

The Indiana Jury Verdict Reporter

The Most Current and Complete Summary of Indiana Jury Verdicts

February, 2007

Statewide Jury Verdict Coverage

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Unbiased and Independently Researched Jury Verdict Results

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Medical Negligence - A surgical misadventure during a laparoscopic procedure to correct acid reflux disease caused a man to lose most of his stomach and has left him a "gastric cripple"

Castro v. Demir, 45C01-0202-CT-31
Plaintiff: Harold T. Harper, *Harper & Rogers*, Valparaiso
Defense: Jon Schmoll and Michelle P. Burchett, *Spangler Jennings & Dougherty*, Merrillville
Verdict: \$1,500,000 for plaintiff
County: **Lake**, Circuit
Court: J. Arredondo, 11-13-06

In the middle of February in 2000, Michael Castro, age 54 and an employee of U.S. Steel, was suffering from severe acid reflux disease. Castro consulted with a surgeon, Dr. Teoman

Demir of Munster, about the problem.

It was Dr. Demir's recommendation that Castro undergo a "Nissen Fundoplication" procedure. This procedure involves sewing the top of the stomach around the esophagus to stop the contents of the stomach from flowing back up into the esophagus.

Dr. Demir performed the procedure laparoscopically on 2-25-00 at Community Hospital in Munster. However, something went terribly wrong. During the course of the procedure, Castro suffered serious vascular damage and a perforated stomach.

As a result of these insults, Castro

developed gangrene of the stomach and suffered multi-organ failure. He remained in Community Hospital until 4-10-00 and was later airlifted to Rush Presbyterian - St. Luke's Hospital in Chicago.

Castro underwent multiple surgeries and repeated, lengthy hospitalizations in an effort to repair the damage to his internal organs. Although he survived the ordeal, Castro lost his gallbladder and most of his stomach. This has left him a "gastric cripple" and caused him to have permanent problems with oral food ingestion, weight loss, and malnutrition. He also claims mental suffering.

The case was presented to a medical review panel consisting of three surgeons. They were Dr. Chad Davis of Indianapolis, Dr. Hermann Burgermeister of Portland, and Dr. Larry Micon of Indianapolis.

Castro was critical of Dr. Demir's care in three respects: (1) failure to perform the Nissen Fundoplication properly, (2) failure to recognize the scope of Castro's vascular damage, and (3) failure to diagnose and treat Castro's necrotic stomach and perforation. The opinion of the panel was unanimous that Dr. Demir's treatment did not fall below the standard of care.

In this lawsuit, Castro, who has since moved to Georgia, repeated his liability theory against Dr. Demir as outlined above. Castro's identified medical expert was Dr. B.J. Pomerantz, Surgery, Columbus, OH.

Dr. Demir defended the case and denied any breach of the standard of care. Instead, Dr. Demir blamed Castro's tragic outcome on post-surgical complications that had nothing to do with any negligence on Dr. Demir's part. The identified defense experts included Dr. Gary Vitale, Surgery, Louisville, KY; and Dr. Jeffrey Hagen, Surgery, Los Angeles, CA.

At the conclusion of a five-day trial in Crown Point, the jury returned a verdict for Castro and awarded him damages of \$1,500,000. After reduction to the currently prevailing statutory cap on damages, the court

entered a judgment for Castro in the amount of \$1,250,000.

The judgment has been satisfied to the extent of Dr. Demir's portion of \$250,000. The remainder of the judgment is to be paid by the Indiana Patient's Compensation Fund.

Products Liability - A budding televangelist was killed in a Ford Explorer roll-over – his estate criticized the SUV's failure to have electronic stability control

Bourke v. Ford Motor Company, 2:03-136

Plaintiff: Michael D. Wiseman, *Wiseman & McIntyre*, Boston, MA and Donald E. Schyler, *Schyler & Associates*, Merrillville

Defense: James M. Campbell and David M. Rodgers, *Campbell Campbell Edwards & Conroy*, Boston, MA and Kevin C. Schiferl and Karen M.R.

