

The Indiana Jury Verdict Reporter

The Most Current and Complete Summary of Indiana Jury Verdicts

August, 2006

Statewide Jury Verdict Coverage

7 IJVR 8

Unbiased and Independently Researched Jury Verdict Results

In This Issue

Marion County

Civil Rights - \$1,975,000	p. 1
Auto Negligence - \$22,500	p. 4
Auto Negligence - \$10,106	p. 8
Auto Negligence - Zero	p. 13

Lake County

Auto Negligence - \$78,500	p. 3
Auto Negligence - \$45,000	p. 3
Auto Negligence - \$18,500	p. 6
Truck Negligence - \$15,000	p. 7
Auto Negligence - \$7,340	p. 9
Premises Liability - \$5,000	p. 10
Premises Liability - Defense verdict	p. 11

Bartholomew County

Uninsured Motorist - \$120,000	p. 3
--------------------------------	------

Porter County

Dogbite - Defense verdict	p. 4
Medical Negligence - Defense verdict	p. 8

Monroe County

Premises Liability - Defense verdict	p. 5
Auto Negligence - \$2,996	p. 12
Auto Negligence - Defense verdict	p. 13

Federal Court - Indianapolis

Medical Negligence - \$259,375	p. 5
--------------------------------	------

Madison County

Pharmacy Neg. - Defense verdict	p. 6
Auto Negligence - \$6,500	p. 11

Allen County

Auto Negligence - \$12,200	p. 7
----------------------------	------

Knox County

Premises Liability - Defense verdict	p. 9
--------------------------------------	------

Floyd County

Auto Negligence - \$9,178	p. 10
---------------------------	-------

Dubois County

Auto Negligence - \$4,169	p. 12
---------------------------	-------

Tippecanoe County

Auto Negligence - \$688	p. 12
-------------------------	-------

Federal Court - Hammond

Auto Negligence - \$10,000	p. 13
----------------------------	-------

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 On-Sale for just \$149.00

Order the IJVR 2005 Year in Review

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

On Sale into August for Just \$149.00

See online at juryverdicts.net for more details

Order the IJVR 2005 Year in Review

Just \$149.00 including shipping during August

Civil Rights - A married couple's lives were ruined when their former business partner conspired with law enforcement to drive the couple out of business and have them falsely prosecuted for embezzlement and tax evasion

Orban v. Albrecht, et al.,
49D02-0106-CT-900

Plaintiff: James R. Fisher and Debra H. Miller, *Miller & Fisher*, Indianapolis

Defense: John H. Lewis, *Lewis & Wilkins*, Indianapolis, for Albrecht and Indiana Dept. of Revenue and State of Indiana; Mark D. Ulmschneider, *Steele Ulmschneider & Malloy*, Fort Wayne, for Schmitt and City of Warsaw

Verdict: \$1,975,000 for plaintiff

allocated \$1,575,000 against Albrecht and \$400,000 against Schmitt and City of Warsaw

County: **Marion**, Superior Court: J. Johnson, 6-29-06

In the early months of 1998, David Melching was busily pursuing his dreams of entrepreneurship. For one thing, he was the owner of a company called D.A. Melching & Associates, Inc. (hereinafter, DAMA), a general contractor with offices at 474 West Levi Lee Road in the City of Warsaw.

That one business, however, was not enough to satisfy Melching's ambitions. On 1-1-98, Melching entered into a partnership with Richard Orban to operate a carpet business.

Auto Negligence - Plaintiff was awarded slightly less than three times his medical expenses for soft-tissue injuries he sustained in an intersection crash

Dahm v. Kirmani, 45D11-0207-CT-172
Plaintiff: Michael E. Polen, Jr., *Rubino Ruman Crosmer Cerven Smith & Sersic*, Dyer

Defense: Galen A. Bradley, *Querrey & Harrow*, Merrillville

Verdict: \$78,500 for plaintiff

County: **Lake**, Superior

Court: J. Dywan, 4-25-06

It was 2-16-02, and Paul Dahm was traveling on Schrage Avenue in the City of Whiting. At the same time, a vehicle being driven by Karen Kirmani was approaching from the opposite direction.

