

Kentucky Trial Court Review

The Most Current and Complete Summary of Kentucky Jury Verdicts

February 2014

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Civil Jury Verdicts

Complete and timely coverage of civil jury verdicts including circuit, division, presiding judge, parties, case number, attorneys and results.

Underinsured Motorist - The plaintiff (a man in his twenties who works a factory job) suffered a broken femur just below the femoral head when the tortfeasor ran a red light and broadsided his vehicle – the plaintiff settled with the tortfeasor for his \$50,000 limits and sought UIM coverage against Allstate in this lawsuit

Deckard v. Allstate, 13-375

Plaintiff: William F. McMurry, McMurry & Associates, Louisville and Bradley A. Sears and Sam Aguiar, Aguiar Law Office, Louisville

Defense: Valerie W. Herbert, Travis & Herbert, Louisville

Verdict: \$326,260 for plaintiff

Court: **Jefferson, J. Stevens,**
1-16-14

Brandon Deckard, then age 23, was involved in a serious car collision on 9-19-12. He was driving his grandmother's car (a Ford Taurus to get new tires put upon it. At the intersection of New Cut and Old New Cut Road, a motorist ran the red light and broadsided his vehicle. It struck his vehicle hard on the driver's side, pushing the vehicle in some two feet and directly into his hip.

Deckard suffered a fractured femur just below the femoral head. The injury was surgically repaired by Dr. Sam Carter, Orthopedics, Louisville, who placed three large screws in Deckard's hip. Because of Deckard's age, he was at high risk for

developing necrosis in his femur bone – this risk was especially high in the first year.

Deckard did not develop this condition in the first year after the crash, his doctor explaining that he faces just a single digit risk in the four years after the wreck. After four years have passed (at the time of trial only 15 months had transpired), there is no risk of necrosis. Thus as the case was presented, Deckard still faced some risk of necrosis, the proof indicating if it did present, Deckard would require knee replacement.

Deckard, who works at an assembly line job, was off work for some 16 weeks. While he still has a dull aching sensation in his hip, Deckard has returned to a full work schedule – he is on his feet forty hours a week.

Deckard moved first against the tortfeasor and took her \$50,000 limits.

In this lawsuit he sought \$100,000 of UIM coverage from Allstate – it insured his grandmother's car. Brandon had another \$50,000 in secondary coverage available to him from Nationwide.

The case was tried against Allstate alone, Nationwide agreeing to be bound by the result. This was an interesting case as Allstate had not advanced the underlying limits and thus it was not a so-called *Coots* case. Judge Stevens tightly limited any insurance proof, identifying Allstate as the defendant but not allowing Deckard to describe himself as an insured or explain that this case involved an automobile policy.

If Deckard prevailed at trial he could take his medicals of \$30,200 and lost wages of \$11,060. His impairment was quantified at \$369,661 by a vocational expert, Sara Ford, Louisville – she indicated his work life had been shortened from **K**

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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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Gossett and the motorized vehicle on the shopping public without properly instructing Gossett on the scooter's operation. If Wilson prevailed she could be awarded lost wages and suffering damages.

Wal-Mart first removed the case from Muhlenberg Circuit Court (Greenville, KY) to federal court. Its defense focused on blaming Gossett for the accident. It noted that despite her protests that she didn't know how to use the scooter, in fact she had used it for years. The jury then could apportion fault to the non-party Gossett. Wal-Mart also diminished damages with an IME, Dr. Dennis O'Keefe, Neurology,

Bowling Green, who believed that the incident left Wilson with only a temporary strain injury.

The court's instructions asked if Wal-Mart failed to exercise ordinary care in maintaining its premises. The answer was no and Wilson took nothing. A defense judgment was entered.

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