Another year has passed and around here, that means it’s time to
ship out the 2005 Year in Review Volume. The 2005 edition, the sixth
in the series, tops out at more than 381 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.

The Injury Report also returns to this volume in 2005.

Don’t guess the value of a case
Read the Book and know what it’s worth

See online at juryverdicts.net for more details

Order the IJVR 2005 Year in Review
Just $180.00 including shipping.

Bad Faith - A woman who was
rendered unable to work due to
multiple medical problems applied
for and received long-term disability
benefits under her former employer’s
group insurance plan; the woman
claimed bad faith and breach of
contract when the insurer abruptly
terminated the payments

Combs v. Lumbermen’s Mutual
Casualty Company,
49D06-0412-PL-2242

Plaintiff: Bridget O’Ryan, Indianapolis
Defence: David F. Schmidt, Vittorio F.
Terrizzi, and Jennifer L. Noland,
Chittenden Murday & Novotny,
Chicago, IL; and Michael L. Carter,
Spangler Jennings & Dougherty,
Indianapolis

Verdict: $1,522,583 for plaintiff
County: Marion, Superior
Court: J. Carroll, 3-27-06

Donna Combs began working for
Hancock Memorial Hospital and Health
Services in 1994. Combs had several
different jobs within the Hancock
Memorial organization over the years,
the most recent of which was that of
Senior Office Technologist. In that
capacity, she functioned as, among other
things, an x-ray technician.

One of the fringe benefits of Combs’s
employment was a group disability
insurance plan issued by Lumbermen’s
Mutual Casualty Company. The plan

Unbiased and Independently Researched Jury Verdict Results

In This Issue

Marion County
Bad Faith - $1,522,583 p. 1
Auto Negligence - $12,500 p. 6
School Negligence - Defense verdict p. 10
Photography Neg - Defense verdict p. 11
Premises Liability - Defense verdict p. 12
Auto Negligence - $1,450 p. 14

Lake County
Auto Negligence - $40,000 p. 4
Premises Liability - $80,000 p. 8
Premises Liability - $5,000 p. 9
Auto Negligence - $15,000 p. 10
Auto Negligence - $5,530 p. 12

Porter County
Accounting Negligence - $796,000 p. 5
Auto Negligence - $137,500 p. 8
Auto Negligence - $10,120 p. 9

Indiana Jury Verdict Reporter

The Most Current and Complete Summary of Indiana Jury Verdicts

April, 2006
Statewide Jury Verdict Coverage

Civil Jury Verdicts
Timely coverage of civil jury verdicts in Indiana including court,
division, presiding judge, parties, cause number, attorneys and results.
The IJVR 2005 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 sixth edition. At 381 pages, the IJVR 2005 Year in Review includes the complete verdict summary from every reported case in 2005, 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 2005 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. Need cardiology cases? Turn to the Verdict by Case Type summary within the Medical Negligence Report.

What else is included in 2005?

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 2005? In what sort of cases were they returned? The report also summarizes all seventy million dollar results since 2000.

The Products Liability Report
Need products liability verdicts? In our six-year study, the IJVR has chronicled seventeen results, including two in 2005.

Other One-of-A-Kind Analysis
Beyond the articles above, the 2005 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 aware 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 2005 Volume is just $180.00, tax and 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.
Have you procrastinated? Do you need the book yesterday? We can ship it overnight for $20.00 extra.
Have you ever seen the Book? What’s in it?
This is a partial look at the 2005 Death Report – see the complete report in the 2005 Book

