

Missouri Lawyers WEEKLY

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Insurance company settles with wrong person

Initial \$50,000 settlement upped to \$700,000



Steve Kuenzel

The family of an emergency medical technician killed while responding to an emergency received a \$700,000 settlement from the insurer of the driver who hit her. That's after an initial \$50,000 insurance settlement was later ruled invalid.

Around 9:50 a.m. on June 15, 2003, EMT Billielin Cobb was responding to an emergency in her personal vehicle, which was equipped with a light. She was driving eastbound on Route ZZ in Franklin County; Jerry Cooper was driving westbound.

As Cooper rounded a turn, his vehicle drifted into Cobb's lane, and the vehicles collided. Cobb, 33, was seriously injured. Her coworkers came to her aid to free her from the car, but she later died at St. John's Mercy Hospital in St. Louis.

She left behind three children, then ages 17, 13 and 10. She was divorced from their father, who had serious medical problems, said Jeff Bauer, who represented the children through their guardian ad litem, Faye Owsley.

After the wreck, Cobb's mother, Eleanor Bangs, tried to settle the case with Cooper's insurance company. Following a wrongful death settlement hearing, American Family Insurance paid the policy limits of \$50,000, Bauer said.

"The problem was she was never appointed as their next friend or guardian ad litem. Before you can take action on behalf of three minor children, you have to have court approval," he said.

What's more, it appears the children never received the money, he said.

Because the children were minors, the courts eventually appointed a guardian ad litem, Faye Owsley. The oldest, William (now serving in the U.S. Army) turned 18 in the interim, and he and Owsley worked to recover the insurance payment. They sued Cooper for wrongful death and demanded the insurance policy limits of \$50,000, Bauer said.

But the insurance company moved to dismiss the case, citing the prior settlement and payment. That led to a lawsuit against Cooper, Bauer said. In a flurry of legal documents, the plaintiffs argued Bangs never was duly appointed the children's next friend or guardian.

"The court determined the prior settlement wasn't valid, and their insured was going to have to stand for the wrongful death of Billielin Cobb," he said.

The parties started taking depositions to prepare for trial, he said.

Steve Kuenzel, who represented Cooper, said the lawsuit accused the insurance company, American Family, of acting in bad faith. He said the parties settled because the case involved so much uncertainty, not to mention a set of facts very sympathetic to the plaintiffs.

"You've got the death of a mother of three, the father was battling a very serious illness, and may not be around all that much longer, and on top of that you have the decedent, who was on an ambulance call when the accident happened," he said, adding that, also, Cooper pleaded guilty to a careless and imprudent driving charge. "There were a lot of factors here that would have made this case worth a lot more than the original \$50,000 policy limits."

In the end, the parties settled for \$700,000, 14 times the value of the insurance policy limits, Bauer said.

"It's not usual that you see an insurance company settle the case once, and turn around and have to pay again," he said.

Kuenzel — who was not involved in the original settlement with the grandmother — said he agreed the case was unusual.

"I would say if there is a moral to the story, it's that lawyers need to be very careful to follow the statutes when you are doing a minor settlement or a wrongful death, and particularly when you have both combined," he said.

— Rebecca Boyle

■ \$700,000 settlement

WRONGFUL DEATH

- **Court:** Franklin County Circuit Court
- **Case Number/Date:** 06AB-CC00137/Dec. 22, 2010
- **Judge:** T. Bennett Barkemper Jr.
- **Plaintiff's Experts:** Larry Cox, Springfield (accounting, damages, economics); Dr. Stanley Sakabu, St. Louis (surgical specialties)
- **Defendant's Experts:** Thomas Ireland, St. Louis (accounting, damages, economics)
- **Special Damages:** Lost wages of \$414,552 to \$472,110, plaintiff's expert said; lost wages of \$87,714, defendant's expert said
- **Past Medical:** \$33,916
- **Insurer:** American Family Insurance
- **Caption:** Faye Owsley et al. v. Jerry D. Cooper III
- **Plaintiff's Attorneys:** Todd Werts and Brad Lee, Lee Werts, Columbia; Jeff Bauer and Grant Rahmeyer, Steag, Bauer, Gassner, Springfield
- **Defendant's Attorney:** Steve Kuenzel, Eckenkamp Kuenzel, Washington