

MINNESOTA LAWYER FORM

Type of Case: Personal Injury: Auto-Bicycle Accident - fractured leg

Injuries Alleged: Plaintiff sustained a fractured fibula and tibia of his right leg. He also sustained fractures to four bottom teeth.

Venue: Hennepin County District Court

Court File Number: 98-9852

Judge: Honorable Harry Seymour Crump

Date of Verdict: 9/16/99

Jury Factual Determinations: Jury found that Defendant was 91 % negligent and Plaintiff was 9 % negligent.

Net Verdict: After set-off and fault reductions: \$314,187.85. Plaintiff is seeking to tax costs and interest for total Net Verdict: \$347,073.89

Brief Facts/Issues Disputed: Plaintiff was riding his bicycle southbound on Nicollet Mall, when he was struck by Defendant's motor vehicle in the intersection at 12th Street. Plaintiff testified that as he approached the intersection of Nicollet Mall and 12th Street the traffic control light changed from red to green. Defendant testified that as he approached the intersection of 12th Street and Nicollet Mall, the traffic control light governing his direction of travel changed from red to green. Each party produced a witnesses supporting their version of the events. Plaintiff produced an eye witness who testified that he was standing on the corner of Nicollet and 12th waiting to cross 12th Street on southbound Nicollet. He testified the light changed from green to yellow to red by the time Defendant's vehicle entered the intersection. Defendant produced two eye witnesses. The first was a bicyclist riding along side Plaintiff for the previous five blocks. He gave a recorded statement shortly after the accident to Defendant's insurer claiming the Plaintiff burst ahead of him into the intersection when the light was red. Approximately one year later he gave a second statement, personally signed, stating that his bike lock had come loose and he was looking down at the time of the accident. In his deposition he testified that the 2nd statement was more accurate. At trial, defense council played back the recorded taped statement for the witness in the hallway outside the courtroom. The witness then testified consistent with the 1st statement. In cross examination, Plaintiff's council succeeded in securing an admission from the witness that he has no recollection of the accident and that he did not know what color the light, was at the time of the accident. Plaintiff's council then successfully moved to have the witness testimony excluded and the jury so instructed to disregard as Defense council had failed to produce the actual tape of the first statement despite Plaintiff's numerous requests. Defendant then produced a third eyewitness who testified that he was walking eastbound on 12th near the intersection of Nicollet and was watching the light with the intent to jaywalk. He testified the light was green for Defendant and the bike entered against the red. On cross examination, however, the eyewitness

admitted that he originally identified the vehicle as a black SUV not a gold Volvo. Plaintiff further established through photographic evidence that Defendant's view was or may have been obstructed and, moreover, that it was possible he was looking backwards at the time of the accident in anticipation of jaywalking.

Sidelights: Testimony of Defendant's independent witness excluded by the trial Judge following examination and cross-examination for failure to produce tape of statement taken seven days after accident to Plaintiff's counsel pursuant to Request for Production and Request for Supplementation.

Person submitting report: Robert D. Boedigheimer, Esq., 612 820 8382, fax: 612 820 0486

Gross Damages Awarded (itemized):

Past medical expenses:	\$42,168.00
Past wage loss:	\$20,780.00
Past pain, disability, disfigurement, emotional distress and embarrassment:	\$80,000.00
Future medical expenses:	\$5,000.00
Future pain, disability, disfigurement, emotional distress and embarrassment:	<u>\$228,000.00</u>
TOTAL VERDICT:	\$375,948.00

Plaintiff Attorney: Robert D. Boedigheimer, McCloud & Boedigheimer, P.A., Bloomington, Minnesota, (612) 820-8382

Defendant Attorney: Lee La Bore

Insurance Carrier: State Farm Insurance Companies

Plaintiff Experts: Dr. David Templeman, Hennepin County Medical Center

Defense Experts: Dr. Peter Daly, Summit/Landmark Orthopedics

Last Demand: \$50,000

Last Offer: \$0

Case Title: Steven Anthony Graffie v. Patrick Gowan Ryan

Disposition: Defendant's motion for a new trial denied. Case is pending.

Insurance Limits: \$100,000 per person with a \$1,000,000 excess umbrella policy

Deductions (comparative fault, collateral sources, PIP offsets, etc.):
9 percent comparative fault, \$20,000.00 no-fault medical, \$10,686.63 no-fault wage