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WEEKLY

Family settles claims over fatal head-on collision

Driver has filed own suit against other defendants



Wes Shumate



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The family of a 57-year-old southwest Missouri man killed in a highway collision agreed to a \$3.3 million settlement of a wrongful death lawsuit against a tractor-trailer driver responsible for the head-on collision, the company he worked for and several other defendants.

Moark Egg Corp. and its subsidiary, Premier Farms, are re-

sponsible for the bulk of the settlement, more than \$3 million. Both companies are based in Neosho and covered the liability of their employee, tractor-trailer driver Owen Martin.

Newton County Circuit Judge Timothy W. Perigo approved the settlement on Sept. 18, and the defendants paid it the same day. According to his order, Revonda C. "Carla" Keller, the surviv-

ing spouse of Donald E. Keller, and the couple's two adult children, Heather Keller-Misner and Derrick Keller, each received \$643,697. The judge also approved attorneys' fees of \$1.3 million and expenses of \$51,000.

The accident

Donald Keller, who was driving north on U.S. 60 in Neosho, died instantly on Jan. 12, 2010, after

Martin, who delivered processed chicken litter for Premier Farms, hit Keller's 1997 Ford Ranger pickup truck head-on. Jared Hurst and Steven Gilford were in front of Martin in the southbound lane of the two-way highway. According to the Missouri State Highway Patrol accident report, Hurst was stopped to make a left turn onto Owl Road, and Gilford was stopped behind him. The report,

\$3.3 Million Settlement

MOTOR VEHICLE COLLISION

■ **Breakdown:** \$3.05 million from Moark Egg Corp., Premier Farms and Owen Martin; \$150,000 from Wiseman Family Tire and Robert Wiseman; \$100,000 from KCR International Trucks Inc. d/b/a Diamond International of Joplin; \$2,500 from Steven Gilford; \$1,000 from Jared Hurst

■ **Venue:** Newton County Circuit Court

■ **Case Number/Date:** 10NW-CV00122/Aug. 13, 2012

■ **Mediator:** Gary R. Cunningham

■ **Plaintiffs' Experts:** Stan V. Smith, Chicago (economics); Jerry G. Wallingford, San Antonio (accident reconstruction); William E. Hampton, Cape Girardeau (accident reconstruction)

■ **Defendant's Expert:** For Steven Gilford: Fred B. Semke, St. Charles (accident reconstruction)

■ **Insurers:** Old Republic Insurance Co. for Moark Egg Corp., Premier Farms and Owen Martin; Travelers Insurance Co. for KCR International Trucks Inc. d/b/a Diamond International of Joplin; Grinnell Mutual Reinsurance Co. for Robert Wiseman and Wiseman Family Tire; Progressive Preferred Insurance Co. for Jared Hurst; Shelter Insurance Co. for Steven Gilford

■ **Caption:** Heather Keller-Misner and Revonda C. Keller v. Moark Egg Corp., Premier Farms, Owen Martin, Wiseman Family Tire Inc., Robert Wiseman, Steven Gilford, Jared Hurst and KCR International Trucks Inc. d/b/a Diamond International of Joplin

■ **Plaintiffs' Attorneys:** Scott S. Bethune and Wes Shumate, Davis, Bethune & Jones, Kansas City

■ **Defendants' Attorneys:** Kristie S. Crawford and Kurt A. Schmid, Brown & James, Kansas City and St. Louis, for Moark Egg Corp. and Premier Farms; Roger A. Johnson, Scott J. Vorhees and Cephus Richard III, Johnson, Vorhees & Martucci, Joplin, for Owen Martin; Karl W. Blanchard Jr., Blanchard, Robertson, Mitchell & Carter, Joplin, for KCR International Trucks Inc. d/b/a Diamond International of Joplin; Jeffrey S. Nichols and Allison G. Confer, Wallace, Saunders, Austin, Brown & Enoch, Overland Park, Kan., for Robert Wiseman and Wiseman Family Tire Inc.; Keith A. Cary and John L. Mullen, Franke Schultz & Mullen, Kansas City, for Jared Hurst; Kory D. Stubblefield and Angela Drake, Lowther Johnson, Springfield, for Steven Gilford

which cites Martin as inattentive, states the tractor-trailer driver skidded when he tried to brake. He crossed over into the northbound lane and struck Keller's vehicle, pushing it backward until both vehicles were in a ditch by the side of the highway.

Scott S. Bethune, who represented Keller's family, added a few more details. He said Gilford, who was also a commercial truck driver, saw the tractor-trailer barreling down on him and pulled over to the ditch on his right to avoid being rear-ended.

By driving to his right, Moark, Premier Farms and Martin alleged, Gilford "took away an escape route to the Moark driver because the Moark driver couldn't go to the right because he'd run into the pickup truck that moved out of the way," Bethune said.

In August, about a week after the parties settled this case, Martin sued Wiseman Family Tire and Robert Wiseman, truck dealer Diamond International, Hurst, Gilford and four supervisory employees at Premier Farms. He dismissed Gilford from the suit without prejudice in October.

"We obviously are of the view that Owen Martin really isn't the one that was responsible for what happened because ... he didn't have any good options and was placed in an emergency situation," said Martin's lawyer, Roger A. Johnson, of the Joplin firm of Johnson, Vorhees & Martucci.

