

# The Indiana Jury Verdict Reporter

The Most Current and Complete Summary of Indiana Jury Verdicts

August 2022

Statewide Jury Verdict Coverage

23 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.

**Medical Negligence - A 46 year-old married father of two underwent a below the knee amputation of his left leg; when he died from a pulmonary embolism sixteen days after the surgery, his estate blamed his death on his surgeon's alleged failure to take appropriate measures to prevent the development of deep vein thrombosis**

*Estate of Stout v. Gabrielsen, et al.*, 53C01-1902-CT-315  
Plaintiff: John D. Boren and Kristopher Fuller, *Boren Oliver & Coffey, LLP.*, Martinsville  
Defense: Patrick B. Healy, *Roetzel & Andress, LPA.*, Cincinnati, OH  
Verdict: Defense verdict on liability  
County: **Monroe**, Circuit  
Court: J. Blanton, 6-30-22

On 2-13-18, Matthew Stout sought a medical evaluation debridement of a wound to his left foot. Stout consulted on the matter with a general surgeon, Dr. Steven Gabrielsen, an employee of Monroe Hospital in Bloomington. On that visit, Stout was treated for a MRSA infection and confirmed he was on antibiotics.

Nearly a month and a half later on 3-22-18, Stout went to Monroe Hospital for a change of his dressing. At that time it was noted that his wound was very slow in showing any signs of improvement. Ultimately, Stout was diagnosed with left "charcot foot" and a non-healing plantar ulcer.

Charcot foot is a serious condition in which the bones of the foot

become weakened and fracture and the joints collapse, causing the foot to take on an abnormal shape. The condition develops due to significant nerve damage, often related to diabetes, and is also associated with a decrease in sensation and the ability to feel pain in the affected foot. Progression of charcot foot can lead to amputation.

In Stout's case, a below the knee amputation of the left leg was indeed the recommendation. The procedure was performed by Dr. Gabrielsen on 4-11-18 and was uneventful. It would later be alleged that Dr. Gabrielsen did not prescribe post-operative anti-coagulants.

Sixteen days after the surgery, Stout developed a "saddle" pulmonary embolism – i.e., a large blood clot at the point where the main pulmonary artery branches off to each lung. Stout died due to the embolism. At the time of his death he was 46 years old and left behind a wife and two children.

Stout's estate, administered by his widow, Danell Stout, presented the matter to a medical review panel comprised of three general surgeons. They were Dr. Paul Bowlds of Greenwood, Dr. Daniel MacMillan of Jeffersonville, and Dr. Larry Micon of Indianapolis.

According to the estate, Dr. Gabrielsen failed to prescribe anti-coagulants or take other steps to prevent Stout from developing deep vein thrombosis. Dr. Gabrielsen's failure in this regard fell below the

standard of care, and his employer, Monroe Hospital, is vicariously liable for Dr. Gabrielsen's actions.

The medical review panel issued the unanimous opinion that Dr. Gabrielsen's treatment of Stout did not represent a breach of the applicable standard of care. The estate filed suit against Dr. Gabrielsen and Monroe Hospital on the grounds noted above. The estate's identified expert was Dr. Ashley Lankford, General Surgery, New Albany.

Dr. Gabrielsen and Monroe Hospital defended the case and denied any breach of the standard of care. Among other things they denied that anti-coagulants were indicated in Stout's case, and they claimed that appropriate measures were taken to prevent Stout from developing deep vein thrombosis. The identified defense experts were Dr. Micon from the medical review panel and Dr. Scott Hockenberry, General Surgery, Columbus, OH.

The case was tried for four days in Bloomington. In closing arguments the estate asked the jury for an award of \$2.1 Million. The jury deliberated for just under four hours before returning a defense verdict for Dr. Gabrielsen and Monroe Hospital.

The jury appended to its verdict a recommendation that the hospital review its practices and procedures regarding patient documentation and in providing directions upon patient discharge. At the time the IJVR reviewed the record, no judgment had yet been entered.

