

The Indiana Jury Verdict Reporter

The Most Current and Complete Summary of Indiana Jury Verdicts

December, 2005

Statewide Jury Verdict Coverage

6 IJVR 12

Unbiased and Independently Researched Jury Verdict Results

In This Issue

Marion County

Medical Negligence - \$45,000	p. 4
Auto Negligence - \$18,000	p. 6
Auto Negligence - Defense verdict	p. 10
Truck Negligence - \$12,200	p. 11
Auto Negligence - Defense verdict	p. 12

Lake County

Workplace Negligence - \$10,500,000	p. 1
Swimming Pool Neg. - \$400,000	p. 2
Premises Liability - \$60,000	p. 5
Auto Negligence - \$24,644	p. 7
Slip and Fall - \$8,800	p. 10
Auto Negligence - Defense verdict	p. 12

Vigo County

Auto Negligence - \$90,528	p. 2
Auto Negligence - \$1,556	p. 12

Hamilton County

Auto Negligence - \$67,050	p. 3
----------------------------	------

Bartholomew County

Auto Negligence - \$50,000	p. 5
----------------------------	------

Boone County

Repo Negligence - Defense verdict	p. 6
-----------------------------------	------

Vanderburgh County

Medical Negligence - Defense verdict	p. 7
--------------------------------------	------

Monroe County

Auto Negligence - \$17,700	p. 8
----------------------------	------

Gibson County

Premises Liability - Defense verdict	p. 8
--------------------------------------	------

Federal Court - Indianapolis

Prisoner's Rights - Defense verdict	p. 9
-------------------------------------	------

Elkhart County

Auto Negligence - \$3,719	p. 11
---------------------------	-------

Lawrence County

Auto Negligence - \$3,277	p. 11
---------------------------	-------

Porter County

Auto Negligence - Defense verdict	p. 13
-----------------------------------	-------

Notable Out-of-State Verdicts	p. 14
--------------------------------------	-------

Civil Jury Verdicts

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

Workplace Negligence - A construction worker suffered serious head injuries after falling more than twenty feet to the ground while helping to build a shopping center

Gulley v. Main Street Centre, et al.,
45C01-0308-CT-174

Plaintiff: Kenneth J. Allen, *Kenneth J. Allen & Associates*, Valparaiso

Defense: Daniel G. Suber and Jennifer E. Davis, *Daniel G. Suber & Associates*, Valparaiso

Verdict: \$10,500,000 for plaintiff less 10% comparative fault

County: **Lake**, Circuit

Court: J. Arredondo, 9-1-05

In the spring of 2001, there was a construction project under way at 713 West Main Street in Schererville. The project was a large retail shopping center to be called, appropriately enough, Main Street Centre.

The sole owner of the Main Street project was David Van Dyke. The company in charge of the actual construction was Precision Commercial Construction, Inc. As it happened, Van Dyke was also the sole owner of Precision.

On 1-3-02, Precision subcontracted with a company called Trump Ironworks to furnish and install structural steel framing for the project. One of Trump's employees was Brian Gulley. Gulley's job included attaching metal beams to one another, sometimes at a considerable height.

Gulley was hard at work on 2-14-02 helping to put up a roof deck on the project. He was in the process of fastening a horizontal metal beam to a column when he slipped and fell more than twenty feet to the ground below. No one saw what caused Gulley to fall, although the accident report contains a suggestion that he might have lost consciousness just prior to falling.

In any event, Gulley hit the ground

hard and stopped breathing due to the impact. Fortunately, a mason working nearby happened to be trained in CPR and revived him. Gulley was then transported by ambulance to the hospital for further treatment.

Gulley sustained extensive injuries in the fall. Among them were a complex skull fracture, a brain injury, extensive facial injuries, and disfigurement. He has also permanently lost his sense of smell and is prone to fatigue, depression, and headaches.

Gulley's incurred medical bills mounted to \$168,494, and he anticipates future medical expenses of between \$20,000 and \$30,000 for reconstructive surgery. Also, he now has only a limited ability to work.

Gulley sued for damages and targeted Main Street Centre, Precision Commercial Construction, a company called Keogh Mechanical Corporation, and someone named David Katz. The role of Keogh and Katz in the incident is unclear from the record. In any event, Gulley later dismissed them from the case and focused his attention on Main Street and Precision.

Gulley blamed defendants for allowing dangerous conditions to exist at the construction site and providing no fall protection. In particular, he noted that on at least one occasion an employee of Precision visited the site and took photographs. Some of those photographs show Gulley himself working more than six feet above the ground without fall protection.

This was significant inasmuch as it constituted a violation of Precision's own safety rules, as well as OSHA regulations. Yet, there is no evidence the Precision employee who observed this violation bothered to alert anyone to the danger.

In addition to his other damages, Gulley sought compensation for his lost

earnings and for his pain and suffering. He estimated his past and future wage loss at \$853,442. He quantified his past and future pain and suffering at more than \$8,000,000.

Main Street and Precision defended the case and pointed the finger of blame at Gulley for choosing to work at altitude without being tied off or using safety equipment. Also, Main Street denied having any duty to provide its subcontractors with a safe place to work. Instead, Main Street claimed that Precision was in charge of the project, and Main Street had no knowledge of working conditions at the site.

Gulley opposed this defense by pointing out that Main Street and Precision were both solely owned by Van Dyke. In fact, the two companies actually share the same office space. Given that close relationship, it would be disingenuous to suppose that the one hand did not know what the other was doing.

The case was tried for eight days in Crown Point. The jury returned a complex verdict in which 80% of the fault was assigned to Precision, 10% was assigned to Main Street, 8% was assigned to non-party Trump Ironworks, and the remaining 2% was assigned to Gulley.

The jury set Gulley's total damages at \$10,500,000. After reduction for comparative fault, his final award came to \$9,450,000. That figure represented an \$8,400,000 verdict against Precision combined with a \$1,050,000 verdict against Main Street. The court entered a consistent judgment.

Post-trial, defendants filed a motion to correct errors. The court's ruling on the motion was not in the record at the time the IJVR reviewed it.

Auto Negligence - A woman suffered two herniated discs when another driver ran a red light and crashed into her

Goldner v. Watts,

84D02-0305-CT-3765

Plaintiff: Keith L. Johnson, *Johnson Law Office*, Terre Haute

Defense: William W. Drummy, *Wilkinson Goeller Modesitt Wilkinson & Drummy*, Terre Haute

Verdict: \$90,528 for plaintiff

County: **Vigo**, Superior

Court: J. Adler, 9-26-05

In the evening of 7-27-02, Kimberly Goldner, age 45 and a paint store sales associate, was driving west on Walnut Street toward the intersection with South 4th Street in Terre Haute. At the same time, Michael Watts was driving south on South 4th Street. At the intersection, Watts ran a red light and collided with Goldner.

Goldner suffered two herniated discs in her thoracic spine as a result of the crash and incurred medical expenses totaling \$14,193. She was also off work for two months due to the accident. Her lost wages came to \$2,100. Goldner was ultimately assigned a permanent impairment rating of 8%, as well as a 25lb. weight limitation.

Goldner filed suit against Watts and blamed him for running the red light and crashing into her. In addition to her other damages, Goldner sought future lost wages. In particular, she had previously planned to return to the more highly paying factory work from which she had been laid off before going to work for the paint store.

Based on her impairment rating and weight limitation, Goldner claimed her dream of returning to factory work was now rendered impossible. She estimated her lost future wages at approximately \$10,000 per year.

Goldner's medical experts included Dr. James Walsh, Family Practice, Terre Haute; Dr. Joseph Bergeron, Physiatry, Indianapolis; and Dr. Eric Potts, Neurosurgery, Indianapolis. Doctors Walsh and Bergeron agreed that Goldner's two herniated discs were due to the accident.

Watts admitted fault for the crash and

explained he simply failed to see the red light. He defended on damages and disputed their nature and extent.

A jury in Terre Haute deliberated for approximately two and a half hours before returning a verdict in favor of Goldner. The jury awarded her damages of \$90,528, and the court followed with a consistent judgment for that amount. The judgment has been satisfied.

Swimming Pool Negligence Following a routine maintenance procedure at a high school, the school's swimming pool became saturated with chlorine gas, causing permanent injury to at least one of the students who was participating in a swimming class

Stoval v. Warsaw Chemical Company,

45D11-0103-CT-91

Plaintiff: Donald E. Schlyer and David R. Novak, *Schlyer & Associates*, Merrillville

Defense: Leonard H. Holajter, *Ohio Casualty Litigation Counsel*,

Valparaiso, for Warsaw Chemical Company; John M.T. Chavis, II, *Locke Reynolds*, Indianapolis, for Tri-Creek School Corporation

Verdict: \$400,000 for plaintiff

County: **Lake**, Superior

Court: J. Dywan, 7-15-05

In 1999, Danielle Stoval was a student enrolled at Lowell High School, part of the Tri-Creek School Corporation, in Lake County. The school was equipped with a large swimming pool used for swimming classes. The pool was serviced by chlorine tanks that were housed in a "chlorine closet." Significantly, the closet was also equipped with a tube that vented chlorine to the outside.

