

The Indiana Jury Verdict Reporter

The Most Current and Complete Summary of Indiana Jury Verdicts

January, 2006

Statewide Jury Verdict Coverage

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Unbiased and Independently Researched Jury Verdict Results

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Premises Liability - While riding a motorized cart through the dairy section of a grocery store, a woman cut her foot on a piece of metal that protruding from beneath a refrigerated case

Smith v. Meijer, Inc.,

45D11-0406-CT-132

Plaintiff: Eric Oden Clark,

Schererville

Defense: Jeffrey W. Clymer, *Querrey & Harrow*, Merrillville

Verdict: \$1,770,000 for plaintiff less 35% comparative fault

County: **Lake**, Superior

Court: J. Dywan, 11-1-05

In the late morning of 4-15-02, Sheila Smith, age 55, visited the Meijer's store at 611 U.S. 30 in Merrillville. Smith was there to do a bit of shopping and to return an item she had previously purchased.

Having gotten her refund for the returned item, Smith climbed into one of the motorized carts Meijer's provides to its customers and set out to shop for groceries. Smith would later claim that

although the cart worked properly at first, it soon began to operated erratically. In particular, the cart had a propensity to take off at high speeds and was difficult to control.

Despite this, Smith continued to shop. However, disaster awaited her in the dairy section. As Smith tooted along the aisles, she banged into at least one of the refrigerated cases. A Meijer's employee heard the ruckus and came to investigate. When the employee offered help, Smith declined. An instant later, however, Smith noticed her right foot was bleeding.

It was Smith's belief that she had cut her foot on a piece of metal that was protruding from beneath the refrigerated case. The sight of her own blood sent Smith into hysterics. The employee applied a compress to Smith's wound to stop the bleeding and to calm down the now agitated Smith. Once the bleeding was under control, Smith left the premises. That, however, would not be the end of the matter.

Smith was subsequently diagnosed

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Civil Jury Verdicts

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with Reflex Sympathetic Dystrophy (RSD), which she attributed to the cut she received at the store. Her medical experts were Dr. George Tsoutsouris, Podiatry, Highland; and physical therapist Gani Azeez. Smith's medical expenses climbed to \$34,025.

Smith filed suit against Meijer's and blamed it for providing her with a dangerous and uncontrollable motorized cart and for failing to protect her from the hazard the cart posed. Meijer's defended the case and denied there was anything wrong with the cart.

According to Meijer's, the fault for the accident rested entirely with Smith herself. Additionally, Meijer's disputed the nature, extent, and causation of Smith's injuries, and the store accused Smith of failing to mitigate her damages. The record does not identify defense experts.

During the course of the litigation, Meijer's filed a motion to be allowed to videotape Smith's deposition. Smith opposed the motion and characterized it as an attempt to intimidate her. The court, however, ruled that Smith's alleged fear was conclusory, and the video recording might actually help to prevent uncivil conduct during the deposition. Accordingly, the court granted Meijer's motion.

Also, Meijer's filed a motion in limine that sought to exclude certain testimony from Dr. Tsoutsouris. The testimony in question concerned two issues: (1) the possibility of Smith's pain perhaps eventually driving her to commit suicide, and (2) whether or not amputation of Smith's injured limb might be appropriate.

The court initially granted the motion but later reversed that decision and allowed the testimony at trial. At the end of a two-day trial in Crown Point, the jury returned a verdict in which 65% of the fault was assigned to Meijer's and the remaining 35% was assigned to Smith. The jury set Smith's damages at \$1,770,000. After reduction for comparative fault, her award came to \$1,150,000. The court entered a judgment for that amount.

Post-trial, Meijer's filed a motion to correct errors and for a new trial or for remittitur. The basis for the motion was

three-fold: (1) the court's decision to allow Dr. Tsoutsouris's testimony regarding the possibility of amputation and Smith's suicide was erroneous, (2) the sheer magnitude of the award, and the fact that it was some fifty times Smith's medical expenses, indicates the jury's decision was motivated by passion and prejudice, and (3) the verdict was against the weight of the evidence. The court's ruling on the motion was not part of the record at the time the IJVR reviewed it.

Disability Discrimination - A long-time revenue agent for the IRS alleged he was denied a special agent position (special agents carry guns and can shoot delinquent taxpayers) because of his diabetic condition – the IRS explained that safety comes first and the agency could not take the risk that plaintiff might sustain a hyperglycemic event

Branham v. IRS, 1:01-152

Plaintiff: John W. Griffin, Jr.,
Houston Marek & Griffin, Victoria, TX
and Elizabeth G. Russell, *Krieg DeVault*, Indianapolis, IN

Defense: Jeffrey L. Hunter and Debra G. Richards, *Assistant U.S. Attorneys*, Indianapolis, IN

Verdict: \$78,000 for plaintiff

Federal: **Indianapolis**

Court: J. Tinder, 12-12-05

Gary Branham started working in 1986 as a revenue agent for the IRS. On 3-3-99, Branham was selected for a special agent position – within the IRS, special agents are its law enforcement arm. They carry guns.

Branham starting in that spot was conditioned on his passing a physical and background check. As a part of that process, the IRS learned that Branham was an insulin-dependent diabetic. Because of that condition, the IRS withdrew the offer in June, disqualifying him on medical grounds. The IRS explained it acted because of a fear that Branham might sustain a hyperglycemic event and lose consciousness. Even if the risk of this was small, the IRS couldn't put Branham or other agents in danger.

Branham thought the decision

represented illegal disability discrimination and he filed this Rehabilitation Act lawsuit in federal court. His case was simple – while he sometimes had a mild reaction, trembling or sweating, his diabetes had never resulted in a serious reaction. The IRS defended as noted above.

The trial court first granted summary judgment for the IRS. Branham appealed and the 7th Circuit reversed – See *Branham v. Snow*, 392 F.3d 896 (7th Cir. 2004). The matter returned to Indianapolis for a jury trial.

The jury's verdict was for Branham on the disability claim, the jury explicitly rejecting the IRS's claim that if Branham were an agent, he and others would be at risk of harm. Then to damages, plaintiff took \$78,000 for lost wages, but nothing for emotional suffering.

Plaintiff has since moved for attorney fees and other equitable relief. [Because of his age, (now over 40), Branham is not eligible to begin special agent training – he was 37 at the time he was denied a position. He does still work as a revenue agent.]

Auto Negligence - A woman was rear-ended by a driver who was talking on a cell phone; in an effort to oppose the cell phone company's dismissal from the ensuing litigation, the woman cited a Blondie cartoon as evidence of public opinion

Williams v. Meagher,

82D03-0305-CT-2142

Plaintiff: John D. Clouse and Ivan A. Arnaez, *Clouse Law Offices*, Evansville

Defense: Heather H. Lacy, *Bamberger Foreman Oswald & Hahn*, Evansville

Verdict: \$85,000 for plaintiff

County: **Vanderburgh**, Superior

Court: J. Pigman, 9-8-05

In the evening of 3-27-03, Terri Williams, age 45, was on her way to have dinner with her boyfriend. At the same time, a vehicle being driven by Kellie Meagher was traveling behind her in the same direction. It would become significant to this case the Meagher was talking on a cell phone.

As the parties drove along, Meagher's attention was apparently distracted by her cell phone