



## Suit: Improperly installed air conditioner fell on electrician

**Type:** Verdict-Plaintiff

**Amount:** \$424,952

**State:** California

**Venue:** San Bernardino County

**Court:** Superior Court of San Bernardino County, San Bernardino, CA

**Injury Type(s):**

- *shoulder* - frozen shoulder (adhesive capsulitis); adhesive capsulitis (frozen shoulder)

**Case Type:**

- *Insurance* - Subrogation
- *Construction* - Accidents; Falling Object
- *Worker/Workplace Negligence* - Negligent Assembly or Installation

**Case Name:** Markel Insurance Company v. Controlled Environment HVAC Inc., Ors Gyene, and Walden Structures Inc. / James Carver v. Controlled Environment HVAC Inc., Gyene Ors, Walden Structures Inc., Ors Gyene, Julian Martinez, Nivan Cordero, and 800 Opal, LLC, No. CIVDS1303246; CIVDS1311630

**Date:** December 21, 2015

**Plaintiff(s):**

- James Carver (Male, 37 Years)
- Markel Insurance Company

**Plaintiff Attorney(s):**

- Marc Lazarus; Russell & Lazarus; Newport Beach CA for James Carver
- Jeffrey S. Marsilio; Stockwell, Harris, Woolverton & Muehl; Los Angeles CA for Markel Insurance Company

- Plaintiff Expert(s):**
- Brad P. Avrit P.E.; Safety; Marina del Rey, CA called by: Marc Lazarus, Jeffrey S. Marsilio
  - David E. Fisher M.D.; Orthopedic Surgery; San Bernardino, CA called by: Marc Lazarus, Jeffrey S. Marsilio
  - Stephen P. Kay M.D.; Orthopedic Surgery; Los Angeles, CA called by: Marc Lazarus, Jeffrey S. Marsilio
  - Lawrence R. Walker M.D.; Orthopedic Surgery; San Bernardino, CA called by: Marc Lazarus, Jeffrey S. Marsilio

- Defendant(s):**
- Ors Gyene
  - 800 Opal, LLC
  - Nivan Cordero
  - Julian Martinez
  - Walden Structures Inc.
  - Controlled Environment HVAC Inc.

- Defense Attorney(s):**
- Sima Jonoobi; Philip A. Kraft & Associates; Carlsbad, CA for Controlled Environment HVAC Inc., Ors Gyene, Julian Martinez
  - None reported for Walden Structures Inc., 800 Opal, LLC, Nivan Cordero

- Defendant Expert(s):**
- Stephen L.G. Rothman M.D.; Radiology; Los Angeles, CA called by: for Sima Jonoobi
  - Keolanui Chun M.D.; Orthopedic Surgery; Riverside, CA called by: for Sima Jonoobi
  - Christopher R. Morgan G.C.; General Contracting; San Diego, CA called by: for Sima Jonoobi

- Insurers:**
- Salmen Insurance Services

**Facts:** On Nov. 2, 2011, plaintiff James Carver, 37, an electrician for Noble Electric, was working on a construction job site, in Mentone, when a 150-pound air conditioning unit fell on him. He subsequently sustained an injury of his left shoulder.

Plaintiff Markel Insurance Co., the workers' compensation insurance company that provided workers' compensation coverage for Noble Electric employees at time of the incident, brought a subrogation suit against the company that installed the subject air conditioning unit, Controlled Environment HVAC Inc.; Controlled Environment's owner, Ors Gyene; and the general contractor, Walden Structures Inc.

Carver also brought his own suit against Controlled Environment; Gyene; and Walden Structures. Carver also sued the owner of the premises, 800 Opal, LLC; and employees of Controlled Environment who were present at the time of the incident, Julian Martinez and Nivan Cordero. Carver alleged that the defendants were negligent in the installation of the air conditioner and for failing to ensure a safe workplace.

The matters were ultimately consolidated.

Carver was an employee of Noble Electric, a subcontractor on the job site. Pursuant to the Privette line of cases, an employee of a subcontractor is precluded from bringing an action

against a general contractor unless there is evidence of negligence on the part of that general contractor. However, in Carver's case, there was no evidence of negligence on the part of the general contractor, Walden Structures. As a result, Walden Structures was dismissed from the case on a motion for summary judgment. Likewise, 800 Opal was dismissed on a motion for summary judgment on a similar basis as Walden Structures.

