of minutes, he said.

Contrasts continued in each side's portrayal of Driggott. As Bruning sought to emphasize the magnitude of her love for the children and her loss, Herold tore down Driggott's reputation.

Bruning opened his case in front of displays of the children's school pictures. He painted Driggott as a hard-working mother who provided for her children in the best ways she could, even if it meant occasionally leaving them alone overnight while she went to work.

This was a growing and loving family that depended on each other for support, Bruning told the jury. The family was happy, and they had a bright future; they had overcome many of life's obstacles.

But Herold played on the fact that Driggott moved to St. Louis for her job, leaving the kids behind in Chicago for four years with baby-sitter Debbie Jensen. The defense also showed videotaped depositions of the children's father and friends in Chicago who insinuated Driggott's lack of parental involvement.

The point isn't that Dawn Driggott is a bad person, that she didn't care for them, Herold said in closing arguments. The fact of the matter is they didn't live with her for four and a half years. They lived with Debbie Jensen.

However, it was Driggott who had the last word by taking the witness stand for rebuttal testimony after Herold rested her case. Here, Driggott explained work prevented her from visiting the kids on Christmas and on each of their birthdays. She also explained her sudden decision to move them back to St. Louis with her.

They missed me too much and didn't want to wait until August when they were originally supposed to move, she said on the stand.

The fire occurred 14 months later.

Judge Dennis M Schaumann placed a gag order on the case after television station KMOV disclosed a $250,000 confidential settlement between Driggott and Compaq Computers a month before jury selection began. Canon and BDI Laguna also settled with the plaintiff for undisclosed sums.

Defense attorneys had no comment regarding the jury's decision.

Headline: # Man, 21, slain in barrage of shots on city street

Correction:

PubDate: Saturday, 8/19/2006

Section: News

Page: A6

Byline: By Steve Giegerich
ST. LOUIS POST-DISPATCH
Bill Bryan and Heather Ratcliffe of the Post-Dispatch contributed to this report.

Text: Police are searching for three men who witnesses said fired at least 12 shots at a 21-year-old St. Louis man, killing him after he walked to a service station to buy cigarettes early Friday.

After felling Timothy Bacon with a barrage of 10 shots in the 1400 block of Madison Street, one of the gunmen fired two more shots into Bacon's body, police said.

Bacon, of the 1400 block of East Obear, was the subject of a news article earlier this month citing a state Division of Family Services report stating that he had been struck repeatedly by former Vashon High School basketball coach Floyd Irons six years ago.

School officials said Bacon, a special education student, had failed to follow school policy when he arrived late for classes on Feb. 16, 2000. Bacon suffered a broken nose, a scratched cornea and abrasions, the report said.

He was charged with assault for allegedly scuffling with school security officers.

Irons successfully appealed the agency's recommendation that assault charges be filed against him.

In July, the St. Louis School Board removed Irons from his coaching duties and his position as district athletics director.

Bacon complained in an Aug. 8 interview that he still suffered from migraine headaches as a result of the fracas.

Irons' attorney, Jerome Dobson of St. Louis, said his client was "very upset" by the killing. "We deplore this senseless loss of his life and express our deepest sympathy to his family, " Dobson said Friday.

Dobson said Irons had no knowledge of a civil suit that St. Louis lawyer **Anthony Bruning** intended to file on Bacon's behalf next week.

Bruning said the suit would have sought damages from the School Board and Irons, in connection with the alleged assault.

Bacon was killed at 1:45 a.m. His father, Roger Bacon, believes the slaying was an execution.

Timothy Bacon's parents and **Bruning** acknowledge Bacon had a problem with authority.

Court records show Bacon was cited for resisting arrest last April after violating a restraining order filed by the mother of one of his two children.

Jury awards plaintiff in trucking accident

Man suffered whiplash, mild brain injury

George Burroughs III of Arnold was awarded $1.3 million after he was hit by an 18-wheeler with an 80,000-pound load.

Burroughs, 38, was on his way to work when he was rear-ended along Interstate 55 by the truck driven by Donald Hudson II of Southern Refrigerated Transportation.

