

The Indiana Jury Verdict Reporter

The Most Current and Complete Summary of Indiana Jury Verdicts

June 2013

Statewide Jury Verdict Coverage

14 IJVR 6

Unbiased and Independently Researched Jury Verdict Results

In This Issue

Marion County

Assault - \$200	p. 1
Auto Negligence - \$95,000	p. 4
Auto Negligence - \$5,000	p. 7
Auto Negligence - \$1,000	p. 8

Lake County

Auto Negligence - \$21,000	p. 3
Medical Negligence - \$150,000	p. 5
Prem. Liability - Defense verdict	p. 7
Auto Negligence - \$109,612	p. 10

Allen County

School Neg. - Defense verdict	p. 3
-------------------------------	------

Federal Court - South Bend

Sexual Harassment - \$24,000	p. 8
------------------------------	------

Grant County

Medical Negligence - \$100,000	p. 6
--------------------------------	------

Tipton County

Medical Neg. - Defense verdict	p. 11
--------------------------------	-------

Howard County

Auto Negligence - Defense verdict	p. 11
-----------------------------------	-------

Johnson County

Auto Negligence - \$7,971	p. 12
---------------------------	-------

Monroe County

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

Wayne County

Auto Negligence - \$2,616	p. 12
---------------------------	-------

Notable Out of State Verdict

<i>Lexington, Kentucky</i> Products Liability - Defense verdict	p. 13
--	-------

Assault - A man embroiled in a dispute with his former girlfriend in the parking lot of their apartment complex claimed that two of her friends showed up and assaulted him; the two friends presented counterclaims insisting they had acted in self-defense and that it was plaintiff who had assaulted them

Monroe v. Gruber, et al.,
49D02-1003-CT-12026

Plaintiff: Robert J. Arnold,
Shelbyville

Defense: Edward G. Bielski, *Bose McKinney & Evans, LLP.,*

Indianapolis, for Gruber and Richardson; Bryant was *pro se*

Verdict: \$200 for plaintiff divided equally between Gruber and

Richardson on assault claims;

Defense verdict for Bryant on

intentional infliction of emotional

distress; for plaintiff on Gruber and

Richardson's counterclaims for

assault

County: **Marion**, Superior

Court: J. Sosin, 5-17-13

For a time, David Monroe and his girlfriend, Elizabeth Bryant (a former employee of a gentlemen's club in Shelby County) lived together with

their infant daughter in an apartment located in the Parc Bordeaux

apartment complex in Indianapolis.

Eventually, however, the

relationship turned sour, and

Monroe moved into a separate

apartment within the same complex.

Despite the separation, relations

between the two apparently

continued to deteriorate. On 3-18-08,

Bryant called Scott Gruber, a friend

and co-worker, and complained that Monroe was physically and verbally abusing her, as well as preventing her from entering her apartment. She asked Gruber to come help her.

Fearing for his own safety, Gruber asked Josh Richardson, another friend and co-worker, to accompany him on the rescue mission.

Richardson agreed, and the two men soon arrived in the parking lot of the apartment complex. The parties offer differing accounts of what happened next.

According to Monroe, Gruber approached him in the parking lot and began yelling threats to harm him. While Monroe talked with Gruber, Richardson snuck up behind him and punched Monroe in the back of the head. Both Gruber and Richardson then proceeded to attack Monroe physically.

Monroe recalls that he managed to escape from this attack three separate times. The second time he escaped he managed to retrieve from his car a baseball bat that he intended to use to defend himself. However, Richardson took the bat away from him, and the attack continued.

The third time Monroe escaped he went back to his car and retrieved a small plastic screwdriver that, again, he intended to use to defend himself. This time, however, Gruber sprayed him with mace, and Monroe was once again disarmed. At this point Monroe retreated to his own apartment and did not return.

In the meantime, the ruckus had

Civil Jury Verdicts

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

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 patients began filing suit. 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 with Weinberger defending as best he could. The identified defense experts included Dr. Gregory Hale, Psychology, Indianapolis.