On 3-23-99, one of the chlorine tanks was empty and needed replacing. Lowell's maintenance man replaced the tank and switched the regulator from the empty tank to the full one. However, he was unable to open the valve on the new tank. Lowell called in the Warsaw Chemical Company to deal with the situation. Warsaw sent its employee, Randall Creamer, out to the site. There would later be some dispute over exactly what Creamer did to

correct the problem.

According to Stoval, Creamer pulled the problematic chlorine tank out of the closet and attached the regulator to the tank before opening the stuck valve. In doing so, however, he accidentally pulled the vent tube into the wall cavity, thereby allowing chlorine to vent into the building.

Believing he had completed his repairs, but not realizing there was a new problem with the vent tube, Creamer left the premises. The following morning, Stoval reported for swimming class. No one was aware that as a result of the vent tube problem, the pool had become saturated with chlorine gas.

Stoval lined up along with the other students at the edge of the pool and began doing her warm-up exercises. At the same time, some of the other students dove into the pool. Almost immediately, the students began coughing and complaining to their physical education teacher, Mary Opat, of a bleach-like odor in the water. Opat recognized the signs of chlorine exposure and ordered the students to the showers for decontamination. Ultimately, the entire school was evacuated.

Stoval was hospitalized for four days due to her exposure to the chlorine gas and was subsequently diagnosed with Reactive Airways Dysfunction Syndrome (RADS). She continues to have difficulty breathing if she exerts herself. On such occasions, she must now use an inhaler to regain her breath. Her medical expenses are unknown.

Stoval's experts included two pulmonologists: Dr. Charles Rebesco of Hobart, and Dr. Elliot Stokar of Munster. Interestingly, Stokar was originally hired by Tri-Creek to perform an IME on Stoval. It is unclear why he switched teams. Stoval's other expert was an architect, Joseph Szarkowicz.

Stoval filed suit against the Tri-Creek School Corporation and the Warsaw Chemical Company. She blamed them for failing to replace the chlorine tank properly and exposing her to chlorine gas. In particular, she alleged that Creamer failed to inspect the vent tube to ensure its proper placement before

leaving the premises.

Both defendants denied wrongdoing, and they each blamed the other for the incident. Tri-Creek blamed Warsaw for having pulled the vent tube into the wall cavity and failing to inspect it prior to leaving. Warsaw, however, told a somewhat different story.

According to Warsaw, all Creamer did was to open a stuck valve on the new chlorine tank. It was Tri-Creek's own maintenance man who installed the regulator before Creamer ever arrived on the scene, and it must have been the maintenance man who pulled the vent tube into the wall cavity. Thus, the fault for the incident rests with Tri-Creek rather than with Warsaw.

Tri-Creek's expert was chemical engineer Russell Ogle. Warsaw's expert was Dr. Timothy Zwier, Chairman of the Department of Chemistry at Purdue University, West Lafayette.

The case was tried for five days in Crown Point. During deliberations, Stoval entered into a high/low agreement with Tri-Creek with parameters of \$110,000/\$100,000. The jury returned a verdict in which 80% of the fault was assigned to Tri-Creek, and the remaining 20% was assigned to Warsaw.

Stoval's damages were set at \$400,000, with half of that amount assessed to each defendant. Thus, Stoval took \$40,000 from Warsaw and was awarded \$160,000 against Tri-Creek. Pursuant to the terms of the high/low agreement, Tri-Creek will pay the minimum figure of \$100,000. Prior to trial, Stoval's settlement demand was \$200,000; Warsaw's offer was \$45,000.

Auto Negligence - A woman claimed TMJ and other ailments as a result of being rear-ended by another driver

Truex v. Kitterman,
29D02-0004-CT-234
Plaintiff: Timothy A. Rowe, *Rowe & Hamilton*, Indianapolis
Defense: C. Stuart Carter, *State Farm Litigation Counsel*, Indianapolis
Verdict: \$67,050 for plaintiffs less 20% comparative fault
County: **Hamilton**, Superior Court: J. Pylitt, 5-27-05

On 10-12-98, Michelle Truex, age 41, was driving east on 116th Street in Fishers. Her two children, Alexandria and Gabriel, were riding with her as passengers. When Truex stopped in traffic due to construction, she was rear-ended by Helen Kitterman.

Michelle suffered injuries to her neck and back, and she complained of TMJ dysfunction, memory loss, and chronic pain. Alexandria and Gabriel also suffered injuries that the record does not describe. Their medical expenses are unknown.

Michelle's treating physician, Dr. Douglas Robertson, Family Practice, Carmel, offered the opinion that her chronic pain was due to the injuries she sustained in the crash. Her other identified expert, Dr. Robert Silbert, Physical Medicine, Indianapolis, believed her injuries exacerbated a pre-existing condition.

Michelle, Alexandria, and Gabriel all filed suit against Kitterman and blamed her for rear-ending them. Additionally, Michelle's husband, Lewis Truex, presented a derivative claim for loss of consortium.

Kitterman defended the case and minimized the claimed damages. In particular, Kitterman noted that Michelle had suffered a similar neck problem due to a similar accident some six years previously in 1992. The record does not identify defense experts.

The case was tried for two days in Noblesville. The jury returned a verdict in which 80% of the fault was assigned to Kitterman and the remaining 20% to the Truexes. It appeared, however, that the jury struggled with the calculation

of damages.

The verdict form listed Michelle's total damages as \$63,285, Gabriel's damages as \$1,590, Alexandria's damages as \$1,550, and Lewis's consortium damages as \$625. This brought the total combined damages to \$67,050. After reduction for comparative fault, the total award came to \$53,640. That, however, was not the end of the matter.

The jury included a handwritten note explaining its intent to make the final awards as follows: \$50,000 to Michelle, \$1,590 to Gabriel, \$1,550 to Alexandria, and \$500 to Lewis. Having explained its intent, the jury asked if it had completed the verdict form correctly so as to effectuate that intent. A few simple calculations demonstrate that it did not.

Despite the peculiar mathematics, the court entered a judgment consistent with the jury's stated intent. The judgment has been satisfied. Prior to trial, Kitterman made a Qualified Settlement Offer of \$8,000.

Medical Negligence - While administering a medical test, a doctor used a needle on a teenager with a history of drug abuse and sexual promiscuity; the doctor then reused the same needle on another patient, placing that patient in fear of becoming infected with HIV

Neeley v. Ganser, 49D03-0102-CT-299
Plaintiff: David DuMond, *Law Offices of David DuMond*, Indianapolis
Defense: Jon M. Pinnick and Jeffery L. Lund, *Schultz & Pogue*, Carmel
Verdict: \$45,000 for plaintiff
County: Marion, Superior
Court: J. McCarty, 4-14-05

Kandice Neeley, age 28, was an employee of the Children's Bureau of Indianapolis. Part of her job involved serving as an adult guardian for troubled juveniles. One such juvenile who came under Neeley's care was a seventeen year-old girl identified in the record only as "Jane Doe."

Pursuant to a court order, Doe was being housed at a juvenile residential treatment center in Indianapolis. It is significant to this case that Doe was known to have a history of drug abuse

and sexual promiscuity.

In the late afternoon of 9-13-00, Neeley escorted Doe to the Family Support Center to receive a tuberculin skin test, a test designed to determine whether one has ever had tuberculosis. The test involves injecting a small amount of tuberculosis antigens under the top layer of skin on the inner forearm.

The plan was for Doe and Neeley both to have the test. Doe was to go first, and Neeley would be second. In due course, they arrived at the Center and came under the care of Dr. Judith Ganser, a specialist in both pediatrics and public health. It was Ganser who would perform the tests.

Doe was quite nervous about the procedure, and so Neeley accompanied her into the examination room to help calm her. In Neeley's presence, Ganser injected the needle into Doe. As she did so, a trickle of blood flowed down Doe's arm. This alarmed Doe greatly, and Neeley took her out of the room to calm her down.

When Neeley returned to the examination room a short while later for her own test, Ganser was ready with needle in hand. Ganser inserted the needle into Neeley's arm and performed the test without incident. Afterward, Neeley took Doe shopping and then went back to the residential facility.

Early the following morning, Ganser telephoned the Children's Bureau office with some disturbing news. Following her administration of the two tests, Ganser realized she had used the same needle on both Doe and Neeley. Neeley claims she herself was not informed of this revelation until that afternoon.

However, within twenty-four hours of the incident, Neeley underwent tests for HIV, hepatitis, and other blood-borne diseases. All the tests came back negative. Additionally, Doe herself was tested on 10-5-00, and those tests also were negative. Nevertheless, Neeley thought the damage was done.

The experience left Neeley with a lingering fear of contracting AIDS or some other disease. Also, it so happened that at the time of the incident, Neeley was engaged to be

married to one Jerry Travelstead.

She and Travelstead were in fact married some two months later on 12-2-00. As a result of the needle-sharing incident, however, she was advised to avoid "unprotected" intimate contact with her new husband. This has compounded Neeley's distress by eliciting a fear, not only of contracting some dread disease herself, but of transmitting it to her husband.

