The Indiana Jury Verdict Reporter

The Most Current and Complete Summary of Indiana Jury Verdicts

August, 2012 **Statewide Jury Verdict Coverage** **13 IJVR 8**

Unbiased and Independently Researched Jury Verdict Results

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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.

Civil Rights - A teenaged girl was sexually assaulted by a guard in a juvenile correctional facility; the guard was convicted and sent to prison for the offense, and the girl sought compensation from the guard, the facility superintendent, and the Department of Correction

Benton v. Indiana Dept. Of Correction, et al., 49D05-1007-CT-31632
Plaintiff: Terry Noffsinger, *NoffsingerLaw, R.C.*, Evansville
Defense: Wade J. Hornbacher and Betsy Isenberg, *Indiana Attorney General's Office*, Indianapolis
Verdict: $200,000 for plaintiff against Furman ($150,000) and Dept. Of Correction ($50,000); defense verdict for Rivenburg
County: **Marion**, Superior Court: J. Moberly, 7-13-12

On 2-13-07, Tabatha Benton, a teenager suffering from bipolar disorder, was sentenced in the Dubois Circuit Court to a term of two years and two months at the Juvenile Correctional Facility located at 2596 North Girls School Road in Indianapolis. The record does not identify the offense for which she was convicted.

One of the guards at the facility was John Furman. It seems that Furman was popular among the other inmates, some of whom allegedly had the habit of calling him "Dad."

By December of 2007, Benton, then age 14, had been at the facility for approximately 10 months. She would later claim that on 12-21-07, Furman for the first time made sexual advances to her. Benton informed her mother, Gail Eckert, of what had happened. Eckert and her husband, Jeffrey Eckert, responded by traveling to the facility to meet with the superintendent, Robert Rivenburg.

The Eckerts met with Rivenburg, his assistant, and a counselor identified in the record only as Mr. Steffel. Eckert complained about the sexual advances Furman had made to Benton, and Mr. Steffel assured her that Furman's conduct would be investigated.

In the meantime, Eckert also informed Benton's probation officer of her concerns, and she also notified Dubois Circuit Court Judge Weikert. Ultimately, however, Eckert was informed that the facility security camera did not show anything amiss, and it appears that nothing more was done about her complaints.

Several months later, on 4-5-08, Benton, who by then had reached the age of 15, was assigned to Furman's work crew for a cleaning detail. While Benton was on that detail, Furman allowed her to call her family and friends. After she completed the call, he allegedly told her that she owed him a kiss.

According to Benton, Furman became aggressive. She told him to stop, but he refused to do so and instead proceeded to sexually assault her. Benton claims that after the sexual assault, Furman threatened her with physical harm if she told anyone about it.

Benton did initially keep the matter to herself. It turned out, however, that Furman allegedly had also sexually assaulted another inmate that same day. When Benton learned the following day that this other inmate had reported that assault, Benton decided to follow suit and also report what had happened to her.

On 7-23-08, Furman was charged with sexual misconduct with a minor, a Class B felony, in Marion Superior Court 4. He later pled guilty on 10-29-08 and was sentenced to 14 years with seven suspended and seven executed, followed by five years of probation.

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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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laptops were password protected, so defendants could not have gained access to his formulae even if they had wanted to.

Furthermore, defendants explained that they didn't need or want Parks's formulae because many very similar formulae are available for free on the Internet. Defendants also claimed that one of the reasons Parks had been fired was precisely the fact that his formulae didn't work correctly and were not good enough. Finally, defendants argued that the entire matter was now moot given that the ORPC facility was destroyed by fire on 6-17-07, and the company is no longer in business.

In addition to the allegedly poor quality of his formulae, defendants also cited other reasons for the decision to fire Parks. Those reasons included Parks's tendency to use bad language, his lack of knowledge of anything he was hired to do, and his alleged misuse of company credit cards.

Parks came to believe that defendants had made similar allegations against him to others in the polyurethane coating industry and had thereby made it impossible for him to gain other employment in the industry. Based on that belief, Parks amended his complaint to add a count for defamation.

The case was tried for 11 days in Spencer and resulted in a complex verdict. First, the jury found for all defendants on the counts for breach of contract and defamation. Also, ORPC was exonerated on the count regarding theft of the laptop computers.

On the other hand, the verdict was for Parks against all three defendants on the appropriation of proprietary information count. He also prevailed against the Stellmachers on the count for theft of the laptops. On the latter count he was awarded damages of $1,250 against each of the Stellmachers.

On the appropriation count, damages were assessed $20,000 against Lee Stellmacher, $5,000 against Jed Stellmacher, and $3,000 against ORPC. Finally, the jury awarded Parks punitive damages of $140,000 against Lee, $100,000 against Jed, and $10,000 against ORPC.

That brought the final award to a combined total of $280,500. The court entered a judgment that reflected the verdict. Post-trial, Parks initiated proceedings supplemental in an effort to collect on the judgment. At the time the IJVR reviewed the record, the matter was still pending.

