

\$9 Million Awarded in Train Crash

Riverside woman's suit is the first of more than 100 to go to trial in the 2002 Placentia wreck.

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A Riverside woman was awarded nearly \$9 million Wednesday by an Orange County jury for injuries—primarily psychological—she suffered in a 2002 crash between a Metrolink commuter train and a freight train that killed three people and injured more than 260.

Pamela Macek's lawsuit against the Burlington Northern and Sante Fe Railway Co. was the first of more than 100 cases stemming from the Placentia crash to go to trial.

After deliberating two days, a jury voted 9 to 3 to award her \$7.5 million for pain and suffering, \$900,000 for past and future wage losses, and \$500,000 for medical bills.

Her attorney, Jerome L. Ringler, said the verdict was unusual in that the bulk of the damages were for psychological rather than physical injuries. As a result of the accident, he said, Macek "suffers [from] post-traumatic stress disorder" with anxiety, sleeplessness, confusion and inability to focus.

Burlington Northern's two attorneys did not return calls seeking comment. Company spokeswoman Lena Kent said railway officials had not had a chance to review the entire decision but were disappointed by the verdict.

Macek, a 53-year-old mother of three, was on her way to work as chief financial officer for Arrow Industries the morning of April 23, 2002, when a milelong Burlington Northern plowed head-on into the Metrolink train she was riding.

Macek, a passenger in the front car, suffered shattered cheekbones and upper jaw. She required two surgeries on her face and one for back injuries.

Federal investigators concluded last year that the collision was caused by an inattentive Burlington Northern crew that missed a warning signal. Contributing to the crash, they said, was the lack of an automatic braking system on the freight train.

Macek's lawsuit and the others against Burlington Northern allege that an automatic braking system, long sought by the Federal Railroad Administration, could have prevented the collision. The lawsuits also allege that the crew was fatigued from overwork and that the conductor had a history of losing track signals.

Metrolink was originally a defendant in Macek's suit, Ringler said, but was dismissed as a party after Burlington Northern assumed liability. However, the commuter line remains a defendant in other pending suits.

Because Burlington Northern admitted responsibility before Macek's trial, at issue was the extent of her injuries and the damages, Ringler said. During the monthlong trial before Superior Court Judge Dennis B. Choate in Santa Ana, Macek and a variety of medical specialists testified, including experts in psychiatry, psychology and neurology.

Ringler said Wednesday that the crash changed Macek from an outgoing and highly successful businesswoman into a reclusive and fragile person, "someone who hides from her own shadow."

"She constantly relives her accident," he said. "She was fearful she would never walk off that train alive."

"Now [Macek] is so disabled she can no longer work." The cases were consolidated because there was a common defendant with a common set of facts surrounding the crash. It is not a class-action suit because the plaintiffs have dramatically different injuries and will require their own lawyers and expert testimony.

Macek's case was chosen as the lead case by a steering committee and because she chose to waive punitive damages, Ringler said. The remaining cases are awaiting a judge's ruling on whether the plaintiffs can seek punitive damages.

In previous motions, Burlington Northern had contended that federal provisions related to rail safety and interstate commerce exempted it from punitive damages, which are designed to punish defendants for malice fraud or negligence, and go beyond compensation sought for property damage, loss of wage, and physical or psychological injuries.

But in a ruling last year, Superior Court Judge C. Robert Jameson disagreed, finding that Burlington Northern and its employees allegedly violated the company's internal rules and regulations—issues where federal law did not apply. The decision cleared the way for juries to award plaintiffs millions of more dollars in compensation.