Death Cases at a Glance
2005 results in bold

Plaintiff’s Verdicts - the forty-two cases where plaintiffs prevailed

<table>
<thead>
<tr>
<th>County/Case No.</th>
<th>Verdict</th>
<th>Manner of Death</th>
<th>Age/Sex</th>
<th>Occupation</th>
</tr>
</thead>
<tbody>
<tr>
<td>South Bend-1023</td>
<td>$56,500,000</td>
<td>Jail beating</td>
<td>30-M</td>
<td>Unknown</td>
</tr>
<tr>
<td>Clark-1572</td>
<td>$14,000,000</td>
<td>Car Wreck</td>
<td>39-F</td>
<td>Unknown ($5,000,000)</td>
</tr>
<tr>
<td></td>
<td>$14,000,000</td>
<td>Car Wreck</td>
<td>12-F</td>
<td>N/A ($3,000,000)</td>
</tr>
<tr>
<td></td>
<td>$14,000,000</td>
<td>Car Wreck</td>
<td>9-F</td>
<td>N/A ($3,000,000)</td>
</tr>
<tr>
<td></td>
<td>$14,000,000</td>
<td>Car Wreck</td>
<td>7-F</td>
<td>N/A ($3,000,000)</td>
</tr>
<tr>
<td>Marion-1271</td>
<td>$6,000,000</td>
<td>Explosion</td>
<td>39-M</td>
<td>Unknown</td>
</tr>
<tr>
<td>Jasper-260</td>
<td>$5,109,480</td>
<td>Rail Crossing</td>
<td>30-M</td>
<td>Used Car Dealer</td>
</tr>
<tr>
<td>Decatur-366</td>
<td>$2,800,000</td>
<td>Car Wreck</td>
<td>43-F</td>
<td>Interior Designer</td>
</tr>
<tr>
<td>Tippecanoe-687</td>
<td>$2,563,983</td>
<td>Explosion</td>
<td>25-F</td>
<td>Postal Worker</td>
</tr>
<tr>
<td>Lake-1346</td>
<td>$2,500,000</td>
<td>Anesthesia</td>
<td>32-F</td>
<td>Homemaker</td>
</tr>
<tr>
<td>Porter-245</td>
<td>$2,000,000</td>
<td>Car Wreck</td>
<td>16-F</td>
<td>Student</td>
</tr>
<tr>
<td>Lawrence-1172</td>
<td>$2,000,000</td>
<td>Shooting</td>
<td>38-M</td>
<td>Unknown</td>
</tr>
<tr>
<td>Indianapolis-67</td>
<td>$1,584,340</td>
<td>Electrocution</td>
<td>37-M</td>
<td>Van Driver</td>
</tr>
<tr>
<td>Lake-1698</td>
<td>$1,570,000</td>
<td>ER Error</td>
<td>37-F</td>
<td>Graphic Design</td>
</tr>
<tr>
<td>Indianapolis-419</td>
<td>$1,537,424</td>
<td>Car Wreck</td>
<td>37-F</td>
<td>Claims Manager</td>
</tr>
<tr>
<td>Tippecanoe-1826</td>
<td>$1,500,000</td>
<td>Surgical Error</td>
<td>38-F</td>
<td>Unknown</td>
</tr>
<tr>
<td>Allen-1439</td>
<td>$1,500,000</td>
<td>Surgical Error</td>
<td>48-F</td>
<td>Insurance Billing Clerk</td>
</tr>
<tr>
<td>Cass-1014</td>
<td>$1,500,000</td>
<td>Nursing Home</td>
<td>88-F</td>
<td>Retired</td>
</tr>
<tr>
<td>Indianapolis-885</td>
<td>$1,500,000</td>
<td>Cranial Bleed</td>
<td>13-M</td>
<td>Student</td>
</tr>
<tr>
<td>LaPorte-676</td>
<td>$1,400,000</td>
<td>Explosion</td>
<td>18-F</td>
<td>Factory</td>
</tr>
<tr>
<td></td>
<td>$1,400,000</td>
<td>Explosion</td>
<td>38-F</td>
<td>Factory</td>
</tr>
<tr>
<td>South Bend-575</td>
<td>$1,042,234</td>
<td>Car Wreck</td>
<td>52-M</td>
<td>Grocery operator</td>
</tr>
<tr>
<td>Lake-1700</td>
<td>$1,005,000</td>
<td>Medical Error</td>
<td>38-F</td>
<td>Unknown</td>
</tr>
<tr>
<td>Tippecanoe-686</td>
<td>$920,308</td>
<td>Cardiac event</td>
<td>54-M</td>
<td>Alcoa</td>
</tr>
<tr>
<td>Marion-1939</td>
<td>$850,000</td>
<td>Stab Wound</td>
<td>20-F</td>
<td>Unknown</td>
</tr>
<tr>
<td>Wabash-1420</td>
<td>$850,000</td>
<td>Murder</td>
<td>46-M</td>
<td>High school teacher</td>
</tr>
</tbody>
</table>
was initially administered by a company called Kemper National Services. However, the administration of the plan was later taken over by Kemper’s successor company, Broadside Services, Inc.

