

The Indiana Jury Verdict Reporter

The Most Current and Complete Summary of Indiana Jury Verdicts

June, 2007

Statewide Jury Verdict Coverage

8 IJVR 6

Unbiased and Independently Researched Jury Verdict Results

In This Issue

Marion County

Premises Liability - \$182,500	p.
Medical Negligence - \$80,000	p.
Auto Negligence - \$865	p.
Auto Negligence - Defense verdict	p.

Lake County

Auto Negligence - \$40,000	p.
Auto Negligence - \$22,500	p.
Auto Negligence - \$6,000	p.
Subrogation - Defense verdict	p.
Auto Negligence - Defense verdict	p.

Floyd County

Legal Negligence - \$1,491,886	p. 1
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Putnam County

Auto Negligence - \$900,000	p.
-----------------------------	----

Federal Court - Indianapolis

Race Discrimination - Defense verdict	p.
---------------------------------------	----

Hendricks County

Medical Negligence - \$375,000	p.
--------------------------------	----

Brown County

Conversion - \$90,500	p.
-----------------------	----

St. Joseph County

Motorcycle Neg. - Defense verdict	p.
-----------------------------------	----

Sullivan County

Auto Negligence - \$30,000	p.
----------------------------	----

Porter County

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

Jasper County

Government Neg. - Defense verdict	p.
-----------------------------------	----

Federal Court - New Albany

Race Discrimination - Defense verdict	p.
---------------------------------------	----

Elkhart County

Auto Negligence - \$12,000	p.
----------------------------	----

Allen County

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

Monroe County

Auto Negligence - \$8,249	p.
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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.

Legal Negligence - An attorney provided two encouraging opinion letters to a man who wanted to start a business in competition with his current employer; when the employer later sued, the man blamed his attorney for having given him bad advice

Solnosky, et al. v. Goodwell, et al., 22C01-0206-CT-329

Plaintiff: John H. Dwyer, Jr., *Pedley Zielke Gordinier & Pence*, Louisville, KY

Defense: Richard T. Mullineaux and R. Jeffrey Lowe, *Kightlinger & Gray, LLP.*, New Albany

Verdict: \$1,491,886 for plaintiff

County: **Floyd**, Circuit

Court: J. Cody, 5-2-07

OpenSided MRI of Louisville, LLC. (hereinafter, "OpenSided") is a company located in Jeffersonville, IN that provides MRI services on referral from local physicians. The majority owner and managing member of OpenSided is a company called MMR Holdings, Inc.

In the summer of 1997, Ronald Solnosky joined OpenSided as a manager but later concentrated his efforts on marketing. His primary marketing technique consisted in taking local physicians out to lunch or dinner and encouraging them to refer their patients to OpenSided.

Solnosky apparently did well in this position, but he came to believe he was not being adequately rewarded for his successes. When Solnosky complained about this to upper management, he was given the title of Regional Vice President.

The conferring of the title might have seemed like a promotion. However, the title carried with it no additional authority or responsibility, and no one worked under Solnosky. Thus, he regarded the title as an empty token

given to him simply to quell his unrest.

For this and other reasons, Solnosky grew increasingly dissatisfied with his job at OpenSided. Accordingly, he entered into discussions with Gary Miller, an officer of MMR Holdings, about the possibility of breaking away and starting their own MRI company.

The new company was to be called "Kentuckiana Diagnostics, LLC.," and it too would be located in Jeffersonville. Solnosky intended to market the new company's services in essentially the same way he had marketed OpenSided's services -- i.e., by wining and dining local physicians.

In addition, Solnosky and Miller planned to solicit physicians to make financial investments in the company. It was anticipated that any physicians who did invest in Kentuckiana Diagnostics would naturally send their MRI referrals to the company. Despite this arrangement, there would later be some disagreement about the extent to which Kentuckiana Diagnostics would be in actual competition with OpenSided.

In any event, Before Solnosky and Miller could kick off the new venture in earnest, they felt a need to obtain a legal opinion about the propriety of Solnosky continuing to work for OpenSided while simultaneously participating in the creation of Kentuckiana Diagnostics. Accordingly, Solnosky met on 6-6-00 with Karen Goodwell, an attorney with the New Albany law firm of Mattox, Mattox & Wilson.

During the meeting with Goodwell, Solnosky explained that he was not a decision maker at OpenSided, nor was he a member of the Board of Directors. Furthermore, Solnosky had never signed any sort of non-compete or confidentiality agreement, and he was not privy to any of OpenSided's trade secrets.

testimony because he was not licensed to practice law in Indiana. Second, the court ruled during the trial that attorney Meunier would not be allowed to testify either that Goodwell's conduct breached the standard of care or whether her conduct was consistent with the Indiana Rules of Professional Conduct.

