

The Indiana Jury Verdict Reporter

The Most Current and Complete Summary of Indiana Jury Verdicts

October 2022

Statewide Jury Verdict Coverage

23 IJVR 10

Unbiased and Independently Researched Jury Verdict Results

In This Issue

Marion County

Auto Negligence - \$800,000 p. 2

Lake County

Medical Negligence - Defense verdict p. 1

Federal Court - Lafayette

Educational Civil Rights - \$10,000 p. 3

Allen County

Auto Negligence - \$4,486 p. 5

Federal Court - South Bend

Employment Retaliation - \$560,000 p. 6

Kosciusko County

Auto Negligence - Defense verdict p. 6

Hendricks County

Premises Liability - Defense verdict p. 7

Noble County

Underinsured Motorist - \$10,942 p. 8

Federal Court - Hammond

Civil Rights - Defense verdict p. 8

Medical Negligence - While undergoing an elective knee replacement surgery, plaintiff suffered a cardiac arrest and ultimately died; plaintiff's estate blamed his death on the doctor and nurse who had administered the anesthesia

Estate of Hess v. Dong, et al.,
45D04-1703-CT-76

Plaintiff: Barry D. Rooth and Holly S.C. Wojcik, *Theodoros & Rooth, P.C.*, Merrillville

Defense: Jeremy W. Willett and Kathleen M. Erickson, *O'Neill*

McFadden & Willett, LLP., Schererville

Verdict: Defense verdict on liability
County: **Lake**, Superior

Court: J. Kantar, 9-21-22

In July of 2011, Donald Hess, age 53, was experiencing persistent pain in his left knee. Hess had undergone a knee replacement of his right knee some four years earlier, and now decided to undergo a similar procedure to replace his left knee.

The procedure was performed on 8-9-11. Anesthesia for the procedure was provided by a nurse anesthesiologist, Harold Cezar, under the supervision of Dr. Yanzhang Dong. Both Cezar and Dr. Dong were employees of Anesthesia Consultants of Indiana, LLC.

Following the pre-surgical evaluation, a decision was made to use spinal anesthesia rather than general anesthesia. It was administered by Cezar while Dr. Dong was out of the room dealing with several other patients.

During the procedure, Hess's blood pressure dropped precipitously. He suffered a cardiac arrest and was intubated, but he could not be revived. He came out of the procedure essentially brain dead and was transferred to hospice. Approximately nine days later Hess's family discontinued life support, and he died.

Hess's estate presented the case to a medical review panel comprised of Dr. Jithendra Chaudary, Cardiology, Richmond; Dr. Brent Damer, Orthopedics, Muncie; and Dr. George Stearley, Anesthesiology, Richmond. The panel issued an opinion finding no breach of the standard of care.

Hess's estate filed suit against Cezar, Dr. Dong, and Anesthesia Consultants of Indiana, LLC. The estate blamed Hess's death on the administration of the anesthesia. The identified experts for the estate included Dr. Hossein Ardehali, Cardiology, Chicago, IL; and Dr. Peter Salgo, Anesthesiology, New York, NY.

Cezar, Dr. Dong, and Anesthesia Consultants of Indiana defended the case and denied any breach of the standard of care. Instead, they attributed Hess's death to a known complication that is not indicative of malpractice. The identified defense experts included Dr. Andre DeWolf, Anesthesiology, Chicago, IL; Dr. Richard Josephson, Cardiology, Cleveland, OH; Dr. Carolyn Lanter, Anesthesiology, Indianapolis; and

Civil Jury Verdicts

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

Education Civil Rights - A student at Purdue had a late night sexual encounter (she was very drunk) with a fellow student – thereafter she alleged the encounter represented a sexual assault, and she reported it to school officials – those officials concluded the encounter was consensual and the plaintiff had made up a false report – she was expelled, the penalty later being lowered to a two-year suspension – the student sued Purdue and the two administrators alleging Title IX discrimination and the denial of her due process rights

Hayes v. Purdue et al, 4:18-89

Plaintiff: Barry A. Macey and Jeffrey A. Macey, *Macey Swanson*, Indianapolis

Defense: William P. Kealey and Joseph H. Harrison, III, *Stuart & Branigan*, Lafayette

Verdict: \$10,000 for plaintiff against Purdue; Defense verdict on damages for Dean Semersheim and Vice-President Rollock

Federal: **Lafayette**

(Tried in Hammond)

Court: J. Martin, 9-23-22

Megan Hayes, then age 19, was a sophomore student at Purdue University on 4-17-17. It was Grand Prix Week at Purdue which culminated with a go-kart race. It is also associated with all-day parties that run late into the night.

