

JOHNSON & WARD

TORTS: NEGLIGENCE: TRACTOR TRAILER/PICKUP TRUCK: WRONGFUL
DEATH: VERDICT

RE: Mrs. Ethel M. Fritts, Administratrix of the Estate of Paul Silas Elder, Deceased vs. Anderson Trucking Service, Inc., A Minnesota Corporation, Hicks Trucking Company of Litchfield, Inc., A Minnesota Corporation, and Thomas Eugene Francis
U.S. District Court Civil Action File No. 4:95-CV-0197-HLM

Verdict: \$750,000.00, returned October 18, 1996.

Offer/Demand: Plaintiff's final offer was \$950,000.00, though plaintiff indicated she would settle for less if defendants would move on their offer. Defendants' final offer was \$250,000.00.

Attorneys: William C. Lanham and Clark H. McGehee, JOHNSON & WARD, Atlanta, Georgia, for plaintiffs. David W. Noblit and Chris Moore, LEITNER, WARNER, MOFFITT, WILLIAMS, DOOLEY & NAPOLITAN, P.L.L.C., Chattanooga, Tennessee, and John E. Hall, Jr., SULLIVAN, HALL, BOOTH & SMITH, Atlanta, Georgia, for defendants.

Insurance Carrier: St. Paul Fire & Marine Insurance Company.

On October 9, 1994, Paul Silas Elder, 57-years of age, was driving his Chevrolet S-10 pickup truck in a northerly direction on U.S. Highway 41 in Catoosa County, Georgia. Thomas Eugene Francis was driving a tractor trailer truck on behalf of his employers, Anderson Trucking Service, Inc. and Hick's Trucking Company of Litchfield, Inc., and was proceeding in a southerly direction on U.S. Highway 41, approaching Elder's pickup truck from the opposite direction.

U.S. Highway 41, at the point of this incident, was a winding, two lane roadway. Near its intersection with Wooten Road, it curves sharply to the west for vehicles proceeding in a northbound direction. At the time of this incident, the vehicles were proceeding in a driving rain storm. As Francis proceeded

into this sharp curve, a collision occurred between his trailer and Elder's pickup truck. Plaintiff contended that Francis lost control of his tractor trailer rig in the curve, permitting the trailer to slide across the centerline into the northbound lane of travel, where it violently struck the pickup truck driven by Elder, which was proceeding into the curve at the same time. As a direct and proximate result of the collision, Elder was killed.

Elder left no spouse or children surviving him, and his elderly sister, Ethel Fritts, Administratrix of his Estate, brought this wrongful death action.

The liability dispute centered on which vehicle had crossed the centerline. There were two eyewitnesses to the incident, who were following behind Elder's pickup truck. They testified that the tractor trailer rig never crossed the centerline, and that Elder's pickup truck had lost control and gone across the centerline, striking the trailer. Francis also stated that he did not cross the centerline, but that he saw Elder's truck approaching at an excessive speed, driving erratically, and that Elder passed him and crossed the centerline, striking his trailer. Plaintiff contended that based upon the eyewitnesses' distance from the point of impact, and the limited visibility due to weather conditions, it would have been virtually impossible for them to see the actual collision, or determine the point of impact. Moreover, plaintiff established, through prior statements of these witnesses, that they had indicated shortly after the collision that they saw the impact only after it had occurred, when they saw steam and/or smoke, and the pickup truck

came spinning down the road toward them. Plaintiff also contended, based upon the physical evidence at the scene, including gouge marks and photographs taken by the Georgia State Patrol, that the impact must have occurred in Elder's lane of travel, that the trailer had lost control due to the sharp curve and inclement weather conditions, and that it had been allowed to slide across the centerline and strike Elder's truck in the northbound lane.

There was no evidence of speeding by the tractor trailer, and it was essentially undisputed it was travelling between 30 and 32 miles per hour at the time of the collision, but plaintiff asserted Francis must have been travelling too fast for conditions to lose lateral control of the trailer. Defendants, however, retained a reconstruction expert, who testified that it would have been impossible for the trailer to lose traction and slide at that speed, since the "critical speed" for such loss of traction was substantially higher than the speed Francis contended he was driving, and that had the trailer lost control in that fashion, it would have been unlikely that the driver could have regained control, and bring his tractor trailer to a stop down the road where he did after the incident. Based upon the testimony of the investigating State Troopers, however, as well as plaintiff's own accident reconstruction expert, plaintiff contended that the physical evidence clearly indicated that the impact had occurred in Elder's lane of travel. Plaintiff further showed that defendants' truck was between 3 1/2 and 8 1/2 feet overlength for that roadway, in violation of Georgia law, though

it was disputed as to whether the overlength condition contributed to any alleged loss of control. Defendants contended that they had a permit for an overlength truck to proceed on the interstate highways, and that the truck driver had been forced onto U.S. 41, due to traffic congestion which had caused him to detour from I-75 just north of the site of this incident.

At the time of his death, Elder was working as a maintenance man at a local packaging plant, earning approximately \$19,000.00 per year, and was survived by three elderly sisters. There was no evidence of any pre-impact or post-impact conscious pain and suffering, and so the sole issue for jury determination was liability and the value of Elder's life.

The case was tried over a four-day period in U.S. District Court in Rome, Georgia, and the jury returned a verdict on October 18, 1996 after approximately one hour of deliberation.