Upon reaching the intersection, Kirmani made a left turn onto 119th Street. In doing so, she collided with the driver's side of Dahm's vehicle. Dahm suffered soft-tissue injuries in the crash and complained of pain in his neck and lower back. His vehicle was totaled. Kirmani's vehicle sustained \$4,900 in damage.

In this lawsuit, Dahm blamed Kirmani for making the unsafe turn and causing the crash. In addition to his medical expenses of \$27,457, Dahm also claimed lost wages of \$60,000. His identified medical expert was Dr. Robert Martino, Orthopedic Surgery, Merrillville.

Kirmani admitted fault for the crash, but she disputed the nature and extent of Dahm's claimed injuries. The medical expert for the defense was Dr. David Shenker, Neurology, Chicago, IL. Shenker's contribution consisted only in doing a review of Dahm's medical records.

The case was tried for two days in Crown Point. The verdict was for Dahm, and he was awarded damages of \$78,500. The court entered a consistent judgment. Prior to trial, Dahm's settlement demand was \$100,000. Kirmani thought \$6,500 would be more fair.

Uninsured Motorist - Plaintiff suffered a severe injury to his index finger when he was rear-ended by an uninsured driver; plaintiff's UM carrier defended on damages

Roudebush v. State Farm,
03D01-0409-CT-1557

Plaintiff: Mark C. Ladendorf and Amy Van Ostrand-Fakehany, *Ladendorf & Ladendorf*, Indianapolis

Defense: Kenneth A. Ewing, *Kopka Pinkus & Dolin*, Indianapolis

Verdict: \$120,000 for plaintiff

County: **Bartholomew**, Superior

Court: J. Monroe, 6-28-06

In the late morning of 9-26-02, James Roudebush, a retired teacher, was driving south on U.S. 31 near the intersection with Middle Road in Bartholomew County. Behind him was a vehicle being driven by Zachariah Gruber.

As Roudebush approached the intersection, he stopped in traffic. Gruber failed to stop in time and rear-ended him. The impact pushed Roudebush forward into the rear of the vehicle in front of him.

Roudebush sustained several injuries in the crash. Among them was a cut to his left calf that has left a significant scar. He also suffered injuries to his lower back and chest. Most serious, however, was an injury to his index finger that required surgery. His medical expenses came to approximately \$11,000.

As it happened, Gruber was uninsured. Accordingly, Roudebush made a claim for uninsured motorist benefits with his own insurer, State Farm. Apparently, State Farm at some point tendered \$18,038 as payment for the claim. Roudebush thought that was insufficient, and he filed suit against State Farm on a UM count.

State Farm admitted Gruber was at fault for the crash, but the insurer disputed the nature and extent of Roudebush's claimed injuries. At the conclusion of a two-day trial in Columbus, the jury awarded Roudebush damages of \$120,000. The court entered a consistent judgment.

Prior to trial, State Farm made a Qualified Settlement Offer of \$27,602. That offer was to include the previously

tendered \$18,038. Roudebush countered with a Qualified Settlement Offer of his own in the amount of \$60,000, also to include the previously tendered amount.

Auto Negligence - A woman suffered soft-tissue injuries in a disputed turn crash; the jury awarded her more than seven times her medical expenses

Marlow v. Hlinko, 45D05-0401-CT-23

Plaintiff: Jeffrey S. Wrage, *Blachly Tabor Bozik & Hartman*, Valparaiso

Defense: Richard Long, *Bokota*

Ehrhardt McCloskey Wilson & Conover, Merrillville

Verdict: \$45,000 for Yvonne; for John but zero damages

County: **Lake**, Superior

Court: J. Pete, 4-6-06

In the evening of 10-16-02, Yvonne Marlow, age 47 and a salesperson for Carmax, was driving north on Morse Street near the intersection with 153rd Avenue in Cedar Lake. At the same time, a vehicle being driven by Marie Hlinko, age 84, was approaching from the opposite direction. Hlinko had been out playing bingo at the American Legion and was on her way home.

