



## UIM carrier disputes injury causation in auto case

**Type:** Verdict-Plaintiff

**Amount:** \$1,200,761

**State:** Ohio

**Venue:** Delaware County

**Court:** Delaware County, Court of Common Pleas, OH

**Injury Type(s):**

- *head* - concussion
- *neck* - fusion, cervical; herniated disc, cervical; herniated disc at C6-7
- *brain* - traumatic brain injury
- *other* - loss of consortium
- *dental* - fractured teeth
- *mental/psychological* - depression; post-concussion syndrome

**Case Type:**

- *Motor Vehicle* - Rear-ender; Multiple Vehicle; Underinsured Motorist

**Case Name:** Ilona D. Deluca-Ely and John Ely v. Larry R. Lacure, No. 14 CV C 01 0071

**Date:** April 26, 2016

**Plaintiff(s):**

- John Ely (Male)
- Ilona D. Deluca-Ely (Female, 49 Years)

**Plaintiff Attorney(s):**

- Todd H. Neuman; Allen, Kuehnle, Stovall & Neuman, L.L.P.; Columbus OH for Ilona D. Deluca-Ely, John Ely
- Jeffrey R. Corcoran; Allen, Kuehnle, Stovall & Neuman, L.L.P.; Columbus OH for Ilona D. Deluca-Ely, John Ely

**Plaintiff Expert  
(s):**

- John R. Finch Ph.D.; Vocational Rehabilitation; Columbus, OH called by: Todd H. Neuman, Jeffrey R. Corcoran
- David W. Boyd Ph.D.; Economics; Granville, OH called by: Todd H. Neuman, Jeffrey R. Corcoran
- Dennis McCuen D.D.S.; Dentistry/Odontology; Columbus, OH called by: Todd H. Neuman, Jeffrey R. Corcoran
- Cynthia Bennett Ph.D.; Clinical Psychology; Columbus, OH called by: Todd H. Neuman, Jeffrey R. Corcoran
- Douglas Schumacher M.D.; Family Medicine; Canal Winchester, OH called by: Todd H. Neuman, Jeffrey R. Corcoran
- Timothy P. Drankwalter D.O.; Otolaryngology; Circleville, OH called by: Todd H. Neuman, Jeffrey R. Corcoran

**Defendant(s):**

- Larry R. Lacure
- Protective Insurance Company

**Defense  
Attorney(s):**

- Joseph J. Golian; Dickie Mccamey & Chilcote PC; Columbus, OH for Protective Insurance Company
- Jeffrey P. Nodzak; Allstate Staff Counsel; Collumbus, OH for Larry R. Lacure
- Jessica R. Walter; Dickie Mccamey & Chilcote PC; Columbus, OH for Protective Insurance Company

**Defendant  
Expert(s):**

- Chris S. Karas M.D.; Neurology; Columbus, OH called by: for Joseph J. Golian, Jeffrey P. Nodzak, Jessica R. Walter
- Robert J. Mazo M.D.; Neurology; Westerville, OH called by: for Joseph J. Golian, Jeffrey P. Nodzak, Jessica R. Walter
- Sagarika M. Nayak M.D.; Neurology; Westlake, OH called by: for Joseph J. Golian, Jeffrey P. Nodzak, Jessica R. Walter

**Insurers:**

- Allstate Insurance Co.

**Facts:**

On Dec. 3, 2013, plaintiff Debbie Deluca-Ely, 49, a registered nurse, was operating a vehicle on Route 23 in Delaware County. While stopped in the right lane behind another car at the intersection with Lewis Center Road, a motor home operated by Larry Lacure and traveling 50 mph hit the left side and rear of Deluca-Ely's car. Lacure was cited for failure to maintain an assured clear distance ahead. Deluca-Ely claimed a mild traumatic brain injury, cervical hyperextension injuries and depression, among other injuries, as a result of the accident.

Deluca-Ely sued Lacure, alleging per se negligence. Lacure tendered his \$300,000 liability insurance policy limits, which Deluca-Ely accepted.

At the time of the accident, Deluca-Ely was in the course and scope of her employment and was covered for underinsured motorist protection by her employer's carrier, Protective Insurance Company. Deluca-Ely sought and was granted leave to amend her complaint to include Protective Insurance as a defendant for the purpose of asserting a UIM claim.

Protective did not dispute the liability of tortfeasor Lacure and acknowledged it had potential exposure of \$700,000 (the \$1 million policy limits minus the sum paid by Lacure's carrier). The UIM claim proceeded to trial as to the extent of Deluca-Ely's claimed injuries.

**Injury:**

Deluca-Ely received no immediate medical attention, but presented at a local hospital emergency room later that evening complaining of neck pain. Her emergency room examination was negative for fractures or subluxations. She was diagnosed with neck muscle strain and given instructions to follow up with her primary care physician should her complaints of neck pain persist.

Deluca-Ely followed up with her primary care physician who made an initial diagnosis of concussion/post-concussive syndrome. Eventually, a neurologist would opine that she suffered a mild traumatic brain injury.

An MRI of Deluca-Ely's cervical spine 20 days after the subject accident revealed multilevel discogenic and spondylitic changes, stenosis and degenerative changes. This included were disc herniations, for which Deluca-Ely eventually underwent cervical fusion at C6-7.

Ten months after the accident, Deluca-Ely first sought treatment of fractured molars and broken teeth that she attributed to the accident. Deluca-Ely also claimed a psychological overlay due to the accident that included a diagnosis and treatment for depression.

Deluca-Ely did not return to work until March 2014. After electing to take a medical leave in March 2014, she did not return to work until May 2014. She then worked from May 2014 through September 2014, when she again elected to take additional medical leave. Her position was ultimately eliminated due to expired medical leave.

Deluca-Ely claimed past economic damages of \$512,748.88, which included lost wages of \$146,469 and past lost business income of \$182,770. She also claimed she will incur future lost wages of \$1,589,077.96.

Deluca-Ely's husband joined in the action asserting a loss of consortium claim.

The defense disputed the casual relationship between many of Deluca-Ely's claimed injuries and the underlying motor vehicle accident. The defense noted that Deluca-Ely did not request medical assistance at the scene of the accident and denied hitting her head or any loss of consciousness when examined at the hospital emergency room later that evening. The defense questioned the delays and gaps in pertinent treatment. Medical evidence was presented that Deluca-Ely had a history of attention deficit disorder (ADD) issues and was otherwise challenged by pressures at work and issues with her marriage.

**Result:**

The jury returned a total damages award of \$1,200,761 for Debbie Deluca-Ely. No consortium damages were awarded. The award was reduced to the policy limits of \$1 million and was also subject to a setoff of the prior \$300,000 tortfeasor settlement, resulting in a net award against Protective Insurance in the amount of \$700,000. The plaintiff's ultimate recovery from the settlement and judgment was for \$1 million.

The court allocated 70 percent of the court costs to Protective Insurance and 30 percent to Lacure.

**Iiona D. Deluca-Ely**

\$1,000,761 Personal Injury: economic damages

\$200,000 Personal Injury: pain and suffering

**Trial Information:**

**Judge:** David M. Gormley

**Trial Length:** 4 days

**Trial  
Deliberations:** 2 hours

**Jury Vote:** 6-0

**Editor's  
Comment:** This report is based on information that was provided by plaintiff's counsel. Defense counsel declined to contribute to the report.

**Writer** Jon Steiger

## Van driver and laundromat both liable for injuries: plaintiffs

**Type:** Verdict-Plaintiff

**Amount:** \$862,550

**State:** Ohio

**Venue:** Summit County

**Court:** Summit County, Court of Common Pleas, OH

**Injury Type(s):**

- *leg* - fracture, leg; fracture, tibia; fracture, leg; fracture, fibula; scar and/or disfigurement, leg
- *back* - fracture, back; fracture, L2; fracture, back; fracture, L3; fracture, back; fracture, L4; fracture, vertebra; fracture, L2; fracture, vertebra; fracture, L3; fracture, vertebra; fracture, L4; fracture, vertebra; fracture, transverse process
- *head* - concussion
- *neck* - fracture, vertebra; fracture, transverse process
- *other* - hematoma; laceration; massage therapy; physical therapy; pins/rods/screws; decreased range of motion
- *foot/heel* - heel; Achilles tendon, tear
- *surgeries/treatment* - debridement; open reduction; internal fixation
- *mental/psychological* - emotional distress

**Case Type:**

- *Motor Vehicle* - Pedestrian; Negligent Entrustment
- *Premises Liability* - Dangerous Condition; Negligent Repair and/or Maintenance
- *Emotional Distress* - Negligent Infliction of Emotional Distress

**Case Name:** Jaime Melendez, Ofalia Melendez, Maria Melendez and Osvaldo Melendez v. Ganga Kharel, Pritam Kharel and Akron Coin Laundry Inc., No. CV 2016 04 1842

**Date:** July 23, 2018

**Plaintiff(s):**

- Jaime Melendez (Male, 36 Years)
- Maria Melendez (Female, 9 Years)
- Ofalia Melendez
- Osvaldo Melendez

**Plaintiff  
Attorney(s):**

- Mark C. Willis; Willis & Willis Co., L.P.A.; Akron OH for Jaime Melendez, Ofalia Melendez, Maria Melendez, Osvaldo Melendez
- Matthew L. Rizzi Jr.; Willis & Willis Co., L.P.A.; Akron OH for Jaime Melendez, Ofalia Melendez, Maria Melendez, Osvaldo Melendez
- Heather R. Ninni; Willis & Willis Co., L.P.A.; Akron OH for Jaime Melendez, Ofalia Melendez, Maria Melendez, Osvaldo Melendez

**Plaintiff Expert  
(s):**

- Dean A. Young; Legal Services; Akron, OH called by: Mark C. Willis, Matthew L. Rizzi Jr., Heather R. Ninni,
- Gary A. Pennington M.D.; Plastic Surgery/Reconstructive Surgery; Akron, OH called by: Mark C. Willis, Matthew L. Rizzi Jr., Heather R. Ninni
- Alvaro L. DeCola; Immigration; Akron, OH called by: Mark C. Willis, Matthew L. Rizzi Jr., Heather R. Ninni
- Richard L. Zimmerman; Architecture; Akron, OH called by: Mark C. Willis, Matthew L. Rizzi Jr., Heather R. Ninni

**Defendant(s):**

- Ganga Kharel
- Pritam Kharel
- Akron Coin Laundry Inc.

**Defense  
Attorney(s):**

- David C. Engle; American Family Insurance Group; Cleveland, OH for Ganga Kharel, Pritam Kharel
- Adam E. Carr; Carr Law Office, LLC; Hudson, OH for Akron Coin Laundry Inc.