Burroughs was carrying pieces of firewood in the bed of his pickup truck for traction. When he was hit from behind, a piece of firewood flew through the back window and struck Burroughs in the head.

He suffered whiplash and head trauma. Burroughs underwent surgery to fuse four cervical vertebrae, and he received rehabilitation therapy for more than a year for a mild traumatic brain injury.

At the trial, which lasted four days, the defense disputed negligence and claimed Burroughs was driving too slowly, said plaintiffs' attorney Anthony S. Bruning. The defendant also questioned Burroughs' injuries, claiming he was a malingerer.

Burroughs didn't work for 21 months and lost about $155,000 in wages, Bruning said.

The jury decided in favor of Burroughs and against both defendants and awarded him $1.3 million for personal injury. His wife, Juanita, received $100,000 for loss of consortium.

On Jan. 5, defense attorney Michael Lawder filed a motion for judgment notwithstanding the verdict and alternative motions for remittitur and for new trial.

— Cathy Kingsley

$1.4 million jury verdict

PERSONAL INJURY/ VEHICULAR

- **Court:** Jefferson County Circuit Court
- **Case Number/Date:** 08JE-CC00496/ Dec. 4, 2009
- **Judge:** Mark Stoll
- **Insurance:** Cherokee Insurance Co./ $1 million limit
- **Plaintiffs' Experts:** Sharon Grass, Ste. Genevieve (nurse practitioner); Dr. Nehal Modh, Festus (pain specialist); Jackie Jenks, St. Louis Rehabilitation Institute (rehabilitation therapist); Dr. Franklin Hayward, Cape Girardeau (neurosurgeon)
- **Defendants' Experts:** Dr. Scott R. Soerries, St. Louis (emergency room physician); Stephen Jordan, Cape Girardeau (psychologist)
- **Special Damages:** $85,000 for medical specials
- **Caption:** George Burroughs and Juanita Burroughs v. Donald Hudson and Southern Refrigerated Transportation

Anthony Bruning

Michael Lawder

- **Plaintiffs' Attorney:** Anthony S. Bruning, Lehr, Plunkert & Bruning, St. Louis
- **Defendants' Attorney:** Michael Lawder, Gilbert & Anderson, St. Louis

SEARCH ONLINE AT HTTP://VERDICTS.MOLAWYERSMEDIA.COM

urors favor parents n day care death trial

ut ability to collect on $708k award unclear

MIKE TRASK
e.trask@molawyersmedia.com

St. Charles County jury awarded near-708,000 to the parents of a toddler who d at a day care operating in a Wentzville dence. But it's unclear whether they ever collect on the award.

ighteen-month-old Mason Beach died ot. 10, 2009, from a head injury suf-ed in the home of day care provider Lisa st.

Mason suffered the head injury just nutes after Rebecca Beach, his mother, opped him off at West's home, said at-ney Anthony Bruning, who represented child's parents in the civil case.

On the day of the incident, West told veral people that the toddler fell down e steps to her basement, Bruning said. owever, the attorney added, the day care ovider would not talk to authorities and er refused to testify in court.

When he suffered the head injury, ason apparently was the only child who as not a member of the West family at e home, Bruning said. The attorney said sa West appeared to care for seven or ght children, but he added that he could ot show she watched that many at one me. The defendant didn't keep records, nd "there were no witnesses to say what appened," he said. Lisa West's husband, Scott, was not at home at the time.

The plaintiff's medical experts, St. Charles County Medical Examiner Dr. Mary Case and Dr. Ann DiMaio at SSM Cardinal Glennon Children's Medical Center, both testified that the child's injuries and subsequent death did not result from a fall down steps, Bruning said. In fact, Case called the manner of death a homicide, he said.

Dr. Thomas Young, a former Jackson County medical examiner, testified for the defendants.

The verdict did not surprise Martin Buckley, West's attorney.

"It was a difficult case to try because my client took the Fifth Amendment," he said. "My client could not tell her side of the story."

The threat of criminal prosecution hung over his client during the trial, Buckley said. County Prosecuting Attorney Jack Banas or one of his representatives was in court during the entire trial, Buckley said.

"That was an explicit threat to my client," he said.

