

Man Falls to Death Due to Negligent Construction

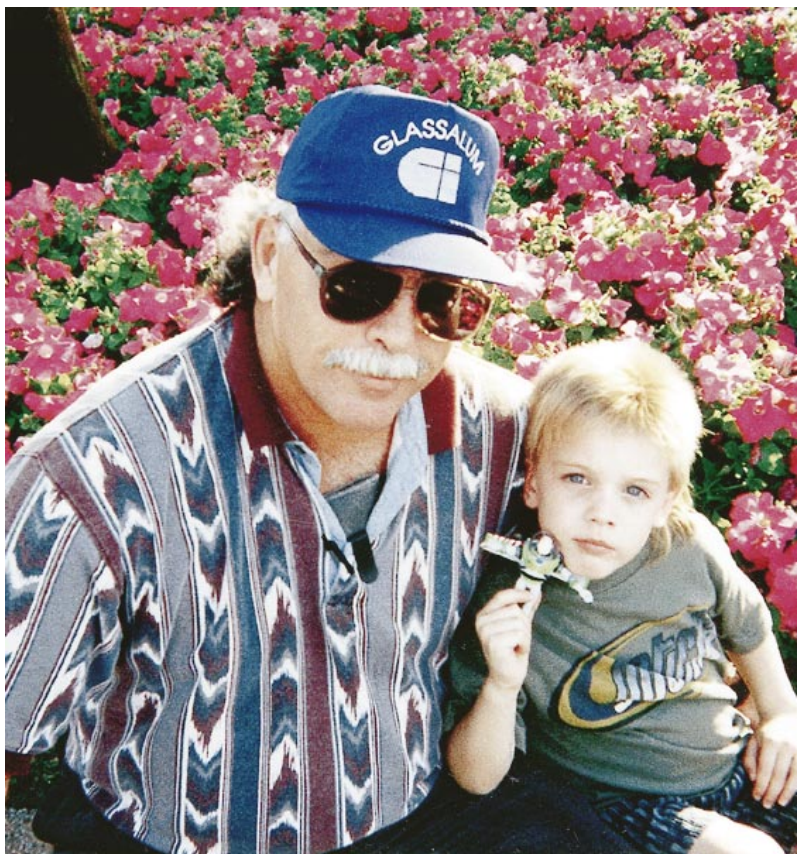
On July 15, 1998, George Allan Clements (“Allan”), went to a construction site in Miami Beach, Fla. The site was a luxury high-rise condominium being built by general contractor John Moriarity and Associates of Florida, Inc. Mr. Clements was a foreman for R.C. Aluminum, installing windows on the construction project. At approximately 8:15 a.m. that morning, Mr. Clements and his crew were installing a window frame on the 14th floor, which did not seem to fit. Similar to what he had done on job sites in the past, Mr. Clements went to the floor above to assist the crew with the placement of the frame.

The project had a safety rail system around the exposed edges, which was supposed to meet the Occupational Safety and Health Administration (OSHA) requirements. OSHA requirements for unprotected sides, edges, wall openings, and walking surfaces more than six feet above the ground require “protection from falling by guardrail systems, safety net systems or personal fall arrest systems.”

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While on the 15th floor, Mr. Clements leaned over the safety rail, but unexpectedly, one of the bolts to the rail broke. Mr. Clements tragically fell to his death. He was 46-years-old, and is survived by his wife, Amy, and his 7-year-old son, Austin.

Mrs. Clements retained attorneys Harry Shevin and Sean Domnick, along with co-counsel Paul Lopez, of the law firm of Tripp Scott in Ft. Lauderdale. A lawsuit was originally filed against John Moriarity, Inc.,



Allan Clements and son, Austin, in 1996.

as well as the companies that sold the bolts used to secure the safety rail. It was learned through investigation and discovery that Commercial Forming installed the safety rail system. Under the law, John Moriarity, Inc. has what is known as ‘horizontal immunity’ and could not be found liable for workers’ compensation claims. However, the subcontractors, like Commercial Forming and R. C. Aluminum are considered ‘vertical’, and are liable for any kind of claims and compensation.

Mr. Shevin and Mr. Domnick obtained a court order to obtain the broken bolt from police custody, and hired an expert in analyzing and testing metals. The expert analysis and visual inspection revealed that the bolt was improperly installed. Instead of properly screwing in the bolt, a worker for Commercial Forming hammered it in, fracturing the integrity of the metal and causing the bolt to lose its strength and hardness. Through this reckless act, Commercial Forming set up a death trap, which resulted in the death of Mr. Clements.

Commercial Forming initially claimed that an unknown person had removed the safety rail, and reinstalled it improperly. **Continued on page five.**



View showing 15th floor from where Mr. Clements fell.

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However, after being pressed, Commercial Forming could not identify the aforementioned person. Furthermore, Commercial Forming claimed that Mr. Clements was negligent for failing to wear an individual safety harness. However, under OSHA regulations, the safety rail is an alternative to an individual harness. In fact, the safety inspector on the job admitted in his deposition that he would not wear an individual harness if there were a safety rail.

After the evidence was developed against Commercial Forming, a demand was made of \$1 million of the insurance policy limits. Commercial Forming agreed to tender its insurance policy limits, with 50 percent of the net proceeds of the settlement being used to fund an annuity that will provide for Mr. Clements' son's future financial needs. Mrs. Clements also received a \$100,000 death benefit from workers compensation.

On July 15, 2001, *The Miami Herald* published an In Memoriam written by Mrs. Clement to her husband. In it she wrote, "I love you with all my heart and reconfirm here, in this most public manner, the promise I made to you the day we laid you to rest by your Dad: I will do my best to raise our son, Austin, to be like you, Allan, because you are now, always have been, and forever will be, my hero." ■