The Indiana Jury Verdict Reporter

The Most Current and Complete Summary of Indiana Jury Verdicts

February, 2006 **Statewide Jury Verdict Coverage** **7 IJVR 2**

Unbiased and Independently Researched Jury Verdict Results

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Civil Jury Verdicts

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

Assault - In an effort to gain control of his father's multi-million dollar estate, a man attempted to murder his sister and her son
King v. King, 49D12-0307-CT-1278
Plaintiff: Robert E. Saint, *Emswiller Williams Noland & Clarke*, Indianapolis
Defense: Robert B. Thornburg, *Locke Reynolds*, Indianapolis
Verdict: $200,000 for Kay; $50,000 for Christopher
County: **Marion**, Superior
Court: J. Moberly, 1-16-06

Over the course of his long and successful career in business, George King managed to amass a sizeable fortune. As is so often the case, however, King's success in business was marred by domestic disharmony. King had two children: a daughter, Kay, and a son, also named George. Kay and her brother frequently squabbled over access to their aging father's money.

Although King apparently lived with his son, he seems to have given Kay control of the family finances. King even went so far as to give Kay a power of attorney. Young George apparently saw the writing on the wall, and he clashed with Kay over who would control their father's multi-million dollar estate after his death. As a result of these conflicts, Kay and George saw as little of each other as possible.

Despite their efforts to maintain a healthy distance from one another, it was inevitable that Kay and George would occasionally come into contact.

On one such occasion in the summer of 2000, the friction between the two siblings erupted into ominous threats.

During a heated argument, George shouted at Kay, "I'm going to kill you!" Kay asked him, "Are you going to shoot me?" To which George answered, "Yeah," as he nodded affirmatively. That scene was an eerie foreshadowing of events to come.

In the evening of 11-14-01, Kay and her own son, Christopher, then age 15, were returning home from Christopher's confirmation class. Christopher was driving, and Kay was riding as a front seat passenger. Christopher pulled the car into the garage and turned off the engine. Only then did he notice something moving in the darkness.

Out of the shadows, a figure emerged and stepped toward the passenger side of the car. It was a man wearing a dark trench coat and a ski mask. The man also had a bag from Hardee's restaurant covering his right hand. Before either Christopher or Kay could react, the man whisked off the bag to reveal a revolver.

The man began firing shots into the passenger compartment of the car, and both Kay and Christopher were hit several times in various parts of their bodies. In the chaos of the moment, Christopher had dropped the car keys into his lap. He now fumbled desperately to find them. When he finally regained the keys, Christopher managed to restart the car and back quickly out of the garage. He then sped off down the street with the masked man running behind and continuing to fire shots.

Christopher drove to a nearby fire station where the firemen rendered first aid before arranging for Kay and Christopher to be transported to the hospital. While they were being treated, Kay and Christopher repeatedly identified George as their attacker. They based this identification on their recognition of the masked man's eyes, mouth, and small build.

Kay spent the next three weeks in the hospital recovering from gunshot wounds to her head, face, neck, hand, shoulder, and upper torso. Among her injuries were a fractured jaw, facial fractures, and broken teeth. Christopher suffered similar injuries. Additionally, he still has bullet fragments in his body, and he has suffered permanent disfigurement.

While Kay was in the hospital, she was terrified that George would come after her to finish the job. In an effort to assuage her fears, a group of friends took turns standing guard over her until she was discharged. After Kay left the hospital, she was placed under police protection and went into hiding.

In the meantime, George was arrested and prosecuted on two charges of attempted murder (Class A felonies), as well as several lesser associated offenses. He was convicted on those charges on 8-23-03 and sentenced to fifty years in prison. He filed an appeal, and in a published opinion, the appellate court affirmed his conviction. See *King v. State*, 799 N.E.2d 42 (2003 Ind.App.).

With the criminal aspects of the case out of the way, Kay and Christopher filed suit against George and sought compensation for their damages. In addition to their physical suffering, they also claimed emotional distress and sought punitive damages.

Kay, in particular, seemed to have been especially traumatized by the experience. Although she came out of hiding after George was convicted and sent to prison, she continues to suffer from anxiety and fears that George will hire a "hit man" to kill her and her son.

Plaintiffs identified a veritable stable full of experts. Among them were Dr. DuWayne Carlson, Orthopedic Surgery, Indianapolis; Dr. Andrew Mandery, Hand Surgery, Indianapolis; Dr. Jeffrey Rich, Dentistry, Indianapolis; Dr. Richard Lawlor, Forensic Psychology, Indianapolis; and Dr. George Launey, Economics, Franklin.

From the confines of his prison cell at the Wabash Valley Correctional Facility, George defended the case as best he could and maintained his innocence. He was particularly concerned to call into question Kay and Christopher's identification of him as their attacker, given that the assailant wore a ski mask that obscured his face.

Plaintiffs responded to this argument by filing a motion for partial summary judgment on the issue of liability. They argued that in light of George's conviction in criminal court, he should be barred by the doctrine of collateral estoppel from maintaining his innocence in the civil case. The court agreed and granted the motion. With few options remaining, George defended on damages and attempted to minimize the claimed damages.

The case was tried for five days in Indianapolis solely on the issue of damages. The proceeding was bifurcated into separate compensatory and punitive damages phases. In the compensatory damages phase, the jury found for plaintiffs and awarded Kay $200,000 and Christopher $50,000.

In the punitive damages phase, George argued that punitives would not be appropriate inasmuch as he is already serving a fifty-year prison sentence. Thus, punitive damages in the civil case would serve no additional purpose. The jury was evidently persuaded by this reasoning and awarded zero punitives. The court's consistent judgment brought the case to a close.

Auto Negligence - A pregnant woman was awarded more than three times her medical expenses in a rear-end crash case; her husband's consortium interest was valued at zero

Dumbauld v. Griffin,
45C01-0404-CT-56
Plaintiff: David R. Phillips, *Sturm & Phillips*, Valparaiso
Defense: Paul P. Pobereyko, *Universal Casualty Litigation Counsel*, Munster
Verdict: $32,000 for Sara; Zero for Matthew
County: **Lake**, Circuit
Court: Christina Miller (Magistrate), 11-15-05

In the afternoon of 2-21-03, Sara Dumbauld was driving a 2002 Chevrolet Ventura, going north on State Line Road in Hammond. Dumbauld was on her way to work. Behind her was a 1987 Ford F150 truck being driven by Henry Griffin. An instant later, Griffin rear-ended her.

Dumbauld suffered injuries to her neck and spine due to the crash. As it happened, Dumbauld was pregnant at the time and feared for the safety of her unborn child. As a precautionary measure, her doctor placed her on bed rest, and she was thus unable to get an appropriate diagnosis or treatment until after her child was born.

Dumbauld later gave birth to a healthy child. By this time, however, Dumbauld had suffered permanent injuries to her spine. Her medical expenses came to approximately $10,000. Additionally, she incurred lost wages in an unspecified amount due to her bed rest.

In this lawsuit, Dumbauld sought compensation from Griffin for her medical expenses, lost wages, and other damages. Her husband, Matthew, also presented a derivative claim for his loss of consortium.

Griffin defended the case and explained that the sun's glare reflected off the rear of Dumbauld's vehicle had prevented him from seeing her brake lights. Griffin also disputed the nature and extent of Dumbauld's claimed injuries.

At the conclusion of a two-day trial in Crown Point, the jury returned a mixed verdict for the Dumbaulds. The jury awarded damages of $32,000 to Sara but zero to Matthew for his consortium interest. The court entered a consistent judgment.

Prior to trial, the Dumbaulds made a Qualified Settlement Offer of $25,000. Post-trial, they filed a motion for costs and attorney fees of $1,000. At the time the IJVR reviewed it, the court's ruling on the motion was not part of the record.

Medical Negligence - While in the hospital recovering from a stroke, a patient twice fell off the toilet and suffered a shoulder injury; the patient criticized the hospital for failing to anchor him to the toilet with a restraint device

Boyer v. Memorial Health System, Inc., 71C01-0110-CP-2483
Plaintiff: Patrick F. O'Leary, Goshen
Defense: Jane F. Bennett, *May Oberfell Lorber*, Mishawaka
Verdict: $125,000 for Billy; $12,500 for Bonnie
County: **St. Joseph**, Circuit
Court: J. Matsey, 11-17-05

On 5-18-93, Billy Boyer, a service technician for a food service company, was admitted to Memorial Hospital for diagnosis and treatment of a stroke that he had suffered while recovering from back surgery. As a result of his stroke, Boyer was partially paralyzed in his left arm and leg, and his balance, coordination, and strength were affected.

