

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

---

BETHANY BARBEE, EDWARD BARBEE, DARLENE BARBEE,  
THOMAS BARBEE, MARGARET BARBEE, GLADYS BARBEE,  
MATTHEW BARBEE, HARVEY BARBEE, JANE BARBEE  
and BERNICE WILLIAMS,

Plaintiffs,

and

GENERAL MOTORS CORPORATION,

Intervener,

v.

UNITED STATES OF AMERICA and  
MARY FALK, as Administrator and  
Personal Representative of the  
Estate of Danielle Skatrud, Deceased,

Defendants,

and

ANTHEM BLUE CROSS & BLUE SHIELD, MEDICAL MUTUAL,  
CIGNA HEALTHCARE, KAISER PERMANENTE,  
NATIONWIDE INSURANCE, UNICARE LIFE & HEALTH INSURANCE COMPANY,  
UNITED HEALTHCARE OF OHIO, INC., and ALLSTATE INSURANCE COMPANY,

New Party Defendants.

---

The above entitled matter was tried to the Court at which  
trial the Court determined the uncontested facts as follows.

On October 12, 2002 plaintiff Edward Barbee was driving a red  
Honda southbound on Interstate 90/94. Plaintiff Thomas Barbee was  
in the front passenger seat. Plaintiff Margaret Barbee was in the

back seat directly behind Edward Barbee. Plaintiff Darlene Barbee was in the back seat directly behind Thomas Barbee.

On October 12, 2002 plaintiff Matthew Barbee was driving a Buick Le Sabre southbound on Interstate 90/94. Plaintiff Gladys Barbee was in the back seat directly behind Matthew Barbee. Plaintiff Bernice Williams was sitting in the middle position of the back seat. Plaintiff Harvey Barbee was sitting in the backseat directly behind the passenger seat.

At that same time an Acura driven by Danielle Skatrud was traveling in the northbound lanes of traffic on Interstate 90/94. She had two passengers in her vehicle Jeremy LaRoche and Justin Vandre. Another vehicle driven by an employee of the United States was also traveling northbound on Interstate 90/94. An accident occurred between the Skatrud vehicle and the vehicle driven by the United States employee. The Court previously determined both Danielle Skatrud and the United States employee were negligent in the operation of their vehicles. Danielle Skatrud was found to be 70% negligent and the United States employee was found to be 30% negligent.

As a result of the accident between the Skatrud vehicle and the United States vehicle plaintiff Edward Barbee's vehicle was struck on the left front corner by the Skatrud vehicle after she drove through the median and hit his vehicle. As a result of this collision Edward Barbee's vehicle skidded and then went into one

full lateral "barrel-roll" it landed on its wheels and then skidded another 50 -75 feet before it came to rest.

After hitting Edward Barbee's vehicle the Skatrud vehicle hit the Buick Le Sabre driven by Matthew Barbee head on. The Skatrud vehicle broke into three large pieces as a result of these collisions. The Buick Le Sabre suffered extensive front-end damage.

The parties stipulated regarding liability and the case proceeded as a damages only trial.

The medical records and expenses of plaintiffs were authentic and required no further foundation witnesses.

Plaintiff Bernice Williams

\_\_\_\_\_In addition to the above stated uncontested facts the Court determines the uncontested facts concerning Bernice Williams as follows:

\_\_\_\_\_Bernice Williams was last employed at Elyria Memorial Hospital on October 10, 2002. She worked in the environmental health services department for 22 years.

Bernice Williams was injured in the October 12, 2002 collision. She sustained a left posterior hip dislocation with transverse wall acetabulum fracture and a ligament tear of the left thumb. The fracture dislocation of the left hip led to a condition called avascular necrosis of the femoral head. Bernice Williams

also suffered nerve damage. The nerve damage was associated with her hip injury

Bernice Williams underwent a closed reduction of her left hip and acetabular fracture on October 12, 2002. She was placed in skeletal traction for three days post surgery.

Bernice Williams underwent operative and internal fixation for her left transverse posterolateral wall acetabular fracture on October 15, 2002.

Another surgery was performed on October 23, 2002 to repair the left thumb ligament damage.

Bernice Williams was confined in a Wisconsin hospital from October 12, 2002 through October 26, 2002. At that point she was transferred to Cleveland, Ohio.

Bernice Williams was then confined in Ohio at Elyria Memorial Hospital in Elyria, Ohio from October 26, 2002 through October 29, 2002. After three days of stabilization she was then transferred to a rehabilitation hospital where she was confined from October 29, 2002 through November 9, 2002. The name of the rehabilitation hospital was Lorain County Health Partners.

Bernice Williams has suffered significant past physical and mental pain and suffering, disability and scarring. Her scarring is located bilaterally on her lower extremities, on her right hip, on her left thumb and on the top of her hand.

Bernice Williams has undergone extensive surgeries in the past as well as extensive medical care and treatment as a direct and proximate result of the October 12, 2002 collision.

The entirety of Bernice Williams' medical expenses are reasonable and necessary to have incurred as a direct and proximate result of the October 12, 2002 collision. However, Bernice Williams does not know what she paid out-of-pocket for her medical expenses.

