

The Indiana Jury Verdict Reporter

The Most Current and Complete Summary of Indiana Jury Verdicts

December, 2005

Statewide Jury Verdict Coverage

6 IJVR 12

Unbiased and Independently Researched Jury Verdict Results

In This Issue

Marion County

Medical Negligence - \$45,000	p. 4
Auto Negligence - \$18,000	p. 6
Auto Negligence - Defense verdict	p. 10
Truck Negligence - \$12,200	p. 11
Auto Negligence - Defense verdict	p. 12

Lake County

Workplace Negligence - \$10,500,000	p. 1
Swimming Pool Neg. - \$400,000	p. 2
Premises Liability - \$60,000	p. 5
Auto Negligence - \$24,644	p. 7
Slip and Fall - \$8,800	p. 10
Auto Negligence - Defense verdict	p. 12

Vigo County

Auto Negligence - \$90,528	p. 2
Auto Negligence - \$1,556	p. 12

Hamilton County

Auto Negligence - \$67,050	p. 3
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Bartholomew County

Auto Negligence - \$50,000	p. 5
----------------------------	------

Boone County

Repo Negligence - Defense verdict	p. 6
-----------------------------------	------

Vanderburgh County

Medical Negligence - Defense verdict	p. 7
--------------------------------------	------

Monroe County

Auto Negligence - \$17,700	p. 8
----------------------------	------

Gibson County

Premises Liability - Defense verdict	p. 8
--------------------------------------	------

Federal Court - Indianapolis

Prisoner's Rights - Defense verdict	p. 9
-------------------------------------	------

Elkhart County

Auto Negligence - \$3,719	p. 11
---------------------------	-------

Lawrence County

Auto Negligence - \$3,277	p. 11
---------------------------	-------

Porter County

Auto Negligence - Defense verdict	p. 13
-----------------------------------	-------

Notable Out-of-State Verdicts	p. 14
--------------------------------------	-------

Civil Jury Verdicts

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

Workplace Negligence - A construction worker suffered serious head injuries after falling more than twenty feet to the ground while helping to build a shopping center

Gulley v. Main Street Centre, et al.,
45C01-0308-CT-174

Plaintiff: Kenneth J. Allen, *Kenneth J. Allen & Associates*, Valparaiso

Defense: Daniel G. Suber and Jennifer E. Davis, *Daniel G. Suber & Associates*, Valparaiso

Verdict: \$10,500,000 for plaintiff less 10% comparative fault

County: **Lake**, Circuit

Court: J. Arredondo, 9-1-05

In the spring of 2001, there was a construction project under way at 713 West Main Street in Schererville. The project was a large retail shopping center to be called, appropriately enough, Main Street Centre.

The sole owner of the Main Street project was David Van Dyke. The company in charge of the actual construction was Precision Commercial Construction, Inc. As it happened, Van Dyke was also the sole owner of Precision.

On 1-3-02, Precision subcontracted with a company called Trump Ironworks to furnish and install structural steel framing for the project. One of Trump's employees was Brian Gulley. Gulley's job included attaching metal beams to one another, sometimes at a considerable height.

Gulley was hard at work on 2-14-02 helping to put up a roof deck on the project. He was in the process of fastening a horizontal metal beam to a column when he slipped and fell more than twenty feet to the ground below. No one saw what caused Gulley to fall, although the accident report contains a suggestion that he might have lost consciousness just prior to falling.

In any event, Gulley hit the ground

hard and stopped breathing due to the impact. Fortunately, a mason working nearby happened to be trained in CPR and revived him. Gulley was then transported by ambulance to the hospital for further treatment.

Gulley sustained extensive injuries in the fall. Among them were a complex skull fracture, a brain injury, extensive facial injuries, and disfigurement. He has also permanently lost his sense of smell and is prone to fatigue, depression, and headaches.

Gulley's incurred medical bills mounted to \$168,494, and he anticipates future medical expenses of between \$20,000 and \$30,000 for reconstructive surgery. Also, he now has only a limited ability to work.

Gulley sued for damages and targeted Main Street Centre, Precision Commercial Construction, a company called Keogh Mechanical Corporation, and someone named David Katz. The role of Keogh and Katz in the incident is unclear from the record. In any event, Gulley later dismissed them from the case and focused his attention on Main Street and Precision.

Gulley blamed defendants for allowing dangerous conditions to exist at the construction site and providing no fall protection. In particular, he noted that on at least one occasion an employee of Precision visited the site and took photographs. Some of those photographs show Gulley himself working more than six feet above the ground without fall protection.

This was significant inasmuch as it constituted a violation of Precision's own safety rules, as well as OSHA regulations. Yet, there is no evidence the Precision employee who observed this violation bothered to alert anyone to the danger.

In addition to his other damages, Gulley sought compensation for his lost

earnings and for his pain and suffering. He estimated his past and future wage loss at \$853,442. He quantified his past and future pain and suffering at more than \$8,000,000.

