

The Indiana Jury Verdict Reporter

The Most Current and Complete Summary of Indiana Jury Verdicts

November, 2005

Statewide Jury Verdict Coverage

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Unbiased and Independently Researched Jury Verdict Results

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Truck Negligence - A driver fell asleep at the wheel, crossed the centerline, and hit a woman on a motorcycle; the woman's extensive injuries included a severed left leg, and her husband claimed emotional distress damages for having witnessed the gruesome incident

Goad v. Clancy, 45D11-0209-CT-200

Plaintiff: Terrence M. Rubino and Steven J. Sersic, *Rubino Ruman Crosmer Cerven Smith & Sersic*, Dyer
Defense: Harold G. Hagberg, *Hagberg LaTulip*, Schererville

Verdict: \$11,000,000 for plaintiffs

County: Lake, Superior

Court: J. Dywan, 9-23-05

It was a sunny Memorial Day afternoon on 5-27-02, and Dianna Goad was out with her husband, Robert Goad, riding their Harley-Davidson motorcycles. The two were headed west on U.S. 231 in Crown Point as they rode along side by side on their respective bikes.

At the same time, Timothy Clancy, age 39 and the owner of Action K-9 (a canine security business), approached from the opposite direction. Clancy was accompanied by his sixteen year-old son, Joshua. The father/son team had made a trip to Chicago around 2:00 a.m. that same morning and were on their way back home to Hebron.

There would later be some dispute over who was driving the Clancy truck. Timothy claimed that he himself was a passenger, and Joshua was driving. However, two eyewitnesses who were traveling separately in front of the Goads described the driver of the Clancy truck as a middle-aged male with a goatee. The witnesses also said the driver was slumped against the driver's side door.

In any event, as the parties drew near one another in the 4100 block of U.S. 231, Clancy's vehicle veered left of

center. The Goads noticed the vehicles ahead of them swerve to avoid colliding with Clancy, and so the Goads slowed and separated. Robert swerved left, and Dianna swerved right. The evasive maneuver was to prove tragically unsuccessful.

The Clancy truck continued to cross the centerline and drove between the Goads. In doing so, the truck hit Dianna and caused her to be thrown into the air. Dianna's left leg was instantly amputated at the knee. She landed some fifty feet away in a water-filled ditch, and her bloody leg landed several yards away.

In addition to her severed leg, Dianna also suffered a fractured pelvis, a compound fracture of her left arm, a ruptured spleen, and multiple cuts and bruises. She underwent no fewer than seven surgeries and was fitted with a prosthetic leg. The prosthesis cost \$50,000 and must be replaced every few years. Dianna's treatment continues and requires her to take daily medications. In total, her medical expenses have climbed to \$484,080.

Timothy was prosecuted criminally over the incident. He was tried in June of 2004 and convicted. He later filed an appeal of his conviction, but the record does not reveal the exact charge on which he was convicted or the disposition of his appeal.

The Goads filed suit against Timothy and blamed him for the crash. In addition to Dianna's injury claim, Robert presented a claim for negligent infliction of emotional distress at having seen his wife injured.

The Goads also targeted Action K-9 on the ground that Timothy might have been within the course of his employment at the time. However, the

Civil Jury Verdicts

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

Goads later dismissed Action K-9 from the case. Finally, when Timothy claimed that Joshua had been driving, the Goads amended their complaint to add him as a defendant.

The Clancys defended the case as best they could and insisted it was Joshua who was driving. Joshua admitted some fault for the accident and explained he must have fallen asleep at the wheel because he had no recollection of hitting Dianna. The Clancys also disputed the nature and extent of the claimed injuries and the reasonableness and necessity of Dianna's medical treatment. Finally, the Clancys also implicated the Goads' fault.

During the course of the litigation, Timothy filed for Chapter 13 bankruptcy and enjoyed the benefits of the automatic stay of proceedings. However, the parties later agreed to modify the stay so as to allow the Goads to pursue their claim against Timothy to its conclusion. This was done with the proviso that collection of any judgment would have to be pursued through the bankruptcy court.

The case was tried for three days in Crown Point. The jury assigned 100% of the fault to Timothy and zero to Joshua and Robert. Dianna was awarded damages in the amount of \$10,000,000. The jury awarded Robert another \$1,000,000 on his emotional distress claim. The court entered a consistent judgment.

