MOTOR VEHICLE ACCIDENT: $145,000

Injuries claimed: Depressed left lateral tibial plateau fracture and 3mm anterior knee joint fracture fragment with moderate joint effusion. She will continue to take blood thinners to avoid further embolism and clotting. Also, she runs a higher risk of spontaneous internal bleeding.

Court: Milwaukee County Circuit Court

Case name: *Margaret Friar vs. Nicole Pusa*

Case number: 08CV014235

Judge: Hon. Maxine White

Verdict & settlement: Settlement in favor of plaintiff

Plaintiff's first demand: $150,000

Defendant's first offer: $130,000

Settlement amount: $145,000

Special damages: Plaintiff's past medical expenses: $97,575; Plaintiff's future medical expenses: Use of blood thinners and regular lab work

Date of incident: July 9, 2008

Plaintiffs attorney (firm): Mark S. Young, Habush Habush & Rottier SC

Defendants attorney (firm): Richard Mueller, Mueller Goss & Possi SC

Insurance carrier: State Farm Mutual Insurance Company; liability policy limits: $150,000

Plaintiffs expert witnesses: Dr. M. Ismail Quryshi, physician, Wauwatosa

Plaintiff counsel's summary of the facts: Friar was a pedestrian walking Eastbound on North Avenue and began crossing the street at a corner crosswalk of N. 103rd Street. At the same time, Pusa attempted to make a right hand turn and struck Friar.

Plaintiff's negligence theory: 100 percent liable, Pusa failed to yield right of way to a pedestrian in a crosswalk and failed as to proper lookout.

Defendant's position: Disputed value of damages.

GENERAL NEGLIGENCE: $168,750

Injuries claimed: Bilateral mandible fracture, right femur fracture, right calcaneal fracture, right shoulder injury resulting in adhesive capsulitis, facial lacerations, fractured teeth and multiple abrasions.

Court: Trempealeau County Circuit Court

Case name: *Glen Updike vs. David Nelson*

Case number: 08CV151

Judge: David Richie, mediator

Verdict & settlement: Settlement in favor of plaintiff

Plaintiff's first demand: $300,000

Defendant's first offer: $100,000

Award: $168,750

Special damages: Plaintiff's past medical expenses: $134,894; plaintiff's past wage loss: $29,440

Date of incident:Sept. 27, 2005

Plaintiffs attorney (firm): Mark Young, Habush Habush & Rottier SC

Defendants attorney (firm): Paul Millis, Skolos, Millis & Matousek, SC

Insurance carrier: Rural Mutual Insurance Company; liability policy limits: $300,000

Plaintiffs expert witnesses: Thomas Proft, P.E., material science, Germantown; Dr. Steve Bowman, orthopaedic surgeon, La Crosse

Defendants expert witnesses: Robert Bussewitz, Silo sales, Beaver Dam; Carl R. Looper, Jr., Metallurgical and Mineral Engineering, Madison; Robert Emmerich, P.E., Safety Engineer, Madison; Dr. Paul Cedarburg, orthopaedic surgery, Madison; Dr. Richard Fleck, dentist, Madison; Mr. Kevin Schutz and G. Richard Meadows

Plaintiff counsel's summary of the facts: Updike was performing work on inside of silo located at Nelson's farm. Updike was sitting atop the silo unloader inside the silo to complete his work when the cables failed causing Updike to fall 30 ft.

Plaintiff's negligence theory: Nelson knew or should have known the cables were hazardous, dangerous and in an unsafe condition.

Defendant's position: Denied cables were unsafe; claimed Updike lacked permission to sue unloader; claimed Updike should have worn a safety harness.

MOTOR VEHICLE ACCIDENT: $75,000

Injuries alleged: Multiple lacerations to his face

Case name: *Nicholas Kraby vs. Juan Gomez*

Court: Milwaukee County Circuit Court

Case number: 08CV016391

Mediator: Gerald Schmidt

Insurance: American Family Insurance Group

Plaintiff's attorney/firm: Mark S. Young, Habush Habush & Rottier, SC

Defendant's attorney/firm: Mary Kniaz, American Family

Date of occurrence: Nov. 26, 2005

Plaintiff's first demand: $100,000

Defendant's first offer: $50,000

Verdict/settlement: Mediation

Amount of settlement: $75,000

Plaintiff's past medical expenses: $18,083; plaintiff's past wage loss: $2,150; plaintiff's future medical expenses: $15,000 to $20,000

Plaintiff's expert witnesses: Dr. John Yousif, Plastic and Reconstructive Surgery, Mequon

Plaintiff counsel's summary of facts: Kraby was traveling Southbound on S. 27th Street. At the intersection of West Cold Spring Road and South 27th Street, Kraby entered the intersection with a flashing yellow light. At the same time, Gomez was traveling West on Cold Spring Road and entered the intersection with a red light, crossing into the path of Kraby. Prior to the crash, Gomez had been arguing with his passenger and was under the influence of alcohol.

Plaintiff's negligence theory: Gomez failed to yield right of way and also was operating a motor vehicle under the influence of alcohol.

Defendant's Position: Disputed value of damages.

MOTOR VEHICLE/ GENERAL NEGLIGENCE: $950,000

Case name: *Anthony Starcevic and Karen Kubin n/k/a Karen Starcevic vs. Peter, Linda and Mackenzie Anfang; Ursula Bryan; Destiny Johnson*

County: Kenosha County Circuit Court

Case no: 08CV813

Judge: Mediator, Terry Johnson

Liability insurer(s): Anfang's: State Farm Mutual Insurance Company; Bryan: Farmers Insurance; Johnson: Acuity, A Mutual Company

Anthony Starcevic:

Plaintiff's injuries: Lacerations to left cheek, lips and chin. Severe laceration and muscle damage to left bicep and deltoid muscles as well as a severe laceration to his left shoulder thoracic joint and left clavicle fracture.

Plaintiff's past medical expenses: $193,424; Plaintiff's past wage loss: $71,640; Plaintiff's future medical expenses: $60,000; Plaintiff's future loss of earning capacity: $850,000

Karen Kubin n/k/a Karen Starcevic:

Plaintiff's injuries: laceration above left eye, cheekbone complex fracture, left little finger fracture with tendon damage.

Plaintiff's past medical expenses: $92,742.60; Plaintiff's past wage loss: $3,690

Plaintiff's attorney(s)/firm: Mark S. Young, Habush Habush & Rottier, SC

Defendant's attorney(s)/firm: Anfang's and State Farm: Emile Banks, Emile Banks & Associates; Bryan and Farmers: Douglas Carroll, Farmers Insurance Company; Johnson and Acuity: Lance Grady, Grady, Hayes & Neary

Date of occurrence: July 4, 2009

Verdict/settlement: Settlement through mediation

Plaintiff's first demand: $1.6 million

Defendant's first offer: $435,000

Amount of settlement: $950,000

Plaintiffs percentage of contributory negligence: zero percent

Plaintiffs experts: Charles Weeth, pyrotechnics, La Crosse; Anthony: Dr. Greg Schmeling, orthopaedic surgery, Milwaukee; Anthony & Karen: Dr. James Sanger, plastic surgery and hand surgery, Milwaukee; Plaintiff's Vocational/ Economist Expert(s): Mr. John Baumgart and Mr. Karl Egge; Anfang's and State Farm Mutual Insurance Company: Robert Krenz, professional engineer, accident reconstruction, Oregon

Defense experts: Charles Scalia, P.E., professional engineer, accident reconstruction, Madison; Leanne Panizich, Destiny Johnson and Acuity, A Mutual Insurance Company

Plaintiff counsel's summary of facts: Starcevic and Kubin were riding a motorcycle traveling Southbound on CTHB/Tuttle Road when their motorcycle collided with a minivan operated by Ursula Bryan which came into their lane to avoid fireworks (smoke bomb) used by Mackenzie Anfang and Destiny Johnson who were under the supervision of Peter and Linda Anfang.

Plaintiff's negligence theory: Mackenzie Anfang and Destiny Johnson were negligent in the use of smoke bombs on an incline causing it roll into the roadway. Mackenzie Anfang's parents, Peter and Linda, failed to properly supervise Mackenize and Destiny Johnson, failed to read and implement instructions on warning label and negligently instructed Mackenzie and Destiny where to safely light smoke bombs on steep driveway.

Ursula Bryan failed as to proper lookout and did not check for oncoming traffic prior to swerving. Also, she made a sudden decision to swerve into oncoming traffic rather than stopping to avoid the smoke bomb in the road.

Defendant's position: Johnson claimed she was not handling or controlling smoke bombs. Anfangs claimed that they were reasonable in supervising children and that Mackenzie was not negligent. Anfangs and Johnson claimed accident was primarily caused by Bryan negligently swerving. Bryan claimed accident due solely to smoke bomb in roadway and she was reacting to emergency.

PERSONAL INJURY: $525,000

Injuries claimed: S1 (sacroiliac) joint disruption on the left; pubic symphysis diastatis; a closed sacral fracture on the left side, urethral tears; a rectroperitoneal hematoma; and left 4, 5, 6, 7 rib fractures. The urethral tear eventually led to permanent erectile dysfunction

Case name: *Re: Benda, et al. v. Crates Leather, et al.*

Case number: 08-CV-010-297

Verdict & settlement: Settlement in favor of plaintiff

Settlement amount: $525,000

Special damages: $310,000

Plaintiffs attorney (firm): Victor C. Harding, Warshafsky, Rotter, Tarnoff & Block SC

Defendants attorney (firm): Crates was represented by Michael Murray of Kasdorf Lewis & Swietlik; West 20 by Quentin Shafer of Drawe, Shafer & Stewart; TriTech by Scott Ritter and John Griner of Griner & Associates; and Shirley Bethune by Eric Darling of Schmidt, Darling & Erwin.

Plaintiffs expert witnesses: Jack Johnson, Ph.D., P.E., Engineering, Forensics & Testing, Ltd., Verona

Defendants expert witnesses: Paul Gramann, Ph.D., a plastic consulting engineer, The Madison Group, Madison; Dr. Carl Loper, C. R. L. Corporation, Ltd., Madison

Plaintiff counsel's summary of the facts: On April 1, 2006, Ron Benda purchased a new high-end saddle for use riding horses for pleasure at his farm in Sullivan, Indiana. Approximately 18 months later, he went horseback riding with his daughter and friend at the Crawford County Forest Preserve, just over the border in Illinois. While galloping to catch up with his daughter, suddenly and without warning, the right stirrup failed with his foot going straight through the bottom, sending him to the ground. After several hours, he was conveyed by Flight for Life to the hospital in Illinois. His injuries included S1 (sacroiliac) joint disruption on the left; pubic symphysis diastatis; a closed sacral fracture on the left side, urethral tears; a rectroperitoneal hematoma; and left 4, 5, 6, 7 rib fractures. The urethral tear eventually led to permanent erectile dysfunction.

The saddle Benda purchased on April 1, 2006 was from West 20 of Mukwonago which was selling saddlery at the Indianapolis County Fair. West 20 had purchased the saddle new from Crates Leather Company of Chattanooga, Tennessee. Crates purchased the stirrup from Shirley Bethune of Rainesville, Alabama who was in the business of sewing leather covers around plastic form stirrups.

Bethune purchased the plastic form from Tri-Tech Molded Products, Inc. of McMinnville, Tennessee.

During the process for sewing the leather around the plastic form, Bethune would drive two or more staples through the leather into the plastic form to hold it in place. Once the leather was sewn on, the staples served no functional purpose and were eventually covered with leather. Ms. Bethune has done this for over 20 years.

Tri-Tech is in the business of plastic injection molding, It purchased the stirrup form molds many years before. The mold created a stirrup form of I beam construction. The flat portion of the stirrup where one places their foot, is the top of the I. Then there is a vertical I piece and then the bottom flat portion of the stirrup as the bottom of the I. During the placement of the leather, Bethune drove several staples through the bottom flat portion directly into the I of the I beam construction. Over time, cracks developed, commencing where the staple was placed and splaying into the flat top and bottom sections, which led eventually to the ultimate failure.

In July 2008 Ron Benda commenced an action against Crates, Bethune, Tri-Tech and West 20, sounding generally in negligence and strict liability/defective product, along with their insurers. Bethune carried no insurance. The defendants generally denied all allegations.

Benda retained the services of Jack Johnson, Ph.D., P.E., Engineering, Forensics & Testing, Ltd., 9226 Windy Point, Verona, WI 53593. Dr. Johnson is currently a emeritus professor of civil engineering at UW-Madison. Dr. Johnson, after examining and studying the stirrup, concluded that it was defective and unreasonably dangerous after staples had been driven into the I beam construction, compromising the form's structural integrity.

Towards the end of discovery, Tri-Tech took the position that Bethune abused its product when she drove the staple into the form during her sewing process. Tri-Tech asserted it was unaware that Bethune and/or other stirrup makers were driving nails/staples into its forms and especially driving staples into the eye of the I beam construction.

Crates retained the services of Paul Gramann, Ph.D., a plastic consulting engineer, The Madison Group, Madison. Essentially, Mr. Gramann concluded after extensive testing that Tri-Tech allowed moisture to creep into the storage of its plastic for form molding. This moisture during the molding process created an overly brittle stirrup form. It was further his opinion that had the usual Tyvek plastic not been compromised by moisture, even driving the staples into the eye of the I beam construction would not have caused the form to crack and eventually break.

Tri-Tech retained the services of Dr. Carl Loper, C.R.L. Corporation, Ltd., Madison. Dr. Loper generally opined that the staple created the fracture and that had the staple not been driven into the I of the I beam, the stirrup probably would never have failed.

Ron Benda's special damages included medical bills of approximately $98,000 Additionally, and at the time of the incident, Benda was a lieutenant colonel in the Marine Reserves, as well as a middle school teacher. Although he lost virtually no time from work as he appeared for duty in the Reserves immediately following the incident, a claim for loss of earning capacity in the future was made. It was asserted that Benda aspired to becoming a full bird colonel in the Reserves before retiring. This advancement was lost to him as a result of his residual injuries. In addition, it was asserted he would need to retire early from teaching as a result of his injuries. The claimed loss of future earning capacity, therefore, approximated $212,000. Accordingly, total specials were claimed at $310,000.

Shortly before mediation, the parties settled the case for a total value of $525,000. TriTech's insurer contributed $415,000; Crates' insurer $100,000; and West 20's insurer $10,000.