Allstate Insurance Company issued a policy of insurance identified as policy number 626573328 to Bernice Williams and said policy was in full force and effect at the time of the October 12, 2002 collision.

Bernice Williams is 48 years old and her average life expectancy is approximately another 28.8 years.

In addition to the uncontested facts stated above, as a result of trial the Court determines the following findings of fact and conclusions of law concerning Bernice Williams: she incurred a total of \$104,214.53 in medical expenses. Allstate Insurance Company proved its subrogation interest in the amount of \$15,005.48 concerning Bernice Williams. Accordingly, she sustained \$89,209.05 in damages for her past medical expenses.

In terms of future medical expenses the Court finds she will require left hip replacement surgery in the future. As a result of her hip replacement surgery she will require physical therapy, home

health care, post-operative medical visits and post-operative pain medication. It is necessary to award damages for future medical expenses concerning her future left hip surgery in the amount of \$33,831.58. An award of future medical expenses for thumb surgery has not been proven. Exhibit 115 is the life care plan for Bernice Williams created by Ms. Boeing who testified she was informed that Bernice Williams may require future surgery on her thumb. This conclusion does not meet the reasonable degree of medical certainty required to award damages for future medical expenses.

In terms of past loss of earning capacity defendant United States of America has stipulated to the amount of \$66,575.00 which is just and necessary.

In terms of future services and equipment the testimony of Ms. Boeing is credible. It is reasonable and necessary for Bernice Williams to have someone assist her with life activities which she cannot perform exclusively by herself such as grocery shopping, laundry and periodic deep cleaning. Bernice Williams currently has people assisting her with these tasks such as her friend and her son who can assist her into the future. Accordingly, when the entirety of the evidence is considered the Court finds it appropriate to award Bernice Williams damages for future services and equipment in the amount of \$130,000.00. Because an award for future services and equipment is appropriate, an award for future

loss of services is not necessary or reasonable and would equate to double the recovery for the same type of damages.

There is no doubt that Bernice Williams endured significant pain and suffering and will continue to endure pain and suffering into the future. Bernice Williams was one of the most injured plaintiffs in this case. Dr. Stanfield testified Bernice Williams now has arthritis in her hip because of her injuries and she will continue to suffer from pain into the future. Dr. Stanfield also testified Bernice Williams will incur significant limitations because of her injuries. The Court finds this testimony credible. Accordingly, it is reasonable and appropriate to award damages for both past pain and suffering in the amount of \$250,000.00 and future pain and suffering in the amount of \$100,000.00.

Bernice Williams also presented a claim for future loss of earning capacity for which the basis for said award has not been provided. Dr. Stanfield testified Bernice Williams cannot currently perform her job duties as a housekeeper and will not be able to perform those duties in the future. Such testimony supports her damages for future services and equipment. However, this testimony alone does not support an award for future loss of earning capacity. Bernice Williams did not demonstrate that she is unable to perform any job in which she could earn what she had earned as a housekeeper. Having failed to meet this burden, damages for future loss of earning capacity cannot be awarded.

Finally, Bernice Williams presented a claim for past loss of services. No basis for this award exists. She has been taking care of herself since the accident with some assistance from her son and her friend. Bernice Williams testified she was a "neat freak" before the accident and now she just lets things happen. However, the Court finds this testimony does not support an award for past loss of services.

Accordingly, Bernice Williams sustained damages in the amount of \$669,615.63 summarized as follows: past medical expenses in the amount of \$89,209.05; future medical expenses in the amount of \$33,831.58; past loss of earning capacity in the amount of \$66,575.00; future services and equipment in the amount of \$130,000.00; past pain and suffering in the amount of \$250,000.00; and future pain and suffering in the amount of \$100,000.00. The United States of America is liable for 30% of her damages. Accordingly, judgment will be entered in favor of plaintiff Bernice Williams against defendant United States of America in the amount of \$200,884.69.

Plaintiff Gladys Barbee

---

The Court determines the uncontested facts concerning Gladys Barbee as follows: as a direct and proximate result of the October 12, 2002 collision Gladys Barbee suffered physical injuries and damages including: bilateral supracondylar femur fractures



involving the intra articular surface with the knee joint bilaterally and a subarachnoid hemorrhage which showed an intra parenchymal hemorrhage in the right frontal lobe of her brain.

As a direct and proximate result of the October 12, 2002 collision the bilateral femur fractures necessitated surgical intervention in Madison WI, extensive physical therapy and rehabilitation. They also eventually led to the need for bilateral total knee replacements. These were performed in Elyria, Ohio.

Gladys Barbee had been hospitalized in Wisconsin from October 12, 2002 through October 25, 2002. She was then hospitalized in Elyria, Ohio from October 25, 2002 through October 29, 2002. Then she was transferred to a rehabilitation hospital and she stayed there from October 29, 2002 through November 9, 2002. Subsequent to these hospitalizations Gladys Barbee was also hospitalized for the removal of hardware in her right femur and a right total knee replacement at Elyria Memorial Hospital on May 28, 2003. She underwent a similar confinement on February 25, 2005 to remove the hardware from her left femur and underwent a left total knee replacement. This also occurred at Elyria Memorial Hospital.

