

# The Indiana Jury Verdict Reporter

The Most Current and Complete Summary of Indiana Jury Verdicts

July, 2012

Statewide Jury Verdict Coverage

13 IJVR 7

*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.

## Correction

In our June 2012 issue, we reported on the case of *Petty v. American Family Insurance*. In that report we identified Scott A. Faultless as the plaintiff's attorney. That information was incorrect. Plaintiff's attorney on that case was actually Christopher M. Barry. We apologize for the error.

## Workplace Negligence - A "tipper" operator at a landfill suffered an aggravation of a pre-existing knee condition when a driver delivering an 80,000 pound load ran his semi truck into the tipper; the jury awarded plaintiff nearly 68 times the amount of his worker's compensation lien

*Orlando v. Mr. Bult's, Inc.*, 56C01-1005-CT-4  
Plaintiff: Jeffrey S. Wrage and Nathan D. Vis, *Blachly Tabor Bozik & Hartman*, LLC., Valparaiso  
Defense: Michael R. Hartigan, *Hartigan & O'Connor*, Chicago, IL  
Verdict: \$650,000 for plaintiff  
County: **Newton**, Circuit  
Court: J. Leach, 5-22-12

In October of 2008, Nathan Orlando, then age 31, was working as a "tipper" operator at the landfill site of the Newton County Development Corporation, also known as "Allied Waste." On the morning of 10-1-08, Orlando was working in the enclosed cab of the tipper as he went through the morning leveling procedure.

While Orlando was thus occupied, a semi truck owned by Mr. Bult's, Inc. arrived at the site to deposit its 80,000 pound load. As the driver of the truck maneuvered into position, his rig

slammed into Orlando's tipper. It was a significant impact that knocked Orlando off his feet and into the wall of the tipper cab.

Orlando hit the wall with the right side of his body. The impact zone included his head, shoulder, elbow, right knee, and right ankle. Although Orlando was shaken up by the impact, he remained on the job some 30 minutes before being driven to the Working Well Clinic. From there he was transferred to the ER at the local hospital for further tests.

The tests failed to produce any remarkable findings, and Orlando returned to work the next day. However, he soon decided he was in too much pain to continue working. Approximately three weeks later, Orlando was referred for an MRI that revealed bone bruising in his right knee, a patellar dislocation, and an ACL strain. A second MRI on Orlando's right ankle also revealed significant bone bruising and tendinitis.

Orlando followed a course of physical therapy that lasted approximately two months. He was also given a TENS unit that he continues to use to this day. Although Orlando was assigned a Permanent Partial Impairment rating of 0% and released to return to work a little over three months after the incident, he complains of continuing pain. His medical evidence was that his right knee would never be back to 100% and would be permanently prone to locking up.

Orlando filed suit against Mr. Bult's, Inc. and held it responsible for the actions of its driver in running into Orlando's tipper. There is some confusion in the record concerning the precise amount of Orlando's claimed damages. At one point, Orlando lists his medical expenses as totaling \$16,897 but with a worker's compensation lien of

**Auto Negligence - A driver exiting a high school parking lot ran into a pedestrian who was jogging across the exit lane; the driver fled the scene and later pled guilty to a criminal charge of failing to stop after an accident**

*O'Connor v. Fraley*, 73D01-1005-CT-9

Plaintiff: H. Curtis Johnson, *Brown DePrez & Johnson, P.A.*, Shelbyville; and John J. Morse, *Morse & Bickel, P.C.*, Indianapolis

Defense: James M. Sabina and Bette J. Peterson, *State Farm Litigation Counsel*, Indianapolis

Verdict: \$62,050 for plaintiff

County: **Shelby**, Superior

Court: J. Tandy, 1-12-12

On 4-20-09, Melissa O'Connor was jogging on South Miller Street near Shelbyville High School in Shelbyville. At the same time, Thomas Fraley was driving in the high school parking lot in a 2007 Ford F-150 pickup truck owned by Dennis Clark, a State Farm insured.

O'Connor's jogging route took her across the exit lane of the high school parking lot. Just as she made her way across the exit lane by way of the crosswalk, Fraley attempted to drive out of the parking lot via the exit lane. In doing so, he ran into O'Connor.