GENERAL NEGLIGENCE: ZERO DOLLARS

Case name: *Vernon and Georgia Kohlwey v. Holy Family Memorial, Inc., et al.*

Court: Manitowoc County Circuit Court

Judge: Jerome L. Fox

Injuries alleged: Past Medical Expenses, Past and Future Pain and Suffering, Loss of Society and Companionship

Amount sought at trial: $577,000

Highest offer: $0

Verdict: Jury verdict for defense

Original filing date: Aug.15, 2007

Plaintiff attorney: Paul J. Scoptur, Aiken & Scoptur, SC, Milwaukee

Defense attorney: Mark T. Budzinski, Corneille Law Group, Green Bay

Plaintiff experts: Terri Antionette, RN, Pennsylvania

Defense experts: Suzanne Ward, RN, Wisconsin

Insurance company: Physicians Insurance Company of Wisconsin

Defense counsel's summary of case: Plaintiff, Vernon Kohlwey and his wife sued Holy Family Memorial Adult Day Services alleging that the staff at the Holy Family were negligent in assisting Mr. Kohlwey to the bathroom causing him to fall and fracture his hip. Mr. Kohlwey had multiple co-morbidities including gait instability and chronic obstructive pulmonary disorder. He was being assisted by two nursing assistants, but had breathing difficulties and asked a staff member to retrieve his inhaler. Mr. Kohlwey subsequently fell and fractured his hip. The hip fracture was surgically repaired and the plaintiff was placed in a nursing home for an extended period of time. Plaintiffs contended Mr. Kohlwey never fully recovered.

PRODUCT LIABILITY: $4 MILLION

Injuries claimed: Permanent crush injuries to middle and lower extremities

Court: Waukesha County Circuit Court

Case name: *Alan R. Szuta, et al. vs. Kelbe Bros. Equipment Co., Inc, et al.*

Case number: 05 CV 2997

Judge: Hon. Michael O. Bohren

Verdict & Settlement: Settled prior to trial

Settlement amount: $4 Million

Date of incident: May 25, 2004

Disposition date: Oct. 2, 2009

Original filing date: Dec. 12, 2005

Plaintiffs attorney (firm): Daniel A. Rottier and Christopher E. Rogers, Habush Habush & Rottier SC, Madison

Defendants attorney (firm): William Katt, Leib & Katt, Milwaukee, for Kelbe Bros.; Patrick Brennan, Crivello Carlson &

Mentkowski, SC, Milwaukee, for LBX

Insurance carrier: Sentry Insurance, Kelbe Bros; Mitsui Sumitomo, LBX

Plaintiffs expert witnesses: Plaintiffs' liability experts included Daniel Pacheco, Polytechnic, Inc., Northbrook, IL, and Dennis Skogen, Skogen Engineering Group, Inc., Madison, WI. In addition, Kevin Schutz of Professional Rehabilitation Service, Madison, WI, was named as a Vocational expert and Professor Karl Egge, of Macalister College, St. Paul, MN, was named as an Economist. Plaintiff's medical experts were primarily his caregivers and included physical medicine, rehabilitation physicians and therapists.

Plaintiff counsel's summary of the facts: Plaintiff was 44 years old at the time of the accident and worked part-time as a shop assistant for an excavating company in Vernon, Wisconsin.

This matter arose out of a catastrophic accident which occurred on May 25, 2004. That evening, after general work hours had ended, the plaintiff, while in the scope of his employment, began preparations for changing the oil of a Link Belt excavator owned by his employer. The excavator was equipped with a Hendrix J.B. Quick Coupler, manufactured by Hendrix Manufacturing Equipment Company, Inc. and sold by defendant Kelbe Bros. Equipment Co., Inc. through defendant LBX Company, LLC.

The Hendrix quick coupler is a coupling device that attaches to the end of an excavator boom arm. Its design allows for a more rapid changing between various boom arm attachments, the most common being an excavating bucket. The excavator operator first begins coupling with a bucket attachment on the ground. The bucket's teeth and opening are positioned toward the cab of the excavator. The operator first rests the bucket's front "stick-pin" in the quick coupler's "c-casting." Once done, the operator then rotates the coupler away and downward to "seat" the coupler onto the bucket's "link-pin." The operator then turns an in-cab control to "lock." This extends the coupler's locking lever which was intended to close over the bucket's link-pin. The quick coupler locking lever however, would periodically override and miss this link-pin. When the link pin was missed, the bucket was not securely attached to the quick coupler and if the boom arm was lifted off of the ground, the bucket could become unattached from the quick coupler and fall off of the boom arm.

The plaintiff in this case requested that his employer move the cab and boom arm of the excavator 180 degrees to allow for easier access to the engine. Upon the employer doing so, the excavator bucket released from the quick coupler as a result of the locking lever missing the link-pin. The bucket fell, struck some debris, and ultimately landed on the plaintiff, crushing his mid and lower extremities, causing him catastrophic injuries.

The Hendrix quick coupler was purchased by Kelbe Bros. Equipment Co., Inc. from LBX Company, LLC and it was shipped directly to Kelbe Bros. by Hendrix Manufacturing Company where it was installed on the subject LBX excavator by Kelbe Bros. employees and subsequently sold to plaintiff's employer.

Plaintiffs sued Kelbe Bros. Equipment Co., Inc. and LBX Company, LLC on strict liability and negligence grounds. The defendants denied that a defect existed and claimed contributory negligence against the plaintiff and his employer. Defendants argued that the plaintiff was contributorily negligent when he violated traditional work site safety practices by entering the boom arm's swing area while it was in operation. Furthermore, defendants argued that plaintiff's employer was negligent because the employer failed to properly test for a secure bucket attachment before moving the boom arm, operated the coupler in the neutral position instead of the locked position and operated the boom arm while the plaintiff was in the boom arm's swing area.

Additionally, defendants argued that there was a substantial change in the condition of the quick coupler as plaintiff's employer failed to replace a missing coupler closure spring, failed to remedy a leaking closure cylinder hose and failed to repair an inoperative warning buzzer on the coupler control switch box. Plaintiff's employer also never installed a mechanical lock kit that had previously been offered by Hendrix free of charge to prevent unintended attachment disengagements.

To rebut all of the defendant's arguments, plaintiffs were prepared to offer substantial evidence of other similar incidents that had occurred throughout the country.

MEDICAL MALPRACTICE/ WRONGFUL DEATH: ZERO DOLLARS

Injuries alleged: Past medical and funeral expenses; loss of society and companionship for surviving spouse and minor child; pecuniary loss for surviving spouse and minor child

Case name: *Jackson, et. al v. Dr. F., et al.*

Court: Iron County Circuit Court

Judge: Patrick J. Madden

Amount sought at trial: $1 million

Highest offer: $100,000

Verdict: Jury returned verdict for defense

Original filing date: Oct. 21, 2005

Plaintiff attorney: Anthony D. Cossi, Cossi Law Office, Ironwood, MI

Defense attorney: Mark T. Budzinski and Crystal M. Uebelher, Corneille Law Group, Green Bay

Plaintiff experts: Dr. Richard Schaffer, family physician, Iowa; Dr. Harry Cohen, cardiologist, Illinois; Dr. Charles Iknayan, pathologist, Wisconsin

Defense experts: Dr. Carl Tommaso, cardiologist, Illinois; Dr. Len Scarpinato, family physician, Wisconsin; Dr. Stephen Factor, pathologist, New York

Insurance company: Physicians Insurance Company of Wisconsin

Defense counsel's summary of case: The plaintiffs in this case brought a wrongful death claim against Thomas Jackson's primary care physician. Jackson presented with numbness and tingling in his left arm and subsequently developed a ball of acid in his chest. While Jackson was under Dr. F.'s care, he was prescribed medication for high cholesterol, referred for an EMG study of his left arm and prescribed medication for acid reflux. Jackson died suddenly of cardiac arrest approximately one month after presenting with the complaints of chest pain. Plaintiffs alleged the standard of care required Dr. F. to refer someone with Jackson's symptoms to a cardiologist. The defense argued that Dr. F.'s evaluation and treatment were appropriate and within the standard of care. The jury found that the doctor's care and treatment was reasonable.

MOTOR VEHICLE

ACCIDENT: $425,000

Injuries alleged: Multiple fractures (hip, tailbone, ribs, arm) and internal injuries; permanent with scars. Scarring description: Surgical scars are the most prominent. She also has disfigurement from the chest tube and left flank lacerations

Case name: *Emily J. Craker vs. Devin A. Parker (Deceased)*

Case no.: 09-CV-290

Court: Waupaca County Circuit Court

Verdict/settlement: Case was mediated

Special damages: Plaintiff's past medical expenses: $108,204; plaintiff's past wage loss: $3,600; plaintiff's future medical expenses: unknown; plaintiff's future loss of earning capacity: None; Plaintiff's future losses (other): Unknown

Plaintiff's first demand: $750,000

Defendant's first offer: $300,000

Settlement amount: $425,000

Insurance: American Family

Plaintiff's attorney: David E. Sunby, Habush Habush & Rottier, SC

Defense attorney: Jane Kirkeide, American Family Insurance

Date of occurrence: May 20, 2006

Plaintiff's experts: Jeffrey Ralston, M.D., Neenah; David J. Schultz, M.D, Neenah

Noteworthy evidentiary issues: Contributory negligence for entering car with drunk, enraged boyfriend

Plaintiff counsel's summary of the facts: Driver was speeding and lost control of the vehicle.

Plaintiff's negligence theory: Reckless driving

Defendant's position: Contributory negligence for getting in car.

CIVIL RIGHTS: $1.75 MILLION

Injuries claimed: Death, Emotional Distress

Court: United States District Court, Eastern District of Wisconsin

Case name: *Estate of Michael Edward Bell, Kim Marie Bell, Michael Martin Bell, Shantae Bell v. Officer Erich R. Strausbaugh, Officer Erich S. Weidner, Lieutenant David H. Krueger, Officer Albert B. Gonzales, City of Kenosha*

Case number: 05-CV-01176-CNC

Judge: Chief Judge C.N. Clevert, Jr.

Verdict & settlement: Settled prior to trial

Original amount sought: $5.25 million

Original offer: $50,000

Settlement amount: $1.75 million

Date of incident: Nov. 9, 2004

Disposition date: Feb. 5, 2010

Original filing date: Nov. 9, 2005

Plaintiffs attorney (firm): Patrick O. Dunphy, Brett A. Eckstein, Cannon & Dunphy, SC

Defendants attorney (firm): Gregg G. Gunta, Kevin P. Reak, Gunta & Reak, SC

Insurance carrier: Cities & Villages Mutual Insurance Company

Plaintiffs expert witnesses: John Baumgart (vocational expert), Karl Egge (economist), Bart Epstein and Terry Laber (blood spatter experts), Richard Ernest (ballistics expert), William Gaut (police practices and procedures expert), R. Paul McCauley, Ph.D. (police practices and procedures expert), Charles Wetli, M.D. (forensic examiner), P. Douglas Kelley, M.D. (medical examiner), Dan Krane, Ph.D. (DNA expert), Dennis Skogen, P.E. (accident reconstructionist),

Defendants expert witnesses: John Peters, Ph.D. (police practices and procedures expert); Robert Willis (police practices and procedures expert); Robert Krenz, P.E. (accident reconstructionist); William Lewinski, Ph.D. (policy psychologist); Alan Friedman, Ph.D. (DNA expert); Stuart James (blood spatter expert).

Plaintiff counsel's summary of the facts: This case concerned numerous allegations of civil rights violations, including an unlawful stop, excessive use of force, excessive force by use of taser, and excessive use of deadly force by shooting the plaintiff Michael E. Bell at point blank range through the head. The circumstances surrounding the shooting were hotly contested, but the plaintiffs alleged the following:

In the early morning hours on Nov. 9, 2004, as Michael pulled his vehicle in front of his family's townhouse, he was unlawfully detained by Officers Strausbaugh and Weidner without reasonable suspicion. After Michael passively resisted the officers' commands, he was taken to the ground in his front yard and tased, in violation of the Kenosha Police Department's policies and procedures governing the use of tasers. Michael tried to flee and ran along the side of the house to the back yard. The officers followed, and Lieutenant Krueger arrived to assist the officers. The skirmish awoke Michael's mother and sister, who went outside and saw Michael being pummeled by the officers. They also saw that Michael was in handcuffs. The officers then threw Michael over the hood of a parked car in the driveway. While this was going on, Officer Gonzales arrived on scene and was running toward the officers with his gun drawn. While in route, Officer Strausbaugh yelled "he's going for my gun," and Michael's mother and sister yelled "he doesn't have it." Officer Gonzales then shot Michael on the right side of the head at point blank range. Michael died shortly thereafter. The State Crime Laboratory tested Officer Strausbaugh's gun and did not find Michael's DNA on the gun. Michael's fingerprints were also not found on the gun. The handcuffs that were allegedly used on Michael were also removed from the scene before evidence was collected.

During discovery, the plaintiffs' alleged that the officers offered multiple and contradictory accounts for how the shooting actually occurred. The officers' basic contention was that Officer Gonzales was on Michael's left side when he shot Michael in the right side of the head. The plaintiffs alleged that the officers' account was inconsistent with eyewitness observations, the autopsy report, ballistics evidence, and blood spatter evidence. In addition, the plaintiffs alleged that the use of force was excessive and in violation of Michael Fourth Amendment rights. The case was examined extensively by use of force experts, forensic experts for both sides — including ballistics, blood spatter experts, and medical examiners — and was defended vigorously by the law firm of Gunta & Reak, SC. Ultimately, the case settled at mediation with the aid of Justice Janine Geske.

MEDICAL MALPRACTICE: ZERO DOLLARS

Injuries claimed: The patient's estate claimed pre-death pain and suffering, and the patient's widow requested loss of society and companionship.