Neeley's identified infectious disease expert was Dr. Karen Israel, Indianapolis. Her treating psychologist was Dr. James Rice of Fishers. It was Rice's opinion that the needle mishap and the resulting fear of disease has caused Neeley considerable emotional distress.

Neeley presented the matter to a medical review panel and criticized Ganser for using the same needle on her as was used on Doe and for not notifying her promptly of the mistake. Oddly, the record indicates the panel opinion, but it does not reveal the identities of the panel members. In any event, the opinion of the panel was that Ganser did breach the standard of care, and her conduct was a factor in Neeley's damages.

Armed with the panel opinion, Neeley filed suit against Ganser and reiterated her complaint about the reuse of the needle. According to Neeley, the staff at the Family Support Center had her telephone number, and so Ganser could have called her at home to tell her the news within hours of the incident.

If Ganser had done this, Neeley could have undergone prophylactic HIV treatments. The delay, however, closed that window of opportunity and rendered prophylaxis useless. As a result, Neeley was forced into a position in which she feared for her health, her very life, and the life of her husband. If successful in the litigation, Neeley sought emotional distress damages, lost wages, the cost of medical and psychological counseling, and an item identified as lost tuition.

In addition to Neeley's underlying claim, her new husband, Travelstead, presented a derivative claim for loss of consortium. Travelstead also presented independent, non-derivative claims for

his own emotional distress grounded in his love and affection for his wife, and for the injury the incident has done to “the tender bonds that should be fully enjoyed in the communion of marriage.”

Ganser admitted accidentally using the same needle on Neeley as was used on Doe, but she disputed the nature and extent of Neeley’s injury. According to Ganser, she tried to notify Neeley of the problem almost immediately, but Neeley had already left the office. Ganser then reported the matter to Neeley’s employer first thing the following morning.

Ganser also pointed out that all of Neeley’s tests came back negative. Thus, any lingering fear of disease Neeley might have are simply baseless. Ganser’s identified experts were Dr. John Black, Infectious Disease, Indianapolis; and Dr. Gregory Hale, Forensic Psychology, Indianapolis.

During the course of the litigation, the court granted Ganser a partial summary judgment on Travelstead’s non-derivative claims. Although his derivative consortium claim remained intact, there is no further mention of it in the record.

The case was tried for three days in Indianapolis. The jury returned a verdict for Neeley and awarded her damages of \$45,000. The court’s consistent judgment brought the case to a close.

Auto Negligence - A man suffered a herniated disc after being rear-ended at an intersection

Johnson v. Parker,

03C01-0308-CT-1114

Plaintiff: Patrick W. Harrison, *Beck Harrison & Dalmbert*, Columbus

Defense: John A. Stroh, *Sharpnack Bigley Stroh & Washburn*, Columbus, for Parker; Robert J. Smith, *Allstate Litigation Counsel*, Indianapolis, for Allstate

Verdict: \$50,000 for plaintiff

County: **Bartholomew**, Circuit

Court: J. Heimann, 10-12-05

In the morning of 9-30-02, Paul Johnson, age 39, was driving west on State Street near the intersection with Behren Court in Columbus. Behind

him was a vehicle being driven by Derek Parker.

At a point just west of East High School, Johnson stopped in a line of traffic, waiting for a van that was turning onto Behren Court. An instant later, Parker rear-ended him.

Johnson suffered a herniated disc at C6-7. Johnson’s insurer, Allstate, paid \$7,101 of his medical expenses and another \$876 in lost wages benefits.

Johnson filed suit against Parker and blamed him for the crash. Inasmuch as Parker’s insurance policy carried a liability limit of \$50,000, Johnson also made an underinsured motorist claim against Allstate under his own policy that carried a UIM limit of \$100,000.

Parker defended the case and disputed the nature and extent of the claimed damages. With respect to the UIM claim, Allstate admitted coverage and eligibility but left the amount to be determined by the judgment.

The case was tried in Columbus. Interestingly, the jury was informed that Allstate was a party in the case to the extent there might be insurance benefits involved. However, the jury was not informed of the amount of the available coverage.

The jury was also informed that Allstate would likely dispute Parker’s negligence and Johnson’s injuries. Beyond those considerations, however, the jury was instructed not to concern itself with Allstate’s role in the case.

At the conclusion of the two-day trial, the jury returned a verdict for Johnson and awarded him \$50,000, the exact amount of Parker’s policy limits. The court entered a consistent judgment for that amount against Parker and for zero against Allstate on the UIM claim. Parker has satisfied the judgment against him.

Premises Liability - An elderly woman tripped and fell in a riverboat casino while searching for a slot machine to play; the woman hit her head on a wall and suffered an eye injury

Kepuraitis v. Harrah’s East Chicago Casino, 45D11-0309-CT-198

Plaintiff: Robert A. Montgomery, *Law Office of Robert Montgomery*, Chicago;

and Frank A. Jury, Valparaiso

Defense: Harold G. Hagberg, *Hagberg Mullen & LaTulip*, Schererville

Verdict: \$60,000 for plaintiff less 25% comparative fault

County: **Lake**, Superior

Court: J. Dywan, 10-18-05

On 9-3-00, Theresa Kepuraitis, age 72, was a patron at Harrah’s Riverboat Casino in East Chicago. Unbeknownst to Kepuraitis, the casino apparently had an unusual architectural feature. Situated in the middle of the aisle near the slot machines was what Kepuraitis would later characterize as an “escape hatch.”

The record is not clear about the purpose of the hatch or its proper designation. What is clear, however, is that the hatch was recessed one to two inches below the surface of the floor. Kepuraitis would later claim the hatch was difficult to see due to the dim lighting in the area.

As Kepuraitis made her way down the aisle looking for a slot machine to play, she was apparently bedazzled by the noise, the excitement, and the other patrons. Her attention was further occupied with the serious business of trying to decide which slot machine to play.

Perhaps as a result of this sensory overload, Kepuraitis failed to notice the hatch in the floor. When she stepped into the recess that contained the hatch, she lost her balance and fell forward. On her way down, Kepuraitis hit her knee on the ground and then hit her head and eye on a nearby wall. The impact was so hard it actually left a dent in the wall.

As a result of her fall, Kepuraitis suffered an injury to her eye that she claims is permanent. She underwent one corrective surgery on the eye and may require additional surgery in the

future. Her medical expenses are unknown.

In this lawsuit, Kepuraitis blames Harrah's for locating the treacherous hatch in a recess in the middle of a well-traveled floor and without adequate lighting or warnings. According to Kepuraitis, this combination of circumstances was an accident waiting to happen.

Harrah's defended the case and blamed the incident on Kepuraitis's own inattention. The casino also disputed the nature, extent, and causation of the claimed injuries, and it disputed the reasonableness and necessity of Kepuraitis's medical expenses.

At the conclusion of a two-day trial in Crown Point, the jury returned a verdict in which 75% of the fault was assigned to Harrah's. The remaining 25% of the fault was assigned to Kepuraitis. The jury set her total damages at \$60,000. After reduction for comparative fault, Kepuraitis's award came to \$45,000. The court's consistent judgment for that amount followed.

Auto Negligence - A teenager sitting in traffic was rear-ended and suffered compression fractures in his spine; the tortfeasor admitted fault and defended on damages

Palin v. Cox, 49D04-9909-CT-1339

Plaintiff: Donald F. Foley, *Foley & Pool*, Indianapolis

Defense: Mark S. Alderfer, *Hackman Hulett & Cracraft*, Indianapolis

Verdict: \$18,000 for plaintiff

County: **Marion**, Superior

Court: J. Ayers, 6-22-05

In the late afternoon of 11-2-97, Jeremy Palin, then age 16, was driving a 1991 Chevrolet Caprice. He was headed east on West 10th Street near the intersection with North Landowne Road in Indianapolis. Along the way, Palin found himself sitting in a line of traffic waiting for several cars up ahead to make left turns.

As Palin sat waiting, he was rear-ended by a 1991 Nissan Sentra being driven by Gary Cox. One source would later estimate Cox's speed just before the crash at between 30 to 40 mph.

According to court records, Cox initially attempted to flee the scene but was unable to effectuate his escape because his tires had shredded in the collision.

Palin was taken by ambulance to the ER at Methodist Hospital. Ultimately, he was diagnosed with compression fractures at T12 and L1. He received physical therapy but complains of continuing pain in his lower back. One of his treating doctors, Dr. Don Jardine, offered the opinion that Palin's ongoing pain was due to the injuries he received in the crash. Palin's medical expenses are unknown.

Palin filed an action against Cox and blamed him for the crash. Cox admitted fault but disputed the nature, extent, and causation of Palin's injuries. In particular, he noted that Dr. Jardine's report that purportedly tied Palin's ongoing pain to the crash was in fact dated some seven years after the incident. The identified defense IME was Dr. Herbert Biel, Orthopedic Surgery, Indianapolis.

The case was tried for two days in Indianapolis. The jury deliberated slightly less than three hours before returning a verdict for Palin. He was awarded damages of \$18,000, and the court followed with a consistent judgment for that amount.

