

The Indiana Jury Verdict Reporter

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July, 2006

Statewide Jury Verdict Coverage

7 IJVR 7

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In This Issue

Marion County

| | |
|----------------------------------|-------|
| Garbage Truck Neg. - \$1,153,846 | p. 3 |
| Auto Negligence - \$30,000 | p. 6 |
| Auto Negligence - \$21,901 | p. 8 |
| Auto Negligence - \$3,500 | p. 11 |
| Auto Negligence - \$763 | p. 12 |

Lake County

| | |
|--------------------------------------|-------|
| Workplace Negligence - \$1,600,000 | p. 1 |
| Auto Negligence - \$65,000 | p. 4 |
| Auto Negligence - \$56,428 | p. 5 |
| Premises Liability - Defense verdict | p. 8 |
| Auto Negligence - \$5,000 | p. 10 |
| Auto Negligence - Defense verdict | p. 12 |
| Auto Negligence - Defense verdict | p. 13 |

Madison County

| | |
|----------------------------|------|
| Auto Negligence - \$26,837 | p. 2 |
|----------------------------|------|

Porter County

| | |
|-----------------------------------|-------|
| Premises Liability - \$450,000 | p. 4 |
| Auto Negligence - Defense verdict | p. 13 |

Federal Court - Hammond

| | |
|----------------------------|------|
| Auto Negligence - \$15,000 | p. 5 |
|----------------------------|------|

Tiptecanoe County

| | |
|--------------------------------|------|
| Landlord Neg - Defense verdict | p. 6 |
|--------------------------------|------|

Knox County

| | |
|--------------------------------------|------|
| Medical Negligence - Defense verdict | p. 7 |
|--------------------------------------|------|

Federal Court - Indianapolis

| | |
|-----------------------------------|------|
| First Amendment - Defense verdict | p. 7 |
|-----------------------------------|------|

Vigo County

| | |
|----------------------------|-------|
| Auto Negligence - \$12,449 | p. 9 |
| Auto Negligence - \$4,433 | p. 10 |

Allen County

| | |
|--------------------------------------|------|
| Medical Negligence - Defense verdict | p. 9 |
|--------------------------------------|------|

Floyd County

| | |
|---------------------------|-------|
| Auto Negligence - \$5,000 | p. 10 |
|---------------------------|-------|

Vanderburgh County

| | |
|---------------------------|-------|
| Auto Negligence - \$3,800 | p. 11 |
|---------------------------|-------|

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Workplace Negligence - A construction worker was seriously injured when a slab of concrete flipped off the prongs of a forklift and hit him on the head

*Martinez v. Swift Transportation Company, Inc., et al.,
45D01-0210-CT-257*

Plaintiff: James J. Kenney, *Saunders Condon & Kenney*, Chicago, IL
Defense: Stetson F. Atwood, *Donohue Brown Mathewson & Smyth*, Chicago, IL

Verdict: \$1,600,000 for plaintiffs less 60% comparative fault

County: **Lake**, Superior

Court: J. Schneider, 5-25-06

In October of 2000, Pedro Martinez was working as a laborer for Roger &

Sons Construction Company, a general contractor headquartered in East Chicago. Roger & Sons had previously entered into a contract with a company called Swift Transportation Company, Inc. to renovate and update Swift's restrooms to make them ADA compliant.

In the morning of 10-27-00, Roger & Sons sent Martinez to the construction site at Swift's facility located at 6500 Industrial Highway in Gary. His task for the day would include helping to remove old sidewalk so it could be replaced with new concrete.

Martinez's supervisor instructed him to use a diamond saw and a 20 lb. sledge hammer to break up a five-foot by five-foot square of concrete sidewalk.

Martinez complied with his instructions and set to work. As he proceeded to break up the concrete, he would remove the chunks by hand.

Nearby, one of Swift's own employees, Robert Spear, was using a forklift to clear an area in preparation for the construction of a pond and a picnic area. Spear noticed Martinez removing the concrete by hand. There would be fact disputes about what happened next.

According to Martinez, Spear began using the forklift to help him remove the chunks of concrete. As Martinez used a pry bar to lift a large, 35 lb slab, Spear maneuvered the forklift into position behind it. Martinez then motioned for Spear to move forward and to lower the forklift prongs in order to slide them under the slab.