Court: Brown County Circuit Court

Case name: *Weis v. Marshfield Clinic, et al.*

Case number: 07-CV-175

Judge: Donald R. Zuidmulder

Verdict & settlement: The jury returned a defense verdict

Amount sought: $350,000 (the cap) for loss of society and companionship, and the estate $1 million in pre-death pain and suffering

Award: Zero dollars

Disposition date: March 11, 2010

Plaintiffs attorney (firm): D. James Weis and Theresa B. Laughlin, Habush Habush & Rottier, SC, Wausau

Defendants attorney (firm): Doctor and Marshfield Clinic: Randall J. Sandfort, Marshfield Clinic, Marshfield, Barrett J. Corneille, Corneille Law Group, Madison; Wisconsin Injured Patients and Families Compensation Fund: Jeremy T. Gill, Nash Spindler Grimstad & McCracken, LLP, Manitowoc

Plaintiffs expert witnesses: Dr. Hamied Rezazadeh, medical oncologist; Dr. Michael Lagios, pathologist

Defendants expert witnesses: Dr. James A. Stewart, medical oncologist; Dr. Richard Margolese, surgical oncologist; Dr. Alan David, family practitioner

Defense counsel's summary of the facts: On Feb. 17, 2004, the patient appeared for her annual OB/GYN examination at the office of her primary care provider. The patient testified during an evidentiary deposition that she had left breast abnormalities present on that date. The history as recorded in the patient's chart stated that breast abnormalities had existed prior to the patient visit, but had resolved by the day of the exam. The physician conceded that if the breast abnormalities described by the patient had been present at the time of the examination on Feb. 17, 2004, the standard of care would have required an immediate referral to a surgeon to evaluate the patient for the possibility of breast cancer.

The patient's husband and numerous family members described breast abnormalities both before and after the Feb. 17, 2004 patient visit. They, along with the patient, testified that once the abnormality began, it was present continuously.

The history recorded by the physician on Feb. 16, 2004 was different than the patient and family recollections. In addition, the examination of the breast done on that day was charted as normal. Although the date of dictation of the office note could not be determined, the clinical note was not transcribed until 48 days later, and it was not signed until May 8. The patient's explanation for the delay was that the physician was preoccupied with family issues that caused a delay in dictation, transcription and signing. Patient alleged that the delay resulted in an inaccurate note.

When the patient's breast cancer was diagnosed approximately 12 months later, it was resistant to all forms of treatment. The patient argued that earlier diagnosis would have led to a different outcome, and the defense asserted that the patient's aggressive cancer precluded a change in outcome with earlier diagnosis.

The plaintiff's cancer eventually caused her demise. Her husband sought $350,000 (the cap) for loss of society and companionship, and the estate $1 million in pre-death pain and suffering.

PERSONAL INJURY: ZERO DOLLARS

Injuries claimed: Plaintiff sustained fractures and an ulnar deviation of two fingers on her right hand, requiring surgery and extensive physical therapy. She incurred medical expenses of $19,260.52, and a wage loss of $2,250.40. She suffered a permanent decrease in flexion and extension of one of her fingers on the right hand.

Court: Milwaukee County Circuit Court

Case name: *Virgil Joiner, et al. v. East Pointe Marketplace Limited Partnership, et al.*

Case number: 08 CV 16230

Judge: Timothy G. Dugan

Verdict & settlement: Jury returned defense verdict

Original amount sought: $135,000

Highest offer: $15,000

Award: Zero dollars

Special damages: East Pointe Market-place Limited Partnership: No negligence. Plaintiff Virgil Joiner: No negligence. Past medical expense, $19,261; Past wage loss, $2,250; Past pain, suffering and disability, $7,500; Future pain, suffering and disability, $7,500

Date of incident: Feb. 9, 2007

Disposition date: Feb. 18, 2010

Original filing date: Nov. 11, 2008

Plaintiffs attorney (firm): Thomas A. Ogorchock, Miller & Ogorchock, SC, Milwaukee

Defendants attorney (firm): Thomas J. Binder, Simpson & Deardorff, SC, Milwaukee

Insurance carrier: ACUITY, A Mutual Insurance Company

Plaintiffs expert witnesses: Norman Buebendorf, M.D., Hand Surgery, Ltd., Milwaukee, WI

Defendants expert witnesses: None

Defense counsel's summary of the facts: On Feb. 9, 2007, the plaintiff, a social worker, while on her way to work, stopped at the Guaranty Bank located within the East Pointe Marketplace on Ogden Avenue in Milwaukee. She parked her vehicle in the parking lot, went into the bank to do her banking, and tripped and fell after exiting the bank. The plaintiff claims she tripped and fell on a difference in elevation between two sidewalk slabs in front of the bank. She alleged that the owner of East Pointe Marketplace was negligent and violated the safe place statute.

The defendant, East Pointe Marketplace Limited Partnership, denied any liability. The difference in elevation between the two slabs was only three-eighths of an inch, well within the three-quarter inch tolerance utilized as a standard by East Pointe. The defendants argued that the main reason the plaintiff tripped and fell was because she was not watching where she was walking at the time of the accident. No reasonably prudent person would have tripped and fallen on this slight discrepancy in the height of the sidewalk slabs.

MOTOR VEHICLE ACCIDENT: $359,987

Injuries claimed: Cervical disc herniations at C5-6 and C6-7

Court: Waukesha County Circuit Court
Case name: *Daniel J. Britten v. USAA et al.*
Case number: 08-CV-3189
Judge: Honorable Michael O. Bohren
Verdict/settlement: Settlement
Amount: $359,987

Original amount sought: The defendant John Stockhausen, a Texas resident, was visiting his parents in Wisconsin and driving their vehicle. That vehicle was insured under a $300,000 liability limit policy issued by USAA. A demand was made for those policy limits, as well as for disclosure of any other applicable policies of liability insurance. An additional $25,000 liability policy issued by USAA to Mr. Stockhausen insuring his personal vehicle in Texas was later disclosed, and a demand was subsequently made for those policy limits as well.

Original offer: None

Special damages: Past medical expenses of $141,054.52, past loss of earnings and loss of pension contributions of $33,316.16; future impairment of earning capacity of $480,445.

Date of incident: June 9, 2008
Disposition date: March 16, 2010
Original filing date: Sept. 10, 2008
Plaintiff's attorney (firm): Edward E. Robinson of Cannon & Dunphy, S.C.
Defendants attorney (firm): Terry E. Johnson of Peterson, Johnson & Murray, S.C.
Insurance carrier: USAA
Plaintiff's expert witnesses: Dr. Lynn Bartl, neurosurgeon; Dr. Richard K. Karr, orthopedic surgeon; John Baumgart, vocational expert
Defendant's expert witnesses: None

Plaintiff counsel's summary of the facts: The plaintiff Daniel Britten was stopped behind another vehicle at a red traffic light governing his direction of travel on southbound County Highway P at its intersection with Lisbon Road, in Oconomowoc, Wisconsin, when he was forcefully rear-ended by a vehicle being operated by John Gerard Stockhausen. Stockhausen told the investigating police officer that he had dropped a bottle of water, and was attempting to pick it up and took his eyes of the road. As a result of the tremendous impact, Mr. Britten's vehicle was propelled into the vehicle in front of him.

Noteworthy issues: A notice of claim and proof of loss was submitted to USAA on January 19, 2009 demanding the $300,000 underlying policy limits. The total settlement of $359,986.60 includes $34,986.60 in statutory interest pursuant to Wis. Stat. § 628.46 based on USAA's failure to timely pay that claim.

MOTOR VEHICLE ACCIDENT: $500,000

Injuries claimed: Fractured pelvis; fractured right humerus with dislocation. During Geraldine Tupper's hospitalization following the crash, surgery was scheduled to repair her right humerus fracture. However, due to Tupper's weakened condition, the decision was made to cancel the surgery. Unfortunately, this meant that her fractured arm did not heal back in proper anatomic alignment, leaving her with significant loss of range of motion that affects her ability to do many activities of daily living. Prior to the accident, Tupper was independent, and living on her own.

Court: Waukesha County Circuit Court
Case name: *Geraldine Tupper v. American Family Mutual Insurance Company, et al.*
Case number: 09CV00078
Judge: Honorable Michael O. Bohren
Verdict/settlement: Settlement

Award: The case settled at mediation for the $500,000 policy limits, in return for a full release of all claims, including any potential excess claim against Mr. Kream and his mother, who sponsored him. Gary Kuphall of Stierman, Steffens & Kuphall, S.C., served as the mediator.

Special damages: $272,264.64, including past medical expenses of $89,996.21; past in-home nursing care and assistance of $29,819.95; and future in-home nursing care and assistance of $109,948.48.

Date of incident: Aug. 20, 2007
Disposition date: Jan. 13, 2010
Original filing date: Jan. 7, 2009
Plaintiff's attorney (firm): Edward E. Robinson of Cannon & Dunphy, S.C.
Defendant's attorney (firm): James T. Murray, Jr., Peterson, Johnson & Murray, S.C.; Robert A. Levine, Law Offices of Robert A. Levine.
Insurance carrier: American Family Mutual Insurance Company
Plaintiff's expert witnesses: Dr. Susan Larson, Physical Medicine & Rehabilitation; Dr. Amy Franta, Orthopedic Surgeon
Defendant's expert witnesses: Dr. Sridhar Vasudevan, Physical Medicine & Rehabilitation; Dr. Austin Boyle III, Orthopedic Surgeon

Plaintiff counsel's summary of the facts: On Aug. 20, 2007, at approximately 8:37 a.m., the plaintiff, Tupper (age 80) was traveling northbound on Calhoun Road, approaching its intersection with Civic Drive, in the City of Brookfield. There were daylight conditions at the time, although it was raining lightly. At the same time, Jacob Kream (age 16) was traveling southbound on Calhoun Road, and was intending to turn left onto Civic Drive. According to Tupper, as she approached the intersection, the traffic light for her direction of travel was still green, but turned yellow just as she got to the intersection. Because she was already entering the intersection when the light turned yellow, she could not stop. Unfortunately, as soon as the light turned yellow, Kream, instead of yielding to Tupper, proceeded to make his left turn, causing him to collide into the front of Tupper's vehicle. As a result of this collision, Tupper's vehicle was then pushed into a vehicle that was stopped for the red light in the westbound lane of Civic Drive at the intersection. Kream contended that the light had already turned yellow prior to Tupper reaching the intersection, and that Tupper appeared to be slowing as if she were going to stop.

BUSINESS TORT/NUISANCE: $5 MILLION

Case name: *Bollant Farms, Inc., Steven Bollant, Delores Bollant and Thomas Bollant vs. Scenic Rivers Energy Cooperative and Federated Rural Electric Insurance Exchange*

Case No. 07-CV-349

Court: Grant Circuit Court

Judge: Hon. Robert P. Van De Hey

Injuries alleged: Lowered milk production, lost value of the herd, excess expenses.

Original amount sought: $5,400,000, plus nuisance damages

Highest offer: $0

Verdict/settlement: Verdict for plaintiffs

Award: $3,750,000 economic damages plus $1,250,000 annoyance, inconvenience and discomfort (damages for private nuisance), totaling $5,000,000

Disposition date: April 20, 2010

Original filing date: June 29, 2007

Incident date: 2002-2008 exposure to stray electricity.

Plaintiff attorney: Scott Lawrence, Lawrence Law Office, SC, St. Nazianz and Christopher D. Stombaugh, Kopp, McKichan, Geyer, Skemp & Stombaugh, LLP, Platteville

Defense attorneys: Denis R. Vogel and Mary Beth Peranteau, Wheeler, Van Sickle & Anderson, SC, Madison

Plaintiff experts: Thomas Beane, Fort Atkinson, stray voltage investigator; Michael Behr, Ph.D., Northfield, MN, agricultural economist; William English, P.E., Charlotte, MI, electrical engineer; Thomas Hermsen, Fennimore, veterinary medicine; Michael Limmex, BS, Lodi, dairy nutrition; Mark Schmidt, Platteville, master electrician; William Schmidt, Platteville, WI, master electrician; Richard Schulte, DVM, Marshfield, veterinary medicine

Defense experts: Ronald Erskine, DVM, East Lansing, MI, veterinary medicine; Charles Forster, P.E., Oregon, WI, electrical engineer; James Kliebenstein, Ph.D., Ames Iowa, agricultural economist; Roger Mellenberger, Ph.D., Dousman, dairy scientist (did not testify at trial); David Rhoda, DVM, Evansville, veterinary medicine; Daniel Stelpflug, Ronald Jentz and Robert Hampton, Lancaster, employees of defendant Scenic Rivers, utility practices.

Insurance company: Federated Rural Electric Insurance Exchange

Plaintiff counsel's summary of facts: Plaintiff dairy farm and its owners/operators sought damages for stray electricity damage to the herd and its productivity between 2002 and resolution of the electrical problems with defendant's utility system in 2008, plus damages during the herd recovery period to the present. Defendant partially rebuilt its 1930s-1940s era power line in 2002-2003 and finished the rebuild (partially at plaintiffs' expense) in 2005.

Defendant made another wiring error during 2005 that was discovered and remedied in early 2008. The dairy herd's health and production improved dramatically after the last corrections.

As in many of these cases, the "cow contact voltages" as measured by the methods of the Public Service Commission of Wisconsin (PSCW) did not exceed the PSCW "level of concern" for 60 Hz., steady state AC rms voltage. However, the herd was exposed to ground current transient voltages, originating from the power line, which are short duration bursts of electrical energy and whose measurement and mitigation are not addressed by the PSCW protocols. As in *Hoffmann v. Wisconsin Electric Power Co*., 2003 WI 64 262 Wis.2d 264, 664 N.W.2d 55, negligence was established under the common law.

MOTOR VEHICLE

ACCIDENT: $1.25 MILLION

Injuries/damages: Spinal cord injury requiring spinal fusion-incomplete paraplegia but ambulatory

Case name: *S. Worzalla v. R. Fleck, State Farm*

County: Dane County

Case number: settled before filing

Verdict/settlement: Settlement in favor of plaintiff

Amount of settlement: $1.25 million (policy limit)

Date of Incident: Sept. 20, 2008

Place: Town of Bristol, Dane County

Specific negligence of product: Motor vehicle collision (one-car)

Special damages: Past medical expenses: $263,000; future medical expenses: $720,000

Insurance Company: State Farm Insurance

Plaintiff's attorney: Keith Clifford, Clifford & Raihala SC, Madison

Defense attorney(s): N/A

Plaintiff counsel's summary of the case: The 17-year-old male claimant was injured while a passenger in the vehicle of a 21-year-old driver. The driver had recently acquired the automobile and offered to take the claimant and two other passengers of like age out for a ride in the new car. During the ride, he turned onto a road none of the passengers or driver had been on before. It was nighttime. The driver accelerated the speed from a dead stop to approximately 80-100 mph, unaware that the road was a dead end. The car flew off the end of the road striking a pile of boulders and a tree.