Repossession Negligence - A man suffered soft tissue injuries while trying to prevent his fiancé's Jeep from being repossessed

Cripe v. DeVol, 06D02-0209-CT-89

Plaintiff: Paul S. Kruse, *Parr Richey Obremskey & Morton*, Lebanon

Defense: Randall A. Lakey, *Smith & Wade*, Carmel

Verdict: Defense verdict on comparative fault

County: **Boone**, Superior

Court: J. Detamore, 4-27-05

In the late 1990s, Connie Walker, owner of Homeland Real Estate, Inc. in Lebanon, seemed to have become involved in some unusual financial dealings. In particular, they began when she fell delinquent on a loan made to her and to Homeland by the Union Federal Bank.

As it happened, Homeland counted

among its assets a 1995 Jeep Laredo. In either 1999 or 1998, Walker presented herself to Union Federal and used the Jeep as security to refinance the loan. According to Union Federal, however, Walker represented that she herself, rather than Homeland, was the owner of the Jeep.

Union Federal took Walker at her word and accepted the Jeep as security. Walker later defaulted on the new loan, leaving a balance due of \$4,434. In response, Union Federal retained the services of Chris DeVol to repossess the Jeep.

At this time, Walker was residing at 501 West Washington Street in Lebanon with her fiancé, Joseph Cripe, age 49. In the afternoon of 7-26-02, DeVol arrived at Walker's residence and found the Jeep parked out front. By chance, Cripe also happened to be outside.

DeVol was undeterred by Cripe's presence and proceeded to repossess the Jeep. Cripe asked DeVol what he was doing, but according to Cripe, DeVol didn't answer. At this point, Cripe claims he thought DeVol was either a thief trying to steal the Jeep, or else a representative of a rental car company mistakenly trying to pick up a rented vehicle. In either case, Cripe would have none of it.

Cripe shouted at DeVol and reached inside the Jeep. Just then, DeVol sped away, dragging Cripe along and running over his foot. Cripe claimed injuries to his knee and to his right wrist and ankle. Although he suffered no broken bones in the incident, the injured areas were extremely swollen. His incurred medical bills came to \$11,299.

Cripe and Homeland filed suit against DeVol and Union Federal. Homeland blamed Union Federal for trying to repossess the Jeep in the first place. Homeland pointed out that it was the legal owner of the vehicle, and the company never granted Union Federal a lien on it, nor had Union Federal ever perfected such a lien.

Union Federal responded to the suit by filing a third-party claim against Walker for fraud. Specifically, by misrepresenting the Jeep as her own

personal property when offering it as security, Walker defrauded Union Federal into refinancing her loan. Homeland subsequently dismissed its claim against Union Federal, and Union Federal reciprocated by dismissing its claim against Walker.

Cripe blamed DeVol for dragging him along the ground during the repossession and thus causing his injuries. DeVol defended the case and offered a slightly different version of events. According to him, he did not in fact remain silent when Cripe asked him why he was taking the Jeep. Rather, DeVol informed Cripe that he was repossessing the Jeep for Union Federal.

DeVol claimed Cripe reacted angrily to this news by grabbing DeVol by the shoulders, pulling on his shirt, and screaming profanity at him. In the face of such a response, DeVol felt a need to leave the area with dispatch. It was Cripe who made the choice to continue the attack on DeVol by reaching into the Jeep while it was pulling away. Cripe's resulting injuries, therefore, were no one's fault but his own.

A jury in Lebanon heard the case and assigned 65% of the fault to Cripe and the remaining 35% to DeVol. The court's consistent defense judgment brought the case to a close.

Auto Negligence - A woman claimed soft tissue injuries after her car was clipped by another motorist who was cutting in front of her; the woman was awarded nearly five times her medical expenses

Walker v. Ballinger,
45D10-0408-CT-161

Plaintiff: Richard F. McDevitt, *Jeffrey Oliveira & Associates*, Merrillville

Defense: Kent S. Wilson, *State Farm Litigation Counsel*, Crown Point

Verdict: \$24,644 for plaintiff

County: Lake, Superior

Court: J. Pera, 10-19-05

On 4-1-04, Gloria Walker was driving west on 41st Avenue toward the intersection with Oak Lane in Gary. Walker's front seat passenger that day was her adult daughter, Michaela Whitman. Behind Walker and headed in the same direction was a vehicle

being driven by Ronald Ballinger.

As the parties drove along, Ballinger attempted to pass Walker on the left. Instead of completing his maneuver, however, he cut sharply back to the right and clipped Walker's left front quarter panel.

The impact caused Walker to lose control. In the confusion, Walker pressed her accelerator instead of her brake and drove off the right side of the road. Her vehicle came to rest only when it hit some railroad ties that were being used for landscaping in a nearby yard.

Walker sustained soft tissue injuries due to the crash and incurred medical expenses of \$5,008. Michaela was also injured, but the record does not describe the nature of her injuries or the amount of her medical expenses.

Both Walker and Michaela filed suit against Ballinger and blamed him for the crash. However, Michaela later dismissed her claim without prejudice. The case then proceeded solely on Walker's claim.

Bollinger admitted fault for the crash, but he disputed the nature, extent, and causation of Walker's claimed injuries. In particular, Bollinger attributed Walker's ailments to pre-existing conditions, including degenerative disc disease.

A jury in Crown Point heard the case and returned a verdict for Walker in the amount of \$24,644. The court followed with a consistent judgment, and it has been satisfied.

Medical Negligence - A woman who underwent surgery to correct bladder incontinence claimed her Ob-Gyn bungled the procedure and caused her to lose her right ureter and right kidney

Resseguie v. Bennett,
82D03-0310-CT-4337

Plaintiff: Glenn A. Deig, Evansville

Defense: Tracy S. Prewitt, *O'Bryan Brown & Toner*, Louisville, Kentucky

Verdict: Defense verdict on liability

County: Vanderburgh, Superior

Court: J. Pigman, 6-2-05

As the year 1998 drew to a close, Dorothy Resseguie found herself suffering from urinary incontinence.

On 12-1-98, she consulted about her condition with Dr. Julie Bennett, an Ob-Gyn in Evansville.

Dr. Bennett recommended a "Burch" procedure as the solution to Resseguie's problem. The procedure involves supporting the bladder by suturing the vagina to the pelvic ligaments. This sounded good to Resseguie, and the surgery was scheduled for 1-6-99.

Dr. Bennett performed the surgery as planned and subsequently discharged Resseguie from the hospital on 1-9-99. Resseguie went back to Dr. Bennett a few days later to have her surgical staples removed, and she returned again on 2-1-99 for her final post-op visit.

During the post-op visit, Resseguie reported having a vaginal discharge and some cramping. Bennett diagnosed her with vaginosis (a bacterial infection) and treated her with a substance called MetroGel. Finally, Resseguie saw Bennett again on 3-11-99. At that time she reported she was getting better control of her bladder and that her vaginal discharge had resolved.

Appearances to the contrary notwithstanding, all was not well with Resseguie. It was eventually discovered that she had sustained some damage to her right ureter. Resseguie would later claim that during the surgery, Bennett had misplaced a suture and thereby occluded her right ureter.

As a result of this mistake, Resseguie had to have additional corrective surgery at a cost of \$25,487. In the process, she lost not only her right ureter, but also her right kidney as well. Resseguie presented the matter to a medical review panel that consisted of three Ob-Gyns from Indianapolis: Dr. Paul Schoon, Dr. Alan Gillespie, and Dr. Scott Bowers.

Resseguie noted that Bennett failed to do a cystoscopy immediately following the surgery to check for obstructions in her ureters. If Bennett had taken that simple step, the problem would have been caught and corrected. The panel agreed and handed down the unanimous opinion that Bennett's conduct had failed to meet the standard of care was a factor in Resseguie's damages.

Resseguie filed suit against Bennett

and criticized the doctor for misplacing the suture and failing to do the cystoscopy. Her identified expert was panel member Gillespie. Also, Resseguie's husband, Harold Resseguie, presented a derivative claim for loss of consortium.

Bennett defended the case and denied breaching the standard of care. Her identified expert was Dr. Kenneth Zegart, Ob-Gyn, Louisville, Kentucky. Zegart offered the opinion that the standard of care did not mandate a cystoscopy, and in any event injury to the ureter during gynecological procedures is a known complication that can and does occur in the absence of negligence.

The case was tried for two days in Evansville. After approximately forty-five minutes of deliberation, the jury returned a verdict for Bennett. The court followed with a consistent defense judgment. Post-trial, Resseguie filed a motion to correct errors, arguing that the verdict was not supported by the evidence. The court's ruling on the motion was not a part of the record at the time the IJVR reviewed it.

