The Indiana Jury Verdict Reporter

The Most Current and Complete Summary of Indiana Jury Verdicts

January, 2010 **Statewide Jury Verdict Coverage** **11 IJVR 1**

Unbiased and Independently Researched Jury Verdict Results

In This Issue

Civil Jury Verdicts

Timely coverage of civil jury verdicts in Indiana including court, division, presiding judge, parties, cause number, attorneys and results.

Truck Negligence - A woman suffered a traumatic brain injury when her car was crushed by a tractor-trailer that had encroached on her lane on the interstate

Spoa-Harty v. Hummer Transportation, Inc., et al., 64D02-0606-CT-4748
Plaintiff: Kenneth J. Allen, *Kenneth J. Allen & Associates*, Valparaiso
Defense: Michael E. Simmons and Laura E. Gorman, *Hume Smith Geddes Green & Simmons, LLP.*, Indianapolis
Verdict: $5,220,000 for plaintiffs (allocated $4,270,000 to Kimberly and $950,000 to Jesse)
County: **Porter**, Superior
Court: J. Alexa, 11-18-09

On 2-17-04, Kimberly Spoa-Harty, then age 30 and a computer network specialist for Alverno Information Services, was driving her Chrysler Sebring on her way to work. Her route took her west on I-94 in Portage.

At the same time, 37 year-old Inderjeet Sekhon was driving a tractor-trailer owned by his employer, a

Canadian company called Hummer Transportation. Sekhon was hauling a load from Ontario to his destination in Romeoville, IL.

As Sekhon proceeded westward in the left lane of I-94, he overtook Spoa-Harty who was in the right lane. At a point near Mile Marker 16.8, Sekhon cut into Spoa-Harty's lane. In doing so, however, he struck Spoa-Harty's car.

The impact caused Spoa-Harty's car first to spin into the guardrail. Her car then bounced back into the travel lanes where it was crushed beneath Sekhon's trailer.

Remarkably, Spoa-Harty survived the crash. However, she did suffer a mild traumatic brain injury, as well as soft-tissue injuries to her right shoulder. She underwent an arthroscopic surgery for her shoulder injury, and she was off work for slightly over a year. Her medical expenses came to more than $123,000.

Spoa-Harty filed suit against Hummer Transportation and blamed it for Sekhon's actions in causing the crash. Spoa-Harty's husband, Jesse Harty, also presented a derivative claim for his loss of consortium. In addition to her other damages, Spoa-Harty claimed lost wages of $55,927.

Plaintiffs' identified experts included two neuropsychologists. They were Dr. Mary Zemansky of Chesterton and Dr. Steven Rothke of Northbrook, IL. Plaintiffs' other experts were Dr. Rupesh Shah, Internal Medicine, Merrillville; and David Gibson, Vocational Economics, Chicago, IL.

Gibson calculated the impairment of Spoa-Harty's future earning capacity at $1,107,427. That calculation was based in part on the fact that Spoa-Harty's employer, Alverno Information Services, is owned by the Franciscan Sisters and operates on a company philosophy of compassion and caring.

Due to that philosophy, Alverno has made extensive accommodations for Spoa-Harty's post-crash condition. Among other things, the company has allowed her to work from home as needed. Gibson reasoned that if Spoa-Harty should lose her job, it would be unlikely she could find another employer that would accommodate her in the same way.

Liability in this case was established by default. Hummer Transportation thus defended solely on the issue of damages. According to defendant, Spoa-Harty suffered no more than a mere bump on the head and other minor, temporary injuries that have since resolved.

Defendant also noted that Spoa-Harty's medical bills have all been paid, she has returned to work in the same job, and in fact has been promoted. Defendant's identified experts included Dr. Jonathan Javors, Orthopedics, Munster; Dr. George Launey, Economics, Lakeway, TX; Dr. Joseph Fink, Neuropsychology, Chicago, IL; and Thomas Roundtree, Vocational Rehabilitation, Chicago, IL.

The case was tried for eight days in Valparaiso. The jury deliberated approximately three hours before returning a verdict for plaintiffs. Spoa-Harty was awarded damages of $4,270,000, while Jesse was awarded $950,000 for his consortium interest. That brought the combined total to $5,220,000. The court entered a judgment that reflected the verdict.

Auto Negligence - A police officer ran a stop sign and collided with a motorist

Torres v. Harley, 45D05-0606-CT-126
Plaintiff: Kevin W. Marshall, *Law Office of Smith & Marshall*, Hammond
Defense: Jerome M. Taylor, *Gary City Attorney*, Gary
Verdict: $84,000 for plaintiff
County: **Lake**, Superior
Court: J. Davis, 6-17-09

During the morning rush hour on 11-9-05, Saturino Torres was driving east on Seventh Avenue in Gary. At the same time, Sinclair Harley, IV, age 32 and an employee of the City of Gary Police Department, was traveling north on Fillmore Street in a 2003 Ford Bronco Explorer owned by the police department.

The intersection of Seventh Avenue and Fillmore Street was marked by a stop sign on Fillmore Street. Seventh Avenue, in contrast, was a through street. Thus it was with a clear conscience that Torres continued without stopping along Seventh Avenue.

Harley, however, also continued without stopping at the stop sign controlling the intersection. An instant later, Harley drove directly into the side of Torres's car. The impact caused Torres's car to flip over onto its top before coming to a stop.

Torres was injured in the collision. A few weeks after the accident, he visited a doctor and complained of stiffness in his neck, his shoulders, and the back of his head. He was also suffering pain in his lower back that radiated down both of his legs. His incurred medical expenses came to approximately $28,000.

Torres filed suit against Harley and blamed him for running the stop sign and thereby causing the crash. Torres also named the Harley's employer, the City of Gary, as a co-defendant on a theory of vicarious liability.

Harley and the City defended the case and disputed, extent, and causation of Torres's claimed injuries. In addition, defendants suggested that Torres had been at fault for speeding on a residential street.

A Hammond jury heard the evidence over three days and returned a verdict for Torres in the amount of $84,000. The court entered a consistent judgment. The judgment was not promptly satisfied, however.

First, defendants' attorney objected to the verdict. He pointed out that in closing arguments Torres's counsel had mentioned his twenty years of experience as an attorney and also said that Torres should get treble damages. Defense counsel could not imagine how the jury had come up with a verdict of $84,000 if the jurors had not tripled the $28,000 of Torres's medical expenses.

The court was unconvinced with this argument and denied the defense motion for a new trial or *remittitur*. Once again, however, Torres had difficulty collecting on the judgment. A month and a half after the jury's verdict, Torres filed a motion to garnish Harley's earnings. The court granted the motion and issued a garnishment order.

Gender Discrimination - A female employee at a health club alleged she was denied a position as a personal trainer because of her gender

Cooper v. International Sports Clubs, 4:08-70
Plaintiff: Andrew G. Jones, *Gibbons Jones*, Indianapolis
Defense: David A. Rosenthal, Lafayette
Verdict: $1,400 for plaintiff
Federal: **Lafayette**
Court: J. Rodovich, 12-8-09

Stephanie Cooper was hired in November of 2006 as a manager-in-training by the International Sports Club (ISC) – it is a health club. In February of 2007 two personal trainer positions opened up at ISC. Two male personal trainers had resigned.

Cooper sought to fill the personal trainer position. She was not hired – as importantly, she recalled being told she was not selected because she was a girl. This litigation followed, Cooper alleging the non-selection represented unlawful gender discrimination. If prevailing against ISC, she sought an award of compensatory and punitive damages.

ISC defended and denied any discrimination. It explained that Cooper was not selected because she had not been certified as a personal trainer. That there was no discriminatory animus, ISC further developed that it had several female personal trainers and in terms of its business decisions, it made no sense to not do so.

