

Missouri Lawyers Weekly

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Railroad settles case after \$4M jury verdict

Agreed to quick payout while punitives pondered



Rick Holtsclaw



Bradford Kendall

The lawsuit stems from the Aug. 15, 2008, death of Shelby Wilson. She was a passenger in a car that was struck by one of BNSF's trains at a rural crossing in Andrew County, about an hour north of Kansas City.

Attorneys Rick Holtsclaw and Bradford Kendall, of Holtsclaw & Kendall, represented Gatewood, Shelby's mother. They argued the company failed to mark the crossing with lights and a gate, though it was marked with warning signs. The state had ordered the more stringent measures nearly a year before the accident.

Kendall asked the jury to award as much as \$40 million in punitive damages. He urged the jury to force the company to pay attention to the safety of the communities its trains pass through.

"How many more Shelbys will be taken before this company starts to value human life?" he said.

BNSF installed a signal at the crossing just days after the accident. James LeVere, a BNSF official, testified that the accident happened two days before the state-imposed deadline to install the signal, although little work had been done.

LeVere said that while the state still gives the railway up to a year to install the signals, BNSF has, as a direct result of the accident, voluntarily reduced that time to 180 days.

The company's lawyer, Tom Sattler, of Wolfe, Snowden, Hurd, Luers & Ahl in Lincoln, Neb., urged the jury to award no punitive damages. He said the compensatory award already "sent a powerful message" to the railway company.

He also pointed a finger at the car's driver, Susan Neill, a family friend, who he alleged was talking on a cellphone at the time of the accident.

"This woman drove right past two warning signs into the path of an oncoming train," Sattler said.

Gatewood's attorneys denied that Neill was on the phone when the accident occurred. Lawyers on both sides said the train's crew couldn't see her vehicle and were blameless in the accident.

The trial began in Savannah, the Andrew County seat, on April 25. Circuit Judge Randall Jackson said it was the longest trial in that county to his knowledge.

The verdict appears to be the largest recovered by a plaintiff in a lawsuit against a railroad in the last six years, according to Missouri Lawyers Weekly's V&S Search database and archives.

A 2007 case in St. Louis Circuit Court, *Perry v. Union Pacific*, yielded a nearly \$4.2 million verdict, but the plaintiff was found 85 percent at fault.

— Scott Lauck

\$4 million verdict

WRONGFUL DEATH

- **Court:** Andrew County Circuit Court
- **Case number/Date:** 09AW-CV00445/May 10, 2011
- **Judge:** Randall Jackson
- **Plaintiff's Experts:** Richard Gill, Spokane, Wash. (human factors); Alan Blackwell, North Platte, Neb. (railroad operations); James Loumiet, Independence (accident reconstruction); David Lipscomb, Stanwood, Wash. (acoustics/train horn)
- **Defendant's Experts:** Brian Heikkila, Houston (train operations); Mike Fann, Grapevine, Texas (acoustics); Joseph Blaschke, College Station, Texas (accident reconstruction)
- **Caption:** Shelly Gatewood v. BNSF Railway Co.
- **Plaintiff's Attorneys:** Rick Holtsclaw and Bradford Kendall, Holtsclaw & Kendall, Kansas City
- **Defendant's Attorneys:** Thomas Sattler and Nichole S. Bogen, Wolfe, Snowden, Hurd, Luers & Ahl, Lincoln, Neb.

An Andrew County jury returned a \$4 million jury verdict against Burlington Northern Santa Fe Railway Co. in a lawsuit over the death of a 10-year-old girl.

The jury also agreed to assess punitive damages, but lawyers for the railroad and plaintiff Shelly Gatewood reached a settlement while the jury was deliberating, with BNSF agreeing to pay the full judgment within 10 days. The company also agreed not to appeal.