Buckley called the amount awarded an "odd number" and said he believes at least some jurors wanted to award less.

"It was pretty clearly an averaging verdict," he said.

Whether the plaintiffs ever will collect on the award is unclear. West did not carry business insurance or additional liability insurance for her child care operation, Bruning said. The insurer of the West home, State Farm Fire and Casualty Co., is arguing the homeowner's liability policy limit of $300,000 did not apply to day care operations inside the home.

"From the very beginning, the case wasn't just about money," Bruning said.

The Beaches used the civil trial to get their day in court and make the person responsible for Mason's death face a jury, he said.

Bruning said he understood why Banas has not filed criminal charges against Lisa West. She refuses to talk to authorities about the child's death and she has no history of abusive behavior, he said.

However, "it was enough for a civil jury because the verdict was unanimous," Bruning said.

Banas said criminal charges still could be filed.

"This is an open case," he said. MO

$707,733 verdict

WRONGFUL DEATH

- **Venue:** St. Charles County Circuit Court
- **Case Number/Date:** 1011-CV07697/Feb. 10, 2012
- **Judge:** Nancy Schneider
- **Plaintiffs' Experts:** Dr. Mary Case, St. Louis (St. Charles County medical examiner); Dr. Ann DiMaio, St. Louis (emergency medicine)
- **Defendants' Expert:** Dr. Thomas Young, Kansas City (medical diagnosis, former medical examiner)
- **Special Damages:** $140,000 for charged medical bills, funeral expenses
- **Last Demand:** $300,000 (withdrawn)
- **Insurer:** State Farm Fire and Casualty Co.
- **Caption:** Rebecca Beach and David Beach v. Scott West and Lisa M. West

Anthony S. Bruning

- **Plaintiffs' Attorneys:** Anthony S. Bruning, Leritz, Plunkert & Bruning, St. Louis; Ryan L. Bruning, Page Law, St. Louis
- **Defendant's Attorney:** Martin Buckley, Buckley & Buckley, St. Louis

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DAY CARE

• FROM A1

Wrongful-death suits are a last resort for parents who have lost children, but they're unlikely to collect

Yet there's a strong chance the Beaches won't collect.

That's because West, like all other home day care providers in Missouri and numerous others in states nationwide, was not required to carry business insurance or additional liability coverage despite offering daily, for-pay child care in her home. And, unless a child care provider opts to include a special rider on a homeowner's policy, most insurance companies decline or significantly limit their liability on a homeowner's policy for the death or injury of a child in a home-based day care.

"People need to know that home day care providers don't have to have business insurance," said the Beaches' attorney, Anthony Bruning. "They need to know you take a risk by putting your child there, and if you are uninsured you will have to pay all medical costs if your child is severely injured."

REGULATIONS ARE RARE

The most recent child care licensing study by the National Association for Regulatory Administration found that only eight states nationwide, including Illinois, require home child care providers to carry some form of liability insurance, leaving most parents whose children die or are severely injured in home day cares without financial recourse.

In some cases, the insurance carriers countersue the parents of an injured or deceased child by asking the court for a declaratory judgment to relieve the company of liability in the civil suit.

That's what happened to the Beaches. About two months after they filed their suit, they learned they and the Wests were co-defendants in a separate civil suit filed by the insurer. The Beaches were served at their front door with court papers on behalf of State Farm Fire and Casualty Co. arguing the policy's $300,000 liability coverage did not apply to home day cares. That suit is scheduled to be resolved this week.

Steve Blecha of Imperial said he had the same knock on the door when he and his wife, Shelley Blecha, tried to sue their child care provider. They too learned they were being countersued by the insurance company.

"What a way to kick someone's teeth out of their head," he said. "As if we didn't have enough to deal with."

Their son, Nathan, accidentally suffocated at 3 months in a home day care near Arnold, where regulators later determined the unlicensed provider was caring for more kids than allowed by law. No charges were filed against the provider. The provider also had no liability coverage, just a homeowner's policy.

"We said, well, if no one else is going to do anything about it, why shouldn't we do something about it and sue?" Steve Blecha said of their initial decision to take the matter to civil court.