**Insurers:**

- State Farm Insurance Cos.
- American Family Insurance

**Facts:**

On July 12, 2015, plaintiff Jaime Melendez, 36, a plasterer, his daughter, plaintiff Maria Melendez, 9, and son, plaintiff Osvaldo Melendez, 6, were sitting outside the Akron Coin Laundry in Akron. The building was originally a convenience store. It was made of concrete block, with large plate glass windows framed by steel and a glass entryway. A minivan driven by Ganga Kharel struck Jaime and Maria Melendez and pushed them through the glass into the store. The impact also broke through the concrete block. This reportedly occurred as Kharel was attempting to park in front of the laundromat and hit the accelerator instead of the brake pedal. Jaime and Maria Melendez claimed multiple physical injuries. Osvaldo Melendez, who was not physically injured, claimed negligent infliction of emotional distress.

The Melendezes sued Ganga Kharel, as well as the owner of the minivan, Pritam Kharel. The Melendezes also sued the laundromat, alleging claims of premises liability and negligence.

The Melendezes argued that Ganga Kharel, who had a learner's permit and not a driver's license, was negligent in the operation of the minivan. The Melendezes asserted that Pritam Kharel knew his sister did not have a driver's license when he allowed her to borrow the minivan.

The Melendezes also alleged that Akron Coin Laundry had notice of a defective condition with the property. In support of this allegation, they argued that another motorist had backed into the building two years earlier and broke the glass without penetrating through the building.

The Melendezes' expert in architecture testified that the accident would have been avoided had the laundromat installed wheel stops and bollards in the parking lot and at the storefronts and also managed the landscaping of the parking lot along the curbs. According to the expert, bollards were used as safety measures at other locations within the parking lot, but none existed at the site of the crash.

Akron Coin Laundry maintained that the Kharels were 100 percent liable for the accident. The laundromat maintained that the safety measures proposed by plaintiffs' expert were unnecessary, impractical and not typical for a business in the Akron area.

The Kharels did not stipulate to or contest liability.

**Injury:**

The Melendezes were taken by ambulance to a hospital where they were admitted.

Maria was diagnosed with bilateral open fractures of her tibia and fibula and a laceration of the left Achilles tendon. She underwent an open reduction with internal fixation in which rods were implanted into her legs. Three days later, she underwent debridement and irrigation of her tibia fractures and an Achilles tendon repair.

After five days of hospitalization, she was discharged in a wheelchair and remained bedridden in the ensuing weeks. She eventually became weight-bearing and consulted with her surgeon. She underwent a course of physical therapy over the next few months. No further treatment was rendered.

Maria's expert in plastic surgery opined that Maria had suffered a 10-percent residual loss of motion in her Achilles tendon. According to the expert, Maria suffered extensive



scarring due to her surgeries and will require scar-revision surgery, which was estimated at \$20,880.

Maria testified that she continues to experience discomfort in her Achilles tendon and is bothered by the scarring on her legs. She sought \$26,306.50 in future medical costs, as well as damages for past and future pain and suffering. In total, her counsel asked for \$750,000.

Jaime Melendez was diagnosed with transverse process fractures of the L2, L3 and L4 vertebrae, a concussion and a hematoma. He was immobilized for three days and was then discharged.

Jaime came under the care of an orthopedic surgeon and was put on a course of physical therapy, which consisted of exercise and massage. He treated with therapy for eight weeks. No further treatment was rendered. After eight weeks, he was able to return to work without restriction.

Jaime's counsel cited Jaime's medical records to causally relate his injuries and treatment to the accident.

Jaime testified that he continues to experience ongoing back pain, especially at work, and has to work through the pain. He sought \$48,163.25 in medical costs, as well as an unspecified amount in wage loss. His attorney asked the jury to award \$350,000 to Jaime.

Jaime's wife, Ofalia Melendez, testified that she has had to perform additional household duties as a result of her husband's injuries. Her attorney asked the jury to award \$50,000 to Ofalia.

Osvaldo Melendez had sought damages for negligent infliction of emotional distress. However, no evidence was presented on the claim at trial and it was dismissed following a defense motion for a directed verdict.

Plaintiffs' experts in legal services testified that the Melendez family is going through the legal immigration process and that any money awarded to Maria would be held in trust and could not be spent without court approval.

The defense maintained that, aside from Maria's scarring, plaintiffs made a full recovery from their injuries. Both Maria and Jaime had returned to their normal activities of daily living, the defense asserted.

**Result:**

The jury attributed 45 percent liability to Ganga Kharel, 10 percent liability to Pritam Kharel and 45 percent liability to Akron Coin Laundry. The jury determined that Jaime Melendez was entitled to damages of \$275,363.45, Maria Melendez was entitled to damages of \$367,186.05 and Ofalia Melendez was entitled to damages of \$40,000, for a total of \$862,549.50.

Osvaldo Melendez's claim had been dismissed during trial and he was awarded no damages.

**Jaime Melendez**

\$48,163 Personal Injury: Past Medical Cost

\$27,200 Personal Injury: Past Lost Earnings Capability

\$200,000 Personal Injury: Past Pain And Suffering

**Maria Melendez**

\$26,306 Personal Injury: Past Medical Cost

\$70,880 Personal Injury: Future Medical Cost

\$200,000 Personal Injury: Past Pain And Suffering

\$200,000 Personal Injury: Future Pain And Suffering

\$50,000 Personal Injury: loss of consortium for Jaime Melendez and Ofalia Melendez

**Ofalia Melendez**

\$40,000 Personal Injury: loss of consortium

**Trial Information:**

**Judge:** Jill Flagg Lanzinger

**Demand:** \$1,000,000 (total, by all plaintiffs, from all defendants)

**Offer:** \$25,000 (total, for each plaintiff, from Ganga Kharel and Pritam Kharel)

**Trial Length:** 5 days

**Jury Composition:** 4 male, 4 female

**Editor's Comment:** This report is based on information that was provided by Akron Coin Laundry's counsel. Plaintiffs' counsel and the remaining defendants' counsel did not respond to the reporter's phone calls.

**Writer** Aaron Jenkins

**Suit: Activities curtailed, continued treatment needed after crash****Type:** Verdict-Plaintiff**Amount:** \$550,000**State:** Ohio**Venue:** Federal**Court:** U.S. District Court, Northern District, OH**Injury Type(s):**

- *back* - facet syndrome; herniated disc, lumbar; herniated disc at L4-5; herniated disc, lumbar; herniated disc at L5-S1
- *head* - concussion
- *neck* - facet syndrome; fusion, cervical; herniated disc, cervical; herniated disc at C5-6
- *brain* - brain damage; traumatic brain injury
- *other* - ablation; physical therapy
- *neurological* - radiculopathy
- *surgeries/treatment* - discectomy

**Case Type:**

- *Motor Vehicle* - Sideswipe; Lane Change; Multiple Vehicle

**Case Name:** Tracy Braho and Ronald Braho and State Farm Mutual Automobile Insurance Company v. Liquid Transport Corp. and Isaias Castellanos, Jr., No. 5:16-cv-03007-SL**Date:** July 25, 2019**Plaintiff(s):**

- Tracy Braho (Female, 50 Years)
- Ronald Braho
- State Farm Mutual Automobile Insurance Co.

**Plaintiff Attorney(s):**

- Gary T. Mantkowski; Gary T. Mantkowski Co., L.P.A; Sharon Center OH for Ronald Braho, Tracy Braho
- None reported; ; for State Farm Mutual Automobile Insurance Co.

**Plaintiff Expert(s):**

- Luke Henry Ph.D.; Neurosurgery; Pittsburgh, PA called by: Gary T. Mantkowski
- Tony Lababidi D.O.; Pain Management; Akron, OH called by: Gary T. Mantkowski
- Barry Greenberg M.D.; Orthopedic Surgery; Akron, OH called by: Gary T. Mantkowski

**Defendant(s):**

- Isaias Castellanos Jr.
- Liquid Transport Corp.

**Defense Attorney(s):**

- Jeffrey J. Jurca; Jurca & Lashuk, LLC; Columbus, OH for Liquid Transport Corp., Isaias Castellanos Jr.
- Sean P. Casey; Jurca & Lashuk, LLC; Columbus, OH for Liquid Transport Corp., Isaias Castellanos Jr.

**Defendant Expert(s):**

- Mark S. Berkowitz M.D.; Orthopedic Surgery; Cleveland, OH called by: for Jeffrey J. Jurca, Sean P. Casey
- Galit Askenazi Ph.D.; Neuropsychology; Beachwood, OH called by: for Jeffrey J. Jurca, Sean P. Casey

**Insurers:**

- Great West Casualty Co.

**Facts:**

On Nov. 18, 2014, plaintiff Tracy Braho, 50, a schoolteacher, was driving a mid-sized car in the left lane of Interstate 76, in Palmyra, during snowy conditions. Isaias Castellanos Jr., who was driving a tractor-trailer behind Braho, moved into the adjacent right lane in an attempt to pass Braho. As he moved back into the left lane, the rear tires of his trailer hit the passenger side of Braho's car. The impact caused Braho's vehicle to spin into the grassy median. Braho claimed injuries to her neck, back and head.

Braho initially sued Castellanos and the owner of the tractor-trailer, Liquid Transport Corp., in the Court of Common Pleas of Portage County. Braho alleged that Castellanos was negligent in the operation of his vehicle, and that Liquid Transport was vicariously liable. A separate Portage County lawsuit was filed by State Farm Mutual Automobile Insurance Co. against the same defendants. State Farm's lawsuit was for subrogation.

The defendants filed motions to remove the two lawsuits to the federal court, where they were consolidated into one case. State Farm's claim was later settled for an unknown sum. The case proceeded to trial on Braho's claims only.

The defense conceded liability. The case proceeded to a trial on damages.

**Injury:**

Braho did not go to the hospital from the scene. She first sought treatment in an emergency room two days later. She was treated and released.

Braho was diagnosed with herniations of her C5-6, L4-5 and L5-S1 intervertebral discs. She additionally claimed lumbar radiculopathy, cervical and lumbar facet syndrome, and a mild traumatic brain injury.

Braho underwent nine months of physical therapy. She also had one nerve block injection in her neck and three in her lower back.

Approximately 18 months after the crash, Braho underwent a lumbar discectomy, which involved the removal of her L4-5 disc. She had a second lumbar discectomy at L5-S1 a year later. In December 2018, she also had a cervical discectomy and fusion. She missed approximately six weeks of work after this surgery. Braho additionally saw a pain management doctor who administered two radiofrequency ablations in her neck. Within a month of the crash, Braho also saw a concussion specialist. She treated with that doctor for nine months. The treatment included vestibular therapy.

Braho claimed she will need continued ablations in her neck and back. She stated that she is no longer able to camp or visit her grandchildren as much as she did before the crash. She also stated that she used to walk five miles a day, but is no longer able to walk as much because of her injuries. She said that she gained approximately 30 pounds as a result.

Braho sought recovery of past and future medical expenses and \$26,653.15 in past lost earnings. She also sought past and future non-economic damages. Her husband, Ronald Braho, filed a derivative claim for loss of consortium.

The defense contended that Braho was exaggerating her injuries. The defense also maintained that the crash could not have caused Braho's symptoms, asserting that the spinal injuries were pre-existing and the result of a prior car accident 15 years earlier. Defense counsel also retained a neuropsychology expert who testified that Braho did not show signs of a concussion at the scene of the crash.