The jury found for Cooper that her sex was a motivating factor in the decision not to promote her to the position of personal trainer. Then to damages, she was awarded $1,400. The jury further rejected that the defendant had acted with reckless indifference – having so found, there were no punitive damages. A consistent judgment was entered and the plaintiff has since sought an award of attorney fees.

Excavation Negligence - A seven year-old boy's eye popped out of its socket when he was hit in the side of the head by a metal object thrown by his brother; the boy and his mother blamed the incident on a construction company for allegedly unearthing the metal object during the installation of a septic tank in their backyard

Pendle v. Fix-It Construction, et al., 87C01-0109-CP-500
Plaintiff: J. Zach Winsett, *Scales & Winsett, LLP.*, Boonville
Defense: Patricia K. Woodring, *Terrell Baugh Salmon & Born, LLP.*, Evansville, for Fix-It Construction
Verdict: Defense verdict on liability
County: **Warrick**, Circuit
Court: J. Meier (Special Judge), 7-15-09

In September of 1999, Lori Pendle was having some renovation work done on her home located at 8655 Outer Lincoln Avenue in Newburgh. The work was being done under a Housing Rehabilitation Program contract, and it included the installation of a new septic system.

One of the principal contractors on the project was Fix-It Construction. Three of Fix-It's subcontractors were Foresight Construction, Doug Shoulders, and Andy Shoulders. It was the job of Andy Shoulders to install the septic system. In order to do that, Andy had to excavate a large hole in the backyard of Pendle's home.

On 9-24-99, Pendle was standing near the hole in her backyard and talking with a friend named Stacy. Also in the backyard at that time were Pendle's two young sons, Montana and Dakota. Montana was seven years old, and there was a two-year age difference between him and Dakota. However, the record is unclear as to which boy was older.

While Pendle talked with her friend, the two boys played in the yard behind the pile of dirt that had been created by the excavation. At some point, Dakota found a heavy metal pin approximately eight to ten inches long lying on the ground and caked in dirt.

Dakota picked up the metal pin to throw it at the pile of dirt. Just as he did so, however, Montana ran passed him directly in the line of fire. The metal pin hit Montana hard on the left side of his face. The impact knocked him unconscious to the ground and also caused his left eye to pop out of its socket. In the process, his retina was also torn.

Montana was rushed to the hospital and admitted the Pediatric Intensive Care Unit. He underwent nine surgeries in an effort to repair the damage. Although the medical team was able to save Montana's eye, he still suffers from blurry vision. Montana's medical expenses totaled $22,679.

Pendle filed suit, both on her own behalf and on behalf of Montana, against Fix-It Construction, Foresight Construction, Dough Shoulders, and Andy Shoulders. However, the court later granted summary judgments in favor of Foresight Construction and Doug Shoulders.

The litigation thus proceeded solely against Fix-It Construction and Andy Shoulders. According to plaintiffs, Shoulders's actions in excavating the area for the installation of the septic system caused various foreign materials, including the metal pin, to be exposed to the surface. That, claimed plaintiffs, was what had made the tragedy possible.

Shoulders seems to have been *pro se* throughout the case, and it is not clear whether or not he actively participated in the litigation. In any event, Fix-It Construction defended the case and blamed the incident on non-party Dakota for having thrown the metal pin in the first place.

Fix-It Construction also denied the metal pin had been unearthed by Shoulders at all. On that point, defendant noted that the pin had been found in a remote section of the yard that was far away from the excavation site.

The case was tried for two days in Boonville. The jury returned a verdict for Shoulders and Fix-It Construction. That information had to be gleaned from other sources because the verdict form was not made a part of the record. Nevertheless, the court entered a defense judgment.

Auto Negligence - Plaintiff was awarded slightly over one and a half times her incurred medical expenses for soft-tissue injuries she sustained in a rear-end crash

Olds v. Smothers, 49D01-0805-CT-20146
Plaintiff: Betsy K. Greene, *Greene & Schultz*, Bloomington
Defense: Edward Squier Neal, *GEICO Litigation Counsel*, Indianapolis
Verdict: $12,000 for plaintiff
County: **Marion**, Superior
Court: J. Shaheed, 9-29-09

On 6-6-06, Meghan Olds, then age 22 and an employee of the Dubois County Department of Child Protective Services, was driving on U.S. 31 in Marion County. Behind her was a vehicle being driven by Kristy Smothers. An instant later, Smothers rear-ended Olds.

As a result of the crash, Olds suffered soft-tissue injuries to her neck and left shoulder. Her incurred medical expenses came to $8,111. She filed suit against Smothers and blamed her for causing the crash.

Smothers defended the case and disputed the nature, extent, and causation of Olds's claimed injuries. In addition, she pled a sudden emergency defense, and she accused Olds of failing to mitigate her damages.

The case was tried in Indianapolis for one day. The jury returned a verdict for Olds and awarded her damages of $12,000. The court entered a judgment for that amount.

Excessive Force - A man who was arrested for public intoxication and resisting law enforcement claimed the police fell upon him and beat him for no reason

Turner v. Taylor, et al., 02D01-0609-CT-384
Plaintiff: Ilene Smith, *Christopher C. Myers & Associates*, Fort Wayne
Defense: Robert T. Keen, Jr. and Kelly J. Pautler, *Carson Boxberger LLP*., Fort Wayne
Verdict: Defense verdict on liability
County: **Allen**, Superior
Court: J. Heath, 8-20-08

In the evening of 9-1-05, two members of the Fort Wayne Police Department, Officers Clayton Taylor and Will Smith, arrested Reginald Turner at a Speedway gas station in Fort Wayne. That would turn out to be nearly the only fact in the case that was not in dispute.

According to Turner, on that day he left his apartment on his bicycle to visit his brother, Maurice, who had just been released from a correctional re-entry program. Turner planned to pick up his disability check and get some alcohol so he and his brother could get drunk together.

As he passed the Boys and Girls Club on Fairfield, however, Turner noticed a parked police squad car. Much to his surprise, he saw his brother sitting in the back of the squad car.

Turner stopped and approached the two officers, Taylor and Smith, standing by the car. Although he did not know their names, he later described them both as being short and white. Turner asked Taylor and Smith why his brother was being arrested. They told him to go about his business.

Turner then continued toward his brother's house, where he planned to inquire into why Maurice had been arrested. Unfortunately, the chain on Turner's bicycle came loose on the way. He pulled into a Speedway gas station to repair it. While he was there, Taylor and Smith, each in a separate car, pulled into the gas station, approached Turner, and told him to put his hands behind his back.

When Turner asked why they were harassing him, the two officers grabbed Turner, threw him face down on the ground, and beat him up. In the process, they broke his right toe and caused injuries to his left shoulder and the left side of his neck.

After the officers beat Turner, they handcuffed him, threw his bicycle in a dumpster, and took him to the Allen County Lockup, where he was charged with public intoxication and resisting law enforcement. He pled guilty to the first charge, and the second charge was dismissed as part of his plea bargain.

Officers Taylor and Smith had a markedly different version of events. According to them, they first encountered Turner when he saw Maurice sitting in their car. Turner rode up to them and started to yell at them with slurred speech. He was also riding his bicycle in the middle of the street and thereby impeding traffic. At one point he allegedly shouted, "Fuck you!"

The two police officers pursued Turner, who refused to stop riding. They eventually caught up to him at the Speedway gas station. Turner got off his bicycle and shoved it at Taylor to keep him away. After the two officers managed to subdue and arrest Turner, his blood alcohol level turned out to be 0.16%.

In addition to Turner's version of events and the version of the two police officers, Augusta Alford, a Speedway gas station employee, provided her own account of Turner's arrest. According to Alford, the officers had used more violence than seemed necessary to take Turner down. They also repeatedly hit and kneed Turner. From the bathroom where she had gone to take refuge, Alford heard Turner say "Get off me!" and "Why are y'all messing with me?"

