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Damages phase of intermodal case stopped after attorneys reach settlement

JAMES HALPIN, STAFF WRITER

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Deliberations over punitive damages owed by Philadelphia-based Pennoni Associates Inc. for designing the “flawed and dangerous” James F. Conahan Intermodal Transportation Facility were cut short Thursday after the parties reached an undisclosed settlement.

A jury on Wednesday found the firm negligent in its design and determined the estate of Edward Rehill, who was killed by a reversing bus in September 2011, was due \$350,000 in compensatory damages, of which Pennoni’s share was \$89,250. Because it found Pennoni’s conduct “outrageous,” the jury was instructed Thursday morning to determine how much the firm should pay as punishment.

But jurors were summoned back to the courtroom before reaching a figure, and Luzerne County Judge Thomas F. Burke informed them a settlement had been reached after the eight-day trial. Lawyers on both sides would not disclose the terms of the deal.

“We’re very happy with the jury’s verdict,” plaintiffs’ attorney David J. Selingo said. “We felt that they did a great job in analyzing all parties’ responsibility and it also sends a message that this facility is dangerous. Hopefully now something will be done about it.”

The City of Wilkes-Barre, which owns the facility, will have to review the case and jury’s findings in coming days before determining how to move forward, said assistant city attorney William Vinsko.

“Obviously we’re concerned about the safety of the residents,” he said.

In its verdict, the jury found the city and the Luzerne County Transportation Authority each 25 percent responsible for the death of Rehill, an 86-year-old Wilkes-Barre resident who was killed at the facility when an LCTA bus backed over him as he walked behind it.

Both parties have already settled out of court for undisclosed amounts. The case file, which had been sealed in its entirety as the result of a glitch in the case management software, was unsealed at the conclusion of the trial Thursday. A review of the documents turned up only redacted copies of the settlement papers.

The jury on Wednesday also found Rehill 15 percent responsible for the accident and LCTA bus driver Donna Smith 5 percent responsible. Pennoni, with 30 percent, was found most at fault of any involved party.

Before the jury began its deliberations into the amount of punitive damages Thursday, Pennoni attorney John O’Rourke told its members that the company accepted its verdict.

“We apologize for our negligent design,” O’Rourke said. “You have found it so and we accept your finding.”

But he asked jurors to consider whether the lead designer, former Pennoni employee Lawrence Fetich, had the intent to kill anyone with the design. O’Rourke also pointed out that the jury had found Pennoni only 30 percent responsible, with others involved accounting for a majority 70 percent of the responsibility.

The accident, he said, was the result of a “perfect storm” of five parties, all of whom were negligent to some extent. Pennoni did not enter into the project knowing that a center-island design of a transportation facility was known to cause death, he said.

In fact, Rehill’s death was the first accident involving the facility and the first time Pennoni heard a complaint about the design, he said.

“I can assure you we’re not going to do this again. We got your message,” O’Rourke said. “We get it. We’re not going to have a center island with buses backing up. Thank you for that.”

Selingo countered that it was too little, too late.

“Of course the apologies come out now,” he told the jury. “Where were they before? Where were they when Mr. Rehill used the facility?”

Selingo argued that Fetich, who he maintains got the job because of his political connections, knew from the beginning that backing up buses is dangerous and that the current design of the facility would cause pedestrians to walk among the buses.

The firm’s negligence led to a terrifying end for Rehill, who tried to run from the bus before falling to the ground and being run over, he said.

Jurors, he argued, needed to send a message to other firms across the country that “safety is paramount” and that engineers

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can't let public officials dictate design plans regardless of their lack of safety.

"Engineers have a responsibility for what they're designing," Selingo said. "They're our experts."

He urged the jury not to simply take O'Rourke's word that Pennoni wouldn't engage in the same conduct again.

"We hope not," he said. "But we want to make sure of that."

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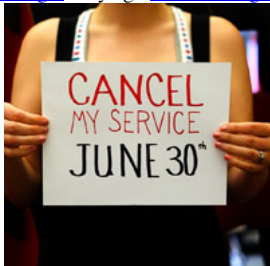
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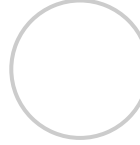
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