Plaintiff's counsel asserted that the installation of the subject AC unit failed because an employee of Controlled Environment forgot to place washers over the nuts that held the AC unit into place. Counsel contended that the use of washers would have prevented the air conditioning unit from sliding off the nuts and striking Carver. Plaintiff's counsel contended that Controlled Environment refused to disclose the identity of its employee(s) who improperly installed the air conditioning unit, claiming that no one could recall who installed the subject air conditioning unit, but during discovery, it was disclosed that Martinez and Cordero were present at the time of the incident. However, Cordero was never able to be served with the lawsuit and, as such, Cordero was dismissed from the case prior to the trial. Martinez was served, and an answer was filed on his behalf by the insurance carrier for Controlled Environment, but Martinez's deposition testimony revealed that he was not the installer. Accordingly, Martinez was dismissed from the case during trial. Thus, the matter only continued against Controlled Environment and its owner, Gyene.

At trial, plaintiff's counsel argued that the air conditioning unit was improperly installed by employees of Controlled Environment and that the unit fell from the ceiling and struck Carver due to the negligence of those employees. Thus, counsel argued that Controlled Environment and Gyene were liable for the negligent actions of their employees.

Defense counsel for Controlled Environment and Gyene contended that there were no witnesses to what took place and that Carver was a convicted felon, so his story should not be believed. Counsel also argued that the subject air conditioning unit was installed properly and that Carver was the one who caused it to fall from a ceiling height onto himself.

**Injury:**

Carver was struck on his left, non-dominant shoulder. He subsequently drove himself to a hospital for treatment. However, Carver had no follow up medical treatment for 104 days, as he had to report to jail to serve time on an earlier criminal conviction. He was ultimately diagnosed with adhesive capsulitis (frozen shoulder) and he underwent two surgeries to his left shoulder, which took place over a two-year period.

Carver claimed that he was off of work for a total of 18 months as a result of his injury. He also claimed that he may require another shoulder surgery for adhesion release.

Markel Insurance paid \$124,951.68 for Carver's past medical costs and past lost earnings. Thus, it sought recovery of the amount it paid for Carver's past economic loss.

Carver sought recovery of \$120,000 in future economic loss. He also sought recovery of damages for his past and future pain and suffering.

In total, counsel for Markel Insurance and Carver asked the jury for the total sum of \$975,000.

Defense counsel argued that not only did the incident not take place as it was alleged, but that all of Carver's alleged shoulder issues were pre-existing.

**Result:**

The jury found that the owner of Controlled Environment, Gyene, and the company itself were responsible for the negligence of their employee(s) for failing to properly install the air conditioning unit. It also determined that the plaintiffs' damages totaled \$424,951.68, including \$300,000 for Carver's damages and \$124,951.68 for Markel Insurance's subrogation recovery.

**James Carver**

\$120,000 Personal Injury: Future Medical Cost

\$90,000 Personal Injury: Past Pain And Suffering

\$90,000 Personal Injury: Future Pain And Suffering

**Markel Insurance Company**

\$49,405 Personal Injury: past medical expenses paid

\$75,547 Personal Injury: past disability paid

**Trial Information:****Judge:**

David S. Cohn

**Demand:** \$389,000 (C.C.P. § 998)

**Offer:** None

**Trial Length:** 9 days

**Trial  
Deliberations:** 8 hours

**Jury Vote:** 12-0

**Jury  
Composition:** 6 male, 6 female

**Post Trial:** Carver's counsel filed a request for admissions, and motions for recovery of attorney fees and C.C.P. § 998 costs and interest. The motions were denied. Controlled Environment and Gyene appealed the verdict. Carver appealed the denial of his motions for recovery of fees and costs.

**Editor's  
Comment:** This report is based on information that was provided by plaintiffs' counsel. Defense counsel for Controlled Environment HVAC Inc., Ors Gyene, and Julian Martinez did not respond to the reporter's phone calls, and counsel for the remaining defendants were not asked to contribute.

**Writer** Priya Idiculla