

# The Indiana Jury Verdict Reporter

The Most Current and Complete Summary of Indiana Jury Verdicts

May, 2007

Statewide Jury Verdict Coverage

8 IJVR 5

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## Civil Jury Verdicts

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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?

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**Medical Negligence - A man who was undergoing treatment for a hernia displayed signs of lung cancer; when the cancer subsequently proved fatal, his estate blamed his medical team for having missed the diagnosis**

*Estate of Lowe v. Ahmad,  
25C01-0311-CT-369*

Plaintiff: Catherine A. Kling,  
*Montross Miller Muller Mendelson & Kennedy*, Indianapolis

Defense: J. Scott Fanzini, *Hunt Suedhoff Kalamaros, LLP.*, St. Joseph, MI

Verdict: \$220,000 for plaintiff  
County: **Fulton**, Circuit

Court: J. Morton, 1-31-07

In April of 1999, Harold Lowe, age 65 and a used car salesman in Rochester, was experiencing pain in the

right side of his groin. On 4-19-99, Lowe consulted with his longtime family physician, Dr. William Fish of Rochester.

Dr. Fish diagnosed Lowe with an inguinal hernia, a condition in which a portion of the intestine bulges through a weakened area of the muscles in the groin. This condition requires a surgical repair. Accordingly, Dr. Fish referred Lowe to Dr. Mirza Ahmad, a general surgeon and an employee of the Fulton County Medical Clinic in Rochester.

The surgery was scheduled to be performed at Dukes Memorial Hospital in Peru. As part of the process of preparing for the surgery, Lowe underwent a chest x-ray on 5-3-99. The x-ray was sent to an outside radiologist for interpretation. The film showed a 3.2 cm. mass located in the upper

portion of Lowe's left lung. A follow-up CT scan on 5-10-99 confirmed the presence of the mass.

Dr. Ahmad performed the hernia surgery as scheduled on 5-14-99. While Lowe was on the operating table, Dr. Ahmad took the opportunity to perform a "bronchoscopy" with biopsy for further evaluation of the mass in Lowe's lung. The biopsy revealed no malignancy, and no further studies on the mass were performed.

In February of 2001, nearly two years after the hernia surgery, Lowe found himself coughing and spitting up blood. He consulted again with Dr. Fish, and a new chest x-ray showed a worsening of the mass in Lowe's lung. A follow-up a week later revealed possible "neoplasm" -- new tissue growth that may be either benign or malignant.

In light of these results, Dr. Fish referred Lowe to a pulmonary specialist, Dr. Thomas Lavelle of South Bend. Dr. Lavelle diagnosed Lowe with lung cancer that had metastasized to his brain. Sadly, Lowe lost his battle with cancer on 4-8-01, only slightly more than a month after receiving the diagnosis.

Lowe's estate presented the matter to a medical review panel and was critical in several respects of the care Lowe had received from Dr. Fish, Dr. Ahmad, and the Fulton County Medical Clinic. Among other things, the estate argued defendants should have (1) followed-up on the radiological studies, (2) informed Lowe of the need to follow-up, and (3) responded to the symptoms of cancer.

More particularly, the results of the x-ray and CT scan in May of 1999 should have prompted defendants to insist on follow-up studies approximately six months later. Defendants failed to order the follow-up studies, and as a result Lowe lost his only chance for recovery.

The members of the medical review panel were Dr. Thomas O'Connor, Thoracic Surgery, Lafayette; Dr. Thomas Cartwright, Internal Medicine, Indianapolis; and Dr. Daniel Shull, Family Practice, Zionsville. The panel opinion was unanimous that defendants did fail to meet the applicable standard

of care, and that failure was a factor in Lowe's death.

Armed with the review panel's opinion, Lowe's estate filed suit against Dr. Fish, Dr. Ahmad, and the Fulton County Medical Clinic. However, the estate later voluntarily dismissed Dr. Fish and the medical clinic. The litigation then proceeded solely against Dr. Ahmad.

The estate pointed out that even Dr. Ahmad himself admitted the bronchoscopy procedure he performed during the hernia surgery does not rule out the possibility of neoplasm and that Lowe's condition called for follow-up within approximately six-months.

The retained experts for the estate included Dr. Gregory Smith, Oncology, Indianapolis; and Dr. George Launey, Economics, Franklin. It was Dr. Smith's opinion that if Lowe had been properly diagnosed and treated in May of 1999, he would have had a 40% to 50% chance of five-year survival.

Dr. Ahmad defended the case and denied any breach of the standard of care. Instead, he blamed Lowe himself for failing to follow Dr. Ahmad's recommendations for his further care.

The case was tried to a jury in Rochester. The verdict was for the estate in the amount of \$220,000. The court's judgment was not made a part of the record.

Post-trial, the estate filed a motion for pre-judgment interest in the amount of \$47,300. At the same time, Dr. Ahmad filed a motion for remittitur and a motion to correct errors. These issues were still pending at the time the IJVR reviewed the record.

### **Auto Negligence - Plaintiff was awarded slightly more than twice her medical expenses for injuries she sustained in a crash for which defendant admitted fault**

*Terry v. Albertson,*  
88D01-0507-CT-242

Plaintiff: David P. Allen and Daniel L. Brown, *Allen Allen & Allen*, Salem  
Defense: Rodney L. Scott and Julie Fessel Flanigan, *Ward Tyler & Scott*, New Albany

Verdict: \$95,000 for plaintiff  
County: **Washington**, Superior  
Court: J. Newkirk, 2-22-07

On 8-4-04, Patricia Terry, age 39, was traveling on West Point Road in Washington County. Also traveling in the same area was a vehicle being driven by April Albertson. An instant later, the two collided.

Terry suffered injuries to her hip and lower back due to the crash. Her medical expenses totaled \$42,317, and she claimed lost wages in the amount of \$20,854.

In the resulting lawsuit, Terry blamed Albertson for the crash. Albertson admitted fault but denied Terry's injuries were related to the crash.

During the course of the litigation, Terry identified a stable of experts. Among them were Dr. Pamela Snook, General Practice, Seymour; Dr. Ted Freidline, D.C., Salem; Dr. Anthony Alexander, Pain Management, Seymour; Dr. James Brent, General Practice, Corydon; and Dr. David Changaris, Neurosurgery, Louisville, KY.

Dr. Changari reported that Terry had been assigned a permanent partial impairment rating of 7% to the whole person due to her accident-related injuries. Finally, Terry's identified vocational rehabilitation expert was Sally Moore.

A jury in Salem heard the case and returned a verdict for Terry in the amount of \$95,000. The court entered a consistent judgment, and it has been satisfied.

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