The parties reached the intersection at the same time. Hlinko made a left turn onto 153rd directly in Yvonne's path, and the two collided. Yvonne was taken by ambulance to the ER where she was treated for widely ranging soft-tissue injuries. She followed with approximately twelve months of chiropractic treatments and incurred medical expenses of \$6,136.

Yvonne filed suit against Hlinko and blamed her for the crash. Additionally, Yvonne's husband, John Marlow, presented a derivative claim for his loss of consortium. Hlinko defended the case and minimized the claimed damages. She also accused Yvonne of failing to mitigate.

A jury in Hammond resolved this case in favor of the Marlows. Yvonne was awarded damages of \$45,000. The jury also found for John on his consortium claim but awarded him zero damages. The court's consistent judgment followed.

Prior to trial, plaintiffs made a Qualified Settlement Offer of \$27,000.

Premises Liability - A woman slipped and fell during a thunderstorm while descending a set of wooden steps to her downstairs apartment; she blamed her landlord for the design, construction, and maintenance of the steps and for not having installed a handrail

Hilker v. Helton, 53C01-0205-CT-957

Plaintiff: John H. Shean, *Shean Law Offices*, Bloomington

Defense: William H. Kelley, *Kelley Belcher & Brown*, Bloomington

Verdict: Defense verdict on liability

County: **Monroe**, Circuit

Court: J. Hoff, 2-15-06

In October of 1997, the husband and wife team of Daniel and Elizabeth Helton, doing business as Helton & Helton Properties, purchased a building located at 4637 Acorn Drive in Bloomington. Part of the building included a downstairs apartment accessible only by a set of steps consisting of five unpainted wooden boards and no handrail.

On 7-22-00, the Heltons leased the downstairs apartment to Katherine Hilker. The lease was to run from 8-12-00 through 8-11-01. Hilker took up residence in the apartment with her roommate, Andrea Benson, and lived there happily for the next several months. However, disaster was about to strike.

On 6-5-01, approximately ten months after Hilker moved into the apartment, the City of Bloomington was being deluged by a thunderstorm. At some point during the storm, Hilker had occasion to walk down the wooden steps to her apartment. While doing so, she slipped and fell.

The record does not reveal the nature of Hilker's injuries or the amount of her medical expenses. In any event, six days after the incident, the Heltons installed a handrail and painted the steps with a non-skid paint. Those remedial measures would not be enough to satisfy Hilker.

In this lawsuit, Hilker blamed the Heltons for the negligent design, construction, and maintenance of the stairway leading to her apartment. According to her, Elizabeth Helton told her shortly after the incident that Daniel

had built the stairs sometime after the Heltons had purchased the building in 1997.

The Heltons defended the case and argued first that pursuant to the lease agreement, they had turned over to Hilker full possession and control of the apartment, including the stairway. Inasmuch as the stairway was not a common area, responsibility for its maintenance thus rested entirely with Hilker.

In addition, the Heltons denied having installed the steps themselves. According to them, the steps were already in place when they bought the building. Furthermore, Hilker lived in the apartment for approximately ten months without incident. Thus, she had to have been aware of the condition of the steps and of the absence of a handrail, yet she never complained about it.

Hilker retorted that it was her understanding the steps were in fact part of a common area and were thus the responsibility of the Heltons. She also reiterated her recollection of Elizabeth's statement that Daniel had built the steps.

The Heltons responded to this with an affidavit from Joann Beggs, the woman from whom they purchased the building in 1997. Beggs confirmed that the steps had been in place when the Heltons bought the building, and she added that the steps were not part of any common area.

In light of this evidence, Hilker added Beggs as a co-defendant. However, the court later granted Beggs a summary judgment and dismissed her from the case. The litigation then proceeded against the Heltons.

The case was tried for two days in Bloomington. After approximately an hour and a half of deliberation, the jury returned a verdict for the Heltons. The court followed with a consistent defense judgment.

