

MissouriLawyers WEEKLY

"Top Plaintiff Win in 2011" in Platte County, Missouri (as reported January 30, 2012)

View Verdict and Settlement

Case Detail

Type: Verdict for plaintiff(s)

Total Value: \$5,000,000.00

Breakdown and distribution of Total Value: 5,000,000 bench verdict; separate \$500,000 settlement with insurer State Farm

Allocation of Fault:

Verdict/Settlement Date: 3/8/2011

Type of Action: Wrongful Death

Type of Action Description:

Court: Platte County Circuit Court (MO)

Case Number: 10AE-CV03126

Caption: *Patrick Cockrill, Diana Cockrill v. John Allen McNamara*

Plaintiff(s) v. Defendants(s)
Patrick Cockrill John Allen McNamara
Diana Cockrill

Injuries Alleged: Death

Trial

Tried Before: Judge

Person Presiding: Owens Lee Hull Jr.

Attorney(s) for Plaintiff(s)

Lead Attorney: Quint Shafer

Firm: Shafer & Welch (Weston, Missouri)

Other Attorney: Jeremy Webb

Firm: Shafer & Welch (Weston, Missouri)

Attorney(s) for Defendant(s)

Lead Attorney: Keith A. Cary
Firm: Franke, Schultz & Mullen (Kansas City, Missouri)

Other Attorney: James L. Sanders
Firm: Wallace, Saunders, Austin, Brown & Enochs (Overland Park, Kansas)

Insurance Carrier(s)

Company: Progressive Direct Insurance Co.
For: Defendant John Allen McNamara

Company: State Farm Insurance Co.
For: Plaintiff Patrick and Diana Cockrill

Plaintiff(s) Expert(s)

Expert: M. A. Cool
Title: Sgt.
Specialty: Accident Reconstruction
Company/Institution: Missouri State Highway Patrol

City/State: Higginsville, Missouri

Defendant(s) Expert(s)

No defendant experts

Case Summary**High-speed crash prompts \$5 million verdict**

Plaintiffs tried to attach criminal bond to civil case

A Platte County judge has awarded \$5 million to the family of a 22-year-old woman killed when a driver sped 150 mph and rear-ended the car in which she was traveling.

The judgment of \$3 million in actual damages and \$2 million for aggravating circumstances is largely a symbolic win for the woman's family, said Quint Shafer, the plaintiffs' attorney. He said the parties agreed beforehand that defendant John McNamara and his family would pay plaintiffs Patrick and Diana Cockrill \$300,000, no matter the judgment amount.

Of that \$300,000 amount, \$200,000 came from part of a cash bond McNamara posted shortly after his August arrest. Attaching the cash bond to a civil judgment was a unique element of the wrongful death suit that required a lot of analysis and paperwork, Shafer said.

"It's pretty unusual for anyone to be able to come up with a large cash bond in a criminal case," Shafer said. "I saw that as a possible asset that could be used to satisfy the judgment we might be able to obtain in the civil case. The question was, how to do it."

In the early hours of Aug. 22, McNamara was behind the wheel of a 2010 Chevrolet Camaro, traveling north on Interstate 29 near Barry Road. Barreling down the freeway at more than 150 mph, according to the Camaro's black box, McNamara looked down momentarily at his speedometer. When he looked up, a car carrying 22-year-old Abby Cockrill appeared in front of him.

The Camaro clipped the back left side of the car, knocking it off the freeway. The roof of the car crushed Cockrill, who was seat-

belted into the passenger side of the car. She died of blunt-force trauma. McNamara and the other driver suffered only minor injuries.

McNamara, a production supervisor at a General Motors plant in Kansas City, had been drinking that night at a Jackson County establishment, Shafer said. According to the police report, McNamara's blood alcohol content was .17. Shafer said he is considering filing a dram shop liability suit against the bar that served McNamara.

McNamara pleaded guilty to first-degree involuntary manslaughter and second-degree assault. Two days after Platte County Circuit Judge Owens Lee Hull Jr. issued the \$5 million civil judgment, he sentenced McNamara to 17 years in prison.

J.R. Hobbs, McNamara's Kansas City criminal defense attorney, said even if McNamara offered part of his cash bond to the civil plaintiffs, Platte County prosecutors had indicated they wouldn't budge from their request for a 20-year-sentence.

Still, the \$200,000 portion of the cash bond was offered as a mitigating factor at sentencing, Hobbs said, along with other mitigating factors, such as McNamara's guilty plea, genuine remorse, gainful employment and his participation in alcohol counseling.

"It was a difficult case for all sides," Hobbs said. "Mr. McNamara tried to bring closure with his plea of guilty and his acceptance of responsibility."

In December, the Cockrills filed an affidavit in support of the prejudgment attachment of McNamara's \$250,000 cash bond, citing Supreme Court Rule 85.08 and R.S.Mo. 521.070.

When they tried to attach the bond to the civil matter, the Cockrills had to post their own bond for an identical amount, Shafer said. That's because when it comes to a criminal bond, the state of Missouri is, in effect, the first lien holder, he said. If the Cockrills did successfully attach the bond, receive the money and squander it, then the state would have no bond to ensure McNamara's presence in court, Shafer said.

"They went to their bank and basically got a letter of credit. They provided that to a surety company, which then provided a \$250,000 bond," Shafer said. "That met the requirement of the court rule."

Hull never got the chance to rule on whether any part of McNamara's criminal bond could be attached to the civil judgment. The parties negotiated and decided that \$200,000 of the bond would be paid to the Cockrills, Shafer said. Progressive Direct Insurance Co. chipped in another \$100,000, the limits of McNamara's insurance policy.

"The defendant had already pleaded guilty. He was going to be sentenced within a couple of days," Shafer said. "We believed it was more efficient while he was pending sentencing to adduce evidence, have testimony and let Judge Hull rule on the issue of damages."

Keith A. Cary, the Franke, Schultz & Mullen attorney for McNamara in the civil case, did not return phone calls seeking comment by press time.

The Cockrills also filed an underinsured motorist claim with their insurer, State Farm Insurance. State Farm settled with the Cockrills in February, allowing the couple to stack five separate policies for a total of \$500,000.

James L. Sanders, the Overland Park, Kan., attorney for State Farm, said his client does not allow him to comment on cases.

As part of the agreement with McNamara, the parties agreed to submit the facts of the case to Hull. Shafer said he offered evidence from an administrator from Northwest Missouri State University, where Abby Cockrill was finishing her education and training to become a teacher. The administrator estimated that Cockrill could have earned close to \$2 million over a 30-year-career as an educator, plus \$14,000 a year in retirement benefits.