Turner filed suit against Taylor and Smith pursuant to 42 U.S.C. § 1983 and accused them of violating his Fourth Amendment rights. In support of his version of events, Turner pointed to Alford's account of his arrest. He also argued he had been maliciously prosecuted inasmuch as the charge of resisting law enforcement that had been

filed against him was ultimately dismissed.

Taylor and Smith defended the case and denied the accuracy of Turner's version of events. In particular, they cast doubt on Turner's description of his arrest because Turner had identified them both as short and white.

Taylor's skin color matched the description of "white," but he also happened to be six feet and one inch tall. Smith, who was black and six feet and five inches tall, was even further from Turner's description. If Turner remembered a black man over six feet tall as a short white man, defendants asked, what else might he be misremembering?

A Fort Wayne jury heard the conflicting stories over two days and returned a verdict for Taylor and Smith. The court entered a consistent defense judgment.

Auto Negligence - A movie theater's manager-in-training rear-ended a cancer nurse at a stop sign on his way back from a run to the bank for rolls of coins

Quigley v. Snodgrass,
64D05-0409-CT-8676
Plaintiff: Patrick B. McEuen, *Millbranth & Bush*, Valparaiso
Defense: Alexis Griffin, *Allstate Litigation Counsel*, Merrillville
Verdict: $63,300 for plaintiff less 25 % comparative fault
County: **Porter**, Superior
Court: J. Harper, 11-1-07

In the afternoon of 5-5-03, Lorna Quigley was driving to St. Mary's Medical Center in Hobart where she worked as a cancer nurse. As she drove her 1998 GMC Jimmy west down Veterans Avenue, she pulled up at a stop sign marking the intersection between Veterans Avenue and Willowcreek Road.

Veterans Avenue was a road parallel to Route 6 that provided shoppers access to restaurants, outlots, and a Walmart plaza. Quigley intended to turn south onto Willowcreek Road, which was a four-lane road with no concrete median.

At the same time, Brad Snodgrass was driving his 2001 Chevrolet S-10 PF pickup behind Quigley on Veterans Avenue. Snodgrass, a manager-in-training at Goodrich's Portage 9 multiplex movie theater, was on a change run to a nearby bank to get rolls of coins for the cinema's cash registers.

Snodgrass was driving fast. When Quigley stopped and prepared to turn, Snodgrass did not stop in time. An instant later, he rear-ended her vehicle.

The force of the impact caused Quigley's seat to recoil. She then rebounded forward and hit her head, causing scratches and bruises on her forehead.

Following the crash, Quigley went to the ER at St. Mary's for x-rays and a CT scan of her head and cervical spine. This cost her at least $1,500. Her car was also damaged. Snodgrass's car required a tow, and it had damage to its bumper and headlights.

Quigley filed suit against Snodgrass and blamed him for crashing into her. She claimed she had suffered injuries to her cervical and thoracic spine and had acquired TMJ syndrome as a result of the crash.

Snodgrass defended the case and disputed the nature and extent of Quigley's claimed injuries. Among other things, he pointed to the fact that Quigley had suffered from migraines before the crash. He also argued that Quigley was partially to blame for the accident.

Some time after Quigley filed suit, she sought to add Goodrich Quality Theaters as a defendant. Goodrich protested that Quigley's attempt to amend was untimely. The court agreed and refused to allow the amendment.

A Valparaiso jury heard the evidence over three days. It returned a verdict assessing Quigley's damages at $63,300 and finding Snodgrass to be 75% at fault. The remaining 25% of the fault was assigned to Quigley. After reduction for comparative fault, the court entered a judgment for Quigley in the amount of $47,475. The judgment has since been satisfied.

Landlord Negligence - Arcing electricity around a neon sign caused a fire that badly damaged a braid store in a strip mall; the jury assigned 100% liability to the landlord for failing to maintain the sign

Rabet and Trustee, Inc. v. Don's Guns and Galleries, et al.,
49D02-0605-PL-19323
Plaintiff: Jeffrey A. Doty, *Buehler Associates*, Indianapolis
Defense: Jon C. Abernathy, Jr., *Goodin Abernathy, LLP*., Indianapolis, for Don's Guns; David L. Taylor and Cameron G. Starnes, *Jennings Taylor Wheeler & Haley, P.C*., Carmel, for EZ Lighting
Verdict: $40,400 for plaintiff
County: **Marion**, Superior
Court: J. Sosin, 12-3-09

A-African Hair Braiding was a business located in a strip mall at 3809 Lafayette Road in Indianapolis. Its storefront was marked by a large neon sign that read BRAIDS. The building was owned by Don's Guns and Galleries, Inc., and insured by National Specialty Insurance Company. A border neon lighting system was installed by Affordable Sign Service and updated around 1999.

On 4-28-05, a fire broke out in the strip mall and caused approximately $168,000 in damage to the building. Don's Guns paid its deductible of $5,000, and National Specialty forked over $163,000 for its share of the damage.

National Specialty, however, was unhappy over the fire damage. The company's investigation, led it to believe A-African Hair Braiding's sign had been defective and had ignited the fire. Accordingly, National Specialty filed a subrogation suit against Laure Rabet, the owner of A-African Hair Braiding.

National Specialty's identified experts included Paul Thogersen, Engineering, Indianapolis. Thogersen's opinion was that the fire had been caused by electrical arcing in the high voltage wiring in the upper border neon tubing.

Rabet defended and explained that the true owner of A-African Hair Braiding was actually Rabet and Trustee, Inc. That entity denied responsibility for

starting the fire. It also filed its own set of claims against three entities. The first was Don's Guns, the owner of the strip mall.

The second of Rabet's targets was EZ Lighting and Mechanical Service Company. EZ Lighting had been hired by Don's Guns to move the BRAIDS sign in October of 2004 when it replaced wood paneling on the facade of the strip mall. Rabet argued that EZ Lighting had been careless in removing and reinstalling the sign.

The third party at whom Rabet pointed the finger was Hutchison Signs, which had made and installed the BRAIDS sign in 2002. Rabet's theory was that if neither of the other two parties were responsible for the fire, Hutchison must have been.

Rabet also retained an electrical engineering expert, Michael Parker, to determine the fire's cause. Parker thought the fire probably was caused by defects in the border neon lighting system and the facade renovation.

The response of these new defendants was to blame one another for being the cause of the fire. EZ Lighting's engineering expert, William Keller of Indianapolis, brought yet a third opinion into the case when he stated the fire had started in the "A" of the BRAIDS sign after electrical arcing had occurred. EZ Lighting blamed Rabet and various nonparties for the fire--including Affordable Sign Service and any others who installed the BRAIDS sign.

EZ Lighting also suggested that even if it had committed some error in removing and replacing the neon fixtures when it restored the facade in 2004, Don's Guns should be vicariously liable. EZ Lighting also pointed out that, according to Rabet's lease, Don's Guns was responsible for maintenance of the neon light system.

Although the record is not clear as to the details, it appears that Hutchison Signs was dismissed from the action not long after its commencement. On the first day of trial, National Specialty stipulated to the dismissal of its claim against Rabet. Thus, the trial proceeded solely on Rabet's claims against Don's Guns and EZ Lighting.

The case was tried for three days in Indianapolis. The jury returned a verdict in which Don's Guns was assigned 100% of the fault. Rabet's damages award totaled $40,400. The court entered a judgment for that amount.

Ed.: This is the second case involving Don's Guns and Galleries that we've reported on in the last two years. Don Davis, the proprietor of Don's Guns, was the plaintiff in a case that was tried on 6-7-07 against the City of Indianapolis.

Davis alleged in that case that the Indianapolis Police Department had used two of his employees as confidential informants in a drug investigation. As part of that investigation, the police allegedly condoned theft of Davis's inventory and the conducting of drug deals in his shop without his knowledge or permission. The jury returned a defense verdict for the City.

