

Carpenter's widow settles wrongful death suit for \$1.05M

By: Bill Cresenzo ◉ April 25, 2019

The wife of a carpenter who was killed when a roof truss system collapsed on him has confidentially settled a wrongful death lawsuit for \$1.05 million, her attorney reports.

Jay Kerr of Asheville said that the carpenter, whose name was withheld pursuant to a confidentiality agreement, was helping build a house in Henderson County in February 2017 and assisting his co-workers with installing a gable truss for a large central room above him. (A truss is triangular and supports a home roof and walls).

The carpenter was pushing and pulling on three wooden 2x4s that were detached at the bracing end, but otherwise kept attached to the gable end truss. As he was holding one of the pieces of wood while standing on the subfloor below, 25 trusses "virtually collapsed like dominos, with several striking and crushing the decedent," Kerr said.

The carpenter was an employee of an independent framing subcontractor who had been hired by a general contractor to frame the home, which includes erection of the roof truss system. Kerr said that the subcontractor had failed to install adequate and proper temporary bracing and restraint to support the truss system as required by the truss manufacturer's specifications.

While there was substantial evidence of the subcontractor's negligence, Kerr said, he concluded that the evidence likely did not support viable claims against the subcontractor, which had provided workers' compensation benefits to the carpenter's wife and two children and thus claimed statutory immunity from any civil liability claims.

The carpenter's widow sued the general contractor, alleging negligence based on violations of the relevant building code and non-delegable duties.

The general contractor didn't dispute that inadequate temporary bracing and restraint had been installed, but claimed that the installation was the sole responsibility of the subcontractor and that it hadn't violated any independent legal duties by failing to ensure that they had been properly installed, Kerr said. It argued that it had properly hired and retained the subcontractor to perform framing work, and that the work did not involve any non-delegable duties.

Kerr said that the biggest challenge in the case was establishing that the general contractor had an independent duty to ensure that the truss safety measures were applied, a duty which he otherwise could not have delegated to the subcontractor.

The two sides ultimately reached a settlement on March 11. Stephen Grabenstein of the Van Winkle Law Firm in Asheville mediated the settlement.

Ervin Ball of Ball Barden and Cury in Asheville represented the contractor. He said that the North Carolina appellate courts have concluded that roofing activities are not inherently dangerous, which otherwise could impose such a non-delegable duty. Ball said that his client has a good safety record and had never been involved in litigation concerning his business.

"Under the circumstances it was a fair and reasonable settlement for all parties," he said. "It was a very tragic accident."



Kerr

Amount: \$1.051 million

Injuries alleged: Death

Case name: Withheld

Case number: Withheld

Court: Henderson County Superior Court

Mediator: Stephen Grabenstein of the Van Winkle Law Firm in Asheville

Date of settlement: March 11

Special damages: \$850,000 third-party settlement funds and net \$201,000 workers' compensation benefits after waiver of subrogation lien

Most helpful experts: Paul Fama of SKA Consulting Engineers, Inc. in Asheville

Attorney for plaintiff: Jay Kerr in Asheville

Attorney for defendant: Ervin Ball of Ball Barden and Cury in Asheville

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