The operative reports from the University of Wisconsin Hospitals and Clinics indicate Gladys Barbee suffered from advanced degenerative arthritis of her right knee before the accident.

The operative reports from the University of Wisconsin Hospitals and Clinics indicate Gladys Barbee suffered from moderate degenerative arthritis in her left knee before the accident.

As a direct and proximate result of the October 12, 2002 collision Gladys Barbee has been hospitalized no less than five times to date.

The injuries and damages to Gladys Barbee's lower extremities have left her legs scarred.

As a direct and proximate result of the collision Gladys Barbee sustained permanent scarring on her knees, legs and forehead.

Gladys Barbee never sought treatment for her knees from Dr. Krebs before the October 12, 2002 collision.

Gladys Barbee had a left knee patellectomy (removal of her left knee cap) which was injured in a previous volleyball accident.

Gladys Barbee has suffered past physical and mental pain, suffering and disability.

The entirety of Gladys Barbee's medical expenses are reasonable and necessary to have incurred as a direct and proximate result of the October 12, 2002 collision. However, Gladys Barbee does not know how much she paid out-of-pocket for her medical expenses.

Gladys Barbee has been receiving Social Security Disability income since she was found to be permanently and totally disabled after she suffered a work related back injury on May 29, 1997. The nerve damage in her back also caused her to suffer chronic depression. However, two hours a day seven days a week Gladys Barbee did work for a couple (Mr. and Mrs. Lewis) making lunch and administering blood sugar tests for Mrs. Lewis (who has diabetes.) Gladys Barbee was paid \$8.00 per hour for her work.

Gladys Barbee had a history of chronic headaches before the October 12, 2002 collision.

Gladys Barbee was diagnosed with a clinical brain stem cerebral vascular accident (stroke) in April of 2002.

Gladys Barbee hit her head on a garage door on July 4, 2004.

Gladys Barbee injured her left knee while riding on a transport vehicle in Las Vegas, Nevada when it stopped suddenly. She smacked her knee and suffered swelling and pain.

Gladys Barbee is 53 years old and her average life expectancy is another 24.9 years.

AllState Insurance Company issued a policy of insurance identified as policy number 092358136 to Gladys Barbee and said policy was in full force and effect at the time of the October 12, 2002 collision.

In addition to the uncontested facts stated above, as a result of trial the Court determines the following findings of fact and

conclusions of law concerning Gladys Barbee: she incurred a total of \$146,105.70 in medical expenses. Allstate Insurance Company proved its subrogation interest in the amount of \$10,000.00 concerning Gladys Barbee. Accordingly, she sustained \$136,105.70 in damages for her past medical expenses.

In terms of past loss of earning capacity defendant United States of America stipulated to an amount of \$17,520.00 which is just and necessary.

Gladys Barbee suffered significant past pain and suffering and will continue to endure pain and suffering into the future. The Court finds she was one of the most injured plaintiffs in the case. Dr. Krebs acknowledged Gladys Barbee had knee problems in the past. However, he testified the October 12, 2002 accident accelerated her arthritis. The Court finds this testimony credible. Further, Dr. Krebs testified Gladys Barbee's knee replacements were very constraining and she will be permanently limited in terms of the range of motion she has in her knees. Again the Court finds such testimony credible. Dr. Sese testified her poor memory, poor concentration, and forgetfulness were a direct result of the accident and he testified those symptoms will probably be a persistent problem for her. The Court finds this testimony credible. Accordingly, it is reasonable and appropriate to award damages for both past pain and suffering in the amount of

\$150,000.00 and future pain and suffering in the amount of \$100,000.00.

Gladys Barbee also presented a claim for future medical expenses. The Court, however, does not find a basis for this award. Neither Dr. Krebs nor Dr. Sese testified Gladys Barbee will ever need future medical treatment. Both doctors testified she will incur some limitations and pain into the future. However, such testimony supports her award of damages for future pain and suffering not her claim for medical expenses. Neither doctor testified she will need medical treatment at any point in the future. In fact Dr. Krebs testified there is no way to know whether she will ever require future treatment for her knees. He also testified her shoulder will not be an issue for her after her recent surgery. Accordingly, the Court does not find that Gladys Barbee has met her burden to prove damages for future medical expenses.

Gladys Barbee sustained damages in the amount of \$403,625.70 summarized as follows: past medical expenses in the amount of \$136,105.70; past loss of earning capacity in the amount of \$17,520.00; past pain and suffering in the amount of \$150,000.00; and future pain and suffering in the amount of \$100,000.00. The United States of America is liable for 30% of her damages. Accordingly, judgment will be entered in favor of plaintiff Gladys

Barbee against defendant United States of America in the amount of \$121,087.71.

Plaintiff Edward Barbee

The Court determines the uncontested facts concerning Edward Barbee as follows: as of October 12, 2002 Edward Barbee was gainfully self-employed as an over-the-road truck driver. As a direct and proximate result of the October 12, 2002 collision Edward Barbee lost his ability to perform his employment activities for approximately nine months. He went back to work on or about June 18, 2003. Edward Barbee is still employed as an over-the-road truck driver.

Edward Barbee is entitled to a damage claim for loss of profits. However, the amount he is entitled to is in dispute.