#### **Case Documents:**

[Defense Summary Judgment Motion](#)  
[Plaintiff Summary Judgment Reply](#)  
[Jury Verdict](#)

#### **Auto Negligence - Plaintiff suffered neurological injuries when she was rear-ended twice in rapid succession by the same driver; the tortfeasor minimized plaintiff's injuries and claimed the impacts were minor**

*Neher v. Wheeler, et al.,*

02D01-2003-CT-175

Plaintiff: Calvert S. Miller, *Carson, LLP.*, Fort Wayne

Defense: Bailey C. Coultrap, *Paganelli Law Group*, Indianapolis

Verdict: \$310,500 for plaintiff

County: **Allen**, Superior

Court: J. Avery (Special Judge),  
6-22-22

In the afternoon of 10-12-18, Amy Neher was driving west on Washington Center Road in Fort Wayne. Her children were riding with her as passengers. Behind Neher and traveling in the same direction was a vehicle being driven by Geoffrey Wheeler.

Neher was in the far right lane and intended to make a right turn to head north on Coldwater Road. When Neher slowed to make her turn, Wheeler rear-ended her. Neher pulled onto Eleanor Drive so she could get her vehicle out of traffic, inspect the damage, check on her children, and wait for the police to arrive. As she did so, Wheeler rear-ended her a second time.

The record does not reveal the nature of Neher's injuries. However, it is known that her treatment included surgery and that her medical care providers included a neurosurgeon. Neher's incurred medical expenses totaled \$126,715.

Neher filed suit against Wheeler and blamed him for crashing into her. It turned out that Wheeler was insured by State Farm under a policy that carried liability limits of 100/300.

Neher thus made an underinsured motorist claim against her own insurer, Erie Insurance. Neher's UIM liability limits under the Erie policy were \$250,000.

The parties ultimately stipulated that Erie Insurance would not participate at trial and that the jury would not be informed of Erie's role in the case. In exchange, Erie agreed to be bound by any verdict up to its policy limits minus any appropriate set-offs.

The litigation proceeded on Neher's claim against Wheeler. He admitted fault for the two crashes, but he disputed the nature, extent, and causation of Neher's claimed injuries. In particular, Wheeler claimed that the impacts between the two vehicles were too minor to have caused serious injuries.

The case was tried for two days in Fort Wayne solely on the issue of damages. The jury deliberated for one hour before returning a verdict for Neher in the amount of \$310,500. The court entered a judgment for that amount, plus post-judgment interest. Erie Insurance has satisfied its component of the judgment. However, at the time the IJVR reviewed the record, Wheeler had not yet satisfied his component.

#### **Case Documents:**

[Jury Verdict](#)

[Final Judgment](#)

**Civil Rights - A state prisoner who suffered a pelvic crush injury years ago in an MVA was unable to produce urine on command for tests while incarcerated and he alleged the prison retaliated against him in terms of discipline and classification – a federal jury found for the plaintiff on the disability discrimination claim and awarded a single dollar in nominal damages**

*Wilburn v. Indiana Department of Corrections*, 3:17-59

Plaintiff: Andrew Chabot, *Chabot Law*, South Bend

Defense: Brandyn L. Arnold and Peter A. Inman, *Assistant Attorneys General*, Indianapolis

Verdict: \$1.00 for plaintiff

Federal: **South Bend**

Court: J. DeGuilio, 7-6-22

Eric Wilburn was convicted on burglary charges in Marshall County and housed in a state prison by the Indiana Department of Corrections (DOC). Wilburn had a history of a prior MVA where he sustained a pelvic crush injury. There was also proof this made it difficult for Wilburn to easily urinate on command even if drank abundant water.

This became important in 2016 when the prison required Wilburn to produce a urine sample as a part of its drug testing program. Wilburn struggled to produce a sample. His disability was documented by his treating physician, Dr. Byron Holm who indicated that Wilburn could have either a blood draw or a mouth swab.

The prison wasn't having it. They believed that Wilburn could urinate and it imposed discipline upon him. That included changing his classification to a more secure one and transferring him to a higher

security level prison.

Wilburn filed this lawsuit and alleged the imposition of discipline represented disability discrimination. The theory was simple enough. He had a disability (he couldn't urinate on command), prison officials failed to reasonably accommodate him and then disciplined him. If the jury found that Wilburn suffered a "physical injury," it could award compensatory damages. Wilburn was ultimately released from prison in 2017.

