

**AS NATIONALLY REPORTED BY  
VERDICT SEARCH, LOUISIANA ADVOCATES AND ATLA  
-APRIL 2004-**

**CONSTRUCTION DEATH**

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**Accidents**

**Workplace Safety**

**Wrongful Death**

**Mechanic underneath scraper crushed by 250-lb belly pan**

**SETTLEMENT**

**\$1,700,000.00**

**CASE**

Wendy Whitmer, individually, as Executrix for the Estate of Darren E. Whitmer, and as Tutrix of the minor child, Collin Whitmer v. Johnny Kemp, Norwel Equipment Company, Audubon Insurance Company, and National Union Fire Insurance Company of Louisiana, No. 459,688

**COURT**

Caddo Parish, 1<sup>st</sup> Judicial District Court, LA

**JUDGE**

Woodrow Nesbitt, Jr.

**DATE**

2/13/2004

**PLAINTIFF**

**ATTORNEY(S)**

**JASON B. STEPHENS**, Stephens & Anderson, LLP  
Fort Worth, TX

**PATRICK R. JACKSON**, Law Offices of Patrick R. Jackson,  
Bossier City, LA

**DEFENSE**

**ATTORNEY(S)**

**Penny N. Nowell**, Lunn, Irion, Salley, Carlisle & Gardner,  
Shreveport, LA

**James B. Gardner**, Lunn, Irion, Salley, Carlisle &  
Gardner, Shreveport, LA

**FACTS & ALLEGATIONS**

On July 5, 2000, plaintiff's decedent Darren Whitmer, a 25 year-old heavy equipment mechanic, was working at an expansion project at a General Motors assembly plant in Shreveport, LA. Whitmer, an employee of Louisiana Machinery Co. in Monroe, LA, and Johnny Kemp, an employee of Norwel Equipment Co. in Alexandria, LA, were contracted as field mechanics to perform maintenance on the machines used in the project. Whitmer and Kemp continued to be employed by their respective employers, receiving pay checks and benefits from them.

Whitmer was working inside the engine compartment of a large earth-moving machine called a scraper. The belly pan, a 250 pound piece of steel that protects the engine compartment from the earth, was lowered to the ground with a “come along” chain attached at one end to the belly pan and the other end to the drive shaft in the engine compartment. This was Kemp and Whitmer’s standard method of lowering the belly pan. Kemp assisted in the lowering of the pan.

For an unknown reason, Kemp started the scraper while Whitmer was underneath, causing the drive shaft to turn and wind the come along. This slammed the belly pan back into place, crushing Whitmer.

Whitmer’s estate, his wife and their 2 year-old son sued Kemp, Norwell, and Norwel’s insurers, Audubon Insurance Co., Lafayette, LA, and National Union Fire Insurance Co. of [Baton Rouge] Louisiana, for negligence.

The defendants argued that Whitmer attached the come along and was more familiar with the machine because he was certified to work on such equipment (Kemp was not), and that Kemp started the scraper based on Whitmer’s instruction.

In addition, the defendants argued that Whitmer and Kemp were the borrowed employees of a third out-of-state contractor, providing them with tort immunity.

The defendants claimed that the out-of-state contractor was negligent for failing to supervise and train Kemp and Whitmer and for failing to provide a safe work environment. The defendants further alleged that Whitmer’s wife did not have standing to sue for wrongful death because she was not legally married due to a service defect in her prior divorce proceedings.

#### **INJURIES/DAMAGES** (*death*)

Whitmer, the father of a 2 year-old, died of catastrophic closed head injuries. The parties disputed whether or not he suffered conscious pain and suffering. A plaintiffs’ expert testified that he died minutes after the accident.

The plaintiffs sought approximately \$2.4 million for past and future wage loss. However, these calculations assumed that Whitmer would continue working nearly 80 hours per week for the rest of his life, as he had done in the 2.5 years before his death. His lost wages would have been \$1.6 million if he only continued working 50% of this overtime for the remainder of his life, the plaintiffs claimed.

**RESULT:** A week into trial, the parties settled for \$1.7 million.

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