

The Indiana Jury Verdict Reporter

The Most Current and Complete Summary of Indiana Jury Verdicts

April, 2006

Statewide Jury Verdict Coverage

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Unbiased and Independently Researched Jury Verdict Results

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Notable Out-of-State Verdicts

Civil Jury Verdicts

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

Bad Faith - A woman who was rendered unable to work due to multiple medical problems applied for and received long-term disability benefits under her former employer's group insurance plan; the woman claimed bad faith and breach of contract when the insurer abruptly terminated the payments

Combs v. Lumbermen's Mutual

Casualty Company,
49D06-0412-PL-2242

Plaintiff: Bridget O'Ryan, Indianapolis

Defense: David F. Schmidt, Vittorio F.

Terrizzi, and Jennifer L. Noland,

Chittenden Murday & Novotny,

Chicago, IL; and Michael L. Carter,

Spangler Jennings & Dougherty,

Indianapolis

Verdict: \$1,522,583 for plaintiff

County: **Marion**, Superior

Court: J. Carroll, 3-27-06

Donna Combs began working for Hancock Memorial Hospital and Health Services in 1994. Combs had several different jobs within the Hancock Memorial organization over the years, the most recent of which was that of Senior Office Technologist. In that capacity, she functioned as, among other things, an x-ray technician.

One of the fringe benefits of Combs's employment was a group disability insurance plan issued by Lumbermen's Mutual Casualty Company. The plan

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Death Cases at a Glance
2005 results in bold

Plaintiff's Verdicts - the forty-two cases where plaintiffs prevailed

<u>County/Case No.</u>	<u>Verdict</u>	<u>Manner of Death</u>	<u>Age/Sex</u>	<u>Occupation</u>
South Bend-1023	\$56,500,000	Jail beating	30-M	Unknown
Clark-1572	\$14,000,000	Car Wreck	39-F 12-F 9-F 7-F	Unknown (\$5,000,000) N/A (\$3,000,000) N/A (\$3,000,000) N/A (\$3,000,000)
Marion-1271	\$6,000,000	Explosion	39-M	Unknown
Jasper-260	\$5,109,480	Rail Crossing	30-M	Used Car Dealer
Decatur-366	\$2,800,000	Car Wreck	43-F	Interior Designer
Tippecanoe-687	\$2,563,983	Explosion	25-F	Postal worker
Lake-1346	\$2,500,000	Anesthesia	32-F	Homemaker
Porter-245	\$2,000,000	Car Wreck	16-F	Student
Lawrence-1172	\$2,000,000	Shooting	38-M	Unknown
Indianapolis-67	\$1,584,340	Electrocution	37-M	Van Driver
Lake-1698	\$1,570,000	ER Error	37-F	Graphic Design
Indianapolis-419	\$1,537,424	Car Wreck	37-F	Claims Manager
Tippecanoe-1826	\$1,500,000	Surgical Error	38-F	Unknown
Allen-1439	\$1,500,000	Surgical Error	48-F	Insurance Billing Clerk
Cass-1014	\$1,500,000	Nursing Home	88-F	Retired
Indianapolis-885	\$1,500,000	Cranial Bleed	13-M	Student
LaPorte-676	\$1,400,000 \$1,400,000	Explosion Explosion	18-F 38-F	Factory Factory
South Bend-575	\$1,042,234	Car Wreck	52-M	Grocery operator
Lake-1700	\$1,005,000	Medical Error	38-F	Unknown
Tippecanoe-686	\$920,308	Cardiac event	54-M	Alcoa
Marion-1939	\$850,000	Stab Wound	20-F	Unknown
Wabash-1420	\$850,000	Murder	46-M	High school teacher

was initially administered by a company called Kemper National Services. However, the administration of the plan was later taken over by Kemper's successor company, Broadside Services, Inc.

Sadly, Combs eventually developed several serious medical problems. Among them were myelodysplastic syndrome (i.e., a blood disease related to leukemia), anemia, severe osteoarthritis, rheumatoid arthritis, chronic fatigue, and fibromyalgia.

Combs's medical problems were so severe, her doctors informed her she would no longer be able to work. At the urging of her physicians, then, Combs resigned her position with Hancock Memorial on 7-30-01.

Combs initially applied for short-term disability benefits through the Lumbermen's group disability plan. She was given those short-term benefits and then later transitioned to long-term benefits. Also, at some point Combs applied for and was awarded SSDI benefits from the Social Security Administration in the amount of \$925 per month.

Combs began receiving long-term disability benefits under the group plan on 1-26-02. Her gross monthly benefit worked out to \$1,746. However, after deducting the amount she was receiving each month in SSDI, her net benefit from the group plan came to \$821.