**Result:**

The jury found that the negligence of Castellanos was the proximate cause of injury to Tracy Braho, and that Ronald Braho incurred a loss of consortium that was the proximate result of this negligence. The jury determined that Tracy Braho's damages totaled \$540,000, and that Ronald Braho's damages totaled \$10,000, for a total of \$550,000.

**Ronald Braho**

\$10,000 Personal Injury: loss of consortium

**Tracy Braho**

\$255,000 Personal Injury: economic loss

\$285,000 Personal Injury: noneconomic loss

**Trial Information:**

**Judge:** Sara E. Lioi

**Demand:** \$850,000 (total, by both plaintiffs)

**Offer:** \$175,000 (total, for both plaintiffs)

**Trial Length:** 4 days

**Jury Vote:** 7-0

**Editor's Comment:** This report is based on information that was provided by defense counsel and counsel of Ronald Braho and Tracy Braho. Additional information was gleaned from court documents. State Farm's counsel was not asked to contribute.

**Writer** Melissa Siegel

## Municipal worker said reversing driver failed to keep lookout

**Type:** Verdict-Plaintiff

**Amount:** \$290,000

**Actual Award:** \$145,000

**State:** Ohio

**Venue:** Summit County

**Court:** Summit County, Court of Common Pleas, OH

**Injury Type(s):**

- *head* - concussion; closed head injury
- *brain* - traumatic brain injury
- *other* - back and neck; physical therapy; loss of consortium; aggravation of pre-existing condition
- *mental/psychological* - anxiety; depression; cognition, impairment; memory, impairment; post-concussion syndrome; post-traumatic stress disorder

**Case Type:**

- *Motor Vehicle* - Pedestrian; Single Vehicle; Reversing Vehicle
- *Affirmative Defenses* - Contributory Negligence

**Case Name:** Kevin Simmers and Brenda Simmers v. AWP Inc., Area Wide Protective, Leah Marzilli and Pamela Smith, No. CV-2015-08-3838

**Date:** August 08, 2017

**Plaintiff(s):**

- Kevin Simmers (Male, 55 Years)
- Brenda Simmers (Female)

**Plaintiff Attorney(s):**

- Gary Cowan; Elk & Elk Co., Ltd.; Mayfield Heights OH for Brenda Simmers, Kevin Simmers
- Kim Young; Elk & Elk Co., Ltd.; Mayfield Heights OH for Brenda Simmers, Kevin Simmers

**Plaintiff Expert(s):**

- Bina Mehta M.D.; Physical Medicine; Kent, OH called by: Gary Cowan, Kim Young
- John Pullman; Vocational Rehabilitation; North Ridgeville, OH called by: Gary Cowan, Kim Young
- Deanna Frye Ph.D.; Neuropsychology; Akron, OH called by: Gary Cowan, Kim Young
- Anthony A. Hayek D.O.; Physical Medicine; Cuyahoga Falls, OH called by: Gary Cowan, Kim Young
- Cecilia M. Schweizer Ph.D.; Psychology/Counseling; Canton, OH called by: Gary Cowan, Kim Young
- William Baldwin Ph.D.; Economics; Lexington, KY called by: Gary Cowan, Kim Young
- Maryanne Cline R.N.; Life Care Planning; Cleveland, OH called by: Gary Cowan, Kim Young

**Defendant(s):**

- AWP Inc.
- Pamela Smith
- Leah Marzilli

**Defense Attorney(s):**

- Gregory G. Guice; Reminger Co., LPA; Cleveland, OH for AWP Inc., Pamela Smith
- Stephen J. Proe; The Law Office of Stephen J. Proe; Seven Hills, OH for Leah Marzilli

**Defendant Expert(s):**

- Guy Rordorf M.D.; Neurology; Boston, MA called by: for Stephen J. Proe
- Paul Dorothy Ph.D.; Civil; Columbus, OH called by: for Stephen J. Proe
- Galit Askenazi Ph.D.; Neuropsychology; Beachwood, OH called by: for Stephen J. Proe
- Richard T. Katz M.D.; Physical Medicine; St. Louis, MO called by: for Stephen J. Proe
- William R. Scott Ph.D.; Biomechanics of Injury; San Antonio, TX called by: for Stephen J. Proe

**Insurers:**

- State Auto Insurance Co.



**Facts:**

On Aug. 23, 2013, plaintiff Kevin Simmers, 55, a municipal worker for the city of Kent, was working in a construction zone located on East Summit Street in Kent. At this time, Leah Marzilli, who was operating a Toyota Avalon, was reversing out of a driveway on East Summit and struck Simmers, causing him to fall to the ground. Simmers claimed injuries to his head, as well as aggravation of pre-existing neck and back conditions.

Simmers sued Marzilli, alleging she had been negligent when she failed to keep a proper lookout while reversing her vehicle. Area Wide Protective (AWP Inc.), the contractor in charge of safety at the construction site, and its employee, Pamela Smith, were also sued.

AWP and Smith entered into a confidential settlement with Simmers prior to trial. The case proceeded against Marzilli only.

Marzilli denied liability, arguing that AWP was responsible for facilitating the movement of vehicle traffic around the construction site with the use of flaggers. She also argued that Simmers had been comparatively negligent in failing to see and avoid the Avalon.

Marzilli's civil engineering expert testified that AWP had an obligation to prevent the kind of collision that occurred on the date in question.

**Injury:**

Simmers was taken by ambulance to Summa Akron City Hospital, where he was hospitalized overnight. Simmers was diagnosed with a concussion, post-concussion syndrome, mild traumatic brain injury and a closed head injury. As a result, he claimed he developed cognition difficulties, including memory loss. Simmers also maintained that the collision aggravated pre-existing degenerative disc disease in his cervical and lumbar spine. Following the accident, Simmers asserted that he developed post-traumatic stress disorder (PTSD), depression and aggravation of long-standing anxiety.

Simmers treated for his physical injuries with physical therapy and pain management. He also received care from an orthopedist. Simmers treated for his cognition difficulties and mental illnesses with psychological and psychiatric counseling. He has not worked since the collision.

Simmers' treating neuropsychologist testified that Simmers developed a mild traumatic brain injury, PTSD and post-concussion syndrome as a result of the accident.

Simmers' physical medicine expert testified that Simmers would require ongoing care for his brain injuries.

Simmers' treating psychologist opined that the head injuries worsened Simmers' anxiety and resulted in PTSD and depression.

Simmers claimed approximately \$81,000 in outstanding medical expenses. He claimed future medical expenses of \$1.33 million to \$2.38 million, as well as lost future earnings of approximately \$500,000. His wife, Brenda Simmers, made a claim for loss of consortium.

Marzilli disputed damages, denying that Simmers suffered any mild traumatic brain injury from the collision. She maintained that Simmers' psychological complaints were entirely pre-existing conditions and unrelated to the impact.

Marzilli's neurology expert testified that Simmers' injuries from the collision were minor. He denied that Simmers suffered any permanent brain injury.

Marzilli's biomechanical engineering expert testified that the reversing vehicle was traveling at approximately five mph. He concluded that the force of impact could not have caused the injuries claimed by Simmers.

**Result:**

The jury attributed 50 percent liability to Marzilli, 48 percent liability to AWP (the negligence of which the jury was allowed to consider for apportionment purposes) and 2 percent liability to Simmers. The jury's award of \$290,000 was reduced to \$145,000 pursuant to the jury's apportionment of liability.

**Trial Information:****Judge:**

Patricia Cosgrove

**Demand:** \$495,000

**Offer:** \$250,000

**Trial Length:** 9 days

**Trial  
Deliberations:** 4.5 hours

**Jury Vote:** unanimous

**Jury  
Composition:** 5 female, 3 male

**Editor's  
Comment:** This report is based on information that was provided by plaintiff's and defense counsel.

**Writer** Max Robinson

**Any ice on sidewalk was from a natural accumulation: defense**

**Type:** Verdict-Plaintiff

**Amount:** \$250,000

**State:** Ohio

**Venue:** Geauga County

**Court:** Geauga County, Court of Common Pleas, OH

**Injury Type(s):**

- *head* - headaches; concussion
- *mental/psychological* - emotional distress; cognition, impairment; memory, impairment; post-concussion syndrome

**Case Type:**

- *Premises Liability* - Sidewalk; Snow and Ice; Apartment Building
- *Slips, Trips & Falls* - Slip and Fall

**Case Name:** Brandy West v. Rhockel Investment Group, No. 15P000469

**Date:** January 25, 2017

**Plaintiff(s):**

- Brandy West (Female, 41 Years)

**Plaintiff Attorney(s):**

- Christopher J. Carney; Klein & Carney Co. LPA; Cleveland OH for Brandy West

**Plaintiff Expert(s):**

- Harold Mars M.D.; Neurology; Beachwood, OH called by: Christopher J. Carney
- Richard Zimmerman; Architecture; Cleveland, OH called by: Christopher J. Carney

**Defendant(s):**

- Rhockel Investment Group

**Defense Attorney(s):**

- Richard F. Andracki; Andracki Law Offices, PLLC; Pittsburgh, PA for Rhockel Investment Group

**Defendant Expert(s):**

- Steven Brose DO; Spinal Injury/Trauma; Cleveland, OH called by: for Richard F. Andracki

**Insurers:**

- Millers Mutual Insurance Co.

**Facts:**

On Dec. 19, 2013, plaintiff Brandy West, 41, was walking on the sidewalk in front of the Pinebrook Tower Apartments where she resided at 1243 Shaffer Drive in Lorain. West slipped and fell. She claimed she suffered a head injury.

West sued property owner Rhockel Investment Group (Rhockel). West alleged that as owner of the adjacent property, Rhockel was responsible for the maintenance of the sidewalk.

West argued that Rhockel caused an accumulation of ice on the sidewalk. West asserted that this was done by migrating water from a roof drain to flow unnaturally onto the subject sidewalk, where it froze.

Plaintiff's architecture expert testified that Rhockel violated building codes by allowing its roof drains to channel water onto the sidewalk.

Defense counsel argued that no ice existed on the subject sidewalk and, if ice was present, it had accumulated naturally.

**Injury:**

West was transported to Avon Hospital by a family member. She was diagnosed with a concussion, received minor treatment and was released.

West ultimately claimed she suffered from post-concussion syndrome. She claimed she suffered from violent headaches, vomiting, blurred vision, confusion, memory loss and dizziness.

West presented at the emergency room at Cleveland Clinic on four occasions for treatment. She also treated with two neurologists and medications.

While most of her symptoms resolved, West claimed she still suffered from sporadic headaches. She also said that her injuries hindered her ability to perform activities of daily living and physical activities.

West's treating neurologist testified that West suffered from post-concussion syndrome and permanent headaches.

West sought damages totaling \$208,000 for her past pain and suffering, future pain and suffering, her affected daily activities, emotional and mental anguish and for her permanent injury.

