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Jury: Intermodal designer negligent in W-B man's death

BY JAMES HALPIN

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The negligence was shared, but on Wednesday a jury decided Philadelphia-based Pennoni Associates Inc. would pay.

After a little over five hours of deliberation, the jury found that most everyone involved played a role in the September 2011 death of 86-year-old Wilkes-Barre resident Edward Rehill, who was crushed by a Luzerne County Transportation bus that backed into him as he walked behind it at the James F. Conahan Intermodal Transportation Facility.

For its role designing the facility, Pennoni was ordered to pay \$350,000 in compensatory damages. That amount is likely to increase, however, because

jurors found the company's conduct "outrageous" and were instructed to return this morning to calculate punitive damages to prevent others from engaging in similar behavior.

The seven-day trial ended Wednesday evening with the jury finding Pennoni negligent in the accident for what Rehill's estate described as a "flawed and dangerous" design. But while Pennoni was found most responsible with 30 percent of the fault, jurors also found the LCTA and City of Wilkes-Barre 25 percent responsible each, Rehill himself 15 percent responsible and LCTA bus driver Donna Smith 5 percent responsible.

Rehill's estate filed suit against the LCTA, City of Wilkes-Barre and Pennoni, but the first two previously settled for amounts that have been sealed by court orders.

Because jurors aren't allowed to know about the settlements, plaintiffs' attorney David J. Selingo found himself in the unlikely position of minimizing their involvement during his closing argument Wednesday. Jurors heard it was Pennoni's negligence — and an inside connection — that resulted in Rehill's untimely death.

Selingo characterized Rehill as a member of the "Greatest Generation," a former serviceman who needlessly died during his daily lunchtime routine because of a design flawed by the failure of the lead designer, former Pennoni employee Lawrence Fetich, to shoot down dangerous ideas city officials had in mind.

Selingo, who earlier in the trial said Pennoni donated to the campaign of Wilkes-Barre Mayor Tom Leighton and knew it would land the design contract before a request for proposals even went out, detailed his allegations Wednesday as he told jurors Pennoni put Fetich on the job specifically because of his connections, despite his lack of experience.

"They chose him because he had a relationship with the City of Wilkes-Barre," Selingo said. "He was promised this project."

Selingo asserted that Leighton at one point assured architects Don Sanderson and Jeff Pyros that Pennoni was going to land the project and that they teamed up with the firm to get in on it. Leighton also "dictated" that Pasonick Engineering would be a subcontractor on the project, he said.

Wilkes-Barre engineer Michael J. Pasonick Jr. was sentenced in March 2012 to a year in prison and a \$250,000 fine for bribing government officials.

During an interview with The Citizens' Voice last week, Leighton vehemently denied ever being influenced by campaign contributions and said Pennoni landed the job only after the RFP went out and an impartial selection committee recommended it.

Selingo asserted during his closing that design problems weren't corrected because Fetich lacked the "personality" to tell city officials the project they envisioned was too large for the site.

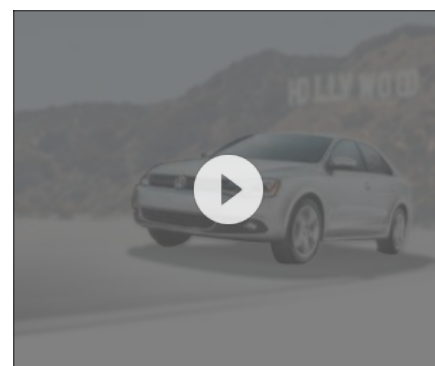
"What is the result? Mass confusion," Selingo said. "This is clearly foreseeable, what was going to happen here."

What happened was that Rehill was backed over as he walked with a cane across the back of a bus that had a malfunctioning rearview camera monitor and no spotter in place to prevent it. Pennoni is at fault for designing a facility that is unsafe without those features — even though in the eyes of authorities those items are voluntary, he said.

"Why not make the design safe in the first place?" Selingo asked, calling the design that requires buses to back up "flawed and dangerous." "They created the dangerous condition at the facility. They should have made it safe."

He ended his closing with a graphic description of Rehill's suffering at the end, detailing how the flesh was torn from his leg and his chest crushed by an axle as he desperately tried to roll and avoid its path.

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“What kind of pain did that man face? What kind of fear?” Selingo asked. “How long did he last in that situation?”

Pennoni attorney John O'Rourke, who presented his closing first, acknowledged that “no human being deserves that” type of an ending, but he questioned where the blame lies. An engineering expert the plaintiffs put on the stand, for instance, has never designed an intermodal facility, he said. The witness placed no blame at all on the bus driver, Donna Smith, or on Rehill himself, despite him being a regular at the facility who had been warned at least 10 times not to walk behind the buses — including the day before he died, O'Rourke said.

“Everything goes to the design,” he said.

He asked the jurors, who aren't supposed to know about the settlements with the other defendants, why the case has changed since it was filed with the LCTA and city as the first and second defendants, respectively. The plaintiffs' expert, for instance, wrote a report blaming the LCTA for failing to hire spotters or maintain working surveillance monitors, but his testimony was different in court.

“Now it's all Pennoni's fault,” O'Rourke said, questioning the shift in blame.

Everybody involved in the planning was on board with the design and no one foresaw that people would ignore the signs and walk across the asphalt, he said. Once the project was finished, Pennoni's involvement was over and it was up to the city and LCTA to maintain it in a safe fashion, he said.

“That's an operational issue,” O'Rourke said.

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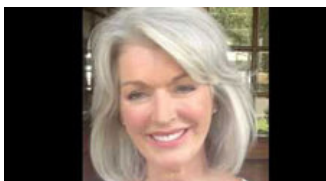
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