Sadly, Combs eventually developed several serious medical problems. Among them were myelodysplastic syndrome (i.e., a blood disease related to leukemia), anemia, severe osteoarthritis, rheumatoid arthritis, chronic fatigue, and fibromyalgia.

Combs’s medical problems were so severe, her doctors informed her she would no longer be able to work. At the urging of her physicians, then, Combs resigned her position with Hancock Memorial on 7-30-01.

Combs initially applied for short-term disability benefits through the Lumbermen’s group disability plan. She was given those short-term benefits and then later transitioned to long-term benefits. Also, at some point Combs applied for and was awarded SSDI benefits from the Social Security Administration in the amount of $925 per month.

Combs began receiving long-term disability benefits under the group plan on 1-26-02. Her gross monthly benefit worked out to $1,746. However, after deducting the amount she was receiving each month in SSDI, her net benefit from the group plan came to $821.

Lumbermen’s continued to pay the benefits for a little more than two years until the situation suddenly took a surprising turn. According to Combs, Lumbermen’s abruptly terminated the payments on 2-29-04. Despite her repeated appeals and multiple statements from her doctors affirming that she was totally disabled, Lumbermen’s refused to resume the payments. Litigation seemed the only solution.

Combs filed suit against Lumbermen’s on counts for bad faith and breach of contract. Her specific allegations against the company were that it, (1) improperly terminated her benefits despite clear liability, (2) failed to conduct a proper investigation and review of her claim prior to terminating her benefits, (3) compelled her to initiate litigation to recover benefits owed to her, and (4) ignored repeated statements from her doctors who insist she cannot work.

Lumbermen’s initially had the case removed to federal court on the ground that Combs’s claim was governed by ERISA. However, the federal court remanded the case back to state court on Combs’s motion because the removal was untimely.

Back in state court, Combs and Lumbermen’s engaged in a protracted battle over whether or not ERISA would govern. If ERISA were to govern the case, then Lumbermen’s would enjoy certain tactical advantages it would not otherwise have. In the end, however, the court ruled against Lumbermen’s on this point and held that the case would be governed by state law.

The next move by Lumbermen’s was to try to bifurcate the bad faith and breach of contract claims. Within that context, Lumbermen’s denied having played any role in denying Combs’s claim. Rather, the decision was made by the administrators of the plan, Kemper and Broadside. Lumbermen’s argued it would hardly seem fair to hold it responsible for the actions of those third parties.

Combs retorted that Lumbermen’s disavowal of any knowledge of or responsibility for the plan administrators’ decisions was disingenuous inasmuch as Kemper was actually a subsidiary of Lumbermen’s. Furthermore, Combs pointed out that Lumbermen’s would in any event be responsible for the actions of the plan administrators under a theory of agency.

The record does not indicate whether Lumbermen’s was successful in its efforts to bifurcate the claims. What is certain is that the case proceeded on the certain tactical advantages it would not otherwise have. In the end, however, the court ruled against Lumbermen’s on this point and held that the case would be governed by state law.

The next move by Lumbermen’s was to try to bifurcate the bad faith and breach of contract claims. Within that context, Lumbermen’s denied having played any role in denying Combs’s claim. Rather, the decision was made by the administrators of the plan, Kemper and Broadside. Lumbermen’s argued it would hardly seem fair to hold it responsible for the actions of those third parties.

Combs retorted that Lumbermen’s disavowal of any knowledge of or responsibility for the plan administrators’ decisions was disingenuous inasmuch as Kemper was actually a subsidiary of Lumbermen’s. Furthermore, Combs pointed out that Lumbermen’s would in any event be responsible for the actions of the plan administrators under a theory of agency.

The record does not indicate whether Lumbermen’s was successful in its efforts to bifurcate the claims. What is certain is that the case proceeded on the merits with Lumbermen’s providing a somewhat different version of the process that led to the termination of Combs’s benefits.