DOC defended that Wilburn could urinate on command (or within two hours as required) and in fact the only time he had a urination problem was when he was drug tested. DOC also denied that this was a disability in the first place. The defense further relied on a urology expert, Dr. Steven Kim, Greencastle. Kim focused that Wilburn only needed an accommodation when he asked for a urine sample but could regularly urinate without an accommodation.

The jury navigated a series of inquiries (answering all for Wilburn) that he had a disability, qualified for an accommodation, requested an accommodation and DOC failed to provide one. However the jury rejected that Wilburn had suffered physical harm. That finding precluded an award of damages for mental anguish or pain and suffering.

The jury then went to nominal damages. It awarded Wilburn a single dollar. The court entered a judgment for the plaintiff in that sum.

#### **Case Documents:**

[Summary Judgment Order](#)

[Pretrial Order](#)

[Jury Verdict](#)

**Insurance Agent Negligence - A married couple's claim under their auto insurance policy was denied and the policy was rescinded on the ground of alleged misinformation on the insurance application; the couple claimed the insurance agency that arranged the policy had filled out the application incorrectly**

*Djengue, et al. v. Velox Insurance, Inc.*, 49D07-1809-CT-36100

Plaintiff: *Pro se*

Defense: Richard A. Rocap and Ryan L. Garner, *Rocap Law Firm, LLC.*, Carmel

Verdict: \$13,000 for plaintiff less 95% comparative fault

County: **Marion**, Superior

Court: J. Dreyer, 6-29-21

In November of 2017, Fatoumata Diallo and her husband, Hubert Djengue, were in the market to buy auto insurance. They visited the office of Velox Insurance, Inc., an independent insurance agency in Indianapolis.

The couple wanted to purchase insurance for two vehicles: a 2011 Chevrolet Cruz owned by Diallo, and a 2014 Honda Accord LX owned by Djengue. The agent arranged for a policy to be issued by the American Freedom Insurance Company.

It would later be alleged that during the application process Diallo presented the Velox agent with the title and registration for the Honda that clearly showed Djengue as the owner. It would also be alleged that the agent filled out the insurance application on behalf of the couple.

Upon being presented with the completed application, Diallo duly signed it as instructed without having been given an opportunity to review any of the associated documents. The couple then left the

office with the belief that their vehicles were properly insured.

Diallo and Djengue maintained their insurance and paid the premiums promptly. On Christmas Day, 12-25-17 (approximately a month after they'd purchased the insurance), Djengue was driving the Honda when he became involved in a one-car accident that resulted in property damage to the vehicle.

Djengue and Diallo made an insurance claim for the damage under the American Freedom policy. A bit over a month later on 2-5-18, American Freedom denied the claim. Three days later on 2-8-18 the company notified the couple that the policy was being rescinded.

Djengue and Diallo filed suit against both American Freedom and Velox Insurance and alleged counts for breach of contract, bad faith, and negligence. American Freedom and Velox defended the case and argued that plaintiffs had made material misrepresentations on the insurance application.

In particular, defendants claimed it was Diallo who had purchased the insurance, but she had failed to disclose on the insurance application that she was not the owner of the Honda. Given that she was not the owner, she could not purchase insurance on the Honda. The policy was therefore void and provided no coverage.

Based on this theory American Freedom filed a motion to strike plaintiffs' demand for a jury trial and argued that the issue of the existence of coverage was an equitable matter for which a jury trial would be inappropriate. The court agreed and bifurcated the claims against American Freedom from those against Velox.

Additionally, defendants filed a motion for summary judgment, which the court denied. After having the issue certified for an interlocutory appeal, defendants attempted to appeal the denial of their summary judgment motion. The court of appeals, however, declined to hear the appeal.

Up to nearly the time of the summary judgment hearing, plaintiffs were represented by attorneys Kevin M. Bowen and Brandon E. Tate with the law firm of *Tate, Bowen, Daugherty, Funk, Spandau, LLC.* in Indianapolis. A few months before the hearing, however, Bowen and Tate withdrew from the case.

The court ultimately held a bench trial on the claims against American Freedom and found for the defense. The litigation proceeded thereafter solely on the claims against Velox with plaintiffs appearing *pro se*.

