

# The Indiana Jury Verdict Reporter

The Most Current and Complete Summary of Indiana Jury Verdicts

March, 2007

Statewide Jury Verdict Coverage

8 IJVR 3

*Unbiased and Independently Researched Jury Verdict Results*

## In This Issue

### Marion County

Auto Negligence - \$292,000	p. 2
Medical Negligence - Defense verdict	p. 5
Breach of Contract - Defense verdict	p. 7
Underinsured Mot. - Defense verdict	p. 8
Auto Negligence - Zero	p. 13

### Lake County

Auto Negligence - \$102,052	p. 4
Auto Negligence - \$50,000	p. 5
Auto Negligence - \$21,185	p. 7
Auto Negligence - \$18,175	p. 10
Auto Negligence - Defense verdict	p. 12

### Jackson County

Firearm Negligence - \$1,025,000	p. 1
----------------------------------	------

### Hendricks County

Underinsured Motorist - \$212,500	p. 4
-----------------------------------	------

### Jennings County

Dental Negligence - Defense verdict	p. 6
-------------------------------------	------

### Johnson County

Auto Negligence - \$28,760	p. 8
----------------------------	------

### Clark County

Underinsured Mot. - Defense verdict	p. 8
-------------------------------------	------

### Vigo County

Auto Negligence - Defense verdict	p. 8
-----------------------------------	------

### Porter County

Auto Negligence - \$20,000	p. 9
Auto Negligence - \$16,000	p. 10

### Federal Court - Fort Wayne

Employment Retal - Defense verdict	p. 9
------------------------------------	------

### Elkhart County

Auto Negligence - \$13,000	p. 11
Auto Negligence - \$1,617	p. 12

### Lawrence County

Auto Negligence - \$10,000	p. 11
----------------------------	-------

### Madison County

Auto Negligence - \$3,600	p. 11
---------------------------	-------

### Greene County

Auto Negligence - Defense verdict	p. 12
-----------------------------------	-------

### Federal Court - Hammond

Auto Negligence - \$6,968	p. 13
---------------------------	-------

### Notable Out-of-State Verdicts

	p. 14
--	-------

## Civil Jury Verdicts

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

\*\*\*The Book is Back - The Seventh Edition Has Arrived\*\*\*

Order the IJVR 2006 Year in Review

Another year has passed and around here, that means it's time to ship out the 2006 Year in Review Volume. The 2006 edition, the **seventh** in the series, tops out at more than 350 pages. Besides all the jury verdicts from last year, it also provides six years of data on car wrecks, medical cases, slip and falls and on and on. Need data on consortium awards?

It's in the Book. Products Liability? Death Verdicts?

If it's important to Indiana litigators, it's in the Book.

*Don't guess the value of a case*

**Read the Book and know what it's worth**

*See the order form in this issue for more details*

**Order the IJVR 2005 Year in Review**

*Just \$180.00 including shipping.*

**Firearm Negligence - Before embarking on a deer hunting trip with a group of friends, a man attempted to unload his rifle in the driveway of his home; instead, the rifle accidentally discharged and shot one of his companions in the leg**  
*Deaton v. Robison, et al.,*

36C01-0407-CT-22

Plaintiff: Brad Smith, *Nunn Law Office*, Bloomington

Defense: William H. Kelley, *Kelley Belcher & Brown, P.C.*, Bloomington, for Robison; Donald Dawson, *Kightlinger & Gray*, Indianapolis, and James R. Shaw, *Huie Fernambucq & Stewart, LLP.*, Birmingham, AL for Knight Rifles, Inc.

Verdict: \$1,000,000 for James Deaton against Robison; \$25,000 for Lisa

Deaton against Robison; defense verdict for Knight Rifles, Inc.

County: **Jackson**, Circuit

Court: J. Vance, 1-12-07

On 11-30-02, James Deaton, then age 42 and an avid hunter, had gone on a deer hunt with a group of friends, one of whom was Justin Robison. On that occasion Robison took with him and used a Model MK-85, .50 caliber muzzle loading rifle manufactured by Knight Rifles, Inc. of Centerville, Iowa and fitted out with a Knight Rifles 209 primer conversion kit.

