

## Van driver agrees to \$8.25 million settlement in train crash

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An Alvarado family who lost a child in a 2001 **train**-van crash will receive an \$8.25 million settlement negotiated during a **trial** in which a jury later found the boy's mother mostly to blame for the accident that paralyzed her.

The agreement, reached during the **trial** of Patricia Lowery's suit against Union Pacific Railroad and Trinity Materials, was unsealed this week during a hearing in Cleburne to allot part of the settlement to Lowery's surviving child.

To determine the payment to 13-year-old Bianca Lowery, 18th District Judge John Neill unsealed the Oct. 2 "high-low agreement," which capped the family's award at \$15 million regardless of the eventual jury verdict and guaranteed the family at least \$8.25 million.

If they had not agreed to the settlement, Union Pacific and Trinity would have had to pay less than \$2 million.

Neill is expected to approve the structured payment to Bianca after receiving more information from her attorney.

The settlement will allow the family to move from their Alvarado home where the passing **trains** are a constant reminder of the fatal crash in which Patricia Lowery's 9-year-old son, Conner, died, said their attorney, Jim Ross of Arlington.

Patricia Lowery and her husband, James, declined to comment on the settlement, referring questions to Ross, part of the legal team that represented the family in its \$80 million lawsuit.

"That's a very traumatic location for them," Ross said. "I think the settlement gives them the opportunity to get away from the immediate area where this accident happened and affords them a little bit of closure to pick up the pieces of as normal a life as they can.

"The settlement will also provide for 41-year-old Patricia Lowery, who was paralyzed by the accident that severed her spine, and Bianca, who was not seriously injured but may need long-term counseling, Ross said.

Attorneys for Union Pacific, which will pay \$7.25 million, and Trinity Materials, which will pay \$1 million, said the settlement benefits everyone even though they wish it could have been reached before the 3-week **trial**.

"Nobody is cold-hearted about this," said Dotty Vidal, attorney for Trinity Materials, which leased a side track near the main Union Pacific track where the crash occurred on Dec. 4, 2001.

Vidal said Trinity officials never believed they were responsible for the crash, which the Lowerys' attorneys said was caused by railroad cars parked on the Trinity track, blocking Patricia Lowery's view of the **train** on the main track.

"Trinity never thought it had any liability and Union Pacific didn't either," Vidal said. "Nevertheless, Union Pacific was willing to pay quite a bit to Mrs. Lowery because this is such a sad case. It's a tragedy she had to sit through all this because they weren't willing to accept what Union Pacific was willing to settle for before **trial**.

"Union Pacific attorney John Proctor would not discuss specific pretrial negotiations but said the Lowerys probably would have gotten more money and spent less on **trial** expenses if the case had been settled earlier.

Ross would not discuss the Lowerys' agreement with their lawyers but said it was a contingency arrangement in which attorneys get a percentage of the award.

Proctor said the "high-low" agreement was reached near the end of the **trial's** second week when it appeared the loss of a juror might cause a mistrial. Part of the agreement was to proceed with 11 jurors.

The jury later assigned 72 percent of the blame for the accident to Patricia Lowery, who pulled into the path of the **train** at the County Road 404 crossing in Alvarado.

Texas law prohibits people from collecting damages if a jury finds them more than 50 percent responsible for their own injuries.

The jury found Union Pacific 23 percent and Trinity 5 percent negligent for the crash.

Without the settlement, Union Pacific and Trinity would have had to pay less than \$2 million, the amount the jury awarded to Bianca, Conner's estate and Patricia Lowery's parents, Angelina and Epifanio Maldonado.

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