

Trucking firms OK \$26.5 million settlement, lawyer says

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BEAUMONT — Lawyers for two trucking companies Monday agreed to a \$26.5 million settlement with a Houston family whose mother was killed and father severely brain damaged in a traffic accident in New York, a lawyer for the family said.

Malone Freight Lines Inc. of Birmingham, Ala., and Gateway Transportation Co. Inc., a subsidiary of Maislin Transport of LaCrosse, Wis., agreed to the settlement with the Richard McWhorter family of Houston, the lawyer said.

"As far as I know it's the largest settlement ever paid to a single family," said attorney Richard Mithoff, who represented the McWhorters.

The accident happened on Interstate 90 near Utica, N.Y., April 17, 1981, while the McWhorters were en route to Niagara Falls and then to Boston where the mother, Barbara Nell McWhorter, planned to run in the Boston Marathon.

Mrs. McWhorter, 36, and her daughter, Susan, 11, were killed. McWhorter, 37, an engineering company comptroller, suffered permanent brain damage. Sons Richard, Jr., then 16, and Andrew, then 13, were hurt. The boys have recovered.

Mithoff said a Malone truck driven by

James Waldroup of Commerce, Ga., jackknifed and a Gateway truck driven by Leonard Fleischer of Elyria, Ohio, ricocheted off the Malone truck into the path of the McWhorter car.

The truck struck the McWhorter car head-on. Both truck drivers were ticketed for speeding on the rain-slick highway.

The lawsuit charged the truckers were racing.

The drivers were named as defendants, but Mithoff said the companies' insurance carriers covered the drivers.

On the advice of her husband, Mrs. McWhorter quit her job as a nurse in a Houston doctor's office to devote full time to running and her family.

Three days before the accident, she had finished fourth in the 35-and-over age group of the Philadelphia 15-kilometer race.

McWhorter was in a coma and hospitalized for three months in Utica. Mithoff said he is unable to care for himself and it takes \$35,000 to \$85,000 a year to provide full-time care for him.

"He has essentially the brain of an infant. He's unable to clean himself, feed himself or clothe himself," Mithoff said.

Mithoff said \$3.5 million of the settlement will be paid immediately, \$12 mil-

lion will be placed in trust and \$11 million will be divided among the McWhorter sons when they are old enough to manage it.

The suit was filed in Beaumont federal court because McWhorter's father, Richard M. McWhorter, 66, lives in Port Arthur and filed as guardian of his son and surviving grandsons.

Mithoff said the original suit was for \$14.8 million but was increased to \$25.2 million. The settlement was even larger because it included an additional award for punitive damages.

The case was scheduled to go to trial Monday and a six-member jury had been selected. Mithoff said plaintiffs' and defense lawyers worked throughout Easter weekend to reach an out-of-court settlement.

Mrs. McWhorter, who had been running for five years, qualified for the Boston Marathon by placing second in the Houston Marathon with a time of three hours, seven minutes and 45 seconds. The family decided to make the trip a family affair.

Mrs. McWhorter was well known in Houston running circles and shortly before the accident was featured in a local publication, *Inside Running*.