According to Lumbermen’s, Kemper informed Combs on 4-3-02 that it needed ongoing objective data to support continuing the disability payments. Following extensive and repeated investigations, Kemper concluded that Combs did not meet the criterion of eligibility of being unable to work at “any occupation.”

Instead, Kemper was able to find no fewer than three different occupations Combs could pursue that were near her home, paid wages that were equal to or greater than the threshold amount for disability eligibility, and that made use of her professional qualifications. Kemper asked Combs to submit any further information she might have that would support a contrary conclusion, but she failed to do so.

In short, Kemper and its successor, Broadside, acted perfectly reasonably at all times. To the extent, therefore, that their actions are to be imputed to Lumbermen’s, then Lumbermen’s claimed that it too acted reasonably.

An Indianapolis jury heard the case and returned a verdict that was an unqualified victory for Combs. On her breach of contract claim, she was awarded $22,583. On her bad faith claim, the jury awarded her $1,500,000.

Combs’s motion because the removal was untimely. In the end, however, the court ruled against Lumbermen’s on this point and held that the case would be governed by state law.

The next move by Lumbermen’s was to try to bifurcate the bad faith and breach of contract claims. Within that context, Lumbermen’s denied having played any role in denying Combs’s claim. Rather, the decision was made by the administrators of the plan, Kemper and Broadside. Lumbermen’s argued it would hardly seem fair to hold it responsible for the actions of those third parties.

Combs retorted that Lumbermen’s disavowal of any knowledge of or responsibility for the plan administrators’ decisions was disingenuous inasmuch as Kemper was actually a subsidiary of Lumbermen’s. Furthermore, Combs pointed out that Lumbermen’s would in any event be responsible for the actions of the plan administrators under a theory of agency.

The record does not indicate whether Lumbermen’s was successful in its efforts to bifurcate the claims. What is certain is that the case proceeded on the merits with Lumbermen’s providing a somewhat different version of the process that led to the termination of Combs’s benefits.

According to Lumbermen’s, Kemper informed Combs on 4-3-02 that it needed ongoing objective data to support continuing the disability payments. Following extensive and repeated investigations, Kemper concluded that Combs did not meet the criterion of eligibility of being unable to work at “any occupation.”

Auto Negligence - Plaintiff suffered soft-tissue injuries in a rear-end crash; defendant balked when plaintiff claimed further injuries and medical expenses three years later

Helton v. Homola,
45D04-0410-CT-246
Plaintiff: Barry D. Sherman and Kristen D. Hill,
Hammond
Defense: John H. Halstead and Rehana R. Adat, Querrey & Harrow, Merrillville
Verdict: $40,000 for plaintiff
County: Lake, Superior
Court: J. Svetanoff, 3-16-06

On 10-25-02, Richard Helton, age 44 and a supervisor with American Airlines at O’Hare Airport, was traveling north on Mississippi Street in Merrillville. Behind him was a vehicle owned by Leonard Homola and being driven by Leonard’s daughter, Mallory Homola.

Upon reaching the intersection with 85th Avenue, Helton stopped in traffic and waited to make a left turn. As he sat waiting, Homola rear-ended him.

Helton was taken to the ER at Methodist Hospital Southlake and treated for soft-tissue symptoms. A few days later he followed up with his family doctor.
physician, Dr. Gerard Davidson of Dyer. Davidson referred Helton to Omni Rehab for a course of physical therapy. Helton completed the physical therapy on 11-27-02, slightly more than a month after the accident, and reported a nearly complete resolution of his symptoms. His medical expenses at that time came to approximately $2,500.

Helton filed suit against both Mallory and Leonard Homola. He blamed Mallory for crashing into him, and he blamed Leonard for negligently entrusting Mallory with the vehicle she was driving. However, Helton later stipulated to Leonard’s dismissal. The case then proceeded solely against Mallory. She defended and disputed the nature and extent of Helton’s claimed injuries.

During the course of the litigation, Helton began to notice a tingling sensation in his arm. He was concerned enough about the situation that he once again consulted with Dr. Davidson in September of 2005. Following further examination, including an MRI, Davidson concluded that Helton’s injuries were more serious than had previously been thought. Helton himself explicitly linked his newly identified ailments to the crash. As a result, the medical expenses he sought in this case more than doubled.

