

The Indiana Jury Verdict Reporter

The Most Current and Complete Summary of Indiana Jury Verdicts

January, 2011

Statewide Jury Verdict Coverage

12 IJVR 1

Unbiased and Independently Researched Jury Verdict Results

In This Issue

Marion County

Auto Negligence - \$40,000	p. 2
Auto Negligence - Defense verdict	p. 7
Parking Negligence - \$12,897	p. 11

Lake County

Truck Negligence - \$2,101,000	p. 1
Medical Negligence - Defense verdict	p. 2
School Negligence - Defense verdict	p. 4
Premises Liability - Defense verdict	p. 11

Delaware County

Auto Negligence - \$20,000	p. 3
----------------------------	------

Vigo County

Auto Negligence - \$30,000	p. 4
----------------------------	------

Porter County

Medical Negligence - Defense verdict	p. 5
Breach of Contract - Defense verdict	p. 10

Federal Court - New Albany

Race/Sex Harassment - Defense	p. 5
-------------------------------	------

Tippecanoe County

Auto Negligence - \$125,000	p. 5
-----------------------------	------

Johnson County

Medical Negligence - Defense verdict	p. 6
--------------------------------------	------

Madison County

School Negligence - \$10,000	p. 7
------------------------------	------

Allen County

Underinsured Motorist - \$28,120	p. 8
----------------------------------	------

Bartholomew County

Medical Negligence - Defense verdict	p. 9
--------------------------------------	------

Lawrence County

Underinsured Motorist - \$65,814	p. 9
----------------------------------	------

Monroe County

Forklift Negligence - \$700,000	p. 12
---------------------------------	-------

Correction

The April 2007 edition of the Indiana Jury Verdict Reporter commented on a case from Indiana wherein Neal Boyd, IV was shot and killed while on school property. The report mistakenly included information that was in part misleading. The Indiana Jury Verdict Reporter and its staff apologize for any harm caused to the family of Neal Boyd, IV as a result thereof.

Truck Negligence - An elderly woman was seriously injured and witnessed the death of her daughter in a crash that happened when a tractor-trailer rear-ended the van in which the woman was riding

Rhenwick v. Schneider National Carriers, et al., 45C01-0805-CT-72
Plaintiff: Kenneth J. Allen and Bryan Bradley, *Kenneth J. Allen & Associates, P.C.*, Valparaiso

Defense: Michael B. Langford and Misti Presnell DeVore, *Scopelitis Garvin Light Hanson & Feary, P.C.*, Indianapolis

Verdict: \$2,101,000 for plaintiff

County: **Lake**, Circuit

Court: J. McDevitt (Magistrate),
8-4-10

On 8-20-07, Justin Wallace, age 25, was hired to work as a semi truck driver for Schneider National Carriers, a shipping company located at 7101 West 17th Street in Gary. Schneider National apparently operates its own in-house training program for the company's truck drivers. Although Wallace completed that program, he would later say he felt the training was too short.

In the afternoon of 5-4-08, slightly over eight months after being hired by Schneider National, Wallace had picked

up a load of pallets from a company in South River, NJ and was on his way to deliver them to a Proctor & Gamble plant in Green Bay, WI. His route took him west on U.S. 30 in Columbia City.

At the same time, Jacquelyn Gates, age 57, was also driving west on U.S. 30 in a 2002 Oldsmobile minivan. Gates's adult son, Sam Gates, was riding with her as a passenger, as was a friend named Christopher Bond. Finally, Gates's elderly mother, Mattie Rhenwick, age 85, was riding in the back seat.

Gates stopped for a red light at the intersection with C.R. 300 West. As she did so, Wallace approached from behind in his semi truck. Wallace would later explain that at just that moment he was preoccupied with scanning his mirrors. As a result, he did not notice that Gates was stopped in front of him until he was only about 75 feet from her van.

As soon as Wallace realized what was happening, he slammed on his brakes and tired turning to the left to avoid a collision. Despite these efforts, a part of his truck collided with part of Gates's van.

