

Woman rear-ended by tractor trailer wins \$830K

BY BRENDAN KEARNEY

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A federal jury in Baltimore has awarded almost \$830,000 to a Dundalk woman who was rear-ended by a tractor trailer in September 2005, underwent two spinal surgeries and claimed she can never work again.

Attorneys for Kathleen Festerman, a 47-year-old mother of three, and Robert Kester, the 39-year-old Lancaster, Pa. driver carrying freight for Cleveland-based Kaplan Trucking Co. Inc., both claimed victory after last month's verdict. The defendants had conceded liability before last month's weeklong trial before

U.S. District Judge J. Frederick Motz.

The jury award, which included past and future medical expenses and loss of earnings and \$425,000 in pain and suffering damages, was "great for us because the last offer in the case was \$500,000," said Festerman's attorney, Andrew G. Slutkin of **Silverman | Thompson | Slutkin | White LLC**. "We certainly asked the jury for more but we recognized that this was the probable value of the case."

Tamara B. Goorevitz, who represented Kester on Kaplan's behalf, said she is "extremely happy" with the sum she called "not unreasonable at all."

"The last demand by the plaintiffs was \$1.2 million, so we really weren't left with much choice but to try the case," said Goorevitz, of **Franklin & Prokopik P.C.** "[Slutkin] told us that he would not go below \$1.2 million. We would've gone higher. ... We wanted to settle the case."

Festerman, who had worked for cinema screen manufacturer Hurley Screen Corp. of Forest Hill, had her 5-year-old son in her maroon Plymouth minivan at the time of the crash.

"She was coming home after picking him up at school," Slutkin explained. "She stopped to make a left onto her street. She was stopped for about a minute when an 18-wheel — a 23-ton tractor trailer, actually — collided into the rear of her car, catapulting her across oncoming traffic onto the side of the road."

"The testimony was that the truck hit her anywhere between 22 and 40 mph," Slutkin said. "Our accident reconstructionist, which they stipulated to, said there was a change of velocity in her car from stopped to 20 mph in a tenth of a

second."

Slutkin said Kester, who had been carrying approximately 1,000 lbs of pallets, said he had been distracted by something along the side of the road when he looked up to see Festerman's van stopped on single-lane Chelsea Road near Aberdeen Proving Ground.

While Festerman's son Kenny escaped essentially unscathed, she suffers neck and back pain even after November 2005 and January 2006 surgeries, and her van was totaled, Slutkin said.

Both Slutkin and Goorevitz noted the impact at trial of video footage taken by a private investigator hired by the defense to verify Festerman's claims that she was permanently disabled for employment purposes.

"It didn't show her doing anything she or her doctor said she couldn't do," said Slutkin, adding the decision to spy on his client therefore "worked out kind of funny."

In contrast, Goorevitz said the video was effective in limiting Festerman's future loss of earnings claim because it showed her carrying coffee, opening and closing car doors, and sitting on a stool at her husband's diner. Slutkin said the video showed his client struggling with her fine motor skills.

"When people say they can never work again, that's when our bells go off," she said of the motivation behind hiring the private investigator. "Obviously the jury accepted that she could go back to work."

Ruling

Kathleen Festerman v. Robert Kester, et al.

Court: U.S. District (Baltimore)

Case Number: JFM-07-3052

Proceedings: Jury trial

Judge: J. Frederick Motz

Outcome: Plaintiff

Dates: Incident: Sept. 26, 2005
Suit filed (in Baltimore City Circuit Court): Oct. 9, 2007
Disposition: Oct. 31, 2008

Plaintiff's Attorney: Andrew G. Slutkin and Jamison G. White of Silverman | Thompson | Slutkin | White LLC

Defense Attorneys: Tamara B. Goorevitz and Colin Bell of Franklin & Prokopik P.C.

Counts: Negligence

Award: \$829,952.34