

## Pedestrian fatality results in \$2M settlement

By: Jessica Shumaker April 23, 2019

The parents of a pedestrian who was struck and killed by a vehicle last year in Independence have agreed to settle their lawsuit against the driver for \$2 million, according to the family's attorneys.

Nicholas Hinrichs of the Hinrichs Law Firm in Kansas City said the plaintiffs, Carol and Gary Mosley, and the driver, Lois Stewart, settled the case on Feb. 6.

The crash occurred at 1:43 p.m. June 17 at 23rd Street and Harvard Avenue in Independence. Hinrichs said Stewart was driving west on 23rd Street when she drove onto a traffic island, striking Allen Mosley and a traffic sign.

Mosley was transported by ambulance to Centerpoint Medical Center, where he died the same day.

Hinrichs said Stewart, who was 89 at the time of the crash, consented to a blood draw and the toxicology results were negative for drugs or alcohol. He said she had a valid driver's license at the time of the crash "and was very remorseful."

He said during pre-trial negotiations, an adjuster for Stewart's insurer, Farmers Insurance, made claims that Stewart's vehicle had a mechanical issue and that she suffered from a diabetic medical episode while driving. Both claims were disproven through further investigation.

Hinrichs said the settlement was the result of nearly six months of negotiations between the parties.

The company made a verbal representation that Stewart was covered by a single-limit \$500,000 policy, and the plaintiffs made a demand in July 2018 for the full policy limits, Hinrichs said.

Farmers Insurance rejected the demand for failure to comply with the requirements of Section 537.058 of the Missouri Revised Statutes. On Aug. 2, 2018, the plaintiffs sent a new demand to the insurer which was compliant with Sections 537.080, 537.058 and 537.060. A month later, the insurer countered with an offer of \$300,000.

On September 26, 2018, the plaintiffs filed their wrongful-death suit. The insurer hired a third-party defense firm to litigate the case. Hinrichs asked that the attorney remain confidential.

The plaintiffs made a post-suit demand for \$2 million or \$500,000 along with a 537.065 agreement under which they would pursue a bad-faith claim against the insurer. Hinrichs said Stewart accepted the \$2 million demand in January.

Hinrichs said he believed the adjuster's earlier claims put the case on track to settle.

"I think the adjuster didn't realize how something like that could get them in trouble down the road," he said. "I think that's one of the reasons they were inclined to pay so much over policy — a lot of those comments could come into later bad-faith litigation."

The Mosleys were also represented by James Montee of the Montee Law Firm in St. Joseph.

Tim Dollar and Tom Hershewe of Dollar, Burns & Becker represented the defendant as personal counsel. Hinrichs said they would have represented Stewart had the bad-faith case proceeded.

\$2 million settlement

Wrongful Death

Venue: Jackson County Circuit Court – Independence

Case Number/Date: 1816-CV25091/Feb. 6, 2019

Judge: Jennifer M. Phillips

Plaintiff's Experts: Jordan Worthan, Kansas City (Mechanic)

Caption: Gary and Carol Mosley v. Lois Stewart

Insurer: Farmers Insurance

Plaintiff's Attorneys: James Montee, Montee Law Firm, St. Joseph; Nicholas Hinrichs, Hinrichs Law Firm, Kansas City

Defendant's Attorneys: Confidential; Tim Dollar and Tom Hershewe, Dollar, Burns & Becker, Kansas City

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