Patients in Boyer's condition face special difficulties in dealing with their basic bodily functions. In particular, it can be difficult for such patients to sit upright while using the bathroom. The usual procedure in such cases is to tie a "waist posey" to the patient and anchor it to the back of the commode. This procedure enables the patient to use the toilet without falling over.

On 5-22-93, several days after Boyer's admission to the hospital, Boyer informed his nurse that he needed to use the bathroom. The nursing staff placed him on the bedside commode and left the room. Significantly, Boyer was not secured with a waist posey. Before long, he slid off the commode and fell to the floor.

Following that incident, Boyer was treated for pain in the back of his head and for a one-inch scrape on his left knee. Three days later, he was transferred to the hospital's rehabilitation center. While there, Boyer was visited on 6-3-93 by his friend, Donald Paulus. During Paulus's visit, Boyer again told his nurse that he needed to use the bathroom.

This time the nurse wheeled Boyer to the bathroom, unfastened the velcro belt that held him in his wheelchair, and hoisted him onto the toilet. The nurse then left the room and said a the call bell should be rung when Boyer was finished. The nurse stated that when she heard the bell, she would return to help Boyer off the toilet. Once again, no waist posey was used.

Shortly after the nurse left the room, Paulus heard Boyer call his name. Paulus, who had been talking on the phone to Boyer's wife, realized Boyer had fallen off the toilet. In fact, Boyer had landed on his left shoulder. Paulus rang the bell for help, and the nurse returned and placed Boyer into the bed.

Although Boyer complained to the nurse about pain that he attributed to his fall, the nurse did not summon a doctor. Instead, she wrote up the incident in such a way as to make it seem that Paulus was somehow at fault for Boyer's fall.

Boyer later underwent surgery on his shoulder, but he continues to experience pain. He presented the evidence to a medical review panel and criticized the hospital for its nursing staff's decision to leave him unattended twice on the toilet despite knowing that he was at risk of falling. Boyer also criticized the decision not to use a restraint device, the failure to provide him with medical attention following the second fall, and the nurse's apparent attempt to cover up the facts surrounding the second fall.

Oddly, the record does not identify the members of the medical review panel. However, the panel's opinion was unanimous that the hospital did breach the standard of care and that the breach was a factor in Boyer's short-term pain. At the same time, the panel also opined that the breach was not a factor in Boyer's continuing pain.

Boyer filed suit against Memorial Health System, Inc., the hospital's alter ego, and reiterated his allegations as outlined above. His identified medical expert was Dr. Magdi Gabriel, Orthopedic Surgery. It was Gabriel's opinion that Boyer suffered subacromial bursitis due to his falls at the hospital. In addition to compensatory damages, Boyer also sought punitive damages. Finally, his wife, Bonnie, presented a derivative

claim for her loss of consortium.

The hospital defended the case and called its care appropriate. According to the hospital, the nurse who attended Boyer during the second fall assessed his injury and determined that it simply wasn't necessary to call a doctor. This is perfectly in keeping with proper procedure.

The hospital also disputed causation and noted that Boyer had no documented complaints of shoulder pain for the next month that he was in the hospital. Indeed, he didn't seek medical attention for his shoulder until several months after his release from the hospital. Instead of being due to the fall, the hospital suggested Boyer's shoulder pain might be due to a work-related back injury.

During the course of the litigation, the proceedings were temporarily stayed because the hospital's insurer, PHICO Insurance Co., was in liquidation in Pennsylvania. For reasons the record does not make clear, however, the hospital later withdrew the notice of stay. Also, the court granted the hospital a partial summary judgment on the issue of punitive damages. The litigation continued on the underlying claims.

The case was tried for five days in South Bend. The jury deliberated for slightly less than one and a half hours before returning a verdict for the Boyers. Billy was awarded damages of $125,000, while Bonnie was awarded $12,500 for her consortium interest. That brought the total combined award to $137,500. The court entered a consistent judgment for that amount.

Post-trial, the hospital filed a motion to correct error because the verdict was against the weight of the evidence. The court denied the motion. According to a published account, the hospital plans to appeal.

Also, Boyer filed an appeal of the court's grant of a partial summary judgment to the hospital on the issue of punitive damages. At the time the IJVR reviewed the record, the appeal was still pending.

Industrial Negligence - A steelworker had one foot amputated and another ankle crushed when seven tons of steel fell from a crane – at a first trial in 2003, plaintiff took a raw verdict of $16 million-plus – the court granted a JNOV then reversed on appeal and the matter was retried nearly three years later

Mesman v. Crane Pro Services, 2:99-428
Plaintiff: Kenneth J. Allen, *Kenneth Allen & Associates*, Valparaiso
Defense: Jeffrey H. Lipe and Beth B. Woods, *Williams Montgomery & John*, Chicago, IL
Verdict: Defense verdict on liability
Federal: **Hammond**
Court: J. Cherry, 1-31-06

John Mesman, age 44, was employed on 1-17-98 for InfraMetals. A steel services firm in East Chicago, it obtains large steel plates from steel mills, then cutting them down to size for product manufacturers. Steel arrives at InfraMetals in railcars. It is then unloaded by overhead cranes that run on girders.

Beginning in 1997, InfraMetals contracted with Crane Pro Services to refurbish and modernize their crane system. Crane Pro is a division of a Finnish company that has 350 locations worldwide. Crane Pro's work included converting cranes to remote control, eliminating the need for a crane operator. The work was finished just ten days before the injury event.

That day, standing inside a railcar, Mesman and other workers began the process of unloading the steel plates. Each weighs approximately 14,000 pounds. A crane began to unload the plate, lifting it into the air. A moment later, the crane collided with a parked and now obsolete cab (made obsolete by the remote control).

The load shifted and fell backwards onto Mesman. The plate nearly cut through Mesman's lower left leg. Ultimately, that foot was amputated. Mesman also sustained a traumatic crush injury to his right foot. It was repaired surgically with the insertion of steel plates and screws.

Mesman ultimately endured forty-three surgeries and more than 200 physical therapy sessions. His medical bills were $232,000, with more than $800,000 estimated for future care all as discussed by Dr. Gary Yarkony, Physical Medicine, Elgin, IL. Impaired and restricted from only the most sedentary positions, Mesman sought $650,000 for future lost wages. The economic loss was quantified by Anthony Gamboa, Vocational Expert, Louisville, KY. At the time of his injury, plaintiff earned $9.25 an hour. Mesman's wife, Judy, presented a derivative consortium claim.

His liability theory against Crane Pro was multi-faceted. It began with the negligence of his liability-immune employer which parked the obsolete cab in the first place. However, Mesman argued that Crane Pro knew when it made the modifications that it was likely the cab would remain. Accordingly, it should have installed a switch to protect contact with the cab or other obstructions.

The theory also implicated a delayed-stop device. It worked so that when activated, the crane still moved for another three seconds, permitting it to travel for another foot. In this instance, a co-worker hit the button, but the crane kept moving. Plaintiff's crane expert was Joby Williamson, Engineer, Oley, PA.

Crane Pro defended the case and relied on its own crane expert, Thomas Laughlin, Engineer, Houston, TX. He explained the modified crane conformed to the state of the art industry standard, calling this configuration very common. While denying any fault, the thrust of the defense and Laughlin's testimony implicated plaintiff, his co-workers and the employer. Importantly, InfraMetals had no safety manual, meetings or program of any kind. Moreover, it was not defendant's fault that InfraMetals elected to leave the cab in a dangerous location.

This case was first tried from March 3rd to March 14th; the deliberations then continued for three more days, the panel finally reaching a verdict on 3-18-03. It was mixed on liability. While Mesman was exonerated, the panel assessed 66% to the non-party

employer, InfraMetals, the remaining 34% to defendant. The raw award of damages was $16,500,000, plaintiff's wife taking $75,000 for her consortium interest. After a reduction for comparative fault, the consistent judgment for the Mesmans against Crane Pro totaled $5,635,500. **See** Case No.1366 in the IJVR 2003 Year in Review. In this first trial, Crane Pro was represented by Byron Knight, Elizabeth Knight and Nathan Lawlis, all of Chicago, IL.