The court's reasoning on these rulings was that the testimony regarding whether Goodwell breached the standard of care was a legal conclusion and thus could not be allowed. Similarly, the issue of whether there was a violation of the Rules of Professional Conduct could not be admitted as evidence until there had been such a determination by the appropriate disciplinary authority. Inasmuch as no such determination had ever been made, the testimony would not be allowed.

Goodwell, Wilson, and the Mattox firm defended the case on several fronts. First, they filed a counterclaim against Solnosky for the \$26,013 he still owed in unpaid attorney fees.

Second, defendants argued that Solnosky had given Goodwell incomplete or inaccurate information. For one thing, he had failed to mention that he had already solicited at least two of OpenSided's customers as investors before he even consulted with Goodwell. Based in part on that omission, plaintiffs implicated Solnosky's fault.

Third, defendants also noted that Kentuckiana Diagnostics had been formed before Goodwell wrote her two opinion letters. Thus, it simply would not have been possible for plaintiffs to act in reliance on the letters in forming the company.

Furthermore, defendants argued that plaintiffs suffered no damages due to anything defendants did because there is no evidence plaintiffs would have acted differently if Goodwell had not provided the letters. Defendants also claimed they owed no duty to Miller or Medical Marketing Resources because they were never clients of the firm.

Finally, defendants insisted their conduct met or exceeded the applicable standard of care for legal professionals.

For one thing they noted that Goodwell stated in her letter that she could not predict what OpenSided's actions would be in response to the formation of Kentuckiana Diagnostics.

Defendants were supported in their arguments on this point by the opinions of their experts: Donald S. Smith of the Indianapolis law firm of Riley, Bennett & Egloff, LLP; and William C. Moyer of the New Albany law firm of Lorch & Naville.

Defendants also identified a third expert: Richard Peterson, CPA, Louisville, KY. Peterson's job was to give an opinion regarding the economic impact on OpenSided of Solnosky's resignation and the formation of Kentuckiana Diagnostics.

During the course of the litigation the court granted summary judgment in favor of defendants. Plaintiffs appealed, and in a memorandum decision, not for publication, the appellate court handed down a complex decision.

First, the appellate court affirmed the grant of summary judgment for Goodwell on the claims against her by Miller and Medical Marketing Resources because they were never her clients. However, the court reversed the grant of summary judgment in favor of Wilson against those two plaintiffs.

The basis for that ruling was that there was an issue of fact concerning the legal status of the Mattox firm. If the firm is a partnership, and Wilson is a partner, then he could potentially be liable to Miller and Medical Marketing Resources. That factual issue precluded the entry of summary judgment. Finally, the appellate court reversed the entry of summary judgment for defendants on Solnosky's claims.

Following the detour to the appellate court, the case was tried in New Albany for nearly a month. At the close of evidence, the court granted defendants a judgment on the evidence on their counterclaim against Solnosky for the unpaid legal fees.

The case went to the jury on plaintiffs' claims. The resulting verdict assigned 100% of the fault to defendants and zero fault to Solnosky. The jury went on to award plaintiffs

damages of \$1,491,886. In post-trial pleadings, defendants indicated that the verdict amount exceeds the amount of their legal malpractice insurance coverage.

At the time the IJVR reviewed the record, it did not contain a judgment. However, defendants have indicated they intend to file a motion to correct errors as soon as the court enters a judgment. The basis for the anticipated motion is unknown.

During the trial, the jury asked a number of questions. Among them was a question directed to Wilson: "You stated the main reason Mattox, Mattox & Wilson withdrew from the Solnosky case was largely a financial one. Has Mattox, Mattox & Wilson ever defended a client fully (to the end of the case) while they owed your firm more than \$26,000?" The response is unknown.

Among the jury's other questions were the following: (1) "Ron was going to be dropped by Suzanne [*sic*] Williams due to outstanding fees and how would he fully exercise his defenses if counsel would not represent him?" (2) "What were his options to further defend his position in court?" (3) "Ron gave up his defenses in signing the judgement [*sic*] so how can I say he was damaged by Mattox, Mattox and Wilson?" The court instructed the jury to review its notes and the instructions.

Auto Negligence - Defendant crossed the center line and caused a multi-vehicle crash; at trial, defendant was prevented from implicating the fault of one of the plaintiffs for not properly wearing her seat belt

McCune v. Hoffman,
67C01-0409-CT-307

Plaintiff: Robert G. Vann, Merrillville
Defense: Robert R. Foss, Jr., *Lewis & Wagner*, Indianapolis
Verdict: \$900,000 for plaintiffs (allocated \$535,000 to Jennifer McCune and \$365,000 to James McCune)

County: **Putnam**, Circuit
Court: J. Headley, 4-5-07

On 10-5-02, James McCune was

driving a Jeep Cherokee, heading south on U.S. 231 in Greencastle. His passengers were Jennifer McCune, Patrick McCune, and Jillian Larrick. At the same time, a vehicle being driven by Kenneth Hoffman approached from the opposite direction.