Weber, *Locke Reynolds*, Indianapolis
Verdict: Defense verdict on liability

Federal: **Hammond**

Court: J. Lozano, 1-19-07

It was 8-21-01 and Richard Bourke, then age 20 and a budding televangelist and a youth minister at a megachurch, was traveling home to Munster, IN from a trip to the nation's capitol. Bourke traveled in a 2000 Ford Explorer. On I-80 he drifted to the left side of the road. Veering back to the right, the SUV began to roll.

Bourke was ejected as the vehicle rolled. He sustained fatal injuries. His estate sued Ford and alleged the SUV was defective because of its inherent instability and propensity to roll. Particularly, the theory criticized the vehicle's failure to have electronic stability control. A key expert for the estate was Mickey Gilbert, Engineer, Golden, CO. Bourke was survived by his wife, Anna. However she dropped her individual claims and there was no proof at trial of her subsequent remarriage.

In developing damages, there was proof from Pastor Steve Muncey (himself a televangelist and Bourke's mentor) who explained that by his thirties, the plaintiff certainly would have been a multi-millionaire. [Muncey, the head of a Munster-based

mega-church, testified live by video feed from Hawaii.]

Ford defended the case and first explained the crash as a product of fatigue – it believed Bourke simply fell asleep. [Telephone messages he left to a friend confirmed this, Bourke admitting as much.] Ford also denied the SUV was unstable, explaining it rolled in this instance because of the forces placed upon it by Bourke's maneuver. Quite simply, the crash was caused by Bourke's fatigue and not the SUV. Ford's key expert was Donald Tandy, Engineer, Houston, TX.

This case was tried for nine days in Hammond. The verdict on liability was for Ford after a little more than thirty minutes of proof and the plaintiff took nothing. A defense judgment was entered.

Ed. Note - This is believed to be the first of hundreds of pending electronic stability control cases to go to trial against Ford.

Auto Negligence - Plaintiff was awarded nearly seven and a half times her medical expenses for soft-tissue injuries she sustained in a failure-to-yield crash

Branum v. Hedrick, 03D01-0502-CT-277

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

Defense: Thomas J. Belcher, *Kelley Belcher & Brown*, Bloomington

Verdict: \$104,000 for plaintiff

County: **Bartholomew**, Superior

Court: J. Monroe, 9-20-06

In the late afternoon of 6-13-03, Veronica Branum, age 46, was driving south on U.S. 31 in Columbus. At the same time, Connie Hedrick was trying to cross U.S. 31. She did so just as Branum arrived on the scene, and Hedrick crashed into the driver's side of Branum's vehicle.

Branum suffered soft tissue injuries to her neck and back due to the crash. Her medical expenses came to \$14,041, and she claimed lost wages in the amount of \$2,027. Her medical treatment consisted mostly of chiropractic care.

Branum filed suit against Hedrick and

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blamed her for crossing the highway unsafely and crashing into her. Hedrick defended the case and disputed the nature and extent of Branum's claimed injuries.

The case was tried for two days in Columbus. The jury returned a verdict for Branum and awarded her damages of \$104,000. The court's judgment for that amount has been satisfied.

Premises Liability - A woman suffered a broken hip when she slipped and fell on a sheet of ice in front of her apartment building

Pelke v. Swanson Court Apartments, 64D01-0406-CT-5845

Plaintiff: Jeffrey S. Sturm, *Sturm & Phillips*, Valparaiso

Defense: Michael P. Blaize, *State Farm Litigation Counsel*, Crown Point

Verdict: \$494,744 for plaintiff less 10% comparative fault

County: **Porter**, Superior

Court: J. Bradford, 10-11-06

In the afternoon of 1-24-04, Mary Pelke, a longtime resident and employee of Swanson Court Apartments in Portage, was on her way to attend her grandson's basketball game. Pelke left her apartment and headed toward the parking lot toward her car.

There had been a substantial snowfall the night before and again that morning. However, Pelke thought it was safe to leave her building because the apartment complex management had made some effort earlier in the day to remove the ice and snow.

