The Indiana Jury Verdict Reporter

The Most Current and Complete Summary of Indiana Jury Verdicts

October 2013 **Statewide Jury Verdict Coverage** **14 IJVR 10**

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.

Medical Negligence - A fetal blood draw being carried out as part of a research study went wrong and necessitated an emergency c-section; the baby suffered an hypoxic event that has left her with spastic quadriplegia cerebral palsy

Bobbitt v. Turnquist-Wells, et al., 82C01-0508-CT-667
Plaintiff: Terry Noffsinger, *NoffsingerLAW, P.C.*, Evansville; and Evy McElmeel, *Law Offices of Evy McElmeel*, Seattle, WA
Defense: R. Thomas Bodkin and Chad M. Smith, *Bamberger Foreman Oswald & Hahn, LLP.*, Evansville, for Turnquist-Wells and St. Mary's Medical Center; David S. Strite and Mark E. Hammond, *O'Bryan Brown & Toner, PLLC.*, Louisville, KY for Malchioni
Verdict: $15,000,000 for plaintiffs (allocated $10,000,000 to Juliann Bobbitt and $5,000,000 to Jamie and Crystal Bobbitt) against Turnquist-Wells and St. Mary's Medical Center; Defense verdict for Malchioni
County: **Vanderburgh**, Circuit Court: J. Heldt, 8-23-13

On 11-18-01, 27 year-old Crystal Bobbitt gave birth to a son, Ethan Bobbitt. Sadly, Ethan was born with a severe case of thrombocytopenia. This is a condition in which the blood has an abnormally low platelet count. People with this condition have difficulty forming blood clots, and so it is possible for them to bleed to death if cut.

In the wake of this discovery, Crystal underwent a round of genetic testing. The results indicated that any subsequent pregnancies she might have would be at extremely high risk of developing neonatal alloimmune thrombocytopenia (NAT). A little over a year later, on 2-15-03, Crystal had a positive pregnancy test.

When this new pregnancy was confirmed, Crystal's ob-gyn referred her to Dr. Mureena Turnquist-Wells, an employee of St. Mary's Medical Center of Evansville, Inc. The reason for the referral was that Dr. Wells was at that time participating in a research study on NAT that was being conducted at New York Presbyterian Hospital and the Weill Cornell Medical Center.

Crystal consulted with Dr. Wells on 4-8-03 and learned that the study would require regular fetal blood sampling by means of a needle inserted into the umbilical vein. Under normal conditions, this procedure carries only a 1% risk of fetal injury or death. Crystal agreed to this plan and signed the consent form to enroll in the study three days later on 4-11-03.

Following her enrollment in the study, Crystal made monthly visits to Dr. Wells for the blood draws. On 9-2-03, when she was just over 33 weeks pregnant, Crystal once again was admitted to the hospital to prepare for the routine blood draw.

In accordance with the standard procedure, she was taken to the operating room the following day and sedated prior to the procedure. Anesthesia was provided by Dr.

around until it came to a stop facing north. In the wake of the crash, Cochrane had one hospital visit. Maez, however, claimed to have been more seriously injured. Specifically, Maez claimed to have suffered whiplash, which in turn resulted in left-side neck pain and headaches. The record does not reveal the amount of her medical expenses.

Maez filed suit against Cochrane and blamed her for pulling into her path. According to Maez, Cochrane should not have stopped at the stop sign. Instead, Maez argued, Cochrane should have stopped at a point beyond the stop sign so as to enable other drivers to see her better.

Interestingly, Maez's original attorney in this case – Craig A. Rieff, then of the South Bend firm *Sweeney Julian, P.C.*, but now practicing as the *Rieff Law Office, P.C.* in Mishawaka – filed an affidavit along with a summary judgment brief saying that he had personally measured the distance between the stop sign and the intersection.

That move prompted Cochrane to file a motion to disqualify Rieff because he had made himself into a witness in the case. The court denied the motion. Sometime later, however, Rieff disappeared from the case, and attorney Daniel Pfiefer took over as Maez's legal counsel.

Cochrane defended the case and blamed the crash on Maez. Defendant also disputed the nature and extent of Maez's claimed injuries. Finally, Cochrane accused Maez of having failed to mitigate her damages.

The case was tried in South Bend. The jury returned a verdict in which 75% of the fault was assigned to Maez, and the remaining 25% was assigned to Cochrane. Based on the allocation of fault, the court entered a defense judgment. Maez's post-trial motion to correct error was still pending when the IJVR reviewed the record.

Dog Attack - A little girl visited defendant' s home on Halloween night for trick-or-treating; defendant's dog came outside and knocked the little girl down, causing her to suffer a wrist fracture

Morgan v. Haganman,
49D14-0903-CT-14487
Plaintiff: R. Daniel Craven, *Craven Hoover & Blazek, P.C.*, Indianapolis
Defense: Patricia A. Douglas, *American Family Insurance Litigation Counsel*, Indianapolis
Verdict: Defense verdict on comparative fault
County: **Marion**, Superior Court: J. Osborn, 7-31-13

On Halloween of 2008, Julie Morgan dropped off her minor daughter, Alexis Morgan, at the home of neighbor Michele Burge. The plan was that Alexis would go on a hay ride and participate in trick-or-treating with Burge's daughter and some other neighborhood children.

At some point during the trick-or-treating expedition, Alexis visited the home of Benton Haganman, Jr., located at 7705 Knapp Road in Indianapolis. As it happened, Haganman was not at home at the time. However, his pet dog, a boxer, was on the property.