Auto Negligence - Defendant crossed the median and collided with plaintiff nearly head-on; plaintiff sustained soft tissue injuries and was awarded slightly more than three times his medical expenses

Palmer v. Simmons,
53C06-0404-CT-821

Plaintiff: Brad Smith, *Nunn Law Office*, Bloomington

Defense: Mark S. Alderfer, *Hacman Hulett & Cracraft*, Indianapolis

Verdict: \$17,700 for plaintiff

County: **Monroe**, Circuit

Court: J. Galvin, 6-28-05

In the afternoon of 9-20-03, Orville Palmer, age 47 and a tool and die maker with the Cook Corporation, was driving a 1993 Geo Metro going north on S.R. 37 in Bloomington. Approaching from the opposite direction was a Dodge Caravan being driven by Theodore Simmons.

The road in that area features two lanes in each direction with a grassy median separating northbound from southbound traffic. As the parties drew

near each other, Simmons crossed the grassy median, hit the front driver's side of Palmer's car, and then scraped down the left side before eventually coming to a stop. The record does not explain what prompted Simmons's detour across the median.

Following the crash, Palmer was transported by ambulance to the ER at Bloomington Hospital with complaints of pain in the region of his left clavicle. Nearly a month later, Palmer began complaining of pain in his back. He followed a course of chiropractic care and incurred medical expenses of \$5,126.

Palmer filed suit against Simmons and blamed him for crossing the center line and causing the crash. In addition to his medical expenses, Palmer also sought recovery of approximately two weeks of lost wages, amounting to \$783.

Simmons defended the case and minimized the claimed damages. He also pleaded a sudden emergency defense, though the record is silent on the nature of the alleged emergency. Finally, Simmons implicated Palmer's fault for failing to mitigate his damages.

During the course of the litigation, Simmons planned to use the services of Dr. J. Paul Kern, Orthopedic Surgery, Indianapolis, as an IME. However, Palmer objected to that choice on the ground that Dr. Kern is, in the words of Palmer's counsel, a defense "hired gun" who is biased against plaintiffs. After some discussion, the parties agreed Simmons would not hire Dr. Kern after all. Instead, the defense IME would be Dr. Richard Hutson, Orthopedic Surgery, Indianapolis.

The case was tried for two days in Bloomington. The jury deliberated for slightly over an hour and forty-five minutes before returning a verdict in which 100% of the fault was assigned to Simmons. The jury awarded Palmer damages of \$17,700. The court entered a consistent judgment, and it has been satisfied.

Premises Liability - A five year-old boy's hand was seriously injured after being caught under a riding mower his mother was operating on her parents' property; the woman blamed her parents for failing to prevent her from accidentally injuring her child

Donnell v. Wright, 26D01-9907-CT-8

Plaintiff: C. Dean Higginbotham, Princeton

Defense: Brent R. Weil, *Kightlinger & Gray*, Evansville

Verdict: Defense verdict on liability

County: **Gibson**, Superior

Court: J. Penrod, 5-19-04

In 1997, Melanie Donnell and her husband, Patrick Shawn Donnell, were living in a trailer with their son, also named Patrick Donnell, then age 4, and their young daughter. The trailer was located on property owned by Melanie's parents, Robert and E.R. Wright.

Although the Donnells did not pay rent for the space on which their trailer sat, they helped out around the property as best they could. Specifically, the Donnells shared with the Wrights the responsibility for keeping the grass mowed.

On 7-27-97, the Wrights went off to attend a family fish fry. The Donnells stayed behind and decided to take the opportunity to mow the grass. In order to get the job done, Melanie made use of a riding mower owned by the Wrights. It would become significant to this case that the riding mower was equipped with a wagon.

For reasons the record does not explain, Melanie decided to allow her two children to ride in the wagon while she mowed the grass. All was well for a while, until Melanie put the mower in reverse. As fate would have it, little Patrick chose that precise moment to stand up in the wagon.

The sudden backward movement of the mower caused Patrick to lose his balance and fall forward between the wagon and the mower. In the process, his left hand went under the mower and was severely injured. Ultimately, his fingers had to be amputated. Little Patrick's medical expenses totaled \$38,032, and the cost of his anticipated

future surgery is estimated at another \$10,000.

Melanie, Patrick Shawn, and little Patrick all filed suit against the Wrights and blamed them for the incident. The essence of the Donnells' claim was that the Wrights should have prevented Melanie from letting little Patrick ride in the wagon.

Initially, the Donnells argued that in mowing the grass, Melanie was acting as an agent for the Wrights. Thus, the Wrights were responsible for little Patrick's injuries under a theory of vicarious liability. However, the Wrights filed a motion to dismiss the case based on the doctrine of parental immunity.

The Wrights reasoned that Melanie could transfer to them vicariously only the liability she herself would otherwise have had. Given that the parental immunity doctrine would bar any liability on Melanie's part, there was therefore no liability to transfer to the Wrights. The court agreed with this reasoning and dismissed the vicarious liability claim.

With the vicarious liability theory gone, the parties disputed the proper classification of the case. Ultimately, the court ruled the case fell under the heading of premises liability. Accordingly, little Patrick was an invitee on the Wrights' premises, and the Wrights owed him a duty of reasonable care. The court left it to the jury to decide whether that duty had been breached.

The Donnells sought to certify this issue for an interlocutory appeal, but the court refused. The case then proceeded on the merits. During the course of the litigation, Melanie dismissed her claim, and little Patrick ended up as the sole remaining plaintiff, suing through his father as his next friend.

In addition to his other damages, little Patrick sought \$150,000 for his pain, suffering, and emotional distress, plus another \$300,000 for his permanent impairment. The Wrights defended the case and denied any negligence on their part. More pointedly, they denied any duty to protect little Patrick while he was under

the direct supervision of his own parents. Instead, the Wrights blamed the tragedy on Melanie and Patrick Shawn.

The case was tried for two days in Princeton. The jury found in favor of the Wrights, and the court entered a consistent defense judgment. According to the record, the Donnells filed a motion to correct errors in regard to the court's use of the parental immunity doctrine as a basis for dismissing their vicarious liability claim.

The Donnells argued, (1) the parental immunity doctrine is outdated and ought to be abrogated, and (2) in any event, the doctrine should not be used to extend protection to a non-parent third-party. The court's ruling on the motion was not part of the record when the IJVR reviewed it.

Prisoner's Rights - Plaintiff was beaten to death in the old county lock-up by another inmate – his estate alleged the sheriff was deliberately indifferent to the dangerous and overcrowded lock-up where violence was commonplace

Carpenter v. Marion County Sheriff, 1:03-1023

Plaintiff: Richard A. Waples, David R. Brimm and JauNae M. Hanger, *Waples & Hanger*, Indianapolis

Defense: Kevin C. Schiferl and Anthony W. Overholt, *Locke Reynolds*, Indianapolis

Verdict: Defense verdict on liability

Federal: **Indianapolis**

Court: J. Young, 11-16-05

On 7-1-03, Kenneth Carpenter, age 44, was arrested on intoxication and battery charges in Marion County. He was taken to the county lock-up – at that time, it was operated by the Marion County Sheriff within the City-County Building. New prisoners were processed and then placed in the Bail Commissioner's Tank – there they would wait to meet for a bail evaluation.

At this point, all the prisoners were still in their rawest form – they had just been arrested and many were intoxicated and otherwise stressed from the circumstances of their arrest. The

prisoners were then introduced without any classification or segregation into the tank. The most violent criminals were mixed with everyday miscreants.

Stewing the pot further, the tank was exceptionally crowded – it was also filthy and it stunk. Conditions were so bad especially when fifty or more inmates were present (there were 54 this day), there was no room to stand. The toilet was mostly inoperable – prisoners would sometimes wait for hours in the tank.

That led it to have a well-deserved reputation as one of America's worst lock-ups. Beatings and violence were not just commonplace, they were expected and anticipated.

Against this backdrop, Carpenter became a victim. Another prisoner, Larry Thomas, beat and kicked Carpenter until he was unconscious. The tank was monitored by a closed circuit camera – jailers arrived twenty-one seconds later. While Carpenter was taken to the ER, he was in a coma. He did not recover consciousness and died six days later when life support was removed.

His estate blamed the death on deliberate indifference by the sheriff to the dangerous conditions of the jail as described above. In fact at the time of his death, the jail had operated under a federal consent order for *thirty* years – a who's who of federal judges in Indianapolis had repeatedly condemned the jail's operations. Even more coincidental, Judge Sarah Barker on the federal bench, found the sheriff in contempt regarding the jail just *one week* after Carpenter's death.

The tank was closed a month later, but it was too late for Carpenter. The estate pursued this Eighth Amendment action to trial in Indianapolis – the focus was the failure to correct the dangerous jail, even after the dangers were well-known, notably, (1) overcrowding and (2) the failure to classify and segregate inmates.

The sheriff defended the case that the tank was properly monitored – it pointed to the exceptionally speedy response of jailers, arriving twenty seconds later. While Carpenter's death was tragic, the attack was blamed solely

on the aggressor, Thomas, who later pled guilty and is serving a ten-year term. The sheriff also postured that regardless of the jail's history, the deliberate indifference burden was impossible to meet in this case – plaintiff countered that the case was proved, the sheriff turning a blind eye to jail conditions.

Tried to a federal jury in Indianapolis, the verdict was for the sheriff, the estate taking nothing. A defense judgment followed.

