

DAILY REPORT

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Defense wins trial over accident at General Mills plant

ALL-WOMEN JURY rejected claims by man run over by rail car; plaintiff's lawyer says Judge Thrash limited examination time too much

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AFTER A NEWTON COUNTY man had both his legs partially amputated as a result of a railroad car accident, he filed suit in federal court. One defendant, the owner of the railroad car that ran over the plaintiff, settled for undisclosed terms in the midst of a deposition. But the railroad, CSX Transportation, went to trial last month.

The railroad may have made the right decision. Attorneys for CSX, Casey Gilson partners Robert E. Casey Jr. and Joyce Gist Lewis, last month secured a defense verdict for their client after a week-and-a-half-long jury trial before U.S. District Judge Thomas W. Thrash Jr.

The trial has some unusual aspects. All 12 members of the jury were women, while lawyers for General Mills, which



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Robert Casey and Joyce Gist Lewis, CSX's lawyers, said the actions of General Mills' attorneys were unusual.

was the plaintiff's employer but not a party to the suit, kept a close eye on matters—at one point asking to sit at one of the counsel tables.

The plaintiff's lawyer, Michael J. Warshauer of Warshauer Poe & Thornton, said one of the grounds for an appeal may be the judge's 20-hour time limit for his examination and cross-examination of witnesses to the accident and experts.

The accident occurred in June 2005 at General Mills' cereal production plant on Alcovy Road in Covington. Doug Burchfield, a General Mills

employee, was working on a rail spur where grain was being delivered to the factory. During the process of moving hopper cars, a type of railroad freight car used to transport bulk commodities such as grain and coal, one car rolled out of its position, pulling two cars along with it. All three cars ran over Burchfield, whose legs were amputated at the knees as a result. He also suffered broken bones and other injuries.

Warshauer, Burchfield's attorney, argued that CSX had delivered to General Mills a hopper car with an

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inefficient and illegal handbrake and that CSX should have inspected the brake and ensured it was working properly. Warshauer asked for \$36.6 million on behalf of Burchfield.

But CSX's legal team argued that Burchfield had not properly applied the hopper car's handbrake during the repositioning maneuvers, Casey said.

"[Burchfield] didn't have any recollection of actually setting [the brake]," Lewis said. "His co-worker, the only eyewitness, didn't see him set the brake."

Warshauer has filed an appeal with the 11th U.S. Circuit Court of Appeals.

"We were surprised by the result," Warshauer said. "We expect to have another opportunity to get a different result."

Burchfield also has a workers' compensation claim pending against General Mills, according to Casey and Lewis.

The defense lawyers said they had never seen a case tried in front of an all-women jury—although the single-sex makeup did not appear to bother anyone. Neither side challenged it.

Settlement negotiations with the hopper car's owner occurred about a week before the end of the discovery period as depositions were being taken at Casey Gilson's office at Six Concourse Parkway.

"In the middle of a deposition, the plaintiff's counsel goes out in the hallway during a break and calls the lawyers for [the car owner] and made some sort of deal with them," Lewis said.

Weinberg Wheeler Hudgins Gunn & Dial partner Earl W. "Billy" Gunn, counsel to the hopper car owner, The Andersons Inc., reached the settlement agreement with Warshauer for Burchfield. The Andersons, an agribusiness corporation based in Maumee, Ohio, had been named as the second defendant in Burchfield's complaint, although The Andersons was dismissed as a defendant in December after it reached the settlement agreement.

The Andersons had filed a third-party complaint against a Michigan flour manufacturer, Star of the West Milling Co., which leased the hopper car from The Andersons. The third-party complaint against Star of the West was dismissed in June.

Gunn could not be reached for comment on the settlement or the third-party complaint.

Another unusual element was the behavior of counsel for General Mills, Casey and Lewis said.

General Mills' lawyers, Jerry W. Blackwell and Alyssa L. Rebensdorf of the Minneapolis firm Blackwell Burke, filed a motion asking to sit at the same table as counsel during the questioning of two of its employees "to represent General Mills' interests during questioning of these witnesses." The Blackwell Burke lawyers also wanted to sit at counsel's table—they did not specify which side—arguing that the questioning of General Mills employees could "encroach upon the privileges and protections afforded to non-party General Mills pursuant to the attorney client-privilege ... [and] the work-product doctrine."

Thrash denied the motion. But during the trial, Rebensdorf on multiple occasions stood up from the public seating area and attempted to lodge objections, Casey and Lewis said.

"I'm not going to say [Thrash] ignored her, but he did not sustain her objections," Casey said.

General Mills apparently was justified in wanting to protect its interests in the case. Casey and Lewis said they are considering filing a claim against General Mills seeking payment of attorney fees. The request would be based on a contract between CSX and General Mills related to the operation and shared liability of the rail spur at the Covington plant.

Rebensdorf declined to comment on both the request to sit at counsel's table and on CSX's potential motion for attorney fees.

Warshauer, the plaintiff's lawyer, said that Thrash limited to 20 hours his time to examine and cross-examine experts and witnesses. Warshauer said he cut short his examination of the experts he called, because CSX had listed 30 potential witnesses and he wanted to save time to cross-examine them. But CSX called only a handful of people to the stand, which meant Warshauer needlessly made his direct examination shorter than he had wanted.

"It affects the integrity of the system, to say that, regardless of how things are going, you only get a limited number of hours," Warshauer said. "[Thrash] is the only judge I know who does this."

Thrash's time limit on his questioning of witnesses and experts may form a basis of his appeal, Warshauer said. Other facets of the appeal will include "faulty evidentiary rulings" and errors in the jury charges, he said.

The case in U.S. District Court for the Northern District of Georgia is *Burchfield v. CSX Transportation*, No. 07-cv-01263. The appeal in the 11th Circuit is *Burchfield v. CSX Transportation*, No. 09-15417. ☞