The Indiana Jury Verdict Reporter

The Most Current and Complete Summary of Indiana Jury Verdicts

November, 2006 **Statewide Jury Verdict Coverage** **7 IJVR 11**

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.

Bad Faith - A man who was injured in a collision with an uninsured motorist claimed his own UM carrier engaged in unfair claims settlement practices

Fields v. Allstate Insurance,
45D01-0608-CT-145
Plaintiff: Kenneth J. Allen and David W. Conover, *Kenneth Allen & Associates*, Valparaiso
Defense: Ronald D. Getchey, *Luce Forward Hamilton & Scripps*, San Diego, CA; Jack Kramer, *Hoeppner Wagner & Evans*, Merrillville; and Thomas D. Collignon, *Collignon & Dietrick*, Indianapolis
Verdict: $20,000,000 for plaintiff
County: **Lake**, Superior
Court: J. Kavadias-Schneider, 10-5-06

On 9-1-95, Ted Fields, age 50 and a steelworker at U.S. Steel, was involved in a collision with Jimmie Woodley at the intersection of U.S. 20 and Lake Street in Gary. Fields suffered a back injury due to the crash and later underwent a cervical diskectomy. As a result of the injury and subsequent surgery, he was off work for five months. His special damages came to $24,000.

Fields filed suit against Woodley on 10-27-95, slightly less than two months after the crash. As it happened, Woodley was insured by a company called Coronet. In January of 1997, Coronet became insolvent, and Woodley thus became an uninsured motorist.

Fields himself was insured with Allstate under a policy that carried uninsured motorist bodily injury coverage of 50/100, uninsured motorist property damage coverage of $10,000, and med-pay coverage of $1,000. On 1-27-97, Fields made a UM claim with Allstate under the policy.

According to Fields, all the evidence indicated his damages were in fact much higher than his policy limits and that his claim should be paid immediately. Instead, however, Allstate employed various questionable tactics in an effort to avoid paying his claim fairly and in good faith.

Fields filed suit against Allstate on a claim for bad faith in settling his claim. He alleged the insurer engaged in claims handling practices and procedures that placed its own financial interests ahead of its policyholders.

If successful, Fields sought both compensatory and punitive damages. His wife also presented a derivative claim for her loss of consortium. Fields's expert on matters of insurance claims handling was Donald Dinsmore of Gainesville, FL.

One of the tactics Fields alleged Allstate employed was the mandatory use by the company's adjusters of a computer program known as "Colossus," designed to automate the evaluation of claims. According to Fields, Colossus's programing was specifically rigged to undervalue claims.

Moreover, Fields alleged that Allstate set up a conflict of interest by linking the compensation the company paid its adjusters to how often the adjusters settled cases at levels at or below the levels set by Colossus. When claimants declined to accept the unreasonably low settlement offers produced by Colossus, Allstate would resort to "aggressive" litigation tactics as punishment.

Fields claimed Allstate used methods such as these in handling his claim. For example, although Colossus evaluated his claim at between $45,000 to $51,000, Allstate made no settlement offer. Later, once the litigation was underway, Allstate made it a practice to fight vigorous battles over countless discovery issues, and the company even refused to appear for its deposition.

Fields would later claim that the experience of being subjected to Allstate's hardball tactics caused him to develop hypertension and cardiovascular problems. He underwent surgery for his heart problems, and he also suffered a stroke that he attributed in part to the stress of dealing with Allstate's recalcitrance.

The court eventually took notice of Allstate's bad behavior and sanctioned the company by entering an order of default against it. Allstate appealed that decision, and it was reversed at the Court of Appeals. However, the Indiana Supreme Court vacated the appellate court decision and remanded the case for trial on the issue of damages.

Allstate disputed the extent of Fields's damages and noted he had a family history of hypertension, heart disease, and stroke. Also, Fields himself was a smoker. Finally, Allstate argued against the propriety of punitive damages in this case. The identified claims handling expert for Allstate was attorney Thomas Macke of Valparaiso.

The case was tried for eight days in Hammond. At the close of proof, the court granted Allstate a directed verdict on Fields's wife's consortium claim. The case went to the jury on the issue of compensatory and punitive damages on Fields's claim.