Medical Negligence - Plaintiff sustained an injury to her laryngeal nerve during a thyroidectomy – she blamed her ENT for the surgical choice in the first place, noting there was a less risky non-invasive treatment available

Lasley v. Moss, 1:05-107

Plaintiff: Jerry A. Garau and Jennifer Stephens Love, *Findling Garau*

Defense: Edward L. Murphy, Jr., *Miller Murphy & Miller*, Fort Wayne

Verdict: \$259,375 for plaintiff

Federal: **Indianapolis**

Court: J. McKinney, 7-14-06

Angela Lasley suffered from hyperparathyroidism. In January of 1999, Dr. John Moss, an ENT, performed a surgery to remove her thyroid. During the procedure, he injured her laryngeal nerve. Lasley has been left with permanent hoarseness.

In this suit, she alleged negligence by Moss in several regards: (1) the surgical choice in the first place as a non-invasive drug treatment (I-131) was an option, and (2) his surgical technique with respect to the injury, and (3) a delay in making a repair. Plaintiff's experts are not revealed in the record – beyond the primary claim, her husband, William, presented a derivative consortium claim.

Moss defended that the surgical decision was proper – I-131, he explained, can lead to birth defects and was inappropriate for Lasley who was then of child-bearing age. Then to the injury itself, Moss called it a complication, not negligence. His expert was Dr. Elizabeth Blair, ENT, Chicago, IL.

Lasley prevailed on liability and an Indianapolis jury awarded her \$259,375 – consortium was rejected. A judgment in that sum followed. She has since sought an award of pre-judgment interest (above the defendant's \$100,000 of culpability) noting that before trial he'd offered nothing. [Plaintiff's demand was \$75,000.] The motion is pending.

The incident took place on a Saturday. When Ingram awoke on Sunday, she was in considerable pain in her hip and foot. It was not until the next day, a Monday, that she finally went to the ER at St. Margaret's in Dyer. There she was diagnosed with two broken toes and a sprained left hip. Her medical expenses totaled \$2,471, and she claimed lost wages of \$3,546..

Ingram filed suit against Paylow and blamed the store for allowing the icy patch to exist outside its front door and for failing to warn her of the hazard. Paylow defended the case and implicated Ingram's fault. The store also disputed the nature, extent, and causation of her claimed injuries.

The case was tried for two days in East Chicago. During Ingram's testimony, she admitted she was partly at fault for the incident. However, she insisted that Paylow was even more at fault.

The jury assigned 51% of the fault to Paylow and the remaining 49% to Ingram. Her raw damages were set at \$5,000. After reduction for comparative fault, Ingram's award came to \$2,550, almost exactly the amount of her medical expenses. The court entered a consistent judgment for that amount, plus costs, and it has been satisfied.

Auto Negligence - Plaintiff prevailed in a case arising out of an intersection crash in which defendant ran a stop sign

McGraw v. Jackley,
48D02-0206-CT-461

Plaintiff: Martha Warren-Rosenfeld,
Lee Burns & Cossell, Indianapolis
Defense: W. Brent Threlkeld,
Threlkeld Reynolds, Indianapolis
Verdict: \$6,500 for plaintiff
County: **Madison**, Superior
Court: J. Brinkman, 4-26-06

During the lunch hour on 7-1-00, Ulysee McGraw was driving a 1994 Chevrolet S-10 pickup truck on Vanbuskirk Street in Madison County. At the same time, Heather Jackley was driving a Dodge Neon, heading south on Dresser Street.

Jackley reached the intersection and began making a left turn onto

Vanbuskirk. In doing so, she ran a stop sign and turned in front of McGraw. An instant later, the two collided.

The record does not reveal the nature of McGraw's injuries or the amount of his medical expenses. He filed suit against Jackley and blamed her for running the stop sign and causing the crash. Jackley admitted fault but minimized the claimed damages. She also accused McGraw of failing to mitigate.

