

# PRODUCTS LIABILITY

## AUTOMOTIVE

### CONCRETE MIXER

Single Vehicle — Truck — Crashworthiness

## Drum of concrete mixer crushed driver in his cab

**SETTLEMENT**    **\$3,000,000**

**CASE**            Karen Conley and Dennis Conley, individually, and as administrators of the Estate of Raymond Lee Conley v. Oshkosh Truck Corporation, McNelos Truck & Manufacturing Inc., Bergey's Inc., Bergey's Retread Technology Inc., Rock Hill Materials Company, Rock Hill Trucking Company Inc., Bridgestone/Firestone North America Tire LLC and Bridgestone America Holding Inc.,  
No. C-48-CV-2005-2895

**COURT**            Northampton County Court of Common Pleas, PA

**JUDGE**            Anthony S. Beltrami

**DATE**              10/1/2009

**PLAINTIFF**

**ATTORNEY(S)**    Jonathan M. Cohen, Kline & Specter, Philadelphia, PA  
James J. Waldenberger, Kline & Specter, Philadelphia, PA

**DEFENSE**

**ATTORNEY(S)**    Gerhard Dietrich, Daller, Greenberg & Dietrich, LLP, Conshohocken, PA (Bridgestone America Holding Inc., Bridgestone/Firestone North America Tire LLC)  
John A. Livingood, Jr., Margolis & Edelstein, Philadelphia, PA (Bergey's Inc., Bergey's Retread Technology Inc.)

Stephen D. Menard, Burns, White & Hickton LLC, West Conshohocken, PA (McNelos Truck & Manufacturing Inc., Oshkosh Truck Corporation)

Jeffrey H. Quinn, Dickie, McCamey & Chilcote, P.C., Philadelphia, PA (Rock Hill Materials Company, Rock Hill Trucking Company Inc.)

Joseph Trabucco, Burns, White & Hickton LLC, West Conshohocken, PA (McNelos Truck & Manufacturing Inc., Oshkosh Truck Corporation)

**FACTS & ALLEGATIONS** On April 30, 2003, plaintiff's decedent Raymond Lee Conley, a 31-year-old truck driver, was driving an Oshkosh S-Series, front discharge concrete mixing truck on Route 33, in Palmerton, when the front right Bridgestone tire of the truck blew out. Conley veered off road and hit a shallow embankment. Upon impact, the drum of the concrete mixer broke into the cabin of the vehicle and crushed Conley. Emergency personnel found Conley dead.

Conley's estate sued Oshkosh Truck Corp.; McNelos Truck & Manufacturing Inc., the manufacturer of the drum; and Bridgestone/Firestone North America Tire LLC and Bridgestone America Holding Inc. for products liability (design defect and manufacturing defect) that resulted in his wrongful death. Conley's estate also sued Bergey's Inc. and Bergey's Retread Technology Inc., for a manufacturing defect in retreading the tires.

The defendants subsequently joined Conley's employer, Rock Hill Trucking Company Inc. and its related entity, Rock Hill Materials. Bridgestone and Rock Hill Trucking were dismissed on summary judgment and the matter went forward against Bergey's, McNelos, Rock Hill Materials and Oshkosh.

Plaintiff's counsel asserted that striking the embankment should not have caused the drum to puncture the cabin since

Conley had been going about 55 mph and then reduced speed to about 15 mph when the tire blew out.

McNelos was sued initially because it had manufactured the drum, however, plaintiff's counsel never presented any allegations against it.

Plaintiff's counsel argued that the Oshkosh cabin of the truck wasn't reinforced in any way to prevent the drum from crashing into the cabin. Counsel asserted that the cabin should have been designed with a roll cage or other support system. Plaintiff's counsel also asserted that Oshkosh was liable for an internal manufacturing crack in the transmission shaft that caused the drum to slide forward upon impact. While Oshkosh didn't manufacture the shaft, plaintiff's counsel alleged it was liable for selling the truck with a damaged transmission shaft.

Plaintiff's counsel argued that Bergey's negligently retreaded the 10-year-old tire and installed it.

Oshkosh maintained that the truck wasn't defective and McNelos argued there was no manufacturing defect that caused the transmission shaft to crack.

The defense maintained that Rock Hill was liable for the negligence that caused Conley's death because it failed to inspect Conley's truck despite his complaints in the weeks leading up to the accident. It was noted that on 14 of the 16 work days leading up to the accident Conley lodged complaints with his employer about the condition of the tires.

#### **INJURIES/DAMAGES** *death; loss of society*

Plaintiff's counsel sought \$1.8 million for Conley's future wage losses and unspecified damages for his conscious pain and suffering for one to three minutes before he died of asphyxia..

The defendants argued that Conley died immediately and didn't suffer any conscious pain and suffering.

**RESULT** The parties settled for \$3 million. Oshkosh paid \$2 million, Bergey's paid \$600,000 and Rock Hill paid \$400,000.

#### **PLAINTIFF**

##### **EXPERT(S)**

Gary A. Derian, P.E., tires,  
Columbus, OH  
Erik Carlsson, crashworthiness, Chester, NJ  
Ian Hood, M.B., Ch.B., J.D., forensic  
pathology, Philadelphia, PA  
David L. Hopkins, A.S.A., economics,  
King of Prussia, PA  
Campbell Laird, Ph.D., metallurgy,  
Stockbridge, MI  
Howard Medoff, P.E., biomechanical,  
Philadelphia, PA

Wayne K. Ross, M.D., forensic pathology,  
Lancaster, PA

Steven M. Schorr, P.E., accident  
reconstruction, Abington, PA

#### **DEFENSE**

##### **EXPERT(S)**

Cleve Bare, P.E., accident investigation &  
reconstruction/ failure analysis/product  
liability, Phoenix, AZ

Colin C. Blaydon, business, Hanover, NH

Kevin Breckenridge, transportation,  
Carrollton, GA

Alfred Cipriani, P.E., accident reconstruction,  
Millersville, MD

Thomas M. Dodson, tire design,  
Akron, OH

Nathan D. Dorris, Ph.D., tire design,  
Atlanta, GA

Thomas Gennarelli, M.D., forensic pathology,  
Fox Point, WI

Joseph L. Grant, tires, Greenville, SC

Kent Johnson, Ph.D., metallurgy, Aurora, IL

Samuel Land, M.D., forensic pathology,  
Allentown, PA

Daniel May, P.E., mechanical,  
Farmington Hills, MI

Gerald T. Olson, Ph.D., economics,  
Glenside, PA

David Pope, P.E., metallurgy,  
Philadelphia, PA

Brian J. Queiser, tires, Akron, OH

**EDITOR'S NOTE** This report is based on information that was provided by plaintiff's counsel, Bergey's and Bridgestone. Counsel for the other defendants did not respond to the reporter's phone calls.

—Joshua Couzens

Plaintiff Expert: Gary A. Derian, P.E., Tire Engineering Expert

**Robson Forensic**  
Engineers, Architects, Scientists & Fire Investigators