

The Indiana Jury Verdict Reporter

The Most Current and Complete Summary of Indiana Jury Verdicts

September, 2007

Statewide Jury Verdict Coverage

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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.

Products Liability - A man was killed in a roll-over crash when one of the tires on his Ford XLT Explorer suddenly lost air; the man's estate sought recovery against both Ford and the maker of the vehicle's seatbelt system

Estate of Moore v. Ford Motor Company, et al., 73C01-0305-CT-13
Plaintiff: Richard S. Eynon and David M. Brinley, *Eynon Law Group, P.C.*, Columbus; and Richard L. Denney and Lydia JoAnn Barrett, *Denny & Barrett, P.C.*, Norman, OK
Defense: Eric A. Riegner and Randall R. Riggs, *Locke Reynolds, LLP.*, Indianapolis; and David M. Rogers, James M. Campbell, and Mark J. Hoover, *Campbell Campbell Edwards & Conroy*, Boston, MA, for Ford Motor Company; Mary K. Reeder and Laura K. Taylor, *Riley Bennett & Egloff, LLP.*, Indianapolis; and Andrew R. Kruppa and Damond R. Mace, *Squire Sanders & Dempsey, LLP.*, Cleveland, OH, for TRW Vehicle Safety Systems, Inc.

Verdict: \$25,000,000 for plaintiff less 64% comparative fault (final award allocated \$7,750,000 against Ford and \$1,250,000 against TRW)

County: **Shelby**, Circuit Court: J. O'Connor, 3-14-07

On 4-6-99, Daniel Moore purchased a used 1997 Ford XLT Explorer from Farlow Auto Sales in Columbus. Although the Explorer originally came equipped with Firestone tires, they were later recalled at Ford's insistence. Accordingly, on 8-28-01, Renner Motors, Inc. of Columbus replaced the Firestone tires with Goodyear "Wrangler" tires.

Nearly four months later, on 12-20-01, Moore, by then age 40 and a private jet pilot, was driving the Explorer south on I-65 in Shelby County. As he reached a point near mile marker 81,

the Explorer's left front tire underwent a sudden, excessive loss of air.

Moore lost control of the vehicle and left the road. Over the next few seconds, he hit a bridge underpass and then rolled over numerous times. During the roll-over, the vehicle's "moon roof" shattered, and Moore was ejected through it. Tragically, Moore died in the crash. He was survived by his wife and son.

Moore's estate filed suit against Ford Motor Company, TRW Vehicle Safety Systems, Inc. (the company that manufactured the Explorer's seatbelt system), Goodyear Tire Company, and Renner Motors, Inc. With regard to Renner and Goodyear, the estate argued the tires were too large for the vehicle and had been under-inflated. Those were the factors that led to the sudden catastrophic failure of the tires.

The subsequent procedural history of the case was complex. Renner made cross-claims against both Ford and Goodyear for indemnification. However, those claims were later dropped. Also, the estate eventually dismissed Goodyear from the case due to a settlement, the terms of which are unknown, and the claim against Renner likewise disappeared.

The case proceeded against Ford and TRW on counts for negligence and breach of warranty. In addition to its other damages, the estate initially sought both punitive damages and pain and suffering.

Defendants responded with a motion to dismiss the count for breach of warranty on grounds of lack of privity. The court granted the motion and dismissed that count. Also, the estate withdrew its claims for punitive damages and pain and suffering.

On the remaining products liability count, the estate criticized the design

and manufacture of both the Explorer itself made by Ford and the three-point restraint system made by TRW. In particular, the estate argued the Explorer was known to have a propensity to roll over.

The estate also argued the moon roof should have been made of safety glass so as to reduce the likelihood of shattering in a roll-over. Regarding TRW's restraint system, the estate claimed it remained latched but had "spooled out" during the roll-over and thereby allowed Moore to be ejected.

The estate identified a veritable army of experts. They included George Launey, Economist, Franklin; Bruce Enz, Accident Reconstruction, Indianapolis; Steven Meyer, Seatbelt design, Goleta, CA; Dr. David Renfro, Engineer, Farmington, AK; Dr. Joseph Burton, Biomechanics, Alpharedda, GA; Dennis Carlson, Tire Expert, Tucson, AZ; and Dr. Steven Batzer, Glass Expert, Farmington, AK.

Ford and TRW defended the case and denied any defect in the design or manufacture of their respective products. Specifically, Ford argued Moore had fallen asleep at the wheel and simply drove off the road.

