

2008 WL 697642 (Ind.Super.)

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WEST'S JURY VERDICTS - INDIANA REPORTS

Failure to Yield Right-of-Way Costs Defendant Nearly \$4K

Superior Court of Indiana, Marion County.

**Rodriguez v. White**

**Type of Case:**

Vehicle Negligence • Motor Vehicle v. Motor Vehicle  
Vehicle Negligence • Intersection  
Vehicle Negligence • Right-of-Way  
Vehicle Negligence • Parked/Stalled/Stopped Vehicle  
Personal Property • Damage Personal Property  
**Insurance** • Automobile Policy  
**Insurance** • Uninsured/Underinsured Motorist

**Specific Liability:** Motorist collided with a vehicle stopped for traffic, causing injuries; **insurance** carrier failed to pay benefits according to the injured's UIM policy

**General Injury:** Injuries to neck, right upper extremity and right lower extremity; property damage

**Jurisdiction:**

State: Indiana  
County: Marion

**Related Court Documents:**

Plaintiffs' first amended complaint: [2003 WL 25699613](#)  
Defendant Allstate's answer: [2003 WL 25699612](#)  
Plaintiffs' expert witness deposition of David A. Josephson, [MD: 2007 WL 4959494](#)  
Verdict form: [2008 WL 344885](#)  
Judgment order: [2008 WL 347710](#)

**Case Name:** Isaias Rodriguez and Jennifer Rodriguez v. Debbie White and Allstate **Insurance** Co.

**Docket/File Number:** 49D03-0001-CT-0068

**Verdict:** Plaintiff Isaias Rodriguez, \$3,774.27

**Verdict Range:** \$1 - 49,999

**Verdict Date:** Jan. 4, 2008

**Judge:** [Patrick L. McCarty](#)

**Attorneys:**

Plaintiffs: [Cheryl A. Planck](#), The Law Offices of Cheryl A. Planck, Indianapolis, Ind.  
Defendant (White): *Pro se*; [Robert R. Foos Jr.](#), Indianapolis, Ind.  
Defendant (Allstate): Katie A. Reagan, Allstate **Insurance** Company, Indianapolis, Ind.

**Trial Type:** Jury

**Experts:**

Plaintiffs: [David A. Josephson, MD](#), neurologist, Josephson Wallack Munshower Neurology, Indianapolis,

Ind.; [Kristi K. George, MD](#), neurologist, Josephson Wallack Munshower Neurology, Indianapolis, Ind.  
Defendants: None mentioned

**Breakdown of Award:**

\$3,774.27 to Isaias Rodriguez for damages

**Summary of Facts:**

Isaias Rodriguez was stopped for traffic on Tibbs near its intersection with 200 in Marion County, Ind., Jan. 24, 1998. According to Rodriguez, a vehicle driven by Debbie White, also traveling on Tibbs, failed to stop for traffic and collided with his vehicle. Rodriguez said he sustained injuries to his neck, right upper extremity and right lower extremity in the accident, as well as aggravation of a pre-existing condition and property damage.

Rodriguez and his wife, Jennifer Rodriguez, said White's **insurance** carrier, Gallant **Insurance**, was granted bankruptcy protection, so White was considered an uninsured motorist. They allegedly filed a claim for UIM benefits through their **insurance** carrier, Allstate **Insurance** Company, which reportedly refused to pay benefits.

Isaias and Jennifer Rodriguez filed an amended complaint against White and Allstate in the Superior Court for Marion County in October 2003. They claimed White drove negligently by failing to maintain a proper lookout and keep her vehicle under control. The plaintiffs claimed White's alleged negligence proximately caused Isaias' injuries, and they sought damages for medical expenses, pain and suffering, property damage and personal injury. They each also sought \$50,000 from Allstate, pursuant to their policy. Jennifer also filed a claim for loss of services, society and companionship.

White denied the allegations, arguing Isaias was more than 50 percent at fault for the accident through his alleged negligence, incurred risk, assumed risk, failure to avoid injury and/or failure to mitigate his damages, barring or reducing any recovery. Also, the defendant claimed she was faced with a sudden emergency not of her own making, and she acted reasonably under the circumstances.

Allstate also denied the allegations, asserting the plaintiffs' injuries were the proximate result of their own alleged negligence, barring or reducing recovery. In the event the plaintiffs were granted judgment in their favor, Allstate maintained it was entitled to a set-off in the amount of any payment made to or on behalf of the plaintiffs regarding the damages. Further, it claimed the first time it became aware of the plaintiffs' request for UIM payment was when it was notified of the lawsuit, and the plaintiffs' recovery was strictly limited to the terms of the policy contract.

By the time the matter proceeded to trial in January 2008, Isaias Rodriguez was the only remaining plaintiff listed. According to the verdict form dated Jan. 4, 2008, a Marion County Superior Court jury found in favor of the plaintiff against White in the amount of \$3,774.27. Judge Patrick L. McCarty entered judgment in favor of Isaias Rodriguez against both defendants in the amount of \$3,774.27 in a judgment dated Jan. 7, 2008.

Court: Superior Court of Indiana, Marion County.

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