Plaintiffs insisted that Diallo had told Velox that Djengue was the actual owner of the Honda and that the Velox agent simply filled out the application incorrectly. Plaintiffs could hardly be blamed for the error of Velox's agent. Plaintiffs also argued that Diallo was a co-owner of the Honda in virtue of the fact that she and Djengue are a married couple.

The case was tried in Indianapolis. At the close of plaintiffs' case, the court granted a defense motion for directed verdict on Diallo's claims but not on Djengue's claims. The court also granted a defense motion to name Diallo as a non-party for purposes of allocation of fault.

The jury returned a verdict in which Velox was assigned 5% of the fault. Djengue was assigned 0%, and the remaining 95% was assigned to

non-party Diallo. The jury set Djengue's raw damages at \$13,000. After reduction for comparative fault, his final award came to \$650. The court entered a judgment for that amount.

Velox deposited the verdict amount with the court clerk. Some three months passed, and Djengue never collected the funds. Velox then filed a motion with the court to show the judgment has been satisfied. The court granted the motion and declared the judgment satisfied.

**Case Documents:**  
[Final Judgment](#)

**Auto Negligence - Plaintiff claimed to have been injured in a chain-reaction rear-end crash; plaintiff won at trial, but the jury awarded her zero damages**

*Alban v. Hassuneh,*

71C01-1804-CT-152

Plaintiff: William A. Keller, *Sweeney Julian, P.C.*, South Bend

Defense: J. Thomas Vetne, *Jones Obenchain, LLP.*, South Bend

Verdict: \$0 for plaintiff

County: **St. Joseph**, Circuit

Court: J. Broden, 7-13-22

In the early evening of 6-2-16, Michelle Alban was driving a 2006 Chevrolet Impala as she headed west on Lincolnway West in South Bend. Two cars behind her was a 2006 KIA Sedona minivan being driven by Mohannad Hassuneh.

At a point near the intersection with Sancome Street, Alban came to a stop in heavy traffic. Hassuneh failed to stop in time, and he rear-ended the vehicle in front of him. The force of the impact propelled that vehicle, in turn, into the rear of Alban's vehicle.

The record does not reveal the

nature of Alban's claimed injuries or the amount of her medical expenses. She filed suit against Hassuneh and blamed him for setting in motion the chain-reaction that resulted in her being rear-ended.

It turned out that Hassuneh had only \$25,000 in insurance coverage. Alban therefore also made an underinsured motorist claim against her own insurer, Progressive. However, the parties later stipulated that Progressive would be removed as a defendant in exchange for the company being responsible for any verdict in excess of \$25,000 up to Progressive's policy limits, minus any appropriate set-offs.

The litigation continued thereafter solely on Alban's claim against Hassuneh. He defended the case and minimized Alban's claimed injuries.

The case was tried for two days in South Bend. The jury returned a verdict for Alban but awarded her zero damages. The court entered a judgment that reflected the verdict.

**Medical Negligence - An elderly woman went to the ER with complaints of "pins and needles" pain in her leg and a non-healing cut between her toes; when the woman's leg was later amputated, she criticized the ER doctor for having misdiagnosed her with cellulitis and for missing the correct diagnosis of ischemia**

*Szprychel v. Cummins*,  
64D05-1901-CT-923

Plaintiff: Arthur R. Baxter, Jr., *Baxter Rose & Schrager, LLP.*, Indianapolis

Defense: Louis W. Voelker and Ryan A. Cook, *Eichhorn & Eichhorn, LLP.*, Hammond

Verdict: Defense verdict on liability  
County: **Porter**, Superior

Court: J. DeBoer, 4-29-21

In August of 2011, the elderly Weronika Szprychel was experiencing what she would later describe as a "pins and needles" pain in her right leg along with a non-healing cut between the fourth and fifth toes of her right foot. Szprychel consulted on the matter with her personal physician, Dr. Alexander Skarzynski, on 8-10-11.

During that visit Dr. Skarzynski diagnosed Szprychel with thrombophlebitis. During a second visit a week later on 8-17-11, Dr. Skarzynski diagnosed cellulitis for which he prescribed antibiotics. The next day Szprychel's pain was worse and was radiating up to her knee. She also had swelling at her fifth toe.