The then presiding Judge Springmann later granted Crane Pro's JNOV motion. Mesman appealed. The 7th Circuit reversed in 2005, Judge Posner writing that this simple case had been badly handled by all. He concluded there was no basis to enter a JNOV and remanded the matter for a second trial. At the trial and in an odd appellate admonition, Posner told the trial judge to take "firm control" of the parties. See *Mesman v. Crane Pro*, 409 F.3d 846 (7th Cir. 2005).

The matter came to a second trial almost three years after the first. Tried for a week, the verdict was for Crane Pro on liability and Mesman took nothing. A defense judgment was entered for the company.

Auto Negligence - Defendant admitted fault for a failure-to-yield crash, and plaintiff was awarded $25,000

Ellis v. Sage, 49D11-0404-CT-761
Plaintiff: Richard C. Bucheri, *Poynter & Bucheri*, Indianapolis
Defense: Robert Smith, *Allstate Litigation Counsel*, Indianapolis
Verdict: $25,000 for plaintiff
County: **Marion**, Superior
Court: J. Hanley, 1-11-06

On 6-8-02, Donald Ellis was driving south on South East Street toward the intersection with East National Avenue in Indianapolis. At the same time, a vehicle being driven by Cole Sage was approaching from the opposite direction.

Upon reaching the intersection, Sage made a left turn onto East National Avenue. He did so in Ellis's path and collided with the front driver's side of Ellis's vehicle. Ellis was forced off the road and suffered unspecified injuries. Also, the record does not reveal the amount of his medical expenses.

Ellis filed suit and blamed Sage for crashing into him. Sage admitted fault for the crash but disputed the nature, extent, and causation of Ellis's injuries.

The case was tried for two days in Indianapolis. The jury returned a verdict for Ellis in the amount of $25,000. Following the trial, the parties stipulated to the application of a credit of $947 for money advanced to Ellis by Sage's insurer, Allstate Insurance. The court entered a reduced judgment for $24,052, and it has been satisfied.

Assault - A woman claimed her boyfriend savagely beat her for no reason; the boyfriend claimed the woman herself was partially to blame for the fight, and in any event, he never intended to hurt her

Fisher v. Becker, 82D03-0404-PL-1648
Plaintiff: Thomas Massey and Mark F. Warzecha, *Bowers & Harrison*, Evansville
Defense: Craig Goedde, *McCray Lavallo Frank & Klinger*, Evansville
Verdict: $15,000 for plaintiff
County: **Vanderburgh**, Superior
Court: J. Knight, 8-18-05

In the early months of 2004, the romance between Jamie Fisher and Chris Becker was approaching a crossroads. Apparently, Fisher was of the opinion that the courtship had gone on long enough, and she was ready to move to the next step. Becker, however, was not so sure, and the tension between the two soon reached a boiling point.

On 3-27-04, Fisher and Becker were having a night out at a bar. Fisher would later claim that as she was driving Becker back to his home at 5521 Calle Las Palmes in Evansville, he hit her in the face repeatedly without provocation. He then allegedly dragged her into his apartment by her hair and her shirt and continued beating her for another two hours.

At some point during the ordeal, Fisher was able to make a call for help on her cell phone. Help eventually arrived, and Becker was arrested. Fisher was taken to Deaconess Hospital where she was treated in the ICU for two days for various injuries, including a ruptured spleen and a nose fracture. She would later calculate her medical expenses and lost wages due to the injury at $11,764.

Becker was prosecuted criminally for his assault on Fisher, and he was found not guilty. Before that happened, however, Fisher filed suit against him on counts for battery and confinement. She sought treble damages, plus another $200,000 to $500,000 for her pain and suffering. Fisher claims she now suffers from post-traumatic stress disorder due to the incident.

Becker defended the case and provided a different version of events. According to him, it was he, rather than Fisher, who was driving the couple home that night. The two had already begun to argue during the drive, and at one point Fisher attempted to grab the wheel. Becker tried to push her hand away, and in the process he accidentally hit her in the face.

Becker further explained that the argument continued once they got inside his apartment. At one point during the discussion, Fisher gave Becker an ultimatum that she would leave him if he didn't marry her within thirty days. In her anger, Fisher threw a telephone at Becker. The two then began wrestling and fell on a sofa. Becker claims Fisher's spleen injury was due to the fall onto the hard sofa.

In light of this alternative version of events, Becker argued Fisher was partially at fault, and he had not intended to harm her. That stance would have interesting post-trial implications.

The case was tried in Evansville for three days (interestingly, Becker's acquittal on the criminal charges would not take place until about a month after the civil trial). The jury deliberated for approximately nine hours before returning a verdict for Fisher in the amount of $15,000. The court entered a judgment for that amount, but the case was far from over.

Post-trial, Fisher filed a motion to correct error, or for additur, or for a new trial on the ground that the verdict

included nothing for Fisher's mental suffering. Fisher also argued that the court's comparative fault instruction had been erroneous in that it excluded intentional conduct.

In essence, the court had instructed the jury that it could award Fisher damages only if they found Becker had acted intentionally (as noted above, Becker claimed his actions were unintentional). The court agreed its instruction had been in error. Accordingly, the court set aside the verdict and granted a new trial. Becker filed an appeal of that ruling. At the time the IJVR reviewed the record, the appeal was pending.

As an interesting aside, the post-trial motions included affidavits that provide intriguing insights into the jury's deliberation process. Several of the affidavits were marked "Not for Public Access." A few of them, however, were not so marked.

According to the affidavits that were not marked confidential, the jury conducted a bit of experimentation during its deliberations. The experiment consisted in using a tape measure to take the dimensions of a sofa so as to determine whether it would have been possible for Fisher's spleen injury to result from falling on the sofa as Becker theorized. Another juror, however, noted the result of the experiment played no role in the deliberations.

The jurors also explained how they arrived at the verdict amount. It seems the jury felt that Fisher provoked Becker to hit her when she issued the marriage ultimatum and threw the telephone at him. The jurors went on to explain that the $15,000 Fisher was awarded was for the time she spent in the hospital.

Auto Negligence - Plaintiff was awarded three and a half times his medical expenses in a rear-end crash case

Dickerson v. Rucker,
45D11-0405-CT-95
Plaintiff: Jeffery Oliveira, *Jeffery Oliveira & Associates*, Merrillville; and Richard F. McDevitt, Munster
Defense: Thomas S. Ehrhardt, *Bokota Ehrhardt McCloskey Wilson & Conover*, Merrillville
Verdict: $16,300 for plaintiff
County: **Lake**, Superior
Court: J. Dywan, 12-1-05

On 1-14-04, Darrin Dickerson was driving north on Pierce Street near the intersection with 33rd Avenue in Gary. Behind him was a 1999 Chevrolet Blazer being driven by Levone Rucker. When Dickerson stopped at a stop sign at the intersection, Rucker also came to a stop.

However, as soon as she stopped, Rucker reached for a tissue. As she did so, she mistakenly assumed that Dickerson had pulled away from the stop sign. Accordingly, Rucker let her foot off the brake and began to move forward, apparently without looking ahead of her. An instant later, she rear-ended Dickerson.

Dickerson suffered injuries to his neck and back, and he complained of headaches. His incurred medical expenses came to $4,612, and the damage to his vehicle amounted to approximately $2,000. Additionally, Dickerson claimed lost wages in the amount of $1,450. His identified medical expert was Dr. Robert Guthrie, Family Practice, Hammond.

Dickerson filed suit against Rucker and blamed her for moving forward without watching where she was going and for crashing into him. Rucker, whose own vehicle sustained only $510 in damage due to the crash, admitted fault but disputed the nature and extent of Dickerson's claimed injuries.

The case was tried for two days in Crown Point. The jury found for Dickerson and awarded him $16,300, or just over three and a half times his medical expenses. The court's consistent judgment followed. Prior to trial, Dickerson's settlement demand had been $25,000; Rucker offered $1,046.