The case was tried to a jury in Hammond and resulted in a verdict for Gill in the amount of \$150,000. If the court entered a judgment, it was not part of the record at the time the IJVR reviewed it.

News reports indicate that more than 350 medical malpractice cases have been filed against Weinberger. Most of those 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.

Sexual Harassment - Three waitresses at a popular Northern Indiana pancake emporium alleged they were sexually harassed by the restaurant's owner

Heyne v. Nick's American Pancake Cafe, 3:11-305

Plaintiff: Kenneth T. Roberts and Adam Lenkowsky, *Roberts & Bishop*, Indianapolis

Defense: Vincent M. Campiti, *Nemeth Feeney Masters & Campiti*, South Bend

Verdict: \$12,000 for Hyne
\$12,000 for King
Defense verdict on claims presented by DeVreese

Federal: **South Bend**

Court: J. DeGuilo, 5-10-13

Nick Kladis operates a popular restaurant in Roseland, IN known as Nick's American Pancake Café. This case concerned three waitresses, Angela Heyne, Angela King and Stacy DeVreese, who worked at the restaurant in 2009 and 2010.

All three women would allege they were sexually harassed by Nick. Heyne would recall she was described by the suggestive acronym "MILF" and that Nick would often engage in offensive touchings. In this lawsuit Heyne presented several tortious counts including, sexual harassment, battery and outrage. She finally quit her job after

receiving a sexual-themed text from Nick, making a decision she couldn't take it any more. If she prevailed at trial, the jury could award her compensatory and punitive damages.

King too recalled a course of sexual harassment that included promises that she would receive a bonus if she met Nick at a local motel. Finally when she told Nick his conduct was illegal, she was fired. Needing money a month later, she returned to work only to find the harassment was worse. She alleged sexual harassment, retaliation and battery. The third plaintiff (DeVreese) recounted similar allegations of sexual harassment. Each of the three plaintiffs made a prayer to the jury of \$225,000.

Nick's American Pancake Café had a simple defense and it came primarily in the form of Nick's testimony. He flatly denied that he had harassed the plaintiffs in any way.

The case was tried for four days in South Bend. The verdict was mixed. While the verdict itself was a state secret, it is learned that DeVreese lost on all counts and took nothing.

King prevailed on only retaliation and battery counts. She took \$2,000 in compensatory damages for emotional suffering and \$10,000 more in punitive damages. Heyne only prevailed on her sexual harassment claim. She took the same measure of damages as King. When the record was reviewed, no judgment had been entered. [The jury had also asked a question in deliberations – that question is also a court secret.]

The two prevailing plaintiffs have since moved for an award of attorney fees in the sum of \$210,000. They

have also sought backpay and other relief. The restaurant replied that the claimed attorney fees were excessive, especially as the plaintiffs were only nominally successful. That is, the defense explained, the jury only awarded them a small fraction of the claimed amount.

Auto Negligence - Plaintiff was awarded damages for injuries she sustained in a rear-end crash; although plaintiff also made a UIM claim, her insurer elected not to participate at trial

McCaffery v. Schwieterman,
49D13-1012-CT-55640

Plaintiff: Michael W. Phelps, *Ken Nunn Law Office*, Bloomington
Defense: Kenneth M. Wahnsiedler, *State Farm Litigation Counsel*, Indianapolis, for Schwieterman; Michael W. McBride and David L. Ferguson, *Ferguson & Ferguson*, Bloomington, for ANPAC
Verdict: \$5,000 for plaintiff
County: **Marion**, Superior
Court: J. Oakes, 5-14-13

On 5-12-10, Yvonne McCaffery was driving near the intersection of 10th Street and Beechway Drive in Indianapolis. As McCaffery approached the intersection, she was rear-ended by Kimberly Schwieterman. The record does not reveal the nature of McCaffery's injuries or the amount of her medical expenses.