The MK-85 is equipped with two safety mechanisms. The primary safety disables the trigger, while a secondary safety, consisting in a simple screw mechanism, locks the hammer and bolt.

The screw design of the secondary safety is such that it is not always clear whether or not the safety is engaged. This is a problem in that if the secondary safety is not engaged, then, as Deaton and Robison would soon learn, the rifle can still fire even when the primary safety is engaged.

On 12-1-02, Deaton and his companions gathered at Robison's home in preparation for setting out on a second day of deer hunting. As Robison was loading his gear into the back of his truck, he noticed that at the end of the previous day's hunt he had forgotten to shoot out his still loaded gun, remove the primer cap, or otherwise disable the rifle.

Upon this realization, and ever concerned with safety, Robison was heard to remark, "I better unload this before I kill someone." While standing in his driveway amid his hunting companions, Robison began the unloading process by pulling back on the rifle hammer. He felt secure in doing this inasmuch as the primary safety was on.

In a split second, the hammer accidentally slipped from Robison's grasp and the rifle fired. As fate would have it, the rifle was at that precise moment pointed at Deaton's left leg approximately 18 inches away. The .50 caliber slug tore through his leg and caused serious damage.

Despite what must have been excruciating pain, Deaton had the presence of mind to direct his friends to apply two tourniquets to his leg. They complied with this direction and then drove him to the ER at Jackson County Hospital in Seymour. From there he was airlifted to Methodist Hospital in Indianapolis.

Deaton was treated for an open tibial fracture, an open wound on his tibia, and an occlusion of the main artery to his left leg. For some time he was in danger of losing the leg altogether. He was initially in the hospital for 20 days, and over the next two years he underwent no fewer than 18 surgeries in an effort to avoid amputation.

During that time his treatments included vein grafts, skin grafts, bone grafts, and open reductions with

internal fixations. These treatments, in turn, were accompanied by multiple infections and multiple hospitalizations. His medical expenses came to more than \$287,963.

As a result of this ordeal, Deaton claims to be permanently impaired due to malalignment and nonunion of the bones, nerves, and vascular system in his leg. He also has permanent scarring, and he is still at risk of possible amputation due to continuing infections.

Deaton has also suffered economic losses. In particular, he was self-employed in the business of installing equipment made by the Steris Corporation in hospitals around the country. Thus, although his injuries did not result in any actual wage loss, Deaton did suffer a loss of earning capacity due to his injuries.

In this lawsuit, Deaton targeted both Robison and Knight Rifles, Inc. He blamed Robison for pointing the loaded gun at him and allowing it to fire while trying to unload it. Deaton's products liability claim against Knight Rifles was grounded in two different theories.

First, Deaton criticized Knight Rifles for designing the gun in such a way that it could fire even with the primary safety engaged. Second, he argued the company provided inadequate warnings against the hazard in that the manual does not explain that the gun can fire when the primary safety is engaged. However, the court later granted Knight Rifles a directed verdict on the inadequate warning claim.

In addition to Deaton's underlying claim, his wife, Lisa, also presented a derivative claim for her loss of consortium. Deaton's identified expert was Lama Martin, Forensic Ballistics, Bel Air, MD.

Both defendants denied any wrongdoing. Additionally, Robison implicated Deaton's fault, and Knight Rifles sought to place the blame jointly on Deaton and Robison. Finally, both defendants disputed the claimed damages.

The case was tried for four days in Brownstown. The jury deliberated approximately two hours before returning a verdict in which Robison

was assigned 100% of the fault. On their claims against Robison, James Deaton was awarded damages of \$1,000,000, while Lisa's consortium interest was valued at \$25,000. Knight Rifles was exonerated on the products liability claim.

The combined award came to \$1,025,000. The court entered a judgment that reflected the verdict. The Deatons filed an appeal, the basis of which is not revealed in the record. Presumably, however, it concerns the defense verdict for Knight Rifles. In any event, at the time the IJVR reviewed the record, the appeal was still pending.

