

Roofing company's failure to provide jobsite safety and supervision results in severe injuries to worker

Jury returns verdict for \$3.2 million, finding TC Crum Roofing responsible despite its efforts to blame others.

From 2006 to 2008, the construction industry in central and southern Florida experienced a substantial boom in business because of the widespread devastation caused by record-setting hurricane seasons. TC Crum Roofing & General Contractors LLC, a licensed roofing company in Wellington, Florida, could barely keep pace with the large volume of calls to repair or replace roofs on homes and businesses in the area. In January 2008, Comcast Cable invited proposals to re-roof a small, single-story building in Port St. Lucie.

TC Crum submitted a proposal and in April 2008 was awarded the contract for \$5,500. The old roofing materials had to be removed from the sloping roof, and a base layer of tar paper installed on the first day. New asphalt shingles were to be installed on the second day. Comcast agreed to pay 50% of the contract price up front and the balance when the job was completed. Comcast paid TC Crum \$2,750 and waited for construction to start. Weeks later, when Comcast inquired about the delay in starting the job, TC Crum told them that they were tied up on a larger job, but would get to the Comcast job soon. In November 2008, Comcast told TC Crum to get the job done or refund its money. Rather than refund the money, TC Crum changed the deal and demanded the balance of the contract price before starting the work. TC Crum needed the rest of the money to buy roofing materials, assuring Comcast that the job would be done soon thereafter. In December 2008, Comcast paid TC Crum for the job in full.

And yet, at the end of April 2009, TC Crum still had not started the work. It had now been a year since the contract was awarded, and a full four months since the contractor had received payment in full for the work. By this time, Comcast had had enough. It wanted the job done or its money back. TC Crum did not want to abandon the contract, but was now under pressure to do the job quickly and cheaply.

The reality was that business was slow and TC Crum did not have employees on its payroll. It didn't have enough work to justify the added charges by TC Crum's payroll company. So TC Crum called a former employee, Roberto Gonzalez, for leads on people who could help do the work.

Mr. Gonzalez put TC Crum in touch with Manuel Casas, a carpenter who had worked at TC Crum jobs in the past. Mr. Casas was promised \$100 cash by TC Crum to work one day to help install shingles on the Comcast building. Mr. Casas agreed to the deal.

On April 30, 2009, Mr. Casas arrived at the jobsite in Port St. Lucie. The old roofing materials had already been removed from the building, there was tar paper on the roof, and new shingles and boxes of nails were stacked on top of the roof, ready to be installed. No one from TC Crum was present at the jobsite, so Mr. Casas and two other workers got to work.

Federal regulations issued by the U. S. Department of Labor, Occupational Safety and Health Administration (OSHA), require contractors such as TC Crum to provide workers with fall protection systems (e.g., scaffolding, guardrails, safety nets, or personal fall-arrest equipment) when they are working at heights greater than six feet above ground. The regulations also require that the contractor provide jobsite supervision when work is performed above that height. On April 30, 2009, TC Crum provided no fall protection system nor did it provide any jobsite supervision.

Mr. Casas was on the Comcast roof when he stepped on a shingle lying on fresh tar. The shingle slid and Mr. Casas fell from the roof, landing 12 feet below onto concrete, fracturing his skull, sternum, and ribs. Emergency response teams were called and he was transported via helicopter to St. Mary's Medical Center in West Palm Beach, Florida. He was in critical condition and near death. Examination showed his ear canal filling with blood – an indication that he was bleeding inside his skull. His eyes were somewhat reactive upon arrival, but as moments went by his right eye was becoming fixed and dilated – another indication of severe brain injury. CT scans confirmed the bleeding and bruised brain.

Medical personnel drilled a hole through Mr. Casas' skull to relieve the pressure on the swelling brain. He remained in a coma for weeks. By the time he was released from the hospital in mid-June 2009, he had endured the intracranial procedure to

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(l-r:) Attorney Mariano Garcia, client Manuel Casas, and attorney Matthew Schwencke.

relieve pressure, a craniotomy, a splenectomy, and a tracheostomy. A feeding tube had been installed through his abdomen and a catheter for urination.

Following his release from the hospital, Mr. Casas continued to suffer from weakness on his left side, much like a stroke victim. He could move about only with the use of a wheelchair. He had to wear a rubberized helmet to protect the area where skull tissue had been removed. Mr. Casas' wife was at his side every step of the way, helping him through his surgeries, therapy, and limited recovery. Typical of brain injuries, Mr. Casas will endure epileptic seizures, physical pain, and clinical depression for the rest of his life. In addition, he will require nursing care and constant medications.

Mr. Casas, whose first language is Spanish, was represented by SDSBS attorneys **Mariano Garcia**, who is bilingual, and **Matthew Schwencke**. At trial, TC Crum acknowledged that it had a duty to protect its employees, but argued that Mr. Casas was not Crum's employee because he was not on its payroll. TC Crum attempted to blame Roberto Gonzalez for the accident, arguing that Mr. Casas was Mr. Gonzalez' employee or the employee of another roofing company allegedly affiliated with Mr. Gonzalez. Both Gonzalez and a representative of the roofing company implicated by TC Crum testified at trial that they had nothing to do with TC Crum's job. TC Crum even argued that since the job was so small, use of fall protection devices such a safety rope and lanyard were an unsafe "tripping hazard" and actually more dangerous than using the legally required safety equipment.

Despite TC Crum's attempts to blame others, evidence and testimony at trial showed that TC Crum was solely responsible to ensure safety and supervision of the jobsite. Importantly, the jury clearly understood that Mr. Casas was to be paid \$100 by TC Crum for his work that day, money he was never paid. After a six-day trial, a Palm Beach County jury found in favor of Mr. Casas and returned a verdict for him in the amount of \$3.2 million. ♦

Frayed cable breaks, dumping two tons of cement blocks on worker

Due to negligent repair of cable, worker suffers serious injuries.

Everyone is familiar with the old saying, "It hit me like a ton of bricks." What is usually only a figure of speech turned into an on-the-job, life-altering injury for William Jackson when two tons of cement construction blocks crashed onto him as he was off-loading them from the back of his employer's boom-truck. Although bones in his neck were fractured, and his back, shoulder, hand, and ankle were injured, Mr. Jackson was able to crawl away from the debris. As he did so, he saw that the cable holding the blocks on the truck, which had been "repaired" the previous day, had snapped, dumping the blocks onto him. Mr. Jackson had surgeries to fuse vertebrae in his neck and to reconstruct his shoulder. He is now forced to walk with a cane, he can no longer work, and he will continue to live with pain and permanent injuries.

Mr. Jackson received some benefits through the workers' compensation system, but was left with substantial medical bills and workers' compensation liens. After the workers' compensation case was settled, the SDSBS team of **Jack Scarola** and **Patrick Quinlan** took on Mr. Jackson's case and sued the company chosen by Mr. Jackson's employer to repair the frayed cable. Unfortunately, the case was substantially complicated by the fact that the broken cable had long since disappeared and, apart from Mr. Jackson himself, there were no eyewitnesses.

Despite these obstacles, the SDSBS team filed a civil suit on Mr. Jackson's behalf, proceeding on the theory of "negligent repair." The lawsuit settled shortly before trial for \$575,000. By successfully negotiating the medical bills and workers' compensation liens, SDSBS was able to greatly reduce Mr. Jackson's financial obligations and deliver a significantly higher portion of the settlement to Mr. Jackson than he would otherwise have received. ♦