When Alexis entered Haganman's property to trick-or-treat, the dog came outside and knocked Alexis to the ground. She suffered a fractured left wrist due to the incident. Alexis underwent a surgical repair, but the record does not reveal the amount of her medical expenses.

Julie and her husband, Chris Morgan, joined with Alexis to file suit against Haganman and blamed him for failing to protect Alexis from his dangerous dog. Plaintiffs also made a third-party beneficiary claim for medpay against Haganman's insurer, American Family Insurance.

In addition to the wrist fracture, plaintiffs claimed Alexis had also suffered emotional trauma due to the incident. Finally, Julie and Chris made a claim for the loss of their daughter's services.

Haganman defended the case and blamed the incident on Alexis for coming onto his property without permission and on Julia and Chris for leaving Alexis in the care of Burge. According to Haganman, Burge had failed to supervise Alexis properly. Based on that theory, he named Burge as a non-party.

Haganman further explained that he had not even been home at the time of the incident and had turned off his exterior lights so as to indicate that he would not be receiving trick-or-treaters. Under those facts, Haganman argued, Alexis was a trespasser on his property. American Family picked up on this theme and argued Alexis's status as a trespasser meant she had no coverage under the company's insurance policy.

Haganman also noted that his dog had been properly restrained by a fully functional electric fence and was wearing the interacting collar at all times. Finally, defendant argued his dog had no known vicious propensities and had never before harmed anyone.

The case was tried for two days in Indianapolis. The jury returned a verdict in which fault was allocated

40% to Alexis, 20% to Julie, 0% to Chris, 0% to Haganman, and the remaining 40% to non-party Burge. Based on the allocation of fault, the verdict was for the defense. If the court entered a judgment, it was not in the record at the time the IJVR reviewed it.

Uninsured Motorist - A woman suffered two herniated disks when her car was rear-ended at an intersection by an uninsured driver; the jury awarded her a bit more than her medical expenses but nothing for her husband's consortium claim

Williams v. State Farm Insurance,
45D05-1110-CT-205
Plaintiff: Thomas W. Kramer, *Buoscio Pera & Kramer*, Merrillville
Defense: Michael M. Oberman, *State Farm Litigation Counsel*, Crown Point
Verdict: $40,000 for Jeanne Williams; zero damages for David Williams
County: **Lake**, Superior
Court: J. Davis, 3-13-13

On 1-14-11, Jeanne Williams, then age 35 and a massage therapist at Kauffman Chiropractic in Merrillville, was driving a 2005 Pontiac Grand Prix as she headed west on U.S. 30 in Schererville. Behind her and traveling in the same direction was a 1997 Pontiac Grand Prix being driven by Anthony Vignone, an Illinois resident.

As Williams approached the intersection with Harvest Drive in the inside lane, she began to slow for a red light. An instant later, Vignone rear-ended her. The impact pushed Williams's car into the intersection. Williams would later recall that in the immediate aftermath of the crash, Vignone told her he wanted to leave the scene because he did not have either a job or insurance.

Williams suffered two herniated cervical disks that she attributed to the crash. Her medical expenses ultimately climbed to more than $30,000. She filed suit against Vignone and blamed him for crashing into her. Williams's husband, David Williams, also presented a derivative claim for his loss of consortium.

Given that Vignone did not have insurance, plaintiffs also made an uninsured motorist claim against their own insurer, State Farm Insurance, under their policy that carried UM coverage of 250/500, plus $10,000 for property damage.

Although the record indicates that Vignone proceeded on a *pro se* basis, there is little to suggest he actually participated in the litigation. State Farm defended the case and disputed Vignone's fault. The company also disputed the extent of Williams's injuries and the amount of her damages.

The case was tried for three days in Hammond. The jury returned a verdict for plaintiffs and awarded damages of $40,000 to Williams but valued her husband's consortium claim at zero. The jury also applied a credit of $5,000 for funds already paid by State Farm to plaintiffs under the medpay provision of their policy.

That brought the final award to $35,000 for Williams. The court entered a judgment for that amount, plus $276 in costs and $107 in pre-judgment interest. State Farm has satisfied the judgment.

Auto Negligence - Plaintiff was working as a "Yellow Shirt" for the Brickyard 400 at the Indianapolis Motor Speedway when defendant ran into him with her vehicle; the jury assigned plaintiff 50% of the fault and awarded his wife nothing on her consortium claim

Pryor v. Norton,
49D12-1107-CT-28915
Plaintiff: Troy K. Rivera, *Ken Nunn Law Office*, Bloomington
Defense: Robert F. Ahlgrim, Jr., *State Farm Litigation Counsel*, Indianapolis
Verdict: $10,000 for Michael Pryor less 50% comparative fault; zero on Briana Pryor consortium claim
County: **Marion**, Superior
Court: J. Welch, 11-14-12

On 7-25-10, Michael Pryor was working as a "Yellow Shirt" for the Brickyard 400 at the Indianapolis Motor Speedway. Yellow Shirts work as part of the Speedway's safety patrol and are responsible for such things as checking tickets and directing traffic and parking.

One of the visitors to the Speedway that day was Diane Norton. It was Pryor's recollection that while he was on foot and engaged in his work as a Yellow Shirt, Norton ran into him with her vehicle. The record does not reveal the nature of Pryor's injuries or the amount of his medical expenses.

Pryor filed suit against Norton and blamed her for running into him. His wife, Briana Norton, also presented a derivative claim for her loss of consortium. Finally, plaintiffs initially made an uninsured/underinsured motorist claim against their own insurer, Safe Auto Insurance Company.

Plaintiffs later stipulated to the dismissal of Safe Auto from the case. The litigation proceeded thereafter

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