

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**SARA LIVINGSTON, et al.,
APPELLANT-RESPONDENT
vs.**

**BAXTER HEALTH CARE CORPORATION,
RESPONDENT-APPELLANT**

DOCKET NUMBER WD71257 (Consolidated with WD71312)

DATE: JUNE 22, 2010

Appeal from:

Jackson County Circuit Court
The Honorable Marco A. Roldan, Judge

Appellate Judges:

Division Two: Mark D. Pfeiffer, P.J., Victor C. Howard and Alok Ahuja, JJ.

Attorneys:

Robert Wells Tormohlen, for Appellant-Respondents

Paul P. Hasty, Jr., for Respondent

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

SARA LIVINGSTON, et al., APPELLANT-RESPONDENT

v.

BAXTER HEALTH CARE CORPORATION, RESPONDENT

WD71257 (Consolidated with WD71312)

Jackson County, Missouri

Before Division Two Judges: Mark D. Pfeiffer, P.J., Victor C. Howard and Alok Ahuja, JJ.

After being involved in a car accident on an interstate in Kansas, Ruth Baxter died as a result of burns when her car started on fire. The collision occurred when an employee of Baxter Health Care Corporation, who was acting in the scope of her employment at the time, rear-ended Baxter's vehicle. Baxter's heirs brought a wrongful death claim and brought a pain and suffering claim on behalf of her estate against the corporation. The jury returned verdicts in favor of the heirs, awarding \$450,000 in non-economic damages on the wrongful death claim and \$750,000 in non-economic damages for the pain and suffering claim. The jury assessed twenty percent of the fault to Baxter and eighty percent to the corporation's employee. The trial court applied Kansas law to the heirs' damages and thereby reduced both awards to \$250,000. The heirs and the corporation appeal.

AFFIRMED.

Division Two holds:

1. Where neither Kansas nor Missouri had a stronger interest than the other state in protecting the corporation from the law of the other state, and where none of the parties being compensated were Missouri residents, Missouri lacked contacts substantial enough to create a more significant relationship to the occurrence and the parties which would warrant the application of Missouri law instead of Kansas law regarding the damages recoverable by the heirs. Therefore, the trial court did not err in applying Kansas law to the damages recoverable and in reducing each verdict to \$250,000.
2. Where there was evidence in addition to allegedly inadmissible statements which indicated that Baxter was either stopped in the roadway or traveling at a speed of less than forty miles per hour, the corporation made a submissible case of comparative fault, and the trial court did not err in denying the heirs' motion for judgment notwithstanding the verdict.
3. Where the totality of the evidence showed that the collision did not involve an impact traumatic enough to cause any serious injuries prior to the ensuing fire, there was sufficient evidence to create a jury question as to whether Baxter was conscious between the time of the

impact and the time of her death, and the trial court did not err in failing to direct a verdict in favor of the corporation on the estate's pain and suffering claim.

4. Where the estate's pain and suffering claim necessarily required that Baxter experienced pain and suffering consciously, and the corporation's attorney reminded the jury during closing argument that it had to find that the heirs had proven consciousness, an average juror would have understood that he or she was required to find that Baxter consciously suffered, although the word "consciously" was not included in the verdict director. Therefore, the trial court did not err in failing to include the word "consciously" in the jury instruction for the estate's pain and suffering claim.

Opinion by: Victor C. Howard, Judge

Date: June 22, 2010

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