It was a significant crash that left all the occupants of the van with serious injuries. Gates herself died of her injuries. Her mother, Rhenwick was trapped in the crumpled van for nearly an hour before she could be extricated. During that time Rhenwick witnessed the death of her daughter, and her own left leg was crushed and nearly severed.

Rhenwick and Gates's estate filed suit against Schneider National and Wallace. Bond and Sam Gates later joined the case as co-plaintiffs. However, the claims of the estate, Sam Gates, and Bond settled at mediation and were dismissed.

Civil Jury Verdicts

Timely coverage of civil jury verdicts in Indiana including court, division, presiding judge, parties, cause number, attorneys and results.

The litigation proceeded solely on Rhenwick's claim. According to her, Schneider National was vicariously liable for the actions of its employee, Wallace. In addition, Rhenwick noted that Wallace had a poor driving history involving several accidents and other problems, and Wallace himself stated that Schneider National's training program was inadequate.

Based on those theories, Rhenwick argued that Schneider National acted recklessly in keeping Wallace on the road. If successful, Rhenwick sought both compensatory and punitive damages. Plaintiff's identified expert on transportation safety was Anita Kerezman of Palm Springs, CA.

Schneider National fired Wallace on 6-25-08, less than two months after the crash. As for the litigation, defendants admitted fault and that Schneider National was responsible for Wallace's actions. Instead, defendants focused their defense on the issue of punitive damages.

According to defendants, Wallace was fully trained as a truck driver and was tested, licensed, and properly supervised. Thus, according to defendants, there was nothing reckless in Schneider National's decision to keep Wallace on the road, and an award of punitive damages would therefore be inappropriate.

The case was tried for four days in Crown Point. The jury returned a verdict for Rhenwick and awarded her \$2,101,000 in compensatory damages. On the claim for punitive damages, the jury found for Schneider National. The court entered a judgment for the full verdict amount, and it has been satisfied.

Auto Negligence - A woman and her minor daughter were injured in a crash; defendant admitted fault and defended on damages

Wilson, et al. v. Hanza,
49D12-0905-CT-23987

Plaintiff: Troy K. Rivera, *Nunn Law Office*, Bloomington

Defense: Ryan D. Etter, *Collignon & Dietrick, P.C.*, Indianapolis

Verdict: \$40,000 for plaintiffs (allocated \$37,500 for Crissy and \$2,500 for Arianna)

County: **Marion**, Superior Court: J. Welch, 8-24-10

A crash took place on 10-2-07 in Marion County. It happened when Tasheana Hanza collided with a vehicle being driven by Crissy Wilson. Riding with Wilson as a passenger was her minor daughter, Arianna Tabor.

Both Wilson and Tabor claimed to have been injured in the crash. However, the record does not reveal the nature of their alleged injuries or the amounts of their respective medical expenses.

On her own behalf, and on behalf of Tabor as her next friend, Wilson filed suit against Hanza and blamed her for causing the crash. Plaintiffs also filed an uninsured/underinsured motorist claim against their own insurer, Allstate Insurance.

Plaintiffs later stipulated to the dismissal of the UM/UIM claim against Allstate. The litigation proceeded solely on the claims against Hanza. She admitted fault for the crash but disputed the nature and extent of plaintiffs' claimed injuries.

The case was tried in a single day in Indianapolis. The jury returned a verdict for plaintiffs and awarded damages of \$37,500 to Wilson and \$2,500 to Tabor. That brought the combined award to \$40,000. The court entered a judgment to that effect, and Hanza has satisfied it.