Medical Negligence - A man went to the ER for treatment of a cut on his finger; when the finger later necrotized and had to be amputated, the man criticized the ER doctor for having applied the dressing to the cut finger too tightly, thereby cutting off the circulation

Slavens v. Gastineau,
67C01-9912-CP-386
Plaintiff: Stephen L. Williams, *Mann Law Firm*, Terre Haute
Defense: Robert G. Zeigler, *Zeigler Cohen & Koch*, Indianapolis
Verdict: Defense verdict on liability
County: **Putnam**, Circuit
Court: J. Headley, 10-14-05

In the evening of 6-14-94, Stephen Slavens went to the ER at Putnam County Hospital in Greencastle with a cut on his left index finger. After Slavens's wound was cleaned, he was examined by Dr. Bruce Gastineau. Gastineau dressed the wound and covered it with gauze and a splint. He then discharged Slavens with instructions for follow-up care.

Slavens went home that night, but his pain only increased, and he found himself unable to sleep. Finally, the pain became so bad that he returned to the ER sometime after midnight. This time he was given a painkiller and sent back home.

The pain continued to worsen, and on 6-18-94, Slavens went back to the ER yet again. On this visit the nurse noted that Slavens's finger had turned black and was exuding a foul odor. Slavens was also unable to bend his finger.

Slavens was examined by a different doctor who immediately referred him to St. Vincent's Hospital in Indianapolis. At St. Vincent's, Slavens was treated with leech therapy. Unfortunately, it didn't work. Further examination revealed a completely necrotic finger. On 6-20-94, Slavens's finger was totally amputated.

Slavens presented the matter to a medical review panel and argued his injury was due to Gastineau's improper application of the splint and gauze in such a way as to cut off the circulation

in his finger. The medical review panel was composed of Dr. Stephen Dillinger, Emergency Medicine, Greenfield; Dr. Robert Nation, Family Practice, Indianapolis; and Dr. Michael Mann, Emergency Medicine, Marion.

The panel was unanimous in its opinion that Putnam County Hospital was without fault in the matter. Regarding Dr. Gastineau, a majority of the panel thought his treatment failed to meet the standard of care, but it could not be determined whether that was a factor in Slavens's injury. The one hold-out on the panel was Dr. Nation. It was his view that Gastineau did not fail to meet the standard of care.

Slavens filed suit and reiterated his criticisms of Gastineau's treatment. His identified medical experts included Dr. John Freed of Terre Haute, and Dr. David Gregory, Emergency Medicine, Columbus. It was Freed's opinion that Gastineau applied the gauze too tightly and that it should have been removed on Slavens's return to the ER. Freed also thought Gastineau should have followed Slavens more closely because of the reported pain. If that had been done, Slavens's finger would not have needed to be amputated.

Gastineau defended the case and denied any breach of the standard of care. Instead, he claimed that either Slavens or his mother had removed the dressing and rewound it incorrectly. That, rather than Gastineau's care, was what cut off the circulation to Slavens's finger and led to the amputation. The record does not identify defense experts.

The case was tried for three days in Greencastle. The jury returned a defense verdict for Gastineau. If the court entered a judgment, it was not in the record at the time the IJVR reviewed it.

Auto Negligence - Plaintiff suffered a separated shoulder and a rotator cuff tear in a failure-to-yield crash case

Henley v. Jarvis, 49C01-9806-CP-1147
Plaintiff: F. Robert Lively, *Lively Shaveer & Troiani*, Indianapolis
Defense: Matthew C. Robinson, *Yarling & Robinson*, Indianapolis
Verdict: $31,784 for plaintiff
County: **Marion**, Circuit
Court: J. Sosin, 3-17-04

On the morning of 6-15-96, Kenneth Henley, age 52, was driving a 1980 Chevrolet Suburban and headed east on West 10th Street in Indianapolis. At the same time, a vehicle being driven by Jason Jarvis was traveling on Dr. Martin Luther King, Jr. Street.

The parties reached the intersection of the two roads simultaneously. According to Henley, he proceeded through the intersection on a green light. Jarvis had a red light, but he disregarded it and entered the intersection as well. An instant later, the two collided.

Henley was taken to the ER at Wishard Hospital where he was initially diagnosed with a right shoulder strain. A later diagnosis indicated a right shoulder separation and a rotator cuff tear. Henley underwent two surgeries related to his injuries and incurred medical expenses of approximately $24,184.

Henley filed suit against Jarvis and blamed him for running the red light and causing the crash. Henley's identified medical expert was Dr. William Atz, Orthopedic Surgery, Beech Grove.

Jarvis defended the case and minimized damages. However, even Jarvis's own IME, Dr. Christopher Stack, Orthopedics, Indianapolis, thought Henley's ongoing complaints of pain were related solely to the accident. Stack also thought Henley had a Permanent Partial Impairment rating of 8% to the person as a whole due to his injuries.

The case was tried for two days in Indianapolis. The jury returned a verdict for Henley in the amount of $31,784. Following the trial, Jarvis filed a motion for a credit of $5,815 for funds that his insurer, Allstate Insurance, had previously paid to Henley. The court granted the motion and entered a judgment for the reduced amount of $25,968. The judgment has been satisfied.

Shopping Cart Negligence - While shopping at a Home Depot store, a man was hit in the back of the leg by a shopping cart being pushed by another customer; the man blamed his resulting injuries both on the other customer and on the store

Machowicz v. Home Depot, et al., 45D10-0308-CT-198
Plaintiff: Nick Katich and Stephanie Shappell, *Katich & Shappell Legal Team*, Crown Point
Defense: Michael J. Rappa, *Johnson & Rappa*, Merrillville, for Home Depot; Joseph Stalmack, *Joseph Stalmack & Associates*, Hammond, for Holtz
Verdict: Defense verdict on liability
County: **Lake**, Superior
Court: J. Pera, 9-22-05

On 6-27-03, Fred Machowicz and his wife visited the Home Depot garden center in Hobart to purchase several bags of dirt. At the same time, Fran Holtz was also at the Home Depot garden center to purchase some flowers.

Holtz had selected the items she wanted to purchase and then placed them on a flat bed cart. However, the cart seemed to have some problems with its wheels. Machowicz would later allege the wheels on Holtz's cart were not functioning properly, and this made the cart difficult to push and steer.

Nevertheless, Holtz continued to use the allegedly defective cart and proceeded with her selected items to the checkout counter. She arrived at the counter and found herself behind Machowicz who was also ready to checkout.

As Holtz came up behind Machowicz, she accidentally hit him in the lower leg with her cart. Machowicz fell down and experienced pain in his leg. He was subsequently diagnosed with a torn Achilles tendon, for which he underwent several surgeries. The record does not reveal the amount of his medical expenses.

Machowicz filed suit against Home Depot, Holtz, and the manufacturer of the cart, a North Carolina company called Technibuilt, Inc. However, Technibuilt later disappeared from the case, presumably due to a dismissal. Machowicz blamed Home Depot for providing Holtz with a defective cart. He blamed Holtz for running into him with the cart and for continuing to use the cart despite knowing of its defects.

Home Depot initially failed to respond to the complaint. On that basis, the court granted Machowicz a default judgment against the mega-store. However, Home Depot later entered the case, and the parties stipulated to having the default set aside.

Home Depot then defended on the merits and disputed the nature, extent, and causation of Machowicz's injuries. The store also accused Machowicz of failing to mitigate his damages, and it blamed Holtz for continuing to use the defective cart. Holtz also defended and minimized damages.

The case was tried in Crown Point for three days. The jury returned a verdict for Holtz and Home Depot. The court's consistent defense judgment followed.

Auto Negligence - Defendant admitted fault for a rear-end crash; plaintiff was awarded slightly less than $1,500

Swem v. Neff, 49D11-0101-CT-104
Plaintiff: David K. Margerum, *Margerum & Kiplinger*, Indianapolis
Defense: Thomas E. Rosta, *Kopka Pinkus Dolin & Eads*, Indianapolis
Verdict: $1,489 for plaintiff
County: **Marion**, Superior
Court: J. Hanley, 1-25-06

On 2-1-99, Mark Swem was driving a 1990 Chevrolet van, going south on Lafayette Road in Indianapolis. His employee, Bruce Garner, was riding with him as a front seat passenger. Behind them and headed in the same direction was a vehicle being driven by Timothy Neff.