The defense argued that West had suffered a concussion, but the symptoms resolved quickly.

The defense's spinal cord injury expert testified that West suffered a concussion, but not post-concussion syndrome.

**Result:** The jury found Rhockel Investment Group negligent and awarded damages to West totaling \$250,000.

**Brandy West**

\$50,000 Personal Injury: Future Physical Impairment

\$50,000 Personal Injury: Past Pain And Suffering

\$50,000 Personal Injury: Future Pain And Suffering

\$50,000 Personal Injury: emotional damages/mental anguish

\$50,000 Personal Injury: effect on daily activity

**Trial Information:**

**Judge:** Forrest W. Burt

**Demand:** \$150,000

**Offer:** \$15,000

**Trial Length:** 3 days

**Trial Deliberations:** 3.5 hours

**Jury Vote:** 6-2

**Jury Composition:** 6 male, 2 female

**Post Trial:** Plaintiff's counsel expressed he would pursue a motion to collect prejudgment interest.

**Editor's Comment:** This report is based on information that was provided by plaintiff's counsel. Defense counsel did not return the reporter's phone calls.

**Writer** Jack Deming

## Ongoing double vision claimed after rear-ender

**Type:** Verdict-Plaintiff

**Amount:** \$248,984

**State:** Ohio

**Venue:** Franklin County

**Court:** Franklin County, Court of Common Pleas, OH

**Injury Type(s):**

- *eye*
- *head* - concussion
- *face/nose* - fracture, facial bone; fracture, orbit
- *sensory/speech* - double vision / diplopia; diplopia / double vision

**Case Type:**

- *Motor Vehicle* - Passenger; Rear-ender; Multiple Vehicle

**Case Name:** Alexa Reinbeau v. John C. Collins, Adm. for Estate of Charles Featherstone, No. 20 CV 007616

**Date:** December 15, 2022

**Plaintiff(s):**

- Alexa Reinbeau, (Female, 23 Years)

**Plaintiff Attorney(s):**

- Nicholas C. Degennaro; Chester Law Group; Akron OH for Alexa Reinbeau

**Defendant(s):**

- Estate of Charles Featherstone

**Defense Attorney(s):**

- M. Jason Founds; Gallagher, Gams, Tallan, Barnes & Littrell, L.L.P.; Columbus, OH for Estate of Charles Featherstone

**Insurers:**

- State Farm Insurance Cos.

**Facts:**

On June 16, 2018, plaintiff, Alexa Reinbeau, 23, was a back-seat passenger in a car that was rear-ended by a motor home operated by Charles Featherstone on I-70 in Columbus. Reinbeau claimed an eye injury and a concussion.

Featherstone died a year after the accident due to health reasons unrelated to the crash, so Reinbeau sued the administrator of his estate, John Collins. The lawsuit alleged that Featherstone was negligent in the operation of a motor vehicle.

The defense stipulated to negligence.

**Injury:**

Reinbeau was transported to a hospital by ambulance. She was ultimately diagnosed with a fracture to her right orbital bone. She claimed the fracture damaged the inferior rectus muscle in her right eye. Reinbeau additionally claimed a concussion.

Reinbeau underwent surgery to repair the orbital fracture. Following the surgery, Reinbeau's right eye was turned out slightly and was slightly off-center in the socket. She also had double vision. These issues were due to the damaged eye muscle.

Reinbeau underwent surgery to tighten up the eye muscle to help correct all of the conditions. While the surgery improved all of the problems, it did not resolve them, so she underwent a second surgery. The second surgery improved the double vision so that it only occurs in very limited circumstances, such as when she looks down and to the right. The surgery also improved the eye turning out and the location in the socket and these conditions are now mostly imperceptible.

Reinbeau had a total of \$58,000 in medical bills.

The defense stipulated that Reinbeau was injured as a result of Featherstone's negligence, but disputed damages.

**Result:**

The jury awarded damages of \$248,984.46 to Reinbeau.



Alexa Reinbeau

\$ 49,984.46 economic loss

\$ 200,000 noneconomic loss

**\$ 249,984.46 Plaintiff's Total Award**

**Trial Information:**

**Judge:** Andy D. Miller

**Demand:** \$550,000

**Offer:** \$250,000

**Trial Length:** 3 days

**Trial  
Deliberations:** 1 days

**Editor's  
Comment:** This report is based on information that was provided by plaintiff's counsel. Additional information was gleaned from court documents. Defense counsel did not respond to the reporter's phone calls.

**Writer** Jason Cohen

## Defense: Car crash didn't permanently injure plaintiff's brain

**Type:** Verdict-Plaintiff

**Amount:** \$100,000

**State:** Ohio

**Venue:** Franklin County

**Court:** Franklin County, Court of Common Pleas, OH

**Injury Type(s):**

- *head* - concussion
- *brain* - traumatic brain injury
- *sensory/speech* - vision, impairment
- *mental/psychological* - depression; cognition, impairment; memory, impairment; concentration, impairment; post-traumatic stress disorder

**Case Type:**

- *Motor Vehicle* - Head-On; Center Line; Multiple Vehicle

**Case Name:** Shuchun Li v. Progressive Direct Insurance Company and Donald D. Harper, No. 17CV4974

**Date:** October 14, 2020

**Plaintiff(s):**

- Shuchun Li (Male, 40 Years)

**Plaintiff Attorney(s):**

- Daniel R. Volkema; Volkema Thomas, LLC; Columbus OH for Shuchun Li
- Jeremy M. Burnside; Burnside Law, LLC; Portsmouth OH for Shuchun Li

**Plaintiff Expert(s):**

- Sara A. Ford M.R.C.; Vocational Assessment; Louisville, KY called by: Daniel R. Volkema, Jeremy M. Burnside
- Randall R. Benson M.D.; Neurology; Novi, MI called by: Daniel R. Volkema, Jeremy M. Burnside
- Richard I. Frederick Ph.D.; Psychology/Counseling; Springfield, MO called by: Daniel R. Volkema, Jeremy M. Burnside

**Defendant(s):**

- Donald D. Harper
- Progressive Direct Insurance Co.

**Defense Attorney(s):**

- Robert C. Buchbinder; Crabbe, Brown & James LLP; Columbus, OH for Donald D. Harper
- None reported for Progressive Direct Insurance Co.
- Christopher R. Green; Crabbe, Brown & James LLP; Columbus, OH for Donald D. Harper

**Defendant Expert(s):**

- Donald J. Tosi Ph.D.; Psychology/Counseling; Columbus, OH called by: for Robert C. Buchbinder, Christopher R. Green
- Gerald S. Steiman M.D.; Neurology; Columbus, OH called by: for Robert C. Buchbinder, Christopher R. Green
- Joshua S. Shimony M.D., Ph.D.; Neuroradiology; St. Louis, MO called by: for Robert C. Buchbinder, Christopher R. Green
- Angeles M. Cheung Ph.D.; Neuropsychology; New York, NY called by: for Robert C. Buchbinder, Christopher R. Green

**Insurers:**

- Safeco Insurance Cos.

**Facts:**

On June 8, 2015, plaintiff Shuchun Li, a student in his 40s, was driving in Columbus. His car was involved in a head-on collision with a car that was being driven by Donald Harper, who had crossed the roadway's centerline. Li suffered an injury of his head.

Li sued Harper and his own insurer, Progressive Direct Insurance Co. The lawsuit alleged that Harper was negligent in the operation of his vehicle. Progressive Direct Insurance, which had reimbursed some of Li's accident-related medical expenses, was involved for subrogation and reimbursement purposes.

Progressive Direct Insurance's claim was bifurcated and stayed, pending the resolution of Li's case against Harper.

Harper died after the lawsuit had been filed, though his death was not related to the accident. The parties stipulated that Li did not have to open and substitute Harper's estate, but that Li's recovery could not exceed Harper's insurance's coverage.

The defense conceded liability. The trial addressed damages.

**Injury:**

Li was retrieved by an ambulance, and he was transported to OhioHealth Riverside Methodist Hospital, in Columbus. He underwent minor treatment.

During the ensuing month, Li repeatedly visited The Ohio State University Wexner Medical Center, in Columbus. Each time, Li claimed that he was suffering impairment of his memory and vision. A doctor ultimately diagnosed a concussion, which was attributed to the accident. A neurologist opined that Li suffers permanent residual damage of the brain.

Li claimed that he also suffered post-traumatic stress disorder, with manifestations that included depression. He underwent psychological counseling. He also underwent therapy that was intended to improve the deficits of his vision.

At the time of the accident, Li was a Ph.D. candidate in his native China. He was attending The Ohio State University to finish his research. Li claimed that he had planned to obtain his doctorate in China and then procure a lucrative engineering job in America, but that his brain's injury ended that plan. He claimed that he has difficulty reading and focusing for extended periods of time. Li's vocational expert opined that the accident cost Li millions of dollars in earning capacity.

Li divorced after the accident. He claimed that his divorce was a product of the accident's residual effects.

Li sought recovery of \$1.7 million to \$3.2 million for future loss of earnings, and he sought recovery of damages for past and future pain and suffering.

The defense disputed whether Li had planned to become an engineer. The defense presented evidence suggesting that Li had intended to return to China and become a professor. Defense counsel argued that Li can accomplish that goal.

The defense's expert neurologist, expert neuropsychologist and expert psychologist examined Li, and they concluded that Li suffered a mild concussion, that the injury resolved, and that Li exaggerated his residual effects.

Defense counsel also contended that Li's psychological difficulties were not related to the accident and instead stemmed from other stressors, such as financial and marital problems. Defense counsel further contended that Li failed to comply with his prescribed course of treatment.

**Result:**

The jury determined that Li's damages totaled \$100,000. However, it found that he did not suffer a permanent injury of the brain.

Shuchun Li

\$ 65,000 economic damages

\$ 35,000 noneconomic damages

**\$ 100,000 Plaintiff's Total Award**

**Trial Information:**

**Judge:** Guy L. Reece II

**Trial Length:** 7 days

**Trial  
Deliberations:** 3 hours

**Jury Vote:** 8-0

**Jury  
Composition:** 3 male, 5 female

**Editor's  
Comment:** This report is based on information that was provided by plaintiff's counsel and Harper's counsel. Additional information was gleaned from court documents. Progressive Direct Insurance's counsel was not asked to contribute.

