

Kentucky Trial Court Review

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Civil Jury Verdicts

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School Bus Negligence/UIM -

A twelve-year old girl was involved in two separate collisions while a passenger on JCPS school buses – she linked a permanent brain injury to the collisions (the second was more serious) and in this lawsuit she sought damages from the bus drivers as well as from their UIM carrier, Travelers – the jury sorted out the complex issues (fault and damages from two separate collisions involving four tortfeasors) and made an award of \$2,413,161 to the girl which included \$1,000,000 for her pain and suffering

Josue v. JCPS Bus Drivers and Travelers,
20-3360

Plaintiff: A. Nicholas Naiser, *Naiser Law Office*, Louisville and Derek P. O'Bryan, *Derek O'Bryan PSC*, Louisville

Defense: Daniel P. Reed and Isaac K. Keller, *Wyatt Tarrant & Combs*, Louisville for all defendants

Verdict: \$2,413,161 for plaintiff assessed 10% to one JCPS bus driver (\$241,316 to that driver) and remainder less PIP and underlying \$150,000 policies of tortfeasors

Court: **Jefferson**

Judge: Jennifer B. Wilcox

Date: 2-4-26

Nicolette Josue, then age 12 and a student of JCPS, was involved in two separate school bus collisions (she was

a passenger) within three months of each other in 2018. The first was on 8-29-18. She was on a bus driven by Ricardo McDonald. Fanta Kallon, in a passenger vehicle, turned into the path of the bus.

The second crash was on 12-13-18. It was a harder hit. Tonya Mickey (who may have been under the influence at the time of medications that lead to drowsiness) drove into the side of a bus driven by Stuart Bilyeau. Her car suffered moderate damage and an axle was broken. There wasn't much visible damage to the much larger bus. There

was only one child injured on the bus. It was Josue. Bilyeau (the driver) had a kidney injury.

Josue would describe the impact left her dazed. Why was she injured? There was evidence the Mickey vehicle hit the bus in the middle right below where Josue was sitting. There was surveillance video on the bus of the impact. It's not exactly clear. Did it show Josue's head striking the side of the bus? Maybe? Maybe not? This would be contested. There was no question though the collision was near where Josue was

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bicep – it was fully ruptured. A referral was made to an orthopedist, Dr. Ryan Shepherd. He couldn't see Maggard until 6-21-21.

Maggard saw him on that date and a surgery was scheduled for 6-29-21. Shepherd attempted to repair the torn bicep. He could not and aborted the procedure. Some 18 months later Maggard went to the Cleveland Clinic for a second opinion. They confirmed the bicep tendon could not be reattached. It remains detached and Maggard continues to have pain and limitations.

Maggard filed this lawsuit and alleged negligence by both Hall and Bowling in treating the rupture. The theory was that at the urgent care they failed to appreciate the serious injury and make an immediate referral to an orthopedist. The theory continued that with prompt care, the tendon could have been repaired and the permanent injury avoided.

Maggard built his case through several experts. He relied on Jill Baldwin, APRN, Louisville and Dr. Michelle Morris, Family Practice, Columbus, OH on the standard of care. A third expert, Dr. Nikhil Verman, Orthopedics, Chicago, IL (he's team doctor for the White Sox) discussed causation, i.e., that the injury could be repaired if treated promptly.

Maggard's medical bills were \$23,432.2. He sought \$153,266 for his impairment. His vocational expert was Sara Ford, Louisville. Maggard could take \$2,000,000 for his pain and his suffering. His wife (Tonya) sought \$500,000 more for her consortium interest.

The defendants replied that the urgent care was appropriate and thorough, the differential diagnosis including a torn bicep. The order for a MRI two weeks later was timely and the attempted surgical repair a month four to six weeks later was

typical. Thus the defendants met the standard of care, and in any event the delay didn't contribute or affect the failure of tendon repair surgery.

A causation expert, Dr. Wesley Cox, Orthopedics, Fayetteville, AR, explained a the success of a surgical repair for this injury is dependent on a variety of factors including the seriousness of the initial injury. The defense also relied on a standard of care expert, Dr. Eric Byrd, Internal Medicine, Hendersonville, NC. There was also a defense vocational expert, Ralph Crystal, Lexington.

This case was tried for four days in Hindman. The trial was delayed one day by inclement weather. The jury had an unusual question. It asked the court: What day of the week did the injury occur? It's not clear how or if Judge Childers answered the question.

The jury reached a verdict and it was unanimously for the each of the defendants on separate instructions. Hall's described the nurse practitioner standard of care – Bowling's implicated the family practice medicine standard. The jury then didn't reach apportionment or damages. A consistent defense judgment was entered.

Case Documents:

[Plaintiff Expert Disclosure](#)
[Defense Expert Disclosure](#)
[Defense Trial Memorandum](#)
[Plaintiff Trial Memorandum](#)
[Final Judgment](#)

A Historic Kentucky Verdict

Medical Negligence

Kentucky's First Million Dollar Personal Injury Verdict

Ewald v. Danganan

May 3, 1974

Jefferson County

Judge Raymond Stephenson

Verdict: \$2,307,882 for plaintiff

Jerry Ewald, then age two, was at his babysitter's home on May 8, 1972. While the boy was playing with a ball, the ball struck a light fixture. Pieces of broken glass struck Ewald in the face and he suffered a cut to his nose.

The boy was taken to St. Mary and Elizabeth Hospital and a facial plastic surgery was performed by Dr. Tom Nichols. There was an anesthesia error during the procedure and Jerry went into cardiac arrest. While he was resuscitated, Jerry suffered a catastrophic and permanent brain injury. The proof at trial was that Jerry functioned at the level of a nine-month old infant.

Jerry, through his parents, sued his anesthesiologist, Dr. Candido Danganan, who had been practicing on a temporary three-month license. That license had been expired for two months at the time he provided care to Jerry. The plaintiff introduced proof that Danganan was not qualified to work without supervision. The error by Danganan, as proven at trial, was that he failed to appreciate that Jerry went into cardiac arrest during the procedure.

The case was tried for fifteen days before Judge Raymond Stephenson in May of 1974. The jury found against Danganan, two of his associates and the hospital, and awarded the boy \$1,000,000 for future medicals. He also took \$500,000 each for his pain and suffering and lost earnings.

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