

Woman nabs record verdict in MoDOT crash case

Verdict thought to be largest ever in Adair County

MOTOR VEHICLE COLLISION

■ **Breakdown:** \$9.9 million for future medical damages; \$2,790,667 for future noneconomic damages; \$811,000 for past economic damages, including medical; \$750,000 for past noneconomic damages; \$415,000 for other future economic damages

■ **Venue:** Adair County Circuit Court

■ **Case Number/Date:** 09AR-CV01048/Nov. 30, 2012

■ **Judge:** Russell Steele

■ **Plaintiff's Experts:** Bob Caldwell, Lafayette, Colo. (accident reconstruction); Mariusz Ziejewski, Fargo, N.D. (biomechanics); Paul Paxton, Pensacola, Fla. (trucking); Dr. Norbert Belz, Springfield (life care planning); John Ward, Leawood, Kan. (economics)

■ **Defendant's Experts:** Andrew Irwin, Dallas (accident reconstruction); James Funk, San Antonio (biomechanics); Rudolf Mortimer, Champaign, Ill. (human factors)

■ **Allocation of Fault:** 75 percent to defendant, 25 percent to plaintiff

■ **Caption:** Donald H. McCoy, as duly appointed guardian and conservator for Ann Marie Ferguson v. Missouri State Highways and Transportation Commission

■ **Plaintiff's Attorneys:** A.W. Smith, The A.W. Smith Law Firm, Columbia; Brad Kuhlman, Kuhlman & Lucas, Kansas City; Jay Benson, Benson Law Firm, Kirksville

■ **Defendant's Attorney:** Gary Holtmeyer, Missouri Department of Transportation, Columbia

■ BY MELISSA MEINZER

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An Adair County jury returned a record-breaking \$14.7 million verdict against the Missouri State Highways and Transportation Commission to a woman severely injured in a collision.

The verdict, returned Nov. 30, appears to be the largest ever in northern Missouri's Adair County, according to both Missouri Lawyers Weekly's V&S Search database and plaintiff's attorney A.W. Smith. The next-highest plaintiff's result from the county included in the database was an \$850,000 confidential settlement of a medical malpractice case in 2008. The jury verdict is also the largest reported judgment against the state commission, which oversees the Missouri Department of Transportation, with the next highest being a \$6 million arbitration award in 2007.

In July 2008, Ann Marie Ferguson's minivan ran into the back of a MoDOT truck that was carrying a log that overran the truck's bed by 9 feet, according to her attorneys. The log struck Ferguson's face, causing diffuse axonal injury, a type of traumatic brain injury characterized by widespread brain lesions that has left her permanently disabled. One of her attorneys, Jay Benson, said she now basically requires 24-hour care.

Ferguson's father, Donald McCoy, was her appointed guardian and conservator in the case. The driver of the dump truck, Larry Finley, was named as a defendant in his capacity as a MoDOT employee.

The unanimous jury assessed 75 percent of the fault to MoDOT and 25 percent to Ferguson, according to court records. Her attorneys said Ferguson contributed to causing the accident, but argued the truck



A.W. Smith



Brad Kuhlman



Jay Benson

driver and MoDOT were at fault because the log wasn't properly stored on the truck.

Smith said evidence at trial showed that there were flags and a chainsaw on the truck, but that the crew did not take the time to cut down the log. He also said the transportation department's policy clearly said the tailgate should have been up, and he said if Ferguson had hit the truck with the log secured, her injuries would have been minor.

"It was heavily contested," Benson said in a telephone interview. "There was a dispute between the parties as to whether Ann was struck by the log or the tailgate. The jury ultimately concluded that it didn't matter, MoDOT and the driver are still responsible."

A call to MoDOT in-house attorney Gary Holtmeyer was referred to spokesman Bob Brendel, who said that MoDOT is reviewing the case for a possible appeal and would have no further comment.

Smith said his team called accident reconstruction experts, who testified that the log and the truck's tailgate entered the car. Blood and hair were found on the log, he said.

A life care planner indicated that Ferguson would require a lifetime of care after her injuries. She had been a business

owner, Smith said, and an economist extrapolated her lifetime earning potential.

The jury awarded Ferguson \$9.9 million for future medical damages, \$415,000 for other

future economic damages and \$2,790,667 for future noneconomic damages.

"It was a knockdown, drag-out fight for a week," Smith said in a telephone interview.

He added that he was surprised by the defense's strategy of claiming no liability. "From our perspective, this was never a zero-liability case."

The highway department's liability is limited by sovereign immunity. The immunity cap could have limited damages recoverable to \$300,000 plus yearly adjustments — amounting to less than \$393,000 for this year. MoDOT employees, too, are protected, Smith said.

However, Finley's negligent operation of a motor vehicle voids those protections, he said. This puts the State Legal Defense Fund on the hook for the damages, Smith said. MoDOT will have to pay the defense fund back, he said.

"After comparative fault and application of caps, there should be about \$9 million to collect," Smith said. **MS**