

The Legal Intelligencer

THE OLDEST LAW JOURNAL IN THE UNITED STATES

An incisivemedia publication

Ariz. Case Reveals \$12 Mil. Settlement In Phila. Lawsuit

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When a \$12 million settlement was reached in February in a Philadelphia lawsuit against Swift Transportation, one of the country's largest trucking companies, the lawyers on both sides agreed to keep the settlement secret.

But details of the settlement have now been publicly disclosed in a lawsuit that Arizona-based Swift has filed against its insurance brokers.

In the Arizona lawsuit, Swift claims that it had \$31 million in insurance coverage in early 2001, but that its brokers negligently allowed the coverage to lapse.

The suit, filed in Maricopa County, Ariz., alleges that Swift was left "bare of coverage" for claims over \$5 million for 10 days, and that the full \$31 million in coverage was not back in place for another six days.

But on April 12, 2001, just three days after the original coverage lapsed, an accident occurred in Pennsylvania when a Swift truck driver rear-ended a rental car of vacationers headed for Myrtle Beach, S.C., leaving one passenger nearly completely paralyzed.

Swift's suit accuses the brokers of "professional negligence" and seeks to hold them liable for \$6.25 million -- the uninsured portion of Swift's \$11 million contribution to the settlement of Terry Whittlesey's suit.

Whittlesey's lawyer, Thomas J. Duffy of Philadelphia's Duffy & Keenan, refused to discuss the case, saying that Philadelphia Judge Allan L. Tereshko's confidentiality order prohibits him from having any conversations about the settlement -- even if Swift has now revealed it in publicly filed documents.

But court records show that Duffy (no relation to this writer) had built a strong case against Swift prior to the settlement. Tereshko is a judge in the Philadelphia County Court of Common Pleas.



TOM DUFFY

In his pretrial brief, Duffy said medical records showed that the Swift driver had a serious shoulder injury just three months before the accident that left him with minimal use of his right arm.

The brief cited to the Federal Motor Carrier Safety Regulations which require that truck drivers be "physically qualified" and specifically prohibit driving while suffering from an arm impairment that could interfere with the "normal tasks" of truck driving.

According to court papers, Whittlesey was a passenger in a rented car driven by his girlfriend, Myra Alls. The two were headed to Myrtle Beach and were driving closely behind a van occupied by another couple and their children who were joining them in the vacation.

While traveling on Route 95, the suit says, the vacationers found themselves in a construction zone with "stop-and-go traffic."

The suit alleged that a Swift truck driven by Edward Cox was behind Alls' car for some time in the stalled traffic. While still in the construction zone, the suit said, the truck struck Alls' car, pushing it into the van driven by her friends.

Whittlesey was the most seriously injured and is now a "tetraplegic," meaning that he is nearly completely paralyzed from the neck down. While a quadriplegic has no movement ability in all four limbs, a tetraplegic has "minimal movement and some sensation in all four limbs."

Duffy's pretrial brief said that, prior to the accident, Whittlesey was an "active" and "outgoing" 40-year-old who worked in carpentry and contracting.

Now, Duffy said in court papers, Whittlesey wears diapers and a colostomy bag and "has horrible muscle spasms that send him writhing in pain."

If the case had gone to trial, the plaintiffs planned to show the jury a "day-in-the-life" video that would show the aides who assist Whittlesey on a daily basis, bathing him, feeding him and brushing his teeth.

Details of the \$12 million settlement of Whittlesey's case were revealed in a lawsuit Swift filed in late March against its insurance brokers -- Transtar Insurance Brokers Inc. and Diversified Insurance Brokers of Utah Inc.

In the suit, Swift claims that Whittlesey's injuries were so severe that "the liability exposure to Swift vastly exceeded the combined limits" of its available insurance policies.

The insurer for Myra Alls paid her policy limit of \$1 million and Swift paid \$11 million, according to the suit.

But less than half of Swift's payment to Whittlesey was covered by insurance, the suit says.

Although both insurers agreed to pay the policy limit, their contribution was just \$4.75 million, the suit says.