

The Indiana Jury Verdict Reporter

The Most Current and Complete Summary of Indiana Jury Verdicts

February 2017

Statewide Jury Verdict Coverage

18 IJVR 2

Unbiased and Independently Researched Jury Verdict Results

In This Issue

Marion County

Auto Negligence - Defense verdict	p. 3
Auto Negligence - Zero	p. 6
Medical Neg. - Defense verdict	p. 7
Auto Negligence - \$8,944	p. 9
School Bus Neg. - Defense verdict	p. 9
Auto Negligence - \$130,000	p. 9

Federal Court - Fort Wayne

Civil Rights - \$6.00	p. 2
Breach of Warranty - \$150,000	p. 4

Porter County

Medical Negligence - \$2,000,000	p. 1
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Lake County

Premises Liability - \$130,000	p. 4
Underinsured Motorist - \$65,000	p. 8

Johnson County

Snow Rem. Neg. - Defense verdict	p. 6
----------------------------------	------

Tippecanoe County

Auto Negligence - \$30,000	p. 7
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Jury Verdict History

<i>Sullivan County - 1965</i>	
Auto Negligence - \$250,000	p. 10

Civil Jury Verdicts

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

Medical Negligence - A woman suffered permanent debilitating injuries to her feet due to allegedly unnecessary surgeries performed by a podiatrist; after settling for the podiatrist's policy limits, the woman successfully pursued excess damages from the compensation fund and was awarded \$1,000,000 for each of her injured feet

Cooper v. Robertson,

64D02-1509-CT-8261

Plaintiff: Steven L. Langer and Jon F.

Schmoll, *Langer & Langer*, Valparaiso

Defense: Patrick P. Devine, *Hinshaw*

& Culbertson, LLP., Schererville

Verdict: \$2,000,000 for plaintiff

(Bench trial)

County: **Porter**, Superior

Court: J. Alexa, 8-26-16

In July of 2009, Debra Cooper, then age 48 and a maintenance worker for St. Pius X church, was having trouble with her feet. She consulted on the matter with Dr. Michael Salcedo, a podiatrist in Mishawaka. On 7-20-09, Dr. Salcedo performed surgery on both of Cooper's feet. The outcome of the surgery was not good.

There would later be evidence that, among other things, Dr. Salcedo's surgery destroyed a structure called the "sinus tarsi" in Cooper's ankles. This resulted in a permanent alteration in Cooper's gait that causes her now to walk with a "waddle" and even that only with difficulty.

Cooper also sustained nerve damage in the surgery and experiences severe pain in both her

feet. She also complains of complex regional pain syndrome, scarring, and lost wages. Her medical expenses were later stipulated to be \$42,367.

Cooper submitted the case to a medical review panel and criticized Dr. Salcedo for performing unnecessary surgery and for failing to perform the surgery correctly. The panel issued a unanimous opinion that Dr. Salcedo's surgeries did in fact fail to conform to the applicable standard of care.

Dr. Salcedo admitted fault and settled Cooper's claim against him for his policy limits of \$500,000 (comprised of \$250,000 for each foot). Cooper then filed suit to collect excess damages from the Indiana Patient's Compensation Fund. The named defendant in the case was Stephen Robertson, the Indiana Commissioner of Insurance.

Cooper's husband, Thomas Cooper, also presented a loss of consortium claim. The identified experts for plaintiffs included Dr. Frederick Ferlic, Orthopedic Surgery, South Bend; and Dr. Timothy Lubenow, Pain Medicine, Chicago, IL. Respondent's identified expert was Dr. Frederick Fedorchak, Podiatry, Portage.

The case was tried for three days as a bench trial in Valparaiso solely on the issue of damages. Approximately three and a half months later, the court entered its judgment. Specifically, the court found that Cooper's actual damages

actually came to \$38,000.

That amount was in excess of Cosme's \$25,000 UIM coverage with Allstate. Accordingly, the court entered a reduced judgment for Cosme for \$25,000.

Auto Negligence - An elderly retiree suffered injuries to his neck and shoulder in a rear-end crash near the intersection of an interstate off-ramp and a surface street; the jury assigned plaintiff 40% of the fault

Reisa v. Miracle, 49D03-1406-CT-21260

Plaintiff: Nathan D. Foushee, *Ken Nunn Law Office*, Bloomington

Defense: Charles S. Smith and Angela J. Della Rocco, *Schultz & Pogue, LLP.*, Indianapolis

Verdict: \$8,944 for plaintiff less 40% comparative fault

County: **Marion**, Superior

Court: J. Miller, 1-25-17

On 9-3-13, William Reisa, then age 69 and a retiree, was driving on I-465 on the south side of Indianapolis. At the same time, Nicholas Miracle was also driving in the same area. It would later be alleged that Miracle was on the job at the time for his employer, Edward Mundy.

At the intersection with Harding Street, Miracle rear-ended Reisa. Following the crash, Reisa was treated and released at Community Hospital South for injuries to his neck and right shoulder. Reisa also complained of finger numbness and a pinched nerve. His medical expenses are not known.

Reisa and his wife, Patricia Reisa, filed suit against Miracle and blamed him for following too closely and thereby causing the crash. Plaintiffs also named Mundy as a co-defendant, and they initially made

an uninsured/underinsured motorist claim against their own insurer, USAA.