Main Street and Precision defended the case and pointed the finger of blame at Gulley for choosing to work at altitude without being tied off or using safety equipment. Also, Main Street denied having any duty to provide its subcontractors with a safe place to work. Instead, Main Street claimed that Precision was in charge of the project, and Main Street had no knowledge of working conditions at the site.

Gulley opposed this defense by pointing out that Main Street and Precision were both solely owned by Van Dyke. In fact, the two companies actually share the same office space. Given that close relationship, it would be disingenuous to suppose that the one hand did not know what the other was doing.

The case was tried for eight days in Crown Point. The jury returned a complex verdict in which 80% of the fault was assigned to Precision, 10% was assigned to Main Street, 8% was assigned to non-party Trump Ironworks, and the remaining 2% was assigned to Gulley.

The jury set Gulley's total damages at \$10,500,000. After reduction for comparative fault, his final award came to \$9,450,000. That figure represented an \$8,400,000 verdict against Precision combined with a \$1,050,000 verdict against Main Street. The court entered a consistent judgment.

Post-trial, defendants filed a motion to correct errors. The court's ruling on the motion was not in the record at the time the IJVR reviewed it.

Auto Negligence - A woman suffered two herniated discs when another driver ran a red light and crashed into her

Goldner v. Watts,

84D02-0305-CT-3765

Plaintiff: Keith L. Johnson, *Johnson Law Office*, Terre Haute

Defense: William W. Drummy, *Wilkinson Goeller Modesitt Wilkinson & Drummy*, Terre Haute

Verdict: \$90,528 for plaintiff

County: **Vigo**, Superior

Court: J. Adler, 9-26-05

In the evening of 7-27-02, Kimberly Goldner, age 45 and a paint store sales associate, was driving west on Walnut Street toward the intersection with South 4th Street in Terre Haute. At the same time, Michael Watts was driving south on South 4th Street. At the intersection, Watts ran a red light and collided with Goldner.

Goldner suffered two herniated discs in her thoracic spine as a result of the crash and incurred medical expenses totaling \$14,193. She was also off work for two months due to the accident. Her lost wages came to \$2,100. Goldner was ultimately assigned a permanent impairment rating of 8%, as well as a 25lb. weight limitation.

Goldner filed suit against Watts and blamed him for running the red light and crashing into her. In addition to her other damages, Goldner sought future lost wages. In particular, she had previously planned to return to the more highly paying factory work from which she had been laid off before going to work for the paint store.

Based on her impairment rating and weight limitation, Goldner claimed her dream of returning to factory work was now rendered impossible. She estimated her lost future wages at approximately \$10,000 per year.

Goldner's medical experts included Dr. James Walsh, Family Practice, Terre Haute; Dr. Joseph Bergeron, Physiatry, Indianapolis; and Dr. Eric Potts, Neurosurgery, Indianapolis. Doctors Walsh and Bergeron agreed that Goldner's two herniated discs were due to the accident.

Watts admitted fault for the crash and

explained he simply failed to see the red light. He defended on damages and disputed their nature and extent.

A jury in Terre Haute deliberated for approximately two and a half hours before returning a verdict in favor of Goldner. The jury awarded her damages of \$90,528, and the court followed with a consistent judgment for that amount. The judgment has been satisfied.

Swimming Pool Negligence Following a routine maintenance procedure at a high school, the school's swimming pool became saturated with chlorine gas, causing permanent injury to at least one of the students who was participating in a swimming class

Stoval v. Warsaw Chemical Company,

45D11-0103-CT-91

Plaintiff: Donald E. Schlyer and David R. Novak, *Schlyer & Associates*, Merrillville

Defense: Leonard H. Holajter, *Ohio Casualty Litigation Counsel*,

Valparaiso, for Warsaw Chemical Company; John M.T. Chavis, II, *Locke Reynolds*, Indianapolis, for Tri-Creek School Corporation

Verdict: \$400,000 for plaintiff

County: **Lake**, Superior

Court: J. Dywan, 7-15-05

In 1999, Danielle Stoval was a student enrolled at Lowell High School, part of the Tri-Creek School Corporation, in Lake County. The school was equipped with a large swimming pool used for swimming classes. The pool was serviced by chlorine tanks that were housed in a "chlorine closet." Significantly, the closet was also equipped with a tube that vented chlorine to the outside.

On 3-23-99, one of the chlorine tanks was empty and needed replacing. Lowell's maintenance man replaced the tank and switched the regulator from the empty tank to the full one. However, he was unable to open the valve on the new tank. Lowell called in the Warsaw Chemical Company to deal with the situation. Warsaw sent its employee, Randall Creamer, out to the site. There would later be some dispute over exactly what Creamer did to

correct the problem.