Our report on that case is reprinted as Case No. 2526 in the 2007 Year In Review book. In our report we noted that, "Residents of central Indiana will recognize Don from his television commercials in which he explains his shop's low, low prices with the tag line, 'I don't wanna make any money, folks. I just *love* to sell guns. Heh, heh, heh.'"

Auto Negligence - A teenaged driver's vehicle slid forward on a rainy-soaked road and rear-ended the vehicle in front of her

Mann v. Pollard, 22D01-0801-CT-26
Plaintiff: John L. Smith, *Isaacs & Isaacs, P.S.C.*, Louisville, KY; and Gordon D. Ingle, Corydon
Defense: Kenneth G. Doane, Jr., *Waters Tyler Scott Hofmann & Doane, LLC.*, New Albany
Verdict: $9,209 for plaintiff less 10% comparative fault
County: **Floyd**, Superior
Court: J. Orth, 10-21-09

On 9-18-06, it was raining in New Albany. Victoria Pollard, then age 16, was driving home from school in a Ford Probe with a friend, Samantha Crowe, as her passenger. Pollard pulled over on Beechwood Avenue to let her emergency brake down. That having been done, she pulled back into traffic.

Suddenly, Pollard noticed that a Chevrolet Colorado was still stopped at the green light ahead of her. Pollard tried to brake, but the Ford slid forward and rear-ended the Chevrolet, which was being driven by the 54-year-old Adelia Mann.

Mann suffered soft-tissue injuries due to the collision. Although the record does not reveal the amount of her medical expenses, she treated with a chiropractor for neck, back, and leg pain.

Mann filed suit against Pollard and blamed her for causing the collision. Pollard defended the case and disputed the nature, extent, and causation of Mann's claimed injuries.

Pollard's identified experts included Dr. Karl Lamb, Chiropractic Orthopedics, Evansville. It was Dr. Lamb's opinion that Mann's chiropractic treatment had been unnecessary and her back, leg, and neck problems were probably preexisting and not caused by the accident.

The case was tried for two days in New Albany. The jury returned a verdict in which Mann was assigned 10% of the fault. The remaining 90% was assigned to Pollard.

The jury went on to set Mann's raw damages at $9,029. After reduction for comparative fault, her final award came to $8,288. The court entered a judgment for that amount.

Medical Negligence - A podiatrist left for a multi-week vacation after removing a patient's bunion and did not arrange for another podiatrist to be on call; by the time the podiatrist returned, his patient's condition was such that a second surgery was necessary

Vedope v. Fedorchak, 45D01-0512-CT-239
Plaintiff: Ronald F. Layer, *Layer Tanzillo Stassin & Babcock*, Dyer
Defense: James M. Portelli, *Spangler Jennings & Dougherty, P.C.*, Merrillville
Verdict: Defense verdict on liability
County: **Lake**, Superior
Court: J. Kavadias Schneider, 5-21-09

In the early months of 1999, Andrea Vedope was suffering from a bunion on her right foot. She consulted on the matter with a podiatrist in Portage, Dr. Frederick Fedorchak. On 5-27-99, Dr. Fedorchak performed surgery to remove the bunion. He used the McBride procedure, which realigned the toe after the bunion was removed.

The surgery on Vedope appeared to be successful, and shortly thereafter Dr. Fedorchak left his office to take a vacation of several weeks. He did not arrange for another podiatrist to be on-call during his vacation.

While Dr. Fedorchak was on vacation, Vedope returned to his office and received follow-up care and an x-ray from an assistant who was neither a doctor nor a nurse. The assistant also changed Vedope's bandages.

When Dr. Fedorchak returned from his vacation, he realized that during his absence Vedope had developed a "hallux varus" deformity. This is a condition in which the big toe begins to deviate from the midline of the foot.

Dr. Fedorchak promptly arranged for a second surgery to attempt to correct the hallux varus. The record does not describe the outcome of the second surgery. Vedope, however, was unhappy at having to undergo a second surgery at all.

Vedope presented the matter to a medical review panel comprised of three podiatrists. They were Dr. Michael Helms of Indianapolis, Dr. Sandra Cho of South Bend, and Dr. Nelson Worden of Mishawaka.

According to Vedope, Dr. Fedorchak had breached the podiatrist standard of care by performing unnecessary surgery to remove her bunion in the first place and then by failing to make arrangements for follow-up care during his vacation. The panel's unanimous opinion was the Dr. Fedorchak had not breached the applicable standard of care.

Vedope filed suit against Dr. Fedorchak and criticized his treatment of her as outlined above. Her identified experts included Dr. Lowell Weil, Sr., Podiatry, Des Plaines, IL.

Interestingly, Dr. Weil was of the opinion that Dr. Fedorchak had not breached the standard of care in using the McBride procedure. However, Dr. Weil went on to say that it was a breach of the standard of care for Dr. Fedorchak not to have arranged for another podiatrist to be on call during his vacation.

Dr. Fedorchak defended the case and denied having committed any breached the standard of care. His identified experts included Dr. Harold Schoenhaus, Podiatry, Philadelphia, PA.

A Hammond jury heard the evidence over four days and returned a verdict for Dr. Fedorchak. The court entered a defense judgment.

Auto Negligence - Two cars collided after one driver mistakenly believed the intersection was regulated by a four-way stop sign

DeLuca v. Uberin, 15D01-0802-CT-4
Plaintiff: Douglas C. Holland, Lawrenceburg
Defense: Matthew C. Robinson, *Yarling & Robinson*, Indianapolis
Verdict: $1,319 for plaintiff
County: **Dearborn**, Superior
Court: J. Cleary, 2-17-09

In the bright and dry afternoon of 11-8-07, Erin DeLuca, then age 22, was driving north in Seymour on S.R. 11, a through street with no stop signs. She was driving a 1996 Chevrolet Lumina that had over 121,160 miles on it, and she was wearing her seat belt.

At the same time, John Uberin, age 37, was driving a 1994 GMC Jimmy, heading eastward along Laurel Street. A stop sign marked Laurel Street's intersection with S.R. 11. Uberin stopped for the stop sign. Then, mistakenly believing that the intersection was a four-way stop, he started forward.

He did so just as DeLuca arrived on the scene. DeLuca tried to swerve out of Uberin's path, but she was unable to do so. The left front of Uberin's vehicle collided with the left rear of DeLuca's. In turn, DeLuca spun into a 2003 Ford Explorer that was parked on the west curb of the southbound lane of S.R. 11.

DeLuca suffered a bruise on her left leg in the collision and complained of pain in her knee, lower leg, and foot. She was more concerned about the effect of the accident on her seven-month pregnancy. She was taken by ambulance to the ER at Jackson County Memorial Hospital, where she was examined and released. Her medical expenses were $381 for the ER visit and $655 for the ambulance.

Later, however, DeLuca decided her injuries were more severe than she had at first believed. She thought the accident was the cause of her neck and back pain. She also continued to be concerned about the accident's effects on her baby, despite no known problems.

DeLuca filed suit against Uberin and blamed him for totaling her car as well as for injuring her and, possibly, her baby. She estimated her damages at $14,150.

Uberin admitted some fault for the crash. However, he thought DeLuca might have been exceeding the 30 mph speed limit and thus should share a measure of the blame. In addition, he disputed whether DeLuca's back and neck pain were caused by the accident. Nevertheless, he agreed he ought to pay DeLuca's ER expenses and the fair market value of her vehicle, about $2,790, plus the $825 for DeLuca's rental car.

The case was tried in Lawrenceburg. The jury initially returned a verdict for DeLuca in the amount of $1,119, "plus atty's fees plus court cost." The court refused to accept this verdict because of its reference to attorney fees and court costs.

The jury was then given a new instruction regarding these items and sent back to deliberate again. This time, the jury's verdict was $1,319. The court entered a judgment for that amount, and it has since been satisfied.