But the parents dropped the suit after learning the provider had no business insurance. Blecha said they realized the provider, a single mother, would be on her own to pay a judgment.

"In the end, we didn't want to put a family out on the street," he said.

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Mason and Nathan were two of 45 children highlighted last year in an investigation by the Post-Dispatch on deaths in child care in Missouri from 2007 through 2010.

DEADLY DAY CARES

Read our series, find an interactive graphic, see videos, charts and more. stltoday.com/daycares

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Child care referral agencies in Missouri encourage home day care providers to purchase additional coverage to protect themselves, but it's unknown if they follow through, said Carol Scott, CEO of Child Care Aware of Missouri.

It falls to parents to ask before enrolling a child if a provider carries such insurance, she said.

"Parents don't think anything bad is going to happen to their child," Scott said. "We don't want to imagine the worst-case scenario when you're looking for child care; you're imagining the best-case scenario for your child."

'DID IT ON PRINCIPLE'

Some parents of children who have died in day care say the lack of other penalties for potentially negligent providers compels them to sue, even though the parents know they will likely be awarded nothing.

Ashley Brooks knew when she filed a wrongful-death suit last year that her former child care providers had no insurance in their name on their bank-owned house in Ferguson. Her attorney, William Holland, working pro bono, asked for $20 million, supposing nothing would come of it.

"I guess I did it on principle," Brooks said of the lawsuit. "I got to face them in court, and that was important to me."

Last February her infant son, Jordan, accidentally suffocated in an unlicensed home day care operated by Cynthia and Dexter Williams. Medical examiner and police records show Jordan and his older brother stayed overnight because of inclement weather. Dexter Williams put Jordan face down on a couch after 1 a.m. and fell asleep next to him. Sometime within the next three hours, Williams rolled on to Jordan, and the baby suffocated.

The unlicensed providers were never charged with a crime.

Earlier this month, the Williamses waived a jury trial in the civil case and represented themselves in front of St. Louis County Judge Robert Cohen, taking responsibility for the death. The hearing took 15 minutes.

In what's called a "show verdict," the judge awarded $5 million to Brooks, knowing the dollar figure would amount to a statement on negligence and extreme loss, but not a real payout. Brooks said she won't pursue the family's assets because they have very little.

"I can't really say they felt like they understood the severity of what happened and what they did," she said. "I don't think they grasped how much my life has changed and what has happened, because nothing in their life has changed."

ON THE PUBLIC RECORD

Brad and Rebecca Beach, Mason's parents, said financial compensation did not drive them to sue Lisa West and her husband, Scott West. The Beaches said they originally did not want to sue because they wanted to avoid an emotional trial.

But after the family meeting with Banas, Mason's parents agreed to file

ROBERT COHEN • [illegible]

Whenever Annabelle Beach plays near the bookshelf containing mementos of her brother, Mason, she points to his picture and says "baby." Mason Beach died in September 2009 of injuries received in a Wentzville home day care. His parents, Rebecca and Brad Beach, recently received a jury award of $707,000 after suing the unlicensed day care provider but probably won't collect any of it.

two conflicting arguments about what happened to Mason. One contended that Mason's death was caused by improper supervision and a failure by West and her husband to install a safety gate at the top of their home's basement stairs.

The other argued intentional battery and relied heavily on medical testimony from St. Charles County Medical Examiner Mary Case and Ann DiMario, an emergency room physician at Cardinal Glennon Children's Medical Center in charge of child abuse forensics. Both said Mason's extensive head injuries — including retinal hemorrhaging, damage to both optic nerves and bleeding, swelling and shifting of his brain — could not have been caused by a stair fall, and were instead evidence of an inflicted blow.

Thomas Young, a former Jackson County medical examiner, testified for the defense. He argued that he did not believe an adult could shake a baby to death and discarded national research — some of it written by Case — on shaken baby syndrome.

After testimony, Judge Nancy Schneider ruled the Beaches would have to choose which theory they wanted the jury to consider: negligence or inflicted injury, but not both.

The Beaches said they decided to go with negligence — the easier verdict to prove.

The $707,000 jury decision in their favor gave them little relief.

