

# Jason v Jones Trial Report

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## TRIAL REPORTS

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

Low-impact auto accident **Jason W. Jones** v. Alyson Powell Marion Superior Court 10 49D10-0209-CT-1541

Injuries: Whiplash and reactive myofascitis of the neck

Date: Feb. 17 and 18, 2004

Judge or Jury Trial: Jury trial

Judge: Hon. David Dreyer

Disposition: Plaintiff 's verdict of \$48,000

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

Defendant Attorney: Richard K. Milam, Lebanon

Insurance: State Farm Insurance Co.

**Case Information:** This was a rear-end collision with no contest as to the defendant's negligence in causing the collision. Damage to the vehicles was small. Plaintiff did not believe he was injured at the accident scene. He began to experience neck pain the next day and visited an immediate care center where he was diagnosed with cervical strain, given pain medication and muscle relaxers and told to call back if his pain did not subside.

Plaintiff 's pain worsened, and he was referred to a pain and rehabilitation doctor, who prescribed not only additional medications and physical therapy but also three injection procedures to treat the plaintiff 's recurring pain. The injection procedures, known as facet block and trigger point injections, were described by the plaintiff as very painful. A 2-inch needle is inserted into the spinal column and related muscles to apply medication directly to the affected areas.

The jury was told not only of the plaintiff 's pain in recovering from the injuries and the limitations placed on his work and leisure activities, but also of the painful nature of the injections. The syringe used in the procedures was shown to the jury. Negotiations with State Farm prior to trial were very difficult. State Farm contended the plaintiff was not hurt based on

the condition of the cars following the accident. The apparent reasoning was that a low-impact collision does not result in serious pain or injury.

Medical expenses were approximately \$9,500 and lost income was approximately \$1,500. State Farm offered only \$300 to settle the case prior to mediation and only \$2,000 at mediation. Plaintiff's initial demand had been \$49,500. The jury awarded a verdict of \$48,000.

During his videotaped deposition, plaintiff's treating physician explained that the true focus of determining whether injury has occurred should be on the body location and position at the time of collision, not on the damage cause to the vehicles involved. The use of such expert testimony to combat a low-impact defense appeared to very effective with the jury.

The defendant also attempted to use a failure to mitigate damages defense, under which it is argued that the plaintiff shares fault in the accident because of his failure to obtain proper treatment for his injuries or follow the instructions of his doctor. In this case it was alleged plaintiff missed some of his physical therapy appointments and thus adversely affected his recovery or treatment. Under the current comparative fault statute, failure to mitigate constitutes fault on the part of the plaintiff.

Plaintiff's counsel filed a motion for judgment on the evidence following the presentation of defendant's case, arguing that there was no medical expert testimony to link the alleged failure to attend medical appointments with the duration or expense associated with plaintiff's recovery. Recent case law made it clear that only medical expert testimony can establish such a causal link - not lay witness testimony, common sense or speculation. The motion for judgment on the evidence was granted, and thus defendant could not argue comparative fault to the jury.

Injury attorneys should be aware that a mitigation of damages defense relating to medical treatment may be properly excluded when there is no expert testimony to support it. It can have a tremendous impact on the outcome of the case. - Steven M. Crell