Plaintiffs ultimately dismissed their claims against Mundy and USAA. The litigation continued thereafter solely against Miracle. He defended the case, minimized Reisa's claimed injuries, and implicated Reisa's fault.

The case was tried for two days in Indianapolis. The jury returned a verdict in which fault was allocated 40% to Reisa and the remaining 60% to Miracle. The jury set Reisa's raw damages at \$8,944, which happened to be the exact amount defendant had suggested in closing argument. After adjustment for comparative fault, Reisa's final award came to \$5,366. The court entered a judgment for that amount, plus costs.

School Bus Negligence - Plaintiff claimed to have been injured when his vehicle was struck by a school bus that made an allegedly improper turn; the jury returned a defense verdict

Taylor v. Metropolitan School District of Warren Township,

49D12-1303-CT-1-715

Plaintiff: Theresa L.D. Ebbs, *Glaser & Ebbs*, Indianapolis

Defense: Kenneth A. Ewing, *Liberty Mutual Litigation Counsel*, Carmel

Verdict: Defense verdict on liability
County: **Marion**, Superior

Court: J. Dietrick, 1-26-17

On 8-21-12, John Pratt was driving a school bus for the Metropolitan School District of Warren Township. Pratt was traveling on 21st Street and preparing to make a turn at the intersection with Lake Terrace West Drive in Indianapolis.

As Pratt made his turn, his school bus collided with a vehicle being

driven by Terrance Taylor. The record does not reveal the nature of Taylor's claimed injuries, but it is known that his medical expenses climbed to more than \$13,000.

Taylor filed suit against the school district and blamed it for Pratt's actions in making what Taylor characterized as an improper turn. The school district denied fault and implicated Taylor's contributory negligence.

The case was tried in Indianapolis. The jury returned a defense verdict for the school district. If the court entered a judgment, it was not part of the record at the time the IJVR reviewed it. Prior to trial, Taylor's settlement demand was for \$30,000. The defense made a qualified settlement offer of \$3,000.

Auto Negligence - Defendant admitted fault for rear-ending plaintiff twice while he waited in the drive-thru at McDonald's; after plaintiff won a substantial verdict, the parties disagreed over the issue of pre-judgment interest

Reed v. Kinzer, 49D04-1306-CT-23143

Plaintiff: Katherine G. Karres, *Hensley Legal Group, P.C.*, Indianapolis

Defense: Patrick J. Murphy, *State Farm Litigation Counsel*, Indianapolis

Verdict: \$130,000 for plaintiff

County: **Marion**, Superior
Court: J. Ayers, 1-11-17

On 12-8-11, David Reed, then age 65, was stopped at the drive-thru at the McDonald's restaurant located at 10955 U.S. 36 near Indianapolis. As Reed sat waiting in the drive-thru, he was rear-ended by Barbara Kinzer. Oddly, it appears Kinzer struck Reed's vehicle twice.

The record is unspecific as to the nature of Reed's injuries. However,



Katherine G. Karres for the plaintiff

it is known that he had surgery and that his medical expenses came to \$93,459. Kinzer admitted fault for the crash but disputed the nature and extent of Reed's claimed injuries.

The case was tried for two days in Indianapolis. The jury returned a verdict for Reed and awarded him damages of \$130,000. If the court entered a judgment, it was not part of the record at the time the IJVR reviewed it.

Prior to trial, Reed made a settlement offer of \$45,000. Kinzer countered that offer with her own settlement offer of \$19,065. Post-trial, Reed filed a motion for pre-judgment interest in the amount of \$26,000 based on Kinzer's rejection of his offer.

Kinzer opposed that motion and noted that Reed had made a new settlement offer of \$100,000 six months before the trial. According to Kinzer, this second offer effectively withdrew the earlier offer.

Kinzer argued this meant the new settlement offer did not qualify for interest under the pre-judgment interest statute, Ind. Code § 34-51-4-

1, *et seq.*, because the new offer does not meet the time requirements spelled out in that statute.

Alternatively, Kinzer argued that if any interest was due at all, it should be only \$2,761. At the time the IJVR reviewed the record, the issue was still pending.

Jury Verdict History

Baker v. von der Lieth
Sullivan Circuit Court
April 8, 1965

Judge Lowdermilk
Verdict: \$250,000 for plaintiff

There was a fatal car crash in Vincennes on 5-12-62. It involved a sports car containing Wendy von der Lieth, age 17 and James Baker, age 18. There would be disputes about who was driving.

Whoever was the driver, there was proof the car slipped off the road a mile outside of Vincennes. The driver lost control and struck an oncoming vehicle. von der Lieth was killed instantly. Baker was left with a serious and permanent brain injury.

Baker sued the von der Lieth estate and alleged she was the driver (it was her car) and she was negligent in losing control. His damages were substantial. The von der Lieth estate denied Wendy was the driver and argued it was Baker.

The case was venued from Knox County to Sullivan County where it was tried before Judge Lowdermilk. The jury's verdict was for Baker and he took an award of \$250,000. It was described as the largest personal injury verdict in state history to that time. Hansford Mann of Terre Haute represented Baker.

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The Indiana Jury Verdict Reporter is published at 9462 Brownsboro Road, No. 133, Louisville, Kentucky 40241. Phone at 502-339-8794 or 1-866-228-2447. Fax to 502-326-9794. Denise Miller, Publisher, Shannon Ragland and Aaron Spurling, Editors.

Annual subscription is \$329.00 per year. Kentucky residents add 6% for sales tax.

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