Auto Negligence - Although the court determined defendant's fault by partial summary judgment, the jury in an intersection crash case still returned a defense verdict

Martin v. Mullins, 49D12-0403-CT-518
Plaintiff: Joseph A. Thomas, *Thomas Szostak Thomas & Nugent*, Indianapolis
Defense: Robert Smith, *Allstate Litigation Counsel*, Indianapolis
Verdict: Defense verdict on damages
County: **Marion**, Superior
Court: J. Moberly, 8-10-05

In the morning of 11-9-02, Richard Mullins, age 29, was driving a 2000 Chevrolet Malibu and was on his way home. His route took him south on U.S. 31 toward the intersection with Stop 12 Road in Indianapolis. At the same time, Alan Martin, age 46, was driving a 2000 GMC Sonoma pickup truck headed east on Stop 12 Road.

Upon reaching the intersection, Martin had a green light, and Mullins was facing a red light. Martin entered the intersection and proceeded to make a left turn to head north on U.S. 31. Mullins saw Martin enter the intersection but was unable to stop in time. Mullins ran the red light and hit Martin in the area of Martin's left rear wheel.

Martin claimed widely ranging soft tissue injuries due to the crash. His medical bills were approximately \$9,200. In this lawsuit, Martin blamed Mullins for running the red light and crashing into him. Martin's wife, Neppie Martin, presented a derivative claim for loss of consortium.

During the course of the litigation, the court granted Martin a partial summary judgment on the issue of fault.

The case then proceeded with Mullins defending on the issue of damages. The case was tried for two days in Indianapolis. The verdict was for Mullins, and the court entered a consistent defense judgment.

Slip and Fall - A woman claimed a knee injury after slipping and falling on ice that had accumulated at the entrance to a medical facility

Drayton v. Northwest Family Healthcare Center, 45D10-0102-CT-81
Plaintiff: Patrick McFarland and Sandra O'Brien, *Law Offices of Patrick McFarland*, Merrillville
Defense: Gregory J. Tonner, *Spangler Jennings & Dougherty*, Merrillville
Verdict: \$8,800 for plaintiff less 80% comparative fault
County: **Lake**, Superior
Court: J. Pera, 10-6-05

In the late afternoon of 1-27-00, Marcia Drayton visited the facilities of the Northwest Family Healthcare Center at 6924 Indianapolis Boulevard in Hammond. Drayton was there to get a prescription for her migraines.

Drayton entered the facility by way of a ramp positioned at the back door. As it happened, the gutters on the building were situated in such a way as to allow water dripping from above the door to accumulate on the ramp and freeze. Despite this, Drayton made her way into the building without incident.

Having completed her business, Drayton left the building some five to ten minutes after she arrived. On her way out, she slipped on some ice that had accumulated on the ramp. Drayton fell hard to the ground and suffered an injury to her knee. Her medical bills eventually mounted to more than \$22,000.

Drayton filed suit against Northwest and blamed it for allowing the ice to accumulate and failing to de-ice the area. According to Drayton, the slope of the ramp was greater than that allowed under the relevant building codes, and the design of the gutters was faulty. If the ramp and the gutters had been designed correctly, or if Northwest had at least properly de-iced the area, Drayton would not have fallen.

Northwest defended the case on

several fronts. First, it pointed out that the building was actually owned by a company called Alkar, Inc. Northwest argued the ramp had been in place for many years before the healthcare center took occupancy, and Northwest didn't even know about the code violation until after Drayton's accident.

In any event, the responsibility for complying with building codes rested with Alkar rather than with Northwest. For that reason, Northwest named Alkar as a non-party. Defendant also denied any negligence on its own part.

Specifically, on the morning of Drayton's accident, Northwest employees noticed the back door was frozen shut, and ice had accumulated on the ramp. Northwest responded by contacting a company called Korellis Roofing to correct the problem. In addition, Northwest called in a company called Meier Snowplowing, Inc. to plow the sidewalk and entrance.

Also, the staff at Northwest routinely placed buckets of salt with scoops near the entryway, and employees periodically spread salt around the area. These elaborate precautions, according to Northwest, effectively absolved it of any liability. Instead, Northwest blamed Drayton's fall on Drayton herself.

Northwest argued that inasmuch as Drayton had entered the building through the same route she took to leave it, she had an opportunity to see for herself whether the ramp was wet or slick. That being so, Drayton assumed the risk of injury by making the decision to proceed.

Finally, Northwest disputed the permanence of Drayton's injury and the reasonableness and necessity of her medical expenses. According to Northwest, many of Drayton's medical expenses consisted in repeated diagnostic tests that suggest she was shopping around for doctors who would tell her what she wanted to hear.

The case was tried over four days in Crown Point. The jury returned a verdict in which 20% of the fault was assigned to Northwest, 30% was assigned to non-party Alkar, Inc., and the remaining 50% was assigned to Drayton. The jury set Drayton's

damages at \$8,800. After reduction for comparative fault, her award came to \$1,760. The court entered a consistent judgment for that amount.

Post-trial, Drayton filed a motion to correct errors. At the time the IJVR reviewed the record, the motion was still pending.

Auto Negligence - A woman and her son claimed soft tissue injuries after being rear-ended at a traffic light

Meyers, et al. v. Motruk,
20D04-0209-CT-17

Plaintiff: Kenneth R. Martin, Goshen

Defense: Christine E. Clark, *Kopka Pinkus Dolin & Eads*, South Bend

Verdict: \$3,719 for plaintiffs

County: **Elkhart**, Superior

Court: J. Murto, 6-9-05

In the early evening of 10-16-01, Anna Meyers was driving south on S.R. 15 in Elkhart County. Her front seat passenger was her five year-old son, Jonah Mullet. Behind them was a vehicle being driven by Mike Motruk.

At some point during her journey, Meyers stopped for a red light. She would later claim she heard the sound a vehicle approaching rapidly from behind. Instinctively, Meyers threw out her arm to protect her son. At the same time, she put her foot on the brake and braced for impact. An instant later, Motruk rear-ended her.

Meyers claimed that immediately following the crash, she noticed the odor of alcohol emanating from Motruk, and he exhibited "broken" speech. Additionally, when Motruk was asked to turn on his hazard lights, he instead turned on his windshield wipers. Based on these clues, Meyers deduced that Motruk was intoxicated.

Meyers was subsequently diagnosed with injury to her cervical spine, and she complains of continuing pain and soreness. Her medical expenses were more than \$3,400, while her lost wages exceeded \$295. Little Jonah suffered soreness and disorientation due to the crash. He also now has persistent nightmares, fear, and trouble sleeping.

Meyers and her son filed suit against Motruk and blamed him for speeding and crashing into them. Based on the

indications that Motruk may have been intoxicated, they also sought punitive damages.

Motruk initially defended the case and disputed the nature and extent of the claimed injuries. He explained that it had been raining on the day of the crash, and the pavement was wet. When he saw Meyers stopped at the light, he too tried to apply his brakes. However, he was simply unable to stop in time due to the wet pavement. As a result, he tapped Meyers's rear bumper in a mild collision. Motruk also adamantly denied having consumed any alcohol that day.

The case was tried to a jury in Goshen. According to court records, Motruk admitted liability during the trial and defended on the issue of damages. The jury deliberated for just over half an hour before returning a verdict for Meyers and Jonah. They were awarded compensatory damages of \$3,719 but the jury rejected punitives. The court's consistent judgment has been satisfied.

Prior to trial, Motruk made a Qualified Settlement Offer of \$4,719 to Meyers and \$750 to Jonah. Post-trial, Motruk filed a motion for \$1,000 in attorney fees based on plaintiffs' rejection of the settlement offer. A hearing was set on the matter but was later vacated when the judgment was satisfied.

Truck Negligence - A building materials truck tried to change lanes on the interstate and instead collided with another vehicle

Myers v. Furrow Building Materials, Inc., et al., 49D06-0206-CT-991

Plaintiff: Dean J. Arnold, *Nunn Law Office*, Bloomington

Defense: Daun A. Weliever, *Lewis & Wagner*, Indianapolis

Verdict: \$12,200 for plaintiff

County: **Marion**, Superior

Court: J. Carroll, 6-21-05

In the early evening of 6-5-00, Ilona Myers was traveling west in the right-hand lane of I-465 in Indianapolis. At the same time, Michael Vaughn was traveling in the center lane just behind Myers. Vaughn was driving a truck owned by the Ruan Leasing Company

and leased to Vaughn's employer, Furrow Building Materials, Inc.

At a point near the 33.4 mile marker, just east of the Meridian Street exit, Vaughn attempted to move into Myers's lane. In doing so, he clipped the rear of Myers's vehicle and caused her to spin out of control.

As a result of the collision, Myers claimed injuries to her neck and back. Her medical bills came to \$6,290. She filed suit against Vaughn, Furrow, and Ruan. Myers blamed Vaughn for changing lanes unsafely and colliding with her. She blamed Furrow and Ruan for negligently entrusting the truck to Vaughn.

Vaughn, Furrow, and Ruan defended the case and claimed Vaughn acted reasonably. They also denied that Myers's injuries were related to the crash, and they accused her of failing to mitigate her damages by not following her doctors' orders.