Prior to trial, Timothy's insurer, Allstate, offered Dianna Timothy's policy limits of \$100,000 but nothing for Robert. The theory behind the zero offer to Robert was that his emotional distress claim was derivative on Dianna's injuries and therefore did not qualify for separate compensation.

Auto Negligence - A woman was awarded damages of \$350,000 in a rear-end crash case

Jordan v. Mijatovich,
79D02-0405-CT-30

Plaintiff: Brent E. Clary, *Bennett Boehning & Clary*, Lafayette

Defense: Michael J. Delehanty, *State Farm Litigation Counsel*, Indianapolis

Verdict: \$350,000 for plaintiff

County: **Tippecanoe**, Superior

Court: J. Van Dorn, 8-3-05

In the late afternoon of 8-16-02, Amy Jordan was traveling on IN 26 East. At a certain point, Jordan stopped for traffic. An instant later, she was rear-ended by Brandon Mijatovich. The record does not reveal the nature of Jordan's injuries or the amount of her medical expenses.

Jordan filed suit against Mijatovich and blamed him for crashing into her. Mijatovich defended the case and pleaded sudden emergency.

The case was tried for two days in Lafayette. The jury returned a verdict for Jordan in the amount of \$350,000, and the court entered a consistent judgment.

Post-trial, Mijatovich filed a motion to correct errors. The grounds for the motion are unknown, however, because the motion itself was not contained in the record. In any event, the court took the matter under advisement and apparently had not ruled when the IJVR reviewed the record in early October.

Sexual Harassment et al - A dog food production worker alleged she was sexually harassed and retaliated against when she complained

Bright v. Hill's Pet Foods, 1:03-1709

Plaintiff: Richard L. Darst, *Cohen Garelick & Glazier*, Indianapolis

Defense: Ellen E. Boskoff, Jane A.

Dall and Susan W. Kline, *Baker & Daniels*, Indianapolis and George A.

Stohner, Los Angeles, CA and Rene M. Johnson, Princeton, NJ, both of *Morgan*

Lewis & Bockius

Verdict: Defense verdict on liability

Federal: **Indianapolis**

Court: J. Hamilton, 10-18-05

Elizabeth Bright was hired in February of 2000 by Hill's Pet Nutrition. She worked in production at the company's plant in Richmond, IN. The company, a division of Colgate Palmolive, makes dog and cat food.

Bright was assigned to the stretch wrap part of the plant. While in that capacity, Bright alleged she was subjected to a sexually hostile work environment. Co-workers asked her out for dates and showed up at her home. On other occasions, pornography was rampant on company computers.

When Bright complained, an investigation into the computers was undertaken. Ultimately eleven employees were disciplined. If the harassment was bad, Bright postured, the retaliation was worse. Word got out that Bright was the snitch and her co-workers retaliated against her.

Beyond sexual harassment and retaliation for having reported it, Bright also alleged Title VII gender discrimination. It was her contention that women were not properly trained or paid as well as men. Bright's fourth count asserted retaliation for having exercised FMLA leave. Her employment ended on 11-9-02 – Bright thought she was fired. The next day she went to work for the Transportation Security Agency (TSA). If prevailing at trial, Bright sought compensatory and punitive damages.

Hill's defended the case and developed a theme – namely, Bright resigned her position (she wasn't fired) and took a job with TSA. In this lawsuit, she hoped to reap a windfall,

attempting to turn workplace dissatisfaction into a federal claim.

To the merits, Hill's noted the allegations of sexual harassment were just that – even if true, it further postured, they failed to rise to the level of being severe and pervasive. The company also developed that when plaintiff complained, an investigation was conducted. [There were numerous fact disputes about what Bright reported and when.]

Hill's also denied FMLA retaliation or gender discrimination. It noted that during her 2 ½ years with the company, Bright availed herself of FMLA leave on six occasions. In sum, Hill's denied all four counts, (1) sexual harassment, (2) Title VII discrimination, (3) retaliation for having reported the harassment, and (4) FMLA retaliation.

This case was tried in Indianapolis for six days. The verdict was for Hill's on all four counts, Bright taking nothing. A defense judgment was entered for Hill's.