McCaffery filed suit against Schwieterman and blamed her for causing the crash. As it happened, Schwieterman was a State Farm insured with policy limits of \$100,000. McCaffery was unsure that would be enough, so she also made an underinsured motorist claim against her own insurer, American National Property and Casualty (i.e.,

"ANPAC"). McCaffery's UIM policy limits were \$250,000.

The parties agreed that Schwieterman was responsible for the crash. However, defendants disputed the nature, extent, and duration of McCaffery's claimed injuries, as well as the amount of her claimed damages.

As the case progressed to trial, ANPAC filed a motion to have Schwieterman identified to the jury as the sole defendant and to omit all references to ANPAC. The court granted the motion. The case was then tried in Indianapolis without ANPAC's participation. The jury returned a verdict awarding McCaffery damages of \$5,000, and the court entered a judgment for that amount.

Premises Liability - A fitness club patron attempting to use a vertical tanning booth raised her arms above her head while inside the booth; in doing so, the patron was injured when her fingers made contact with the spinning blades of an overhead fan

Martin v. Fuel Fitness Center, Inc.,
45C01-1101-CT-18

Plaintiff: David W. Holub, *Law Offices of David W. Holub, P.C.*, Merrillville
Defense: Mark A. Lienhoop, *Newby Lewis Kaminski Jones, LLP.*, LaPorte
Verdict: Defense verdict on liability
County: **Lake**, Circuit
Court: J. Paras, 4-2-13

In 2009, the Fuel Fitness Center, Inc. was operating a fitness club located at 12937 Wicker Avenue, Suite B, in Cedar Lake. Bonnie Martin, then age 49, had been a member of the club for some two years. It was Martin's custom to have a workout at the club followed

by a session in one of the club's tanning booths.

At least one of the tanning booths was a vertical unit that required the patron to stand with her arms raised above her head. The booth was equipped with a pair of handles located near the top for the patron to hold onto so as to minimize arm fatigue.

Also located at the top of the booth near the handles was a cooling fan with large metal blades. The spinning metal fan blades were separated from the patron only by a metal grid of circular bars. Martin would later allege that sections of the grid had gaps in the bars of as much as half an inch.

In the afternoon of 3-26-09, Martin went to the club and had her usual workout. Once her workout was finished, Martin proceeded to the tanning booth. The particular booth she chose was a vertical unit that Martin had used before.

Martin entered the booth while wearing her protective goggles. She would later claim that the combination of the goggles and the poor lighting in the booth made it impossible for her to see her surroundings. Instead, she arranged herself within the booth purely by feel.

As Martin reached up to grasp the handles near the top of the booth, the fingers of her left hand apparently slipped through some of the gaps in the metal grid and made contact with the spinning fan blades. As a result, Martin suffered cuts to her fingers and injuries to the nails of the second and middle fingers of her left hand.

Although the record does not reveal the amount of Martin's medical expenses, it is known that Fuel Fitness's insurer paid \$5,000 in

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Case Style _____

Jurisdiction _____ Case Number _____

Trial Judge _____ Date Verdict _____

Verdict _____

For plaintiff _____ (Name, City, Firm)

For defense _____ (Name, City, Firm)

Fact Summary _____

Injury/Damages _____

Submitted by: _____

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degree burns that required multiple debridements and a subsequent revision surgery. Despite those corrective efforts, Volmer has been left with a permanent scar.

Volmer presented the matter to a medical review panel comprised of three otolaryngologists. They were Dr. Ronda Hamaker of Indianapolis, Dr. Robert McQuiston of Indianapolis, and Dr. James Miner of

Greenfield.

The panel issued the unanimous opinion that Dr. Goldberg's treatment of Volmer had not constituted a breach of the otolaryngology standard of care. However, the panel also concluded that there was a standard of care breach by River View Surgery Center.

Volmer filed suit against River

View Surgery Center and blamed it for the conduct of its nurse in placing the grounding pad incorrectly and thereby causing her burns. River View Surgery Center initially defended the case and denied having breached the standard of care.

Less than one month before trial, however, defendant changed its tune and admitted the standard of care breach. The case thus went to trial

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