Premises Liability - A movie theater patron tripped and fell on the theater stairs when a fire alarm sounded and she tried to evacuate; the parties disputed whether the theater had been properly illuminated at the time

Bautiste-Jones v. Cinemark Movies 14, 71C01-0709-CT-132
Plaintiff: Daniel H. Pfeifer, *Pfeifer Morgan & Stesiak*, South Bend
Defense: Richard A. Rocap, *Rocap Witchger, LLP*., Indianapolis
Verdict: Defense verdict on liability
County: **St. Joseph**, Circuit
Court: J. Ready (Magistrate), 6-18-09

On 1-16-06, Mary Bautiste-Jones went to Cinemark Movies 14 on Edison Road in Mishawaka to watch a movie. After the theater darkened, Bautiste-Jones settled back to enjoy the spectacle.

Her enjoyment was abruptly and unpleasantly interrupted by the fire alarm. Bautiste-Jones climbed to her feet and headed toward the stairs that led to the exit.

The parties later disputed whether the house lights brightened at the same time that the fire alarm sounded, how much they brightened, and whether the house lights were adequate even if fully brightened. What was not in dispute was that Bautiste-Jones tripped and fell on the stairs in her attempt to exit the theater.

Bautiste-Jones went to the ER at Memorial Hospital, where she was diagnosed with a sprain to her left ankle. The record does not disclose the amount of her medical expenses.

Bautiste-Jones filed suit against Cinemark and blamed it for causing her fall by failing to maintain its theater in properly safe condition. Her husband, Bruce Jones, presented a derivative claim for his loss of consortium.

Cinemark defended and disputed Bautiste-Jones's claim that her fall had been caused by the lack of lighting. It also questioned the nature and extent of Bautiste-Jones's injuries.

A Mishawaka jury considered the evidence presented by both sides and returned a defense verdict. The court entered a consistent judgment.

Auto Negligence - A man attempted to prevent an intoxicated acquaintance from driving out of the parking lot of the man's apartment complex; the drunk responded by running into the man, dragging him with the car, and running over his hand

Fricke v. Davis, 49C01-0604-CT-17501
Plaintiff: Travis W. Montgomery and Scott A. Weathers, *The Weathers Law Office, P.C.*, Indianapolis
Defense: William H. Kelley, *Kelley Belcher & Brown*, Bloomington
Verdict: $4,000 for plaintiff less 30% comparative fault
County: **Marion**, Circuit
Court: J. Rosenberg, 10-6-09

It was 5-13-05, and William Davis was visiting Justin Fricke at Fricke's apartment located at 2029 Runaway Bay in Speedway. At the conclusion of the visit, Davis decided to drive to his home in Johnson County. This presented a problem inasmuch as Davis was intoxicated at the time.

Fricke did not want Davis to drive home while intoxicated, so he followed Davis to the apartment complex parking lot with the intention of preventing him from leaving. Davis, however, would have none of it.

As Davis attempted to drive out of the parking lot, he somehow managed to run into Fricke. That impact caused Fricke to be dragged some distance by Davis's vehicle. During the confusion, Davis also ran over Fricke's hand.

The record does not describe the exact nature of Fricke's injuries, nor does it reveal the amount of his medical expenses. He filed suit and blamed Davis for driving drunk, running into him, and running over his hand.

Davis defended the case and disputed the causation of Fricke's claimed injuries. Davis also sought to place blame for the incident on Fricke himself.

The case was tried for two days in Indianapolis. The jury returned a verdict in which Davis was assigned 70% of the fault. The remaining 30% was assigned to Fricke. The jury set Fricke's raw damages at $4,000. After reduction for comparative fault, his final award came to $2,800. The court entered a judgment for that amount.

Utility Negligence - A gas leak in a residence led to an explosion and fire that killed the homeowner; after the homeowner's insurer paid for the property damage, the company pursued a subrogation claim against the gas company

Safeco Insurance v. Vectern Energy Delivery of Indiana, Inc., 82D03-0401-CC-459
Plaintiff: Kevin P. Caraher and Katherine C. O'Malley, *Cozen O'Connor*, Chicago, IL
Defense: Patrick A. Shoulders and Keith W. Vonderahe, *Ziemer Stayman Weitzel & Shoulders, LLP.*, Evansville
Verdict: Defense verdict on liability
County: **Vanderburgh**, Superior
Court: J. Pigman, 10-2-08

In 2002, Robert Kelley, age 88, was living in his home located at 23 West Florida Street in Evansville. Gas service was provided to the house by the Southern Indiana Gas & Electric Company d/b/a Vectern Energy Delivery of Indiana, Inc.

In early December of 2002, gas began to leak into Kelley's home. In the morning of 12-2-02, the gas ignited and caused an explosion. Kelley was badly injured in the resulting fire. He lingered in considerable pain for approximately a month before finally dying on 1-1-03.

Kelley's homeowner's insurer, Safeco Insurance, paid $150,476 to Kelley's estate toward the property damage to his

home. Safeco then filed suit against Vectern Energy Delivery on a subrogation claim to recover the funds Safeco had paid to Kelley's estate.

According to Safeco, gas had begun to escape into Kelley's home sometime prior to 12-2-02 from the gas line that was under Vectern's control. It was that leak which led to the subsequent fire, and so Vectern was obligated to pay for the damage.

Vectern defended the case and denied any responsibility for causing either the gas leak or the fire. The identified defense experts included Gerry Mang, Fire Investigation, Indianapolis. It was Mang's opinion that the gas leak was confined to the equipment for the residence and was not attributed to any source under Vectern's control.

An Evansville jury heard the evidence and returned a defense verdict for Vectern. If the court entered a judgment, it was not part of the record at the time the IJVR reviewed it.

Auto Negligence - Although plaintiff prevailed in a rear-end crash case, his award amounted only to slightly more than one tenth of his medical expenses

Miranda v. Fey, 02D01-0707-CT-273
Plaintiff: Ragna M. Urberg, *Beckman Lawson, LLP*., Fort Wayne
Defense: Carolyn M. Trier, *Trier Law Office*, Fort Wayne
Verdict: $3,000 for plaintiff
County: **Allen**, Superior
Court: J. Levine, 8-20-09

On 7-15-05, Victor Miranda and his wife Julie were driving south on Lima Road in Fort Wayne. Behind them was driving Jana Fey in a 1996 Chrysler Town and Country. Suddenly, Fey's Chrysler rear-ended the Mirandas' vehicle.

Julie had minor injuries. However, she was pregnant. After she was taken to the ER at Parkview Hospital for evaluation, she was discharged.

Victor was more seriously hurt. He suffered a whiplash strain that required physical therapy and pain management injections. After this did not improve his condition, he underwent an MRI that identified a cervical fracture with osteophytes. His medical expenses totaled $26,582.

Both Mirandas filed suit against Fey and blamed her for causing the collision. Fey defended and minimized the Mirandas's claimed damages. Her identified IME was Dr. Mark Reecer, Physical Medicine, Fort Wayne.

On the first day of what was to be a three-day trial in Fort Wayne, Julie Miranda withdrew her claims. Victor presented his case to the jury, which returned a verdict of $3,000 in his favor. The court entered a judgment for that amount, plus costs of $133.

Premises Liability - A nurse slipped and fell on the common staircase of her apartment building; she underwent four surgeries to repair her back and knee injuries

Warren v. Boblewski, 46D01-0305-CT-120
Plaintiff: Edmond W. Foley, *Foley & Small*, South Bend
Defense: David A. Wilson, *Bokota Ehrhardt McCloskey Wilson & Conover, P.C.*, Merrillville
Verdict: $500,000 for plaintiff less 40% comparative fault
County: **LaPorte**, Superior
Court: J. Lang, 5-20-09

Ruby Warren, age 49 and a divorced nurse with back and knee problems, rented an upper-floor apartment at 205 Freemont Street in Michigan City. On 6-4-01 Warren planned to go to the store with her adult daughter. She was coming down the common stairway when one of the concrete steps crumbled beneath her foot.