The driver was charged with three felonies, including reckless endangerment and reckless injury. The insurer attempted to argue that the claimant was contributorally negligent for not maintaining lookout and warning the driver. The claimant met that argument with the simple mathematics of the collision since the rate of speed in feet per second combined with the claimant's perception/reaction time demonstrated that there was no opportunity to give any warning which might have led to avoiding the collision. As well, a rear seat passenger such as the claimant under Wisconsin law is held to a lesser degree of care then either a driver or a front seat passenger.

The claimant suffered a spinal cord injury which left him wheelchair bound for several months. Ultimately, he regained his ability to walk although with a limp, impairment to running, and functional limitations. An expert witness retained by plaintiffs concluded that in his later years he would likely be confined to a wheelchair as a result of his permanent injury categorized as "incomplete paraplegia."

The insurer first paid $250,000 under its primary policy as an advance payment. Having exhausted those limits, it ultimately paid the limits under its umbrella insurance policy of $1,000,000. The settlement was negotiated with an in-house adjuster for the insurer.

BAD FAITH: $8.37 MILLION

Court: Milwaukee County Circuit Court

Case name: Park Terrace LLC v. Transportation Insurance Co., et al.

Case number: 2007CV012848

Judge: Hon. William Pocan

Verdict & settlement: Verdict in favor of plaintiff

Award: $8.37 million

Special damages: Of the $8,370,000 awarded, $4,000,000 was

punitive damages.

Date of incident: Oct. 21, 2005

Disposition date: May 14, 2010

Plaintiffs attorney (firm): Counsel for Plaintiff Park Terrace, LLC: Douglas W. Rose, Rose & deJong, S.C., Milwaukee; Rose was assisted on the case by attorneys Jennifer Geller Baumann and Victor E. Plantinga, both of Rose and deJong, S.C.

Defendants attorney (firm): Counsel for Defendant Johnson Insurance Services, LLC: Christine K. Nelson, Nelson, Connell, Conrad, Tallmadge & Slein, S.C., Waukesha; Counsel for Defendant Transportation Insurance Company (a part of CNA Insurance): Zacarias Chacon, Lewis Brisbois Bisgaard & Smith, Chicago

Plaintif counsel's summary of case status: On Friday afternoon, May 14, 2010, a Milwaukee County Circuit Court jury awarded $8,370,000 in compensatory and punitive damages to Park Terrace, LLC, a local development company that built row house and bluff home condominiums in the Beerline neighborhood of Milwaukee. Park Terrace's attorney, Douglas W. Rose of Rose & deJong, S.C., stated that the verdict will hopefully "send a message" to the defendant, Transportation Insurance Company, a part of the CNA Insurance companies, not to engage in bad faith conduct.

A large fire occurred during construction of the condominium project in Oct. 21, 2005. Although the property damage portion of the claim was paid by CNA, Park Terrace claimed that CNA engaged in bad faith conduct by failing to provide coverage and payment pursuant to a loss of income endorsement to the fire insurance policy that was in place at the time of the fire. Of the $8,370,000 awarded, $4,000,000 was punitive damages.

According to Rose, CNA's conduct was "reprehensible," and that the trial evidence and testimony revealed that bad faith conduct was "systemic" throughout the CNA companies. Insurance experts called during the two week trial testified that CNA acted in bad faith towards its own insured, and that the insurance company "took the umbrella to protect the insured and hit them over the head with it."

Judge William Pocan presided over the trial, and found as a matter of law that CNA had improperly reformed the policy. The jury deliberated Friday afternoon for a total of approximately two hours before reaching its verdict.

Rose stated that Park Terrace made every possible effort to resolve the matter prior to trial, but that CNA offered absolutely nothing prior to the commencement of the trial proceedings. He stated that the jury was "extremely attentive throughout," and felt they reached a "fair and just decision."

PERSONAL INJURY: ZERO DOLLARS

Case name: *Roach, et al. v. Dixie Gas Co., et al.*

Case number: 06-02-0140

Court: Hardeman County, Tenn

Judge: Judge Weber McCraw

Injuries alleged: Severe PTSD and depression; permanent hearing loss and impaired speech; complete disability; lost earnings

Original amount sought: Plaintiffs' original demand was $15,000,000; demand at trial was $6.5 million.

Highest offer: $100,000

Verdict/settlement: Verdict in favor of defendant; after an eight-day trial, the jury deliberated one hour and returned a unanimous verdict finding plaintiffs' alleged injuries were not caused by the defendants and that the plaintiffs incurred no damages.

Verdict/settlement date: Jan. 28, 2010

Original filing date: April 19, 2006

Incident Date: April 22, 2005

Plaintiff attorney: Edward M. Bearman, Esq., Memphis, TN

Defense attorney: John V. McCoy, Eugene LaFlamme, McCoy & Hofbauer SC, Waukesha

Plaintiff experts at trial: Dr. Shea, Dr. Anton, Dr. Head, Dr. Garman, Virgil Nutt, Dr. Larry Bates, Leon Tingle, Dr. Augustus.

Defense experts at trial: Dr. Schwaber, Dr. Wolters, Robert Vance Insurance Company: Crum & Forster

Defense counsel's summary of case: Dixie Gas had seven 6,000-gallon propane tanks manifolded together on its premises. A liquid propane leak originated at one of the flexible connectors in the tank manifold system. The fugitive gas eventually found an ignition source and exploded. The area around the facility was evacuated for three days following the incident to burn off the remaining propane. This included almost one-half of the members of the nearby city of 6,000 residents.

At the time of the leak, the plaintiffs were at the facility to purchase propane for their RV and camping trip. The husband exited the RV and went into the office to order the propane. Soon thereafter the leak started.

The plaintiffs claimed that the propane cloud immediately enveloped their RV. The husband alleged that he was forced to feel his way through the gas cloud and down the RV to rescue his wife. Both plaintiffs claimed to have just gotten past the gate when the first explosion occurred. They testified that the force of the blast wave knocked them to the ground and caused immediate hearing loss and severe ringing in their ears. They stated that they were forced to huddle in a ravine with the husband lying on top of his wife to protect her. They also testified they feared for their lives.

For strategic reasons, the defendants conceded before any evidence was presented in the case that they were negligent in causing the explosion. Thus the sole issue at trial was whether defendants' negligence caused the alleged injuries, and if so, what damages did plaintiffs suffer.

The defense produced a neighbor from across the street who saw the plaintiffs leave the facility about five minutes before the ignition. Although the plaintiffs testified that there were only two minutes from the time the leak started to its ignition, other independent fact witnesses offered a seven- to 15-minute timeframe. Fire department personnel who secured the scene after the leak but before the gas ignited did not see the plaintiffs.

Plaintiffs testified they suffered severe PTSD and depression as a result of the accident that left them completely disabled for life. They alleged a laundry list of injuries related to PTSD and depression, including loss of balance and ability to focus, memory loss, nightmares, severe headaches, vertigo, nausea, incontinence and cognitive dysfunction. This was in addition to the permanent hearing loss and ringing in their ears. The husband also presented with a "baby talk" condition, where he would speak in a manner where he would drop conjunctions. For example, if a normal person would say, "I am going to go downstairs," the husband would say in a slowed and slurred speech pattern, "I go downstairs." The plaintiffs secured a host of doctors that were very well qualified in ENT, psychiatry, neuro-psychology, neurology and occupational hazards in support of their injury complaints. The plaintiffs argued that these injuries

caused them to lose their business and suffer other severe economic damages.

Defendants' psychiatric and neuropsychological experts testified that the plaintiffs were faking or greatly exaggerating their complaints. The defense neuropsychologist had the husband take a neuropsychological test called the MMPI-2, which has a component to it that examines faking and exaggeration in a litigation context (FBS or Fake Bad Scale). He testified that the husband scored the highest score he had ever seen.

The defense otolaryngologist testified that the husband does have bilateral symmetric hearing loss, but this type of hearing loss is not consistent with a blast injury. It is typically the result of prolonged noise exposure or a hereditary condition.

All the medical experts agreed that the most common injury from a blast is damage to the tympanic membrane in the inner ear. Neither plaintiff had any damage to this area, which would be highly unusual if they were subjected to the type of blast wave about which they testified.

Defendants successfully attacked the plaintiffs' economic damage claims by investigating their past financial records. Defense counsel discovered that the plaintiffs filed for bankruptcy about one to two years before the accident and had been losing money on their businesses for the preceding three years. Despite this fact, the plaintiffs' economic expert offered the opinion that the plaintiffs had a lost earning capacity of over $4 million.

CONSTRUCTION ACCIDENT: $8.8 MILLION

Court: Waukesha County Circuit Court
Case name: *William Eisler v. West Bend Mutual, et al.*
Case No: 07-CV-2734
Judge: Honorable Michael Bohren
Verdict: In favor of plaintiff
Award: $8.8 Million
Special damages: Past medical damages: $1,239,492
Date of incident: July 12, 2007
Disposition date: May 14, 2010

Attorneys for Plaintiffs: counsel for plaintiff, William Eisler: Thadd J. Llaurado and Keith R. Stachowiak of Murphy & Prachthauser; Counsel for Involuntary Plaintiff, Integrity Mutual Insurance Company (comp carrier): Patrick McNally of Borgelt, Powell, Peterson & Frauen

Defense attorney: Terry Booth of Piper & Schmidt (For West Bend Mutual Insurance Company and Coello & Associates)

Plaintiff's summary of the case status: On Friday evening, May 14, 2010, a Waukesha County Circuit Court jury awarded $8,799,492 in compensatory damages, and assigned 40 percent of the negligence causing the accident to masonry contractor, Coello & Associates, who was insured by West Bend Mutual Insurance.

This construction accident happened during the building of a residence in Sussex. Plaintiff William Eisler was a siding subcontractor on the job. On an early morning in July 2007, he was readying the job site for his siding crew's work and pulled on some plastic that had been left behind by the masonry contractors to protect their cement work from rain. As he pulled on the plastic the porch roof collapsed onto him, crushing his pelvis and causing numerous internal injuries, breaking both of his legs and crushing his pelvis. During the course of a rather lengthy recovery, Eisler was plagued by infections that resulted from the internal injuries that he sustained.

One of the significant factors that caused the porch roof to collapse was the replacement of 4x4 temporary support braces, which were nailed into the porch roof by the carpenter, with 2x4s that were placed on an angle and not nailed into the porch roof by the cement contractor. The cement contractor did need to remove temporary 4 x 4 supports in order to pour a concrete slab, but the plaintiffs contended that they should not have replaced the 4x4 supports with weaker 2x4 supports, and, also, should have nailed those supports into place to prevent them from slipping.

On the morning that jury selection began, the plaintiffs resolved their case against three other contractors on the job site, including the general contractor, the carpentry contractor and the trenching contractor. The amount received was $1,212,500 under a *Pierringer*-type release. The case went forward against the masonry contractor, and the jury returned a verdict finding them 40 percent responsible for the $8.8 million verdict.

MEDICAL MALPRACTICE: $23.2 MILLION

Case name: *Laron Birmingham, a Minor, by David P. Lowe, Guardian ad Litem and Kishia Lee v. Injured Patients and Families Compensation Fund, Lifetime OB/GYN, Ltd.; Dr. Donald Baccus; St. Joseph Regional Medical Center, Inc.*
Case no: 06CV006494
Disposition date: May 10-27, 2010
Court: Milwaukee County Circuit Court
Judge: Hon. Maxine White
Verdict/settlement: Verdict in favor of plaintiff
Amount: $23.2 Million
Special damages: Medical expenses: $187,402
Plaintiff's attorney: Jeffrey M. Goldberg, Jeffrey M. Goldberg Law Offices, Milwaukee
Guardian Ad Litem: David Lowe, Jacquart & Lowe SC, Milwaukee

Plaintiff's experts: Dr. Geoffrey Schnider, obstetrician-gynecologist (Houston, Texas); Dr. Richard Colan, plaintiff's treating pediatric neurologist who had seen the child from 8 hours of birth until the present (Oak Creek, Wisconsin); Dr. Gary Yarkony, a physiatrist (Elgin, Illinois); Charles Linke, Ph.D., an economist (Champaign, Illinois)

Plaintiff's rebuttal experts: Dr. Leonard Valentino, pediatric hematologist (Chicago, Illinois); Dr. Manohar Shroff, pediatric neuroradiologist (Toronto, Ontario); Dr. Gabrielle deVeber, pediatric neurologist (Oakville, Ontario)

Defendants' experts: Dr. John Bazley, obstetrician-gynecologist (Monroe, Wisconsin); Lisa Hanson, R.N., nursing expert (Graton, Wisconsin); Dr. Susan Farrell, developmental pediatrician (Greensboro, North Carolina;); Jubin Merati, Ph.D., economist (Los Angeles, California); Dr. Stephen T. Glass, pediatric neurologist (Bothell, Washington); Dr. Joel Meyer, neuroradiologist (Evanston, Illinois); Dr. Sinisa Dovat, hematologist (Madison, Wisconsin)

Plaintiff counsel's summary of the case: The case involved Laron Birmingham, who was born on May 3, 2005. His mother, Kishia, became pregnant in the fall of 2004. She had seen other physicians initially but changed to Lifetime OB/GYN, Ltd. in March

of 2005. She was admitted to the hospital late in the evening on April 30 with a diagnosis of preeclampsia and kept on a monitor. In the early morning hours of May 2, her water broke and she was transferred to labor and delivery. By 6:45 she was dilated to three cm and was shortly thereafter placed on magnesium sulfate for preeclampsia to prevent seizures. Subsequently at approximately 9:30 when she was still three cm dilated pitocin was added to augment contractions. By 2 p.m. she had reached only five cm and if a normal progression of labor had ensued she would have delivered in the late afternoon — early evening hours. However the labor did not progress as anticipated and her rate of dilation was far below normally accepted obstetric norms, which have a minimum of 1.2 cm per hour. By 6:30 in the evening a young resident, Christy South, M.D., recognized the failure to progress and inserted an intrauterine pressure catheter to measure the force of contractions. At about 5 p.m., Dr. Donald Baccus had taken over this patient from one of his partners and was responsible that evening for the labor. Dr. Baccus did virtually nothing with regard to monitoring the labor nor determining why labor was not progressing normally. In fact he testified it was normal for this patient. By approximately 8 p.m. she was noted to be dilated to a rim (approx. 9+ cm) with the fetus at 1+ station. More than two hours later she was still dilated exactly the same with no further fetal descent. Again Dr. Baccus did absolutely nothing to evaluate the failure to progress and intervene.