The case was resolved by a jury in Anderson in favor of McGraw. He was awarded damages of \$6,500. That information was gleaned from other pleadings inasmuch as the verdict form was to part of the record. In any event, the court entered a consistent judgment for the verdict amount, plus costs of \$100. The judgment has been satisfied.

Premises Liability - An elderly woman on her way to a doctor's appointment in a medical clinic was knocked to the floor when an elevator door closed on her; the woman suffered a fractured hip that required surgery

Kurz v. Hammond Clinic,
45D05-0402-CT-57

Plaintiff: Kevin Smith, *Rubino Ruman Crosmer Cerven Smith & Sersic*, Dyer
Defense: J. Thomas Vetne, *Jones Obenchain, LLP.*, South Bend, for Hammond Clinic; Perry C. Rocco, *Menges & Molzahn, LLC.*, Chicago, IL, for ThyssenKrupp Elevator Corporation
Verdict: Defense verdict on liability
County: **Lake**, Superior
Court: J. Pete, 2-28-06

Muriel Kurz, age 81 and a retiree, was on her way to a doctor's appointment at the Hammond Clinic in Hammond. Kurz, who walked with a cane in her right hand, was accompanied that day by her daughter.

Upon arriving at the clinic, Kurz and her daughter made their way to the elevator in the lobby. Just as Kurz entered the elevator, however, the door began to close on her. In the next instant, the elevator door hit Kurz on her right hip and knocked her to the floor.

Kurz sustained a non-displaced intertrochanteric fracture of her left hip

due to the fall. She subsequently underwent an open reduction with internal fixation, for which she incurred medical expenses of approximately \$60,000.

In this lawsuit, Kurz targeted the Hammond Clinic and a company called ThyssenKrupp Elevator Corporation. ThyssenKrupp was the company responsible for maintaining the elevators. Kurz blamed both defendants for the incident and for her injuries. Her medical expert was Dr. Jeffrey Tioco, Orthopedic Surgery, Munster.

Kurz also identified an elevator expert in the person of Richard Gregory of Chicago, IL. Gregory explained that the door opening mechanisms with which the elevator was equipped were part of the original installation that took place back in 1985.

Gregory thought those mechanisms were obsolete and should have been replaced with a more modern system called a "Pana 40" device. That device makes use of a series of infrared beams to detect whether the way is clear to close the elevator door. If the Pana 40 device had been installed on the elevator in the Hammond Clinic, Kurz would never have been injured.

As it turned out, ThyssenKrupp had itself previously recommended to the Hammond Clinic that the Pana 40 device should be installed on all the clinic's elevators. However, the clinic rejected that recommendation some nine months prior to Kurz's accident.

Both ThyssenKrupp and the Hammond Clinic defended the case and denied any wrongdoing. They noted that a ThyssenKrupp mechanic had inspected the elevators earlier on the same day of Kurz's fall.

That inspection, which lasted between two and a half to three hours, found the elevators to be in good working order. Thus, Kurz's accident could only have been due to her own failure to exercise reasonable care for her own safety. Interestingly, neither of the two defendants retained any experts to address the issues of liability or damages.

The case was tried for two days in Hammond. Immediately after jury selection and before opening statements,

The Indiana Jury Verdict Reporter
9462 Brownsboro Road, No. 133
Louisville, Kentucky 40241
1-877-313-1915
Online at Juryverdicts.net

From Evansville to Fort Wayne, Lake County to Jeffersonville
Comprehensive and Timely Indiana Jury Verdict Coverage

The Indiana Jury Verdict Reporter
The Most Current and Complete Summary of Indiana Jury Verdicts

Ordering is Easy - Call to Place your MasterCard/Visa order

Order the 2005 Year in Review

Call 1-877-313-1915 to pay by Mastercard/Visa

Name

Return with your check to the
The Indiana Jury Verdict Reporter
at the above address

Firm Name

_____ \$199.00 for a one year subscription to the
Indiana Jury Verdict Reporter (12 issues)

Address

_____ \$149.00 to Order the
IJVR 2005 Year in Review
(On Sale in August – Save 25%)

City, State, Zip