

## Jefferson County Auto Negligence Case Index

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**4694 - Auto Negligence/UIM - An optometrist linked a brain injury to a moderate rear-end crash – while he claimed pain and suffering damages of \$1.1 million, a Louisville jury valued that damage component at just \$6,000**

*Andrews v. Westfield Insurance et al*,  
09-11522

Plaintiff: D. Tysen Smith, II and Liz J. Shepherd, *Dolt Thompson Shepherd Kinney & Wilt*, Louisville

Defense: John W. Walters and Jennifer M. Jabroski, *Golden & Walters*, Lexington for Westfield Insurance

Patricia L. Harmeling, *Phillips Parker Orberon & Arnett*, Louisville for Wade

Verdict: \$22,885 for plaintiff

Court: **Jefferson**, J. Edwards,  
12-2-11

Billy Andrews, then age 45 and a Horse Cave optometrist, was visiting Louisville on 11-30-06 to run errands. While he was stopped on Breckinridge Lane, he was rear-ended by Timothy Wade. The collision resulted in moderate damage. [Wade would defend on liability that Andrews suddenly swerved in front of him.]

However it happened there was no injury at the scene. Andrews instead left the scene and rented a car – he continued to run errands and drove home. He first sought treatment a week later with a chiropractor for apparent soft-tissue symptoms.

Some six months later he saw his primary care physician – as a part of that exam, he mentioned ongoing neck pain and headaches. He was sent for an MRI which indicated a small hemorrhage in his left frontal pole.

Andrews then followed with a

neurosurgeon, Dr. Steven Reiss, who identified that he suffered from both whiplash and a post-concussive syndrome.

Nearly a year later Andrews began to report not just headaches but also cognitive and emotional problems. An IME expert for Andrews, Dr. Robert Granacher, Neuropsychiatry, Lexington linked a mild traumatic brain injury to the crash and assigned a moderate impairment. Granacher noted that the plaintiff's concentration, mood and memory were all affected. Andrews sought medicals of \$16,855 and pain and suffering of \$1.1 million.

Andrews moved in this lawsuit against both Wade and his \$100,000 policy limits. Above that sum he sought UIM coverage from his carrier, Westfield Insurance. Andrews never settled with Wade before trial – despite the lack of a settlement, Westfield elected to participate at trial.

The defense of the case minimized the notion of a brain injury, noting that Andrews has continued to grow his successful optometry practice and enjoyed an active lifestyle with a relationship and regular travel.

An IME for the defense, Dr. David Shraberg, Neuropsychiatry, Lexington, couldn't link the brain lesion to trauma or any ongoing problem. He thought at best that Andrews had suffered just a temporary concussion. Granacher was also cross-examined aggressively by Dale Golden of *Granacher Gone Wild* fame and a partner in the firm defending Westfield.

The jury found Wade solely at fault. Then to damages, Andrews took his medicals as claimed plus \$6,000 more for pain and suffering. The verdict

totaled \$22,885. A consistent judgment (less PIP) was entered against Wade. The verdict did not implicate the \$100,000 floor of UIM coverage.