

2008 WL 5234329 (D.Kan.)

For Opinion See [591 F.Supp.2d 1156](#) , [591 F.Supp.2d 1149](#) , [2007 WL 2265504](#)

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WEST'S JURY VERDICTS - KANSAS REPORTS

Trucking Company Owes \$15.2M for Tractor-Trailer MVA

United States District Court, D. Kansas.

Frederick v. Swift Transp. Co.

Type of Case:

Vehicle Negligence • Motor Vehicle v. Motor Vehicle
Vehicle Negligence • Trailer
Vehicle Negligence • Truck
Vehicle Negligence • Reverse Collision
Vehicle Negligence • Impaired Driver
Vehicle Negligence • Inattention
Vehicle Negligence • Excessive Speed
Vicarious Liability

Specific Liability: Driver of tractor-trailer negligently attempted to turn into rest area on side of highway, resulting in a collision with another tractor-trailer

General Injury: Unspecified personal injuries

Jurisdiction:

State: Kansas

County: Not Applicable

Related Court Documents:

Plaintiffs' first amended complaint: [2008 WL 5231270](#)

Defendant Swift's answer to first amended complaint: [2008 WL 5231271](#)

Defendant Getchel's answer to first amended complaint: [2008 WL 5231268](#)

Verdict form: [2008 WL 5076362](#)

Case Name: Terry L. Frederick and Donna F. Frederick v. Swift Transportation Co. Inc. and Robyn L. Getchel

Docket/File Number: 6:06-cv-01332

Verdict: Plaintiffs, \$23,500,000.00; reduced to \$15,275,000.00 per fault apportionment

Verdict Range: \$5,000,000 - 999,999,999

Verdict Date: Nov. 25, 2008

Judge: [Monti L. Belot](#)

Attorneys:

Plaintiffs: [Douglas R. Bradley](#), [Lynn R. Johnson](#) and [Scott E. Nutter](#), Shamberg, Johnson & Bergman, Kansas City, Mo.

Defendant (Swift): [Thomas W. Wagstaff](#) and [Brandon D. Henry](#), Wagstaff & Cartmell, Kansas City, Mo.; [James R. Jarrow](#), Baker Sterchi Cowden & Rice, Overland Park, Kan.

Defendant (Getchel): [James R. Jarrow](#) and [John A. Watt](#), Baker Sterchi Cowden & Rice, Overland Park, Kan.

Trial Type: Jury

Experts:

Plaintiffs: [Rudolf Mortimer, PhD](#), psychologist, Human Factors Engineering, Urbana, Ill.; [Kris Sperry, MD](#), forensic pathologist, Senoia, Ga.; [Steve Christoffersen, PE](#), accident reconstructionist, Verifact Corporation, San Antonio, Texas; Wilbur Swearingin, Rehabilitation Consulting Service, Springfield, Mo.; [Terry Winkler, MD](#), rehabilitation physician, Ozark Area Rehabilitation Services, Springfield, Mo.

Defendant (Swift): [J.T. Hayes](#), accident reconstructionist, Los Lunas, N.M.; Christopher Long, PhD, DABFT, toxicologist, Saint Louis University, Berkeley, Mo.; Robert R. Reed, trucking safety and regulatory compliance, Columbus, Ohio; [Atul T. Patel, MD](#), physician, Shawnee Mission, Kan.

Breakdown of Award:

\$19,500,000.00 to plaintiff Terry Frederick from defendant Swift for damages

\$4,000,000.00 to plaintiff Donna Frederick from defendant Swift for loss of consortium damages

The jury found defendant Swift to be 20 percent at fault, defendant Getchel to be 45 percent at fault, and Dennis Bottorff to be 35 percent at fault. The award was reduced in judgment to \$15,275,000.00 per fault apportionment.

Summary of Facts:

Robyn Getchel drove east on US Highway 54 in Quay County, N.M., March 16, 2000, in a tractor-trailer reportedly owned by her employer Swift Transportation Company Inc., an Arizona corporation registered to do business in Kansas. Dennis Bottorff also drove east on Highway 54 in a tractor-trailer owned by Yellow Transportation. Terry Frederick traveled with him as a passenger. Getchel reportedly attempted to make a U-turn into a rest area located off Highway 54 in the middle of the night, got stuck and backed into oncoming traffic, striking the vehicle driven by Bottorff.

Terry reportedly sustained unspecified personal injuries.

Terry and his wife Donna filed a lawsuit in the United States District Court for the District of Kansas against Getchel and Swift. The plaintiffs claimed Getchel's negligence proximately caused their injuries. Getchel was negligent, the Fredericks claimed, in that she drove while under the influence of methamphetamines, attempted to make an unsafe turn into the roadside rest area, backed her tractor-trailer into the tractor-trailer driven by Bottorff, failed to keep a proper lookout, and failed to use ordinary care.

The plaintiffs asserted Swift was vicariously liable for Getchel's negligence. They also asserted Swift was negligent in that it failed to use ordinary care in hiring, training, supervising, and retaining Getchel.

Terry sought damages for pain and suffering, disability and disfigurement, loss of enjoyment of life, medical expenses, and loss of earnings and earning capacity. Donna sought damages for loss of consortium. The plaintiffs argued they were entitled to punitive damages based on the defendants' willful, wanton, grossly negligent, and reckless conduct and disregard for their safety.

Getchel denied she was negligent and claimed Bottorff rear-ended her vehicle. She claimed Bottorff failed to keep a careful lookout, drove too fast, followed too closely, and was inattentive.

She also argued that she was not the proximate cause of the plaintiffs' injuries, that her negligence, if any, should be reduced per comparative fault, that the plaintiffs failed to mitigate their damages and that the claim for punitive damages violated her constitutional rights.

Swift admitted Getchel was their employee but claimed at the time of the collision Swift Leasing Co. Inc. owned the tractor she drove and MS Carriers Inc. owned the trailer. Swift argued that any damages should be reduced by the comparative fault of a third party, that the plaintiffs' injuries were the direct and unavoidable consequence of a pre-existing medical condition, that the plaintiffs failed to mitigate their damages and that the claims were barred or limited by set off.

Swift further argued that Bottorff was negligent in that he failed to reduce his speed, failed to follow a safe distance behind, failed to keep a proper lookout, and failed to take action to steer around or otherwise avoid the collision.

Judge Monti Belot granted the plaintiffs' motion to dismiss defendant Getchel Sept. 11, 2008.

The case proceeded to trial, and the jury found in favor of the plaintiffs Nov. 25, 2008, assessing Terry's damages at \$19,500,000 and assessing Donna's damages for loss of consortium at \$4,000,000. The jury determined Swift was 20 percent at fault for the collision, Getchel was 45 percent at fault and Bottorff was 35 percent at fault. The award was reduced in judgment to \$15,275,000 per fault apportionment Nov. 25, 2008.

Court: United States District Court, D. Kansas.

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