Szprychel went to the ER at Porter Memorial Hospital for a second opinion. At the ER she came under the care of Dr. David Cummins. He also diagnosed cellulitis, and he sent Szprychel home with instructions to continue taking the antibiotics and to follow-up with Dr. Skarzynski in two or three days.

Szprychel's condition continued to worsen. She eventually consulted with a podiatrist who, in turn, referred her for a vascular consult. On 9-8-11, Szprychel saw a vascular surgeon who immediately recognized that Szprychel had no circulation in her leg and that the cut between her toes had become gangrenous.

Szprychel was diagnosed with ischemia and underwent the amputation of two of her toes. When that failed to resolve the problem, she had a below the knee amputation of her right leg. That, too, failed to resolve the problem, so she then had an above the knee amputation of her right leg.

After recovering from her ordeal, Szprychel presented the matter to a medical review panel. The panel members were Dr. Edward Seall, Emergency Medicine, Lafayette; Dr. Andrew Hart, Internal Medicine, Lafayette; and Dr. Jill Grant, Emergency Medicine, Lafayette.

Szprychel criticized Dr. Cummins for failing to diagnose her ischemia condition and failing to send her for a vascular consult. Had Dr. Cummins not made those errors, Szprychel would have had a better chance of saving her leg.

The medical review panel issued the unanimous opinion that Dr. Cummins's treatment of Szprychel did not fall below the emergency medicine standard of care. Szprychel filed suit against Dr. Cummins on the grounds noted above.

Szprychel claims that when she went to Dr. Cummins on 8-18-11, she had a 30% to 40% chance of saving her leg. Dr. Cummins's errors, however, resulted in a three week delay in diagnosis and treatment,

which reduced her chance of saving her leg to 5% to 15%. Szprychel's identified experts included Dr. Mark Keldahl, Vascular Surgery, Chicago, IL.

Dr. Cummins defended the case and denied having committed any breach of the standard of care. He also disputed the nature and extent of Szprychel's claimed injuries. The identified defense experts included Dr. Mark Lowell, Emergency Medicine, Ann Arbor, MI; and Dr. Martin Borhani, Vascular Surgery, Chicago, IL.

The case was tried for four days in Valparaiso. The jury returned a verdict for Dr. Cummins, and the court entered a defense judgment.

#### **Case Documents:**

[Pretrial Order](#)

[Medical Review Panel Opinion](#)

[Jury Verdict](#)

### **Auto Negligence - A father and his two minor children suffered soft-tissue injuries in a rear-end crash; defendant admitted fault for the crash but disputed the nature, cause, and extent of plaintiffs' injuries**

*Willis v. Thu*, 02D03-2007-CT-361

Plaintiff: Christopher R. Blackburn,

*Blackburn & Green*, Fort Wayne

Defense: Thomas H. Datzman, Jr.,

*Metzger Rosta, LLP.*, Noblesville

Verdict: \$32,800 for plaintiffs

County: **Allen**, Superior

Court: J. DeGroote, 5-24-22

In the afternoon of 5-25-19, Guy Willis, Sr., then age 45, was driving a 2009 Dodge Journey SXT in Fort Wayne. His two children, Guy, Jr. (age 15) and Adriel (age 17) were riding with him as passengers. The Willises were traveling east on Paulding Road just east of Hessen Cassel Road.

Guy, Sr. (hereinafter referred to simply as "Senior") stopped in traffic to make a left turn. As he sat waiting for traffic to clear so he could make his turn, his vehicle was rear-ended by a 2003 Honda Pilot SUV being driven by Sein Thu.

Senior claimed to have suffered soft-tissue injuries to his neck and lower back due to the crash. His medical expenses came to \$18,611. Guy, Jr. (hereinafter, "Junior") and Adriel also claimed to have suffered soft-tissue injuries to their necks. Junior's medicals were \$2,546, while Adriel's medicals were \$2,173.

Both on his own behalf and on behalf of his two children, Senior filed suit against Thu and blamed him for crashing into them. Senior's wife, Jonell Willis, also presented a derivative consortium claim, and both parents claimed the loss of services of their minor children. Finally, plaintiffs presented an underinsured motorist claim against their own insurer, State Farm. Plaintiffs' UIM coverage under their State Farm policy was \$50,000 per person.

