

# \$3 Million Settlement in Northampton County Truck Crash

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A crash that caused a 40,000-pound mixer on the back of a cement truck to roll over and crush the cab, killing the driver, has resulted in a \$3 million settlement in Northampton County.

In *Conley v. Oshkosh Truck Corp.*, the plaintiff's decedent, Raymond Lee Conley, 31, was driving a front-discharge concrete mixer for Rock Hill Trucking Co. on Route 33 in Palmer Township when the front right steer tire blew out, sending the truck into a shallow ditch on the right side of the road, according to the plaintiffs' pretrial memorandum.

When the truck struck the ditch at a rate of about 15 mph, the steel mixer drum on the back, which was full of concrete and weighed about 40,000 pounds, came loose and tumbled over the top of the aluminum cab, collapsing the roof and crushing Conley to death, the plaintiffs' memorandum said.

According to the plaintiffs' memorandum, Conley's truck, a 1999 Oshkosh S-Series "New England" model, contained several design and manufacturing defects.

The plaintiffs said in their memorandum that the front pedestal was not strong enough to support the force of the steel drum in a low-speed crash and that the front pedestal and catwalk structure both collapsed because of low force impact.

The cab, which was constructed of low-grade aluminum, was defective and should have included steel reinforcements and a roll bar or cage, the plaintiffs' memorandum said.

According to the plaintiffs' memorandum, Oshkosh engineer Stephen Nimmer testified at a deposition that, although the cab on Oshkosh's predecessor model to the S-Series was made of steel, it was replaced with aluminum on newer models in order to minimize weight and maximize the amount of concrete it could carry.

The steering column was also defective because it did not collapse on impact, the plaintiffs' memorandum said.

"A collapsible steering wheel would have created room for Ray Conley's body as the roof was crushing down on him," the memorandum said.

The drum also could have included a safety loop to prevent it from detaching and the rear pedestal was not strong enough to withstand the force of the crash, the plaintiffs' memorandum said.

Also, a metallurgical analysis of the drum transmission shaft revealed an internal crack caused during the manufacturing stage that weakened the shaft and resulted in its snapping during Conley's accident, the memorandum said.

Oshkosh representative Thomas Quigley said the S-Series design had never been crash-tested and the possibility of the drum crushing the cab was never considered, according to the plaintiffs' memorandum.

Quigley also testified at deposition that the drum's pedestal moved forward toward the cab during testing of the S-Series model, the plaintiffs' memorandum said.

The plaintiffs said in their memorandum that Oshkosh should have considered the possibility of the drum crushing the cab since several incidents of the S-Series drum detaching in 1999 and 2000 forced a recall campaign in 2001.

Despite this knowledge, the plaintiffs alleged in their memorandum, Oshkosh "merely recalled the bolts" but made no changes to ensure the driver would be safe in the event of a drum detachment.

The plaintiffs claimed in their memorandum that defendant Bergey's Inc. was negligent because it retreaded the tire in 1999, when the tire was 10 years old, an age "considerably beyond what is considered safe to retread a tire."

Kline & Specter attorney James J. Waldenberger, who represented plaintiffs Karen and Dennis Conley, the administrators of Raymond Conley's estate, said Rock Hill Materials, a separate entity from Rock Hill Trucking Co., was also joined in the case as a defendant by Bergey's and Oshkosh for allegedly negligent inspection and maintenance of the tire that blew out.

Both Bergey's and Oshkosh said in their own pretrial memorandums that Conley had expressed concerns to his employer on at least 14 occasions about the condition of the front tires on his truck but nothing was ever done.

Waldenberger said it took "very sophisticated analysis" from a number of experts to determine whether Conley had conscious pain and suffering.

The plaintiffs' forensic pathology expert, Dr. Wayne K. Ross, said Conley was conscious for up to three minutes following the crash, the plaintiffs' memorandum said.

Dr. Samuel Land, the pathologist for Bergey's and Oshkosh, however, said Conley would most likely have gone unconscious immediately because of head injuries incurred as soon as the drum impacted the cab's roof.

The defense's other damages expert, Dr. Thomas Gennarelli, a neurosurgeon, also said Conley would have gone into an instantaneous coma on impact and would not have had any conscious pain or suffering.

The plaintiffs' economic and actuarial expert, David L. Hopkins, estimated Conley's total net lost earnings and lost earning capacity to be in excess of \$1.8 million, according to the plaintiffs' memorandum.

According to the plaintiffs' memorandum, at the time of his death Conley left behind a 3-year-old daughter, of whom he was the primary caregiver.

The parties reached a settlement agreement on Aug. 13 and it was approved Sept. 25. Northampton Judge Anthony S. Beltrami oversaw the settlement hearings.

Oshkosh agreed to pay \$2 million, Bergey's agreed to pay \$600,000 and Rock Hill Materials agreed to pay the remaining \$400,000.

Waldenberger's co-counsel on the case, Jonathan M. Cohen, also of Kline & Specter, credited Beltrami with getting the parties to reach a settlement, calling him an "extremely competent mediator."

An attorney for Bergey's, John A. Livingood Jr. of Margolis Edelstein in Philadelphia, said he could not comment on the case.

Oshkosh's attorney, Daniel J. Hart of Marshall Dennehey Warner Coleman & Goggin in Philadelphia, could not be reached for comment at press time, nor could Rock Hill Materials' attorney, Jeffrey H. Quinn of Dickie McCamey & Chilcote, also in Philadelphia. •