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## Premises Liability – Death

By: MO Lawyers Media Staff January 1, 1996

\$531,000 Settlement

**Type of Action:** Premises liability**Type of Injuries:** Death of an 82-year-old woman**Court/Case Number/Date:** Jackson County Circuit Court/CV95-7314/December 1995**Caption:** Murphy v. Woodbine Health Care Centre and Royal Roofing**Judge, Jury or ADR:** Claim against defendant roofer settled through mediation before Richard Ralston; claim against nursing home settled through direct negotiations**Name of Judge:** Lee E. Wells**Special Damages Claimed:** \$61,000 past medical expense**Verdict or Settlement:** Settlements for \$281,000 from roofer, plus \$250,000 from nursing home**Attorney for Plaintiff:** Daniel T. DeFeo, Monsees, Miller and DeFeo, Kansas City**Insurance Carriers:** CNA Insurance (for roofer); Zurich American (for nursing home)**Plaintiff's Expert:** Edward DeVilbiss, Manhattan, KS (architect)**Defendant's Experts:** None**Facts of the Case:** Plaintiff's wife was killed by the collapse of the roof over the dining room at the nursing home where she lived. Plaintiff sued the nursing home and a roofer for wrongful death.

When the roof collapsed, the decedent suffered fractures of her skull and right humerus. She survived for 12 days before she succumbed.

The roof over the dining room was a flat asphalt roof supported by wooden trusses and decking. Plaintiff claimed the prior owner of the nursing home had neglected the roof for years, allowing water to penetrate the structure. Plaintiff said the prior owner had to set out trash buckets to catch the leakage, and the water caused the structure to rot.

Defendant Woodbine acquired the nursing home two years before the fatal accident. It knew that the roof leaked, but it did not immediately undertake repairs in order to seek insurance coverage. It said the leakage was in a different area of the nursing home than where the collapse occurred and denied there was any structural problem with the part of the roof that collapsed.

Plaintiff claimed state nursing home regulations imposed a non-delegable duty upon Woodbine to provide a safe structure for its residents. Woodbine denied that these regulations applied in this case.

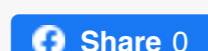
Eventually Woodbine hired defendant roofer to repair its roof. The roofer removed the old roofing and piled the gravel aggregate on the part of the roof that later collapsed.

The nursing home blamed the roofer for causing the roof collapse and denied the collapse caused decedent's death. The roofer said the roof collapsed because the wooden roof trusses had rotted.

The roofer had a \$500,000 single limit insurance policy. In July 1995 it agreed it would pay the full policy limit, and demanded mediation or interpleader. Plaintiff received \$281,000 of this sum; the remainder was paid to five other injured residents and to the nursing home for property damage.



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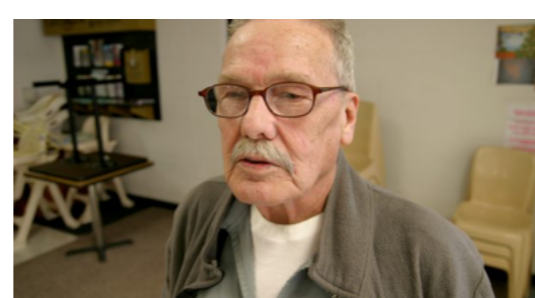
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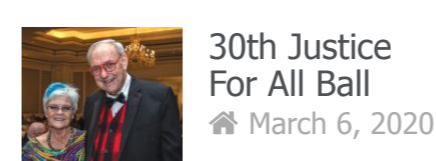
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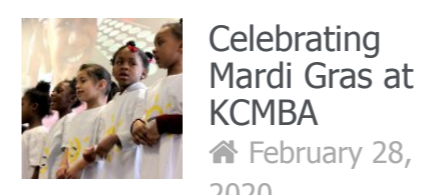
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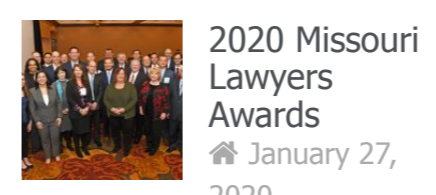
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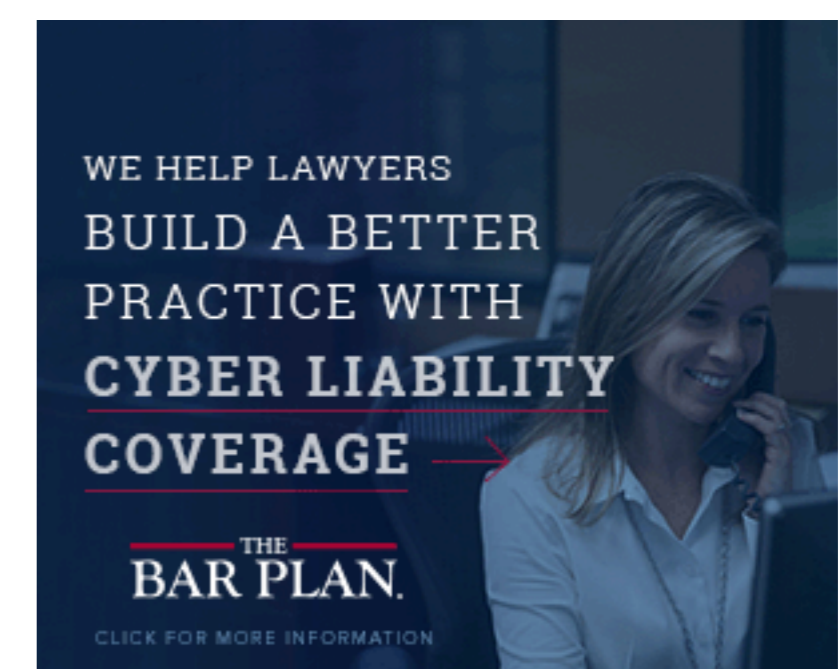
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