

# The Indiana Jury Verdict Reporter

The Most Current and Complete Summary of Indiana Jury Verdicts

October, 2006

Statewide Jury Verdict Coverage

7 IJVR 10

## Unbiased and Independently Researched Jury Verdict Results

### In This Issue

#### Marion County

Auto Negligence - \$13,800	p. 4
Auto Negligence - \$12,500	p. 5
Uninsured Motorist - \$497	p. 10
Auto Negligence - \$10,000	p. 12

#### Lake County

Garbage Truck Negligence - \$815,290	p. 4
Auto Negligence - \$15,000	p. 6
Auto Negligence - \$13,601	p. 8
Truck Negligence - Defense verdict	p. 9
Uninsured Motorist - Defense verdict	p. 11
Auto Negligence - \$13,106	p. 12
Auto Negligence - \$5,000	p. 13

#### Monroe County

Medical Negligence - \$2,701,000	p. 1
----------------------------------	------

#### Federal Court - Hammond

Wrongful Imprisonment - \$9,000,000	p. 2
-------------------------------------	------

#### Vanderburgh County

Auto Negligence - \$98,000	p. 2
----------------------------	------

#### Spencer County

Condemnation - \$1,270,000	p. 3
----------------------------	------

#### Fayette County

Utility Negligence - Defense verdict	p. 5
--------------------------------------	------

#### Vigo County

Medical Negligence - Defense verdict	p. 6
Auto Negligence - \$13,500	p. 11
Auto Negligence - Defense verdict	p. 13

#### Federal Court - South Bend

Medical Negligence - Defense verdict	p. 7
--------------------------------------	------

#### Knox County

Underinsured Motorist - \$150,000	p. 7
-----------------------------------	------

#### Hancock County

Medical Negligence - Defense verdict	p. 8
--------------------------------------	------

#### Porter County

Auto Negligence - \$50,000	p. 9
----------------------------	------

#### Bartholomew County

Auto Negligence - \$30,000	p. 10
----------------------------	-------

#### Federal Court - Evansville

FELA - Defense verdict	p. 13
------------------------	-------

### Civil Jury Verdicts

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

### Medical Negligence - While performing an arthroscopic procedure on a woman's knee, an orthopedic surgeon cut through the back of the woman's knee joint and severed her popliteal artery and vein

*Langley v. Doster*,  
53C06-0408-CT-1471  
Plaintiff: James H. Young and Richard Young, *Young & Young*, Indianapolis  
Defense: Edward J. Liptak, *Carson Boxberger*, Bloomington  
Verdict: \$2,701,000 for plaintiffs  
County: **Monroe**, Circuit  
Court: J. Galvin, 11-17-05

In the early months of 2000, Karen Langley, age 60, was having some problems with her right knee. She consulted about the matter with Dr. Sterling Doster, an orthopedic surgeon in Bloomington. Doster diagnosed a medial meniscal tear and recommended an arthroscopic procedure.

On 3-2-00, Doster performed an arthroscopy and meniscectomy on Langley's right knee. The procedure included the use of an instrument called a power surgical shaver. During the course of the procedure, something went terribly wrong.

Doster inadvertently cut through the back of Langley's knee joint with the surgical shaver. As he did so, he tore open her popliteal artery and her popliteal vein. Langley underwent two surgeries to repair the damage. However, she suffered numerous injuries, including compartment syndrome and a temporary drop foot condition.

In addition to her other injuries, a portion of Langley's calf muscle died, and she was left with disfigurement and permanent RSD (Reflex Sympathetic Dystrophy). The pain associated with Langley's RSD is so severe that she requires the continued use of an implanted nerve stimulation device, as

well as considerable dosages of pain medication. Her incurred medical expenses came to approximately \$200,000.

Langley presented the case to a medical review panel consisting of three orthopedic surgeons. They were Dr. Thomas Woo of Indianapolis, Dr. Charles Bartley of Shelbyville, and Dr. James Friedlander of Franklin. The panel concluded that Doster's treatment fell below the standard of care and was a factor in Langley's damages.

Armed with this opinion from the panel, Langley filed suit against Doster and criticized his performance of the arthroscopic procedure. In particular, he should not have cut through her knee joints and severed her popliteal artery and vein. Additionally, Langley's husband, Thomas, presented a derivative claim for his loss of consortium. The Langleys' retained medical expert was Dr. Michael Kane, Family Practice, Nashville.

Doster defended the case and denied any breach of the standard of care. His identified experts (all orthopedic surgeons) included Dr. Jeffrey McIntosh of Lafayette, Dr. Robert Czarkowski of Carmel, Dr. Edward Bell of New Albany, and Dr. Howard Freedberg of Bartlett, IL. It was Dr. Freedberg's opinion that the cause of Langley's RSD could not be known.

The case was tried for four days in Bloomington. The jury deliberated for slightly over three hours before returning a verdict in favor of the Langleys. Karen was awarded damages of \$2,415,000. Thomas's consortium interest was valued at \$286,000. That brought their combined award to \$2,701,000.