As a direct and proximate result of the October 12, 2002 collision Edward Barbee suffered a large head laceration, bilateral ankle fractures and a left knee contusion. Whether or not Edward Barbee's injuries have completely healed is in dispute.

As a direct and proximate result of the October 12, 2002 collision Edward Barbee sustained permanent scarring over the anterior portion of his scalp.

As a direct and proximate result of the October 12, 2002 collision Edward Barbee had follow-up appointments with his orthopedic surgeon for his bilateral ankle fractures over several

years. His last visit was in February of 2005. He also underwent physical therapy for his ankles. However, Edward Barbee never underwent surgery for his bilateral ankle fractures.

On November 14, 2002 Edward Barbee's CAT scan was negative for any brain injury.

All of the medical care and treatment Edward Barbee received was reasonable and necessary. His medical bills are reasonable and necessary as well. However, Edward Barbee does not know the amount he paid out-of-pocket for his medical expenses.

As a direct and proximate result of the October 12, 2002 collision Edward Barbee suffered from perithesias and lancinating type of pain from the scalp laceration. However, the severity of these injuries is in dispute. Whether Edward Barbee could eliminate his pain with medication is also in dispute.

Edward Barbee is 56 years old and has an average life expectancy of another 22.7 years.

In addition to the uncontested facts stated above, as a result of trial the Court determines the following findings of fact and conclusions of law concerning Edward Barbee: he incurred a total of \$16,257.74 in medical expenses. His insurers Unicare Life & Health Company and Nationwide Insurance waived any subrogation interest they may have had as it relates to Edward Barbee. Accordingly, pursuant to the collateral source rule Edward Barbee sustained \$16,257.74 in damages for past medical expenses.

In terms of past lost earning capacity it is uncontested that Edward Barbee is entitled to a damage claim for loss of profits. However, the amount is in dispute. Defendant United States of America stipulated to an amount of \$17,964.00. The Court has no evidentiary basis to award any other amount. Accordingly, said amount will be provided.

In terms of past and future pain and suffering there is no question the collision of October 12, 2002 was an horrific event and as a result Edward Barbee endured significant pain and suffering. He was confined to a wheelchair for a period of time and the physical therapy regime he underwent was necessary to increase the range of movement in his ankles. Fortunately, it appears Edward Barbee has recovered from his injuries and is now able to work on his house, play with his grandchildren and continue in his occupation as an over-the-road truck driver. It is uncontested that as a direct and proximate result of the collision Edward Barbee sustained permanent scarring over the anterior portion of his scalp. Accordingly, it is appropriate to award Edward Barbee damages for past pain and suffering in the amount of \$30,000.00 and damages for future pain and suffering in the amount of \$20,000.00.

Edward Barbee also presented a claim for future medical expenses. This claim has not been proven to a reasonable degree of medical certainty. Dr. Sese did not suggest Edward Barbee will



receive further treatment for his head laceration. Further, Dr. Palekar testified Edward Barbee may require arthroscopies on his ankles at some point but such speculative testimony does not satisfy the standard for awarding future medical expenses.

Accordingly, Edward Barbee sustained damages in the amount of \$84,221.74 summarized as follows: past medical expenses in the amount of \$16,257.74; past loss of earning capacity in the amount of \$17,964.00; past pain and suffering in the amount of \$30,000.00; and future pain and suffering in the amount of \$20,000.00. The United States of America is liable for 30% of his damages. Accordingly, judgment will be entered in favor of plaintiff Edward Barbee against defendant United States of America in the amount of \$25,266.52.

#### Plaintiff Margaret Barbee

The Court determines the uncontested facts concerning Margaret Barbee as follows: as a direct and proximate result of the October 12, 2002 collision Margaret Barbee's injuries included: a right ankle fracture, nasal and orbital fractures, corneal abrasion, multiple rib fractures, scarring and a left-scapular fracture.

Margaret Barbee's orthopedic injuries of her right ankle fracture, left second metatarsal shaft fracture and displaced left scapular fracture all required orthopedic attention and/or

treatment. These injuries as well as Margaret Barbee's rib fractures were caused by the October 12, 2002 collision.

As a direct and proximate result of the October 12, 2002 collision Margaret Barbee underwent a closed reduction of her right ankle on October 12, 2002. These injuries required a confinement in a Wisconsin hospital from October 12, 2002 through October 21, 2002. She was then transferred to Cleveland and she was confined at Lorain Community Hospital Rehabilitation Center from October 21, 2002 through October 25, 2002.

Margaret Barbee testified at her deposition that she suffers from chronic sinus disease.

All of Margaret Barbee's psychiatric and psychological care and treatment was related to the October 12, 2002 collision. Her psychiatric and psychological bills are reasonable and were necessary for her care and treatment.

Margaret Barbee's medical expenses are reasonable in amount and were necessary for her treatment. They are also a direct and proximate result of the October 12, 2002 collision. However, Margaret Barbee does not know how much she paid out-of-pocket for her medical expenses.

Margaret Barbee is employed as a case manager supervisor for Western Reserve Agency on Aging. She sustained lost wages as a result of the October 12, 2002 collision.

Margaret Barbee sustained her lost wages during the period of October 2002 through approximately January of 2003.