At trial, it was pointed out that more than 60 percent of the primary cesarean sections done in this country are done for failure to progress in labor. By 9 p.m., the fetal monitor strip was showing a normal baseline but minimal variability. There were virtually no accelerations from approximately 9 p.m. on and none of the doctors did anything to stimulate or seek an acceleration.

By 11 p.m. Dr. Baccus determined she was now fully dilated and instructed the nurses to have her push. He left the labor room and went back to his office, which was still in the building. Immediately upon the patient pushing late decelerations developed with every contraction. There was one contraction during when Kishia, the mother, did not push and the fetal monitor strip showed no deceleration. Thus it was clearly established that the decelerations were the result of the mother's pushing. Instead of the nurse instructing the patient to stop pushing and alerting the physician, the nurse allowed the pushing to continue. When Dr. Baccus returned at about 11:30 p.m. he also allowed the mother to continue pushing and thought he could deliver by forceps. He admitted that he did not know whether the fetus was OA or OP. He thought the baby was at +2 station according to the medical record and later in his discharge note indicated it was +2 to +3 station. In reality the baby had large caput succedaneum making accurate station determination very difficult. Despite knowing that the fetus was in a compromised position in terms of oxygenation status and knowing that the labor had not been progressing normally, Dr. Baccus instead of handling the forceps himself tendered the use of forceps to a resident. A third year resident did as instructed and applied Simpson Lucard forceps. These were forceps which the doctor normally used for a more difficult delivery. Thus, it countered his argument at trial that he thought it was an easy outlet since he did not use the forceps which he would normally use for this. The forceps were noted by the resident to slip off several times. Unbeknownst to Dr. Baccus the resident thought the fetus was an OA position, the normal position for delivery instead of inverted as an OP. After Joy Anderson failed with the forceps Dr. Baccus reapplied forceps on two occasions and then subsequently when forceps were not able to be used allowed the resident to apply vacuum for delivery. After vacuum there was a shoulder dystocia, which Dr. Baccus had to again step in to deliver.

The child was born with a cord blood pH of 6.96 and base deficit of -17.3. In addition the child had multiple skull fractures which plaintiff contended were from the forceps. Defendants claim skull fracture could occur in normal spontaneous delivery.

Defendants denied negligence but also claimed that since Laron's cerebral palsy was not spastic quadriplegic, the type normally seen in global hypoxia, that the injury actually resulted from a sinus venous thrombosis, a type of stroke. None of the treating doctors had diagnosed this or seen it but rather it was clearly a defense argument. They called as a witness a neuroradiologist from Chicago to whom they did not even show all of the initial CT scans, who was the only one to see a sinus venous thrombosis. In actuality they had previously disclosed the films to a pediatric neuroradiologist, Dr. Gordon Sze, from Yale who had indicated it was a hypoxic ischemic injury.

Plaintiff disclosed rebuttal experts including Dr. Gabrielle deVeber, a world renowned sinus venous thrombosis expert and Dr. Manohar Shroff, a pediatric neuroradiologist who works with Dr. deVeber in the area of stroke research who told the jury that this child never had a sinus venous thrombosis.

PERSONAL INJURY: $1.7 MILLION

Case name: *Rogers vs. Kleinhas, et al.*
Case no: 08-CV-1100
Court: Washington County Circuit Court
Judge: Hon. Patrick Faragher
Injuries alleged: Cervical Spine Injury which required two surgeries
Original amount sought: $2.5 Million
Highest offer: $1.7 Million
Verdict/settlement: Settlement
Amount: $1.7 Million
Disposition date: May 11, 2010
Original filing date: Oct. 9, 2009
Date of incident: Oct. 11, 2005
Plaintiff attorney: Patrick R. Griffin, Griffin Law Center, West Bend
Defense attorney: John T. Juettner, Crivello Carlson SC, Milwaukee
Plaintiff's experts: James E. Cain MD, Spinal Surgeon Edward G. Reshel MD, Neurologist Robert N. DeYoung MD, Clinical Psychologist Richard Hass MD, Pain Management Tim Riley, Sarah Holmes, Vocational Professionals, Inc.
Defendant's experts: Donald Feinsilver MD, Psychiatrist, Stephan Robbins MD, Orthopedist, Robert Weber, Accident Reconstruction, Debra Anderson, Neuropsychology, LeAnn Panizich, Vocational Analysis, Michael Campbell, Vocational Analysis, John Peters, Economist, Robert Zoeller MD
Insurance: Liberty Mutual Insurance
Plaintiff counsel's summary of the case: Plaintiff was a passenger in a truck which was being operated by a co-employee which was involved in a collision on Oct. 11, 2005. Plaintiff and the driver were in the course of employment. Plaintiff came to see counsel with a question regarding Worker's Compensation benefits. Upon investigation, they discovered that Plaintiff's employer had a waiver of the co-

employee exclusion in its liability policy. Plaintiff suffered a serious neck injury which required two surgeries. Case was settled at mediation after suit was filed. Mediator was Attorney James Smith of Smith, Gunderson & Rowen, SC.

PERSONAL INJURY: ZERO DOLLARS

Case name: *Anderson v. Shawn Lanier, Lanier, Inc., and American Family Mutual Insurance Co.*

Case no: 07-CV-919

Court: Eau Claire County Circuit Court

Judge: Hon. Michael Schumacher

Injuries alleged: Plaintiff claimed soft tissue injuries to the left wrist, shoulder, upper back, a herniated disk at L5-S1, activation of dormant, never treated for, degenerative conditions in his low back, SI joint, and Piriformis Syndrome, causing deep, burning, throbbing, aching pain deep in his right butt cheek, resulting in a right-sided limp, with severe activity limitations. Plaintiff claimed to the jury $50,026 in past medical expenses, $52,000 in future medicals, and past and future pain, suffering, and disability of $300,000-$350,000.

Original amount sought: $200,000

Highest offer: $25,000

Verdict/settlement: Jury returned defense verdict

Disposition date: March 5, 2010

Original filing date: Nov. 27, 2007

Date of incident: Dec. 4, 2004

Insurance company: American Family Mutual Insurance Company

Plaintiff attorney: Timothy J. Aiken, Aiken & Skoptur, Milwaukee and Raymond E. Krek, Krek & Associates SC, Jefferson

Defense attorney: Fred L. Morris, American Family Mutual Insurance Company, Eau Claire

Plaintiff's experts: Dr. Andrew Floren (occupational medicine), Dr. Melissa Wold (DPT), and Dr. James Klug (DC)

Defense experts: Dr. Gary Wyard (orthopaedic surgeon) and Dr. Leo Bronston (DC)

Defense counsel summary of the facts: On Dec. 2, 2004, at 6 p.m., plaintiff, 51- year-old Dean Anderson, was driving his 1998 Ford Contour north on 4th Street in Eau Claire, Wisconsin, up a steep hill, to a residence three to four houses past the intersection of 4th and Cedar Streets. The intersection of 4th and Cedar is uncontrolled, unlit, with high banks and trees on both sides of 4th Street. The 4th Street hill crests literally at the intersection with Cedar Street.

On Dec. 4, 2004, it was snowing, and the road surface was slippery. Plaintiff had been up the 4th Street hill on one previous occasion when it was slippery, and had slid back down the hill because he wasn't going fast enough.

On Dec. 4, 2004, he testified that he had to maintain the speed limit (25 mph) all the way up the hill to keep from sliding back down. Plaintiff testified that he first saw the 1992 Toyota Previa van, driven by 22-year- old defendant Shawn Lanier in the course of his employment as a Domino's delivery driver, when plaintiff was 2-3 car lengths south of the 4th-Cedar Street intersection, and that the van was 75 yards to his left down Cedar Street, approaching the intersection.

Within that 2-3 car length span before impact, plaintiff not only identified the van as being exactly 75 yards to his left, but also that the van was going too fast, and that it was a pizza delivery van, even though the van had no markings on it.

Defendant Lanier testified that he had delivered a pizza at a house about 1 1/2 blocks west of the 4th-Cedar Streets intersection, had gotten stiffed on the tip, and was headed east on Cedar Street, at about 25 mph, to his next delivery.

Lanier testified that he didn't see the plaintiff vehicle until he was in the intersection, about 10 feet away from it. Both drivers slammed on their brakes, colliding in the SE quadrant of the intersection, defendant's left front end to plaintiff's driver's side front corner. Plaintiff claimed soft tissue injuries to the left wrist, shoulder, upper back, a herniated disk at L5-S1, activation of dormant, never treated for, degenerative conditions in his low back, SI joint, and Piriformis Syndrome, causing deep, burning, throbbing, aching pain deep in his right butt cheek, resulting in a right-sided limp, with severe activity limitations.

On agreement of the parties at pre-trial, the court allowed a jury view of the intersection. On the first morning of trial, plaintiffs' counsel tried unsuccessfully to persuade the court to disallow the jury view.

The jury view was crucial to the defense, because plaintiff had the uncontrolled intersection right-of-way instruction in their favor, as well as a better witness.

The jury view gave the jury a good sense of what a hazard this intersection was, even on a good day. In addition to bringing three live doctors, plaintiff called a Catholic priest, a Methodist minister, five lay before/after and character witnesses.

Defendants successfully attacked the plaintiff's damage case through testimony regarding a pelvic CT and bone scan that had been done, both of which showed bone-on-bone right side hip arthritis, which all of the doctors agreed was unrelated to the car accident.

Defendant's experts, as well as a few notes from non-testifying treaters, also suggested that there was an element of functional overlay to plaintiff's physical complaints.

CONSUMER CREDIT: $10,910

Case name: *Capital One Bank, USA NA v. Summers*

Case number: Circuit court nos. 2008SC440, 2008CV242; Court of Appeals nos. 2009AP1337, 2009AP1338

Court: Green Lake County Circuit Court

Judge: William M. McMonigal

Original amount sought: $3,155 on the small claims action; $7,755 on the large claims action

Verdict/settlement: Verdicts on summary judgment

Outcome: Summary affirmance by the Court of Appeals

Verdict/settlement date: May 26, 2010

Original filing date: May 22, 2009

Plaintiff/respondent attorney: Paul H. Thielhelm, Kevin T. White, Kohn Law Firm SC, Milwaukee

Defendant/appellant attorney: Gary W. Thompson, Thompson Law Offices SC, Milwaukee

Plaintiff counsel's summary of case: Capital One brought two separate actions against Eugene Summers, one in large claims and the other in small claims, seeking judgments for amounts due on his credit card accounts after he defaulted.

Capital One sought summary judgment in both cases. In those

motions, it relied upon affidavits from a Capital One employee that included account statements showing the status of the accounts from a zero balance to the amounts in litigation. Summers countered that Capital One had not complied with the Wisconsin Consumer Act at Sec. 425.109(2), which requires that upon a defendant/customer's written request, the plaintiff/creditor must submit copies of the "writings evidencing any transaction" upon which the creditor's claim is based. Summers argued that Capital One should also be required to submit the credit card agreements and other information regarding the accounts' terms.

The circuit court concluded in the large claims case that the statute only required Capital One to provide account statements covering the period during which the balance had accrued. Further, Summers offered no evidence to support his argument that Capital One's claims fell outside the terms of his credit card agreement, and there was no evidence that Summers disputed any of the charges or statements. Therefore, the court granted summary judgment. Summary judgment was subsequently granted in the small claims case as well, after Summers failed to appear at an adjourned hearing date.

The Wisconsin Court of Appeals, Dist. II, consolidated the appeals and summarily affirmed both judgments. The court wrote, "Summers attempt to expand the definition of 'writings' in sec. 425.109(2) to include all documents relating to the creation of the account, including its terms and conditions, is inconsistent with *Newgard [v. Bank of America*, 2007 WI App 161]. The court additionally wrote that the statements submitted by Capital One fulfilled the goal of sec. 425.109(2): to provide the debtor with all the information necessary to determine how the creditor computed the amount due. Summers did not dispute that these were his credit card accounts or that he made the purchases and transactions detailed on the statements.

The case offers persuasive authority regarding the issue of the "writings evidencing" requirement, which has long been in dispute between debtor and creditor counsel.

PERSONAL INJURY: $3.85 million

Case name: *Ryan M. Lampe v. Allstate Insurance Company, Scott Campbell, Wausau Underwriters Ins. Co., Employers Insurance Company of Wausau, United Healthcare of Wisconsin, Inc., and Milwaukee County Department of Health and Human Services*

Case number: 06 CV 005921

County: Milwaukee

Judge: Dennis P. Moroney

Settlement amount: $3.85 million

Special damages: past medical expenses: $407,557.44; future medical expenses: $12,028,000; Future wage loss: $1,630,000

What each defendant paid: Allstate Insurance: $200,000; Wausau/Employers: $3.65 million

Date of occurrence: Jan. 4, 2005

Place: Cudahy High School, Cudahy

Plaintiff's attorneys: Daniel A. Rottier and Christopher E. Rogers, Habush Habush & Rottier, S.C.

Defendant's attorneys: Todd Smith and Linda Schmidt, Godfrey & Kahn, Counsel for Wausau Underwriters Ins. Co. & Employers Insurance Company of Wausau; John Swietlik and Michael Aiken, Kasdorf, Lewis & Swietlik, Counsel for Allstate Ixnsurance Company and Scott Campbell; Raymond Pollen and Daniel Mullin, Crivello, Carlson & Mentkowski, S.C., Co-counsel for Scott Campbell

Plaintiff's medical witnesses: (treating): Dr. William Warring, III and Dr. Dennis J. Maiman, Milwaukee

Plaintiff's expert witnesses: Scot Davis, High School Wrestling Coach; Leonard Lucenko, Ph.D. Recreational Risk Management; Karl Egge, Economist; Robert Taylor, Life Care Planner/Vocational Rehabilitation

Defendant's expert witnesses: Russell Hellickson, Former College Wrestling Coach; Fredrick McGaver, Former High School Wrestling Coach; Douglas Andrewski, Wrestling Referee; Linda Graham, Life Care Planner; Timothy Riley, Vocational Rehabilitation

Injuries/damages: As a result of a wrestling injury on Jan. 4, 2005, Lampe sustained a cervical spine dislocation called bilateral locked facet at C-5 and C-6. In Lampe's case, the C-5 vertebrae moved forward onto the C-6 vertebrae causing severe spinal cord injury. Immediately following the injury, Lampe lost movement to all of his extremities and sensation from his mid chest level down. Lampe is considered a tetriplegic. Lampe was hospitalized at Froedtert from Jan. 4, 2005 until his transfer to the Rehabilitation Unit in mid January. He was inpatient at Froedtert Rehabilitation until Feb. 22, 2006.