TRW denied any problem with the seatbelt system. The company emphasized that when TRW's experts went to examine the remains of the Explorer, they found the seatbelt still latched and were told it had been like that since the crash.

In addition to their other defenses, Ford and TRW implicated Moore's fault, as well as the fault of non-party Goodyear. Among the many experts defendants identified was Catherine Corrigan, Biomechanics, Philadelphia, PA.

The case was tried for fifteen days in Shelbyville. The jury deliberated slightly over seven hours before returning a verdict in which Moore was assigned 33% of the fault and non-party Goodyear was assigned 31%. The remaining 36% was divided between defendants as follows: 31% to Ford and 5% to TRW.

The jury set the estate's raw damages at \$25,000,000. In accordance with the division of fault, Ford was assessed

\$7,750,000, while TRW would be responsible for \$1,250,000. That brought the estate's final award to \$9,000,000. The court entered a judgment that reflected the verdict, and defendants have filed an appeal.

Auto Negligence - A bicyclist was hit by an SUV that ran a red light – the bicyclist didn't seek treatment for two years (he didn't have insurance) but has since seen a pain management doctor (who treated him conditioned on a lien in this lawsuit) for radiating back pain

Wolf v. Ogle, 46D04-0512-CC-401

Plaintiff: Duke T. Escue, *Walter T.*

Alvarez, P.C., Crown Point

Defense: William Deer, Merrillville

Verdict: \$1,050,000 for plaintiff

County: **LaPorte**, Superior

Court: J. Boklund, 8-16-07

It was 4-8-04 and David Wolf, then age 34, was riding a BMX bicycle at the intersection of Hwy 12 and Pine Street in Michigan City. While Wolf was in the crosswalk, he was going against traffic on the one-way street. Wolf did have a green light of sorts to go the wrong way.

At the same time, the defendant, Richard Ogle, driving a car in the right direction, ran a red light and crashed into Wolf. Wolf was thrown into the air and landed on his back. While he was shaken, Wolf didn't treat for two years. In fact, the day after the wreck, Wolf was well enough to go back to work in his job as a drywall hanger.

He explained the treatment gap that he simply didn't have insurance – despite calling every doctor in the area, he couldn't find anyone to treat him. Ultimately, (two years later) he struck a bargain with Dr. Paul Madison, a pain management doctor in Michigan City. Madison agreed to treat Wolf if he was permitted to have a lien on the recovery in any lawsuit with Ogle.

Thereafter Madison identified radiating neck and back pain related to a disc bulge. Plaintiff incurred medical bills of \$137,000. There was no claim for wage loss.

In this lawsuit, it was Wolf's theory that even though he was traveling southbound on a northbound one-way

street, Ogle was still to blame for having run the red light.

Ogle defended and blamed Wolf for the crash. He also diminished damages with an IME, Dr. Marc Sloan, Pain Management, Chicago, IL. The expert did not believe Wolf had sustained a severe injury.

The jury's verdict on liability was for Wolf, Ogle being found solely at fault. Then to damages, Wolf took a general award of \$1,050,000. A consistent judgment followed. It is learned plaintiff had demanded \$1,000,000 while Ogle (an Allstate insured) never made an offer.

Auto Negligence - A woman suffered a back injury when she was rear-ended by a driver who had looked away from the road to pick up his cell phone

Bowman v. Price,

64D01-0412-CT-11266

Plaintiff: Timothy F. Kelly and Beth L.

Brown, *Kelly Law Offices*, Crown Point;

and Michael Troumouliaris, Merrillville

Defense: Jerry E. Huelat and Jaime M.

Oss, *Huelat & Mack, P.C.*, Michigan

City; and Timothy J. Brown, *Liberty*

Mutual Litigation Counsel, Merrillville

Verdict: \$133,000 for plaintiff

County: **Porter**, Superior

Court: J. Bradford, 4-25-07

On 12-26-02, Barbara Bowman was driving east on U.S. 30 in Valparaiso. Behind her, David Price was driving a vehicle allegedly owned by his parents, Robert and Merry Price.

As the parties approached a spot approximately 500 feet west of the intersection with C.R. 475 West, Bowman stopped in traffic. At just that moment, Price looked down to pick up his cell phone. In doing so he failed to notice Bowman had stopped. An instant later, Price rear-ended Bowman, and the impact pushed her into the rear of the vehicle in front of her.

Although Bowman felt shaken up and stiff after the crash, she hoped it would resolve by itself. Guided by that hope, she did not seek immediate medical treatment. Over the next few days, however, her pain grew worse.

Bowman was ultimately diagnosed

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