**Writer** Melissa Siegel

## Husband and wife sue after being hit by turning driver

**Type:** Verdict-Plaintiff

**Amount:** \$92,903

**State:** Ohio

**Venue:** Hamilton County

**Court:** Hamilton County, Court of Common Pleas, OH

**Injury Type(s):**

- *head* - concussion
- *ankle* - sprain/strain
- *chest* - rib, pain; fracture, rib
- *other* - laceration; physical therapy; steroid injection
- *wrist*
- *face/nose* - facial laceration
- *hand/finger* - hand

**Case Type:**

- *Motor Vehicle* - Left Turn; Stop Sign; Intersection

**Case Name:** Odell Bonner and Margaret Bonner v. Luke Lewis, No. A 1206033

**Date:** July 02, 2015

**Plaintiff(s):**

- Odell Bonner (Male, 65 Years)
- Margaret Bonner (Female, 62 Years)

**Plaintiff Attorney(s):**

- James R. Garvin; Brown, Lippert & Laite; Cincinnati OH for Odell Bonner, Margaret Bonner

**Plaintiff Expert(s):**

- Thomas Shockley M.D.; Orthopedics; Cincinnati, OH called by: James R. Garvin

**Defendant(s):**

- Luke Lewis

**Defense  
Attorney(s):**

- William Joseph Moran Jr.; Governmental Employees Insurance Co.; Cincinnati, OH for Luke Lewis

**Defendant  
Expert(s):**

- Thomas A. Bender M.D.; Orthopedic Surgery; Cincinnati, OH called by: for William Joseph Moran Jr.

**Insurers:**

- Government Employees Insurance Co.

**Facts:**

On Aug. 4, 2010, plaintiff Odell Bonner, 65, a custodian, was operating a Chevrolet Impala with his wife, plaintiff Margaret Bonner, 62, also a custodian, as a passenger. They were traveling on Madison Pike in Hamilton County. They entered an intersection and were involved in a collision with a vehicle driven by defendant Luke Lewis, who attempted to make a left turn. Traffic on the intersecting street was subject to a stop sign. Mr. Bonner claimed lacerations, a wrist injury and a rib fracture as a result of the accident. Mrs. Bonner claimed rib fractures, a concussion, an ankle sprain, bruises and contusions.

The Bonners sued Lewis, alleging that Lewis was negligent in the operation of a motor vehicle.

The plaintiffs alleged that Lewis failed to yield the right-of-way to through traffic. They also claimed Lewis failed to keep a proper lookout.

Lewis stipulated to liability, but disputed damages.

**Injury:**

The Bonners were transported from the scene by ambulance and were taken to a local emergency room. Mr. Bonner was treated and released. Mrs. Bonner was admitted for two days.

Mr. Bonner presented to the emergency room with a laceration to his hand and a cut on his forehead. Medical tape was applied to both wounds and he was released. The lacerations healed within six to eight weeks.

Shortly after the accident, Mr. Bonner presented to his family physician for persistent pain and was diagnosed with a fractured rib on his right side and a strained tendon to his right wrist. Rest was prescribed and he stayed off work for four months to allow the rib to heal. He also underwent physical therapy for the wrist injury. He eventually returned to work in the same capacity, but retired in January 2014.

Mr. Bonner claimed \$4,099.68 in medical expenses and \$9,711 in lost wages. He also sought damages for pain and suffering.

Mrs. Bonner was hospitalized for two days. She had five severe rib fractures, a slight concussion, a sprain to her right ankle, and bruising and contusing about her body. She was released with pain medication and an anti-inflammatory steroid injection in her buttocks.

Mrs. Bonner was non-weight bearing for five months and ordered to bed rest for four of those five months, during which time she required in-home nursing care due to the rib fractures. Her orthopedist testified that Mrs. Bonner might need injections in the future.

Mrs. Bonner eventually healed and returned to work in the same capacity until she retired. She incurred approximately \$53,000 (\$29,603.63 accepted) in medical expenses. She also sought \$13,225 in lost wages, plus damages for pain and suffering.

The defense disputed damages.

Thomas Bender, M.D., who performed an IME on both plaintiffs, testified that all treatment was reasonable and necessary. He also opined that neither party suffered any permanent injuries.

**Result:**

The jury awarded \$21,243.36 in damages to Odell Bonner and \$71,659.55 to Margaret Bonner.

**Trial Information:**

**Judge:** Richard Niehaus

**Trial Length:** 4 days

**Trial Deliberations:** 2 hours



**Editor's  
Comment:**

This report is based on information that was provided by defense counsel. Plaintiffs' counsel did not respond to a request for comment.

**Writer**

Carol Meirow

## Parties disputed severity of plaintiff's head injury after crash

**Type:** Verdict-Plaintiff

**Amount:** \$50,781

**State:** Ohio

**Venue:** Franklin County

**Court:** Franklin County, Court of Common Pleas, OH

**Injury Type(s):**

- *head* - concussion
- *brain* - traumatic brain injury
- *other* - physical therapy; steroid injection; aggravation of pre-existing condition
- *surgeries/treatment* - knee surgery; knee replacement
- *mental/psychological* - cognition, impairment; memory, impairment

**Case Type:**

- *Motor Vehicle* - Broadside; Left Turn; Intersection; Multiple Vehicle

**Case Name:** Richard Evans v. Todd White, No. 17 CV 000519

**Date:** October 01, 2019

**Plaintiff(s):**

- Richard Evans (Male, 54 Years)

**Plaintiff Attorney(s):**

- J. Scott Bowman; Geiser, Bowman & McLafferty, LLC; Columbus OH for Richard Evans
- Ashley Merino; Geiser, Bowman & McLafferty, LLC; Columbus OH for Richard Evans

**Plaintiff Expert (s):**

- Emily Bush; Speech Pathology; Columbus, OH called by: J. Scott Bowman, Ashley Merino
- Sudhir Dubey Psy.D; Clinical Psychology; Columbus, OH called by: J. Scott Bowman, Ashley Merino
- Geoffrey Eubank M.D.; Neurology; Columbus, OH called by: J. Scott Bowman, Ashley Merino

**Defendant(s):**

- Todd White

**Defense Attorney(s):**

- Robert S. Roby; Curry, Roby & Mulvey, LLC; Columbus, OH for Todd White
- Lisa Haase; Curry, Roby & Mulvey, LLC; Columbus, OH for Todd White

**Defendant Expert(s):**

- Thomas Sullivan Ph.D.; Neuropsychology; Fairfield, OH called by: for Robert S. Roby, Lisa Haase
- Stephen Voto M.D.; Orthopedic Surgery; Lancaster, OH called by: for Robert S. Roby, Lisa Haase

**Insurers:**

- Encova Insurance

**Facts:**

On Jan. 25, 2015, plaintiff Richard Evans, 54, a restaurant manager, was in a sport utility vehicle, traveling north on Sawmill Road in Columbus. Upon entering the intersection with Tuller Parkway, he drove into the side of another SUV driven by Todd White, who had been traveling south on Sawmill. Evans claimed injuries to his knees and head.

Evans sued White. Evans alleged that White was negligent in the operation of his vehicle.

Evans claimed that White failed to yield at the intersection. According to Evans, White attempted to make a left turn onto Tuller in front of his oncoming vehicle. Although White had a green light, he did not have a green turning arrow.

The defense conceded liability. The case proceeded to a trial on damages only.

**Injury:**

Evans was placed in an ambulance and transported to Riverside Methodist Hospital. He was admitted for observation.

Evans was diagnosed with a concussion. Evans also claimed that the crash aggravated his preexisting bilateral knee arthritis.

After his release from the hospital, Evans was sent to post-concussion therapy. He was released from this therapy in April 2015.

In January 2016, Evans presented to a neurologist complaining of continued cognitive issues, allegedly due to a traumatic brain injury. The neurologist referred Evans for more cognitive treatment, which he received in 2016 and 2017.

Evans began physical therapy for his knees shortly after the crash. He also received steroid and viscosupplementation injections.

Evans continued conservative treatment for nearly three years, but it did not alleviate his symptoms. In late 2017 he had replacement surgery on one of his knees. He had the other knee replaced in early 2018. After each procedure, he underwent three months of physical therapy.

Evans claimed he has continued cognition issues, including emotional disturbances, memory loss and executive functioning problems. As a result, he said he can no longer drive. take walks or be alone with his grandchildren.

Evans stated that his inability to do his daily activities has left him feeling depressed. He said he will need future emotional support counseling to deal with this issue. It was also claimed that Evans will need additional cognitive therapy.

Evans attempted to return to work after the crash, but claimed he quit in September 2015 because he could no longer handle the job responsibilities. He then got another job 18 months after the crash, but reportedly had to leave that position after three months for similar reasons. He never went back to work after that.

Evans sought past and future medical expenses, past and future lost earnings, and past and future noneconomic damages. His counsel asked to the jury to award approximately \$1 million.

The defense contended that Evans suffered a simple concussion in the accident. The defense noted that Evans was released from his post-concussion treatment three months after the accident. At that time, per defense counsel, there was no indication that Evans had lingering issues or that he would need additional treatment. The defense also noted that Evans did not see a doctor for eight months after his release from post-concussion treatment.

The defense further disputed whether Evans quit his restaurant manager job because of his cognitive problems. The defense asserted that Evans was actually fired in September 2015 for unrelated reasons.

The defense's neuropsychology expert opined that it was unlikely the simple concussion Evans' suffered in the accident was still causing his cognitive symptoms. The expert said that Evans was instead experiencing a somatic disorder.

The defense's IME doctor opined that the crash may have caused a small aggravation of Evans' preexisting knee problems. However, the doctor maintained that Evans returned to baseline after three months. The doctor stated that Evans' injections and surgeries were thus unrelated to the subject accident.

**Result:**

The jury found that White's negligence was a direct and proximate cause of Evans' injuries. They determined that Evans' damages totaled \$50,780.95. This was for past damages only.

## **Richard Evans**

\$23,625 Personal Injury: Past Medical Cost

\$3,406 Personal Injury: Past Lost Earnings Capability

\$23,750 Personal Injury: past noneconomic damages

### **Trial Information:**

**Judge:** Jennifer Hunt

**Demand:** \$265,000

**Offer:** \$65,000

**Trial Length:** 7 days

**Jury Vote:** 8-0

**Post Trial:** Plaintiff's counsel filed a motion to tax costs.

**Editor's Comment:** This report is based on information that was provided by defense counsel. Additional information was gleaned from court documents. Plaintiff's counsel did not respond to the reporter's phone calls.