"I don't think anything really came out of the trial," said Rebecca Beach a week later in her O'Fallon home, as she sifted through a plastic box of photos of Mason on her kitchen table.

After Mason died, Rebecca Beach said she and her husband did not return to their Wentzville home because they could not bear to look at

being contested by the insurance company.

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But the parents dropped the suit after learning the provider had no business insurance. Blecha said they realized the provider, a single mother, would be on her own to pay a judgment.

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In the same investigation, Nathan was one of 35 babies whose death was sleep-related. In most of those deaths, caregivers failed to follow safe sleep practices, which led to accidental suffocation. All but four of those deaths occurred in unlicensed home day cares with no state standards or inspections.

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But after the family meeting with Banas, Mason's parents agreed to file a wrongful-death suit so it would be on public record that Lisa West was suspected of hurting Mason in her home day care. They held out hope that new evidence might come to light in the civil trial to aid in future criminal prosecution.

Banas, the St. Charles County prosecutor, or a member of his office was present in the audience throughout the three-day trial earlier this month.

But West never took the stand. Invoking the Fifth Amendment, she refused to answer any questions about her day care or the incident in a pretrial deposition.

Her husband, out of town the day Mason was hurt, declined to tell a jury what his wife had told him about the incident.

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After Mason died, Rebecca Beach said she and her husband did not return to their Wentzville home because they could not bear to look at Mason's toys in their living room or his room. They put it on the market and moved with a relative for seven months.

Last year, the parents learned of the criminal prosecution of two other in-home day care providers who had children die in their care. In one case in Eureka — where there were adult witnesses — the caregiver was charged with second-degree involuntary felony child abuse.

The Beaches say Mason's child care provider remains unpunished.

"Our life was turned upside down and changed in every way, and they have been allowed to go on about their business," Rebecca Beach said. "There is no being held accountable for it."

Headline: # Justice proves elusive in deaths at day cares
In cases with few witnesses, little evidence, criminal charges are unlikely. Lack of provider insurance means payouts won in suits are hard to collect.

Correction:

PubDate: Sunday, 2/26/2012

Section: News

Page: A1

Byline: BY NANCY CAMBRIA • Nancy.Cambria@post-dispatch.com > 314-340-8238

Text: On a spring day in 2010, 17 members of Mason Beach's family crammed into the living room of his uncle's O'Fallon, Mo., home and set their attention on an invited guest, St. Charles County Prosecutor Jack Banas.

The family wanted to know why Banas had not filed criminal charges after Mason died Sept. 10, 2009, from a head injury suffered just minutes after his mom left him at a Wentzville home day care eating Cheerios in a high chair. Why, a half-year later, had nothing happened?

But Banas gave them no solace that day. In a recent interview, he said Mason's fatal injuries remain suspicious. But there were no other witnesses older than 4 in the unlicensed home day care. And beyond medical opinions, there was probably not enough evidence to convince a jury that the 18-month-old died from an inflicted injury and not from an accidental fall down carpeted stairs, as the provider claimed.

The investigation remains open. The child care provider, Lisa West, has not been charged. She stopped speaking to authorities hours after Mason's death. Her attorney, Arthur Margulis, said the death was a "heartbreaking" accident, not a crime.

So, in the absence of criminal prosecution, Mason's family made the choice of last resort for parents who have had children die in home day cares: They sued.

Earlier this month the Beaches were awarded $707,000 after a jury decided West was negligent in caring for Mason - one of the highest wrongful-death awards for a child ever awarded in St. Charles County.

Yet there's a strong chance the Beaches won't collect.

That's because West, like all other home day care providers in Missouri and numerous others in states nationwide, was not required to carry business insurance or additional liability coverage despite offering daily, for-pay child care in her home. And, unless a child care provider opts to include a special rider on a homeowner's policy, most insurance companies decline or significantly limit their liability on a homeowner's policy for the death or injury of a child in a home-based day care.

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stltoday.com/daycares

Photo Unique IDs:

Cutline: Photos by Robert Cohen • rcohen@post-dispatch.com
Annabelle Beach hugs a valentine bear given at birth to her brother, Mason. Mason Beach died in September 2009 of injuries received in a Wentzville home day care. After Annabelle was born, Rebecca Beach's mother, Debbie Earle (left), moved into Rebecca's St. Peters home to care for her granddaughter while Rebecca (right) and Brad Beach worked.