Prior to trial, plaintiffs' demand was access to the Patient's Compensation Fund. Doster made no settlement offer.

Post-trial, the Doster filed a motion to reduce the award to the statutory limit. The court granted the motion and entered a final judgment in the amount of \$1,250,000.

The Langleys filed a motion to deny Doster's motion to reduce the award to the statutory limit. Their argument was that each of the two plaintiffs qualified as separate patients under the Medical Malpractice Act, and so they were entitled to separate judgments.

However, by the time the Langleys filed their motion, the court had already ruled on Doster's motion. On that basis, the court decided that no further action on the Langleys' motion was necessary. The reduced judgment stood and was subsequently satisfied.

During the presentation of evidence, the jury asked the witnesses a number of questions. Dr. Friedlander was asked the following: (1) "Would a finding for the defendant (on the panel = 2 - 1 or 3 - 0) stop the suit from going forward?" (2) "Is a finding against the doctor necessary for the suit to proceed?" The court refused to allow the questions. The jury also asked Dr. Woo, "How much time did you spend reviewing the submissions in this case?"

Finally, the jury asked the plaintiff, Karen Langley, the following questions: (1) "How are your visits to your physical therapist paid for? Do you have co-pay? How are your drugs paid for? Do you have any out-of-pocket?" (2) "Was this action (civil action) initiated by your insurance company? If not, how?" The court again refused to ask these questions.

**Wrongful Conviction - The plaintiff spent nearly 21 years in jail for a rape he did not commit – after being exonerated by DNA evidence, he sued the police for systematic errors that led to his wrongful conviction**

*Mayes v. City of Hammond et al*, 2:03-379

Plaintiff: Nick J. Brustin, *Cochran Neufeld & Scheck*, New York, NY and John L. Stainthorp, *People's Law Office*, Chicago, IL

Defense: David C. Jensen and Robert J. Feldt, *Eichhorn & Eichhorn*, Hammond for the City of Hammond

Steven A. Kurowski, Schererville for Detective Solan

Verdict: \$9,000,000 for plaintiff

Federal: **Hammond**

Court: J. Cherry, 8-22-06

In 1982, Lisa Jaynes, then age 18 and a convenience store clerk, was kidnapped and brutally raped in Hammond by two men. Mike Solan, a police detective in Hammond, began an investigation. A photo pak was presented to Jaynes – she made a tentative identification of Larry Mayes.

The police also subjected Jaynes to a period of hypnosis to help clarify her memory. That hypnosis tended to exculpate Mayes. Despite this, Mayes was charged and convicted of rape and abduction. He was sentenced to 80 years in prison – Mayes would later recall Solan's taunts that he'd be an old man when he was released from jail.

Mayes later served nearly 21 years in jail. The Innocence Project, which uses DNA evidence to exonerate innocent defendants, became involved in the case. DNA testing revealed that Mayes was not the rapist – his semen didn't match the perpetrator. He was released from prison, being the 100<sup>th</sup> person freed by the Innocence Project.

This federal lawsuit followed, Mayes alleging the police had not just violated his rights in this case, but instead that the police force was systematically deficient in that it was poorly trained and supervised. He cited proof that (1) the police testified the photo pak identification was positive when it wasn't, and (2) they misrepresented the hypnosis results. The combination of

police errors, the theory went, resulted in plaintiff's wrongful conviction.

The proof burden was substantial for Mayes – he had to prove not just a rights violation, but that it arose from a department that was so poorly managed that the violations represented a systematic failure. If Mayes did prevail, an award of compensatory damages from both the City of Hammond and Solan was sought. [Solan, who is planning to retire this year, is still on the force.]

The city defended the case and noted the investigation was reasonably conducted, the conviction resulting from the victim's identification. It stuck to its guns that Jaynes had picked Mayes out of the photo pak. Moreover beyond the trial court conviction, the government noted it was affirmed on appeal.

In developing its case, Hammond also sought to introduce proof that Mayes had prior convictions for both rape and robbery. This evidence was excluded.

Tried over twelve days in Hammond, the verdict was for Mayes and he took a general award of \$9,000,000 against both defendants. A consistent judgment followed. Defendants have appealed.

**Auto Negligence - A Deputy Sheriff driving in emergency mode when there was no emergency entered an intersection against the traffic light and collided with a pregnant woman**

*Englert v. Ellsworth*, 82D03-0508-PL-3649

Plaintiff: Curtis J. Hamilton, III, *Bach Hamilton*, Henderson, KY

Defense: Allyson R. Breeden and Keith W. Vonderahe, *Ziemer Stayman Weitzel & Shoulders*, Evansville

Verdict: \$98,000 for plaintiff

County: **Vanderburgh**, Superior

Court: J. Knight, 8-18-06

Around noon on 12-8-03, Kenneth Tenbarge, age 38 and a deputy with the Vanderburgh County Sheriff's Department, was hot on the trail of a possible drug dealer. Tenbarge had received a radio call indicating that a well-known narcotics suspect had purchased some pills at an "Always Open" store at the corner of St. Joseph Avenue and Allens Lane in Evansville. It was thought the pills might have