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Calvert jury awards \$2.8M in fatal car crash

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A Calvert County jury has awarded \$2.8 million to the family of a Prince Frederick man killed in a car accident two years ago.

The award for Michael J. Funchion's wife, Kathleen, and two sons, announced Friday, includes \$1.5 million in noneconomic damages, which will be lowered under the state's cap on noneconomic damages to bring the total award to approximately \$2.5 million.

Funchion was at a stop sign on westbound Nursery Road attempting to make a right turn onto northbound Route 4 in Lusby on May 18, 2013, when he was hit by a Ford pickup truck driven by Kenneth V. Klingensmith Jr. heading northbound on Route 4, according to the complaint.

"The collision occurred with so much force that it caused Mr. Funchion's car to be launched and spun approximately 100 yards off of the road, which resulted in Mr. Funchion being ejected from his car," states the complaint, filed in October 2013 in Calvert County Circuit Court.

Klingensmith's truck, owned by his employer, Ameri-Star Homes, continued forward for approximately 100 yards before overturning, according to the complaint.

FUNCHION, ET AL. V. KLINGENSMITH, ET AL.

Court: Calvert County Circuit	Suit filed: Oct. 7, 2013 Verdict: April 10, 2015
Case No.: 04C13001443	Plaintiffs' Attorneys: Andrew G. Slutkin and Ethan S. Nochumowitz of Silverman, Thompson, Slutkin & White LLC in Baltimore
Judge: E. Gregory Wells	Defendants' Attorneys: Steven R. Migdal of Buck, Migdal & Cuches, Chtd. in Annapolis and Joanne M. Dicus, Columbia solo practitioner
Outcome: Verdict for plaintiff of \$2.82 million, including \$1.5 million in noneconomic damages (reduced to \$1.16 million based on cap)	Dates: Event: May 18, 2013
Counts: Wrongful death, negligence	

Klingensmith later told police he fell asleep at the wheel but tests later showed he had multiple drugs in his system, including cocaine and marijuana, according to the complaint.

"We believe he passed out," said Andrew G. Slutkin, one of the Funchion family's lawyers.

But the defendants conceded liability prior to trial, and a negligent entrustment claim against Ameri-Star was dismissed last month, according to Slutkin, of Silverman, Thompson, Slutkin & White LLC in Baltimore.

During the four-day trial before Judge E. Gregory Wells, Ameri-Star argued that while Klingensmith was an employee, he was using the truck with the company's permission for a side job, Slutkin said. But the plaintiffs' law-

yers were able to show Klingensmith was doing work for one of Ameri-Star's banks, Slutkin said.

\$1.5M

pre-cap award for noneconomic damages for Michael J. Funchion's wife and two sons

Funchion, 63, was a Vietnam veteran and building engineer. He had a side business rehabbing homes with his son, Jerry, according to the complaint. The two were driving home in separate cars from a rehab assignment when the accident occurred, according to the complaint.

Jerry Funchion, who had already turned onto Route 4, turned around and was with his father for Michael Funchion's final moments, according to Slutkin. Jerry Funchion, two eyewitnesses and a medical examiner all testified at trial that Michael Funchion was in "excruciating pain" for the 10 minutes he lived after the accident,

Slutkin said.

"You never want your client to suffer, but as a lawyer that's something you have to prove," said Slutkin, who tried the case along with Ethan S. Nochumowitz.

The plaintiffs' lawyers also used as evidence the more than 25 moving violations on Klingensmith's record dating back to the early 1980s. Klingensmith was found guilty of negligent driving and failing to obey traffic signs and lane directions in connection with Funchion's death and fine more than \$450, according to online court records.

Slutkin said he was told by Calvert County courthouse employees and local lawyers that the jury's verdict was the largest ever in the jurisdiction. He credited the Funchion family for helping to persuade the jury of four men and two women, who came back with a verdict after two hours of deliberations.

"Mike and Kathy Funchion had a truly special relationship, as did their children," he said. "I think the jury saw that."

Steven R. Migdal of Buck, Migdal & Cuches, Chtd. in Annapolis, who represented Glen Burnie-based Ameri-Star and Klingensmith, did not respond to a call for comment.

The defendants' final settlement offer was \$1.5 million; the plaintiffs sought \$2.2 million, according to Slutkin.