Margaret Barbee was able to resume her everyday activities by the end of 2002. Additionally, Margaret Barbee's doctors have not placed any limitations on her physical activities.

Margaret Barbee is 55 years old and has an average life expectancy of another 23.4 years.

In addition to the uncontested facts stated above, as a result of trial the Court determines the following findings of fact and conclusions of law concerning Margaret Barbee: she incurred a total of \$39,980.23 in medical expenses. Intervener General Motors Corporation proved its interest in the amount of \$33,132.93 concerning expenses incurred on behalf of Margaret Barbee. Nationwide Insurance has waived any subrogation interest it may have had concerning Margaret Barbee. Accordingly, she sustained \$6,847.30 in damages for past medical expenses.

Damages in the amount of \$13,059.96 for past loss of earnings are reasonable and necessary. Exhibit 121 is a letter from Pamela Tatum who is a human resources assistant at Western Reserve Area Agency on Aging where Margaret Barbee is employed. This credible evidence demonstrates the total amount of economic loss Margaret Barbee suffered as a result of the October 12, 2002 collision to be \$13,059.96.

Again there is no question the collision of October 12, 2002 was an horrific event to witness and experience, causing Margaret Barbee pain and suffering. Fortunately, Margaret Barbee has recovered. Dr. Truehaft has not imposed any restrictions on her activities as a result of her physical injuries and Dr. Spencer testified that she has achieved the goals of her therapy. However, it is uncontested that Margaret Barbee sustained some scarring as a result of her injuries. Accordingly, an award for past pain and suffering in the amount of \$20,000.00 and an award of \$5,000.00 for future pain and suffering is appropriate.

Margaret Barbee sustained damages in the amount of \$44,907.26 summarized as follows: past medical expenses in the amount of \$6,847.30; past loss of earnings in the amount of \$13,059.96; past pain and suffering in the amount of \$20,000.00; future pain and suffering in the amount of \$5,000.00. The United States of America is liable for 30% of her damages. Accordingly, judgment will be entered in favor of plaintiff Margaret Barbee against defendant United States of America in the amount of \$13,472.18.

#### Plaintiff Harvey Barbee

The Court determines the uncontested facts concerning Harvey Barbee as follows: as a direct and proximate result of the October 12, 2002 collision Harvey Barbee suffered injuries which included:

a kidney contusion, a chest wall injury, abrasions, scarring and a neck sprain. The amount of time it took for Harvey Barbee's injuries to heal is in dispute.

As a direct and proximate result of the October 12, 2002 collision Harvey Barbee suffered permanent scarring of his neck, chest and pelvis.

Harvey Barbee has degenerative disc disease in his spine at C5-C6 and C6-C7.

Harvey Barbee sustained past physical and mental pain, suffering and disability.

The medical expenses submitted by Harvey Barbee are reasonable in amount and were necessary for his therapy. Harvey Barbee does not know the amount he paid out-of-pocket for his medical expenses.

The medical care and treatment provided to Harvey Barbee was reasonable and necessary.

Harvey Barbee is 50 years old and has an average life expectancy of another 27.3 years.

Allstate Insurance Company issued a policy of insurance identified as policy number 092222355 to Harvey Barbee and said policy was in full force and effect at the time of the October 12, 2002 collision.

In addition to the uncontested facts stated above, as a result of trial the Court determines the following findings of fact and conclusions of law concerning Harvey Barbee: he incurred a total of

\$17,533.64 in medical expenses. Allstate Insurance Company proved its subrogation interest in the amount of \$10,385.00 concerning Harvey Barbee. Accordingly, he sustained \$7,148.64 in damages for past medical expenses.

Past and future pain and suffering resulted from the horrible collision of October 12, 2002. Dr. Huey testified Harvey Barbee suffered an extensive hematoma that started at the right side of his neck and it extended down into his chest wall. He also suffered a painful burn from his seat belt. Dr. Huey testified Harvey Barbee will have a scar from his seat belt for the rest of his life. Dr. Huey's testimony is credible and an award of damages in the amount of \$50,000.00 for past pain and suffering and \$25,000.00 for future pain and suffering is reasonable and necessary.

Accordingly, Harvey Barbee sustained damages in the amount of \$82,148.64 summarized as follows: past medical expenses in the amount of \$7,148.64; past pain and suffering in the amount of \$50,000.00; and future pain and suffering in the amount of \$25,000.00. The United States of America is liable for 30% of his damages. Accordingly, judgment will be entered in favor of plaintiff Harvey Barbee against defendant United States of America in the amount of \$24,644.59.

Plaintiff Matthew Barbee

\_\_\_\_\_The Court determines the uncontested facts concerning Matthew Barbee as follows: as a direct and proximate result of the October 12, 2002 collision Matthew Barbee sustained a right toe injury and ligament damage to the extensor tendon to his right big toe.

Matthew Barbee's first joint of his right big toe had also been disrupted and damaged. He needed to undergo surgery to repair those injuries.

As a result of the October 12, 2002 collision Matthew Barbee sustained bilateral knee injuries.

Matthew Barbee also sustained a right thumb injury and he sustained ligament damage to his right thumb. Both of these injuries required orthopedic treatment.

For a period of time Matthew Barbee could not straighten out or lift his big toe because of his ligament and tendon damage. Dr. Palekar performed surgery to correct this.