**Writer** Melissa Siegel

## Fatal crash occurs after drivers stop for unknown reasons

**Type:** Verdict-Plaintiff

**Amount:** \$50,000

**Actual Award:** \$34,000

**State:** Ohio

**Venue:** Franklin County

**Court:** Franklin County, Court of Common Pleas, OH

**Injury Type(s):**

- *eye*
- *leg*
- *head* - concussion
- *knee*
- *neck*
- *other* - aggravation of pre-existing condition
- *shoulder*
- *hand/finger* - hand
- *mental/psychological* - post-traumatic stress disorder

**Case Type:**

- *Wrongful Death*
- *Motor Vehicle* - Parked Car; Rear-ender

**Case Name:** Wayne G. Stoof v. Local Waste Services LTD, Gregory S. Marcinko, Constance Lofton and Thomas Bonasera as Administrator of the Estate of Markio Washington; Constance Lofton v. Gregory Marcinko, Local Waste Services, LTD, Thomas Bonasera as Administrator of the Estate of Markio Washington and Wayne Stoof, No. 10 CVC 12 18255; 10 CVC 12 18265

**Date:** March 27, 2015

**Plaintiff(s):**

- Wayne G. Stoof (Male, 60 Years)
- Constance Lofton (Female)

**Plaintiff Attorney(s):**

- William R. Thomas; Thomas & Company, LPA; Delaware OH for Wayne G. Stoof
- Brian A. Walker; Walker Law Offices; Worthington OH for Constance Lofton

**Plaintiff Expert  
(s):**

- Charles B. May D.O.; Internal Medicine; Columbus, OH called by: William R. Thomas
- Timothy D. Duffy D.O.; Orthopedics; Columbus, OH called by: William R. Thomas

**Defendant(s):**

- Wayne Stoof
- Constance Lofton
- Gregory S. Marcinko
- Local Waste Services LTD
- Thomas J. Bonasera, Administrator

**Defense  
Attorney(s):**

- John C. Cahill; Columbus, OH for Thomas J. Bonasera, Administrator
- Kelly N. Grigsby; William, Moliterno & Scully Co., LPA; Westerville, OH for Constance Lofton
- John P. Petro; Williams & Petro Co., LLC; Columbus, OH for Local Waste Services LTD, Gregory S. Marcinko
- Robert S. Roby; Curry, Roby & Mulvey Co., LLC; Columbus, OH for Wayne Stoof
- Charles E. Ticknor III; Dinsmore & Shohl LLP; Columbus, OH for Thomas J. Bonasera, Administrator
- Michael A. Renne; Dinsmore & Shohl LLP; Columbus, OH for Thomas J. Bonasera, Administrator
- Michael D. Bonasera; Dinsmore & Shohl LLP; Columbus, OH for Thomas J. Bonasera, Administrator

**Insurers:**

- Ohio Mutual Insurance Group

**Facts:**

On Dec. 16, 2008, plaintiff Wayne D. Stoof, 60s, semi-retired, was operating a Honda Accord northbound on I-270 in Franklin County. He was traveling in the middle lane, behind Markio Washington, 32. At approximately 6:15 a.m., Washington began slowing in front of Stoof, stopped and then exited his vehicle. Stoof stopped behind Washington's stopped car. At the same time, another northbound driver swerved to miss the stopped vehicles. Defendant Gregory S. Marcinko, who had been operating a trash truck behind the swerving vehicle, had just a few seconds to react. He swerved to his left, but clipped the rear of Stoof's vehicle, sending it into a spin. Stoof's vehicle hit Washington, who was in the roadway, and then hit a vehicle driven by defendant Constance Lofton in the right lane. Washington suffered fatal injuries. Stoof, who was in his vehicle at the time of the collision, claimed head, neck and shoulder injuries. Lofton also claimed multiple bodily injuries.

Stoof filed suit against Marcinko and his employer, Local Waste Services LTD; Thomas J. Bonasera as administrator of Washington's estate; and Lofton, alleging motor vehicle negligence. Lofton filed suit against Marcinko; Local Waste Services, LTD; Thomas Bonasera as administrator of Washington's estate; and Stoof, also alleging motor vehicle negligence. The cases were consolidated.

The defendants filed cross-claims against one another. Lofton settled out of the case prior to trial and the claims against the Washington estate were dismissed. The case proceeded to trial on Stoof's claims against Marcinko and Local Waste Services only.

There was no dispute that Washington had stopped his vehicle in the middle of the road. Washington's estate asserted that the reason for Washington stopping might have been due to mechanical reasons or possibly because Stoof rear-ended his vehicle. Stoof asserted that he stopped because Washington stopped abruptly in front of him. He denied hitting Washington's car.

Stoof alleged that Marcinko was negligent per se when he failed to maintain an assured clear distance ahead. He also alleged that Local Waste Services was vicariously liable for Marcinko's actions.

The defense contended that Stoof and Washington stopped due to an incident of road rage and that Marcinko had no time to react to the stopped vehicles ahead of him, which he did not see until the car in front of him swerved suddenly into another lane. Marcinko claimed he braked and attempted to avoid a collision, but was unable to avoid impacting the rear of Stoof's vehicle. The defense contended there was no evidence of a mechanical problem with Washington's vehicle, nor was there evidence that Stoof struck Washington's car.



**Injury:** Stoof alleged a concussion, with post-traumatic stress disorder (PTSD), an aggravation of a pre-existing neck condition, and a right shoulder injury, for which his treating orthopedist opined future shoulder replacement surgery would be needed.

Stoof claimed \$28,000 in past medical expenses, \$25,000 in future medical expenses and \$750 in lost wages. His attorney asked the jury for \$250,000 to \$350,000 in damages.

Lofton claimed injuries to her right knee, right leg, head, right eye, right hand and other parts of her body. She claimed some of the injuries were permanent.

Lofton claimed \$36,975 in medical expenses. She also claimed future medicals, past and future lost wages, and damages for pain and suffering.

**Result:** The jury determined that Stoof's damages totaled \$50,000. The jury assigned 32 percent liability to Stoof, 24 percent liability to Marcinko and Local Waste, and 44 percent liability to Washington. Judgment was entered for Stoof in the amount of \$34,000.

### **Trial Information:**

**Judge:** Kimberly Cocroft

**Demand:** \$150,000 (Washington estate); N/A (Stoof)

**Offer:** None

**Trial Length:** 4 days

**Trial Deliberations:** 5 hours

**Jury Vote:** 8 jurors

**Editor's Comment:** This report is based on information that was provided by plaintiff's and defense counsel and information gleaned from court documents.

**Writer** Margi Banner

## College student: Cops used excessive force during arrest

<b>Type:</b>	Verdict-Mixed
<b>Amount:</b>	\$30,000
<b>State:</b>	Ohio
<b>Venue:</b>	Federal
<b>Court:</b>	U.S. District Court, Southern District of Ohio, Eastern Division, Columbus, OH
<b>Injury Type(s):</b>	<ul style="list-style-type: none"><li>• <i>head</i> - concussion; closed head injury</li><li>• <i>epidermis</i> - contusion</li><li>• <i>face/nose</i> - face; face, bruise</li><li>• <i>mental/psychological</i> - cognition, impairment; post-traumatic stress disorder</li></ul>
<b>Case Type:</b>	<ul style="list-style-type: none"><li>• <i>Government</i> - Police; Municipalities; Excessive Force</li><li>• <i>Civil Rights</i> - 42 USC 1983; Police as Defendant</li></ul>
<b>Case Name:</b>	Joseph Hines v. City of Columbus c/o Richard C. Pfeiffer, Jr., Kimberley Jacobs, Richard Bash, Christopher Bowling, Luellen Luykendoll, James Morrow, Patrick Schaffer, Thomas Dewitt, Debra Paxton, Edward Prime, Earl Westfall and Ian Pruitt, No. 2:13-cv-01058-JLG
<b>Date:</b>	September 28, 2015
<b>Plaintiff(s):</b>	<ul style="list-style-type: none"><li>• Joseph Hines (19 Years)</li></ul>
<b>Plaintiff Attorney(s):</b>	<ul style="list-style-type: none"><li>• David A. Goldstein; David A. Goldstein Co. LPA; Colulmbus OH for Joseph Hines</li><li>• James J. Harrington IV; Fieger, Fieger, Kenney, Giroux &amp; Harrington, P.C.; Southfield MI for Joseph Hines</li></ul>
<b>Plaintiff Expert (s):</b>	<ul style="list-style-type: none"><li>• Gerald A. Shiener M.D.; Psychiatry; Birmingham, MI called by: David A. Goldstein, James J. Harrington IV</li></ul>

**Defendant(s):**

- Ian Pruitt
- Debra Paxton
- Edward Prime
- James Morrow
- Richard Bash
- Earl Westfall
- Thomas Dewitt
- City of Columbus
- Kimberley Jacobs
- Patrick Schaffer
- Luellen Luykendol
- Christopher Bowling

**Defense  
Attorney(s):**

- Timothy J. Mangan; Columbus City Attorney's Office; Columbus, OH for City of Columbus, Thomas Dewitt, Debra Paxton, Edward Prime, Earl Westfall, Ian Pruitt, Kimberley Jacobs, Richard Bash, Christopher Bowling, Luellen Luykendol, James Morrow, Patrick Schaffer
- Westley Phillips; Columbus City Attorney's Office; Columbus, OH for City of Columbus, Thomas Dewitt, Debra Paxton, Edward Prime, Earl Westfall, Ian Pruitt, Kimberley Jacobs, Richard Bash, Christopher Bowling, Luellen Luykendol, James Morrow, Patrick Schaffer

**Defendant  
Expert(s):**

- Douglas Beech M.D.; Psychiatry; Columbus, OH called by: for Timothy J. Mangan, Westley Phillips

**Facts:**

On Aug. 29, 2012, plaintiff Joseph Hines, 19, a college student, was walking on High Street in Columbus with two friends. Hines and his friends were students at Ohio State University and it was the first day of classes. Defendants Thomas Dewitt and Debra Paxton were police officers for the city of Columbus. The officers were patrolling on bicycles. Dewitt and Paxton observed Hines near an alcoholic beverage open container which was sitting on the ground near a bench. The officers approached and questioned Hines concerning the open container and whether he had identification. Hines was then arrested by Dewitt, Paxton and defendant Edward Prime, who was another city of Columbus police officer who had arrived at the scene in a patrol car. Defendant officers Earl Westfall and Ian Pruitt were also involved in the arrest. Hines was charged with littering, underage consumption, public intoxication, obstruction of official business and resisting arrest. Hines subsequently pled guilty to the littering charge and the other charges were dismissed.

Hines sued the city of Columbus, Dewitt, Paxton, Prime, Westfall and Pruitt, alleging excessive force against Paxton, DeWitt, Prime, Westfall and Pruitt; failure to intervene against Paxton, DeWitt and Prime; and conspiracy against all defendants, under 42 U.S.C. § 1983. There were several other individuals named as defendants as well, but they were dismissed from the case prior to trial.

The excessive force claims against Westfall and Pruitt and the failure to intervene claim against Paxton were dismissed prior to trial. The conspiracy claim was also dismissed. The case proceeded to trial on the claims of excessive force against Dewitt and Prime and the failure to intervene claim against Paxton.

Hines alleged he did not resist arrest, nor did he attempt to run from the officers. He argued that Dewitt and Prime used excessive force in effectuating his arrest. Hines asserted that, even though he did not resist arrest, he had been maced and struck several times. He also argued that he was knocked unconscious when he hit the ground during the arrest. Hines alleged that Paxton failed to intervene when the other two officers were using an unreasonable amount of force while arresting him.

Dewitt, Paxton and Prime contended that Hines resisted his arrest despite their requests for him to stop resisting. The defense maintained that Hines had attempted to run when the officers initially attempted to handcuff him and that he continued to resist the arrest and would not allow them to handcuff his right wrist. The officers asserted that the use of force utilized in effectuating Hines' arrest was reasonable under the circumstances and that they did not know if Hines, who was resisting the arrest, had a weapon.

**Injury:**

Hines was taken to the emergency room following the incident. He was diagnosed with a concussion and contusions on the face and head. Hines later treated with a psychiatrist and was diagnosed with post-traumatic stress disorder (PTSD). Hines claimed permanent cognitive impairment and continuing mild PTSD.

