

Auto Negligence - The defendant's brakes failed and to a rear-end crash with a Fed Ex truck, the defendant crossed the centerline and crashed head-on into the plaintiff - that second wreck left the plaintiff with an open pilon fracture - the defendant was exonerated at trial by the sudden emergency of his failed brakes

Bailey v. MCM Signs, 05-2758

Plaintiff: Neil F. Duncliffe and Stephanie Litteral, Georgetown

Defense: John W. Walters and B. Ellen Cochran, *Golden & Walters*, Lexington

Verdict: Defense verdict on liability
Circuit: Fayette, J. Goodwine, 5-3-07

Laura Bailey, age 28 and a supervisor at Cingular Wireless, proceeded on 4-11-05 on U.S. 25. At the same time, Frank Patton of MCM Signs, approached from the opposite direction. Looking away a moment, he turned back to the road and saw a stopped Fed Ex Truck.

Patton hit the brakes and nothing happened. Reacting fast, he swerved left and across the centerline. In a serious collision, he collided with Bailey. The crash left her with an open pilon fracture - it was repaired in a surgery which included a skin graft. Treating the fracture was Dr. William Rosenblum, Orthopedics, Lexington.

Beyond that serious injury, Bailey has also complained of PTSD, depression and obsessive compulsive disorder (OCD), all as identified by her expert psychiatrist, Robert Granacher, Lexington.

As Granacher's deposition approached, Patton sought his records regarding his IME practice. Granacher initially balked, but the court ordered their production. In contesting the order, Granacher filed an unusual pleading. It showed the difficulty of him providing the requested discovery, including picture after picture of his busy file room. In his motion, Granacher also complained that he was being unfairly pursued by attorney Dale Golden, a partner of Walters - it had gotten so bad for Granacher (with Golden at least), that Golden has been hired around the country, most recently in a West Virginia case, to simply conduct a cross-examination. [Golden, readers will recall, was the examiner in *Granacher Gone Wild*.]

Ultimately Granacher produced the records and they were interesting. In a four-year period, according to his records, Granacher had performed 1671

IMEs. In 406 of those cases, his deposition testimony was required. For each of those four years, the expert earned from \$1.4 to \$1.6 million from his consultancy. [While this case was tried by Walters, Golden cross-examined Granacher.]

The expert aside, Bailey pursued Patton and his employer to trial, alleging negligence regarding this wreck and seeking damages. If she prevailed, the jury could award medicals of \$156,928 and \$177,560 for future care. Lost wages were \$87,043, while impairment was limited to \$488,469. Plaintiff's vocational expert was Ralph Crystal, Lexington. The cap in the instructions on past suffering was \$180,000 - Bailey took \$600,000 for that in the future.

MCM Signs defended the wreck with a very simple notion. It cited the sudden emergency of the brake failure, this defense being incorporated into the jury instructions.

The defendant also contested the emotional injury, hiring its own psychiatry expert, David Shrberg, Lexington. He found no evidence of PTSD and also diminished Granacher's OCD diagnosis, noting that this condition had pre-existed the wreck. Impairment damages were also diminished by Luca Conte, Louisville, who made a live appearance at trial.

The instructions were boilerplate except that they also incorporated sudden emergency language regarding the brake failure. It was on this basis that the defense prevailed on liability, Bailey taking nothing. A defense judgment was entered.

Bailey has sought JNOV relief arguing the proof was inadequate on the sudden emergency, it only being supported by defendant's bald assertion. Moreover there was no real emergency, the so-called sudden emergency only starting when Patton looked up, saw the Fed Ex truck and crossed the centerline. MCM Signs has replied that the proof was adequate, notably, the brakes had previously worked fine. The motion is pending.