When Spear had gotten the prongs under the slab, he instructed Martinez to get out of the way. Just as Martinez turned to walk away, however, Spear put the forklift into gear and engaged the lifting mechanism without waiting for Martinez to get clear.

The abrupt lifting movement launched the slab into the air and caused it to hit Martinez on the top of his head, as well as on his right shoulder and upper back. He sustained a concussion, a compression injury to his cervical spine, a herniated disc at C5-6, and cuts to his head and shoulder.

Martinez later underwent a diskectomy, and he continues to suffer from chronic pain and depression. His medical expenses are unknown.

In this lawsuit, Martinez blamed Spear for his operation of the forklift, and he targeted Swift inasmuch as Spear was acting within the scope of his employment with the company at the time of the incident. Martinez's wife, Martha, also presented a derivative claim for her loss of consortium.

If successful, Martinez sought compensation for his injuries, as well as for his past and future lost income. His identified experts included Dr. Anthony Gamboa, Economics, Louisville, KY.

Swift initially had the case removed to federal court on diversity jurisdiction based on the fact that Swift is incorporated in Arizona. However,

prior to removal, Martinez added a diversity-destroying co-defendant identified only as "unknown forklift manufacturer."

On the basis of that entity's addition as a co-defendant, the case was sent back on remand. Although the litigation continued to its conclusion in state court, the claim against the anonymous co-defendant seems to have dropped out.

In any event, Swift and Spear defended the case and offered a slightly different account of what happened. According to them, it was Martinez who asked Spear to use the forklift to help remove the concrete. Martinez then used hand signals to direct Spear to raise the prongs. When Martinez looked away to tell other bystanders to stand back, the slab flipped off the prongs and hit him.

Thus, the accident was actually due to a combination of Martinez's request for the assistance of the forklift in the first place, his own judgment as to whether the prongs were positioned properly, and his own decision to look away at the crucial moment. Additionally, defendants named Martinez's employer, Roger & Sons, as a non-party.

The case was tried in Hammond over four days. The verdict allocated 40% of the fault to Swift and Spear, 50% to non-party Roger & Sons, and the remaining 10% to Martinez. The jury set Martinez's damages at \$1,300,000, and it valued Martha's consortium interest at \$300,000. That made a combined total of \$1,600,000.

After adjustment for comparative fault, Martinez's award came to \$520,000, and Martha took \$120,000. That brought their combined final award to \$640,000. The court followed with a consistent judgment for that amount.

Auto Negligence - A woman suffered soft-tissue injuries when the vehicle in which she was riding as a passenger rear-ended another motorist; the woman blamed the driver with whom she was riding
Hunt v. Walters, 48D02-0310-CT-904
Plaintiff: John E. Eisele, *Eisele Lockwood & Williams*, Anderson
Defense: Robert F. Ahlgrim, Jr., *State Farm Litigation Counsel*, Indianapolis
Verdict: \$26,837 for plaintiff
County: **Madison**, Superior
Court: J. Brinkman, 12-15-06

On 6-13-02, Savannah Hunt was riding as a passenger in a vehicle being driven by Zachary Walters. The two were traveling east on 10th Street near the intersection with Wilson Boulevard in Anderson.

Up ahead of Walters and Hunt, Pamela Binnion was stopped in traffic waiting to make a left turn into the Tenth Street School parking lot. Walters, however, failed to stop behind Binnion, and an instant later he rear-ended her.

Hunt sustained widely ranging soft-tissue injuries due to the crash. She was treated at Community Hospital Anderson and incurred medical expenses of \$8,873. Of that amount, Walters's insurer, State Farm, paid a total of \$6,891 to Hunt's various health care providers.

Hunt filed suit against Walters and blamed him for the crash. According to her, Walters was unable to stop in time to avoid the crash because he was speeding. Walters admitted fault, but he disputed the nature, extent, and causation of Hunt's claimed injuries.

The case was tried for two days in Anderson. The jury returned a verdict for Hunt and awarded her damages of \$26,837. That information had to be gleaned from other pleadings inasmuch as the verdict form was not part of the record.

Walters moved for a set-off in the amount of \$6,891 for the medical payments his insurer had previously made. The court granted the motion and entered a consistent judgment, plus costs of \$109. The judgment has since been satisfied.

Prior to trial, Walters made a