Lumbermen's continued to pay the benefits for a little more than two years until the situation suddenly took a surprising turn. According to Combs, Lumbermen's abruptly terminated the payments on 2-29-04. Despite her repeated appeals and multiple statements from her doctors affirming that she was totally disabled, Lumbermen's refused to resume the payments. Litigation seemed the only solution.

Combs filed suit against Lumbermen's on counts for bad faith and breach of contract. Her specific allegations against the company were that it, (1) improperly terminated her benefits despite clear liability, (2) failed to conduct a proper investigation and review of her claim prior to terminating her benefits, (3) compelled her to initiate litigation to recover benefits owed to her, and (4)

ignored repeated statements from her doctors who insist she cannot work.

Lumbermen's initially had the case removed to federal court on the ground that Combs's claim was governed by ERISA. However, the federal court remanded the case back to state court on Combs's motion because the removal was untimely.

Back in state court, Combs and Lumbermen's engaged in a protracted battle over whether or not ERISA would govern. If ERISA were to govern the case, then Lumbermen's would enjoy certain tactical advantages it would not otherwise have. In the end, however, the court ruled against Lumbermen's on this point and held that the case would be governed by state law.

The next move by Lumbermen's was to try to bifurcate the bad faith and breach of contract claims. Within that context, Lumbermen's denied having played any role in denying Combs's claim. Rather, the decision was made by the administrators of the plan, Kemper and Broadside. Lumbermen's argued it would hardly seem fair to hold it responsible for the actions of those third parties.

Combs retorted that Lumbermen's disavowal of any knowledge of or responsibility for the plan administrators' decisions was disingenuous inasmuch as Kemper was actually a subsidiary of Lumbermen's. Furthermore, Combs pointed out that Lumbermen's would in any event be responsible for the actions of the plan administrators under a theory of agency.

The record does not indicate whether Lumbermen's was successful in its efforts to bifurcate the claims. What is certain is that the case proceeded on the merits with Lumbermen's providing a somewhat different version of the process that led to the termination of Combs's benefits.

According to Lumbermen's, Kemper informed Combs on 4-3-02 that it needed ongoing objective data to support continuing the disability payments. Following extensive and repeated investigations, Kemper concluded that Combs did not meet the criterion of eligibility of being unable to work at "any occupation."

Instead, Kemper was able to find no fewer than three different occupations Combs could pursue that were near her home, paid wages that were equal to or greater than the threshold amount for disability eligibility, and that made use of her professional qualifications. Kemper asked Combs to submit any further information she might have that would support a contrary conclusion, but she failed to do so.

In short, Kemper and its successor, Broadside, acted perfectly reasonably at all times. To the extent, therefore, that their actions are to be imputed to Lumbermen's, then Lumbermen's claimed that it too acted reasonably.

An Indianapolis jury heard the case and returned a verdict that was an unqualified victory for Combs. On her breach of contract claim, she was awarded \$22,583. On her bad faith claim, the jury awarded her \$1,500,000. That brought her combined award to \$1,522,583. The court entered a consistent judgment for that amount.

Auto Negligence - Plaintiff suffered soft-tissue injuries in a rear-end crash; defendant balked when plaintiff claimed further injuries and medical expenses three years later

Helton v. Homola,
45D04-0410-CT-246

Plaintiff: Barry D. Sherman and Kristen D. Hill, *Barry D. Sherman & Associates*, Hammond

Defense: John H. Halstead and Rehana R. Adat, *Querrey & Harrow*, Merrillville

Verdict: \$40,000 for plaintiff

County: Lake, Superior

Court: J. Svetanoff, 3-16-06

On 10-25-02, Richard Helton, age 44 and a supervisor with American Airlines at O'Hare Airport, was traveling north on Mississippi Street in Merrillville. Behind him was a vehicle owned by Leonard Homola and being driven by Leonard's daughter, Mallory Homola.

Upon reaching the intersection with 85th Avenue, Helton stopped in traffic and waited to make a left turn. As he sat waiting, Homola rear-ended him.

Helton was taken to the ER at Methodist Hospital Southlake and treated for soft-tissue symptoms. A few days later he followed up with his family

physician, Dr. Gerard Davidson of Dyer.

Davidson referred Helton to Omni Rehab for a course of physical therapy. Helton completed the physical therapy on 11-27-02, slightly more than a month after the accident, and reported a nearly complete resolution of his symptoms. His medical expenses at that time came to approximately \$2,500.

Helton filed suit against both Mallory and Leonard Homola. He blamed Mallory for crashing into him, and he blamed Leonard for negligently entrusting Mallory with the vehicle she was driving. However, Helton later stipulated to Leonard's dismissal. The case then proceeded solely against Mallory. She defended and disputed the nature and extent of Helton's claimed injuries.

