

# Missouri Lawyers

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## WEEKLY

## Jury awards \$2.3M verdict against Ameren UE

*One teen died; two injured in accident*



**Maurice Graham**

**CATHY KINGSLEY**

A jury awarded three families \$2.3 million by AmerenUE in a case that involved a lake tragedy in Jefferson County.

Nicholas Harbison, 16, died, and Morgan Milfeld and Timothy Fitzpatrick, both 15 at the time, were injured after they were shocked swimming in a lake. The teenagers were in a hot tub at the home of Tracy and Ginger Jones in the Summerset Lake subdivision south of De Soto and decided to jump into Spring Lake in March 2006. They were shocked while swimming near the ladder on the dock.

Milfeld and Fitzpatrick were unconscious and required resuscitation. After being flown to St. John's Mercy Medical Center, they remained in an induced coma for five days and required hospitalization and rehabilitation thereafter. Both were diagnosed with mild hypoxic brain injuries and eventually returned to school.

Fitzpatrick continues to suffer from periodic seizures, some motor loss in his legs and impaired memory. Milfeld is a collegiate soccer player but requires some minor educational accommodations. Neither of them have any memory of the accident.

The parents of the deceased, Jerry Harbison, of De Soto, and Tina Harbison, of Rolla, were awarded \$1.25 million; Timothy Fitzpatrick and his parents, Bryan and Diana Fitzpatrick, were awarded \$725,000; and Morgan Milfeld and her parents, Felix and Tarrole Milfeld, were awarded \$350,000.

Maurice Graham, of Gray, Ritter & Graham, said stray voltage from AmerenUE's

power line under Spring Lake caused the injuries. An electric cable with 7,200 volts had several corroded bare concentric neutrals that insulate the hot wire and provide a return path. According to Ameren engineers, only three of those 10 wires remained.

Plaintiff's expert Donald R. Johnson, an electrical engineer, testified that it violated national safety code to leave the line under the lake.

James J. Virtel, of Armstrong Teasdale, said AmerenUE thought the electrical problem came from the Jones' wiring system on the dock. The homeowner had done the wiring himself, and then neighbors subsequently made some changes. AmerenUE con-

tended that whatever wiring problems existed the evening of the tragedy had been corrected before the opportunity for a complete investigation of the dock.

Ameren also contended that elevated creatine phosphokinase levels in the blood of Fitzpatrick and Milfeld following the near-drownings established that they had been subjected to more than stray voltage.

The jury deliberated for 12 hours before returning a verdict against AmerenUE with a vote of 9-3. This is the first recovery in Missouri against a utility for injury or death allegedly due to stray voltage and thought to be the first in the United States.

### ■ \$2.325 million jury verdict

#### WRONGFUL DEATH

■ **Court:** Jefferson County Circuit Court

■ **Case Number/Date:** 23CV306-2504/06JE-CC00383/06JE-CC00384 (three cases consolidated for trial)/ March 5, 2009

■ **Judges:** Gary P. Kramer

■ **Plaintiffs' Experts:** Donald Johnson, Afton, Wyo. (electrical engineer); Dr. Raymond Fish, Champagne, Ill. (electrical engineer/medical doctor); Dr. Stephen Kanne, Columbia (neuropsychologist); Dr. B. Wesley Sherman, Columbia (professor of engineering/electrical engineer); Dr. John O. Ward, Prairie Village, Kan. (economist); Wilbur Swearingin, Springfield (vocational expert)

■ **Defendant's Experts:** Dr. J. Derald Morgan, Madison, Ala. (electrical engineer/professor of engineering); Dr. Ronald Wright, Fort Lauderdale, Fla. (pathologist); Charles Newcombe, Everett, Wash. (metrologist)

■ **Last Pretrial Demand:** \$3.5 million from Fitzpatrick; \$1.6 million from Milfeld

■ **Insurer:** Associated Electric and Gas Insurance Services

■ **Caption:** Jerry A. Harbison and Tina Harbison, Timothy Fitzpatrick, Bryan and Diana Fitzpatrick, Morgan Milfeld, Felix and Tarrole Milfeld v. Union Electric Co.

■ **Plaintiff's Attorneys:** Maurice Graham, Gray, Ritter & Graham, St. Louis; Michael S. Williams, Belleville, Ill.; Reed Brooks Kenagy III, Kenagy Law Firm, Steelville

■ **Defendant's Attorney:** James J. Virtel and Karen A. Baudendistel, Armstrong Teasdale, St. Louis