Hines claimed past medical specials of approximately \$10,100.

The defense argued that Hines had not suffered any cognitive impairment related to his injuries. The defense also contended that Hines had suffered only mild PTSD, which had resolved.

**Result:** The jury returned a \$30,000 verdict for the plaintiff on the excessive force claim against Thomas Dewitt. Defense verdicts were entered on the claims against Debra Paxton and Edward Prime. All other defendants/claims had been dismissed prior to trial.

**Trial Information:**

**Judge:** James L. Graham

**Trial Length:** 5 days

**Trial  
Deliberations:** 5 hours

**Jury Vote:** 9-0

**Editor's  
Comment:** This report is based on information that was provided by plaintiff's counsel. Defense counsel did not respond to a request for comment.

**Writer** Amy Oliva

## Plaintiff suffered short-term symptoms at best, per defense

**Type:** Verdict-Plaintiff

**Amount:** \$20,000

**State:** Ohio

**Venue:** Cuyahoga County

**Court:** Cuyahoga County, Court of Common Pleas, OH

**Injury Type(s):**

- *back* - lower back; sprain, lumbar; strain, lumbar
- *head* - concussion
- *neck* - sprain, cervical; strain, cervical
- *other* - soft tissue; physical therapy
- *mental/psychological* - cognition, impairment; memory, impairment; post-concussion syndrome; concentration, impairment

**Case Type:**

- *Motor Vehicle* - Sideswipe; Lane Change; Multiple Vehicle

**Case Name:** Macie Consolo v. Victoria J. Ritchey, No. CV-19-917580

**Date:** October 14, 2021

**Plaintiff(s):**

- Macie Consolo, (Female, 20 Years)

**Plaintiff Attorney(s):**

- Sebastian E. Proels; Proels & Proels LLC; Beachwood OH for Macie Consolo
- Allayne W. Proels; Proels & Proels LLC; Beachwood OH for Macie Consolo

**Plaintiff Expert(s):**

- Cynthia Taylor D.O.; Physical Medicine; Cleveland, OH called by: Sebastian E. Proels, Allayne W. Proels

**Defendant(s):**

- Victoria J. Ritchey

**Defense Attorney(s):**

- Hamilton DeSaussure; Stark & Knoll Co., LPA; Akron, OH for Victoria J. Ritchey

**Defendant  
Expert(s):**

- Norman Friedman M.D.; Neurology; Fairlawn, OH called by: for Hamilton DeSaussure

**Insurers:**

- State Farm Insurance Cos.

**Facts:**

On July 8, 2017, plaintiff Macie Consolo, a clerical worker in her 20s, was driving a sedan in the center lane of southbound Interstate 271, in Warrensville Heights. Victoria Ritchey, who was operating a sedan in the far right lane, left her lane of travel and sideswiped Consolo's vehicle. The impact caused Consolo's car to spin and hit the concrete barrier on the left side of the road. The car then bounced off the barrier, went across the interstate and struck the guardrail to the right of the highway. Consolo claimed injuries to her neck, back and head.

Consolo sued Ritchey. Consolo alleged that Ritchey was negligent in the operation of her vehicle.

The defense admitted liability. The case proceeded to a trial that addressed causation and damages.

**Injury:**

An ambulance came to the scene, but Consolo did not receive emergency transport. Instead, her mother took her to University Hospitals Ahuja Medical Center the day of the crash. Consolo was treated and released.

Consolo claimed that the accident caused soft tissue sprains and strains to her neck and lower back. She also was diagnosed with a concussion and post-concussion syndrome.

Consolo underwent physical therapy and saw a neurologist twice. She stopped treatment in November 2017.

Consolo claimed chronic lower back and neck pain. She also alleged that the head injury caused a cognitive impairment that affected her short-term memory, concentration ability and personality. She specifically contended that she had difficulty reading, and that she was less upbeat than she was prior to the accident. She said that her head injury hindered her at work, as well.

Consolo claimed she would need additional physical therapy and neurological appointments in the future. Her counsel retained a physical medicine expert who confirmed the post-concussion syndrome diagnosis.

The parties stipulated that Consolo paid \$14,868.28 to satisfy her past medical expenses. Consolo sought recovery of this amount, along with future medical expenses and damages for past and future pain and suffering. Consolo also claimed that she was entitled to punitive damages, alleging that Ritchey was dangerously weaving between lanes prior to the accident.

The court bifurcated the compensatory and punitive damages phases of the trial. Ritchey's allegedly reckless driving was not mentioned during the compensatory phase.

The defense maintained that Consolo had no ongoing physical limitations that resulted from the crash. The defense noted that Consolo had not received treatment for nearly four years. The defense also pointed to medical records indicating that Consolo's concussion symptoms were short-term and that no further neurological treatment was necessary.

**Result:**

The jury awarded Consolo \$20,000 following the compensatory damages trial. Consolo's counsel then opted not to proceed with the punitive damages phase.



Macie Consolo

\$ 14,868.28 Past Medical Cost

\$ 5,131.72 Past Pain Suffering

**\$ 20,000 Plaintiff's Total Award**

**Trial Information:**

**Judge:** Michael P. Shaughnessy

**Trial Length:** 3 days

**Trial  
Deliberations:** 0

**Jury Vote:** 8-0

**Editor's  
Comment:** This report is based on information that was provided by defense counsel. Additional information was gleaned from court documents. Plaintiff's counsel did not respond to the reporter's phone calls.

**Writer** Melissa Siegel

## Plaintiff's disability unrelated to crash, defense argued

**Type:** Verdict-Plaintiff

**Amount:** \$18,000

**State:** Ohio

**Venue:** Franklin County

**Court:** Franklin County, Court of Common Pleas, OH

**Injury Type(s):**

- *back* - nerve impingement
- *head* - headaches; concussion; closed head injury
- *neck* - whiplash; spasm, cervical; sprain, cervical; strain, cervical; nerve impingement
- *elbow* - biceps tendon, tear
- *other* - arthritis; chiropractic; physical therapy; steroid injection; aggravation of pre-existing condition
- *shoulder* - rotator cuff, injury (tear); supraspinatus muscle/tendon, tear
- *neurological* - nerve impingement

**Case Type:**

- *Motor Vehicle* - Rear-ender; Multiple Vehicle

**Case Name:** Julie Borovetz v. Regina Wowk, Zachary Baker, Motorists Insurance Group, John Doe One and John Doe Two, No. 19 CV 001927

**Date:** October 28, 2022

**Plaintiff(s):**

- Julie Borovetz, (Female, 52 Years)

**Plaintiff Attorney(s):**

- Jordan D. Lebovitz; Nurenberg Paris Injury Lawyers; Cleveland OH for Julie Borovetz

**Plaintiff Expert (s):**

- Priti Nair M.D.; Physical Medicine; Westlake, OH called by: Jordan D. Lebovitz
- Ralph Frasca Ph.D.; Economics; Dayton, OH called by: Jordan D. Lebovitz
- Robert Wetzell M.D.; Orthopedics; Boardman, OH called by: Jordan D. Lebovitz
- Kenneth J. Manges Ph.D.; Vocational Rehabilitation/Counseling; Cincinnati, OH called by: Jordan D. Lebovitz

**Defendant(s):**

- Regina Wowk
- Zachary Baker
- Motorists Insurance Group

**Defense Attorney(s):**

- Belinda D. Barnes; Gallagher, Gams, Tallan, Barnes & Littrell, L.L.P.; Columbus, OH for Regina Wowk

**Defendant Expert(s):**

- Gerald S. Steiman M.D.; Neurology; Columbus, OH called by: for Belinda D. Barnes

**Insurers:**

- State Farm Insurance Cos.
- Motorists Insurance Group

**Facts:**

On March 25, 2017, plaintiff Julie Borovetz, 52, a home remodeling salesperson, was operating a sedan on Morse Road in Columbus. She stopped for a red light at the intersection with Hamilton Road. Zachary Baker, who was operating a pickup truck directly behind Borovetz's car, also came to a stop, but Baker was rear-ended by a sport utility vehicle operated by Regina Wowk. The impact pushed Baker's pickup truck into the back of Borovetz's car. Borovetz claimed injuries to her head, neck and shoulders.

Borovetz sued Wowk and Baker. Borovetz alleged that Wowk and Baker were negligent in the operation of their respective vehicles.

Borovetz was working at the time of the crash. She also sued her employer's insurance provider, Motorists Insurance Group, for underinsured-motorist benefits.

Baker was dismissed from the case prior to trial. Motorists Insurance Group did not participate at trial.

Wowk's counsel conceded liability. The trial addressed causation and damages.

**Injury:**

Borovetz went to work from the scene of the crash. The accident occurred in the early evening and Borovetz continued working until 1:30 a.m. the following morning. She then presented to Ohio State University's hospital. There was a long line of patients ahead of her and she did not want to wait. She thus went to a nearby clinic, instead.

At the clinic, Borovetz complained of a severe headache. Doctors told her to return to the hospital for a CT scan, but she opted to go home instead. The following day, Borovetz went to Mount Carmel East, where she was treated and released.

Borovetz was initially diagnosed with a neck strain, a tension migraine and a strain to her left, nondominant shoulder. She later claimed a concussion/closed head injury, a cervical sprain, cervical facet joint pain syndrome, neck spasms and headaches. Borovetz also suffered a tear of her left rotator cuff's supraspinatus tendon prior to the crash. She

claimed the accident aggravated this earlier injury, as well as aggravating degenerative arthritis in her neck.

Plaintiff's counsel retained an orthopedics expert who opined that the crash aggravated Borovetz's preexisting disc disease and also caused a whiplash injury and nerve impingement.

Borovetz went to an orthopedist a few days after the accident. She then saw her primary-care doctor in May 2017. Borovetz had another appointment with this doctor in June 2017. That same month, Borovetz had a physical therapy session, but she did not like the physical therapy and never returned.

After a six-month gap in treatment, Borovetz went back to her primary-care doctor in December 2017. The next month, Borovetz began receiving chiropractic treatment.

Some two years after the accident, Borovetz suffered a torn right biceps tendon while at work. She claimed that, due to neck pain suffered in the subject crash, she had to alter the setup of her drafting table, which she alleged led to the biceps tear.

Borovetz ultimately saw 29 different care providers after the car accident. Most of those appointments were one-time visits. However, she did undergo physical therapy and was administered steroid injections to her neck and right shoulder.

Borovetz stopped working after suffering the biceps injury. Her counsel retained a vocational rehabilitation expert who opined that Borovetz is completely disabled. Counsel also retained an economist who calculated Borovetz's lost earnings.

Borovetz also stated that she has become depressed due to her chronic pain. She said that she enjoyed going on vacation and exercised up to six hours a day before the accident. Borovetz testified that she no longer goes on vacations and mostly stays in bed all day.

Borovetz sought recovery of \$486,207 in past lost earnings and \$890,082 in future lost earnings. She also sought recovery of damages for past and future noneconomic loss.