Due to hard work on his part, Lampe is able maneuver a manual wheelchair and has limited ability to independently type on his computer.

Lampe's past medical bills equaled $407,000. Plaintiff's damages' experts argued that the present value of Lampe's future medical expenses equal $12 million.

During Lampe's hospitalization, he received his acceptance letter to the Massachusetts Institute of Technology which, due to his injuries, he did not accept. Instead, he enrolled in the Milwaukee School of Engineering. He graduated from MSOE in 2009 with a Mechanical Engineering degree and is currently enrolled at the University of Wisconsin-Milwaukee pursuing a master's degree in architecture. Plaintiff's damages' experts opined that Lampe suffered a loss of earning capacity of $1.6 million. Defendants argued there was no loss of earning capacity.

Insurance coverage under the School District's policies totaled $6 million. Allstate Insurance, the homeowner's insurer for Mr. Campbell, had an additional $200,000 of coverage. The case settled in its entirety for $3.85 million.

Insurance company: Allstate Insurance Company, Scott Campbell's Home Owners Insurer, $200,000; Wausau Underwriters Insurance Company, School District of Cudahy Commercial General Liability Insurer, $3,000,000; Employers Insurance Company of Wausau, School District of Cudahy Excess Liability Insurer, $3,000,000

Plaintiff counsel's summary of the case: Plaintiff Lampe was a high school senior, and student wrestler at Oak Creek High School. On January 4, 2005, after the Oak Creek wrestling practice had ended, Lampe and fellow Oak Creek student wrestler Tony Megna were invited to participate in an extended after hours wrestling practice held at Cudahy High School. The extended wrestling practice was organized and run by defendant Scott Campbell, a Cudahy High School volunteer wrestling coach and Megna family friend. Campbell was the only wrestling coach present. The extra practice session was also attended by Cudahy High School wrestler Jake Lisowski and was videotaped by the father of Tony Megna.

Plaintiffs argued that the extra practice session was in clear violation of WIAA rules and that the head wrestling coach for Cudahy High School was aware of the extended practice and purposefully left the building before it began.

At the start of the after hours, extended practice, Tony Megna and

Jake Lisowski paired up and practiced takedown maneuvers for roughly two minutes. After this session, volunteer coach Campbell made the decision to live wrestle Lampe. Campbell was 43 years old and weighed 205 pounds at the time of the incident. Lampe weighed 189 pounds. Campbell had never met Lampe prior to the day of the incident. Campbell decided to wrestle Lampe without any wrestling warm up or instructions of any kind, and without Campbell making any determination of Lampe's skill level as a wrestler. Twenty-three seconds into their live match, Mr. Campbell took Lampe to the ground and fractured his neck. Lampe suffered catastrophic injuries as a result.

On June 27, 2006, plaintiff Lampe filed suit against Campbell, his home owners insurer Allstate Insurance Company, and the School District of Cudahy's liability carrier, Wausau Underwriters Insurance Company and their umbrella carrier, Employers Insurance Company of Wausau, alleging that the injuries and damages suffered by Lampe were caused by the recklessness of Campbell. The Complaint further alleged that Campbell was an insured "volunteer worker" under the policies issued by Wausau and Employers. The plaintiff did not bring a claim against the Cudahy School District itself.

Wausau and Employers filed a joint summary judgment motion on the grounds that Campbell did not fit the definition of "volunteer" under the policies. Both policies defined "insured" to include: "your volunteer workers only while performing duties related to the conduct of your business." The policies further defined "volunteer worker" as:

"A person who is not your employee and who donates his or her work and acts at the discretion of and within the scope of duties determined by you, and is not paid a fee, salary, or other compensation by you or anyone else for their work performed for you."

The trial court granted Wausau/ Employers motion for summary judgment, ruling that Campbell did not satisfy the definition of volunteer worker because at the time Lampe was injured, Campbell was not acting at the direction of or within the scope of duties determined by the District. The trial court held that because Cudahy's head wrestling coach did not require Campbell to conduct the practice and did not control his activities at practice, Campbell could not be considered a volunteer worker.

The plaintiff appealed, and on July 29, 2008, the Court of Appeals reversed the trial court, ruling that a reasonable inference could be made that the District's insurance policies covered Campbell as he was working at the direction of the District and engaging in the duties for which he had volunteered.

PERSONAL INJURY: $3 million

Case name: *Brian and Jennifer Collicott, et al. v. Whole Foods Market Group, Inc., et al.*

Case number: 05-CV-450

County: Chippewa County Circuit Court

Judge: Hon. Frederick A. Henderson

Settlement amount: $3 million

Special damages: $2.2 million to Brian Collicott for his injuries and $750,000 to Jennifer Collicott for loss of consortium.

What each defendant paid: The settlement preserves Whole Foods right to seek contribution from Chippewa Trails.

Date of accident: Oct. 16, 2005

Place: I-94 Westbound by Osseo

Plaintiff's attorneys: Daniel A. Rottier, Anne MacArthur and Joseph M. Troy, Habush Habush & Rottier S.C., Madison

Defendant's attorneys: Daniel A. Haws and Stacy R. Ertz, Murnane Brandt, Minneapolis, for Whole Foods Market Group, Inc., and Ace American Insurance Company; Michael Knippen, Traub Lieberman, Chicago, for Westchester Fire Insurance Company; Jay R. Starrett, Michael Rosenberg and Thomas Gonzales, Whyte Hirschboeck Dudek, Milwaukee, for Chippewa Trails, Inc., and Lancer Insurance Company; Thomas Graham for EMC Insurance

Plaintiff counsel's summary of the case: This lawsuit arises from a collision on I-94 Westbound when a semi-tractor-trailer combination unit owned by Whole Foods Market Group, Inc., and operated by its employee, Michael J. Kozlowski, went off the shoulder of the interstate and then overturned when Kozlowski attempted to pull back on the roadway. The semi blocked both westbound lanes of I-94 and both shoulders of the roadway. Soon after the semi rolled, a Chippewa Trails tour bus owned by Chippewa Trails and operated by its employee, Paul Rasmus, collided with the underside of the overturned semi. The tour bus was transporting Chippewa Falls High School students, teachers and chaperones from a band competition in Whitewater back to Chippewa Falls. Five people were killed, and many others were injured. Brian Collicott was one of the most severely injured of the surviving passengers.

Plaintiffs contended Kozlowski was negligent in the operation of the semi. Whole Foods admitted his negligence but contended that Chippewa Trails and its employee, Rasmus, were also negligent because of Chippewa Trails' failure to maintain the bus brakes in proper working order and for Rasmus' failure to see the semi in time to avoid the accident.

Injuries: Brian Collicott suffered multiple injuries in the accident a left femur fracture, a left tib/fib dislocation fracture, a fracture of his first rib, a sterna l fracture, thoracic spine fractures at T-5 and T-6 and severe post-traumatic stress disorder. He underwent multiple surgeries, including an open reduction of left ankle fracture dislocation with application of external fixator; an overwrap of short leg Robert Jones dressing to a longer Robert Jones dressing left distal femur fracture; an open reduction of distal femur fracture with application of internal fixator; an open reduction of distal tibial pylon fracture with application of internal fixator; splint removal wound evaluation, suture removal and application of a short leg cast left distal femur fracture and left ankle fracture; and, removal of deep hardware from his left leg femur. He and his wife also received individual and couple's counseling.

Medical specials: $256,215.65 in medical expenses.

Wage loss and loss of earning capacity: $67,807.19 in loss of past wages and temporary total disability and permanent partial disability along with a claim for loss of earning capacity based on the amount of pay he would have earned as an Assistant High School Band Director as a Middle School Band Director.

MOTOR VEHICLE ACCIDENT: $495,196 Settlement

Case name: *Hartwig v. Eland*

Case no.: 09-CV-220

Judge: Tim Duket

Court: Marinette County

Injuries: Fractured left forearm; permanent nerve damage in fore-

arm/elbow and arthritis in left wrist

Verdict/settlement: Settlement for plaintiff

First demand: $931,021

First offer: $125,000

Settlement amount: $495,196

Special damages: Plaintiff's past medical expenses: $56,386; plaintiff's past wage loss: $34,865 and an additional business expense in the amount of $34,865; plaintiff's future medical expenses: $15,348-$25,348; plaintiff's future loss of earning capacity: $331,772, and an additional future business expense of $33,000.

Disposition date: Sept. 15, 2009

Date of incident: May 19, 2006

Insurance: Nationwide Insurance Company

Policy limit: $500,000

Plaintiff's attorney: Ralph J. Tease, Jr., Habush Habush & Rottier SC

Defendant's attorney: Joseph J. Ferris, Kasdorf, Lewis & Swietlik, SC

Plaintiff's experts: Dr. John Bax & Dr. Jon Cherney, Hand & Upper Extremity Center of Northeast Wisconsin, Appleton; Dr. Thomas Leow, Bay Area Orthopedics, Marinette; Ross K. Lynch, Professional Rehabilitation Service, Madison

Plaintiff counsel's summary of the case: Defendant Ashley Eland attempted to change lanes. She didn't see Mr. Hartwig's vehicle in the next lane, and collided with his vehicle. The impact caused the Hartwig vehicle to leave the roadway, strike a traffic control signal and come to rest against a business sign.

Plaintiff's negligence theory: Defendant failed to properly and safely change lanes.

MOTOR VEHICLE ACCIDENT: $725,000 Settlement

Case name: *Bestul v. Bestul*

Mediator: John Teetaert

Verdict/settlement: Settlement for plaintiff

First demand: $1.1 million

First offer: $600,000

Settlement amount: $725,000

Special damages: plaintiff's past medical expenses: $140,457

Mediation date: July 15, 2009

Date of occurence: June 27, 2006

Insurance: American Family Mutual Insurance Company

Injuries: Emma Bestul suffered severe abrasions and burns to her bilateral lower extremities. She has undergone multiple procedures to repair the injuries but is left with residual scarring; permanent scarring to her bilateral lower extremities

Plaintiff's attorney: Ralph J. Tease, Jr., Habush Habush & Rottier SC

Plaintiff's experts: Dr. John Jensen, Plastic Surgery, Children's Hospital of Wisconsin, Milwaukee; Dr. Bradley Grunert, Psychology, Medical College of Wisconsin, Milwaukee

Plaintiff's attorney's summary of the case: On June 27, 2006, Cynthia Bestul and her two children were preparing to leave their home in Bestul's 2003 Subaru SUV. Bestul placed and belted the children in their seats. She then started the engine, place the vehicle in reverse, and was about to pull the vehicle out of the garage when she realized that she forgot her phone inside the house.

According to Bestul, she placed the vehicle in park, applied the parking brake and entered the home to grab her phone, leaving the engine running. When she returned to the garage she observed the vehicle rolling backwards down the driveway. Our client, Cynthia's daughter, Emma Bestul, exited the vehicle to try to stop it from rolling away. Emma Bestul was pinned beneath the vehicle and sustained severe bilateral lower extremity injuries.

Plaintiff's negligence theory: After an inspection of the vehicle failed to disclose any defect in operation of the transmission or parking brake, the plaintiff claimed that the operator of the vehicle failed to properly place it in park and/or apply the parking brake prior to the accident.

MOTOR VEHICLE ACCIDENT: $1.05 million Settlement

Case name: *Peter Andresek v. Gilbert Nelson*

County: Milwaukee County

Judge: Gerald Schmidt, mediator

Amount: $1,050,000

Special damages: Past medical expenses: $350,694; past wage loss: $26,354; future loss of earning capacity: $642,600 claimed

Date of incident: July 23, 2008

Insurance carrier: Acuity

Injuries claimed: Plaintiff's injuries (w/details): A traumatic closed head brain injury involving multiple skull fractures, bilateral frontotemporal contusions with intracranial hemorrhage; A comminuted fracture of the left fibula/tibia (ankle pilon type fracture) requiring multiple surgeries, after the use of an external fixator; A right lateral femoral condyle fracture (right knee) also requiring surgical repair; A left ulnar styloid (wrist) fracture; A right sacroiliac joint ligament injury combined with pubic symphysis diastasis (separation of the pelvic bone) An anterior lateral free tissue transfer (skin grafting) to battle the nasty infection and tissue damage to his left lower extremity; Various lacerations (thigh, back of head, etc.) and skin damage. The long road to recovery has left Andresek with the inability to smell, and its combined impact on his taste, diminished hearing, a changed personality, difficulty processing information with executive dysfunction, memory problems and other cognitive deficits (all the result of his traumatic brain injury), an ankle that is extremely weak, extremely painful and hideous to observe, a knee that is painful with simple activities, and the constant fear of an infection recurring and arthritis progressing further than it already has.

Verdict & settlement: Settlement for plaintiff

Original offer: $750,000

Disposition date: April 7, 2010

Plaintiff's attorneys: Laurence J. Fehring, Habush Habush & Rottier SC

Defendant's attorneys: Lance Grady, Grady, Hayes & Neary, LLC

Plaintiffs expert witnesses: Laura Liddicoat on THC, State Crime Lab; Gregory J. Schmeling, M.D., Orthopedics; John LoGiudice, M.D., Plastic Surgery; John Baumgart

Defendants expert witnesses: Dennis Skogen, Accident reconstruction

Plaintiff counsel's summary of the facts: Peter Andresek was operating his motorcycle within the posted speed limit northbound on South 145/Fond du Lac Avenue and was struck by Gilbert A.

Nelson. Nelson proceeded from the stop sign travelling eastbound, without warning, directly into Andresek's path. After the collision, Nelson veered into the westbound lanes and struck another vehicle.

Plaintiff's negligence theory: Defendant's failure to yield right of way from stop sign.

Defendant's position: Contributory negligence on plaintiff motorcyclist, charged with operating with THC in system.

