

VERDICTS & SETTLEMENTS

Jury sides with defense in motor vehicle fatality on I-435

■ DAVID BAUGHER

A trial over a fatal traffic crash involving a pair of semi-trailer trucks has resulted in a defense verdict that centered on whether the second of the two held any responsibility for the death.

“There was a truck following another truck and we represented the following truck,” said defense attorney Charles Cooper of Franke Schultz & Mullen.

According to the filed suit in the case, motorist Sheila Penn was on Interstate 435 in the Kansas City area when a Peterbilt truck rearended her.

“The car hit the rail and spun around and then came into contact with our truck,” Cooper said. “We argued that the second hit was not substantial and that the first one was what caused her death. They argued that both trucks together combined to cause her death.”

Parties related to the first truck settled the matter out of court, but the rest of the matter proceeded to trial.

Plaintiff’s attorney Robert Mintz of Devkota Law Firm said that there was no dispute over the fact that the first truck easily provided the greater impact, but he introduced testimony from a neurosurgeon that “secondary impact syndrome” was the cause of Penn’s demise. The condition, often heard of among athletes, can arise in cases of head trauma in which a second impact – even a small one – can greatly exacerbate the negative effects of an already injured brain due to blood flow issues.

“The facts are that she was hit twice and the question was ‘Did the second

impact contribute?’” Mintz said. “One percent would have been enough.”

Mintz said that the truck was also operating outside of rules regarding safe following distance.

“There was considerable evidence at trial that the defendants in our case – the second truck – was driving within 300 feet of the vehicle in front of them, which was the first truck,” he noted.

Cooper acknowledged that his driver was following more closely than the specified distance. However, he said that the chaos of the accident made it difficult for his client to avoid striking her car.

“Through that cloud of dust, the car just pops back out onto the road in front of us after hitting the guardrail,” he noted.

He also introduced testimony from a doctor, an accident reconstructionist and a biomechanics expert who contended that the forces created by the second impact were not enough to kill the deceased.

Cooper’s client’s truck had video of the crash.

“It not only showed the accident of the first truck in front of us but also had video facing our driver showing how quickly he reacted,” he said.

Mintz, who assisted Tarak Devkota, said that his side asked \$6 – \$10.5 million but the jury ultimately returned a defense verdict.

Cooper said jurors told him afterward that they believed the deceased who passed away minutes before paramedics

arrived, would have died regardless of the second impact.

Mintz also spoke with the panel members after the case and agreed that that was indeed their conclusion.

“Personally, I think they were overwhelmed by the impact with the first truck on the video,” he said. “We knew that from the beginning of the case. It is going to be hard to get the jury’s attention focused away from this tremendous impact.”

Defense verdict: Wrongful death

Venue: Jackson County Circuit Court
Case Number/Date: 2216-CV26603/
April 11, 2025

Judge: Charles McKenzie

Plaintiffs’ Experts: Yaw Sarpong, Kansas City, Kan., (medical); John Glennon, Lenexa, Kan., (accident reconstruction); Tim Krehbiel, Liberty, (engineering)

Defendants’ Experts: Richard M. Dubinski, Kansas City, Kan., (neurology); Ted Bain, San Antonio, Tex., (biomechanics); Billy S. Cox, Jr., Navosota, Tex., (accident reconstruction)

Injuries: Death

Caption: Cherie Russell; Victor Brown; Adriane Kirby; Ray Atty; Roshawn Brown-Hudson; Maurice Atty v. Clymore Trucking; Gary R. Perry

Plaintiffs’ Attorneys: Tarak A. Devkota and Robert Mintz, Devkota Law Firm, (Kansas City)

Defendants’ Attorneys: Charles H. Cooper, Michael T. Halloran, Franke, Schultz & Mullen, (Kansas City)