Upon reaching the intersection with 56th Street, Swen stopped for a red light. As he sat waiting for the light to turn green, Neff rear-ended him. Swem and Garner suffered soft tissue injuries in the crash. Their respective medical expenses are unknown, but Swem received chiropractic treatments from Dr. Travis Barnhart in Indianapolis.

Swem and Garner filed suit and blamed Neff for crashing into them. During the course of the litigation, Garner settled his claim and got out of the case. The litigation proceeded on Swem's claim. Neff admitted fault, but he disputed the nature, extent, and causation of Swem's claimed injuries. Neff also accused Swem of failing to mitigate his damages.

A jury in Indianapolis heard the case and returned a verdict for Swem in the amount of $1,489. The court entered a consistent judgment.

Medical Negligence - A woman underwent surgery to remove and replace a morphine pump; following the surgery, the woman developed meningitis, which led to cardiac arrest and brain damage

Dusza v. Madison,
45D01-0405-CT-115
Plaintiff: Terrence L. Smith and David S. Gladish, *Smith & DeBonis*, Highland
Defense: Louis W. Voelker and Gregory A. Crisman, *Eichhorn & Eichhorn*, Hammond
Verdict: Defense verdict on liability
County: **Lake**, Superior
Court: J. Schneider, 11-30-05

In December of 1998, Rose Dusza, then age 59, was having multiple medical problems. For one thing, it seems she had a colostomy performed. At around the same time, Dusza underwent surgery to install a Medtronic morphine pump in her lower back to deliver morphine directly to her spinal fluid. The surgery was performed by Dr. Paul Madison of Michigan City.

Over the following year, Dusza experienced problems with the pump. Most seriously, the pump had begun to protrude through her skin near the colostomy. As a result, the pump needed to be surgically removed and replaced. Dr. Madison was once again to perform the procedure.

On 5-25-99, Dusza was admitted to St. Anthony's Hospital in Michigan City to undergo the corrective surgery. The operation was completed in the morning, and it seemed to be a success. Appearances, however, were deceiving.

That evening, the nursing staff at St. Anthony's found Dusza unconscious and seizing. She had contracted an infection, had a 107 degree temperature, was in respiratory distress, and was described as profoundly unresponsive.

The staff paged Madison at approximately 7:25 p.m. and informed him of Dusza's condition. They contacted him again at home twenty-five minutes later at 7:50 p.m., and they paged him yet again half an hour later at 8:20 p.m. Madison did finally arrive nearly two hours later at 10:00 p.m. The next day, on 5-26-99, Dusza suffered cardiac arrest and went into a coma. As a result, she has been left with severe brain damage.

Dusza has been declared an incompetent adult and assigned a guardian in the person of her daughter, Donna Sparks. On behalf of her mother, Sparks submitted the matter to a medical review panel comprised of Dr. Steven Posar, Internal Medicine, South Bend; Dr. L. Annette Alpert, Internal Medicine, Bloomington; and Dr. Katherine Prillaman, Anesthesiology, Bloomington.

The opinion of the panel was unanimous that Madison breached the standard of care by failing to examine Dusza sooner after he was first notified of her condition on 5-25-99. However, the panel members also opined that the delay was not a factor in Dusza's subsequent injury. Finally, the panel unanimously agreed that St. Anthony's did not breach the standard of care.

Sparks filed suit against both St. Anthony's Hospital and Madison. However, St. Anthony's was later granted a summary judgment and dismissed from the case. The litigation continued against Madison. Sparks criticized his failure to manage Dusza's infection and his failure to provide proper observation and follow-up care.

Sparks's identified experts included Dr. Timothy King, Anesthesiology, Valparaiso; and Dr. John Black, Infectious Disease, Indianapolis. Also,

Laura Lampton of Chicago provided a life care plan for Dusza. Lampton estimated the cost of Dusza's care for the rest of her life at between $1.7 Million and $3.8 Million.

Drs. King and Black agreed that following the removal of the pump, Dusza developed meningitis due to contamination of her spinal fluid. This, combined with other complications, led to her cardiac arrest and subsequent brain damage. They also agreed that, given the protruding pump's proximity to Dusza's colostomy, the standard of care required Madison to get an infectious disease consult prior to conducting the surgery. Finally, Madison should have used a different antibiotic.

Madison defended the case and denied breaching the standard of care. Instead, he called his treatment reasonable, and he disputed causation. His identified experts included Dr. Ashley Classen, DO, Fort Worth, Texas; and Dr. David Pitrak, Infectious Disease, Chicago, Illinois.

The case was tried for three days in Hammond. The jury returned a verdict for Madison, and the court entered a consistent defense judgment.

Auto Negligence - A family of three were injured when another driver pulled into an intersection in their path and collided with them

O'Dell v. Baele, 20C01-0203-CT-23
Plaintiff: Jeffery J. Stesiak, *Sweeney Pfeifer Morgan & Stesiak*, South Bend
Defense: Mark D. Geheb, *Ohio Casualty Litigation Counsel*, Valparaiso
Verdict: $45,000 for plaintiffs less 25% comparative fault
County: **Elkhart**, Circuit
Court: J. Shewmaker, 4-26-05

In the afternoon of 7-15-01, Kevin O'Dell, then age 33, was driving a 1992 Ford Escort, going east on C.R. 36 in Goshen. His wife, Amanda, and their four year-old son, Cody, were riding with him as passengers. At the same time, a vehicle being driven by Roger Baele was traveling north on C.R. 15.

At the intersection of the two roads, C.R. 15 is controlled by a stop sign, but C.R. 36 is not. Baele stopped at the stop sign and then proceeded to turn onto C.R. 36. He did so in Kevin's path. Kevin blew his horn, hit his brakes, and steered sharply to the left. The evasive maneuver was unsuccessful, and the two collided.

The impact caused little Cody to be thrown forward and hit his head on the seat in front of him. He suffered a bruised nose and a cut to his lower lip. Cody was taken to Goshen General Hospital and given six stitches. His medical expenses came to $2,764. Kevin's injuries included a collapsed lung, and he incurred medicals of $8,401. The record does not reveal the nature of Amanda's injuries, but her medical expenses totaled $6,789.

The O'Dells filed suit against Baele and blamed him for pulling out in front of them and causing the crash. Additionally, Kevin and Amanda each made mutual consortium claims. During the course of the litigation, little Cody settled his claim for $8,300 and got out of the case. The litigation proceeded on the claims of Kevin and Amanda. In addition to their other damages, Kevin claimed lost wages of $1,800.

Baele defended the case and blamed the crash on Kevin. According to Baele, he came to a complete stop at the intersection and then eased his way out slowly because his view was obstructed by foliage at the corner. At just that moment, Kevin arrived on the scene and raced through the intersection at an excessive speed.

Thus, the crash was due to Kevin's speeding rather than to anything Baele might have done. The O'Dells dispute that account and deny that Kevin was speeding. Finally, in addition to implicating Kevin's fault, Baele also disputed the nature and extent of the claimed injuries and the amount of Kevin's lost wages.

The case was tried for two days in Goshen. The jury assigned 75% of the fault to Baele and the remaining 25% to Kevin. The jury set Kevin's damages at $30,000 and Amanda's at $15,000. After reduction for comparative fault, Kevin's award came to $22,500, and Amanda took $11,250. The court's consistent judgment has been satisfied.

Post-trial, the O'Dells filed a motion to correct error because the assignment of 25% of the fault to Kevin was against the weight of the evidence. They also argued the court erred in instructing the jury on the issue of failure to mitigate. The record does not describe the nature of the alleged error in any further detail. In any event, the court denied the motion.

Insurance Contract - Plaintiffs home burned in a fire – the insurer denied the claim and suggested the plaintiffs were involved

Achey v. State Farm, 3:02-446
Plaintiff: Peter L. Obremsky and Monica Doerr, Lebanon and James A.L. Buddenbaum, Indianapolis, all of *Parr Obremsky & Morton* and William Kelly Leeman, *Leeman & Burns*, Logansport
Defense: Robin L. Babbitt, James P. Strenski and Anna E. Muehling, *Bingham McHale*, Indianapolis
Verdict: Defense verdict on liability
Federal: **South Bend**
Court: J. Miller, 9-6-05

In the middle of the night on 9-18-01, Barbara Achey was waiting up for her husband, Andrew, to return home. The couple lived with their children in a home in Logansport, IN. At three in the morning, the house caught fire. Achey and the children, along with the cat, got out safely.

