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News Story

Construction Worker Wins \$30M For Electric Shock Subcontractor Failed To Turn Off Power

By Kelly Kress

A carpenter who received a 277-volt electric shock at a construction site has won a \$30 million verdict in his Jackson County case against an electrical subcontractor.

Plaintiff Virgil McCormack claimed that Capital Electrical Construction Co. was negligent in failing to turn off the power while he was working. Capital Electric contended that McCormack was at fault for touching an uncapped wire and that he was feigning injury, since serious symptoms did not develop until several days later.

It was the second trial in the case — in 1999 a jury found McCormack to be 92 percent at fault. But the trial judge granted a new trial after concluding that the jurors misunderstood the comparative fault instructions.

McCormack's attorney, Grant Davis of Kansas City, said the case centered on the "frivolous, hurtful defense" made by Capital Electric.

"Despite all evidence to the contrary, they accused him of being a malingerer, that he was faking," said Davis. "They said Virgil, his wife and all of the treating doctors were lying."

Richard Scaletty, co-counsel for McCormack, agreed. "They accused them of being phonies, fakes and frauds. This was a tragic injury to a man in the prime of his life."

According to Scaletty, the case "shows the callousness of some corporations and companies in America. In this time of tort reform, with all the talk of frivolous lawsuits, this is a prime example of corporate use of a frivolous defense."

Counsel for Capital Electric declined comment on the case. (*McCormack v. Capital Electrical Construction Co.*)

277 Volts

In 1995 Virgil McCormack was employed by Carmen Schell Construction to hang sheetrock during the construction of the Marion Merrell Dow building in Kansas City. Capital Electric was the subcontractor hired to perform the electrical work at the site.

McCormack was unaware that the electrical power had been turned on at the site. While installing a firewall in an unlit area, McCormack touched the uncapped end of a live wire. He received a shock of 277 volts.

McCormack was taken to the hospital and released the next day. Upon his release, McCormack appeared

to have only minor injuries. Within days, he began to experience numbness and tingling in his arms, and developed dizziness and pain.

Over the next year, he developed increasingly severe symptoms, including a seizure disorder, cognitive dysfunction, organic mood disorder, depression, anxiety and post-traumatic stress disorder. His IQ dropped from approximately 100, in the normal range, to 67, which is classified as mentally retarded.

Two Lawsuits

Represented initially by Rick Scaletty alone, McCormack filed a workers' compensation suit against Carmen Schell and a negligence action against Capital Electric. Both companies were insured by The Hartford Insurance Company.

In the negligence case against Capital Electric, the company argued that McCormack was to blame for his own injury. A jury found him to be 92 percent at fault, and McCormack moved for a new trial. As the trial judge was dismissing the jurors after the case, some of them asked about the practical effect of their decision on McCormack. The judge decided that the jurors had misunderstood his instructions and had delivered a verdict different from what they had intended. He went on the record and voiced his discomfort with the outcome of the trial, saying that the verdict was "clearly beyond the weight of the evidence and just simply not reasonable." He granted McCormack's motion for a new trial, finding the verdict against the weight of the evidence.

Hartford appealed, but the Western District Court of Appeals upheld the order for a new trial in a Nov. 7, 2000 opinion. Shortly after the decision, Scaletty brought attorney Grant Davis into the case.

During the workers' compensation trial, Hartford accused McCormack of malingering, claiming his medical and mental problems were not related to the electrical shock. The administrative law judge found McCormack to be permanently and totally disabled due to his work place injury, issuing a 14-page decision. The court ordered Hartford to pay all of McCormack's medical expenses, and permanent total disability.

Hartford appealed, but the decision was upheld by both the Industrial Relations Commission and the Court of Appeals. The case is *McCormack v. Carmen Schell Construction Co. and ITT Hartford*, No. WD 60771, June 25, 2002.

Seven months after the court handed down the decision in the workers' compensation appeal, McCormack began the second jury trial in the case against Capital Electric. Hartford again accused McCormack of malingering.

This time the jury found Capital to be 100 percent at fault, and awarded McCormack \$28.8 million. They also awarded Sandy McCormack \$1.6 million.

"The workers' compensation court found that Virgil had a legitimate injury," Grant Davis said. "The court found the insurance company at fault for having a frivolous defense.

"They were calling our client a malinger, but I got one of their experts to admit that this seven-year process was hurting him further."

Davis explained that electrical trauma can produce a progressive injury and a pattern of abnormality. He said the PET scan done on McCormack's brain showed abnormal brain activity similar to someone suffering from dementia or Alzheimer's disease.

According to Davis, the insurance company "brought in six experts who said he was not really hurt," and defense experts told the jury not to consider the PET scan or the neurophysiological tests that show his current condition.

"Virgil was a journeyman carpenter, he coached his daughter's softball team, he was an avid outdoorsman," Davis said. "After high school, he was recruited to play minor league baseball. That was all taken away. He can't drive, can't follow TV shows. His IQ dropped from normal to borderline retarded. He

volunteers at the hospital to give him something to do."

Rick Scaletty said, "They violated OSHA by having the power on [at the work site], they refused to take any responsibility for what happened, and then they accused them of being frauds, of malingering.

"They spent over \$70,000 on surveillance and over \$180,000 in expert witness fees.

"Not one of Virgil's treating doctors said he was not seriously injured," Scaletty said. "Many of the symptoms developed after the injury, but were not identified right away. He developed what his family called spells, which were not noted in the chart until two years later when he was diagnosed as having a seizure disorder. He was also not receiving psychiatrist treatment for the depression caused by his organic brain disorder, and he spiraled down, making several suicide attempts."

Scaletty said that one of the defense experts accused McCormack of taking too much medication, but another said he was not following doctor's orders.

"There was no sense of trying to work with Virgil, no support offered," Scaletty said. "In the workers' comp case, they made a big deal out of him not going to the Mayo Clinic, said he was refusing medical treatment. Then they cut off his workers comp benefits."

He said the defense lawyers had made an appointment for McCormack at the Mayo Clinic in Minnesota for the workers' comp case. Then the other team of lawyers scheduled an appointment on the same day with two experts for the negligence case, in Kansas City. "They were willing to go, but Sandy couldn't get off work, and Virgil can't travel alone. They [the insurance company] made no attempt to work with us."

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