A photograph of Mason Beach from Christmas 2008 sits on the fireplace mantel of Rebecca and Brad Beach's home in St. Peters. Prosecutors have said that Mason's fatal injuries remain suspicious, but there's probably not enough evidence to convince a jury that the boy died from an inflicted injury and not an accidental fall.

Robert Cohen • rcohen@post-dispatch.com
Whenever Annabelle Beach plays near the bookshelf containing mementos of her brother, Mason, she points to his picture and says "baby." Mason Beach died in September 2009 of injuries received in a Wentzville home day care. His parents, Rebecca and Brad Beach, recently received a jury award of $707,000 after suing the unlicensed day care provider but probably won't collect any of it.

NEW TO THURSDAY: **RIDES MAGAZINE** PARKED INSIDE

stl TODAY

ST. LOUIS POST-DISPATCH

THURSDAY • 12.06.2018 • $2.00

Rams to pay PSL holders $24 million

Team also to pay lawyer fees, expenses

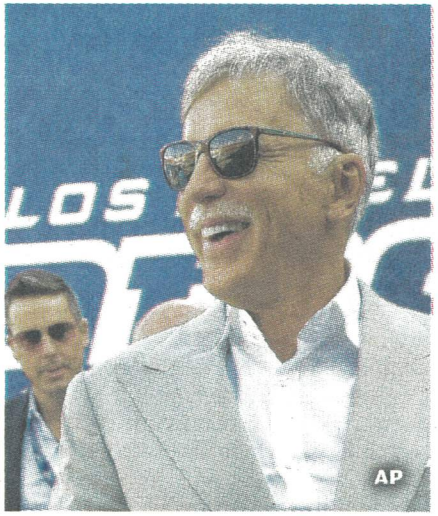
BY JIM THOMAS
St. Louis Post-Dispatch

The Rams have agreed to pay personal seat license-holders in St. Louis up to $24 million for the unused portion of their PSLs after the team relocated to Los Angeles.

Attorneys representing thousands of St. Louis Rams PSL-holders filed a motion for preliminary approval Wednesday in U.S. District Court.

This follows the news last week that the parties had reached a settlement in a class-action suit filed shortly after NFL owners approved the relocation of the Rams from St. Louis to Los Angeles on Jan. 12, 2016.

See RAMS • Page A7



Rams owner Stan Kroenke moved the Rams to Los Angeles for the 2016 season.

Cardinals acquire Arizona slugger

First baseman brings gold glove, big bat

BY DERRICK GOOLD
St. Louis Post-Dispatch

On one of his first days calling the shots for the Arizona Diamondbacks, former general manager Dave Stewart, who earned a reputation as a steely-eyed, no-nonsense starting pitcher, beamed as he talked about the first baseman he inherited. Stewart described how every morning he could wake up and "know the sun is brighter because Paul Goldschmidt is on my team."

That same glow is now set to ignite St. Louis.

In a move several weeks in the making and several years in the chasing, the Cardinals acquired six-time All-Star

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The Cardinals land Paul Goldschmidt in a four-player deal with the Diamondbacks.

Pro football is returning to St. Louis in the form of the XFL • **B1**

Hochman: Trade for Goldschmidt returns Cards to relevancy • **B1**

Rams to pay $24 million to 'St. Louis' PSL holders

RAMS • FROM A1

The Rams also agreed to pay up to $7.4 million in attorney's fees and expenses — a figure that will be paid separately from the $24 million.

Rams executive Kevin Demoff did not respond to a text message seeking comment.

It could take six months or more before eligible PSL holders receive any money, which will come in the form of checks sent directly by the Rams. The process to submit a claim for an award can't begin until the court grants preliminary approval, which is expected in six to eight weeks.

"This is the first step in the process," said A.J. Bruning, an attorney for one of the firms representing PSL holders. "If the court (gives) preliminary approval of this settlement, a website will be put up that people can go to and they can make a claim. And that will happen 10 days after the preliminary approval settlement and stay open for 180 days."