In the amended suit, Martin blames the accident on Hurst. He alleges Hurst stopped suddenly "without first giving an adequate and timely warning of his intention to stop for a left turn onto Owl Road." Martin, according to his suit, was unable to stop the tractor-trailer so, to avoid hitting either Hurst or Gilford, who was blocking the right shoulder of the highway, he headed to the opposite shoulder. Keller was headed to the same shoulder, so the two vehicles collided head-on, "resulting in catastrophic injuries to Plaintiff Martin," he alleges.

The lawsuit doesn't say that Keller was killed in the collision. Martin alleges he suffered neck injuries as well as emotional and psychological injuries.

"The fact that [Martin] has sued my client, Jared Hurst, is outrageous," said Keith A. Cary, of Franke Schultz & Mullen in Kansas City. "And I have filed already a motion for sanctions on that topic, and I intend to pursue it."

Cary said his client was stopped with his left blinker and brake lights on. In addition, Gilford testified at his deposition that he came to a controlled stop 8 feet behind Hurst and "had been sitting there for some period of time when he looked in his mirror and saw a semi barreling down on him from behind," Cary said.

He said the fact that Hurst is paying only \$1,000 into the Keller settlement demonstrates that nobody really thought Hurst was to blame for the accident.

Kory D. Stubblefield, of Lowther Johnson in Springfield, represented Gilford.

"My client was not negligent," he said. "He was proper in doing what he did and doesn't have any liability in either matter, as far as I'm concerned."

Keller's family did not sue Hurst or Gilford. Some of the other defendants brought the two drivers in as third-party defendants.

But Bethune said their presence in the lawsuit was an advantage to his client.

"If we were going to try it, I wanted them in the case to help point the finger back at Moark's actions," the lawyer said. "I didn't want Moark or Wiseman or anybody else to be able to blame an empty chair, like, 'Hey, this vehicle stopped suddenly to make a left-hand turn.'"

Safety issues

The Keller family's allegations against Moark, Premier Farms, the Wiseman defendants and Diamond International have to do with the tractor-trailer's safety.

About six weeks before the fatal accident, another Premier Farms driver, Joseph Paul Carty, raised safety concerns about the tractor-trailer. He drove it one day but refused to drive it the next day when his employer assigned it to him once again, Bethune said.

"Then the supervisor told him turn in his company phone, turn in his keys and go on home," he said. "After a couple of weeks, Human Resources called him back and says, 'Look, we can't fire you for raising safety concerns. We've taken care of the problem that you raised.'"

But the company didn't fix the problem, the family alleged. Martin levels the same allegations against his Premier Farms supervisors in his lawsuit.

Eventually, Carty moved to California, where Bethune's co-counsel, Wes Shumate, tracked him down and persuaded him to return and testify by videotape on the plaintiffs' behalf.

Carty said the vehicle "should be a 'yard dog,' meaning that you only use this truck in the company yard to move trailers around from here to there versus being out on the public highway," Bethune said.

The Highway Patrol's commercial vehicle enforcement unit investigated the accident and found problems with some of the brakes, including rotors that were out of alignment and a hole in the air brake cylinders, Bethune said.

The lawyer said both Carty and Martin asked their supervisor if they could wash the undercarriage of their vehicles so they could inspect the brakes properly, but the supervisor denied their requests. Bethune said the supervisor threatened to fire them if they washed the caked-on mud off the undercarriage. The supervisor denied saying that, he added.

Brown & James lawyers Kristie S. Crawford, in Springfield, and Kurt A. Schmid, in St. Louis, represented Moark and Premier Farms.

Schmid referred questions to Crawford. Crawford said she needed her clients' permission to comment and did not return a later telephone message.

Inspections

In early December 2009, after Carty raised his concerns, the truck was taken to Diamond International, the dealer in Joplin, for an inspection. But inspectors didn't discover or fix the braking problem.

"Our position was going to be we were never asked to inspect the air brake system when we had the truck in, in early December, [and] that it was inspected subsequently," said Diamond International's lawyer, Karl W. Blanchard Jr., of Blanchard, Robertson, Mitchell & Carter in Joplin.

"The driver himself on the day of the accident said he inspected it, that he didn't see any holes in the air cylinder and that he thought the brakes were adequate," Blanchard added.

He blames Martin for driving too fast and not paying attention to other vehicles on the highway.

Bethune said there was a discrepancy about what work the dealer was to have completed.

"Diamond International told us, 'Had they told us that there was a problem with the brakes, we would have done X, Y and Z. We didn't do X, Y and Z; therefore, we don't think they told us to check out the brakes,'" he said.

But instead of having Diamond International conduct the federal motor carrier safety regulation inspection while the truck was there, Moark/Premier Farms took it to Wiseman Family Tire, a tire dealer and repair shop in Neosho, Bethune said.

It took a mechanic 20 minutes to inspect the tractor-trailer — a process Diamond International said should take about an hour and a half, Bethune said. He described the process: "We had testimony from the driver who took the truck in. He said it was a rainy, cold day in December, and it was misting out and that they didn't pull the truck into any interior overhead bay because they didn't have a facility big enough. They just went out, and [Robert Wiseman] just kind of walked around the truck and then passed it."

Wiseman depended on Moark/Premier Farms to buy tires from him and testified that he inspected the vehicle because he hoped the company would continue to buy tires from him, Bethune said.

Wiseman's lawyers, Jeffrey S. Nichols and Allison G. Confer, of Wallace, Saunders, Austin, Brown & Enochs in Overland Park, Kan., did not return telephone calls seeking comment by press time.

Bethune said something positive came out of the incident: Moark/Premier Farms has hired a driving school instructor to make sure it complies with federal motor carrier safety regulations. **MO**