Their insurer, State Farm, began an investigation of the fire. It concluded it had been intentionally set – making matters worse for the Acheys, their insurer concluded they were behind it. Beyond the evidence of ignitable fluid at the scene, State Farm noted the Acheys had financial problems and thus a motive to burn their home. The insurer also pointed out that there was no evidence anyone other than the Acheys had been present.

The Acheys disputed that conclusion and in this lawsuit, they alleged both breach of contract and bad faith. It was their position that State Farm entered into an outcome-based investigation with arson being the only possible conclusion. Plaintiffs pointed out that just because there was accelerant at the scene didn't mean that (1) that accelerant was responsible for the fire, the plaintiffs looking to other causes, or

(2) that they had a motive. In this regard, while conceding some financial problems, it was further noted that in spite of this, the plaintiffs continued to fund an IRA.

Quite simply, the Acheys postured, they were not involved in the fire and were entitled to the benefit of their insurance contract. The alleged bad faith represented the purported conduct of the insurer in denying the claim. Bad faith was dismissed by summary judgment – State Farm defended as above that the fire was suspicious and it considered its insured involvement in that suspicious.

The verdict was for State Farm on the contract count and the Acheys took nothing. Plaintiffs have since moved for a new trial, arguing there was competent proof the plaintiffs set the fire. State Farm replied that the plaintiffs had the opportunity and the motive to set it. The motion was denied.

Underinsured Motorist - **Plaintiff claimed cumulative soft tissue injuries from two separate rear-end crashes; the cases were consolidated and tried together solely on the issue of damages**

Alberts v. State Farm Insurance, et al., 45D05-0206-CT-156
Plaintiff: Ronald F. Layer, *Layer Tanzillo Stassin & Babcock*, Dyer
Defense: Kent S. Wilson, *State Farm Litigation Counsel*, Crown Point, for State Farm; Thomas S. Ehrhardt, *Bokota Ehrhardt McCloskey Wilson & Conover*, Merrillville, for Ashcraft
Verdict: $10,590 for plaintiff against State Farm; defense verdict on damages for Ashcraft
County: **Lake**, Superior
Court: J. Pete, 11-15-05

On 6-24-00, Jeffrey Alberts was driving a 1999 GMC Sierra, going west on U.S. 30 in Schererville. Upon reaching the intersection with U.S. 41, Alberts was rear-ended by an intoxicated Beth Ashcraft. Alberts sustained soft tissue injuries, but his medical expenses are unknown.

A little over a year later, on 7-30-01, Alberts was rear-ended again, this time by John Slivka. Alberts settled with Slivka by accepting his policy limits of $25,000 from Slivka's insurer, Progressive. However, Alberts thought the amount was insufficient, so he filed an underinsured motorist claim against his own insurer, State Farm. In the meantime, Alberts also filed a separate suit against Ashcraft for his injuries relating to the first crash.

Having filed the two cases separately, Alberts sought to consolidate them. He argued that the second crash exacerbated his injuries from the first crash and also caused him to suffer a disc herniation for which he later underwent a fusion surgery. Alberts's identified medical expert was Dr. Marc Levin, Neurological Surgery, Chicago, Illinois.

The court initially granted Alberts's motion to consolidate, but only for purposes of discovery and mediation. The court denied consolidation for trial. However, the court later reversed itself and granted consolidation for trial as well.

During the course of the litigation, the court granted Alberts a partial summary judgment on the issue of liability on his UIM claim against State Farm. Also, Ashcraft admitted to having been intoxicated and stipulated to liability on Alberts's claim against her. The only issue for the jury, then, was that of damages.

State Farm and Ashcraft disputed the nature, extent, and causation of Alberts's claimed injuries. The identified defense experts included Dr. Bobby Shah, Radiology, Valparaiso; and Dr. Terrence Lichtor, Neurological Surgery, Chicago, Illinois.

A jury in Hammond heard the case and returned a mixed verdict. On Alberts's claim against Ashcraft, the jury found for the defense; on the claim against State Farm, the jury found for Alberts and awarded him damages of $10,590. The court entered a consistent judgment.

Post-trial, State Farm filed a motion to correct error, or for remittitur, or for a nunc pro tunc entry on the judgment. State Farm pointed out that Progressive, Slivka's insurer, had paid Alberts $25,000. Thus, Alberts's UIM coverage should not be implicated unless the verdict for him exceeded $25,000. Since he was awarded only $10,590, Alberts was not entitled to anything from State Farm on the UIM claim. The court agreed with this reasoning and reduced the judgment to zero.

Auto Negligence - **An elderly woman was rear-ended by an employee of Papa John's Pizza who was on the job at the time of the accident**

Fisher v. Papa John's Pizza, et al., 06D01-0407-CT-246
Plaintiff: Anthony W. Patterson, *Parr Richer Obremsky & Morton*, Lebanon
Defense: Michael J. Delehanty, *State Farm Litigation Counsel*, Indianapolis
Verdict: $44,601 for plaintiff
County: **Boone**, Superior
Court: J. Kincaid, 1-9-06

On 11-15-03, Bonnie Fisher, age 71, was traveling north on Lebanon Street in the city of Lebanon. Behind her was a vehicle being driven by Francis Whitehead. At the time, Whitehead was in the course of his employment with Papa John's Pizza.

At a certain point in her journey, Fisher stopped in traffic. Whitehead failed to stop in time, and he rear-ended her. The record does not reveal the nature of Fisher's injuries or the amount of her medical expenses.

Fisher filed suit against both Whitehead and Papa John's. She blamed Whitehead for crashing into her, and she targeted Papa John's on a theory of vicarious liability. Both defendants denied fault, disputed the nature and extent of Fisher's claimed injuries, and blamed the crash on Fisher herself.

A jury in Lebanon heard the case and allocated 100% of the fault to defendants. Fisher was awarded damages of $44,601, and the court entered a consistent judgment for that amount. Prior to trial, Whitehead made a Qualified Settlement Offer of $2,765. Fisher also made her own settlement offer of $12,500. The record contains no indication of any post-trial motions.

Uninsured Motorist - Although plaintiff's insurer agreed plaintiff was entitled to some compensation on her uninsured motorist claim, the jury nevertheless returned a defense verdict

Wilson v. State Farm Insurance, 45D11-0501-CT-4
Plaintiff: James A. Greco, *Greco & Bishop*, Merrillville
Defense: Michael P. Blaize, *State Farm Litigation Counsel*, Crown Point
Verdict: Defense verdict on damages
County: **Lake**, Superior
Court: J. Dywan, 11-30-05

In the late afternoon of 9-4-03, Elizabeth Wilson was in a 1994 Ford Explorer, traveling east on S.R. 2 near the intersection with Burr Street in the Town of Lowell. Upon reaching the intersection, Wilson stopped at a stop light. An instant later, she was rear-ended by Sabrina Murillo.

Wilson claimed to have suffered soft tissue injuries due to the crash. Her medical expenses of $4,803 were paid by her insurer, State Farm Insurance. State Farm also paid Wilson $1,027 for the damage to her Explorer, as well as an additional $5,100. However, Wilson thought that amount was insufficient to compensate her fully. As it happened, though, Murillo was uninsured.

Wilson filed an uninsured motorist suit against State Farm. Wilson also named Murillo as a defendant but later dismissed her from the case when Murillo filed for bankruptcy. State Farm agreed Murillo was at fault and that Wilson was entitled to some compensation.

The only dispute between the parties was how much compensation would be appropriate. On that point, State Farm disputed the nature and extent of Wilson's damages and argued that her injuries were quickly resolved.

The case was tried for two days in Crown Point. The jury returned a verdict for State Farm, and the court entered a consistent defense judgment. There was no appeal. Prior to trial, Wilson's settlement demand was the odd sum of $14,003. State Farm offered the equally odd sum of $9,903.