Hayes would recall she started drinking early in the day. By late in the evening she was at a party at the Acacia fraternity house. [Her boyfriend was a fraternity member.] There was evidence that Hayes had consumed the equivalent of 18 or so alcoholic drinks. The students had played a variety of drinking games at Acacia, including Beer Pong and Kings. Hayes was drunk.

As the party wound down, an Acacia member, Chris Lanza (he'd served her several drinks that night), offered to walk Hayes back to her dorm at Harrison Hall. When Hayes arrived at her dorm (it was two in the morning) she couldn't find a key. While a resident advisor helped Hayes access her room, Lanza hid for a moment in the women's bathroom to avoid detection. He then joined Hayes in the dorm room.

Hayes and Lanza had sex. Lanza would later indicate he was concerned that Hayes would allege the encounter was not consensual. He created an audio recording and later played it for his Acacia friends. The recording tended to suggest that the sex was consensual and that Hayes was a willing participant – her voice however was slow and unsteady.

The next morning Lanza and Hayes texted. They agreed to meet again that afternoon in her dorm. Lanza arrived and they had sex again. There was no question this second encounter was consensual.

Thereafter Hayes had a conversation with her boyfriend and told him about Lanza. It was tearful, and the boyfriend expressed concern that the first sexual encounter was not consensual. Why? Hayes was in a drunken blackout and too intoxicated to consent. Thereafter Hayes reported the encounter with Lanza to Purdue officials as a sexual assault.

An investigation began, and it was led by Dean of Students Katherine Semersheim. Semersheim conducted interviews and reviewed evidence including Lanza's secret audiotape. She concluded the sexual encounter was consensual and Hayes had faked the assault allegation. Hayes was

expelled from school. Lanza too was disciplined (regarding the audiotape) and had to write a ten-page paper about sexual exploitation.

The expulsion was appealed and came to the desk of a Purdue Vice-President, Alyssa Rollock. Rollock reviewed the evidence and upheld Semersheim's finding. However, she lowered the penalty to a two-year suspension. Hayes, a Carmel native, sought admission at several Indiana-area colleges. However they refused her admission until the suspension had passed.

Hayes ultimately enrolled at the University of Oregon. However this had its own economic costs, including that she lost her tuition of \$4,996 at Purdue, had to pay more in tuition as an out-of-state Oregon student, incurred travel costs, and, finally, in her judgment Oregon provided a less rigorous education.

Hayes then filed this federal lawsuit under a pseudonym, Nancy Roe. The court permitted her to so proceed. However as the trial began, Hayes was identified in court by her name. The lawsuit alleged that Purdue engaged in Title IX discrimination in several ways: (1) failing to fully investigate her complaint because of her gender, (2) retaliating against her because of her good faith complaint, and (3) generally treating her differently than male students. Particularly, Lanza was told to write a report while she was expelled.

The heart of the case was that the school failed to fully consider the evidence. Particularly, while the first encounter with Lanza may have appeared consensual on the audiotape, and there was other evidence to suggest it was consensual, the key was that Hayes

The Indiana Jury Verdict Reporter
9462 Brownsboro Road, No. 133
Louisville, Kentucky 40241
1-866-228-2447
Online at Juryverdicts.net

From Evansville to Fort Wayne, Lake County to Jeffersonville
Comprehensive and Timely Indiana Jury Verdict Coverage

The Indiana Jury Verdict Reporter
The Most Current and Complete Summary of Indiana Jury Verdicts
Ordering is Easy - Call to Place your MasterCard/Visa order

Order the 2021 Year in Review for just \$250.00

Call 1-866-228-2447 to pay by MasterCard/Visa/AMEX

Name

Return with your check to the
The Indiana Jury Verdict Reporter
at the above address

Firm Name

_____ \$299.00 for a one year subscription to the
Indiana Jury Verdict Reporter (12 issues)

Address

_____ \$250.00 to Order the
IJVR 2021 Year in Review

City, State, Zip

The 22nd Edition ships in March 2022