

MINNESOTA LAWYER  
VERDICTS & SETTLEMENTS

**Type of Action:** Underinsured

**Special Damages:** Charline Macomber past wage loss \$2,500  
Charline Macomber past medical expense \$32,500  
Michael Macomber past wage loss \$3,525  
Michael Macomber past medical expense \$11,000

**Injuries Alleged:** Michael Macomber sustained soft tissue injuries including a herniated disc at the L2-3 level.  
Charline Macomber sustained soft tissue injuries including a herniated disc at the L4-5 level and a second herniated disc at the C5-6 level.

**Plaintiffs' Attorney:** Robert D. Boedigheimer  
McCloud & Boedigheimer, P. A.  
5001 American Blvd. West, Suite 201  
Bloomington, MN 55437

**Court:** Hennepin County District Court

**Defense Attorney:** Steven Viltoft  
La Bore, Guiliani, Cosgriff & Viltoft, LTD  
10285 Yellow Circle Dr.  
Hopkins, MN 55343

**Case Number:** PI-04-012366

**Insurance Carrier:** State Farm Insurance Companies

**Judge:** The Honorable George F. McGunnigle

**Plaintiffs' Expert:** Dr. Robert Heeter

**Date of Disposition:** May 1, 2006:

**Defense Experts:** Dr. Gary Wyard and Dr. John Sherman

**Jury or Bench:** Jury Trial

**Demand:** Total Demand of \$160,000.00 was made at mediation.

**Amount:** Total Verdict of \$338,225.00 which was allocated as follows:

	<u>Charline Macomber</u>	<u>Michael Macomber</u>
Past Medical Expense	\$ 32,500.00	\$ 11,000.00
Past Wage Loss	\$ 2,500.00	\$ 3,525.00
Past Pain and Suffering	\$ 43,000.00	\$ 37,000.00
Future Medical Expense	\$ 7,500.00	\$ 7,500.00
Future Pain and Suffering	\$128,000.00	\$ 65,700.00

**Highest Offer:** Offer for Judgment tendered in the total amount of \$17,500.00, which represented \$12,500.00 for Charline Macomber and \$5,000.00 for Michael Macomber.

**Summary of Case/Sidelights:** Michael and Charline Macomber, both age 59, were injured when they were hit head-on by a drunk driver on January 14, 2003. Liability claims were settled against the tortfeasor's insurer in the amount of \$27,000 for Charline and \$17,000 for Michael on a \$30,000.00 per person policy. Thereafter, they commenced underinsured motorist claims against their carrier, State Farm Mutual Automobile Insurance Company. Michael Macomber was employed as an engine machinist with Gopher Engine Rebuild, Inc. and Charline Macomber was employed in data entry with United HealthCare. Charline and Michael Macomber were disabled from working for 5 weeks each from their respective employers.

Charline suffered from a multitude of medical conditions of which the defense made significant issue at trial. Defendant's expert, Dr. Gary Wyard, testified that Charline Macomber suffered from pre-existing cervical stenosis, pre-existing low back pain with a history of prior laminectomy, rheumatoid arthritis, morbid obesity, hypertension, diabetes, chronic prednisone use, coronary artery disease, bilateral carpal tunnel surgery, tenosynovitis and chronic smoking. Dr. Wyard testified that the only injuries Charline Macomber sustained in the collision of January 14, 2003 were a chest wall contusion, abdominal wall contusion, and cervical strain. He further testified that all of these injuries were superimposed on pre-existing conditions of arthritis and low back injuries including her prior laminectomy from 1976. Dr. Wyard further testified that she did not sustain a permanent injury as a result of the accident on January 14, 2003. He further stated that she was able to return to all pre-loss activity levels including her occupation with United HealthCare. Finally, he testified that she would not need any ongoing care or treatment as a result of the injuries sustained in the accident on January 14, 2003.

Likewise, Dr. John E. Sherman testified that Michael Macomber exacerbated an underlying degenerative disc disease of the lumbar spine for which he had sought prior treatment. Dr. Sherman further testified that Michael did not sustain a permanent injury and that he was not in need of any further medical treatment or care. Finally, Dr. Sherman testified that Michael was able to return to his occupation with Gopher Engine Rebuild, Inc. without restrictions.

Dr. Robert E. Heeter testified as the treating orthopedic surgeon for both Charline and Michael Macomber. Dr. Heeter testified that Charline Macomber sustained a disc herniation at the L4-5 and C5-6 levels of her spine as a direct result of the collision of January 14, 2003. He further testified that her injuries were permanent and that she would require future medical care including a lumbar surgery. Dr. Heeter testified that Michael Macomber also sustained a disc herniation at the L2-3 level of his spine and that the disc herniation was a permanent injury that will require future medical care.

Subsequent to the collision, Charline Macomber was diagnosed with coronary artery disease resulting in two separate by-pass and stent placement surgeries. She also underwent bilateral carpal tunnel surgeries. In February 2005 the Social Security Administration determined that Charline Macomber was disabled due to physical impairment resulting from disorders of the back including discogenic and degenerative changes. Accordingly, Plaintiffs' retained Dr. E.A.W. Gunderson, a forensic economist, who calculated the economic loss resulting from the accident of January 14, 2003. Dr. Gunderson prepared a report setting forth her opinions as to the value of earnings and household services lost due to Charline Macomber's disability. Defendant moved in limine to prohibit the introduction of Dr. Gunderson's testimony, any reference to her disability, and/or any reference to the Social Security Administration's determination of SSDI benefit qualification. Plaintiffs argued that Rule 803 (a) allows admissibility of a report prepared by an agency of the United States government and offered a report of confidential social security benefit information signed and certified by the manager for the local office of the Social Security Administration setting forth their determination of Charline Macomber's disability. Defendant also moved in limine to prohibit the introduction of any evidence that the tortfeasor was intoxicated at the time of the collision. Plaintiffs argued that the information was relevant and necessary as to the issue of Plaintiff's emotional damages and was being offered for that purpose only.

The Court ruled for the Defendant on both issues and Plaintiffs were prohibited from introducing any evidence as to her disability, lost earnings, lost value of household services, and/or emotional anguish from being struck by a drunk driver. Despite this setback, the jury found that both Charline and Michael sustained permanent injuries and awarded the combined damages in the amount of \$338,225.00, the bulk of which was for past and future pain and suffering.

**Deductions:** PIP deductions stipulated to in the amount of \$12,905.52 for Michael Macomber and \$22,573.12 for Charline Macomber. The verdict was further reduced in the amount of \$27,000.00 for Charline Macomber and \$17,000.00 for Michael Macomber for previous settlement proceeds. Taxable costs, disbursements and interest were agreed upon and the case quickly resolved by payment from State Farm Mutual Automobile Insurance Company in the amount of \$277, 702.95.

Submitted by Robert D. Boedigheimer, Attorney at Law, McCloud & Boedigheimer,  
P.A. (952)820-8382 FAX (952)820-0486