Homola sought to have evidence of these new medical expenses excluded on the ground that Homola’s counsel was informed of them only while in the very act of taking Davidson’s deposition. Such an untimely revelation allowed no opportunity to prepare a meaningful cross-examination on the issue.

Moreover, Homola pointed out these new medical expenses were incurred some three years after the accident. It seemed to her that linking the expenses to the accident after so much time had passed was a questionable move at best. The record does not reveal the court’s ruling on the matter.

The case was tried for two days in Gary. The jury returned a verdict for Helton and awarded him $40,000. The court followed with a consistent judgment for that amount.

**Accounting Negligence - An engineering firm’s in-house bookkeeper embezzled nearly $800,000; the firm criticized its outside accountants for failing to catch the embezzlement**

Falk Engineering & Surveying, Inc. v. Pickart & Associates, 64D01-0303-PL-2374

Plaintiff: Robert L. Clark and Jack A. Kramer, Hoeppner Wagner & Evans, Valparaiso

Defense: Daniel W. Glavin, Beckman Kelly & Smith, Hammond

Verdict: $796,000 for plaintiff less 60% comparative fault; for plaintiff on defendant’s counterclaim

County: Porter, Superior Court: J. Bradford, 3-2-06

Pickart & Associates is an accounting firm located at 9111 Broadway, Suite F, in Merrillville. Beginning on 8-22-99, Pickart was hired to provide accounting services for a Porter County company called Falk Engineering & Surveying, Inc. The owners of Falk Engineering were Mike Falk and his wife, Dorothy.

Pickart’s work for Falk Engineering included updating the company’s Quickbooks package, preparing income and payroll tax returns, and preparing corporate financial statements. Pickart continued to provide these services to Falk Engineering for some three years through the fall of 2002.

As it happened, Falk Engineering also employed an in-house bookkeeper named Therese Leudtke. Unbeknownst to Mike and Dorothy, Leudtke was using her position of trust to embezzle from the company.

Leudtke’s embezzlement activities seemed to focus on two main techniques. First, she failed to remit approximately $525,000 in withholding taxes to the federal government. Second, she obtained more than five hundred treasury checks and personal money orders from the First Source Bank drawn against Falk Engineering’s account.

The checks and money orders were made payable to Leudtke herself or to members of her family. In total, the instruments Leudtke obtained in this way were valued at approximately $270,000. That brought the combined effect of Leudtke’s embezzlement to roughly $795,000.

Eventually, Leudtke’s scheme unraveled. She was prosecuted for her crimes, pleaded guilty, and is now serving out a prison term. The next problem was how Falk Engineering could recoup its losses. The solution was not long in coming.

Falk Engineering filed suit against Pickart & Associates on counts for negligence and breach of contract. Falk criticized Pickart for failing to catch Leudtke’s shady dealings. In particular, Pickart failed to confirm that the taxes had actually been paid, and it failed to notice from reconciling Quickbooks that the withholding was not being paid.

Also, Pickart apparently came into possession of copies of some of the money orders and treasury checks, but it failed to alert Falk that something was amiss. Finally, Falk criticized Pickart for failing to acquire and confirm certain required information concerning tax payments while preparing Falk’s financial statements.

In addition to the suit against Pickart, Falk also filed a separate action against First Source Bank. According to Falk, Leudtke did not have signature authority with the bank regarding the use of company funds. Yet, First Source allowed Leudtke to withdraw the funds nonetheless.

The case against First Source was referred to arbitration and then settled for an unknown sum during the discovery phase. The litigation against Pickart proceeded with the accounting firm putting up a multi-pronged defense.

First, Pickart denied breaching the contract or committing any negligent acts. Instead, Pickart blamed the entire incident on Leudtke, Mike, Dorothy, and First Source. The grounds for attributing fault to Leudtke and First Source were obvious. Pickart blamed Mike and Dorothy because, as the proprietors of the business, they were in the best position to notice the embezzlement. Their failure to do so reflected a level of negligence sufficient to absolve Pickart.

Second, Pickart filed a counterclaim against Falk for unpaid fees. Pickart had stopped providing accounting services to Falk on 11-30-02, and Pickart claimed it was owed a balance of $8,697, plus a