Medical Negligence - A man developed serious vision problems after undergoing Lasik eye surgery; the man blamed his problems on his ophthalmologist's failure to recognize that he was not in fact a good candidate for the surgery

Collins v. Lewyckyj,
45D10-0904-CT-73

Plaintiff: Thomas A. Clements, *Clements Law Office*, Merrillville

Defense: Alyssa F. Stamatakos and Carly A. Brandenburg, *Eichhorn & Eichhorn, LLP.*, Hammond

Verdict: Defense verdict on liability

County: **Lake**, Superior Court: J. Pera, 6-16-10

In June of 2004, Matthew Collins was preparing to undergo Lasik eye surgery. The procedure was to be performed by Dr. Myron Lewyckyj, an ophthalmologist employed by the Falton Lewyckyj Evans Eye Clinic in Crown Point.

Prior to the surgery, Dr. Lewyckyj performed a complete ophthalmological examination on Collins. Dr. Lewyckyj's conclusion from that examination was that Collins's eyes were normal and that he was a good candidate for the surgery.

The surgery was performed on 6-11-04. Following the surgery, Collins developed serious vision problems in his left eye. Those problems have continued to worsen, and Collins has been diagnosed with post-Lasik ectasia.

This is a condition in which the corneal tissue that remains following Lasik surgery is too thin to handle the normal pressure and thus begins to weaken. This weakening of the corneal tissue causes it to bulge or otherwise deform, leading in turn to myopia and astigmatism.

Collins presented the matter to a medical review panel comprised of three ophthalmologists. They were Dr. William Keeling of Greenwood, Dr. Earl Lanter of Indianapolis, and Dr. Steven Grossnickle of Mishawaka.

According to Collins, Dr. Lewyckyj's pre-surgical examination was inadequate in that it failed to assess properly the condition of his left eye. If Dr. Lewyckyj had performed a proper examination, he would have found that

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Collins was not in fact a good candidate for the surgery.

The medical review panel unanimously concluded that Dr. Lewyckyj's treatment of Collins did indeed breach the ophthalmologist standard of care and that the breach was a factor in Collins's damages. Collins filed suit against Dr. Lewyckyj and reiterated his claims.

Dr. Lewyckyj defended the case and denied having breached the standard of care. He also disputed the issue of causation, and he accused Collins of having failed to mitigate his damages. The record does not identify defense experts.

The case was tried for three days in Crown Point. The jury returned a verdict for Dr. Lewyckyj, and the court entered a consistent defense judgment.

Auto Negligence - A woman claimed she developed fibromyalgia due to a rear-end crash

Brown v. Johnson, 18C01-0607-PL-26
Plaintiff: Thomas Malapit and Tara M. Smalstig, *Dennis Wenger & Abrell, P.C.*, Muncie
Defense: Jennifer M. Herrmann, *Kighlinger & Gray, LLP.*, Indianapolis
Verdict: \$20,000 for DaRhonda; zero for Todd and Benjamin
County: **Delaware**, Circuit
Court: J. Vorhees, 1-28-10

A crash took place on 7-14-04 in Delaware County. It happened when Daniel Johnson rear-ended a vehicle being driven by DaRhonda Brown. Benjamin Brown was riding as a passenger with DaRhonda and would later also claim to have been injured.

DaRhonda did not seek immediate medical treatment following the crash. The next morning, however, she woke with stiffness in her neck. DaRhonda sought treatment and was ultimately diagnosed with fibromyalgia.

DaRhonda underwent a round of trigger point injections and followed a course of physical therapy. Her medical expenses are unknown. Also, the record does not reveal the nature of Benjamin's claimed injuries.

DaRhonda and Benjamin filed suit against Johnson and blamed him for crashing into them. DaRhonda's husband, Todd Brown, also presented a derivative claim for his loss of consortium. Plaintiffs' identified experts included Dr. Neal Coleman, Pain Management, Muncie; Dr. Miriam Ibrahim, Physical Medicine, Muncie; and Dr. Sarah Thomas, Internal Medicine, Indianapolis.

Johnson defended the case and minimized plaintiffs' claimed damages. He also sought to place a portion of the blame for the crash on DaRhonda. The identified defense experts included Dr. Michael Kaveney, Orthopedics, Carmel; Dr. John Wulff, Neurology, Muncie; and Dr. Andrew Combs, Orthopedics, Muncie.

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