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I-40 Fatal-Crash Suit Settled for Millions

By Scott Sandlin
Journal Staff Writer

A mammoth federal lawsuit stemming from grisly fatalities and injuries in a fire-driven highway pileup east of Santa Rosa in 2002 has been settled for millions of dollars.

Janet Dutler settled for \$15.5 million on behalf of herself and the estate of her late husband, David, who died in the crash, said family attorney Phil Gaddy of Albuquerque.

The Dutlers were returning to Illinois from a vacation in California when they became involved in the multivehicle crash. Janet Dutler lost her leg, sustained head injuries and suffered severe inhalation injuries from the smoke and fire.

The total settlement amount is confidential, but everyone in the combined lawsuits, including the families of six more people killed and others who were injured, signed a so-called "global release" that disposes of all claims by all parties.

As is typical in settlements, the case was concluded with no admission of liability by the primary defendant, the Union Pacific Railroad.

The fatal fire broke out on the afternoon of March 8, 2002, as a railroad crew was at work mending two miles of track near the Cuervo overpass. Sparks from torches ignited a grass fire that couldn't be extinguished because of insufficient and ill-placed water trucks and 60 mph winds.

Thick smoke blanketed the interstate as a trio of vehicles crested a hill and slowed down. A tractor-trailer owned by Brian Kurtz Trucking of Ontario, Canada, bumped the rear of a Jeep and swerved right, next striking a U-Haul in the haze. More cars, trucks and a Logan Municipal School District bus stacked up behind them.

Everything that could go wrong that day did, Gaddy said.

"In the midst of one of the worst droughts in history, the railroad is out essentially burning rail. And the wind that day was incredible," he said.

The railroad's two-ton water truck was on the wrong side of the track, and workers under pressure to meet their daily quota for miles of rail repaired didn't feel they could stop, he said.

Add to that the actions of truckers, professional drivers held to a different standard than ordinary motorists, and the scene was set for the tragedies that followed, Gaddy said.

Plaintiffs argued that the Kurtz driver was poorly trained, inexperienced and "entered the smoke, stopped, jumped out and ran away."

A Kurtz lawyer said the driver acted appropriately, even heroically, and was nominated as Canadian trucker of the year for saving the life of her injured co-driver, who was asleep in the back at the time of the collision.

The intense heat of the fire, driven by diesel fuel from the crashed trucks, meant victims were burned so badly that forensic anthropologists were called in to make positive identification.

By the time it was all done, the dead included David Dutler of Charleston, Ill.; Jonathan Martinez of Rio Rancho; James Cartwright of Mosinee, Wis.; Betty Dye of Nekoosa, Wis.; Russell Jones of Indianapolis; and William and Barbara Herber of Saginaw, Mich.

The settlement order was entered May 6 by U.S. District Judge Bruce Black after months of mediation, first by U.S. Magistrate Judge Robert Scott and former New Mexico Attorney General Paul Bardacke and then by Bardacke alone.

The case was so vast that the parties hired a room at the convention center, equipped with video cameras, microphones and lots of coffee, to be able to accommodate all the lawyers and parties for depositions and meetings.

Primary contributors to the settlement were Union Pacific Railroad and at least four trucking companies whose vehicles were involved in the chain reaction.

That was due in part to an unusual legal strategy in which Union Pacific filed suit against the trucking companies as well as the estates of the victims.

John Thal, attorney for Union Pacific, said the strategy was aimed at unifying, in a single court, claims that could have potentially been filed in multiple jurisdictions from Canada to California and points between.

"It's something I had never seen in 23 years," Gaddy said. "The railroad that had caused a lot of carnage and damage settled with one (family) and got everyone into court before the same judge."

Thal said Union Pacific was "committed to doing the right thing from the outset. They didn't drag their heels. They affirmatively tried to resolve these claims in the right way for some people who'd suffered some terrible losses— and did it in a proactive way ... asking parties to contribute their fair share."

Key to that was getting trucking companies to pitch in.

Since the pileup occurred in the eastbound lanes of I-40, farther from the fire than the westbound lanes, Union Pacific concluded that a combination of events caused the fatal collisions.

"Our view is that it could not have been simply the smoke from this fire that caused this accident to happen," Thal said.

Lance Richards, an attorney for Brian Kurtz Trucking, said the company maintains that it acted appropriately and noted that families initially sued only the railroad.