

Jury awards \$750,000 to estate of truck driver

By KATHLEEN WALLACE
Staff Writer

Survivors of a man who was killed in an accident at the former Malo Brothers & Sons scrap-metal yard have won what is believed to be the largest award ever made by a Marion County Common Pleas Court jury.

Jurors, who found truck driver Wayne Berkey, 26, Dalton, was not responsible for the accident that took his life, awarded his estate \$750,000 for his wrongful death.

Because Malo Brothers was determined by the jury to be completely liable for Berkey's death, Buckeye Union Insurance, which carries Malo's liability insurance, is responsible for paying the entire award. Had Berkey been found partially responsible, the insurance company would have been liable for only a percentage of the award.

"I was shocked," said Marion lawyer Donald Taube, who represented Malo Brothers in the four-day trial that ended late Thursday. "It makes absolutely no sense — not the

dollars, but that they found no liability at all on the driver's part."

Berkey was killed March 13, 1988, while he was standing in his trailer bed when 16 tons of scrap metal was dumped into it. Judge Richard Rogers said that according to testimony at the trial, Berkey, who had pulled his tractor-trailer into position for loading, was folding the trailer's canvas covering, which he had taken off in preparation for loading.

The crane operator could not see Berkey, Rogers said witnesses testified, and did not know he was in

the trailer, nor expected him to be in it.

Witnesses also testified, the judge said, that Berkey had arrived at the junk yard just minutes before closing. He had dropped off a load of stone that was covered with the canvas, and because he was running late, waited until he had pulled his trailer into loading position before removing the canvas.

He was still in the process of doing that, Rogers said, when the operator, who had gone into the office to call home to say he would be late, came

back to his crane, positioned it, and began loading the scrap metal.

Akron lawyer Timothy Scanlon, who represented the Berkey estate, said Malo Brothers was negligent in loading the truck before determining the whereabouts of the driver. Scanlon maintained the crane operator should have checked to make sure he was not in the trailer before loading it.

According to Scanlon, the jury, "did what they should have done" in its verdict.

Taube maintains "sympathy" for

the survivors played heavily in the jury's verdict. Berkey's wife was pregnant at the time of his death, and their son was two years old. Also surviving are Berkey's parents. Summit County Probate Court will determine how much of the \$750,000 goes to each of Berkey's survivors, Rogers said.

Taube said it has not yet been determined whether Malo Brothers, which has since sold the business on Silver Street at Bartram Avenue to Marlen Steel, will file an appeal to overturn the jury's decision.