Matthew Barbee testified at his deposition that the injuries he suffered as a result of the October 12, 2002 collision do not create problems with his ordinary activities.

As a direct and proximate result of the October 12, 2002 collision Matthew Barbee suffered past physical and mental pain, suffering and disability.

Matthew Barbee's medical expenses are reasonable in amount and were necessary for the treatment of the injuries he suffered as a result of the October 12, 2002 collision.

Allstate Insurance Company issued a policy of insurance identified as policy number 092358136 to Matthew Barbee and said policy was in full force and effect at the time of the October 12, 2002 collision.

Matthew Barbee is 31 years old and has an average life expectancy of another 42.8 years.

In addition to the uncontested facts stated above, as a result of trial the Court determines the following findings of fact and conclusions of law concerning Matthew Barbee: he incurred a total of \$17,589.82 in medical expenses. Allstate Insurance Company proved its subrogation interest in the amount of \$6,064.25 concerning Matthew Barbee. United Healthcare of Ohio, Inc. waived any subrogation interest it may have had concerning Matthew Barbee. Accordingly, he sustained \$11,525.57 in damages for past medical expenses.

Past loss of earning capacity in the amount of \$9,120.00 has been stipulated to by defendant United States of America.

The Court finds the collision was a terrible event to endure and as a result thereof Matthew Barbee will have a permanent scar. Said plaintiff testified he still lifts weights, plays football, plays some softball and is not in much pain on a day to day basis.



His testimony was most credible. Accordingly, the Court finds an award in the amount of \$40,000.00 for past pain and suffering and \$10,000.00 for future pain and suffering is reasonable and appropriate.

Matthew Barbee also presented a claim for future medical expenses. The Court does not find a basis for such an award. Dr. Palekar testified that any surgery that Matthew Barbee may require may not be necessary for another 30-40 years. This does not satisfy the reasonable degree of medical certainty required to award damages for future medical expenses.

Accordingly, Matthew Barbee sustained damages in the amount of \$70,645.57 summarized as follows: past medical expenses in the amount of \$11,525.57; past loss of earning capacity in the amount of \$9,120.00; past pain and suffering in the amount of \$40,000.00; and future pain and suffering in the amount of \$10,000.00. The United States of America is liable for 30% of his damages. Accordingly, judgment will be entered in favor of plaintiff Matthew Barbee against defendant United States of America in the amount of \$21,193.67.

Plaintiff Thomas Barbee

\_\_\_\_\_The Court determines the uncontested facts concerning Thomas Barbee as follows: as a direct and proximate result of the October 12, 2002 collision Thomas Barbee suffered a left knee posterior

cruciate ligament tear, right finger fracture, sternal fracture and he currently suffers from knee problems.

Thomas Barbee suffered from a right middle finger mallot injury and he suffered radial digital nerve damage.

Thomas Barbee's sternal fracture was non-displaced. His treatment was limited to pain medication.

Dr. Serna did not impose any restrictions on Thomas Barbee when he discharged him from treatment on January 17, 2003.

Thomas Barbee suffered past physical and mental pain, suffering and disability.

Thomas Barbee's medical expenses are reasonable in amount and were necessary for his medical care and treatment of the injuries he sustained in the October 12, 2002 collision. However, Thomas Barbee does not know how much he paid out-of-pocket for his medical expenses.

Thomas Barbee's wage loss claim is reasonable in amount.

In addition to the uncontested facts stated above, as a result of trial the Court determines the following findings of fact and conclusions of law concerning Thomas Barbee: he incurred a total of \$16,079.30 in medical expenses. The Court finds intervener General Motors Corporation proved its interest in the amount of \$1,190.19 concerning expenses incurred on behalf of Thomas Barbee. Nationwide Insurance waived any subrogation interest it may have had concerning Thomas Barbee. Accordingly, he sustained \$14,889.11

in damages for past medical expenses. The parties stipulated to the amount of \$420.00 for loss of earnings.

Finally, in terms of pain and suffering again there is no question Thomas Barbee endured past pain and suffering as a result of the October 12, 2002 collision. It was an horrific event and he was injured. Accordingly, the Court finds an award for past pain and suffering in the amount of \$50,000.00 has been proven. However, no evidence exists to award damages for future pain and suffering. It is undisputed that Thomas Barbee currently suffers from knee problems. However, no evidence was presented to a reasonable degree of medical certainty that Thomas Barbee will continue to suffer from knee problems into the future. Dr. Serna testified concerning Thomas Barbee's knee problems as of January of 2004. Such testimony does not meet the burden required to award future pain and suffering damages.

Accordingly, Thomas Barbee sustained damages in the amount of \$65,309.11 summarized as follows: past medical expenses in the amount of \$14,889.11; past loss of earnings in the amount of \$420.00; past pain and suffering in the amount of \$50,000.00. The United States of America is liable for 30% of his damages. Accordingly, judgment will be entered in favor of plaintiff Thomas Barbee against defendant United States of America in the amount of \$19,592.73.