After eight hours of deliberation, the jury returned a verdict for Fields and awarded him compensatory damages of $2,000,000. To that amount was added another $18,000,000 in punitive damages. That brought the total award to $20,000,000.

The court reduced the punitive component of the award to the statutorily allowed limit of $6,000,000. The final judgment thus came to $8,000,000. At the time the IJVR reviewed the record, the deadline for filing appeals had not yet expired. Prior to trial, Fields's settlement demand was $500,000. Allstate offered $50,000.

During the eight hours of deliberation, the jury repeatedly sought guidance from the court in calculating damages. First, the jury explained, "We at this time cannot come to an agreement on either compensary [*sic*] or punitive damages at this time [*sic*]." The court helpfully responded to this report with an order to reread Final Instruction #34 and to continue deliberations.

The jury did continue deliberating and then later sent the court a question: "What happens if we can't agree on an amount for punitive damages? We read aloud Final Instruction #34 as ordered." The court again ordered the jury to continue the deliberations and to read the instructions.

Approximately two hours later, the jury informed the court, "We still cannot agree on an amount for punitive damages? [*sic*] We are reviewing and can not [*sic*] come to an agreement." The court's response to this message is unknown.

Auto Negligence - The son of Louis Farrakhan, the leader of the Nation of Islam, rear-ended the plaintiff on I-80 – Farrakhan the younger fled the scene in his Hummer, there also being proof he was drunk

Peterson v. Farrakhan, 2:03-319
Plaintiff: David C. Jensen and Kirk D. Bagrowski, *Eichhorn & Eichhorn*, Hammond and Michael W. Back, Crown Point
Defense: Shelice R. Robinson, *Kopka Pinkus Dolin & Eads*, Crown Point
Verdict: $814,398 for plaintiffs
Federal: **Hammond**
Court: J. Simon, 9-27-06

Early on the morning of 5-09-03, Nasir Farrakhan was returning to his home in New Buffalo, MI. Farrakhan had attended a barbeque and headed east on I-80 near Chesterton. He drove a 1997 Hummer which belongs to his famous father, Louis Farrahkhan, the leader of the Nation of Islam. [Nasir served as his father's director of security.]

Also on I-80 that morning were Gladys and Charles Peterson of Gary. Nasir rear-ended the Petersons. It was a moderate collision. Nasir didn't stop and instead fled the scene. He was apprehended several exits away.

There was evidence of drinking and drug use. Nasir denied this, explaining he was just tired from the party. To the crash itself, Nasir had fallen asleep and didn't even remember there was an impact. This from Nasir's perspective would explain why it looked like he fled the scene. In his giant Hummer, he just had not known there was a crash.

Ultimately fault would be no issue for the crash. The Petersons did try to reach Minister Farrakhan. That claim was dismissed, the trial court finding plaintiffs lacked personal jurisdiction. The case then advanced to trial only against Farrakhan the Younger.

Gladys has since complained of the aggravation of pre-existing spondylosis in her neck and back. While it was purely a soft-tissue injury, her doctors described the symptoms as permanent. She has also reported headaches. Her medicals were $55,088. Charles was also hurt, suffering a temporary soft-tissue injury – his medicals were $9,560.

Beyond compensatory damages, plaintiffs also sought the imposition of punitives. This was predicated on Farrakhan's reckless driving – he was intoxicated and didn't even have a license. Following the crash, Farrakhan pled guilty to criminal recklessness. Farrakhan replied as above and stuck to his "I fell asleep and didn't feel the impact" defense that whether his conduct was tortious or not, it wasn't intentional.

This case advanced to trial in federal court. Gladys was awarded $448,838, while Charles took $15,560. The jury added another $350,000 in punitives, the verdict totaling $814,398. A consistent judgment followed.

Auto Negligence - An elderly plaintiff was found 45% at fault for a failure-to-yield crash in which he suffered debilitating soft-tissue injuries

Martin v. Walker,
49D07-0407-CT-1316
Plaintiff: Troy K. Rivera, *Nunn Law Office*, Bloomington
Defense: Anthony S. Ridolfo, *Hackman Hulett & Cracraft*, Indianapolis
Verdict: $21,901 for plaintiff less 45% comparative fault
County: **Marion**, Superior
Court: J. Zore, 6-7-06

In the early evening of 6-11-03,