The defense maintained that Borovetz's disability is unrelated to the subject accident. The defense noted that Borovetz was granted disability due to her preexisting arthritis, bipolar disorder and severe emotional problems. Defense counsel additionally pointed to Borovetz's six-month gap in treatment and that she was able to work in the two years after the crash.

The defense similarly maintained that only the first few months of Borovetz's treatment,

including the hospital and clinic visits, the initial primary-care and orthopedic appointments, and the physical therapy session, were related to the accident. The defense also contended that Borovetz did not follow the medical advice from her doctors, arguing that her doctors told her to undergo physical and psychological therapy. The defense argued that Borovetz ignored this advice and, instead, visited various doctors who she stopped seeing when they did not tell her what she wanted to hear.

Defense counsel further argued that the biceps tear resulted from a preexisting condition. The defense also claimed that Borovetz gave many different versions about the actual cause of the injury. Specifically, per defense counsel, Borovetz's physical-medicine expert testified that the altered drafting table setup caused Borovetz's biceps tear, but Borovetz claimed at trial that she injured her biceps while sweeping.

The defense additionally disputed the severity of Borovetz's injuries. The defense noted that Borovetz was able to go on out-of-state and international vacations since the car accident. The defense also retained a neurology expert who examined Borovetz and concluded that she only suffered a whiplash injury in the crash.

**Result:** The jury found that Wowk's negligence was a direct and proximate cause of injury to Borovetz. It awarded Borovetz \$18,000, which solely addressed her past noneconomic damages.

Julie Borovetz

\$ 18,000 past noneconomic loss

**\$ 18,000 Plaintiff's Total Award**

**Trial Information:**

**Judge:** Michael J. Holbrook

**Demand:** \$475,000

**Offer:** \$7,500

**Trial Length:** 5 days

**Trial  
Deliberations:** 6 hours

**Jury Vote:** 7-1

**Jury  
Composition:** 5 male, 3 female, 1 Black, 7 white

**Editor's  
Comment:** This report is based on information that was provided by plaintiff's counsel and defense counsel for Wowk. Additional information was gleaned from court documents.

**Writer** Melissa Siegel

## Plaintiff didn't suffer head injury in car accident, defense argued

**Type:** Verdict-Plaintiff

**Amount:** \$6,000

**State:** Ohio

**Venue:** Delaware County

**Court:** Delaware County, Court of Common Pleas, OH

**Injury Type(s):**

- *head* - headaches; concussion; closed head injury
- *other* - soft tissue; back and neck; loss of consortium
- *sensory/speech* - vision, impairment
- *mental/psychological* - post-concussion syndrome

**Case Type:**

- *Motor Vehicle* - Rear-ender; Multiple Vehicle

**Case Name:** Michaelle Blank and Andrew Blank v. Robert H. Butterworth, Jan Born, Allstate Property & Casualty Insurance, No. 12 CV C 12 1452

**Date:** August 07, 2015

**Plaintiff(s):**

- Andrew Blank (Male, 40 Years)
- Michelle Blank (Female, 37 Years)

**Plaintiff Attorney(s):**

- David A. Bressman; ; Dublin OH for Michelle Blank, Andrew Blank

**Plaintiff Expert (s):**

- W. Jerry Mysiw M.D.; Physical Medicine; Columbus, OH called by: David A. Bressman

**Defendant(s):**

- Jan Born
- Robert H. Butterworth
- Allstate Property & Casualty

**Defense  
Attorney(s):**

- Michael R. Henry; Crabbe Brown & James, LLP; Columbus, OH for Robert H. Butterworth
- John E. Vincent; Pelini, Campbell & Williams, LLC; Dublin, OH for Jan Born
- David P. Stadler; Ankuda, Stadler & Moeller, Ltd.; Cleveland, OH for Allstate Property & Casualty
- Paul R. Morway; Ankuda, Stadler & Moeller, Ltd.; Cleveland, OH for Allstate Property & Casualty

**Defendant  
Expert(s):**

- Gerald S. Steiman M.D.; Neurology; Columbus, OH called by: for Michael R. Henry, John E. Vincent, David P. Stadler, Paul R. Morway

**Insurers:**

- Progressive Casualty Insurance Co.
- Westfield Insurance Co.
- Alstate Property & Casualty

**Facts:**

On Jan. 6, 2011, plaintiff Michelle Blank, 37, an attorney, was operating her vehicle on Route 36-37 in Delaware County. Blank stopped for traffic in front of her at an intersectional stop light and was rear-ended by a vehicle driven by defendant Robert H. Butterworth. Butterworth's vehicle was then rear-ended by a vehicle operated by defendant Jan Born, pushing Butterworth's car into the back of Blank's vehicle a second time. Blank claimed neck and back injuries, a closed head injury, concussion and headaches as a result of the two impacts.

Blank filed suit against Butterworth and Born, alleging both were negligent in the operation of their respective vehicles. Blank also named her underinsured motorist carrier, Allstate Property & Casualty Insurance, in the event her damages exceeded the tortfeasors' policy limits. Allstate did not participate at trial.

Blank alleged that Butterworth and Born failed to maintain an assured clear distance ahead. She also claimed they failed to keep a proper lookout and failed to stop in time to avoid the accident.

Defendants Butterworth and Born admitted liability. The case proceeded on the issues of injury causation and damages.

**Injury:**

Blank sought urgent care treatment later on the day of the accident for complaints of neck, back and head pain. She was ultimately diagnosed with soft tissue neck and back injuries, a closed head injury, concussion, post-concussion syndrome, headaches, memory loss and vision disturbances.

Blank claimed \$6,049.75 in medicals, as well as damages for pain and suffering. Her spouse, Andrew Blank, sought damages for loss of consortium.

Defendants acknowledged that Blank may have sustained minor soft tissue neck and back injuries, but argued that the rest of her complaints pre-existed this accident. The defense maintained that Blank treated for all the symptoms she described in the 10 years prior to the accident and/or that the injuries may have been caused by six prior motor vehicle accidents. The defense suggested the jury award \$6,000 to \$10,000.



**Result:** The jury attributed 50 percent liability to each defendant and awarded the plaintiff a total of \$6,000.

**Trial Information:**

**Judge:** David M. Gormley

**Demand:** \$360,000

**Offer:** \$20,000

**Trial Length:** 4 days

**Trial  
Deliberations:** 2 hours

**Jury Vote:** 8-0

**Post Trial:** Plaintiff's motion for new trial was pending at the time of publication.

**Editor's  
Comment:** This report is based on information that was provided by defendant Born's counsel. Defense counsel for Allstate also contributed to the report. Plaintiff's counsel did not respond to a request for comment.

**Writer** Margi Banner

## Plaintiff's concussion was due to prior injury, defense argued

**Type:** Verdict-Plaintiff

**Amount:** \$3,087

**State:** Ohio

**Venue:** Franklin County

**Court:** Franklin County, Court of Common Pleas, OH

**Injury Type(s):** • *head* - headaches; concussion

**Case Type:** • *Motor Vehicle* - Ice; Passenger; Parked Car; Rear-ender; Parking Lot; Weather Conditions; Negligent Entrustment

**Case Name:** David Kamnicar, Jack Kamnicar and Laurie Kamnicar v. Cameron Fiorita, Kristin Fiorita and Robert Fiorita, No. 14 CV 007708

**Date:** August 17, 2016

**Plaintiff(s):** • Jack Kamnicar (Male, 11 Years)  
• David Kamnicar (Male, 50 Years)  
• Laurie Kamnicar (Female, 40 Years)

**Plaintiff Attorney(s):** • James P. Connors; James P. Connors Law Office; Columbus OH for David Kamnicar, Jack Kamnicar, Laurie Kamnicar

**Defendant(s):** • Robert Fiorita  
• Cameron Fiorita  
• Kristin Fiorita  
• Encompass Home and Auto Insurance Co.

**Defense Attorney(s):** • Edwin J. Hollern; Hollern & Associates; Westerville, OH for Encompass Home and Auto Insurance Co., Cameron Fiorita, Kristin Fiorita, Robert Fiorita

**Insurers:** • Encompass Insurance Co.

**Facts:**

On Jan. 24, 2014, plaintiff Jack Kamnicar, 11, was sitting in a vehicle along with his parents. The vehicle was stopped in front of the Chiller hockey rink in Dublin, with Jack preparing to exit the vehicle to run back inside to retrieve a hat he had inadvertently left behind. While Jack was still inside the vehicle, the vehicle was hit by a car driven by Cameron Fiorita. The right front corner of the car Fiorita was driving made contact with the rear bumper of the Kamnicar vehicle, leaving a black rubber mark. There was snow and ice in the parking lot at the time of the accident. Jack claimed a concussion with headaches as a result of the impact. His parents were not injured.

Jack's parents, David Kamnicar and Laurie Kamnicar, filed suit on Jack's behalf against Cameron Fiorita. They also sued Cameron's parents, Kristin Fiorita and Robert Fiorita. The Kamnicars alleged negligent entrustment against Robert Fiorita. They claimed conspiracy against Kristin Fiorita for allegedly conspiring with the liability carrier to deny liability. The liability carrier, Encompass, was also named in the suit on claims of bad faith, civil conspiracy and fraud. The claims against Cameron's parents and Encompass were dismissed prior to trial. The case proceeded against Cameron only.

The Kamnicars alleged that Cameron Fiorita was negligent in the operation of a motor vehicle. They claimed he failed to maintain control of the vehicle in the weather conditions.

In his deposition, Fiorita testified that the Kamnicar vehicle was reversing at the time of impact. However, plaintiffs' counsel presented videotape obtained from the hockey rink which did not support this allegation.

The defense eventually stipulated to liability. Injury causation was the primary dispute at trial.

**Injury:**

The day after the accident, Jack Kamnicar presented to his family doctor with headache complaints. A CT of his head was negative, but he was diagnosed with a mild concussion. He was referred to the concussion clinic at Nationwide Children's Hospital, where he underwent weekly assessments for one month. His headaches ultimately resolved.

The Kamnicars sought damages for medicals and Jack's pain and suffering. David Kamnicar also sought reimbursement of \$498.80 for property damage to his car.

The defense disputed proximate cause based on the minimal impact involved in the accident, which the defense contended resulted in only a scrape to the Kamnicar vehicle. The defense asserted that Jack had suffered a concussion due to sports the year prior to the accident and that any concussion-related complaints were due to that incident rather than the subject accident.

**Result:**

The jury awarded a total of \$3,087.05 in damages to the plaintiffs, representing \$2,588.25 in medicals (the Robinson v. Bates number) and \$498.80 in property damage.

**Trial Information:****Judge:**

David E. Cain

**Demand:** \$17,500

**Offer:** \$5,128

**Trial Length:** 2 days

**Trial  
Deliberations:** 2 hours

**Editor's  
Comment:** This report is based on information that was provided by defense counsel. Plaintiffs' counsel did not respond to a request for comment.

**Writer** Carol Meirow