Warren fell to a sitting position. When she reached for the railing to pull herself up, the railing broke and she fell to her right knee. When her daughter arrived, she took Warren to the ER at St. Anthony's in Michigan City.

At the ER, Warren underwent X-rays. She later had MRIs performed on her back and additional x-rays taken of her knee. When she was diagnosed with a herniated disk, Warren underwent surgery to remove a piece of the disk.

That was to be the first of Warren's four surgeries. One week after her back surgery, Warren incurred a staph infection in her spine and needed a second surgery. The next year, she underwent a third surgery to remove bone and scar tissue. Her fourth surgery was to lift her spine and insert two rods into her back.

In addition to her surgeries, Warren also underwent physical therapy and used a walker and back brace. In the end, Warren was left with both back and leg pain. Because of muscle loss, her right hip was lower than her left hip. She had areas of burning under her skin and numbness, and she found it difficult to lift things with her hands.

Warren filed suit against Michael Boblewski, the owner of the apartment. She blamed him for failing to maintain the premises in a reasonably safe condition. Warren had evidence he knew of the disrepair of the stairs, since she had fallen on the same step in April 2000. Warren's identified experts included Richard Hicks, Civil Engineering, Indianapolis.

Boblewski defended the case and disputed the nature, extent, and causation of Warren's medical problems. He pointed out she had preexisting back and knee problems. Furthermore, he believed that Warren's prior fall in 2000 showed she knew of the problems with the staircase and had simply failed to take proper care for her own safety.

The case was tried in Michigan City for three days. The jury deliberated for three hours and twenty minutes before returning a verdict in which Boblewski was assigned 60% of the fault. The remaining 40% of the fault was assigned to Warren.

The jury set Warren's raw damages at $500,000. After reduction for comparative fault, her final award came to $300,000. The court entered a judgment for that amount, and it has since been satisfied.

During deliberations, the jury sent the court a note asking "What is 'damages'? Does it include medical costs? Lawyer fees? Pain and suffering?" The judge answered, "In response to your question I refer you to Final Instruction No. 31."

Auto Negligence - A pedestrian and a car collided when the car started to back out of a parking space in a gas station

Rice v. Hancock, 10D01-0703-CT-46
Plaintiff: J. Gregory Joyner, *Naber Joyner & Jaffe*, Louisville, KY
Defense: Rodney L. Scott and Chad M. Smith, *Waters Tyler Scott Hofmann & Doane, LLC.*, New Albany
Verdict: Defense verdict on liability
County: **Clark**, Superior
Court: J. Carmichael, 6-23-09

In the afternoon of 3-8-05, Ervin "Little Bitzy" Rice, then age 47, was taking his mother-in-law home to Louisville, KY. He was on workers' compensation and treating with a chiropractor because he had injured his back several months previously. He, his wife, and his mother-in-law had just been shopping at Wal-Mart.

Before Rice dropped off his mother-in-law in Louisville, however, he wanted to fill up his vehicle with gas. To do this, he stopped at the Big Foot Shell station on Eastern Boulevard near its intersection with I-65 in Clarksville. He pulled up to one of the four islands, got out of his vehicle, and headed on foot toward the store to prepay.

At the same time Rice was heading toward the store, Michael Hancock was backing his 1993 Nissan Maxima out of a parking space in front of the store. An instant later, Hancock's Maxima collided with Rice.

Rice and Hancock agreed on this much. They disagreed on the details of the collision. According to Hancock, he had been backing slowly out of the parking space because he was aware of children in the area. Before he completely left the parking space, he heard a loud bang and saw Rice on the driver's side at the rear. Rice was crouching in a position similar to a baseball catcher. When Hancock opened the door, Rice said Hancock had run into him.

Rice's version was more dramatic. According to him, Hancock had been rushing quickly out of the parking space when Hancock struck him at the driver's side rear quarter panel. Rice tried to turn and run away, but then Hancock hit him a second time with the driver's side door. At some point, Rice banged on the car and shouted "Hey, hey, hey, quit moving, quit moving!"

Although the gas station had a security camera, the video did not conclusively resolve the question of what had happened. Regardless of how the incident occurred, Rice elected not to go to the hospital at that time.

Three weeks later, however, he changed his mind and visited the ER at Clark Memorial Hospital. He complained of injuries to his left knee, heel, and hip, and he began to treat with a chiropractor five weeks after the incident. Interestingly, the chiropractor he chose was not the same chiropractor with whom he was treating for his workers' compensation back injury.

Rice's medical expenses eventually totaled $16,651, of which $4,166 was for chiropractic treatment and $12,255 for hospital bills. Despite treatment, he complained of lingering pain in his left hip and knee, a pins and needles sensation in his left foot, and weakness in his left leg.

Two years after the collision, Rice filed suit against Hancock and blamed Hancock for backing into him. Hancock's defense was that the collision between his vehicle and Rice had been minimal.

Hancock's identified experts included Michael Rzesutock, Forensic Engineering, Fayetteville, OH. Rzesutock offered the opinion that Rice had simply walked into Hancock's car and had not been permanently injured.

A Jeffersonville jury found in favor of Hancock and returned a defense verdict. The court entered a consistent judgment. Although the record shows that Rice briefly contemplated a *pro se* appeal, the Indiana Court of Appeals has no record of such an appeal having been filed.

Civil Rights - Walking down the street to get a haircut, a teenager was roughly arrested – the police explained he resembled a suspect in a shots-fired call

Rudelis v. East Chicago Police, 2:08-14
Plaintiff: David Gladish and Michael Bosch, Highland
Defense: Wanda E. Jones, *Jones Law Offices*, Hammond
Verdict: Defense verdict on liability
Federal: **Hammond**
Court: J. Rodovich, 12-16-09

Jason Rudelis, a teenager, walked in East Chicago on 8-20-07. He was proceeding on Olcott Street preparing to get a haircut at an establishment known as Latin Kuts. At the same time and in his neighborhood, a call came into the East Chicago Police of shots fired in an alley. The purported suspect was a Hispanic teenage male – Rudelis is Hispanic.

A short time later, four East Chicago Police officers arrived to investigate. They were Daniel Schumann, Miguel Pena, Gabriel Fears and Nathaniel London. Initially they stopped Rudelis and asked him what he was doing – Rudelis told them. He continued on and got his haircut.

As Rudelis walked back home, the police stopped him again. He was roughly arrested and charged in the shooting. During the arrest, Rudelis was thrown to the ground and sustained a cut to his chin. Rudelis was released without charges a few hours later when it became clear he was not the shots-fired shooter.

In this lawsuit, Rudelis sued the police and alleged both excessive force and false arrest. The police defended that initially Rudelis was stopped (he met the description) but was quickly released. Then to the arrest (in the intervening period while he got a haircut), a witness directly fingered Rudelis. The arrest itself was described as gentle, Rudelis injuring himself when he missed a step and fell. Thus there was no excessive force and moreover, the police had a good faith belief that a crime had been committed.

While no jury verdict was in the court's record, the judgment indicates it

was for the government, Rudelis taking nothing. There was no appeal following this two-day trial.

Bad Faith - A man sustained damages totaling slightly more than $10,000 in a crash with an uninsured motorist; when the man's UM carrier offered him only $3,500 on his claim, he thought they were low-balling and acting in bad faith

Woods v. Universal Casualty Ins. Co., 45D11-0707-CT-118
Plaintiff: Patrick McFarland, Merrillville
Defense: Paul P. Pobereyko, *Universal Casualty Litigation Dep't*, Munster
Verdict: $100,000 for plaintiff
County: **Lake**, Superior
Court: J. Dywan, 8-19-09

During the dinner hour on a dark and rainy 3-29-06, Andrew Woods, age 46, was driving a 2001 Cadillac, heading north on Columbia Avenue in Hammond. The intersection of Columbia Avenue with Michigan Street is at the bottom of a bridge and marked by a traffic light.

