

Trial in fatal train-van wreck will proceed with 11 jurors

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CLEBURNE--For the second time in six days, a juror's family problems have delayed the **trial** in an \$80 million lawsuit over a fatal **train-van** collision, and, again, an out-of-court settlement is being considered.

Most of Wednesday's negotiations focused on whether the two-week-long **trial** between a paralyzed Alvarado mother, the railroad and another firm would continue with 11 jurors if the 12th juror was excused.

That issue was resolved about 5:30 p.m., narrowly averting a mistrial in the case between the Lowery family of Alvarado, and Union Pacific Railroad and Trinity Materials, which leased a side track near the County Road 404 crossing where the crash occurred on Dec. 4, 2001.

Patricia Lowery, the driver of the van, was left a paraplegic, and her son Conner, 9, was killed.

"The parties have agreed to go on with 11 jurors," said Cleburne attorney Chris Cooke, a member of the team representing Lowery; her husband, James; their daughter, Bianca, 13; and Lowery's parents, Angelina and Epifania Maldonado.

The flurry of negotiations began about 1:30 p.m. when the **trial** resumed after Judge John Neill spent the morning presiding over court matters in Somervell County, part of his 18th District Court jurisdiction.

Neill told attorneys that the juror whose family funeral delayed the **trial** for two days last week is now concerned because her husband had been injured and could not work. She told the judge that her worries over the family's finances might affect her ability to fairly consider the Lowery case.

Union Pacific attorney Grant Liser of Fort Worth argued that the law allows a **trial** to continue with 11 jurors if a juror is excused because of a physical or emotional disability. Neill disagreed.

"Unless everyone agrees to go on with 11, we're talking about a mistrial," Neill said.

Cooke said proceeding with 11 jurors would favor the defense. Civil **trials** require only 10 jurors to agree on a verdict. Criminal **trials** require a unanimous jury verdict.

"Right now, the plaintiffs could win with a 10-2 verdict," he said. "If we go with 11, it would have to be 10-1.

"Lowery's attorneys, who had called 11 witnesses, planned to question a Trinity Materials official. The plaintiffs hope to show that the firm was partly to blame for the accident because rail cars parked on its track blocked Lowery's view of the main track, where the collision occurred.

The attorneys then planned to present a videotaped deposition of Bianca, who suffered minor injuries in the accident; call Lowery's father to the stand; and conclude with testimony from Patricia Lowery, who has had to use a wheelchair since her spinal cord was severed in the collision.

The Lowerys contend that Union Pacific is responsible for the accident because company employees parked the rail cars on the Trinity track and failed to sound the **train** horn to warn Lowery of the approaching 102-car **train**.

Union Pacific and Trinity say Lowery should have been aware of the **train** because she had lived near the crossing for 40 years. Further, they say that **train** recordings show that the engineer did sound the horn and that Lowery pulled onto the tracks anyway.

After sending the jury home until 9 a.m. today, Neill urged attorneys to try to agree on how to proceed if he excused one juror. He also suggested that the parties resume settlement talks that broke down after last week's delay.

"An agreement has been reached in principle to settle the case," Cooke said last night. "We're drawing up the proper documents. They have not been formally signed by any of the parties nor approved by the judge and the attorney ad litem, which has to happen.

"Because Bianca Lowery is a minor, Burleson attorney Jeff Cochran was appointed to make sure her interests are represented in any financial awards or settlements in the case.

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