Workplace Negligence - A construction worker claimed catastrophic, career-ending injuries when a masonry wall fell on him at a construction site; he blamed the incident on the general contractor and on the subcontractor that had built the wall

Jarrells v. R.D.J. Custom Homes, Inc., et al., 29D03-0212-CT-943

Plaintiff: William F. Conour, Jessica L. Burks, and John P. Daly, Jr., *Conour Law Firm*, Indianapolis

Defense: Robert A. Smith and Jeffrey B. Cadwell, *Smith & Wade*, Carmel, for R.D.J. Custom Homes; W. Brent Threlkeld, *Threlkeld Reynolds*, Indianapolis, for Delgadillo

Verdict: \$925,000 for plaintiff assessed 45% to R.D.J.; Defense verdict for Delgadillo

County: **Hamilton**, Superior Court: J. Hughes, 8-18-05

R.D.J. Custom Homes, Inc. is a builder of custom homes and buildings in the Hamilton County area. On 1-15-03, R.D.J. entered into a contract with a company called K.L. Office Properties for the construction of a building at

17408 Tiller Court in Westfield.

R.D.J. was to be the general contractor on the project, and it subcontracted out the masonry work to a Armando Delgadillo. Additionally, R.D.J. subcontracted the construction of a steel building on the site to a company called LeMaster Steel Erectors, Inc.

LeMaster's foreman on the job was Jerry Jarrells, age 48. On 9-3-02, Jarrells had been working on the Westfield project for approximately two weeks. On this particular day, Jarrells was working with two other men, Rusty Painter and Jerry Smedley, moving large rolls of insulation into a masonry building that had been constructed by Delgadillo.

Smedley was operating an extended boom forklift to move the rolls of insulation through openings in the walls of the building in accordance with standard construction industry practice. Jarrells stationed himself on the other side of the walls to receive the rolls and maneuver them into position. The men had already placed one roll successfully and were in the process of moving the second roll.

According to Jarrells, he noticed the plastic wrapping around the second roll of insulation had become caught on the ten-foot masonry wall. He called to Smedley to stop the forklift and then walked toward the roll to free the entangled plastic. As Jarrells stood there untangling the plastic, the masonry wall fell on him, hitting him on the right side of his face and throwing him back.

Jarrells suffered a skull fracture, a crushed right cheek bone, a fractured left arm above the wrist, and three fractured ribs on the right side. The injury to his face has left him with a scar under his right eye, extending up to his right ear. Also, Jarrells complains of lingering neck pain, headaches, short-term memory loss, mood disorders, and occasional blurred vision. His medical expenses came to \$54,280.

Jarrells was off work due to his injuries for fifteen weeks, for which he claimed a wage loss of \$12,000. Worker's compensation paid \$49,904 of his medical expenses and another

\$21,025 of indemnity. Jarrells was also assigned a permanent partial impairment rating of 10%. After Jarrells returned to work, he found himself unable to perform his job and was subsequently fired.

Jarrells filed suit against R.D.J. and Delgadillo. He criticized Delgadillo for the allegedly shoddy construction of the masonry wall. According to Jarrells, Delgadillo failed to pour grout solidly down the holes in the cement blocks in the wall, failed to install rebar, and failed to provide any bracing or vertical strengthening.

Jarrells held R.D.J. responsible as the general contractor on the project. In addition to his other damages, Jarrells estimated his future lost income due to the accident at \$374,400. His identified expert was Dr. Scott Taylor, Physical Medicine, Muncie.

Delgadillo and R.D.J. defended the case and blamed the incident on Jarrells, Smedley, and LeMaster. According to defendants, the wall fell because Smedley actually hit it with the forklift. Moreover, there were other openings in the wall that afforded more room for moving the rolls of insulation. Yet Jarrells and Smedley chose to move the rolls through the smaller, and less safe, opening despite the fact they knew it was unbraced.

Defendants argued it would hardly be reasonable to hold Delgadillo and R.D.J. liable for Jarrells's and Smedley's foolish decision. Instead, the lion's share of the fault properly rests with the two men and with LeMaster for failing to train its employees in safe operating procedures.

In addition, R.D.J. disavowed having any control over operations at the Westfield project. Instead, R.D.J. described itself as a "hands-off" general contractor that relied exclusively on subcontractors. In short, R.D.J. argued it could not be held liable for any injuries to employees of its subcontractors. The identified defense IME was Dr. Raymond Horn, Neuropsychology, Carmel.

The case was tried in Noblesville for three days. The jury returned a verdict in which 55% of the fault was assigned to R.D.J., 30% to non-party LeMaster,