

# MISSOURI LAWYERS WEEKLY

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## VERDICTS & SETTLEMENTS

# 18-Year-Old Hit In Head With Rock

## Homeowner's Carrier Refused Coverage



Brian McChesney      Craig Ortwerth

### \$400,000 Settlement

An 18-year-old woman who was hit in the head with a rock at a party filed a garnishment action against Safeco Insurance after it refused to cover her injuries under a homeowner's policy.

On Oct. 17, 1998 Jamie Thomas was walking with friends on a private street in Jefferson County when she was hit in the head with a rock. The rock fractured her skull.

Thomas said the rock was thrown by Jerami Westenberger; she claimed that Westenberger was living with his parents, Diana Harris and William Harris, at the time.

Thomas sued Westenberger for her injuries. A \$450,000 default judgment was entered against Westenberger after he failed to appear for trial.

The Harris home was insured by Safeco. It refused to cover the judgment on the grounds that Westenberger was not a "resident" of the home at the time of the accident.

Westenberger had lived with his parents at the home from 1985 until

1996, when he moved in with his grandmother down the street. In the summer of 1998, he moved into a mobile home with two friends. At the same time he had keys to the Harris residence and had permission to come and go as he pleased, but had no personal property stored in the Harris home.

Thomas claimed that Westenberger moved back in with his parents because he was having trouble paying bills.

Diana Harris and Westenberger testified that he did not reside in the Harris home on the day of Thomas' injury, and that he did not move back in until Oct. 23. Thomas claimed that 18 days after the incident, Harris told Thomas' private investigator over the telephone that Westenberger was living with her at the time of the incident. Harris argued that the investigator's question was compound and

confusing, and testified that she had no intention of making an admission that he resided in her household on Oct. 17.

Westenberger used records from the electric company to show that he was still living in the mobile home at the time of the incident. He said he spent at least one night in the mobile home after the electricity was turned off — and AmerenUE records showed that the electricity was disconnected on Oct. 19.

After a bench trial the district court entered judgment for Thomas, ordering Safeco to satisfy the \$450,000 default judgment to the extent of its \$300,000 policy limits. It also ordered the parties to submit briefs on pre-judgment and postjudgment interest, costs and attorneys' fees.

The parties settled for \$400,000 while post-trial motions were pending.

### Facts of the case

**Type of Action:** Negligence, insurance, declaratory judgment

**Type of Injuries:** Skull fracture

**Court/Case Number/Date:** U.S. District Court, E.D.Mo./4:02CV1166/November 2003

**Caption:** Thomas v. Safeco Insurance Company

**Judge, Jury or ADR:** Judge

**Name of Judge:** Jean Hamilton

**Verdict or Settlement:** \$400,000

settlement

**Special Damages:** None

**Allocation of Fault:** N/A

**Last Demand:** N/A

**Last Offer:** N/A

**Attorney for Plaintiff:** Brian S. McChesney and Craig M. Ortwerth, St. Louis

**Insurer:** Safeco Insurance Company

**Plaintiff's Experts:** None

**Defendant's Experts:** None