Once preliminary approval occurs, the Rams will mail or email notifications to every PSL holder listed in their database. But that database is incomplete and those who think they might be in line for an award are asked to check the website once it becomes active.

"There's no downside to making a claim," said Fernando Bermudez, an attorney from another firm representing PSL holders.

Even PSL holders who quit buying tickets without transferring their PSLs could be entitled to an award if they did not receive a cancellation notice from the Rams.

Personal seat licenses were a one-time fee that gave the buyer the right to buy season tickets to Rams games in St. Louis. (The actual cost of the ticket was extra.) The original PSLs were good for 30 years, or the length of the original stadium lease in St. Louis.

The Rams left for Los Angeles after only 21 seasons. The settlement awards PSL holders the equivalent of nine years' worth of their PSL purchase price, which equates to 30 percent of its original value.

SETTLEMENT DETAILS

TERMS

- Rams agree to pay up to $24 million to PSL holders in St. Louis.
- Rams agree to pay up to $7.4 million in attorney's fees and expenses.

TIMELINE

- Process for receiving refunds will not begin until judge grants preliminary approval, which is expected to take place in six to eight weeks.
- Eligible PSL holders won't receive checks from Rams for about six months.

Depending on the value of the PSL purchased, the settlement could bring an award as low as $75 or up to several thousand dollars per person.

"This is an important day for St. Louis and for the Rams fans, the loyal fans who originally bought the PSLs," said Ryan Bruning, A.J.'s brother and part of the Bruning Law firm. "When we filed this lawsuit, we were seeking reimbursement for these nine years that they lost of NFL football in St. Louis. And that's exactly what we got."

There were six tiers of PSL prices for season ticket holders when the Rams moved to St. Louis — the higher the price, the better the seat location in what is now called the Dome at America's Center. Those pricing tiers were $250, $500, $1,000, $2,500, $3,000 and $4,500.

So if you bought one ticket at the $250 PSL level, your award is 30 percent of that PSL, or $75. If you bought two $250 PSLs, your award is $150. And so on.

At the other end of the spectrum, let's say you bought six tickets at the $4,500 PSL level. That would mean you originally paid $27,000 in PSLs fees (6 times $4,500), so your award would be 30 percent of $27,000 – or $8,100.

"This is a good deal for PSL holders," Bermudez said. "Of course, we would have wanted more. Of course the Rams would have wanted less. But with the help of a former Missouri Supreme Court judge (Ray Price), we came to a figure that is reasonable and that everyone could live with."

Price served as mediator in the case, which had been in settlement discussions since the summer.

There were actually two classes in the class action.

Bruning's firm was involved in what was called the "FANS class" — representing original PSL holders who bought season tickets from the FANS Inc. civic group when the team moved to St. Louis.

Bermudez's firm was involved in what's called the "Rams class" — representing PSL owners who bought their PSLs after March 31, 1996, when the Rams took over the PSL process. The "Rams class" also includes original PSL holders who later transferred their PSLs, or upgraded to a higher-priced PSL.

Because the wording in the FANs and Rams PSLs were different, the legal arguments were different in each class and the attorneys for each class basically worked separately until near the end of the process. Nonetheless the award money is the same for both classes.

Three separate lawsuits were filed on behalf of PSL holders against the Rams within weeks of the relocation vote by the NFL. The three suits subsequently were consolidated into one: McAllister v. St. Louis Rams. Ron McAllister, a PSL holder from Eureka, was one of the original plaintiffs.

For years, McAllister tailgated with Ryan and A.J. Bruning and their father Tony Bruning – also an attorney with the family firm. McAllister attended 169 of the 172 Rams regular-season and playoff home games in St. Louis, and has the ticket stubs to prove it.

"From a personal level, I was hurt, disappointed, mad that the Rams were leaving town and leaving us high and dry," McAllister said. "But from a consumer standpoint, I paid for a ($1,000) personal seat license.

"I was told I was gonna get a product, that I paid good money for, for 30 years. And after Year 21, the team decides to leave on their own. ... So I contacted these guys and I said, 'I want my money back. I want a refund. I did not get what I paid for.'"