

Truck Negligence - The operator of a motorcycle was killed and his wife badly injured when an oncoming truck and wood chipper purportedly entered their lane while rounding a curve and/or failed to stop quickly enough because of defective brakes when the motorcycle encroached the truck's lane – the defense of the case was simple and blamed the decedent for going too fast, losing control and crossing the centerline

Lane et al v. W.A. Kendall Co., 15-CI-15

Plaintiff: Sam Aguiar, *Aguiar Injury Law*, Louisville and Tad Thomas, *Thomas Law Office*, Louisville for Pam Lane

Hans Poppe, *Poppe Law*

Firm, Louisville and Bill Meader,

Hyden for Matt Lane (decedent)

Defense: Melissa T. Richardson,

Drew B. Meadows and Carmine G.

Iaccarino, *Walters Meadows*

Richardson, Lexington and Jeremiah

A. Byrne, Andrew M. Palmer and

Casey Wood Hensley, *Frost Brown*

Todd, Louisville

Verdict: Defense verdict on liability

Court: Owsley, J. Dean,

10-30-15

Matt Lane, age 53 and his wife, Pam, a year younger and of Groveport, Ohio, rode their motorcycle through Owsley County on 5-20-14. They proceeded on curvy Highway 30 – Matt was the motorcycle operator. The speed limit was 55 mph although at relevant portions the road had an advisory speed of 25 mph.

As Lane rounded a sharp curve at some 40 mph he lost control of the motorcycle. He slid across the yellow line and under a large truck coming from the opposite direction. That truck was operated by James Baker for W.A. Kendall, Co. (a tree-trimming company) – it was also pulling a wood chipper.

Matt was declared dead at the

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Trial Judge _____ Date Verdict _____

Verdict _____

For plaintiff _____ (Name, City, Firm)

For defense _____ (Name, City, Firm)

Fact Summary _____

Injury/Damages _____

Submitted by: _____

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scene. Ironically it was his birthday. Pam was seriously injured and her leg was amputated by the collision.

In this lawsuit the Lane plaintiffs (the estate and wife were represented separately) alleged negligence by Baker in operating his truck and W.A. Kendall in maintaining it. It was a multi-faceted theory, the plaintiffs alleging alternatively that Baker was straddling the centerline.

They also implicated the adequacy of the truck and chipper's brakes – that is even if the motorcycle slid into the truck, Baker still had time to slow down or even stop if the brakes

were working properly. There was proof the truck brakes had a cracked rotor and the brake wires on the chipper were not operational. The plaintiff's accident and brake expert was Joey Stidham, Hazard.

The plaintiffs also presented proof that the brakes on the truck were defective and that but for the inadequate brakes, Baker should have been able to stop. Finally there was evidence of a conspiracy of sorts by W.A. Kendall to hide the truck and chipper involved in this crash, the purpose being to obscure evidence from the Lane plaintiffs.

It was also asserted that a drug test given to Baker after the wreck was intentionally concealed by W.A. Kendall. This led to the plaintiffs receiving an adverse inference instruction. The defendants countered that six police officers investigated the wreck and none saw any evidence Baker was intoxicated. From the full body of proof the plaintiff alleged Baker had acted recklessly and a punitive damage instruction went to the jury.

If the estate prevailed at trial it sought \$1,229,833 for a category called "loss of power to labor and

earn money.” The estate also sought \$284,395 for the decedent’s loss of ability to perform household services. These damages were quantified by an economist, William Baldwin, Lexington. As Matt was killed instantly, the estate withdrew its claim for his pain and suffering at the close of the proof.

Pam claimed her medicals of \$585,697 plus \$1,898,638 for future care. Lost wages were \$45,378 and she claimed \$193,450 for those in the future. Pam’s vocational expert was Ralph Crystal, Lexington. Her past suffering was limited to \$5,000,000, Pam seeking \$2.5 million for in the future. She withdrew her claim for post-death consortium. The jury could also impose punitive damages based on purported reckless conduct by the defendant.

W.A. Kendall’s defense was not complex. Matt was going too fast and lost control of his motorcycle. The motorcycle then crossed the centerline and collided with the truck. Baker tried to avoid the collision and steered to the right into a ditch and against the side of the mountain.

W.A. Kendall also replied to the theories advanced by the Lanes. It denied that Baker had time to avoid the collision or that the brakes had anything to do with it. A defense accident expert, Kenneth Agent, Lexington, stated that regardless of the condition of the brakes, the collision was unavoidable. W.A. Kendall also denied hiding this truck and noted that it was in fact the company’s spare truck. Ironically the truck regularly dedicated to this route had been sent to the shop (and this one pressed into service) because the primary truck had a brake light problem.

A trucking industry standard of care expert for W.A. Kendall was Larry Baareman, Grand Rapids, MI.

The defense also relied on a human factors expert, David Curry, Montgomery, IL.

As the litigation progressed W.A. Kendall was represented at trial by counsel from two law firms. The primary liability insurer hired the Walters Meadows Richardson lawyers. An excess carrier employed Frost Brown Todd counsel two months before trial. The defense was unified at trial.

The jury in this case (it was all women) deliberated some three hours on a Friday afternoon. They returned a 9-3 defense verdict for W.A. Kendall on liability and the plaintiffs took nothing. A defense judgment is expected to be entered.

Interestingly the sole male juror on the case was dismissed just before closing arguments. This occurred when it came to light that he had sent a Facebook friend request to one of the defense lawyers.

This case also had an interesting procedural wrinkle. It was Pam alone who first initiated the lawsuit – Matt’s estate did not file a complaint. W.A. Kendall then filed a third-party claim against the estate for property damage. [That claim was dismissed by directed verdict at trial.] Matt’s estate then filed a counterclaim to the third-party claim and thus became an ostensible plaintiff in this way.