

# The Indiana Jury Verdict Reporter

The Most Current and Complete Summary of Indiana Jury Verdicts

May 2013

Statewide Jury Verdict Coverage

14 IJVR 5

*Unbiased and Independently Researched Jury Verdict Results*

## In This Issue

### Marion County

Auto Negligence - Defense verdict	p. 3
Medical Neg. - Defense verdict	p. 10
Auto Negligence - \$6,950	p. 13

### Lake County

Medical Negligence - \$13,000,000	p. 1
Ice Rem. Neg. - Defense verdict	p. 4
Medical Neg. - Defense verdict	p. 5
Premises Liability - \$68,000	p. 11

### Porter County

Auto Negligence - \$76,142	p. 5
Auto Negligence - \$14,653	p. 12

### Monroe County

Auto Negligence - Defense verdict	p. 7
Auto Negligence - \$24,000	p. 13

### Federal Court - Indianapolis

Gender Discrimination - Defense verdict	p. 8
---	------

### Cass County

Premises Liability - \$19,132	p. 8
-------------------------------	------

### St. Joseph County

Auto Negligence - \$20,000	p. 9
----------------------------	------

### Howard County

Auto Negligence - Zero	p. 11
------------------------	-------

### Vanderburgh County

Auto Negligence - Defense verdict	p. 12
-----------------------------------	-------

### Notable Kentucky Verdict

<i>Louisville, Kentucky</i> Products Liability - \$7,246,235	p. 14
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## Civil Jury Verdicts

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

### Medical Negligence - An otolaryngologist who fled the country and was later indicted on 22 counts of healthcare fraud failed to diagnose a patient's laryngeal cancer and instead performed unnecessary surgery on her; the patient later died, and the fugitive doctor was found five years later living in a tent on a mountain in Italy

*Estate of Barnes v. Weinberger, et al.,*  
45D01-0905-CT-64

Plaintiff: Kenneth J. Allen, Brock Alvarado, and Robert Clark, *Kenneth J. Allen & Associates, P.C.*, Valparaiso  
Defense: James Hough, *Spangler Jennings & Dougherty, P.C.*, Merrillville, for Weinberger; Georgianne M. Walker and W. Todd Woelfer, *May Oberfell Lorber*, Mishawaka, for Clinkenbeard  
Verdict: \$13,000,000 for plaintiff against Weinberger (comprised of \$3,000,000 compensatory and \$10,000,000 punitive); defense verdict for Clinkenbeard  
County: **Lake**, Superior Court: J. Schneider, 3-24-11

In April of 2001, Joe Clinkenbeard was working as a physician's assistant employed by the Family Practice Network in Valparaiso. Although Clinkenbeard held an M.D. degree, he was not a licensed physician.

On 4-2-01, Phyllis Barnes, a smoker for some 25 years, consulted with Clinkenbeard for her complaints of coughing and difficulty breathing. He diagnosed bronchitis and tobacco abuse and

gave her cough medicine and an inhaler.

Barnes saw Clinkenbeard several more times of the next four months. During those visits, her list of reported symptoms expanded to include headaches, sore throat, and coughing up blood. At various times Clinkenbeard diagnosed bronchitis, seasonal allergies, chronic sinusitis, and tobacco abuse. In each instance he gave her medications consistent with his diagnosis.

In addition, Barnes consulted with an allergist, Dr. Josephine Wang, on 7-5-01 and again on 8-13-01. Dr. Wang concluded that Barnes did not have allergies, and her chest x-rays were normal. In the end, Barnes was not satisfied with the answers she was getting, so she sought an appointment with Dr. Mark Weinberger, an otolaryngologist based in Merrillville.

Relying in part on extensive billboard advertising, Dr. Weinberger had built a thriving medical practice that enabled him to purchase yachts, travel the world, and enjoy many of the finer things in life. In order to support that lifestyle, it is reported that Dr. Weinberger would see up to 100 patients per day.

Although Dr. Weinberger examined Barnes, the examination was only perfunctory. The standard of care requires that each patient be given a complete ENT exam lasting at least 20 minutes. Dr. Weinberger, however, never had more than a few

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minutes to spare, he never performed a complete ENT exam on Barnes, and he particularly never examined her larynx.

Despite all this, Dr. Weinberger informed Barnes (falsely, as it would later turn out) that her sinuses were full of polyps and that she was badly in need of surgery. Barnes agreed to this, and the surgery was performed on 10-11-01.

Dr. Weinberger performed a total of seven procedures on Barnes for which he billed her approximately \$12,000. Following the surgery Barnes's condition deteriorated. On 12-2-11 she was unable to breath and was taken by ambulance to the ER where x-rays revealed an abnormality.