According to Stoval, Creamer pulled the problematic chlorine tank out of the closet and attached the regulator to the tank before opening the stuck valve. In doing so, however, he accidentally pulled the vent tube into the wall cavity, thereby allowing chlorine to vent into the building.

Believing he had completed his repairs, but not realizing there was a new problem with the vent tube, Creamer left the premises. The following morning, Stoval reported for swimming class. No one was aware that as a result of the vent tube problem, the pool had become saturated with chlorine gas.

Stoval lined up along with the other students at the edge of the pool and began doing her warm-up exercises. At the same time, some of the other students dove into the pool. Almost immediately, the students began coughing and complaining to their physical education teacher, Mary Opat, of a bleach-like odor in the water. Opat recognized the signs of chlorine exposure and ordered the students to the showers for decontamination. Ultimately, the entire school was evacuated.

Stoval was hospitalized for four days due to her exposure to the chlorine gas and was subsequently diagnosed with Reactive Airways Dysfunction Syndrome (RADS). She continues to have difficulty breathing if she exerts herself. On such occasions, she must now use an inhaler to regain her breath. Her medical expenses are unknown.

Stoval's experts included two pulmonologists: Dr. Charles Rebesco of Hobart, and Dr. Elliot Stokar of Munster. Interestingly, Stokar was originally hired by Tri-Creek to perform an IME on Stoval. It is unclear why he switched teams. Stoval's other expert was an architect, Joseph Szarkowicz.

Stoval filed suit against the Tri-Creek School Corporation and the Warsaw Chemical Company. She blamed them for failing to replace the chlorine tank properly and exposing her to chlorine gas. In particular, she alleged that Creamer failed to inspect the vent tube to ensure its proper placement before

leaving the premises.

Both defendants denied wrongdoing, and they each blamed the other for the incident. Tri-Creek blamed Warsaw for having pulled the vent tube into the wall cavity and failing to inspect it prior to leaving. Warsaw, however, told a somewhat different story.

According to Warsaw, all Creamer did was to open a stuck valve on the new chlorine tank. It was Tri-Creek's own maintenance man who installed the regulator before Creamer ever arrived on the scene, and it must have been the maintenance man who pulled the vent tube into the wall cavity. Thus, the fault for the incident rests with Tri-Creek rather than with Warsaw.

Tri-Creek's expert was chemical engineer Russell Ogle. Warsaw's expert was Dr. Timothy Zwier, Chairman of the Department of Chemistry at Purdue University, West Lafayette.

The case was tried for five days in Crown Point. During deliberations, Stoval entered into a high/low agreement with Tri-Creek with parameters of \$110,000/\$100,000. The jury returned a verdict in which 80% of the fault was assigned to Tri-Creek, and the remaining 20% was assigned to Warsaw.

Stoval's damages were set at \$400,000, with half of that amount assessed to each defendant. Thus, Stoval took \$40,000 from Warsaw and was awarded \$160,000 against Tri-Creek. Pursuant to the terms of the high/low agreement, Tri-Creek will pay the minimum figure of \$100,000. Prior to trial, Stoval's settlement demand was \$200,000; Warsaw's offer was \$45,000.

Auto Negligence - A woman claimed TMJ and other ailments as a result of being rear-ended by another driver

Truex v. Kitterman,
29D02-0004-CT-234
Plaintiff: Timothy A. Rowe, *Rowe & Hamilton*, Indianapolis
Defense: C. Stuart Carter, *State Farm Litigation Counsel*, Indianapolis
Verdict: \$67,050 for plaintiffs less 20% comparative fault
County: **Hamilton**, Superior Court: J. Pylitt, 5-27-05

On 10-12-98, Michelle Truex, age 41, was driving east on 116th Street in Fishers. Her two children, Alexandria and Gabriel, were riding with her as passengers. When Truex stopped in traffic due to construction, she was rear-ended by Helen Kitterman.

Michelle suffered injuries to her neck and back, and she complained of TMJ dysfunction, memory loss, and chronic pain. Alexandria and Gabriel also suffered injuries that the record does not describe. Their medical expenses are unknown.

Michelle's treating physician, Dr. Douglas Robertson, Family Practice, Carmel, offered the opinion that her chronic pain was due to the injuries she sustained in the crash. Her other identified expert, Dr. Robert Silbert, Physical Medicine, Indianapolis, believed her injuries exacerbated a pre-existing condition.

Michelle, Alexandria, and Gabriel all filed suit against Kitterman and blamed her for rear-ending them. Additionally, Michelle's husband, Lewis Truex, presented a derivative claim for loss of consortium.

Kitterman defended the case and minimized the claimed damages. In particular, Kitterman noted that Michelle had suffered a similar neck problem due to a similar accident some six years previously in 1992. The record does not identify defense experts.

The case was tried for two days in Noblesville. The jury returned a verdict in which 80% of the fault was assigned to Kitterman and the remaining 20% to the Truexes. It appeared, however, that the jury struggled with the calculation