Junior and Adriel both reached the age of maturity during the course of the litigation, and the case caption was amended to reflect that status. Also, Jonell's consortium claim and the parents' claim for loss of their minor children's services did not survive to trial. The parties additionally stipulated not to identify State Farm as a party to the case.

The litigation proceeded on the claims of Senior, Junior, and Adriel on their claims against Thu. The identified plaintiffs' IME was Dr. Mark Reecer, Physical Medicine, Fort Wayne. Thu admitted fault for the crash but disputed the nature, extent,

and causation of plaintiffs' claimed injuries.

Thu also disputed that all of plaintiffs' medical treatment was related to the crash. This was particularly the case with regard to Senior's medical treatment. Finally, Thu accused Senior of having failed to mitigate his damages.

The case was tried in a single day in Fort Wayne solely on the issue of damages. Interestingly, Thu called no witnesses and presented no evidence. The jury returned a verdict for plaintiffs and awarded damages of \$30,000 to Senior, \$1,800 to Junior, and \$1,000 to Adriel.

That brought the award to a combined total of \$32,800 for plaintiffs. The court entered a judgment that reflected the verdict. Thu filed a post-trial Notice of Appeal. The record does not describe in any detail the basis for the appeal. In any event, at the time the IJVR reviewed the record, the appeal was still pending.

#### **Case Documents:**

[Pretrial Order](#)

[Jury Verdict/Final Judgment](#)

**Civil Rights - An admittedly drunk and rude drunk driving suspect alleged he was beaten by a police officer (with steel handcuffs) at the jail when the drunk (rudely but not aggressively) refused a blood draw – the cop replied that the plaintiff was aggressive and his response was reasonable**

*Chambers v. Fort Wayne Police*,  
1:20-377

Plaintiff: Terrance L. Kinnard,  
*Kinnard Scott Rowling & Powers*,  
Indianapolis

Defense: Carolyn M. Trier, *Trier Law Office*, Fort Wayne

Verdict: Defense verdict on liability

Federal: **Fort Wayne**

Court: J. Brady, 7-15-22

Jason Chambers was admittedly driving drunk in Fort Wayne on the evening of 3-23-19. A city police officer, Charles Smith, observed him run up on a curb. Smith illuminated his blue lights and arrested Chambers on a drunk driving charge.

Chambers was taken to the Allen County Jail. Chambers refused to take a test on the jail's breathalyzer machine. Smith went to get a warrant for a blood draw. Having secured the warrant, Smith served it on Chambers.

It is important to note at all relevant times in this case, Chambers was drunk, rude, defiant and insulting. This conduct continued as Smith served the warrant. Chambers refused to consent to the blood draw.

Chambers alleged that a moment later, Smith took steel handcuffs and struck him three times in the head as Smith shouted, "Quit fighting." Chambers didn't think he ever fought.

The beating left him with a cut to his head. The blood was ultimately

drawn (not from Chambers' head) and Chambers pled guilty to the drunk driving charge.

Chambers filed this federal lawsuit and alleged Smith engaged in excessive force in striking him with the handcuffs. Chambers, as noted above, conceded his boorish drunken behavior, but postured it was all harmless rhetoric. At no time did he actually pose any threat to Smith and thus the beating represented excessive force. If Chambers proved his case the jury could award him compensatory and punitive damages.

Smith defended the case and raised a fact dispute. He first described that Chambers (who outweighed him by 60 pounds) was drunk and agitated. Then as Smith tried to handcuff Chambers to a chair (to effectuate the blood draw), Chambers reached for his wrist. Smith feared for his safety and struck Chambers in the head with a closed fist (not handcuffs) as he implored Chambers to stop fighting. The blows stunned Chambers and Smith was then able to gain control of the situation. This version of events, as put forth by the defense, was argued as representing a reasonable use of force.

The jury instructions asked if Smith had exercised "unreasonable force" on Chambers. The answer was "no" and the plaintiff took nothing. A defense judgment was entered.

**Case Documents:**

[Pretrial Order](#)  
[Jury Verdict](#)

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