Five days later, on 12-7-11, another otolaryngologist, Dr. Dennis Han, diagnosed Barnes with Stage IV laryngeal cancer. It was Barnes's belief that her cancer was probably still at Stage I when she consulted with Clinkenbeard and at Stage II when she was seen by Dr. Weinberger.

If Barnes's cancer had been diagnosed at either of those stages, she could have received radiation therapy and undergone limited surgery. These measures would likely have enabled her to survive. Instead, the diagnosis came too late, and Barnes died on 9-16-04.

Prior to her death, Barnes presented her case to a medical review panel. The panel members,

all from Fort Wayne, were Dr. Bradley Schantz, Anesthesiology; Dr. Charles Giffin, Otolaryngology; and Dr. Douglas Neeld, Immunology.

Barnes argued that the failure by Clinkenbeard and Dr. Weinberger to diagnose her laryngeal cancer deprived her of any chance of survival. She also argued that Dr. Weinberger fabricated test results, deliberately made an incorrect diagnosis, and performed unnecessary surgery on her. That unnecessary surgery, in turn, compromised her immune system and caused an explosive growth in her cancerous tumor, thereby worsening her condition.

The panel issued a unanimous opinion that both Clinkenbeard and

Dr. Weinberger did breach the applicable standard of care. However, the panel explained it would defer to an appropriate specialist on the issue of whether that breach was a factor in Barnes's damages.

Barnes filed suit against Clinkenbeard and Dr. Weinberger on the grounds indicated above. Clinkenbeard defended the case and denied having breached the standard of care. For his part, Dr. Weinberger took more drastic steps.

In response to Barnes's lawsuit, Dr. Weinberger began liquidating his assets, transferring funds, and studying foreign languages. He put his plan into action in September of 2004, shortly after Barnes's death, when he took his family on a vacation to Greece.

In the morning of 9-21-04, during that vacation, Dr. Weinberger went jogging and never came back. It soon came to light that Dr. Weinberger had accumulated much of his wealth by a longstanding practice of performing unnecessary medical procedures and billing heavily for procedures he did not actually perform.

This scheme that had worked so well for so long had begun to crumble when Barnes filed her lawsuit, and this prompted Dr. Weinberger to flee the United States and abandon both his medical practice and his family. Sometime after his disappearance his medical license was revoked, he was indicted on 22 counts of healthcare fraud, and he was listed as a fugitive on the *America's Most Wanted* website.

More than five years later, on 12-15-09, Weinberger (no longer a doctor) was found living in a tent on a mountain in Italy. He was taken

into custody by Italian authorities and extradited back to the United States.

Weinberger later pled guilty to all 22 counts against him and will spend four years in prison. His plea agreement also stipulates that he will be required to make restitution to the patients he admits to defrauding.

In the meantime, this case continued to be prosecuted by Barnes's estate with Weinberger defending as best he could. Among other things, Weinberger argued that Barnes's cancer was already at Stage IV when he saw her, and so his treatment of her made no difference in her outcome.

The case was tried for 10 days in Hammond. The jury returned a defense verdict for Clinkenbeard but a verdict for plaintiff against Weinberger. The jury awarded plaintiff compensatory damages of \$3,000,000, plus another \$10,000,000 in punitive damages.

That brought the final award to \$13,000,000 for the estate against Weinberger. The court initially entered a judgment consistent with the verdict but later reduced it to the statutory cap of \$1,250,000 in compensatory damages and \$9,000,000 in punitives.

News reports indicate that more than 350 medical malpractice cases have been filed against Weinberger. This case was the first to go to trial and the third we have reported. Most of the other cases are still pending. In addition, Weinberger's medical malpractice insurer has filed a federal suit alleging that his decision to flee the country and become a fugitive effectively voided his coverage. That suit also is still pending.

**Auto Negligence - A woman with pre-existing spinal problems claimed to have been injured in a crash that happened when defendant pulled into her path from a parking lot; defendant admitted fault, but the jury returned a defense verdict**

*Schlick v. Burnside*,  
49C01-0912-CT-58219

Plaintiff: Richard A. Cook, *Yosha Cook Shartzter & Tisch*, Indianapolis  
Defense: Robert A. Durham, *State Farm Litigation Counsel*, Indianapolis  
Verdict: Defense verdict on damages

County: **Marion**, Circuit  
Court: J. Rosenberg, 3-13-13

On 2-21-08, Jerilyn Schlick was driving a 2007 Saturn Vue as she traveled north on Range Line Road in Carmel. At the same time, Andrew Burnside was emerging from a parking lot in a 1998 Chevrolet Cavalier.

It was Burnside's intention to cross northbound traffic on Range Line Road. He attempted to do so directly in Schlick's path. An instant later, Schlick t-boned the passenger side of Burnside's car.