Plaintiff Darlene Barbee

The Court determines the uncontested facts concerning Darlene Barbee as follows: as a direct and proximate result of the October 12, 2002 collision Darlene Barbee suffered right knee pain and torn ligaments, a left ankle sprain and torn ligaments and scarring to her right knee. As a result of the October 12, 2002 collision Darlene Barbee sustained a torn medial meniscus of her right knee which included a sprain of ligaments in that knee. However, the amount of time it took for those injuries to heal is in dispute.

As a direct and proximate result of the October 12, 2002 collision Darlene Barbee also suffered torn lateral ligaments of her left ankle.

Both Darlene Barbee's ankle and knee injuries required physical therapy to address the injuries and damages sustained in her joints. The therapy was reasonable.

Repeat MRI scans of the right knee conducted in February of 2005 showed findings consistent with damage to the collateral ligament of the knee as was previously diagnosed.

Darlene Barbee has not been told by any doctor that she will need future medical treatment for the injuries she suffered in the October 12, 2002 collision. She also testified at her deposition that the injuries she suffered in the October 12, 2002 collision do

not prevent her from engaging in any activity she chooses to partake in currently.

The orthopedic treatment rendered to Darlene Barbee's right knee was reasonable and necessary.

As a result of the October 12, 2002 collision Darlene Barbee suffered past physical and mental pain, suffering and disability.

Darlene Barbee's medical expenses are reasonable in amount and were necessary to treat the injuries she suffered in the October 12, 2002 collision. However, Darlene Barbee does not know how much she paid out-of-pocket for her medical expenses.

Darlene Barbee is 54 years old and has an average life expectancy of another 24.2 years.

In addition to the uncontested facts stated above, as a result of trial the Court determines the following findings of fact and conclusions of law concerning Darlene Barbee: she incurred a total of \$11,053.65 in medical expenses. Kaiser Permanente proved its subrogation interest in the amount of \$5,965.16. Nationwide Insurance waived any subrogation interest it may have had concerning Darlene Barbee. Accordingly, she sustained \$5,088.49 in damages for past medical expenses.

There is no question Darlene Barbee endured pain and suffering as a result of the October 12, 2002 collision. It was a terrible collision and she was injured. Fortunately for the plaintiff, Dr. Palekar was able to discharge her from treatment in March of 2003

and did not impose any restrictions on her activities. However, it is undisputed that Darlene Barbee sustained scarring to her right knee as a result of the injuries she suffered in the collision. Accordingly, an award of damages in the amount of \$45,000.00 for past pain and suffering and \$5,000.00 for future pain and suffering is appropriate.

Accordingly, Darlene Barbee sustained damages in the amount of \$55,088.49 summarized as follows: past medical expenses in the amount of \$5,088.49; past pain and suffering in the amount of \$45,000.00; and future pain and suffering in the amount of \$5,000.00. The United States of America is liable for 30% of her damages. Accordingly, judgment will be entered in favor of plaintiff Darlene Barbee against defendant United States of America in the amount of \$16,526.55.

The Court further finds that defendant United States of America did not meet its burden to prove the affirmative defense that plaintiffs Edward Barbee, Gladys Barbee and Bernice Williams negligently contributed to their injuries by failing to wear their seat belts. The Court balances the evidence presented and determines there was not enough credible evidence to support such a defense. Accordingly, the judgment entered in favor of plaintiffs Edward Barbee, Gladys Barbee and Bernice Williams will not be reduced.

Intervener General Motors Corporation

Intervener General Motors Corporation sustained damages in the amount of \$34,323.12. Defendant United States of America is liable for 30% of the damages which amounts to \$10,296.94. Judgment will be entered in said amount. The evidence submitted without objection supports said award.

Anthem Blue Cross & Blue Shield

Anthem Blue Cross & Blue Shield waived any subrogation interest it may have had in this action by failing to respond to the complaint or otherwise participate in the prosecution of this action.

Medical Mutual

Medical Mutual waived any subrogation interest it may have had in this action by failing to respond to the complaint or otherwise participate in the prosecution of this action.

Cigna Healthcare

Cigna Healthcare waived any subrogation interest it may have had in this action by failing to respond to the complaint or otherwise participate in the prosecution of this action.

---

Kaiser Permanente

Subrogated insurer Kaiser Permanente sustained damages in the amount of \$5,965.16. Defendant United States of America is liable for 30% of the damages which amounts to \$1,789.55. Judgment will be entered in said amount. The evidence submitted without objection supports said award.

---

Nationwide Insurance

Nationwide Insurance waived any subrogation interest it may have had in this action by agreeing to be bound by the terms of the judgment entered in its favor against defendant United States of America in case number 04-C-729-S.

---

Unicare Life & Health Insurance Company

Unicare Life & Health Insurance Company waived any subrogation interest it may have had in this action.

---

United Healthcare of Ohio

United Healthcare of Ohio waived any subrogation interest it may have had in this action.



Allstate Insurance Company

Subrogated insurer Allstate Insurance Company sustained damages in the amount of \$41,454.73. Defendant United States of America is liable for 30% of the damages which amounts to \$12,436.42. Judgment will be entered in said amount. The Court finds the evidence submitted without objection supports said award.

No basis exists in this action to award \$200,000.00 to Allstate Insurance Company which it previously paid the sum of \$100,000.00 to plaintiff Bernice Williams and the sum of \$100,000.00 to plaintiff Gladys Barbee. Had Allstate acted pursuant to a mistake of fact the proper course of action is to pursue recovery in a separate action.

