

Phila. Firm Settles Amusement Park Death Case for \$1.9 Mil.

The Legal Intelligencer

By Amaris Elliott-Engel

January 29, 2010



Tom Kline of Kline & Specter

Philadelphia lawyers have secured a \$1.9 million settlement in the case of a woman killed in 2002 at an iconic Allegheny County amusement park.

Stephanie Wilkerson, 29, was killed when a roof covering the Whip ride at Kennywood Park collapsed during a May 2002 storm, the plaintiffs' amended pretrial statement said. Wilkerson was pushed into a wrought iron fence, and her body and skull were crushed.

The case settled Jan. 15 in front of Allegheny County Common Pleas Judge Paul F. Luty, the judge overseeing the conciliation conference in the case. The case was set to go to trial in the liability portion of the case this week.

Plaintiffs Sylvester and Helen Wilkerson, parents of Stephanie Wilkerson, claimed in their lawsuit that Kennywood Park Co. committed negligent and outrageous conduct for failing to use technical construction documents in the construction of the Whip pavilion that would account for the safety of the building, failing to have the pavilion inspected by a certified engineer and failing to obtain a

building permit, according to plaintiffs' papers. The plaintiffs also said in papers Kennywood was negligent for failing to have an adequate evacuation plan for park patrons in case of a severe storm or other emergency.

The plaintiffs also claimed Landau Building Co., the contractor that built the pavilion, was negligent because Landau violated its own practice and agreed to build the pavilion based only on conceptual drawings and without technical construction drawings. Landau agreed to rely on the conceptual drawings after Kennywood agreed to indemnify Landau in the construction of the pavilion, the plaintiffs' pretrial statement said.

Kennywood has agreed to pay \$1.295 million to the Wilkersons, including \$900,000 to be paid by Kennywood's insurer, Chartis Insurance, and \$395,000 to be paid by Kennywood itself, according to a transcript of the Jan. 15 conciliation conference.

Kennywood also agreed to retain a licensed structural engineer to inspect all buildings constructed by Landau at the amusement park to ensure the buildings can withstand the force of high winds, according to the transcript.

Landau has agreed to pay \$650,000, according to the transcript of the conciliation conference.

Plaintiffs' counsel included **Thomas R. Kline**, Jonathan M. Cohen and Royce W. Smith of Kline & Specter in Philadelphia.

Kline said his firm suggested to their clients that the plaintiffs require an inspection of the other buildings constructed by Landau at Kennywood as part of the settlement.

"That provided the family the kind of comfort ... that will let them have the feeling that they have achieved more than just compensation," Kline said.

The damages portion of the case was tried July 20, 2007. The jury awarded \$1.2 million in compensatory damages, including \$350,000 in damages for loss of services and loss of society and comfort, according to the verdict sheet.

Kennywood's defense counsel, David B. White of Burns White & Hickton in Pittsburgh, could not be reached Tuesday afternoon. Jennifer L. McPeak of Burns White and Sean P. Hannon of Dell Moser Lane & Loughney also are Kennywood's counsel.

Landau's defense counsel, James W. Kraus of Pietragallo Gordon Alfano Bosick & Raspanti could not be reached Tuesday afternoon. Kathryn M. Kenyon of Pietragallo and Thomas P. Mannion, Todd A. Gray and Rami M. Awadallah of Mannion & Gray Co. in Cleveland also are Landau's counsel.

Kennywood admitted no fault or liability, White said in the Jan. 15 conciliation conference.

In particular, the plaintiffs claimed the pavilion was built with six-inch by six-inch columns, instead of eight-inch by eight-inch columns as set out in the conceptual drawings, court papers said.

The plaintiffs' structural engineer expert witness, Thomas M. Shingler, offered the opinion that the pavilion's roof was defectively built because wind forces were able to build up and apply force to the underside of the roof trusses, plaintiffs' papers said. The plaintiffs said that sway bracing must be designed to keep the structure stable, but the defendants failed to adhere to this engineering principle.

The plaintiffs were able to amend the complaint to plead punitive damages, Kline said.

However, despite the possibility of obtaining punitive damages in the liability portion of the trial, Kline said settlement was in the best interest of the plaintiffs, for among other reasons, the possibility of the defense getting a new compensatory damages trial; Kennywood is a "storied institution and generally beloved institution" in Allegheny County; and the defense might be able to make an appealing argument to jurors that the storm was an unforeseeable "act of God."

"We thought that was a reasonable walk-away," Kline said.

Kennywood said in its first pretrial statement that it began a \$20 million expansion of the park in 1994. Bruce Robinson was hired to create conceptual drawings of the "Lost Kennywood" project, and Landau Building Co. was hired as general contractor, court papers said.

Kennywood said it relied on Landau to ensure that construction of the pavilion was done correctly and that Kennywood management was not part of the decision to use six-inch by six-inch, instead of eight-inch by eight-inch, columns. Kennywood said Landau had constructed quality projects for Kennywood and other affiliated parks in the past and Landau told Kennywood that it had the engineering and building skills to do the work, Kennywood's pretrial statement said.

"Because Kennywood hired a qualified general contractor to construct Lost Kennywood and build the Whip pavilion, Kennywood did not hire an engineer or architect to prepare building specifications or

inspect construction ... ," court papers said. "Kennywood did not discuss these issues with Landau because that is why Kennywood hired Landau."

Kennywood also said in court papers there were no tornado or macroburst warnings prior to the collapse of the pavilion, and the storm "severely and instantly changed" from a rainstorm into a gusty, severe thunderstorm.

"Kennywood handled the approaching storm per industry standard and its actions with regard to the handling of the approaching storm and its decision to not evacuate the park for an approaching thunderstorm is industry standard," Kennywood's pretrial statement said.

Landau said in its pretrial statement that the pavilion was soundly constructed, but that the winds that tore the roof off the pavilion were the result of winds from a "macro burst, cyclogenic thunderstorm or tornado" that would have blown over most buildings. •