PERSONAL INJURY: $653,021 Settlement

Case name: *Kyla A. Crooks v. Family Living Child Care Center*
Case number: 08-CV-607
Court: Brown County Circuit Court
Judge: John D. McKay, mediator
Settlement amount: $653,021
Special damages: Plaintiff's past medical expenses: $76,333; plaintiff's past wage loss: Mother: $2,450
Date of incident: July 26, 2007
Insurance carrier: West Bend Mutual Insurance Company; Liability Policy Limits: $1 million underlying liability and $1 million umbrella
Injuries claimed: Severe burns to 20 percent of her body; permanent scarring to Kyla's left face, left neck, left shoulder/trunk and back.
Verdict & Settlement: Settlement for plaintiff
Disposition date: Nov. 16, 2009
Plaintiff's attorneys: Ralph J. Tease, Jr., Habush Habush & Rottier SC
Defendant's attorneys: Joseph J. Beisenstein, Menn Law Firm, Ltd.
Plaintiffs expert witnesses: John N. Jensen, M.D., Medical College of Wisconsin, Milwaukee; Andrea L. Winthrop, M.D., Medical College of Wisconsin, Milwaukee; Brad Grunert, Ph.D., Medical College of Wisconsin, Milwaukee
Plaintiff counsel's summary of the facts: This accident occurred on Thursday, July 26, 2007 at the Family Living Childcare Center on Cormier Road in the city of Green Bay. During snack time Kyla Crooks was put into a highchair next to a crockpot of water, which was used for warming bottles. Kyla pulled the electric cord on the the crockpot causing it to spill on her.

MEDICAL MALPRACTICE: $5.9 million Settlement

Case name: *Roark, et al. v. Preferred Professional, et al.*
Case number: 10CV000746
County: Milwaukee County Circuit Court
Judge: William W. Brash, III
Settlement amount: $5.9 million
Date of incident: Dec. 16, 2007
Insurance carrier: Preferred Professional and IPFCF
Verdict & Settlement: Settled prior to trial
Award: Settlement — $5,900,000 with Charles Stierman
Date of incident: Dec. 16, 2007
Disposition date: June 17, 2010
Original filing date: Jan. 19, 2010
Plaintiff's attorneys: William M. Cannon, Cannon & Dunphy, S.C., Brookfield
Defendant's attorneys: Christopher Riordan, von Briesen & Roper SC, Milwaukee; Kathleen Bonville, Gutglass, Erickson, Bonville, Milwaukee
Plaintiffs expert witnesses: Dr. Michael Ward (rehabilitation) Dr. Thomas Hammeke (neuropsychology) Dr. Basil Jackson (psychiatry) Richard Ruvin (properties) LuRae Ahrendt (life care planner) Marvin DeVries (economist)
Defendants expert witnesses: None
Plaintiff counsel's summary of the case: Darlene Roark was admitted to St. Francis Hospital on Dec. 15, 2007 for chronic hip pain. In treatment of her pain, Roark was ordered to receive the narcotic pain medication Dilaudid via patient controlled analgesic (PCA) pump. In changing the syringe of the PCA pump, the nurse at St. Francis inserted a new syringe that was concentrated ten-times higher than the previous syringe. The nurse negligently failed to reprogram the pump for this new concentration.

As a result of the Dilaudid overdose, Roark suffered cardiopulmonary arrest. The cardiopulmonary arrest caused Roark severe hypoxic ischemic encephalopathy. Approximately two months after her admission to St. Francis, she was discharged to Sacred Heart Rehabilitation, Clearview Brain Injury Center and Muskego Health Care Center for extensive rehabilitation. During the past 2 1/2 years, Ms. Roark needed several hospitalizations for bladder infections, agitation/anxiety/ depression, botulism injections, swallowing studies and pain.

Her future care needs include treatment with physical therapy, occupational therapy, speech therapy, psychiatry, orthopedics, primary care medicine and skilled nursing care.

PERSONAL INJURY: $1.73 million Verdict

Case name: *Wright v. Edwards, et al.*
Case number: 08-CV-5171
Court: Milwaukee County Circuit Court
Judge: Charles F. Kahn, Jr.
Verdict amount: $1.73 million
Date of incident: Nov. 18, 2005
Injuries claimed: Plaintiff was shot in the right chest, with the bullet passing through his body and exiting out his back.
Verdict & Settlement: Bench verdict for plaintiff
Award: $1,730,089
Date of incident: Nov. 18, 2005
Disposition date: June 24, 2010
Plaintiff's attorneys: Charles J. Hausmann and Michael J. Donovan, Hausmann-McNally Law Offices, S.C., Milwaukee
Defendant's attorneys: Joe Neterval, Non-Profit Legal Services of Southeast Wisconsin, Milwaukee
Plaintiff counsel's summary of the case: This case questions whether a bouncer, who was a convicted felon, acted with intentional disregard of the rights of the plaintiff when he attempted to interrupt a verbal parking lot argument by firing a rifle at the patrons, causing serious gun shot injury to the plaintiff.

On Nov. 18, 2005, Youantis Wright and some friends went to Remedies Bar & Grill. At closing time, there was an argument in the

parking lot. Wright, who knew people on both sides of the argument, attempted to mediate. As the argument continued, Decosta Edwards, the bar's bouncer, brought a semi-automatic rifle out from the bar. As a convicted felon, Edwards was not allowed to own a gun. Edwards fired several shots in the air. When the crowd didn't disperse, he fired several shots into the crowd, one of which struck Wright in the chest.

MOTOR VEHICLE ACCIDENT: $1.129 million Settlement

Case name: *Xiornara Alfaro v. State Farm*
Case number: N/A — presuit settlement
Settlement amount: $1.129 million
Date of incident: Feb. 29, 2008
Insurance: State Farm
Injuries alleged: Multiple lower extremity injuries, including a right femur fracture, lacerated liver and kidney, fractured hip.
Verdict/settlement: Settlement
Settlement amount: $1.129 million
Verdict/settlement date: January 2010
Plaintiff's experts: Treating medical providers
Defense experts: None
Plaintiff's attorneys: Douglas E. Swanson, Habush Habush & Rottier SC, Waukesha
Defendant's attorneys: Negotiations were conducted via the Claims Office; unidentified legal counsel made decisions on State Farm's behalf.
Plaintiff counsel's summary of the case: Xiomara Alfaro, a foreign exchange student from Costa Rica, was a passenger sitting in the right rear seat of a vehicle driven by her teenage classmate. At the time of the accident Alfaro was living with a host family and attending high school in Waukesha. Alfaro's host "sister" was sitting in the front passenger seat. The driver of the vehicle made a left hand turn directly in front of oncoming traffic. As a result, Alfaro's host "sister" was killed and Alfaro received many serious injuries, including a lacerated liver, lacerated kidney, right femur fracture and multiple lower extremity injuries. She received the vast majority of her medical care in Waukesha. After she was discharged from the hospital she was unable to reside with her host family, so she was required to return to Costa Rica. She was left with permanent orthopedic injuries to her hip and right leg. The past medical bills of $238,000 were paid by the AFS Intercultural Exchange Program's health insurance. AFS did ultimately agree to waive its lien for all amounts paid. The future medical bills necessary to address plastic surgery issues total approximately $20,000. She is now 20 years old and pursuing her studies in Costa Rica.

MOTOR VEHICLE ACCIDENT: $214 Verdict

Case name: *Evans v. American Family Mut. Ins. Co., et al.*
Case number: 07-CV-664
Court: Sauk County Circuit Court
Judge: Patrick Taggart
Verdict amount: $214 (defense verdict)
Date of incident: Oct. 18, 2004
Original filing date: Oct. 20, 2007
Date of disposition: Feb. 24, 2010
Insurance: American Family Mutual Insurance Company
Injuries claimed: Plaintiff complained of continued pain as a result of injuries to her neck and upper back.
Verdict & Settlement: Jury returned a defense verdict.
Original amount sought: Plaintiff requested $69,097 in closing.
Highest offer: None
Award: Verdict: $285 in past medical expenses, $0 in pain and suffering. Plaintiff ultimately received $213.75 after reducing the $285 award by the 25 percent liability apportioned to plaintiff.
Plaintiff's attorneys: Eric P. Molberg, Chiquoine & Molberg, SC, Reedsburg
Defendant's attorneys: Chester A. Isaacson, Corneille Law Group, LLC, Madison
Plaintiffs expert witnesses: Rana Haupt, PA
Defendants expert witnesses: Alvin Krug, MD
Defense counsel's summary of the facts: In this case, the Corneille Law Group defended the driver of a motor vehicle who collided with plaintiff's vehicle when pulling out of a gas station into traffic. Plaintiff complained of continued pain as a result of injuries to her neck and upper back. In closing argument, plaintiff requested an award of $9,097 for medical expenses and $60,000 in pain and suffering. The jury apportioned 25 percent of the liability to plaintiff and awarded her $285 — the cost of her initial visit to the emergency room. Plaintiff received no pain and suffering award.

PERSONAL INJURY: $95,000 Settlement

Case name: *Ashenhurst v. Nicholson, et al.*
Court/Judge: Milwaukee County Circuit Court, Judge Maxine White
Settlement amount: $95,000, settled prior to trial
Date of incident: Aug. 27, 2007
Original filing date: Jan. 14, 2010
Disposition date: July 12, 2010
Insurance: State Farm Mutual Automobile Insurance Company
Injuries claimed: As a result of the accident the plaintiff suffered neck pain, whiplash and tinnitus. Her past medical expenses were $9,157.53. Her only permanent injury as a result of the accident is tinnitus. She suffers tinnitus in both ears, with more pronounced and higher pitched ringing in the left ear. The tinnitus is present 24 hours a day. Plaintiff also has permanent audio discernment problems meaning as a result of the accident she has trouble processing conversations in large settings where there may be more than one speaker. Plaintiff also experiences pain from high pitched noises such as screams and sirens. Future medical expenses were limited due to the nature of the injury. A $5,500.00 expense for neuromonic treatment was sought as future damages.
Original amount sought: $100,000 policy limits
Original offer: $95,000
Plaintiff's attorneys: Jonathan P. Groth, Groth Law Firm, S.C., Brookfield
Defendant's attorneys: Richard T. Mueller, Mueller, Goss & Possi, S.C., Milwaukee

Plaintiffs expert witnesses: Dr. David R. Friedland, M.D. Ph.D.

Plaintiff counsel's summary of the facts: Plaintiff was rear-ended by the defendant while traveling on Interstate 894 in the City of Milwaukee. The Defendant admitted to the police that he may have "dozed off." The collision totaled the Plaintiff's vehicle. The following day the Plaintiff sought treatment for upper back and neck pain. Within a week her treating doctors noted "some new tinnitus." Thereafter she was prescribed physical therapy and underwent a battery of diagnostic tests. The neck and back pain subsided leaving only the constant tinnitus symptoms. The plaintiff works in a professional setting, attending meetings and conferences on a regular basis. The tinnitus did not cause any substantial wage loss but did cause significant distractions and problems during the work day. Ultimately, plaintiff was seen by Dr. Friedland, the Chief of the Department of Otolaryngology and Communication Sciences of the Medical College of Wisconsin. Although nothing can be done to cure tinnitus, with the help of biofeedback and "masking" therapy, treatments and lifestyle changes, plaintiff is able to control the symptoms. Pre-suit State Farm Insurance argued that tinnitus will go away over time and pointed to a remote ear infection as a potential cause of the tinnitus. After the case was put into suit State Farm did not hire a doctor to dispute any diagnosis medical care.

PERSONAL INJURY: Zero dollars

Case name: *Jackson v. Harris Ace Hardware of Beloit, Inc., et al.*

Case number: 08-CV-2516

Court: Rock County Circuit Court

Judge: James Welker

Verdict amount: Zero dollars, jury returned defense verdict

Insurance: General Casualty Company of Wisconsin, Inc.

Injuries claimed: Soft-tissue injuries to right shoulder, right arm, back and right hip.

Verdict & settlement: Jury returned defense verdict

Original amount sought: $10,000

Original offer: Zero dollars

Award: Zero dollars

Date of incident: April 11, 2007

Original filing date: Dec. 23, 2008

Date of disposition: May 17, 2010

Plaintiff's attorneys: George Chaparas, Weigel, Carlson, Blau & Clemens, S.C., Milwaukee

Defendant's attorneys: Chester Isaacson, Corneille Law Group, L.L.C., Madison

Defense counsel's summary of the facts: In this case, the Corneille Law Group defended Harris Ace Hardware of Beloit, Inc. and one of its employees in a lawsuit brought by a store patron. The patron claimed that he suffered injuries to his right shoulder, right arm, back and right hip after he was involved in an altercation with an employee of Harris Ace Hardware. Defendants vehemently denied these allegations, arguing that such an altercation never took place and that plaintiff therefore suffered no injuries. Prior to trial, the defendants moved for the dismissal of plaintiff's claim for medical expenses. This motion was granted. Consequently, plaintiff was only permitted to seek compensation for his alleged pain and suffering. In closing argument, plaintiff requested an award of $10,000. After approximately ten minutes of deliberation, the jury returned a unanimous verdict of no negligence on the part of the employee of Harris Ace Hardware. Plaintiff was therefore awarded nothing.

TRADE SECRET THEFT, PATENT INFRINGEMENT AND COMPUTER HACKING: $25 million settlement

Case name: *Metso Minerals Industries, Inc. v. FLSmidth-Excel LLC, et al.*

Injuries claimed: Profits lost from sales of mining crushers sold by the defendants in competition with Metso's crushers.

Case name: Metso Minerals Industries, Inc. v. FLSmidth-Excel LLC, et al.

Case number: 07-CV-00926

Court: U.S. District Court, Eastern District of Wisconsin

Judge: Hon. J.P. Stadtmueller

Settlement amount: $25 million paid in settlement by the defendants

Date of incident: 2004

Original filing date: Oct. 17, 2007

Date of disposition: The case was dismissed pursuant to agreement of the parties, as part of the settlement, on June 10, 2010.

Plaintiff's attorneys: David R. Cross, Raymond D. Jamieson, Johanna M. Wilbert, Patrick J. Murphy, Quarles & Brady LLP, Milwaukee

Defendant's attorneys: John V. Picone, III, Hopkins & Carley, San Jose, CA; David G. Hanson, Reinhart Boerner Van Deuren S.C., Milwaukee

Expert witnesses: There were about two dozen expert witnesses named in total by the parties, including patent validity experts, damage experts, computer forensic experts, Chilean law experts, U.S. patent law experts, and experts on the reasonableness of the measures Metso took to protect its trade secrets.

Noteworthy evidentiary issues: One of the individual defendants asserted the Fifth Amendment right against self-incrimination at the defendant's deposition. This presented interesting evidentiary issues concerning the admissibility at trial of the deposition testimony and the inferences that could be drawn from the defendant's assertion of the Fifth Amendment, both for the claims against the individual defendant and that defendant's employer.

