

# MICHIGAN LAWYERS WEEKLY

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## Rear-end collision results in 'no cause'

### Plaintiff suffered no serious impairment

Plaintiff was a 42-year-old driver of a delivery van who had stopped for heavy rush hour traffic. After he stopped, he was hit from behind by the defendant's vehicle, a Honda Civic, which was totaled in the accident. The accident occurred in the morning and the plaintiff was able to complete his deliveries for the day. He claimed, however, that he began to develop low-back pain throughout the day.

The plaintiff was a Ukrainian immigrant living in Grand Rapids who sought treatment initially following the accident with Lazar Burkovich, D.C., a Ukrainian speaking chiropractor, in Southfield. After several visits, Dr. Burkovich recommended another chiropractor in the Grand Rapids area, with whom the plaintiff treated for several months. He was then referred to Dr. Sal Dyke, a medical doctor, who ordered physical therapy.

Plaintiff's counsel sent the plaintiff to Dr. James Ellis at Orthopaedic Associates of Grand Rapids. The plaintiff continued his treatment at Orthopaedic Associates of Grand Rapids with Dr. Randall Palmitier, M.D., a physiatrist, and James Stubbart, M.D., an orthopaedic surgeon. Dr. Stubbart ordered a discogram that was performed by Stephen L. Winston, M.D., at Michigan Pain Consultants.

All of the doctors called by the plaintiff who testified at trial agreed that the plaintiff experienced what appeared to be discogenic pain from a ruptured disc. However, Dr. Stubbart, who had seen the plaintiff for consideration of surgery, testified that he was not a surgical candidate. The plaintiff's treating doctors acknowledged that the disc may have been ruptured before the accident but, by history, it had not been causing the plaintiff to experience any symptoms.

Meanwhile, the defendant's experts testified that, although the plaintiff may have had a temporary aggravation of a pre-existing condition, any symptoms he experienced from the accident should have resolved within several months thereafter.

The plaintiff claimed that, due to his pain, he was unable to continue driving his delivery van and that this would result in loss of income for the next 20 years or so of approximately \$18,000 per year. As a result of his inability to work, the plaintiff said he had been forced into bankruptcy. Moreover, he alleged that virtually any activity caused constant back pain and that he had to have assistance from friends and family members for activities of daily living.

The plaintiff's demand was \$195,000, and the offer was \$0.

Defense counsel, however, was convinced that a surveillance video, showing the plaintiff unloading a storage garage for approximately 1.5 hours without any apparent discomfort, persuaded the jury that the plaintiff's complaints were either fictional or grossly exaggerated.

The key to winning, defense counsel said, was effective cross-examination of the plaintiff's treating physicians. Strong testimony from two independent medical evaluators with good credentials and a surveillance video were also very helpful.

**Type of action:** Third-party auto negligence

**Type of injuries:** Low back discogenic injury at L5-S1

**Name of case:** Irzhavtsev v. Hankins

**Court/case no./date:** Kent County Circuit Court; #04-02692-NI; June 16, 2006

**Name of judge:** George S. Buth

**Verdict amount:** \$0 (no serious impairment; no excess wage loss)

**Attorney for the plaintiff:** Withheld

**Attorney for the defendant:** Robert B. Aardema

**Name/city of most helpful experts:** Randolph Russo, M.D., Grand Rapids; Peter Herkner, M.D., Grand Rapids

**Insurance carrier(s):** State Farm Mutual Automobile Insurance Company

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