

TRIAL REPORT

■ **Trial Reports:** Reports on recent Indiana cases from the lawyers and judges involved.

Pedestrian hit on parade route

Lamone Rogers v. Anderson Black Expo, Indiana Black Expo, Inc., Timothy Nails and others

Madison Superior Court No. 48D01-0710-CT-01521

Injuries: Fractured tibia-fibia, fractured scapula, hernia

Date: Dec. 4, 2008

Judge or Jury Trial: Settled at mediation
Judge: Hon. Dennis D. Carroll

Disposition: Settled in mediation for \$138,000 — Anderson Black Expo, \$60,000; Timothy Nails, \$68,000; Indiana Black Expo Inc., \$10,000

Plaintiff Attorney: Steven M. Crell, Cohen Garelick & Glazier

Defendant Attorneys: Anderson Black Expo represented by Willis Huiras, Davis & Sarbinoff; Timothy Nails represented by

Robert Foos, LewisWagner; Indiana Black Expo Inc. represented by Thomas Schultz, Schultz & Pogue; American Family Insurance Co., Lamone Rogers' auto insurance carrier providing underinsured motorist coverage represented by Brent Threlkeld, Threlkeld & Reynolds.

Insurance: Anderson Black Expo insured by Auto Owners Exchange; Timothy Nails insured by Insura Property and Casualty; Indiana Black Expo Inc. insured by FCCI Insurance Co.; Lamone Rogers insured by American Family Insurance Co.

Case Information: In August 2007, Lamone Rogers was performing as a roller skater in a parade sponsored by the Anderson Black Expo, a chapter of the Indiana Black Expo, when he was run over by another parade participant, Timothy Nails, who was driving his show car in the parade. Rogers' ankle was crushed by the car's tire, and his shoulder blades were fractured from being compressed beneath the car. His injuries from the incident also included a hernia.

Rogers missed several weeks of work and incurred substantial medical expenses as a result of the incident. He has not been able to perform stunts on his skates since the incident.

Rogers contended Nails was negligent for driving erratically during the parade, and that Anderson Black Expo representatives were negligent for failing to protect Rogers from the harm he contended resulted from Nails' erratic driving. Rogers contended that he was a business invitee of the Anderson Black Expo as a result of paying an admission fee to participate in the parade and that his status as an invitee heightened the duty of the Anderson Black Expo to protect him from harm.

Anderson Black Expo, Nails, and Indiana Black Expo claimed Rogers was negligent for leaving his designated spot in the parade formation and performing a stunt low to the ground where it

was difficult for drivers in the parade to see him. Anderson Black Expo also contended Nails was not a registered parade participant.

Nails tendered his auto policy limits to Rogers prior to mediation. As a result, Rogers' underinsured motorist coverage under his own automobile policy was invoked. This created the somewhat unusual situation where Rogers' own insurance carrier pursued against Rogers the defenses and allegations of negligence on the part of Rogers that were otherwise asserted by Nails.

Denise Page of the Mediation Group did a masterful job of facilitating a settlement of Rogers' claims for a combined payment from the defendants of \$138,000. The settlement was also facilitated and made feasible by the agreement of Rogers' health insurer to substantially reduce the medical liens on Rogers' settlement.

— Steven M. Crell