

Fault is split in truck-bicycle collision suit

83-year-old plaintiff's age, state of health disputed

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Michigan Lawyers Weekly Staff

Plaintiff Theresa Modzelewski-Shekoski, personal representative of the Estate of Michael Shekoski, sought compensatory damages from defendants Allied Excavation Inc. and Michael Bindig on claims of third-party auto negligence and wrongful death.

On July 23, 2009, Michael Shekoski was attempting to cross at the intersection 22 Mile Road and Van Dyke Avenue on his bicycle. Bindig, a truck driver with Allied Excavation, was traveling east on 22 Mile when he stopped for the red signal at the intersection. The truck driver made a right turn on red, and it was alleged that he did not ever see Shekoski, who had just entered the crosswalk on a white walk signal. The truck struck Shekoski, killing him.

Defendants raised several defenses, including that Shekoski entered the crosswalk on a solid red or blinking "Don't Walk" crosswalk signal; that the truck was at the intersection first and that Shekoski rode his bicycle into the side of it; and that Shekoski did not see the truck because he was legally blind from advanced macular degeneration.

Loss of society also was argued because of plaintiff's decedent's age (83). In addition, it was implied that his general state of physical health, including his prior heart attacks and advanced coronary artery disease, would result in a very low trial verdict at case evaluation and at facilitation.

The jury deliberated for five hours and returned a \$2.55 million verdict, allocating fault as 50 percent Bindig, 20 percent Allied Excavation, and 30 percent plaintiff's decedent.

Types of actions: Third-party auto negligence, wrongful death

Type of injuries: Death

Name of case: *Modzelewski-Shekoski, et al. v. Allied Excavation Inc., et al.*

Court/Case no./Date: Macomb County Circuit Court; 10-1959-NI; Nov. 15, 2012

Tried before: Jury

Name of judge: James Biernat

Demand: \$1.5 million

Highest offers: \$250,000 before trial, \$500,000 during jury deliberation

Verdict amount: \$2.55 million

Allocation of fault: 50 percent defendant Bindig, 20 percent defendant Allied Excavation, 30 percent Michael Shekoski.

Insurance carrier: Secura

Attorneys for plaintiff: Steven Gursten, Thomas James

Attorney for defendant: Witold Szykiel