Auto Negligence - Plaintiff was awarded just over three times his medical expenses in a failure to yield crash case

Towles v. Penn, 84D02-0404-CT-3288
Plaintiff: Christopher P. Shema, *Shema Law Firm*, Terre Haute
Defense: David P. Friedrich, *Wilkinson Goeller Modesitt Wilkinson & Drummy*, Terre Haute
Verdict: $22,184 for Willy Towles; defense verdict on the claim of Regina Towles
County: **Vigo**, Superior
Court: J. Adler, 8-26-05

On 11-14-03, Willy Towles was driving west on Chestnut Street toward the intersection with 16th Street in Terre Haute. At the same time, a vehicle being driven by Yvonne Penn was traveling north on 16th Street.

Willy proceeded through the intersection. Penn, however, did not stop, and an instant later she collided with him. Although the record does not reveal the nature of Willy's injuries, he incurred medical expenses of approximately $6,804.

Willy filed suit against Penn and blamed her for failing to yield the right of way and crashing into him. Additionally, Willy's wife, Regina, presented a derivative consortium claim. Penn admitted fault for the crash but disputed the nature and extent of Willy's claimed injuries. She also argued that Regina suffered no loss of consortium due to the accident.

The case was tried for two days in Terre Haute. The jury returned a verdict for Willy in the amount of $22,184. However, the jury found for Penn on Regina's consortium claim. The court entered a consistent judgment, and it has been satisfied.

Auto Negligence - Plaintiff was awarded her medical expenses in a failure-to-yield crash case; the parties engaged in an interesting post-trial dispute over an award of attorney fees

Coulter v. Flynn, 47D01-0112-CT-1234
Plaintiff: Bradley Smith, *Nunn Law Office*, Bloomington
Defense: John W. Richards, *Bunger & Robertson*, Bloomington
Verdict: $6,353 for plaintiff
County: **Lawrence**, Superior
Court: J. Vance (Special Judge), 4-5-05

In the evening of 12-5-00, Christy Coulter, then age 25, was traveling north on S.R. 37 in Mitchell. At the same time, Eunice Flynn was driving west on Old State Road 37. According to Coulter, Flynn failed to stop at a stop sign at the intersection of the two roads. As a result, Flynn collided with the passenger side of Coulter's vehicle.

Coulter suffered soft tissue injuries due to the crash. Her incurred medical expenses came to $6,323, the bulk of which was for chiropractic treatments. Coulter also claimed lost wages of $548.

Coulter filed suit against Flynn and blamed her for running the stop sign and causing the crash. Flynn defended the case and disputed the nature and extent of the claimed damages.

During the course of the litigation, Coulter and her husband filed for bankruptcy. Shortly thereafter, Flynn filed a motion with the court asking that Coulter be required to substitute as plaintiff the bankruptcy trustee as the real party in interest. The court granted the motion. Later, however, the trustee decided not to administer Coulter's bankruptcy estate. By order of the court, then, title to the claim in this case returned to Coulter.

The case was tried in Bedford. The jury returned a verdict for Coulter in the amount of $6,353, almost exactly the amount of her medical expenses. The court entered a consistent judgment, and it has been satisfied.

Prior to trial, Flynn made a Qualified Settlement Offer of $6,750. Post-trial, Flynn filed a motion for attorney fees of $1,000 based on Coulter's rejection of

the settlement offer. Coulter opposed the motion on the ground that Flynn hadn't incurred any attorney fees inasmuch as her insurer, State Farm, had provided her defense.

The court agreed with Coulter and ruled the governing statute does not authorize recovery of attorney fees by a party's insurer. Flynn responded with a motion to correct error and cited *Poulard v. Lauth*, 793 N.E.2d 1120 (Ind.App., 2003) as authority for the proposition that a defendant is entitled to an award of attorney fees even if the defendant's insurer paid the attorney. The court's ruling on the motion was not part of the record when the IJVR reviewed it.

Auto Negligence - Although defendant admitted 100% fault for a rear-end crash, plaintiff was awarded less than her medical expenses

Richardson v. Maxwell,
77C01-0403-CT-82
Plaintiff: Robert L. Wright, *Wright Shagley & Lowery*, Terre Haute
Defense: Jaime E. Lopez, *Collignon & Dietrick*, Indianapolis
Verdict: $5,000 for plaintiff
County: **Sullivan**, Circuit
Court: J. Pierson, 9-28-05

On 4-15-03, Betty Richardson was driving south on Lafayette Avenue toward the intersection with Hollywood Avenue in Vigo County. At the same time, Robert Maxwell was driving behind her and also headed south. When Richardson stopped to turn left onto Hollywood Avenue, Maxwell rear-ended her.

Richardson was taken to Union Hospital where she was treated for injuries to her neck, left arm, and lower back. Her medical expenses came to $7,637. In addition, she would later claim lost income of $4,733 due to the accident.

Richardson filed suit against Maxwell and blamed him for crashing into her. Maxwell admitted fault for the crash, but he disputed the nature and extent of Richardson's claimed injuries.

A jury in Sullivan heard the evidence over two days and returned a verdict for Richardson. She was awarded damages of $5,000, and the court entered a judgment for that amount, plus costs.

Auto Negligence - A pedestrian suffered a skull fracture and claimed a brain injury after being hit by a passing motorist

Trevino v. Carrasquillo,
45D01-0209-CT-224
Plaintiff: Steven J. Sersic and Kevin Smith, *Rubino Crosmer Smith & Sersic*, Dyer
Defense: P. Michael McCaulay, *Allstate Litigation Counsel*, Merrillville
Verdict: Defense verdict on comparative fault
County: **Lake**, Superior
Court: J. Schneider, 8-16-05

On 5-10-02, Alana Trevino, age 27, was walking near Pine Avenue in Hammond. As she did so, she was struck by a 1994 Chevrolet Beretta being driven by nineteen year-old Victoria Carrasquillo.

Trevino suffered a skull fracture and sustained injury to her brain and central nervous system. Her incurred medical expenses came to $16,470.

In this lawsuit, Trevino blamed Carrasquillo for running into her. Carrasquillo defended the case and disputed the nature and extent of Trevino's claimed injuries. Carrasquillo also implicated Trevino's fault.

At the conclusion of a two-day trial in Hammond, the jury found Trevino to be 100% at fault for the accident. The court entered a consistent defense judgment.

Breach of Warranty - Plaintiffs luxury RV home was a lemon

Pizel v. Monaco Coach Corp., 3:04-286
Plaintiff: Marshall Meyers and Jack C. Gunn, *Krohn & Moss*, Phoenix, AZ
Defense: Michael J. Hays and Joseph R. Fullenkamp, *Barnes & Thornburg*, South Bend
Verdict: $90,000 for plaintiff
Federal: **South Bend**
Court: J. Nuechterlein, 9-30-05

On 7-29-03 Robert Pizel bought what he thought was a dream RV motor home. He selected a Holiday Rambler model manufactured by the Monaco Coach Corporation. Pizel paid $213,859 for the vehicle.

Things didn't go well. Instead of enjoying his golden years in both luxury and style, Pizel spent his time at the repair shop. His Holiday Rambler was in the shop for more than seventy repairs. That included making fruitless cross-country repair trips to the manufacturing facility. This left Pizel with essentially $213,000 driveway ornament.

Pizel sued Monaco and alleged both a breach of express and implied warranty. Monaco defended that while there were some repairs, they were made in a timely fashion. It also pointed out that Pizel lived in the RV for two years and put it to substantial use.

The verdict was mixed, but ultimately for Pizel. He lost on express warranty, while prevailing on the implied warranty. The jury awarded him damages of $90,000. A consistent judgment followed.

Auto Negligence - A transgendered driver suffered a fractured clavicle in a failure-to-yield crash case; the jury assigned the majority of fault to the plaintiff but did not state a specific percentage

Rhodes v. Stump, 20C01-0306-CT-53
Plaintiff: Thomas R. Hamilton, *Hunt Suedhoff Kalamaros*, South Bend
Defense: Caleb S. Johnson, *Spangler Jennings & Dougherty*, Merrillville
Verdict: Defense verdict on comparative fault
County: **Elkhart**, Circuit
Court: J. Shewmaker, 12-13-05

In the morning of 10-1-02, Megan Rhodes was headed to work at American Stonecast Products, Inc. Although born a female, Rhodes was preparing to undergo a sex change operation. Accordingly, Rhodes went by the name "Buddy" and insisted on being referred to as a male [**Ed. Note**: We will respect Rhodes's wishes in this regard and make use of the masculine pronoun].

