

The Indiana Jury Verdict Reporter

The Most Current and Complete Summary of Indiana Jury Verdicts

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Statewide Jury Verdict Coverage

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Unbiased and Independently Researched Jury Verdict Results

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Pregnancy Discrimination - A nurse alleged she was fired because she was pregnant – the hospital replied she was let go because she had a lousy attitude, swore at work, and refused care to a patient – a federal jury sided with the plaintiff and imposed \$5,000,000 in punitive damages

Duis v. Franciscan Health Care Crown Point, 2:20-78

Plaintiff: Ryan P. Sink and Ryan C.

Fox, *Fox & Sink*, Indianapolis

Defense: Amy J. Adolay and Elizabeth M. Roberson, Carmel, and Robert A. Anderson, Merrillville, all of *Krieg DeVault*

Verdict: \$5,500,000 for plaintiff

Federal: **Hammond**

Court: J. Rodovich, 3-9-23

Taryn Duis worked for many years as a nurse at Franciscan Health Care Crown Point (IN) on the progressive care unit. In April of 2019 Duis was pregnant and she informed her employer. Duis also indicated she would take FMLA leave.

The hospital fired Duis that May. Why? It cited a patient care incident where Duis purportedly said in response to a request for medication for a patient, "I don't give a fuck that patient wants pain medications. He could have gotten them earlier." Duis denied having made the remark, and a co-worker buttressed that denial.

In any event, Franciscan began an investigation. It fired her a week later. The hospital claimed that she was let go because she was generally a lousy employee, and more

particularly, she had sworn while at work and refused care to a patient.

Duis believed the firing represented pregnancy discrimination and/or FMLA interference and retaliation. There was proof a supervisor remarked upon learning Duis was excited about her pregnancy (an October delivery) that Duis didn't really "value her job." Duis also noted that before the firing, she had no prior discipline and in effectuating the firing, Franciscan did not implement a progressive discipline plan.

If Duis prevailed at trial on these counts (they were not separate in the instructions) she could take compensatory and punitive damages. She had alleged the firing caused her emotional distress.

Franciscan denied the firing was unlawful. It claimed as noted above that Duis was let go because of poor performance and the patient care issue. Duis had denied the coarse remark and noted that in any event, there was only a very short delay in the patient receiving the medications. Thus, from her perspective the "patient" incident was just a pretext.

Franciscan also diminished Duis's damages as, (1) she had no expert proof of emotional distress, and (2) Franciscan's conduct, even if it were as alleged by Duis, did not rise to the level of warranting punitive damages.

This case was tried for four days in Hammond, and the deliberations

Civil Jury Verdicts

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

the following: Dr. David Randolph, Occupational Health, Milford, OH; William Baldwin, Jr., Economist, Lexington, KY; D. Joe Lydick, Regulatory Compliance, Saint Augustine, FL; and Sharon Lane, Vocational Rehabilitation, Louisville, KY.

CSX defended the case and denied Kirlin's allegations of negligence. Among other things, defendant noted that the truck was equipped with a diamond tread plate bumper that was slip resistant and perfectly safe. Additionally, CSX noted that Kirlin could have requested a cone holder but never did so.

Finally, CSX disputed how Kirlin's claimed injury actually occurred, implicated Kirlin's own fault, and accused him of failing to mitigate his damages. The identified defense experts included Dillon Snowden, Vocational Rehabilitation, Jacksonville, FL; Gary Skoog, Economist, Vernon Hills, IL; Michael DiTallo, Safety, Lake Zurich, IL; and William Keefe, Engineer, Lake Zurich, IL.

The case was tried in Indianapolis. The court presented the jury with a series of specific interrogatories. The first one asked whether CSX was negligent in failing to provide Kirlin with a reasonably safe place to work.

The jury answered "no" to that interrogatory, and that ended the deliberations. Kirlin took nothing, and the court entered a defense judgment. Kirlin has since filed an appeal of the judgment. At the time the IJVR reviewed the record, the appeal was still pending.

Case Documents:

[Defense Summary Judgment Motion](#)
[Plaintiff Summary Judgment Reply](#)
[Jury Verdict](#)

Auto Negligence - Plaintiff suffered soft-tissue injuries when she was rear-ended by a local attorney who failed to notice that traffic had stopped; this case had the distinction of being the first trial in Floyd County after the COVID lockdowns

Carkuff v. Kiesler, 22C01-1806-CT-782

Plaintiff: Amy R. Wheatley, *Law Office of Nicholas Stein*, New Albany
 Defense: Chris Devlin, *Liberty Mutual Litigation Counsel*, Indianapolis

Verdict: \$13,000 for plaintiff

County: **Floyd**, Circuit

Court: J. Cody, 9-2-20

On 8-29-17, Amy Carkuff, then age 44, was driving a 2005 PT Cruiser as she traveled east on I-64 in Floyd County. Carkuff's daughter, Charity Carkuff, was riding with her as a passenger. The two were on their way to Ivy Tech. Behind them was a 2011 Lincoln being driven by Mark Kiesler, a local attorney. Kiesler was going to the hospital to visit his father.

At a certain point, traffic in front of Carkuff came to a stop. She followed suit and also stopped. Kiesler, however, failed to recognize that traffic had stopped, and he rear-ended the Carkuff vehicle. Both Amy and Charity were injured. Amy was treated at the ER for soft-tissue injuries to her neck and back, and she later followed up with chiropractic treatments. Her medical expenses totaled \$6,023.

Both Amy and Charity filed suit against Kiesler and blamed him for crashing into them. Charity later settled her claim at mediation. The litigation proceeded thereafter solely on Amy's claim. Kiesler defended the case and minimized Amy's claimed injuries.

Additionally, Kiesler attempted to argue that the forces involved in the crash were insufficient to have caused a compensable injury.

Kiesler's biomechanics expert was Dr. Richard Baratta of Houston, TX. However, Carkuff argued that Dr. Baratta was not a physician and was therefore not qualified to offer causation testimony.

The court agreed with Carkuff on this point and excluded the testimony of Dr. Baratta. The defense offered no other experts. For her part, Carkuff's expert was her chiropractor who testified live that her soft-tissue injuries were related to the crash.

The case was tried for three days in New Albany. Interestingly, this was the first trial in Floyd County after the COVID lockdowns.

Precautionary measures were still in place at the time. For example, the jury sat in the gallery rather than the jury box, and they remained in the courtroom during deliberations while the parties and court staff left the room.

In any event, the jury returned a verdict for Carkuff and awarded her damages of \$13,000. That figure is slightly over twice her medical expenses. The court entered a judgment for that amount, and it has been satisfied. Prior to trial, Kiesler made a qualified settlement offer of \$10,678.

Case Documents:

[Jury Verdict](#)
[Final Judgment](#)