### **Auto Negligence - Plaintiff suffered a T-12 compression fracture in a rear-end crash on the interstate; the defendant claimed the crash was due to a phantom driver who hit her and pushed her into plaintiff's vehicle**

*Nolting v. Baker, et al.*,  
49D05-0211-CT-1990

Plaintiff: Jeffrey S. Tabor and Travis N. Jensen, *Tabor Law Firm*, Indianapolis  
Defense: Christie A. Seifert, *Goodin Abernathy & Miller, LLP.*, Indianapolis, for Baker; Katie A. Jones, *Allstate Litigation Counsel*, Indianapolis, for Allstate Insurance Company  
Verdict: \$292,000 for plaintiff against Baker; defense verdict for Allstate Insurance

County: **Marion**, Superior  
Court: J. Miller, 2-7-07

In the morning of 12-10-01, Joannette Nolting was driving north on I-65 in Indianapolis. Behind her was a vehicle being driven by Julie Baker. When the parties reached a point near mile marker 103.4, Baker rear-ended Nolting.

The injuries Nolting sustained in the crash included a T-12 compression fracture. Her medical expenses came to \$17,742. Of that amount, her insurer, Allstate Insurance, paid \$4,685 in med pay coverage. Nolting also claimed more than \$26,000 in lost wages.

Nolting filed a lawsuit against Baker and blamed her for the crash. Baker defended the case and claimed that an unidentified driver had hit her and pushed her into Nolting. According to Baker, then, the crash was really due to the fault of the phantom driver.

## The IJVR 2006 Year in Review

Another year has passed and the one-of-a-kind text Indiana litigators have relied upon since 2000 is back with its seventh edition. At just over 400 pages, the IJVR 2006 Year in Review includes the complete verdict summary from every reported case in 2006, statewide from Jeffersonville to Crown Point, Evansville to Fort Wayne and all points in between.

Each of the detailed verdict summaries describes the relevant facts, the experts, the arguments and the results. Back beyond the verdict reports, the 2006 Book makes the individual verdict reports meaningful. For instance, in the *Medical Negligence Report*, the reader can learn how frequently plaintiffs win medical verdicts. Then when plaintiffs win, what are the verdict reports? The medical results are also sorted by medicine type. All the reports are organized to provide verdict data at-a-glance.

### *What else is included in 2006?*

#### *Combined Verdict Summary*

Detailed won-loss percentages for every variety of case with average results by category.

#### *Million Dollar Verdicts*

How many were there in 2006? In what sort of cases were they returned? The report also summarizes all the eighty-plus million dollar results since 2000.

#### *The Products Liability Report*

Need products liability verdicts? In our seven-year study, the IJVR has chronicled more than twenty results.

#### *Other One-of-A-Kind Analysis*

Beyond the articles above, the 2006 Book has a detailed review of all the death cases. Does your case involve punitives? We've got all the results since 2000 sorted by tortious conduct. How has loss of consortium claims been valued? Are you award of the Consortium Rule? It's in the Book.

What about the effect of comparative fault? In which cases was it a bar to plaintiff's recovery? Which attorneys tried the most cases? Which firms tried the most? It's contained in the report on the most prolific attorneys.

*If it's important to litigators, It's in the Book*

**How to Order** - The 2006 Volume is just \$180.00, shipping included

#### **Send your check to the:**

Indiana Jury Verdict Reporter  
9462 Brownsboro Road, No. 133  
Louisville, KY 40241

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, Zip

**We accept MasterCard/Visa. Call 1-877-313-1915 to place your credit card order.**

Based on that claim, Nolting amended her complaint to add a claim against Allstate pursuant to the uninsured motorist provision of her policy. Allstate defended the claim and denied the existence of the phantom.

The case was tried in Indianapolis for two days. The jury deliberated for one hour and fifteen minutes before returning a verdict which found that Nolting's injuries were not caused by the phantom driver.

Accordingly, the verdict was for Nolting solely against Baker, with Allstate being exonerated. The jury awarded Nolting damages in the amount of \$292,000. The court entered a consistent judgment for the verdict amount against Baker and a defense judgment for Allstate.

Prior to trial, Baker's insurer, State Farm Insurance, made a settlement offer of \$75,000 (Baker's policy limits were \$100,000). Also, Allstate offered to settle the UM claim for \$10,000.