Rhodes's was in a 1990 Oldsmobile Cutlass traveling north on C.R. 17 near the intersection with C.R. 6 in Elkhart. At the same time, a vehicle being driven by Karen Stump was

approaching from the opposite direction.

Upon reaching the intersection, Rhodes believed he had a green turn arrow. He began making a left turn, but he did so in Stump's path. Stump did not stop, and an instant later, the two collided. Rhodes suffered a fractured left clavicle in the crash and incurred medical expenses of $2,478. He also lost eight days of work and claimed lost wages of $578.

Dennis Stump filed suit against Rhodes for the damage to the vehicle Karen was driving. The exact nature of the relationship between Dennis and Karen Stump is unclear from the record. In any event, Dennis claimed property damage of $9,851.

In the meantime, Rhodes filed his own separate suit against Karen Stump and blamed her for running the light and crashing into him when he had the right of way. Dennis later moved to have the two cases consolidated, and the court granted the motion.

Karen defended the case and denied failing to yield the right of way. According to her, it was she who had a green light, and so Rhodes must have been facing a red light when he turned abruptly in front of her. Thus, the crash was actually Rhodes's fault rather than hers.

The case was tried for two days in Elkhart. The jury deliberated for more than three hours before returning a verdict that assigned the majority of the fault to Rhodes. Oddly, the verdict form did not specify the precise allocation of fault. Rather, it simply noted that although Stump was at fault, Rhodes's fault was greater than 50%. On that basis, the court entered a defense judgment.

The jury asked the court a question: "Can we have a copy of the accident report?" The court's response is not in the record.

Auto Negligence - Plaintiff claimed soft tissue injuries in a chain reaction rear-end crash case; defendant blamed the accident on plaintiff for first rear-ending the lead car in the line of three

Isom v. Sharp, 53C06-0406-CT-1073
Plaintiff: Michael W. Phelps, *Nunn Law Office*, Bloomington
Defense: Robert J. Smith, *Allstate Litigation Counsel*, Indianapolis
Verdict: Defense verdict on comparative fault
County: **Monroe**, Circuit
Court: J. Galvin, 12-12-05

In the early evening of 4-4-03, Janice Isom was traveling west on 3rd Street in Bloomington. She was behind a vehicle being driven by Cynthia Holt, and third in line behind Isom was Brooke Sharp, a college student.

The parties offer slightly different accounts of exactly what happened. According to Isom, she stopped in traffic behind Holt. An instant later, Sharp rear-ended her and pushed her into the rear of Holt's vehicle. Sharp, however, tells a different story. According to her, Isom rear-ended Holt first, and only then did she (i.e., Sharp) rear-end Isom.

Regardless of how the accident happened, Isom claimed widely ranging soft tissue injuries due to the crash. She incurred medical expenses of $6,060, and she calculated her lost wages at $2,759.

Isom filed suit against Sharp and blamed her for the crash. Sharp defended the case as indicated above and blamed the crash on Isom. Sharp also disputed the nature, extent, and causation of Isom's claimed injuries.

Finally, Sharp named Holt as a non-party. Isom responded to this move by amending her complaint to add Holt as a party defendant. However, the parties later stipulated to Holt's dismissal from the case.

As it happened, the trial of this case was scheduled during final exam week in Bloomington. In fact, Sharp, a college student, had a final exam set for the very day of trial. For that reason she filed a motion to reschedule the trial.

Judge Galvin explained that due to a lack of courtroom space, his court was assigned only one jury trial date per month, and the present case was the oldest on his docket. Thus, he had no choice but to deny the motion. However, the judge explained it was not his intention to penalize Sharp, and he graciously offered to speak with her professors in the hope of gaining her some special dispensation.

It is not known whether Sharp was able to resolve the conflict with her exam. What is certain, though, is that the trial went forward as scheduled. At the close of evidence, the jury deliberated for slightly more than three hours before returning a verdict in which Isom was assigned 51% of the fault. The remaining 49% was assigned to Sharp. The court's consistent defense judgment followed.

During the presentation of evidence, the jury asked several questions of the witnesses. Isom was asked, "Where [*sic*] you on any pain medication while driving the day of 4-4-03?" The jury asked Holt, "Did you sustain any injuries as a result of this accident?" and "How serious was the damage to Ms. Holt's car?" Finally, Sharp was asked, "What was the speed limit on the given road?"

Auto Negligence - Plaintiff and defendant each accused the other of running a red light in a failure-to-yield crash case

Vuletic v. Figueroa, 45D10-0407-CT-133
Plaintiff: April L. Board and Tyler Bellin, *April L. Board, P.C.*, Merrillville
Defense: Deanne K. Sasser, *State Farm Litigation Counsel*, Crown Point
Verdict: Defense verdict on liability
County: **Lake**, Superior
Court: J. Pera, 1-10-06

In the afternoon of 7-5-02, Christina Vuletic was driving a 2000 Dodge Neon going west on Ridge Road in Gary. At the same time, Margarita Figueroa was driving a 1995 Cadillac DeVille going south on Clark Road.

According to Vuletic, she arrived at the intersection of the two roads and was facing a green light. Thus, Figueroa must have had a red light.

Accordingly, Vuletic proceeded through the intersection. However, Figueroa ran the red light and tried to turn left onto Ridge Road. In doing so, she crashed into Vuletic.

The record does not reveal the nature of Vuletic's injuries or the amount of her medical expenses. She filed suit against Figueroa and blamed her for running the red light and causing the crash. Vuletic's identified medical expert was Dr. Keith Pitchford, Orthopedics, Crown Point.

Figueroa defended the case and offered a different version of events. According to her, it was she, rather than Vuletic, who had the green light. Thus, it was actually Vuletic who ran a red light and caused the crash. Additionally, Figueroa disputed the nature, extent, and causation of Vuletic's claimed injuries. The record does not identify defense experts.

The case was tried for two days in Crown Point. The jury returned a verdict for Figueroa, and the court followed with a consistent defense judgment.

Auto Negligence - Plaintiff claimed a herniated disc due to a rear-end crash; he blamed the crash on defendant for talking on her cell phone while driving

Bruce v. Coleman,
49D12-0310-CT-1850
Plaintiff: Bryan C. Tisch, *The Law Offices of Buddy Yosha*, Indianapolis
Defense: Patrick J. Murphy, *State Farm Litigation Counsel*, Indianapolis
Verdict: Defense verdict on liability
County: **Marion**, Superior
Court: J. Moberly, 12-1-05

On 10-12-01, Richard Bruce, then age 48, was at the wheel of a Mercedes Benz E-320 owned by Brickyard Auto Imports. He was heading east on West 10th Street in Indianapolis when he stopped for a traffic light at the intersection in front of the Allison plant.

Connie Coleman was driving behind Bruce, but she was distracted by talking on her cell phone. Coleman failed to stop in time, and an instant later she rear-ended him. Bruce claimed injuries to his back, including a herniated disc. Additionally, he complains of continuing numbness, burning, and throbbing that radiates down to his legs. Bruce's medical expenses came to $13,532.

Bruce filed suit against Coleman and blamed her for not paying attention and for crashing into him. Bruce's wife, Christine, also presented a derivative claim for her loss of consortium. Coleman defended the case and disputed the nature, extent, and causation of Bruce's claimed damages.

At the conclusion of a three-day trial in Indianapolis, the jury returned a verdict for Coleman, and the court followed with a consistent defense judgment. Prior to trial, Coleman made a Qualified Settlement Offer of a whopping $100. Post-trial, she filed a motion for attorney fees of $1,000. The court's ruling on the motion was not in the record at the time the IJVR reviewed it.

During the presentation of evidence, the jury asked Bruce a couple of questions: (1) "If you were having severe back pain, why would the VA make you wait a couple of months to have therapy? Wouldn't they consider that an emergency?" (2) "Has Mr. Bruce received or filed for Workman's Comp?"

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