

MISSOURI LAWYERS WEEKLY

Driver Who Exited Car On Highway Wins \$640K Verdict

Plaintiff's Strategy: Accept Part of Blame



Morry S. Cole

BY ANNE C. VITALE

Plaintiffs normally don't admit fault in front of a jury, especially in conservative St. Louis County.

But a "blame me" strategy recently proved key to a \$640,000 verdict for a man injured in a rear-end accident on Interstate 70.

Johnny Wilkerson's station wagon broke down on the highway in July 2002. Unable to get to the shoulder, he jumped out in a panic and opened the hood, trying to find the problem.

Suddenly a van driven by a state Department of Mental Health employee barreled into the car, which in turn struck Wilkerson. He suffered a fractured skull, broken vertebrae and numerous other injuries.

Morry S. Cole, who represented Wilkerson, said he told jurors that Wilkerson was partly responsible for his injuries, but that the van driver was by far the bigger culprit.

"I asked the jury to think about the fact that Mr. Wilkerson was in a tight spot and was doing the very best he could," Cole said. "Then I asked them to compare that to the state employee who was simply not paying attention."

Jurors apparently found the argument persuasive, finding Wilkerson only 20 percent at fault — a number Cole had suggested to them — on a gross verdict of \$800,000.

"One thing that seemed to particularly grab the jury's attention was that, despite heavy traffic, no other cars were involved in the collision. I argued that this meant that everyone else was paying attention except the state's driver."

A report on the Dec. 7 verdict in *Wilkerson v. Missouri Department of Mental Health* appears on Page 7. An attorney for the state did not respond to a request for comments on the case.

Highway Accident

In July 2002, Wilkerson made his annual road trip to Osawatomie, Kan., to spend the Fourth of July holiday visiting with two aunts and two cousins. At about 1:40 p.m. on July 9, he was passing through St. Louis

on his way back to his home in Nashville.

As Wilkerson was driving his 1984 Ford LTD Station Wagon east on I-70 near Lambert International Airport, the car began running roughly. Due to heavy traffic, he could not get the car over to the shoulder or the median. After about 15 seconds, the car abruptly quit running and came to a complete stop in the left-middle lane of the four-lane highway.

Unnerved, Wilkerson popped the hood and got out of the car to check for problems. As he was investigating under the hood, a van owned by the State of Missouri approached in his lane.

Melinda Sloan-Odum, a licensed social worker for the Department of Mental Health who worked primarily at the Hawthorne Psychiatric Hospital in St. Louis, was driving the van. She had been helping a client register for classes at St. Charles County Community College and was transporting the client back to Hawthorne.

Sloan-Odum crashed the van into the back of Wilkerson's car and the car then struck Wilkerson. The impact catapulted him about 30 feet and he landed in the middle of the interstate.

Wilkerson was life-flighted from the scene by helicopter to Saint Louis University Hospital. He suffered a fractured skull, two fractured cervical vertebrae, six broken ribs on the right side and an unknown number of broken ribs on the left, a broken tibia requiring surgery and an external fixator, resulting pneumonia and stress gastritis.

Wilkerson spent more than three weeks at SLU Hospital and then was transferred to Vanderbilt Medical Center in Nashville. Following another month at Vanderbilt, he was discharged to Mariner Rehabilitation Hospital where he completed almost five months of in-patient treatment.

Cole said it was never determined why Wilkerson's car broke down since the car was towed after the collision and the parties could not locate it. He said that the car's engine had quit in 1999 and Wilkerson had to replace the fuel pump. But it had run well for three years prior to the accident, requiring only routine maintenance including a tire, radiator and starter solenoid.

Prior to the collision, Wilkerson worked as a Lead Attendant at Goodwill Industries of Middle Tennessee, Inc. He was responsible for training attendants at donation centers throughout central Tennessee. He was also required to unload and move clothing, appliances and heavy furniture donations.

However, Cole said his injuries prohibited him from returning to work for nine months. Even after extensive rehabilitation, he said Wilkerson now has mobility



problems including a severe limp, weather-related arthritis and greatly limited stamina.

As a result of these conditions, Cole said Goodwill accommodated Wilkerson by creating a new position that does not require out-of-plant travel or heavy lifting. In his current position as a Dock Monitor, he is responsible for taking notes on incoming donations.

Trial Issues

Wilkerson sued the state for the negligence of its employee. In defense, the state argued that Wilkerson was responsible for driving a defective vehicle and for standing on the roadway.

Cole countered by arguing that although Wilkerson was driving an older car, it was "largely reliable" and had not suddenly broken down for three years. In this instance, Cole said that in the 15 seconds that the car ran roughly before quitting, he could not pull off the highway due to heavy traffic.

Since the car stalled in the lane next to the fast lane, Cole said Wilkerson was left with three options: get out of the car and try to run for the median or shoulder; stay in the car and hope for the best; or try to fix the car and get it off the highway. Cole argued that option one wouldn't work "because traffic was heavy and Wilkerson was never very athletic." He said the second option was not appealing to Wilkerson "because he is very mechanically inclined and thought he had a chance that he might be able to make a quick fix to his car and at least get it off the interstate." Thus, he said Wilkerson chose option three.

"At trial, I referred to option three as self-rescue," Cole said. "I think that County jurors liked the idea that Mr. Wilkerson was attempting to be self-reliant, accept responsibility for the situation and solve the problem himself."

During voir dire, Cole said he confronted the issue that Missouri tax dollars would satisfy any judgment that the jury ultimately rendered by asking questions such as, "Can you treat the State of Missouri the same as you would any other employer of nearly 100,000 employees?" and "Does everyone agree that all litigants should be treated equally in Judge Seigel's court, regardless of whether they are a corpora-

tion, individual or a state?"

Cole said, "Our panel did not seem to mind the idea that the state was on the hook for the verdict."

Other issues Cole had to address during voir dire included the current tort reform climate and the typically conservative nature of St. Louis County juries. But he said the case turned on his client's likeability and favorable facts.

"Truthfully, I think that this was a case where a jury full of nice people simply liked my client and felt that he had done the best he could under dangerous circumstances," he said, noting that equal time was given to discussion of "frivolous lawsuits" and to "frivolous defenses" during voir dire. "The jury rightly felt that Mr. Wilkerson's broken-down car was in plain view in the middle of the interstate and should not have been rear-ended."

'Good Ol' Boy'

Cole said it was important to take extra time to re-familiarize Wilkerson with the scene of the collision and to explain trial procedure and courtroom decorum to him in order to increase his comfort level.

"Mr. Wilkerson is a self-described 'good ol' boy' from Tennessee. Additionally, he has some quirky mannerisms that make one think that he may be a bit different, if not a bit autistic," Cole said.

"Things such as having your client met at the airport, escorted to and from the courthouse and letting him sit in the witness stand on a break prior to testifying are beneficial for every client — but they are critical with a client that has special challenges."

Cole said he was also concerned that the jury might have a difficult time relating to Wilkerson. To overcome this potential obstacle, he said, "I tried to start the case by explaining — as did one of his friends that testified — that he may not have all the social graces, but that he is very mechanically inclined and intelligent."

During Wilkerson's testimony, Cole said, "it was important to let him testify long enough for the jury to get to know him and begin to understand his special gifts and unique personality. By so doing I think they were able to see that he is completely honest, credible and very intelligent."