A jury in Indianapolis resolved the case in favor of Myers and awarded her damages of \$12,200. The court entered a consistent judgment for that amount, plus \$109 in costs. The judgment has been satisfied.

Auto Negligence - A woman claimed soft tissue injuries after being T-boned at an intersection; although the jury found in her favor, she was awarded only a fraction of her medical expenses

Johnson v. Gardner,
47D01-0108-CT-780

Plaintiff: Brad Smith, *Nunn Law Office*, Bloomington

Defense: Kristi Prutow Cirignano and Jacob R. Fulcher, *Kahn Dees Donovan & Kahn*, Evansville

Verdict: \$3,277 for plaintiff

County: **Lawrence**, Superior

Court: J. Robbins, 5-4-05

In the late afternoon of 3-14-00, Anita Johnson, age 51, was driving east on S.R. 58 toward the intersection with "R" Street in Bedford. At the same time, Ralph Gardner was traveling on R Street toward the same intersection. According to Johnson, Gardner ran a stop sign at the intersection and T-boned her on her passenger side.

Although Johnson went to the ER,

she did not go by ambulance. Instead, she was driven there by a friend. In any event, Johnson claimed soft tissue injuries due to the crash and later followed a course of chiropractic treatments. Johnson incurred medical expenses totaling \$22,664. In addition, she lost \$87 in wages.

Johnson brought an action against Gardner and blamed him for running the stop sign and crashing into her. Johnson's identified experts included her chiropractor, Dr. Dion Snyder, and Dr. Kamal Tiwari, Pain Management, Bloomington.

Gardner defended the case and minimized damages. His identified experts included Dr. Scott Taylor, Physical Medicine, Indianapolis; and Dr. Richard French, Neurology, Indianapolis. Interestingly, Dr. Taylor's role in the litigation seemed to consist in doing a records review, while Gardner's counsel described Dr. French as a non-testifying consulting expert.

A two-day trial in Bedford resulted in a verdict for Johnson. The jury awarded her damages in the amount of \$3,277. The court followed with a consistent judgment, and it has been satisfied.

Auto Negligence - A woman claimed soft tissue injuries after the vehicle in which she was riding as a passenger rear-ended another motorist; the woman blamed the driver with whom she was riding, and the jury awarded her slightly less than half her medical expenses

Dilworth v. Taylor,
84D01-0408-CT-8367

Plaintiff: Daniel W. Kelly, Terre Haute

Defense: William W. Drummy,
Wilkinson Goeller Modesitt Wilkinson & Drummy, Terre Haute

Verdict: \$1,556 for plaintiff

County: **Vigo**, Superior

Court: J. Eldred, 6-15-05

It was the afternoon of 1-20-04, and Aisha Dilworth was riding as a front seat passenger in a 1992 Buick LeBaron being driven by her boyfriend, Toby Taylor. The two had just visited a furniture store called American Freight where they had been shopping for furniture for Taylor's apartment.

Having finished their furniture shopping, Dilworth and Taylor were heading back to his apartment. Their route took them east on Wabash Avenue in Terre Haute. Immediately ahead of them was a vehicle being driven by James Faulkes. By coincidence, Faulkes happened to be Taylor's dentist.

At a point approximately 75 feet from the intersection with 21st Street, Taylor rear-ended Faulkes. The impact caused Dilworth to hit her head on the dashboard. Shortly thereafter, she began to experience pain in her back, neck, and shoulders.

Dilworth was taken to the ER at Terre Haute Regional Hospital and diagnosed with a cervical and thoracic sprain. She was treated and released. Subsequently, Dilworth received no fewer than thirteen chiropractic treatments over a period of seven weeks and incurred medical expenses of \$3,430, all of which were paid by Taylor's insurer, Allstate.

In this action, Dilworth blamed Taylor for rear-ending Faulkes and thus causing her injuries. In addition to her other damages, Dilworth also claimed lost wages of \$56 for one day of missed work. Taylor defended the case and disputed the nature, extent, and causation of Dilworth's claimed injuries.

The case was tried for two days in Terre Haute to a jury of four women and two men. After approximately three hours of deliberation, the verdict came back for Dilworth. The jury awarded her damages of \$1,556, and the court's consistent judgment for that amount has been satisfied.

Auto Negligence - Plaintiff was found 95% at fault in a rear-end crash case

Guy v. Victorson, 45D11-0402-CT-31

Plaintiff: Ellen Parker, *Marshall P.*

Whalley & Associates, Merrillville

Defense: Shelice R. Robinson, *Kopka*

Pinkus Dolin & Eads, Crown Point

Verdict: Defense verdict on comparative fault

County: **Lake**, Superior

Court: J. Dywan, 8-25-05

In the afternoon of 3-6-02, Barbara

Guy was traveling northeast on Reed Lane in Schererville. Deborah Victorson was directly behind her. Guy stopped at a stop sign and waited to enter East Joliet Street. An instant later, Victorson rear-ended Guy. The record is silent on the nature of Guy's injuries and the amount of her medical expenses.

Guy filed suit against Victorson and blamed her for the crash. Victorson defended the case and explained her version of events. According to Victorson, Guy initially stopped at the stop sign and then began to move forward.

Victorson followed suit and also began to move forward. While doing so, however, she looked away from the road briefly. When she looked back, she found Guy had suddenly stopped again. Victorson was unable to stop in time, and she bumped Guy in a minor impact.

Based on this account, Victorson blamed the crash on Guy. Victorson also disputed the nature, extent, and causation of Guy's claimed injuries.

During the course of the litigation, Guy filed for bankruptcy. Her claim against Victorson thus became an asset of the bankruptcy estate. The case was tried for two days in Crown Point. The jury assigned 95% of the fault to Guy and the remaining 5% to Victorson. The court entered a consistent defense judgment.

Auto Negligence - Although defendant admitted fault in a rear-end crash case, the jury found him not liable for plaintiff's injuries

Whitesel v. Maude,
49D07-0307-CT-1295

Plaintiff: Robert A. Garelick and Heather S. Wysong Zaiger, *Cohen*

Garelick & Glazier, Indianapolis

Defense: Matthew J. Jankowski, *Kopka*

Pinkus Dolin & Eads, Indianapolis

Verdict: Defense verdict on liability

County: **Marion**, Superior

Court: J. Zore, 9-7-05

In the early afternoon of 10-2-01, Margaret Whitesel, age 49 and a nutritionist with the Health and Hospital Corporation of Marion County, was driving a 2001 Jeep

Cherokee in Indianapolis. Whitesel was traveling west on 38th Street toward the intersection with Gemco Lane. Behind her was a 1985 Oldsmobile Toronado being driven by Terrance Maude.

As Whitesel approached the intersection, she slowed for traffic. An instant later, Maude rear-ended her. Whitesel elected not to be taken to the hospital from the scene because she thought she could drive herself. Later, however, she complained of pain in her neck and back. She sought medical treatment and incurred expenses of \$11,880.

Whitesel filed suit against Maude and blamed him for crashing into her. Maude admitted fault for the crash but minimized the claimed damages and disputed causation. Maude pointed out that Whitesel suffers from polycystic kidney disease, and he suggested that at least part of her pain might be attributable to that condition. Maude's IME was Dr. Marc Duerden, Physical Medicine, Indianapolis.

A jury in Indianapolis heard the case and returned a verdict for Maude. The court followed with a consistent defense judgment.

Auto Negligence - A teenager riding as a passenger with another teenager suffered a herniated disc when the driver lost control on an icy road and collided with a utility pole

Lovings v. Cleary,
64D04-0011-CT-9114

Plaintiff: Gregory W. Brown, *Brown & Brown*, Merrillville

Defense: Edward W. Hearn, *Spangler Jennings & Dougherty*, Valparaiso

Verdict: Defense verdict on liability

County: Porter, Superior

Court: J. Chidester, 5-11-05

In the afternoon of 1-13-00, Adam Cleary, age 17, was driving a 1988 Ford Thunderbird owned by his parents, Patrick and Leanne Cleary. Adam had been at a vocational school earlier in the day and was chauffeuring his friends, Stephen Lovings and Aaron Maesow, back to Portage High School to drop them off.

It had been snowing that day, and the roads were slick with freezing rain.

During the drive, Cleary's car fishtailed at least once, but he managed to regain control and continue on his way. His route took him west on Harrison Road in Valparaiso.

At a point east of the intersection with Froberg Road, Cleary came around a curve. The rear of his car began drifting to the right, and he soon lost control, slid off the road, and hit a utility pole and a tree. The record does not describe what became of Maesow. Lovings, however, presented himself to the ER at Portage Community Hospital some three hours after the crash.

Lovings complained of pain and stiffness in his neck and upper back. He was diagnosed with a disc herniation and/or bulging disc at L4-5. Lovings's identified medical experts were Dr. Wayel Kaakaji, Neurological Surgery, Valparaiso; and Dr. Panjak Patwari, Radiology, Munster. Kaakaji and Patwari agreed Lovings's disc herniation or bulge was caused by the crash.

