

Jury awards \$674,071 to man who lost eye to BB

By JAMES EWINGER
PLAIN DEALER REPORTER

AKRON

A Uniontown man who lost his eye to a BB gun shot in 1987 collected a \$674,071 verdict in Summit County Common Pleas Court yesterday.

The case is noteworthy because it made law when the Ohio Supreme Court affirmed a trial judge's decision that the defendant's homeowners insurance could cover any damages.

The insurance companies appealed Sum-

mit County Common Pleas Judge Glen Morgan's initial decision, claiming that homeowners insurance policies excluded intentional injury, and covered only negligence.

Morgan ruled in 1989 that the important factor was whether the result was intended, not the act itself.

The insurance companies prevailed with the Ohio Court of Appeals (6th District), but the Ohio Supreme Court reversed the appellate court and upheld Morgan last year, clearing the way for the trial that began Monday.

The Supreme Court clarified an ambiguity in Ohio law about whether it was the act or the intent that was binding on the insurance companies.

The case that went to trial Monday was filed by Gary Baker on behalf of his son, Todd, who lost an eye to a BB in 1987, when he was 14.

According to court records, William Swanson, who was 16, shot at a group of people that included young Baker. One shot hit nothing. One hit a girl in the leg, and one hit Baker in the eye.

Before trial, Swanson admitted his own negligence, so the jury had only to determine if Swanson's parents were negligent for allowing their son to have access to the gun, if that was a direct cause of Baker's injuries, and how much to award.

Akron lawyer Timothy Scanlon, representing the Bakers, had sought a total of \$950,000 from the Swansons' insurance policies. The jury awarded \$680,000 to Todd Baker. William Swanson admitted responsibility and did not contest a claim by Baker's parents for \$14,071 in medical expenses.

"It was a fair verdict," Scanlon said. "I think it places responsibility where it ought to be. Parents leaving loaded guns around just leads to trouble."

William P. Orth, who represented the Swansons during the trial, said he would have to consult with his clients about whether to appeal the verdict.

"I would say that the Swansons are satisfied with the verdict because it is well within their insurance coverage," said Orth.

Scanlon said the Swansons' insurance coverage was for \$1.5 million.