

TOP VERDICTS OF 1998

Survivors Of Propane Explosion
Get \$15 Million Settlement

By Geri L. Drelling

September 23, 1996 was a day full of excitement and activity for the Groenewald family — they were moving into a new rental house.

The home was vacated only that morning, and unbeknownst to 41-year-old David Groenewald, the previous tenant had left a propane gas line uncapped when he removed the gas range from the kitchen.

David lit the furnace, and he and his 42-year-old wife JoAnn continued working during the next several hours.

As their 7-year-old daughter Tara played with her Barbie, the gas was snaking its way from the kitchen toward the furnace. When it reached the pilot light, the home exploded.

David suffered burns on over 70 percent of his body and died 12 days after the accident. Although JoAnn and Tara survived, JoAnn was burned over 35 percent of her body. The 7-year-old girl received burns on over 50 percent of her body. Both of her legs would be amputated below the knee, and eight fingers and one thumb would be partially amputated.

When JoAnn and Tara decided to seek advice on recovering for their injuries, they turned to Kansas City attorney Louis C. Accurso.

Accurso began his legal career as the arson prosecutor for the Jackson County prosecutor's office. During his three years there, he was routinely called out to locations involving death or significant property loss, often while the firefighters were still battling the blaze.

In 1985, Accurso established a plaintiff's practice, and since then has handled over 50 propane cases. In addition to managing a law practice, he also found time in 1986 to establish the Gas, Fire and Explosion group for ATLA.

Pre-Suit Investigation

After meeting the Groenewalds, Accurso and his co-counsel John McKay embarked on a year long pre-suit investigation. They began holding weekly meetings. "We used the resources of both firms to coordinate a team effort," Accurso said. "The meetings helped keep our efforts focused on the case."

One of the first items on the agenda was to hire an expert to determine the cause of the explosion. "The most important thing in an explosion case, from the liability standpoint, is to hire competent experts to determine how the explosion occurred. That's because the best defense of all in a propane case is to say, 'It wasn't propane that caused the explosion,'" Accurso stated.

Accurso explained that a propane heating system is like a chain with several links. Liability can reside in any of the links.

Accurso noted, "If the equipment malfunctioned, you'd probably sue the manufacturer. If there was a problem with the way the equipment was installed, you'd sue the retailer. Or there could be premises liability problems if the landlord failed to maintain the system properly."

In the Groenewald case, the experts determined that the explosion happened when gas from the uncapped kitchen gas line reached the furnace's pilot light.

The experts also noted that the home's gas system was plagued by violations of the National Fuel Gas Code. Most serious of these was the lack of shut-off valves on the lines leading to gas appliances.

In addition to hiring competent experts, Accurso spoke with witnesses and ended up taking over 50 statements. Another important resource Accurso utilized was the Gas, Fire & Explosion Group of ATLA.

"By utilizing the Gas, Fire & Explosion Group, I was able to conduct a number of searches to find out about the wholesaler and retailer involved in our case, determine what other litigation had been filed against them, and find out the names of the lawyers handling the matters," Accurso said.

From the information, Accurso was able to identify 45 different propane cases in 8 states. Accurso contacted the attorneys and obtained copies of documents and depositions that had been taken in the other cases.

Building Codes

Accurso also conducted a thorough examination of building codes and industry standards.

"We look at fire, gas and building codes to see what has been adopted as the law in Missouri," said Accurso. "And we look at handbooks and training materials used in the industry to see what the industry standards are."

From his investigation, Accurso determined that although the landlord and previous tenant were sources of liability, there was little chance of recovery from them. Instead, he focused his attention on the retail distributor, Moulin Propane, and the wholesale distributor, Propane Continental, Inc.

Moulin Propane had serviced the property for 11 years and had never warned the landlord or tenants that the gas system lacked shut-off valves or was otherwise in violation of the codes.

He also found that the retailer failed to perform any inspections of the system, although industry standards require inspections on a regular basis.

The retailer had also neglected to inspect the system after interruptions in service and "out of gas events," which are known among professionals to be dangerous.

The retailer's warnings also fell far short of industry standards. "The only warnings he gave about the system were in tiny print on the back of his invoices,"

of the example that had been set by the propane manufacturer, Phillips 66.

"Phillips 66 provides its wholesale distributors with a whole safety packet including warnings and posters that are supposed to be put up in customers' homes," said Accurso. "And their packet even has a separate section on the special dangers that arise in rental properties, where tenants often install and remove gas appliances on their own."

"Continental got this packet from Phillips 66, but didn't pass it on to Moulin Propane."

Almost all of the pieces to the puzzle had been assembled and put together during the pre-suit investigation. Accurso had investigated the case, determined who would be sued and where the suit would be filed. The only thing left was to decide the identity of the plaintiff.

Fault

"In Missouri's joint and several liability law, if a plaintiff is completely without fault, the case becomes one of pure joint and several liability," said Accurso. "Then a defendant who's only one percent at fault can be held responsible for the other 99 percent."

"But if a plaintiff is partly at fault, you lose joint and several liability."

"My feeling is that if you have a chance

"If you have a chance to name a plaintiff that no one can blame, you'd be crazy to name anyone else."

— Plaintiff's lawyer Louis C. Accurso

said Accurso.

Safety Standards

The wholesaler, Propane Continental, was Accurso's main target.

Accurso argued that the odorant used by Continental to warn customers of leaking gas was inadequate and should have been replaced by an alarm system.

He also argued that case law imposes a duty on wholesalers to warn retail distributors about the hazards of their products and to evaluate their competence in handling the products safely. Accurso's evidence showed that Continental had failed in each of these duties.

The task of establishing liability was made easier by the fact that Propane Continental has its own retail division with established safety standards and procedures.

"But it failed to take the next step and find out what its outside distributors were doing with the propane. It took the trouble to run a credit check on Moulin Propane, but it never tried to find out if Moulin was living up to the safety standards that it had established for its own retail outlets," Accurso said.

Accurso also claimed that Continental's failure was more egregious because



Louis C. Accurso

the rounded figure will be higher," Accurso explained. "That way we can still recover prejudgment interest."

The defendants here turned down the initial demand.

Accurso believes the defendants "made a major tactical error. They sought to attack the jurisdiction, which delayed meaningful discovery for about six months. Discovery finally started at the end of July and the case was set for January. We even had our expert videotaped before the defendants videotaped him."

However, Accurso took advantage of the discovery period to take depositions, and extract damning admissions from the other side.

During discovery, Accurso also learned that Continental's policy limits were \$10 million and so he sent a policy limits demand that was also rejected.

The possibility of a successful bad-faith claim was important to producing the \$15 million settlement. Continental's insurance carrier paid its policy limits of \$10 million, and Continental added \$3 million from corporate funds. Moulin Propane's insurer paid its \$2 million policy limits. Two third-party defendants contributed \$50,000.

In spite of the possibility of an even larger recovery at trial, Accurso is convinced that the \$15 million settlement was a good result for his client. "There's not a case out there that can't be lost," he pointed out. "And we have a child in this case who has enormous needs."

MLW

AT-A-GLANCE

Size of Settlement: \$15 million

Special Damages Claimed: \$97,132 past medical expense

Type of Case: Negligence, products liability

Date of Settlement: Nov. 9, 1998

Length of Trial: N/A

Jury Deliberations: N/A

Case Name: Groenewald et al. v.

Propane Continental Inc., et al.

Court: Jackson County Circuit Court

Plaintiff's Attorney: Louis C. Accurso, Beverly Alkire, David Byerly and John McKay, Kansas City

Insurance Carriers: Old Republic Insurance Co.; American States Insurance