**Underinsured Motorist - A woman suffered a life-threatening collapsed lung after being rear-ended by an underinsured driver; the woman settled with the tortfeasor for his policy limits and then pursued a UIM claim against her own insurer**  
*Day v. State Farm Insurance*, 32C01-0512-CT-30

Plaintiff: Jason A. Shartzter and Byan Tisch, *Law Offices of Buddy Yosha, LLC.*, Indianapolis

Defense: Mark S. Alderfer, *Hackman Hulett & Cracraft, LLP.*, Indianapolis

Verdict: \$212,500 for plaintiff

County: **Hendricks**, Circuit

Court: J. Boles, 1-25-07

In the evening of 9-27-04, Nora and Douglas Day were in a 2002 Ford Focus, traveling south on Old U.S. 36 in the Town of Avon. Nora was driving, and her husband, Douglas, was riding as a passenger.

As the Days approached an intersection, Nora stopped in a line of traffic. An instant later she was rear-ended by a 1998 Lincoln Continental being driven by Ricardo Lopez-Fajardo. It was apparently a significant impact.

Although the record contains no indication that Douglas was injured,

Nora suffered a collapsed left lung that, for a time, was life threatening. Her medical expenses are unknown.

However, her own insurer, State Farm Insurance, paid \$24,234 under the medical pay provision of her policy.

Nora filed suit against Lopez-Fajardo and blamed him for rear-ending her. Douglas initially presented a derivative claim for his loss of consortium, but that claim seems not to have survived to trial. Nora also made an underinsured motorist claim against State Farm. Her policy with State Farm carried UIM limits of \$500,000.

Lopez-Fajardo's insurer, Allstate, later settled Nora's claim by paying her its policy limits of \$50,000. The case then proceeded solely on Nora's UIM claim against State Farm. The company admitted that Lopez-Fajardo was at fault for the crash, but it disputed the nature, extent, and causation of Nora's claimed injuries.

The case was tried for three days in Danville. The jury deliberated for approximately one hour and forty minutes before returned a verdict for Nora in the amount of \$212,500. That information had to be gleaned from other pleadings inasmuch as the verdict form was not part of the record.

The court applied a set-off for the \$50,000 Nora had received from Allstate and for the \$24,234 State Farm had paid under the med pay provision of her policy. After the set-offs, the court entered a final judgment in the amount of \$138,265.

**Auto Negligence - A woman riding as a passenger on a motorcycle being driven by her husband was injured when a teenager rear-ended the motorcycle**

*Mayo v. Williams*, 45D10-0402-CT-23

Plaintiff: Clark W. Holesinger and

Karen Tallian, Portage

Defense: Christopher W. Johnson, *State Farm Litigation Counsel*, Crown Point

Verdict: \$102,052 for plaintiff

County: **Lake**, Superior

Court: J. Pera, 4-27-06

On 6-1-02, Carrie Mayo was riding as a passenger on motorcycle being driven by her husband, Richard Mayo.

The two were traveling south on Ripley Street in Lake Station. Behind them was a vehicle being driven by Kevin Williams, a minor, and owned by Kevin's father, Garry Williams.

At a certain point on their journey, the Mayoes had occasion to stop in the road. Kevin did not immediately notice this. A moment later when Kevin did notice the motorcycle had stopped in front of him, he slammed on his brakes. However, it was too late, and Kevin rear-ended the motorcycle.

Apparently, both Carrie and Richard were injured in the crash. However, the record does not reveal the nature of their injuries or the amounts of their respective medical expenses.

Following the crash, Carrie took FMLA leave from her job with Federal Mogul, a supplier of auto and truck parts.

Carrie was released to return to work on 4-21-03, not quite eleven months after the crash. Federal Mogul fired her approximately a month and a half later on 6-3-03. Carrie then filed suit against Federal Mogul for wrongful termination, but that case was dismissed on summary judgment on 12-10-04.

With the employment issue out of the way, Carrie turned her attention to the Williamses. She filed suit against them and blamed Kevin for crashing into her and her husband.

Richard apparently settled his claim, and Carrie's claim against Garry Williams was dismissed by stipulation on the first day of trial. The case thus proceeded solely on Carrie's claim against Kevin. He defended and minimized the claimed damages, and he also accused Carrie of failing to mitigate her damages.

The case was tried for two days in Crown Point. The verdict was for Carrie in the amount of \$102,052. The court entered a judgment for that amount, plus \$134 in costs. The judgment has been satisfied.