As the vehicles drew near each other, Hoffman crossed the center line and set off a multi-vehicle collision that included the McCunes. Another vehicle involved in the crash contained Cheryl Songer.

The record does not reveal the nature of the McCunes' or Larrick's injuries or the amounts of their respective medical expenses. They filed suit against Hoffman and blamed him for crossing the center line and causing the crash.

Larrick subsequently dismissed her claim, and Patrick's claim apparently did not survive to trial. Meanwhile, Songer filed her own separate action against Hoffman. The court later granted plaintiffs' motion to consolidate that action with the McCunes' case for purposes of discovery.

Hoffman admitted fault for the crash, but he sought to implicate Jennifer's fault for her own injuries. Specifically, information came to light that indicated Jennifer was wearing her seat belt with the shoulder harness under her arm. According to Hoffman, if Jennifer had been wearing her seat belt properly, her injuries would have been lessened.

Based on this revelation, Hoffman filed a motion to be allowed to raise Jennifer's misuse of the seat belt as an affirmative defense. He also submitted to the court a proposed comparative fault jury instruction.

Hoffman struck out on both counts. The court denied his motion to raise the seat belt defense and refused the comparative fault instruction. Those decisions would lead to some post-trial motion practice.

The case was tried for two days in Greencastle. The jury returned a verdict for the McCunes and awarded damages of \$535,000 to Jennifer and \$365,000 to James. That brought the combined award to \$900,000. The court entered a judgment that reflected the verdict.

Post-trial, Hoffman filed a motion to

correct errors based on the court's refusal to allow him to raise the seat belt defense and the rejection of the comparative fault instruction. At the time the IJVR reviewed the record, the motion was still pending.

Race Discrimination - A black realtor alleged she was let go because of her race and then after being sacked, her agency put her things on a porch and wouldn't forward her calls

Webb v. Carpenter Realtors, 1:05-723
Plaintiff: Gregory A. Stowers, *Stowers & Weddle*, Indianapolis
Defense: James N. Seahill, Indianapolis
Verdict: Defense verdict on liability
Federal: **Indianapolis**
Court: J. Young, 4-24-07

Pamela Webb, who is black, was employed as a realtor for Carpenter Realtors in Indianapolis beginning in August of 2002. She was fired in February of 2005. Thereafter Webb's office papers and other personal effects were simply placed on the front porch of the office. Carpenter Realtors also refused to forward calls to her.

This litigation followed, Webb alleging she was fired because of her race and then once terminated, she was treated differently than similarly situated former white employees. That is, she couldn't take her listings with her and as noted above, phone calls weren't forwarded to her.

Carpenter Realtors didn't dispute the conduct, but denied it had a racial animus. It explained that it wouldn't forward calls because it believed that Webb was soliciting its customers for her new agency.

The verdict on the race claim was for Carpenter Realtors, Webb taking nothing. A defense judgment ended this case.

Medical Negligence - A candidate for county commissioner was diagnosed with and treated for multiple sclerosis by a neurologist; the patient soon died, and an autopsy showed a viral infection with no sign of MS

Estate of Palmer v. Muckway, et al., 32C01-0405-CT-14
Plaintiff: Michael S. Miller and Catherine A. Kling, *Miller Muller Mendelson & Kennedy*, Indianapolis
Defense: Roger A. Kanne, *Zeigler Cohen & Koch*, Indianapolis; and Matthew W. Conner, *Tabbert Hahn Earnest & Weddle, LLP.*, Indianapolis
Verdict: \$375,000 for plaintiff
County: **Hendricks**, Circuit
Court: J. Boles, 9-21-05

In the late spring and early summer of 2000, the star of Harlan Palmer seemed to be in the ascendant. At the age of 44, Palmer had already risen to the position of president of Mid-Realty Corporation, and he was serving his community as a Hendricks County Councilman. In addition, Palmer had just recently waged a successful campaign to win the primary election for county commissioner.

The only thing that detracted from Palmer's success was the sudden onset of health problems. In particular, Palmer began to display flu-like symptoms that included dizziness, fatigue, weight loss, difficulty ambulating, impaired cognition, and a constant feeling of being cold.

On 6-1-00, Palmer consulted with his family physician, Dr. Stephen Heeger of Plainfield. Dr. Heeger thought it possible that Palmer might be suffering from multiple sclerosis (MS). Based on that suspicion, Dr. Heeger referred Palmer to a neurologist, Dr. Mark Muckway, with Comprehensive Neurological Services, P.C. in Avon.

Palmer's first appointment with Dr. Muckway was on 6-14-00. At that appointment, Dr. Muckway ordered tests to confirm the diagnosis of MS. However, it turned out that Dr. Muckway's philosophy of treating MS was somewhat unorthodox in its aggressiveness.

Before Palmer's test results had even come back, Dr. Muckway confirmed

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