

Missouri Lawyers

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WEEKLY

Jury finds plaintiff 95 percent at fault

Reform limits medical claims to actual amount plaintiff paid



Steven Kuenzel

Tort reform legislation approved in 2005 worked in attorney Steven Kuenzel's favor for a client who was involved in a motor vehicle accident.

Kuenzel's client, Daniel A. Winchester, 25, was involved in an accident that took place on state Highway 30 in St. Clair. Defendant Winchester was traveling eastbound at approximately 35 mph in a school zone. Dane Gratzler, 20, was at a stop sign and pulled out through a backed-up line of westbound traffic into Winchester's lane without looking, Kuenzel said.

Gratzler admitted to being partially at fault but said another driver waved him on. He alleged that Winchester failed to take a careful lookout while in a school zone, knowing that vehicles would be pulling out and onto the road.

Gratzler claimed to have partial thickness rotator cuff tear of the left shoulder and recurrent labral tear of the right shoulder. He had been involved in another motor vehicle accident six months earlier and sustained a labral tear of the right shoulder, Kuenzel said. It had been operated on just two weeks before the second accident.

Judge David L. Hoven found that the reasonable amount of medical bills per the 2005 tort reform was the actual amount paid, \$10,491, rather than gross medical bills of \$34,104.56. Under the law, a defendant may be able to reduce the value of medical bills by the amount actually paid rather than the full cost of care to the plaintiff before any negotiated health care insurance discounts.

The jury apportioned fault of 5 percent to the defendant and 95 percent to the plaintiff. It found the total amount of plaintiff's damages to be \$1,000 with judgment against the defendant for \$50.

The law provides that joint and several liability applies to a defendant only if that defendant is at least 51 percent at fault. If a defendant is found less than 51 percent at fault, that defendant is required to

pay only his proportionate share of liability.

Gratzler's attorney, Jerry Crowder, of Brown & Crouppen, was disappointed that the judge drastically reduced the amount of medical bills allowed into evidence. He said his client had taken out a loan with 17 percent to 18 percent interest to pay his medical bills, making the offer of \$20,000 unacceptable.

Kuenzel said he thinks this is the first case in

Franklin County to go to trial with a definitive finding that followed the tort reform law.

— Cathy Kingsley

Defense verdict

PERSONAL INJURY

- **Court:** Franklin County Circuit Court
- **Case Number/Date:** 06AB-CC00306/Sept. 10, 2008
- **Judge:** David L. Hoven
- **Plaintiff's Expert:** Dr. Richard Hulsey, St. Louis (orthopedic surgeon)
- **Allocation of Fault:** 5 percent to defendant and 95 percent to plaintiff
- **Special Damages:** \$10,491 of paid medical bills per 2005 Tort Reform law rather than \$34,104.56 of gross medical bills
- **Last Pretrial Demand:** \$50,000
- **Last Pretrial Offer:** \$20,000
- **Insurer:** American Family Insurance Co.
- **Caption:** Dane Gratzler v. Daniel A. Winchester

■ **Plaintiff's Attorney:** Jerry Crowder, Brown & Crouppen, St. Louis

■ **Defendant's Attorney:** Steven P. Kuenzel, Eckelkamp Kuenzel, Washington, Mo.