Fraley apparently fled the scene of the accident. He was later arrested and ultimately pled guilty to a criminal charge of Failure to Stop After an Accident, a Class A. Misdemeanor. In the meantime, O'Connor claimed to have suffered a back injury that she attributed to the incident. The record does not reveal the amount of her incurred medical expenses.

O'Connor filed suit against Fraley and blamed him for running into her. Although the record does not reveal Fraley's sentence arising out of the criminal case against him, it is known that he was in jail at the time the complaint in the civil case was served on him. Whether that period of incarceration was due to the incident with O'Connor or to some other incident is not clear.

From his jail cell, Fraley sent the court a handwritten note explaining that he was unable to afford legal

representation. Later, however, State Farm entered the case and assumed Fraley's defense. He denied negligence, disputed the nature, extent, and causation of O'Connor's claimed injuries, and implicated O'Connor's fault.

The case was tried for three days in Shelbyville. The verdict form was not made a part of the record. However, it is known from the court's minutes that the jury assigned 27% of the fault to O'Connor and the remaining 73% to Fraley. The court entered a judgment for O'Connor in the amount of \$62,050, plus costs of \$149. The judgment has been satisfied.

**Premises Liability - A patient visiting a dentist's office for a cleaning slipped and fell on a patch of ice in his parking lot when she was leaving**

*Kirts v. Wyse*, 20D01-0803-CT-18

Plaintiff: Edward J. Chester and Laura L. Ezzell, *Chester Law Office*, Elkhart  
Defense: Georgianne M. Walker, *May Oberfell Lorber*, Mishawaka

Verdict: Defense verdict on liability

County: **Elkhart**, Superior

Court: J. Roberts, 12-8-11

On 12-18-07, Tracy Kirts, a 43-year-old employee of the Elkhart Community Schools, went to her dentist, Dr. Todd Wyse, during her lunch break. Dr. Wyse's parking lot at 57250 Alpha Drive in Goshen had been plowed and salted the day before because of snow. The snowplow, which was operated by M&R Lawncare, had pushed all the snow into a pile at the end of the parking lot.

Kirts's cleaning went uneventfully, and she left the office building around 11:40 am. She had parked her pickup truck at the last parking space to the left of the building entrance. After walking along the sidewalk to the passenger side of her pickup, she started around the back side in order to reach the driver's side of her vehicle.

As she turned the rear corner of the driver's side, however, Kirts suddenly slipped on a patch of ice. She tried to catch herself but was unable to prevent her fall.

Kirts suffered a hairline fracture of her dominant left forearm as a result of her fall. She also suffered a bad injury to her right knee. Her medical expenses totaled \$28,440, and she believed she would suffer pain for the rest of her life. She also claimed lost wages amounting to \$4,695.

Kirts filed suit against Dr. Wyse and blamed him for failing to provide a safe parking lot for his patients. She also named 57250 Alpha Drive, LLC., the owner of the building and parking lot, as a co-defendant.

Kirts's identified expert, David Daubert, Physical Engineering, Waconia, MN offered the opinion that Kirts had fallen because M&R Lawncare had carelessly pushed all the snow into a pile onto the grass adjoining the parking lot. As the grass was slightly higher than the parking lot, water from melted snow trickled down into the parking lot during the day and froze at night. Daubert believed Kirts had slipped on this "freeze-back."

Dr. Wyse defended the case and denied any wrongdoing. According to him, he routinely checked out his parking lot in the morning when he arrived. He had not noticed any problem on the day Kirts fell. His employees had not complained of any problem either, although they had parked in the area of the parking lot furthest from the building.

Furthermore, Dr. Wyse noted, Kirts had been wearing slip-on, backless clog-type shoes during her visit. Dr. Wyse thought Kirts's choice of footwear had contributed to her fall. Daubert, Kirts's expert, disagreed and thought the soft rubber soles of Kirts's shoes had actually been an excellent choice.

As for the LLC that owned the building where Dr. Wyse's office was located, it maintained it had no responsibility for Kirts's fall. By the terms of the lease, Dr. Wyse was responsible for the maintenance of the premises.

The case was tried for three days in Elkhart. The court granted the LLC's motion for judgment on the evidence, leaving only Dr. Wyse to defend. The jury returned a defense verdict after its

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