Estate of Danielle Skatrud and Wisconsin Mutual Insurance Company

The Estate of Danielle Skatrud deposited the policy limits of the Wisconsin Mutual Insurance Company policy in the amount of \$75,000.00 with the Clerk of Court. Pursuant to stipulation of the parties the \$75,000.00 was to be distributed among the various claimants. Accordingly, it is distributed on a pro-rated basis as follows:

Plaintiff Bernice Williams: \$29,915.31

Plaintiff Gladys Barbee: \$18,032.12

Plaintiff Edward Barbee: \$3,762.64

Plaintiff Margaret Barbee: \$2,006.25

Plaintiff Harvey Barbee: \$3,670.02  
Plaintiff Matthew Barbee: \$3,156.12  
Plaintiff Thomas Barbee: \$2,917.71  
Plaintiff Darlene Barbee: \$2,461.10  
Intervener General Motors Corporation: \$1,553.40  
Subrogated Insurer Kaiser Permanente: \$246.48  
Subrogated Insurer Allstate Insurance Company: \$1,852.00  
Plaintiff Faith Donley from case number 04-C-729-S: \$3,974.57  
Plaintiff Nationwide Mutual Fire Company  
from case number 04-C-729-S: \$1,452.28

ORDER

IT IS ORDERED that judgment be entered in favor of plaintiff Bernice Williams against defendant United States of America in the amount of \$200,884.69 with costs.

IT IS FURTHER ORDERED that judgment be entered in favor of plaintiff Gladys Barbee against defendant United States of America in the amount of \$121,087.71 with costs.

IT IS FURTHER ORDERED that judgment be entered in favor of plaintiff Edward Barbee against defendant United States of America in the amount of \$25,266.52 with costs.

IT IS FURTHER ORDERED that judgment be entered in favor of plaintiff Margaret Barbee against defendant United States of America in the amount of \$13,472.18 with costs.

IT IS FURTHER ORDERED that judgment be entered in favor of plaintiff Harvey Barbee against defendant United States of America in the amount of \$24,644.59 with costs.

IT IS FURTHER ORDERED that judgment be entered in favor of plaintiff Matthew Barbee against defendant United States of America in the amount of \$21,193.67 with costs.

IT IS FURTHER ORDERED that judgment be entered in favor of plaintiff Thomas Barbee against defendant United States of America in the amount of \$19,592.73 with costs.

IT IS FURTHER ORDERED that judgment be entered in favor of plaintiff Darlene Barbee against defendant United States of America in the amount of \$16,526.55 with costs.

IT IS FURTHER ORDERED that judgment be entered in favor of intervener General Motors Corporation against defendant United States of America in the amount \$10,296.94 of with costs.

IT IS FURTHER ORDERED that judgment be entered in favor of subrogated insurer Kaiser Permanente against defendant United States of America in the amount of \$1,789.55 with costs.

IT IS FURTHER ORDERED that judgment be entered in favor of subrogated insurer Allstate Insurance Company against defendant United States of America in the amount of \$12,436.42 with costs.

IT IS FURTHER ORDERED that judgment be entered in favor of defendant United States of America against subrogated insurer Anthem Blue Cross & Blue Shield dismissing its complaint and all claims contained therein with prejudice.

IT IS FURTHER ORDERED that judgment be entered in favor of defendant United States of America against subrogated insurer

Medical Mutual dismissing its complaint and all claims contained therein with prejudice.

IT IS FURTHER ORDERED that judgment be entered in favor of defendant United States of America against subrogated insurer Cigna Healthcare dismissing its complaint and all claims contained therein with prejudice.

IT IS FURTHER ORDERED that judgment be entered in favor of defendant United States of America against subrogated insurer Nationwide Insurance dismissing its complaint in case number 05-C-249-S and all claims contained therein with prejudice.

IT IS FURTHER ORDERED that the Clerk of Court for the United States District Court for the Western District of Wisconsin shall distribute no sooner than December 20, 2005 the sum of \$29,915.31 to plaintiff Bernice Williams; \$18,032.12 to plaintiff Gladys Barbee; \$3,762.64 to plaintiff Edward Barbee; \$2,006.25 to plaintiff Margaret Barbee; \$3,670.02 to plaintiff Harvey Barbee; \$3,156.12 to plaintiff Matthew Barbee; \$2,917.71 to plaintiff Thomas Barbee; \$2,461.10 to plaintiff Darlene Barbee; \$1,553.40 to intervener General Motors Corporation; \$246.48 to subrogated insurer Kaiser Permanente; and \$1,852.00 to subrogated insurer Allstate Insurance Company.

IT IS FURTHER ORDERED that the Clerk of Court for the United States District Court for the Western District of Wisconsin shall distribute no sooner than December 20, 2005 the sum of \$3,974.57 to

Faith Donley and \$1,452.28 to Nationwide Mutual Fire Company for judgments entered in their favor in case number 04-C-729-S.

Entered this 7<sup>th</sup> day of December, 2005

BY THE COURT:

S/

---

JOHN C. SHABAZ  
District Judge