As Pelke made her way toward the parking lot, she came to an area on the sidewalk in front of her building. Unbeknownst to her, the sidewalk was covered with a thin sheet of ice that was not visible to the naked eye. When Pelke stepped onto the ice sheet, she slipped and fell hard onto the pavement.

Pelke suffered a broken hip in the fall and later underwent a partial hip replacement surgery. This was followed by a course of physical therapy. Her medical expenses are unknown. As a result of her injuries, Pelke has been rendered permanently unable to work.

In this lawsuit, Pelke blamed

Swanson Court Apartments and its owner for failing to remove the ice and snow from the sidewalk and for failing to warn her of the danger. In addition to her other damages, Pelke claimed lost wages in an undisclosed amount.

Swanson Court defended the case and pointed out it had plowed and shoveled the snow and had applied Ice Melt earlier in the day of Pelke's fall. On that basis, Swanson Court argued it had responded to the severe winter weather in a timely manner, and nothing more could be expected of it.

In addition, Swanson Court implicated Pelke's fault and blamed her injuries on her failure to exercise reasonable precautions for her own safety. Finally, defendant disputed the nature and extent of Pelke's injuries and accused Pelke of failing to mitigate her damages.

The case was tried for two days in Valparaiso. The jury deliberated slightly over one and a half hours before returning a verdict in which 90% of the fault was assigned to Swanson Court Apartments. The remaining 10% was assigned to Pelke.

The jury set Pelke's raw damages at \$494,744. After reduction for comparative fault, her final award came to \$445,269. The court entered a judgment for that amount, and it has been satisfied.

Gender Discrimination - A female union millwright alleged she was denied placement on a work list because of her gender

Randolph v. Carpenter & Millwrights Local 1003, 2:03-92

Plaintiff: Robert P. Kondras, Jr., *Hunt Hassler & Lorenz*, Terre Haute

Defense: Raymond J. Sanguinetti and Terrance B. McGann, *Whitfield & McGann*, Chicago, IL

Verdict: \$50,000 for plaintiff

Federal: **Terre Haute**

Court: J. McKinney, 1-9-07

Elsie Randolph became a union millwright in 1980, a member of the Indiana Regional Council of Carpenters and Millwrights, Local 1003. She was the only woman in the history of the local union. In this lawsuit, she alleged gender discrimination by the union in

two ways.

First, it failed to place her on the "out-of-work" list that made her available for jobs. Then when she sought union protection from out-of-state millwrights, the union did not step up for her as it had for similarly situated males. If prevailing, Randolph sought both compensatory and punitive damages. [Originally summary judgment was granted for the union – the case was reversed at the 7th Circuit.]

The Local 1003 raised fact disputes regarding the out-of-work list – it was maintained for union members who were not regularly placed. When a job came in, it was filled either by the request of the employer or to the next name on the list. In describing this process, the Local 1003 explained Randolph was placed on the list every month she called, members being required to call every thirty days. [Randolph countered that she did call every month, but was not added.] The Local 1003 also denied failing to protect Randolph from out-of-state workers.

Randolph prevailed on the discrimination count and took \$25,000 in compensatory damages and an equal sum in punitives. The verdict totaled \$50,000. Plaintiff has since sought an award of attorney fees.

Auto Negligence - Defendant admitted fault for a rear-end collision; plaintiff suffered a herniated disc and was awarded more than three and a half times her medical expenses

Maurer v. Hoferle, 49C01-0403-CT-874

Plaintiff: Jeffrey D. Oliphant, *The Hastings Law Firm*, Indianapolis

Defense: Cynthia A. Muse, *State Farm Litigation Counsel*, Indianapolis

Verdict: \$75,000 for plaintiff

County: **Marion**, Circuit

Court: J. Sosin, 1-24-07

In the late afternoon of 4-22-02, Stacy Maurer, age 43, was driving south on Meridian Street in Indianapolis. At the same time, Stephanie Hoferle, age 17, was also traveling south directly behind her.

Maurer stopped for a red light at the