At the same time, William Cummings, age 18, had just picked up a pizza for his dinner and was driving south on Columbia Avenue in a 1992 Cadillac. The two Cadillacs entered the intersection almost simultaneously. Both had green lights. Woods was planning on going straight, and Cummings intended to turn left when it was safe to do so.

Cummings decided it was safe to turn left, and he began his turn. He later recalled that he had waited until the light had turned red before beginning his turn. Regardless of whether the light was green or red at the time Cummings was turning, his car collided with Woods's car. Cummings's car spun around, while Woods's car continued to travel until it struck a telephone pole.

Woods was taken by ambulance to Community Hospital where complained of moderate pain in his right knee due to his having hit his knee on the dashboard. He also began to complain of neck and back pain, constant headaches, dizziness, and pain and tingling in his right leg.

In the end, Woods's medical expenses totaled $5,827. He also claimed lost wages of $4,424, and he lost the $200 bonus he would have been paid by his employer, the City of Hammond, for perfect attendance.

Adding to Woods's woes was the fact that Cummings turned out not to be insured. According to Cummings, he had let his insurance lapse only the day before the accident.

Woods had $25,000 in uninsured motorist coverage from Universal Casualty Insurance Corporation. He filed a claim with them and told them the amount of his damages. Universal Casualty responded with an offer of $3,500. Woods insisted on a minimum of $12,000. When Universal Casualty refused to meet Woods's demands, Woods sued it to recover on his UM policy. He also claimed Universal Casualty was acting in bad faith.

Universal Casualty defended the case and denied any bad faith. According to them, Woods had cursed and sworn at them when they offered him $3,500, so they hadn't negotiated further.

As for why the company had offered only $3,500, Universal Casualty explained that they had assessed 35% fault for the accident to Woods. Furthermore, they questioned the nature and extent of Woods's claimed injuries, since it had been 13 days after the accident before he had an MRI.

The case was tried for three days in Crown Point. The jury returned a verdict for Woods and awarded him $50,000 on his bad faith claim and another $50,000 on his UM claim, assigning 100% fault for the accident to Cummings. The total verdict for Woods thus came to $100,000.

The court reduced the UM component of the award to Woods's $25,000 policy limits. That amount, added to the award for the bad faith claim, brought the final award to $75,000. The court's judgment reflected that calculation.

Truck Negligence - Plaintiff was killed in a secondary impact that began with a collision between a truck and a tractor; after the parties reached an agreement on the issue of damages, the case was tried solely on the issue of the allocation of fault between the drivers of the truck and the tractor

Estate of Day v. Sigler, et al., 23C01-0505-CT-177
Plaintiff: David B. Wilson, Indianapolis
Defense: Richard K. Shoultz and Lewis Wooten, *Lewis & Wagner, LLP.*, Indianapolis, for Sigler and Townsend Tree Service; Stephen C. Wheeler and Joseph A. Samreta, *Jennings Taylor Wheeler & Haley, P.C.*, Carmel, for Meuser
Verdict: 100% fault to Townsend and Sigler; 0% fault to Meuser
County: **Fountain**, Circuit
Court: J. Henderson, 3-27-08

In the afternoon of 5-8-05, Nicky Day was driving a 1987 Toyota pickup truck, heading north on U.S. 41 in Fountain County. Up ahead and also traveling north was a 1978 John Deere tractor that was towing an anhydrous applicator and trailer tank. The tractor was being driven by Russell Meuser, and Day was third in the line of traffic behind him.

At the same time, William Sigler approached from the opposite direction in a 2001 International truck that was towing chipper trailer. Sigler was on the job at the time for his employer, Townsend Tree Service, Inc.

At a point approximately 2500 feet north of the intersection with C.R. 700 South, Sigler's truck collided with Meuser's tractor. In the next instant, Sigler's truck flipped over onto its side, and he ran into Day. Tragically, Day was killed in the crash.

Day's estate filed suit against Sigler, Townsend Tree Service, and Meuser. According to plaintiff, Meuser set the stage for the crash by crossing the centerline into Sigler's path.

Furthermore, Sigler shared a measure of the blame because his vehicle was operating on cruise control in excess of the posted 55 mph speed limit. Finally, the estate targeted Townsend Tree Service on a theory of vicarious liability

as Sigler's employer.

The estate eventually reached an agreement with defendants on the issue of damages. The only remaining controversy in the case concerned the allocation of fault. The battle lines were thus drawn with Sigler and Townsend Tree Service on one side and Meuser on the other.

Each side in the dispute blamed the other for causing the crash. In particular, the two sides disagreed about just who it was who had crossed the centerline. Sigler thought it was Meuser, and Meuser thought it was Sigler.

In addition, Meuser pointed out that in the aftermath of the crash, Sigler tested positive for methamphetamine. Sigler himself later admitted having used methamphetamines the day before the crash.

Meuser's identified experts included two toxicologists. They were Dr. Saeed Jortani of Louisville, KY, and Dr. Jerrold Leikin of Chicago, IL. Dr. Jortani offered the opinion that Sigler had drugs in his system at the time of the crash. Meuser also identified an accident reconstructionist, Steve Grundhoefer of Evansville.

The case was tried in Covington solely on the issue of the allocation of fault among the defendants. For that reason, the estate did not participate at trial. Also, the jury was informed of Sigler's use of methamphetamines.

The jury returned a verdict in which 100% of the fault was assigned to Sigler and Townsend Tree Service; Meuser was exonerated. The court entered a judgment that reflected the verdict.

Due to the allocation of fault, Sigler and Townsend Tree Service were thus to be liable for the full amount of the settlement. Although the record does not reveal the amount of the settlement, the judgment is listed as having been satisfied.

Premises Liability - A woman who was delivering a newspaper before dawn slipped and fell on an icy sidewalk at a subscriber's home

Holdeman v. Lyzun,
71C01-0509-CT-177
Plaintiff: Jeffrey J. Stesiak, *Pfeifer Morgan & Stesiak*, South Bend
Defense: Kenneth E. Nowak, *State Farm Litigation Counsel*, Crown Point
Verdict: Defense verdict on liability
County: **St. Joseph**, Circuit
Court: J. Ready (Magistrate), 6-8-09

Before dawn on 1-25-05, Patricia Holdeman was delivering a newspaper to Greg Lyzun's home in St. Joseph County. As she walked along the sidewalk leading from Lyzun's front door to the public sidewalk in front of his house, she slipped on ice and fell.

Holdeman was injured in the crash. The record, however, does not reveal the nature or extent of her injuries or the amount of her medical expenses.

Holdeman filed suit against Lyzun and blamed him for failing to maintain his premises in a safe condition and for failing to warn her of the dangerous ice on the sidewalk in front of his home. Holdeman's husband, Roger, presented a derivative claim for his loss of consortium.

Lyzun defended the case and protested that he hadn't even known about the ice on the sidewalk. He also disputed the nature and extent of Holdeman's claimed injuries. Finally, he suggested that if Holdeman had slipped on the ice, it was at least partly her own fault.

The case was tried to a jury in Mishawaka and resulted in a verdict for Lyzun. The court entered a consistent defense judgment.

Medical Negligence - Following a colon surgery, the elderly plaintiff crashed and died – her estate alleged error by hospital nurses in failing to monitor her condition

Svetic v. The Community Hospital,
45D05-0801-CT-0003
Plaintiff: Brock P. Alvarado, *Kenneth Allen & Associates*, Valparaiso
Defense: Sharon L. Stanzione and Anna Mandula, *Johnson & Bell*, Merrillville
Verdict: Defense verdict on liability
County: **Lake**, Superior
Court: J. Davis, 10-22-09

Naomi Svetic, age 68, underwent a surgery to remove her rectal stump on 1-11-02 – it was related to a longstanding colitis condition. The surgery was performed by Dr. Russell Pellar at Community Hospital in Munster. The surgery itself was unremarkable.