During the course of the litigation, Helton began to notice a tingling sensation in his arm. He was concerned enough about the situation that he once again consulted with Dr. Davidson in September of 2005.

Following further examination, including an MRI, Davidson concluded that Helton's injuries were more serious than had previously been thought. Helton himself explicitly linked his newly identified ailments to the crash. As a result, the medical expenses he sought in this case more than doubled.

Homola sought to have evidence of these new medical expenses excluded on the ground that Homola's counsel was informed of them only while in the very act of taking Davidson's deposition. Such an untimely revelation allowed no opportunity to prepare a meaningful cross-examination on the issue.

Moreover, Homola pointed out these new medical expenses were incurred some three years after the accident. It seemed to her that linking the expenses to the accident after so much time had passed was a questionable move at best. The record does not reveal the court's ruling on the matter.

The case was tried for two days in Gary. The jury returned a verdict for Helton and awarded him \$40,000. The court followed with a consistent judgment for that amount.

Accounting Negligence - An engineering firm's in-house bookkeeper embezzled nearly \$800,000; the firm criticized its outside accountants for failing to catch the embezzlement

Falk Engineering & Surveying, Inc. v. Pickart & Associates,
64D01-0303-PL-2374

Plaintiff: Robert L. Clark and Jack A. Kramer, *Hoepfner Wagner & Evans,* Valparaiso

Defense: Daniel W. Glavin, *Beckman Kelly & Smith,* Hammond

Verdict: \$796,000 for plaintiff less 60% comparative fault; for plaintiff on defendant's counterclaim

County: **Porter**, Superior

Court: J. Bradford, 3-2-06

Pickart & Associates is an accounting firm located at 9111 Broadway, Suite F, in Merrillville. Beginning on 8-22-99, Pickart was hired to provide accounting services for a Porter County company called Falk Engineering & Surveying, Inc. The owners of Falk Engineering were Mike Falk and his wife, Dorothy.

Pickart's work for Falk Engineering included updating the company's Quickbooks package, preparing income and payroll tax returns, and preparing corporate financial statements. Pickart continued to provide these services to Falk Engineering for some three years through the fall of 2002.

As it happened, Falk Engineering also employed an in-house bookkeeper named Therese Leudtke. Unbeknownst to Mike and Dorothy, Leudtke was using her position of trust to embezzle from the company.

Leudtke's embezzlement activities seemed to focus on two main techniques. First, she failed to remit approximately \$525,000 in withholding taxes to the federal government. Second, she obtained more than five hundred treasury checks and personal money orders from the First Source Bank drawn against Falk Engineering's account.

The checks and money orders were made payable to Leudtke herself or to members of her family. In total, the instruments Leudtke obtained in this way were valued at approximately \$270,000. That brought the combined effect of Leudtke's embezzlement to roughly

\$795,000.

Eventually, Leudtke's scheme unraveled. She was prosecuted for her crimes, pleaded guilty, and is now serving out a prison term. The next problem was how Falk Engineering could recoup its losses. The solution was not long in coming.

Falk Engineering filed suit against Pickart & Associates on counts for negligence and breach of contract. Falk criticized Pickart for failing to catch Leudtke's shady dealings. In particular, Pickart failed to confirm that the taxes had actually been paid, and it failed to notice from reconciling Quickbooks that the withholding was not being paid.

Also, Pickart apparently came into possession of copies of some of the money orders and treasury checks, but it failed to alert Falk that something was amiss. Finally, Falk criticized Pickart for failing to acquire and confirm certain required information concerning tax payments while preparing Falk's financial statements.

In addition to the suit against Pickart, Falk also filed a separate action against First Source Bank. According to Falk, Leudtke did not have signature authority with the bank regarding the use of company funds. Yet, First Source allowed Leudtke to withdraw the funds nonetheless.

The case against First Source was referred to arbitration and then settled for an unknown sum during the discovery phase. The litigation against Pickart proceeded with the accounting firm putting up a multi-pronged defense.

First, Pickart denied breaching the contract or committing any negligent acts. Instead, Pickart blamed the entire incident on Leudtke, Mike, Dorothy, and First Source. The grounds for attributing fault to Leudtke and First Source were obvious. Pickart blamed Mike and Dorothy because, as the proprietors of the business, they were in the best position to notice the embezzlement. Their failure to do so reflected a level of negligence sufficient to absolve Pickart.

Second, Pickart filed a counterclaim against Falk for unpaid fees. Pickart had stopped providing accounting services to Falk on 11-30-02, and Pickart claimed it was owed a balance of \$8,697, plus a