

Below is the article from The Legal Intelligencer with the name of the product manufacturer redacted because of a confidentiality agreement.

## The Legal Intelligencer

### Kline Secures Settlement Among Wayne County's Largest

The Legal Intelligencer

By Amaris Elliott-Engel

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Philadelphia attorneys have secured a \$3.2 million settlement for the widower of a Wayne County woman killed by a piece of farming equipment that whipped loose from the truck hauling it on the open road.

Wayne Common Pleas President Judge Raymond Hamill indicated the settlement may be the largest ever in Wayne County and that there has been only one \$1 million verdict before in a rural northeastern county with a population of 47,000, according to plaintiffs lawyer **Thomas R. Kline** of Kline & Specter. Hamill could not be reached.

"This venue was seen as a 'low value venue' where a plaintiff, regardless of the merits, would not succeed," Kline said. "There were many attempts to convince us that the case had a much smaller value than the ultimate settlement."

Schoolteacher Michele Curtis was driving to work at the Damascus Elementary School about 7:45 a.m. Nov. 3, 2005, when a wet lime spreader broke loose from defendant Edward Schweighofer's Ford F-250 pickup, the plaintiff's pretrial conference memorandum said. Curtis died after the lime spreader collided with Curtis' Chevy Blazer.

The settlement in *Curtis v. Schweighofer* was reached Feb. 9, according to copies of the release.

Curtis' husband, Ronald P. Curtis, brought claims of strict liability and negligence against [the manufacturer of the lime spreader]. Curtis brought claims of negligence against Schweighofer, who was driving the truck to which the spreader was attached and rented the spreader to other

farmers, and Jesse Rake, who helped Schweighofer hook the spreader to his truck, and Schweighofer's farm, Twin Brook Farm.

Schweighofer, Rake and Twin Brook Farm, insured by Westfield Insurance Co., settled for \$2.5 million, according to the release. That tendered the policy limits, Kline said. [The manufacturer of the lime spreader], insured by Harleysville Insurance, settled for \$700,000, according to the release.

Schweighofer was in the westbound lane of State Route 371, Lebanon Township, going up a hill and around a slight bend, while Curtis was in the eastbound lane, the plaintiff's memorandum said. The spreader was connected to Schweighofer's truck by a clevis hitch mechanism and two safety chains. When the spreader broke loose, it crashed into the passenger compartment, crushing the Blazer into Curtis' chest.

Schweighofer purchased the spreader in 1999 from James R. Hazelton, who was initially named as a defendant because Schweighofer claimed that the hitch was rewelded prior to his purchase of the spreader, Kline said. Hazelton was later released because of the belief that the hitch was welded while Schweighofer owned the spreader, Kline said.

Schweighofer was unreasonable in towing the spreader with a badly repaired hitch, the plaintiff's memorandum said.

Schweighofer's pretrial memorandum said that he had used the spreader in his own fields and towed the spreader hundreds of times without incident to rent the spreader to other farmers. Schweighofer also denied in his memorandum making any repairs to the hitch and said the safety chains were connected to his truck.

[The manufacturer] was liable because of defects in the spreader's design and manufacturing, including that it should have been foreseeable that the weakness of the original tongue-clevis weld would result in a fracture due to fatigue and the need for an eventual repair of the weld, the plaintiff's memorandum said.

Kline said of the countless products liability cases he has handled "this one fell into the extremely difficult category" because it involved a 24-year-old machine that had extensive modifications on it.

... Papers from the Schweighofer defendant and the plaintiff noted that there had been another accident in Clinton County, New York, in 2000 involving a ... spreader that broke away from the pickup truck hauling it and killed a driver coming in the opposite direction.

[The manufacturer]'s memorandum, however, said that the *Curtis* case was the first "personal injury case ever filed against the [manufacturer] in more than three decades of service to the farming community" and during the sale of 1,679 wet lime spreaders.

Schweighofer's metallurgical expert, Robert W. Hinton, opined that the metal inert gas form of welding used by [the manufacturer]'s welders resulted in a shallow, less effective penetration by the welded parts, Hinton's expert report said.

[The manufacturer] argued in its memorandum that the safety chains were not attached at the time of the accident and that a "substantial and substandard after-market modification" was the cause of the spreader detaching from Schweighofer's truck.

[The manufacturer] specifically claimed in its memorandum that Schweighofer, Rake and another witness changed their deposition testimony from the statements they gave to the Pennsylvania State Police to indicate that the safety chains were connected.

Plaintiff economic witness David Hopkins estimated that Curtis' past and future earnings capacity was \$2.3 million to almost \$4 million and that the past and future loss of household services to Ronald Curtis and Marshall Curtis, their 18-month-old son, was \$710,236.

Hamill placed the \$3.2 million value on the case, Kline said.

Schweighofer's economic experts, Chad L. Staller and Pia Di Girolamo, opined that Curtis' actual loss of past and future earning capacity was closer to \$1.3 million to \$1.6 million, the defense memorandum said.

According to papers, the plaintiff argued Curtis was conscious and suffering from asphyxiation after the accident, but the defendants said Curtis did not experience any conscious pain and suffering. Kline said it would have been difficult to prove anything other than transient pain and suffering.

**David K. Inscho** of Kline & Specter was plaintiff's co-counsel.

Gregory S. Hirtzel of the Post & Schell office in Lancaster represented Schweighofer and Rake. Michael T. Blazick of the Law Offices of Michael T. Blazick in Plains, Luzerne County, represented [the manufacturer]. Hirtzel and Blazick could not be reached. •