Following the surgery, Svetic was taken to a recovery room. That night, her condition was monitored and Svetic appeared normal. The next morning her condition worsened and she suddenly crashed. Svetic did not recover and died at the hospital.

Svetic's estate alleged negligence by the hospital nurses in failing to monitor her condition. Experts for the estate were Dr. Michael Hruskocy, Anesthesia, Park Ridge, IL and an RN, Cynthia Tjelle. Originally presented to a Medical Review Panel, all three doctors found an error – however two of the three found no causation. The third doctor on the panel did not express an opinion on causation.

The hospital defended the case that its monitoring was proper and in any event, any purported error by it was not related to Svetic's demise. Experts for the hospital were Dr. Jesse Hall, Critical Care and Internist, Chicago, IL and pathologist, Dr. John Pless, Indianapolis, IN.

An East Chicago jury deliberated an hour before returning with its verdict. It was for the hospital and the estate took nothing. A defense judgment was entered.

Underinsured Motorist -

Plaintiff was injured in an intersection crash that claimed the life of the tortfeasor; after settling with the tortfeasor's estate, plaintiff pursued a UIM claim against his own insurer

Herron v. Allstate Insurance Co., 42C01-0507-CT-435
Plaintiff: John Pierce, *Pierce Pierce & Stites*, Rockville
Defense: Charles F. Robinson, Jr., *Yarling & Robinson*, Indianapolis
Verdict: Defense verdict on liability
County: **Knox**, Circuit
Court: J. Biddinger-Gregg, 5-6-09

On 9-29-03, Ricky Herron was driving west on U.S. 50 in Knox County. At the same time, Hannah Dunn was driving north on Strawberry Road. At the intersection of the two roads, Dunn ran a stop sign and pulled into Herron's path. In the next instant, the two collided.

Tragically, Dunn was killed in the crash. Herron was injured and ultimately incurred medical expenses totaling $17,018. He filed suit against Dunn's estate and blamed her for having run the stop sign and thereby causing the crash.

In addition to his other damages, Herron also claimed lost wages and property damage to his vehicle in unspecified amounts. When Herron learned that Dunn had only $50,000 in insurance coverage, he amended his complaint to add an underinsured motorist claim against his own insurer, Allstate Insurance Company.

Dunn's estate admitted she was at fault for the crash, but the estate initially disputed the nature, extent, and causation of Herron's claimed injuries. However, Herron later settled with the estate for its policy limits. The litigation continued thereafter solely on Herron's UIM claim against Allstate.

Allstate defended the case on several fronts. First, the company argued that Herron's claimed injuries were due both to pre-existing conditions and a subsequent injury. Second, Allstate denied that any injuries Herron might have suffered in the crash could be valued in excess of the $50,000 he had already been paid by Dunn's estate. Finally, Allstate accused Herron of failing to mitigate his damages.

The case was tried for two days in Vincennes. The jury returned a verdict for Allstate, and the court closed out the case with a consistent defense judgment.

Medical Negligence - A gastroenterologist was blamed for the death of an elderly patient; the jury returned a defense verdict

Estate of Richardson v. O'Brien, 49D01-0608-CT-35930
Plaintiff: Gerald W. Mayer, *Gerald W. Mayer, P.C.*, Indianapolis; and Mary A. Findling, *Findling Park & Associates, P.C.*, Indianapolis
Defense: Peter H. Pogue, *Schultz & Pogue, LLP.*, Indianapolis
Verdict: Defense verdict on liability
County: **Marion**, Superior
Court: J. Shaheed, 7-31-09

In June of 1999, William Richardson, age 61, was experiencing medical problems. He consulted on the matter with a gastroenterologist in the person of Dr. John O'Brien of Indianapolis. Dr. O'Brien treated Richardson on 6-21-99.

Unfortunately, the record is extremely light on details. Among other things, the record does not describe either the nature of Richardson's medical problem or the treatment he received from Dr. O'Brien. All that is known is that Richardson was injured and subsequently died on 7-9-99.

Richardson's estate blamed his death on the treatment he had received from Dr. O'Brien. Accordingly, the estate presented the matter to a medical review panel. The panel members were Dr. David Gudkese, Diagnostic Radiology, Winchester; Dr. Robert Jackson, Surgery, Marion; and Dr. Daryl Daugherty, Gastroenterology, Indianapolis.

After reviewing the evidence, the medical review panel issued a unanimous opinion that Dr. O'Brien's treatment of Richardson did not constitute a breach of the applicable standard of care.

The estate filed suit against Dr. O'Brien and reiterated its claims. The identified experts for the estate included Dr. Peter Kahrilas, Gastroenterology, Chicago, IL. Dr. O'Brien defended the case and denied having breached the standard of care. His identified experts included Dr. H. Worth Boyce, Jr., Gastroenterology, Tampa, FL.

The case was tried in Indianapolis and resulted in a defense verdict for Dr. O'Brien. If the court entered a judgment, it was not part of the record at the time the IJVR reviewed it.

The jury in this case asked several questions during the presentation of the evidence. Among them were the following: (1) "What are 'treatises' he mentioned in testimony?" and (2) "Are these depositions available to the jury for review? Now/during deliberation?" The court's responses to these questions is unknown.

Truck Negligence - A tractor-trailer truck rear-ended a school worker who was slowing to allow an ambulance to pass

Wesley v. Eastman, et al., 45D05-0609-CT-170
Plaintiff: Barry D. Sherman and Gregory J. Sarkisian, *Sarkisian & Fleming, P.C.*, Portage, and Kristen D. Hill, Munster
Defense: Edward W. Hearn, *Johnson & Bell, Ltd.*, Merrillville
Verdict: $69,702 for plaintiff
County: **Lake**, Superior
Court: J. Davis, 8-12-09

On 9-24-04, Geneva Wesley, age 28 and a social worker employed by the special education department of Gary Community School Corporation, was driving a Chrysler 300 on her way to a Steak 'n Shake restaurant. Wesley's route took her west on U.S. 30 toward the intersection with S.R. 53 in Merrillville.

As Wesley approached the intersection, which was near a hospital, she saw other drivers stopping for a passing ambulance. Wesley followed suit and slowed to let the ambulance pass. Suddenly, she was rear-ended by a tractor trailer driven by Larry Eastman for National Freight, Inc. The force of

the impact pushed Wesley's car forward into the intersection.

Wesley's head hit the inside of the car in the collision. Afterward, she began to complain of headaches and back pain.

A year after the accident, Wesley reported an ongoing tingling feeling in her hands and both arms and legs. She described the feeling as being like the "pins and needles" sensation of circulation loss. She also endured pain in both wrists. The amount of her medical expenses is unknown.

Wesley filed suit against both Eastman and National Freight. She blamed Eastman for causing the crash, and she targeted National Freight as his employer on a theory of vicarious liability. Defendants admitted Eastman had been entirely at fault for causing the collision, but they disputed the nature, extent, and causation of Wesley's claimed injuries.

The case was tried to a Hammond jury over three days. The verdict came back for Wesley in the amount of $69,702. The court entered a judgment for that amount, plus costs and post-judgment interest. The judgment since been satisfied.

The Indiana Jury Verdict Reporter is published at 9462 Brownsboro Road, No. 133, Louisville, Kentucky 40241. Phone at 502-339-8794 or 1-866-228-2447. Fax to 502-326-9794. Denise Miller, Publisher, Shannon Ragland, Editor, Sandra Tharp, Editor Emeritus and Aaron Spurling, Assistant Editor.

Annual subscription is $249.00 per year. Kentucky residents add 6% for sales tax.
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