At the scene of the crash Schlick informed the investigating police officer that she had severe pre-existing spine issues and that her back was hurting. Despite her claim of back pain, Schlick declined an offer of an ambulance. The record does not describe her subsequent treatment, if any. Nor does it reveal the amount of her medical expenses.

Schlick filed suit against Burnside and blamed him for pulling into her path and thereby causing the crash. Schlick's husband, Michael Schlick, also presented a derivative claim for his loss of consortium. Burnside admitted fault for the crash but

For his part, Hout would later explain how the crash happened. According to him, he had worked a normal shift at the Ford Motor Company from 7:00 a.m. to 3:30 p.m. that day and then met some friends at John's Pizzeria in Crown Point after work.

Hout admits he ate pizza and drank alcohol during that time but has no memory of leaving the pizzeria or of his trip prior to the crash. Based on that set of facts, Dennis and Leo filed suit against Hout and blamed him for driving drunk, following too closely, and crashing into them.

In light of Hout's admitted intoxication, both Dennis and Leo also sought the imposition of punitive damages. Finally, Leo's wife, Roma Dambrauskas, also presented a derivative claim for her loss of consortium.

Hout admitted fault for the crash and also admitted being drunk. However, he disputed the nature, extent, and causation of plaintiffs' claimed injuries. Finally, Hout accused plaintiffs of having failed to mitigate their damages.

The case was tried for three days in Valparaiso and resulted in a mixed verdict. The jury found for Dennis and Leo and awarded compensatory damages of \$7,551 to Dennis and \$7,102 to Leo. However, the jury awarded both plaintiffs zero on their claims for punitive damages. Similarly, Hout won a defense verdict on Roma's consortium claim.

The court entered a judgment that reflected the verdict. Hout has satisfied the judgment in the amount of \$14,653, that figure representing the combined compensatory damages awards to Dennis and Leo.

**Auto Negligence - Plaintiff suffered soft-tissue injuries in a rear-end crash in Indianapolis; defendant admitted fault but disputed the extent of plaintiff's injuries**

*Heady v. Schaeckel,*

49D11-1103-CT-10414

Plaintiff: David L. Byers, *Holwager*

*Byers & Caughey*, Beech Grove

Defense: Richard L. McOmber,

*Harrison & Moberly, LLP.*,

Indianapolis

Verdict: \$6,950 for plaintiff

County: **Marion**, Superior

Court: J. Hanley, 4-3-13

On 5-26-09, Elizabeth Heady was driving north on Post Road in Indianapolis. Behind her and traveling in the same direction was a vehicle being driven by Marie Schaeckel. Heady stopped for a traffic light at the intersection with 21<sup>st</sup> Street. An instant later, Schaeckel rear-ended her.

Heady suffered soft-tissue injuries that she attributed to the crash. She followed a course of chiropractic treatments, but the record does not reveal the amount of her medical expenses.

In this lawsuit, Heady targeted Schaeckel and sought compensation for her claimed injuries. In addition to her other damages, Heady also claimed an unspecified amount for the damage to her vehicle. Schaeckel admitted fault for the crash but disputed the extent of Heady's injuries.

The case was tried for two days in Indianapolis. Although Schaeckel had previously admitted fault, the jury nonetheless specified an allocation of 100% of the fault to her.

The jury awarded Heady damages of \$6,950. The court entered a judgment for that amount, plus costs.

The judgment has since been satisfied.

**Auto Negligence - Defendant admitted fault in a rear-end crash case and defended on damages; plaintiff was compensated for his injuries, but the jury awarded zero on his wife's consortium claim**

*Compton v. Alano,*

53C01-1008-CT-2240

Plaintiff: William H. Kelley and

Darla S. Brown, *Kelley Belcher &*

*Brown*, Bloomington

Defense: Bradley D. Pippin,

*Progressive Insurance Litigation*

*Counsel*, Indianapolis

Verdict: \$24,000 for Bric Compton;

zero for Lorraine Compton

County: **Monroe**, Circuit

Court: J. Hoff, 5-1-12

In the early evening of 9-3-08, 53 year-old Bric Compton was driving a 1998 Chevrolet pickup truck as he headed south in the right lane of College Avenue in Bloomington. Behind him but in the left lane was a 2000 Pontiac Grand Am being driven by Danise Alano.

At a point just past the intersection with 2<sup>nd</sup> Street, Alano decided to move into the right lane behind Compton. In doing so, she failed to notice that Compton had begun to slow due to traffic in front of him.

Alano looked to the rear over her right shoulder to make sure the way was clear for her to complete her lane change maneuver. When she made her lane change and looked back to the road in front of her, she saw that Compton was either stopped or in the act of stopping.

Alano slammed on her brakes but was unable to stop in time to avoid a collision. In the next instant, she rear-ended Compton. The record does not reveal the nature of

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