Lovings filed suit against the entire Cleary family. He blamed young Adam for driving too fast for the conditions and thus causing the crash. Lovings named Adam's parents, Patrick and Leanne, as Adam's next friends.

Patrick and Leanne filed a motion to dismiss the claim against them on the ground that the complaint did not allege any acts of negligence on their part. The court agreed and noted Adam was in fact eighteen years of age at the time the suit was filed. There was thus no reason for Adam's parents to remain in the case, and they were dismissed.

The case then proceeded solely against Adam. He defended and pleaded sudden emergency and assumption of risk. He also disputed the nature and extent of Lovings's claimed injuries. Adam's IME was Dr. Richard Silberman, Neurology, Valparaiso.

The case was originally tried over four days in December of 2002. The jury returned a defense verdict for Adam, and Lovings filed a motion for a new trial based on an erroneous jury instruction regarding the sudden emergency defense.

In his motion, Lovings argued that

the court's sudden emergency instruction was inapplicable to the case because the accident was not caused by any sudden event outside Adam's control. Rather, he was well aware that the road on which he drove was curvy and that snow and freezing rain were falling. For these reasons, the sudden emergency instruction was simply not relevant.

When the court denied the motion, Lovings appealed. The appellate court agreed with Lovings's reasoning, reversed the decision of the trial court, and remanded for retrial. See *Lovings v. Cleary*, 799 N.E.2d 76 (2003 Ind.App.).

The case was retried for three days in May of 2005. The jury in Valparaiso that heard the case again found for Adam. The court entered a consistent defense judgment. Prior to trial, Adam made a Qualified Settlement Offer of \$2,310. Post-trial, Lovings filed another motion to correct errors and a motion for a judgment notwithstanding the verdict. The motions were denied.

The Indiana Jury Verdict Reporter is published at 9462 Brownsboro Road, No. 133, Louisville, Kentucky 40241. Phone at 502-326-4966 or 1-877-313-1915. Fax to 502-326-9794. Denise Miller, Publisher, Shannon Ragland, Editor, Sandra Tharp, Editor Emeritus and Aaron Spurling, Assistant Editor.

Annual subscription is \$175.00 per year. Kentucky residents add 6% for sales tax.

E-Mail - Info@juryverdicts.net

See the *Indiana Jury Verdict Reporter* online at juryverdicts.net.

Reproduction in any form, including office copy machines, or publication in newsletters or reporters, in whole or in part, is forbidden and prohibited by law, except where advance written permission is granted.

Copyright © 2005

All Rights Reserved, The Indiana Jury Verdict Reporter

Notable Out-of-State Verdicts

The following verdict reports were taken from the December 2005 issue of our sister publication, the *Federal Jury Verdict Reporter*. It is a comprehensive nationwide reporter of civil verdicts in the federal system.

PRODUCTS LIABILITY

Pennsylvania Eastern District - Philadelphia

A pilot and a student pilot were killed when an ultra-light plane crashed in a field, purportedly because of an engine defect—the manufacturer defended that there was no proof of a defect, the plane having gone down because of pilot error

Caption: *Simeone et al v. Bombardier-Rotax*, 2:02-4852

Plaintiff: Arthur Alan Wolk and Alan D. Mattioni,
The Wolk Law Firm, Philadelphia, PA

Defense: Robert J. Kelly, Newark, NJ and Jonathan Dryer,
Philadelphia, PA, both of *Wilson Elser Moskowitz Edelman & Dicker*

Verdict: \$1,425,000 for Lengyel estate
\$550,000 for Simeone estate

Judge: Berle M. Schiller

Date: October 24, 2005

Facts: On 7-22-00, George Lengyel, an experienced pilot, flew an Interplane Skyboy ultralight aircraft that was powered by a 2-stroke Bombardier-Rotax 582 engine. The plane belonged to Lengyel's student pilot, Albert Simeone. Lengyel took off from near Simeone's home in Jennersville, PA – the pair were headed to Chambersburg, PA for an air show. They never made it.

As they approached the York Airport, Lengyel prepared to land to top off their fuel. The only witness to the crash, a man making repairs on his roof, saw the plane make a sudden and silent turn. It crashed into a cornfield. Both Lengyel and Simeone were instantly killed.

Their estates blamed the crash on a manufacturing defect in the plane's Bombardier-Rotax engine – it had less than forty hours on it at the time of the crash. Particularly, plaintiffs cited problems with the engine's spark plugs and oil injection that caused the throttle to stick. In proving that it was the engine that failed, plaintiffs cited the witness on the roof who heard the plane going down *silently*. Plaintiffs also denied pilot error was an issue, noting that Lengyel was an

experienced instructor.

Bombardier-Rotax's defense of the case focused on two themes: (1) there was no defect in the engine, and (2) the plane crashed because of pilot error. To the second notion, it was argued by Bombardier-Rotax that Lengyel struck a power line, that impact causing the crash.

There was an additional fact in this case that could be argued by both sides. The plane made an emergency landing just days before in a cornfield. Plaintiff argued this was evidence there was a defect – the manufacturer countered this further distanced it from any defect, that impact perhaps damaging the planes.

Injury: Death (Both plaintiffs killed in airplane crash)

Experts:

Plaintiff Herb Neubold, Aviation, Louisville, CO
Manuel Rafesky, Surprise, AZ
Mark Seader, Engine Failure, Fort Collins, CO

Defense Weldon Garrelts, Aviation, Philo, IL
Kenneth Orloff, Pilot Safety, Groveland, CA
Roger Stallkamp, Test Pilot, Beavercreek, OH

Jury Instructions/Verdict: The plaintiffs prevailed on liability at trial – the Simeone estate took \$25,000 on the death claim, plus \$525,000 under the Survivor Act. Lengyel's estate took the same sum for death, plus \$1,425,000 for the survivorship interest. Simeone's verdict totaled \$550,000, Lengyel taking \$1.425 million. The combined verdict for the plaintiffs totaled \$1.975 million. A consistent judgment followed.

SEXUAL HARASSMENT

Massachusetts District - Boston

Despite evidence that a middle school student was being repeatedly raped by a classmate, school officials failed to intervene to stop it

Caption: *Colon v. Town of Tewksbury*, 1:04-10003

Plaintiff: Lynn A. Leonard, Melrose, MA and
Anita B. Sullivan, Wakefield, MA

Defense: Leonard H. Kesten and Deborah I. Ecker, *Brody
Hardoon Perkens & Kersten*, Boston, MA

Verdict: \$250,001 for plaintiff

Judge: Patti B. Saris

Date: October 21, 2005

Facts: In 2001, Stephen Colon was a seventh-grade student at John Wynn Middle School in Tewksbury, MA. That year another student, Richard, made sexually inappropriate comments and gestures to Colon – school aides saw the improper conduct, but did nothing.

It got worse the next fall. During class, aides noticed the boys were touching each other inappropriately. The pair were sent for an appointment with a school psychologist. They were told to stop it.

To the key event in this case in January of 2001, Richard got a bathroom pass – Colon lied and said he needed to get a book from his locker. The pair were in fact in the bathroom engaging in anal sex. A teacher caught them. Colon would later explain that he and Richard had sex between five and ten times. By all accounts, the sex was consensual.

In this lawsuit against the Town of Tewksbury, Colon alleged two counts: (1) that he had been sexually harassed by Richard and school officials were indifferent to it, and (2) that a sexually offensive educational environment had been created. In developing his case, Colon introduced proof that he suffered from fetal alcohol syndrome and mild retardation. With an impaired capacity, he argued school officials should have protected him.

Tewksbury defended the case that there was no sexual harassment, the conduct between the boys being entirely mutual. Then to the issue of indifference, school officials postured that while they were suspicious, they had no reason to believe anal sex was occurring in the bathrooms. Colon countered the “it was mutual theory” arguing that didn’t matter – because of his mental limitations, the school still had a duty to protect him from sexual harassment at school.

Jury Instructions/Verdict: Colon first prevailed on the harassment charge that (1) he had been harassed by Richard, (2) the harassment was severe and pervasive and (3) school officials were deliberately indifferent. He also prevailed on a disability discrimination claim, proving that a sexually offensive educational environment had been created. The jury went on to award compensatory damages of \$250,000. A judgment in that sum was entered for Colon. [The jury deliberated eight hours before reaching its verdict.]

To subscribe to the Federal Jury Verdict Reporter, visit our website at juryverdicts.net/FedJVR or call us toll-free at 1-866-228-2447.

The Indiana Jury Verdict Reporter
9462 Brownsboro Road, No. 133
Louisville, Kentucky 40241
502-326-4966 or 1-877-313-1915
Online at Juryverdicts.net

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

Ordering is Easy - Call to place your Mastercard/Visa order

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 2004 Year in Review

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

Name

Firm Name

Address

City, State, Zip

Return with your check to:

The Indiana Jury Verdict Reporter
9462 Brownsboro Road, No. 133
Louisville, Kentucky 40241

\$175.00 for a one year subscription to the
Indiana Jury Verdict Reporter (*12 issues*)

\$180.00 to Order the
IJVR 2004 Year in Review