Auto Negligence - **A woman and her 12 year-old son suffered soft-tissue injuries in a chain-reaction rear-end crash; the driver who set off the chain-reaction admitted fault and defended on damages**

Hernandez v. Baumbaugh,
49D03-0810-CT-48639
Plaintiff: Richard A. Cook, *Yosha Cook Shartzer & Tisch*, Indianapolis
Defense: Kenneth M. Wahnsiedler, *State Farm Litigation Counsel*, Indianapolis
Verdict: $15,117 for plaintiffs (allocated $12,117 for Debbie, $2,000 for Angel, and $1,000 for Brandon)
County: **Marion**, Superior
Court: J. McCarty, 6-6-12

In the evening of 11-2-06, Debbie Hernandez, then age 41, was driving a 2000 Nissan Frontier crew cab pickup truck as she headed north on Keystone Avenue in Indianapolis. Her 12 year-old son, Brandon Hernandez, was riding with her as a front seat passenger.

Behind Hernandez and traveling in the same direction was a vehicle being driven by Sondra Deering. Preston Ray was behind Deering, and behind Ray was a 2002 Nissan Pathfinder being driven by Bret Baumbaugh. At a point just north of the intersection with 71st Street, Baumbaugh rear-ended Ray.

That impact set off a chain-reaction in which Ray was pushed into Deering, and then Deering was pushed into Hernandez. Although Hernandez did not seek treatment at the scene, she went to an Immediate Care center the following morning with symptoms of headaches and pain in her neck and back.

Hernandez was given a diagnosis of cervical and lumbar strain. In addition, x-rays revealed disc space narrowing in her lumbar spine. She underwent surgery on her back and two sessions of physical therapy. She also had a pain injection that provided little relief and an epidural that did resolve her pain.

The record does not reveal the nature of Brandon's injuries, nor does it reveal the amount of Brandon's or his mother's medical expenses. It is known, however, that Hernandez's insurer, Grange Mutual Casualty Company, paid $10,000 toward Hernandez's medicals and $3,219 toward Brandon's pursuant to the medpay provision of their policy.

Hernandez filed suit against Baumbaugh and blamed him for setting off the chain-reaction crash. Brandon joined the case as a co-plaintiff, and Hernandez's husband, Angel Hernandez, presented a derivative claim for his loss of consortium.

Baumbaugh admitted fault for the crash but disputed the nature, extent, and duration of plaintiffs' claimed injuries. The defense IME was Dr. Marc Duerden, Physical Medicine, Indianapolis. It was Dr. Duerden's opinion that Hernandez had magnified her pain. He also noted that she had a history of chronic low back and right leg pain that predated the crash. Partly on that basis, he thought Hernandez's back surgery was unrelated to the crash.

The case was tried for two days in Indianapolis. The jury returned a verdict for plaintiffs and awarded damages of $12,117 to Hernandez and $1,000 to Brandon. In addition, Angel was awarded $2,000 on his consortium claim. That brought the combined award to a total of $15,117. Prior to trial, plaintiffs' global settlement demand had been $600,000.

Post-trial, Baumbaugh filed a motion for set-off regarding the medpay benefits plaintiffs had received from Grange Mutual. The court withheld entry of a final judgment until the set-off issue could be resolved. At the time the IJVR reviewed the record, the motion was still pending.

Dog Attack - **A woman out for a walk was injured when she was attacked by two dogs; the woman blamed the owner of the dogs for failing to keep the dogs restrained and allowing them to roam the neighborhood**

Barocio v. McNulty,
45D01-0810-CT-80
Plaintiff: Karl E. Hand, Highland
Defense: William K. Deer, *Allstate Litigation Counsel*, Merrillville
Verdict: $3,106 for plaintiff
County: **Lake**, Superior
Court: J. Schneider, 2-20-12

In November of 2007, Elizabeth McNulty was living at 1313 Marigold Place in Schererville. McNulty shared her home with two dogs named Evy and Timber. One of the dogs was a German Shepherd mix, while the other was a Shiba Inu. Unfortunately, the record is unspecific as to which was which.

On 11-23-07, Guadalupe Barocio, an employee of the University of Illinois at Chicago, was walking in an area near the intersection of Janis Drive and Ridge Field Run in Schererville. It would later be Barocio's claim that McNulty had allowed the two dogs to leave her home and roam through the neighborhood, including the area in which Barocio was walking.

When the dogs came upon Barocio, they attacked her. Presumably, Barocio suffered bite wounds, but the record does not reveal the extent of those wounds or the nature of any other injuries she might have suffered. The record is similarly silent on the amount of Barocio's medical expenses.

Barocio filed suit against McNulty and blamed her for allowing the two dogs to roam the neighborhood and thereby setting the stage for the attack. McNulty defended the case and disputed the nature and extent of Barocio's

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