Summary of the facts: Metso Minerals Industries, Inc. makes and sells high performance conical rock crushers that are used in the mining and construction industries. defendant FLSmidth-Excel ("Excel") also makes and sells high performance conical rock crushers that are used in the mining and construction industries. Defendant Excel Foundry & Machine, Inc. ("Foundry") makes spare parts for many different types of equipment, including the crushers that were at issue in this case. Defendants Doug Parsons and Richard Parsons were involved in the start up of defendant Excel. Defendant Foundry provided reverse engineering information to defendant Excel to aid in the design of some of Excel's crushers.

Defendant Joseph Martinez and defendant Kenneth Olson were previously employed by Metso, and defendant Christopher Wade

was previously employed by Angus, a machine shop that did work for Metso. All three of them were then hired by defendant Excel. Metso alleged that these three defendants, Martinez, Olson, and Wade, misappropriated what Metso asserts are some of its trade secrets, which consist of detailed design drawings, technical data sheets and computer aided design files related to the design and manufacture of certain models of Metso's conical crushers. Defendants Martinez, Olson and Wade denied those claims.

Metso alleged that defendant Excel and defendant Foundry used Metso's trade-secret information to design and build Excel's conical crushers. Defendant Excel and defendant Foundry denied those claims.

Metso claimed that defendants Richard Parsons, the Executive Vice President of Foundry and Doug Parsons, the President and CEO of Foundry and former CEO of Excel, both knew of (or had reason to know of) and actively encouraged the acquisition and use of Metso's trade-secrets. Richard Parsons and Doug Parsons denied Metso's claims.

Metso also alleged that some early sales of defendant Excel's crushers and defendant Foundry's crusher parts infringed a Metso patent. That patent expired on Feb. 24, 2006. defendant Excel and defendant Foundry admit they infringed Metso's patent, but they contend that the patent is invalid.

Finally, Metso alleged that defendant Cheryl Sullivan, a former Metso employee who was then employed by defendant Foundry, accessed without authorization Metso's password-protected dealer website in 2004 while working at defendant Foundry. Ms. Sullivan refused to respond to Metso's allegations. She had instead asserted her 5th Amendment Constitutional right not to respond.

Pre-trial motions: Judge Stadt-mueller issued several important summary judgment decisions in favor of Metso in May 2010. The Court's decisions eliminated the grounds for several defenses that had been asserted by the defendants, paving the way to have Metso's claims decided in a jury trial, which had been scheduled for June 21. Among other things, Judge Stadtmueller made clear that Metso had standing to sue for theft of trade secrets related to one of its crushers, even though it did not hold legal title to the trade secret information. Judge Stadtmueller's decisions also made clear that Metso was entitled to proceed with both its patent infringement claims and trade secret theft claims, and did not have to choose between these theories of IP protection.

MOTOR VEHICLE ACCIDENT: $665,000 settlement

Injuries claimed: Fractured leg; knee replacement
Court: Iowa County Circuit Court
Case name: *William Backes vs. Daniel Eveland*
Case number: 08CV47
Judge: William Dyke
Verdict & settlement: Settlement in favor of plaintiff
Case name: William Backes v. Daniel Eveland
Case number: 08CV47
Settlement amount: $665,000
Resolution date: Sept. 4, 2009
Insurance: American Family; liability policy limits: $1 million
Plaintiff's attorneys: Douglas E. Swanson, Habush Habush & Rottier SC, Waukesha
Defendant's attorneys: Stephen Murray, Coyne Schultz Becker & Bauer
Original amount sought: $1,000,000
Original offer: $350,000
Award: $665,000
Special damages: Past medical expenses: $200,000; past wage loss: $29,000; future medical expenses: $60,000
Resolution date: Sept. 4, 2009
Trial date: Sept. 16, 2009
Plaintiffs expert witnesses: Dr. Michael Anderson, Orthopaedic Surgery, Milwaukee VA Hospital
Defendants expert witnesses: Dr. David Fetter, Orthopaedic Surgery, Brookfield
Plaintiff counsel's summary of the facts: Plaintiff was driving through intersection. Defendant driver struck rear of vehicle waiting to turn left after it had cleared the intersection. That vehicle was pushed across center lane and head on collision into plaintiff.
Plaintiff's negligence theory: Defendant rear ended vehicle pushing it into plaintiff's vehicle.

The collision occurred in Arena, Wisconsin at the intersection of Hwy 14. Daniel Eveland struck the rear of a stopped vehicle, driven by Kathleen Schulz, which was waiting to turn left. As a result, Schulz's vehicle was pushed across the center line directly into the path of the plaintiff. Schulz was dismissed from this action.

PERSONAL INJURY: $425,000 settlement

Case name: *Frye, et al. v. Liberty Mutual Fire Ins. Co., et al.*
Injuries claimed: Cervical and lumbar spine disc injuries
Court: Milwaukee County Circuit Court
Case number: 08CV003124
Judge: Hon. Mel Flanagan
Verdict & Settlement: Settled prior to trial
Amount: $425,000
Date of incident: March 16, 2005
Disposition date: July 23, 2010
Original filing date: March 3, 2008
Plaintiffs attorney (firm): Kevin R. Martin, Cannon & Dunphy, S.C., Brookfield
Defendants attorney (firm): Daniel Jungen, Stilp Law Office, Brookfield
Insurance carrier: Liberty Mutual Fire Ins. Co.
Plaintiffs expert witnesses: Dennis Maiman, M.D.
Defendants expert witnesses: Morris Soriano, M.D.
Summary of the facts: The plaintiff was a rear-seat passenger in a vehicle that was rear-ended by the defendant on March 16, 2005. The plaintiff had immediate complaints of neck and low-back pain and was placed on conservative treatment for both.

After conservative treatment failed, the plaintiff underwent a lumbar laminectomy in September 2006. Post-operatively, he continued his home exercise program for his neck. The plaintiff developed worsening neck pain with radiculopathy in 2009. After additional conservative treatment failed, the plaintiff underwent two cervical spine surgeries in August and September 2009.

The defendants admitted that the lumbar spine injury and surgery were causally related to the subject collision but disputed the cervical spine injury and surgeries. The case settled at mediation with Chuck Stierman.

WAGE CLAIMS: $4 million settlement

Case name: *Jeff Spoerl, et al. v. Kraft Foods Global Inc.*
Case no.: 09-2691
Court: Seventh Circuit Court of Appeals
Judge: Frank Easterbrook
Verdict & settlement: Court affirmed District Court ruling
Award: Approximately $4 million
Disposition date: Aug. 2, 2010
Plaintiffs attorney (firm): James Olson, Lawton & Cates, Madison; Sarah Siskind of Miner, Barnhill and Galland was co-counsel
Defendants attorney (firm): William Conley and Daniel Kaplan of Foley & Lardner, Madison
Summary of the facts: On June 16, 2009, Judge Barbara Crabb ruled in favor of hourly employees at the Oscar Meyer plant in Madison who had challenged Kraft's failure to compensate them for donning and doffing personal protective equipment such as captive footwear (shoe rubbers, over-the-calf rubber boots, or work boots), hairnets, beard nets, hardhats or bump caps, frocks or career clothing. The parties agreed that the unpaid wages as of April 30, 2008 totaled nearly $2.2 million. Pursuant to the order in place, Kraft deposited $2.2 million into the Settlement Fund in July 2009. Based on this decision, Kraft will also have to pay for the employees' time spend donning and doffing since May 1, 2008, plus pre-judgment interest. This is an additional award likely to exceed $2 million.

Kraft did not pay wages for donning and doffing because it argued their collective bargaining agreement and the Fair Labor Standards Act preempted Wisconsin Law.

MOTOR VEHICLE ACCIDENT: $450,000 settlement

Case name: *Jerome N. Fox vs. Steve G. Johnson (Carew Concrete & Supply Co.)*
Injuries claimed: Closed head injury; blunt chest trauma with pneumothorax; facial lacerations; scapula and clavicle fracture; 5th rib fracture; transverse process fractures T2-T4; and dental fracture #10 and cerebral artery occlusion with cerebral infarction.
Verdict & Settlement: Case settled prior to trial
Original amount sought: $542,134
Original offer: $325,000
Award: $450,000
Special damages: Past medical expenses: $110,248
Date of incident: September 17, 2008
Plaintiffs attorney (firm): Craig A. Christensen, Habush Habush & Rottier, S.C., Appleton
Defendants attorney (firm): N/A
Insurance carrier: West Bend Mutual Insurance Company; Liability Policy Limits: $1 million
Summary of the facts: Jerome Fox was traveling northbound on County Highway J when his vehicle was suddenly struck in the passenger side, by the defendant, Steven G. Johnson. Johnson was driving a cement truck traveling westbound on County Highway JJ and failed to stop at the stop sign. The passenger in Fox's vehicle was killed.

MEDICAL MALPRACTICE: $3 million settlement

Case name: *Kenneth Plants and Susan Plants v. Cully White, D.O., The Medical Protective Company and Wisconsin Patients Compensation Fund*
Injuries claimed: Damage to left sciatic nerve
Court: Milwaukee County Circuit Court
Case number: 05-CV-001-497
Judge: Hon. David Hansher
Verdict & Settlement: Settled prior to trial
Original amount sought: $3 million
Original offer: None until 3 weeks before trial
Award: $3 million
Date of incident: Feb. 26, 2004
Disposition date: June 8, 2009
Original filing date: Feb. 15, 2005
Plaintiffs attorney (firm): Ted M. Warshafsky, Warshafsky, Rotter, Tarnoff & Bloch, S.C., Milwaukee
Defendants attorney (firm): William R. Wick, Nash, Spindler, Grimstad & McCracken, Manitowoc
Insurance carrier: The Medical Protective Company
Plaintiffs expert witnesses: James Stoll, M.D.; Sean Keane, M.D.; Sanford Larson, M.D.; Itzhak Matusiak, Ph.D.
Defendants expert witnesses: Dr. George Cybulski; Dr. John Woodford; Dr. W. Stephen Minore; Dr. Marvin Wooten; Dr. N. Timothy Lynch; Tim Riley; Dr. David Jones
Summary of the facts: Dr. Cully White, a neurosurgeon at St. Luke's Hospital Milwaukee, was to do a disc operation on the right side of the back of plaintiff Kenneth Plants, a carpenter. Instead, he operated on the left side. He did not inform the plaintiff, but created records from the operative report on, indicating it was a right-sided operation. After the surgery, it was clear that Plants had suffered severe disabling injury to his left sciatic nerve. There were no offers to settle until 3 weeks before trial, when defense accepted plaintiff's offer.

PERSONAL INJURY: $1.1 million settlement

Case name: *Bernice Buse v. Sentry Insurance*
Injuries claimed: Severe damage to right leg.
Case number: Settled pre-suit
Mediator: Chuck Stierman
Verdict & Settlement: Settled prior to trial
Amount: $1.1 million

Date of incident: Jan. 15, 2009

Disposition date: Aug. 31, 2010

Plaintiff's attorney (firm): Kelly L. Centofanti, Centofanti Law SC, Mequon

Insurance carrier: Sentry Insurance

Plaintiff's expert witnesses: Treating surgeon: Dr. Roberts

Summary of the facts: Bernice Buse, a 71-year-old woman, was struck by a motor vehicle while crossing Drexel Avenue to get her mail. She was struck by the right front end of the motor vehicle. The driver claimed he did not see her until he hit her, although she was wearing a reflective vest. There were no skid marks, and she was thrown over 33 feet. She suffered a severe right open tibia and fibula fracture. This was a limb-threatening injury and she was at high risk for losing her leg. She required many surgeries related to her initial injury and her subsequent infection in the leg. She now has a permanent partial impairment of the leg.

MOTOR VEHICLE ACCIDENT: $1.5 million settlement

Case name: *Frohlich v. Yakima Products, Inc., William Gordon*

Injuries claimed: A subarachnoid hemorrhage, left pneumothorax, fractured left scapular wing, fractured left third rib, comminuted left femur fracture, a broken nose and facial fractures, and cuts and abrasions to her face and body. The plaintiff suffered permanent orthopedic injuries to her left lower leg, a moderate closed head injury and post-traumatic stress disorder.

Court: Lake County, Ill.

Case number: 09L103

Verdict & settlement: Settlement reached in mediation

Amount: $1.5 million

Special damages: Past medical expenses: $245,000; past wage loss: $26,000; future medical expenses: $67,000

Date of incident: May 14, 2007

Plaintiff's attorney (firm): Robert L. Jaskulski, Habush Habush & Rottier, S.C., Milwaukee

Defendant's attorney (firm): Stephen B. Frew, Leahy, Eisenberg & Fraenkel, Ltd., Chicago, Attorney for Yakima Products, Inc; Thomas M. Devine, Hostak, Henzl & Bichler, S.C., Racine, Attorney for Gordon

Insurance carrier: Specialty Risk Services (Yakima Products, Inc.); Illinois National Insurance Company (Yakima Products, Inc.); Progressive Insurance Company (Gordon)

Plaintiff's expert witnesses: Dennis Skogen (mechanical engineering/accident reconstruction); Stan Johnson (product design/product safety/human factors); Dr. Carol Vetter (Orthopedics); Dr. Ari Kaz (Orthopedics); Dr. Sarah Swanson (Neuropsychologist); Dr. Christina Keppel (Psychiatrist); Dr. Wendy Frietag (Psychologist)

Defendant's expert witnesses: James Sprague (mechanical engineering); Dr. Christopher Grote (Neuropsychologist)

Summary of the facts: The plaintiff, Starr Frohlich was driving her passenger car southbound on Interstate 94 in the Township of Libertyville, Illinois, heading for the O'Hare Airport. She was driving in the far left lane of the tollway when a bicycle was ejected off a bike rack on the rear of a vehicle being operated by the defendant, William Gordon. Attempting to avoid the ejected bicycle, Frohlich moved into the left hand shoulder and, upon returning to the travel portion of the roadway, slid into the center lane of travel where she was struck by a truck in the passenger side of her vehicle.

The plaintiff brought strict liability and negligence claims against Yakima, Inc., the manufacturer of the bike rack utilized by Gordon on the date of the accident, claiming that the bike rack was defective and Yakima was negligent in its design and instructions because the rack failed to adequately secure bicycles to the vehicle, thereby causing ejection of bikes into the roadway. Specifically, the plaintiff, through her retained experts, alleged that the cradle/rubber strap retention system of the rack failed to adequately secure bikes to the rack and that the rack should have been designed with a safety strap to prevent ejection if there was a failure of the cradle/rubber strap retention system.

Plaintiff's negligence: The defendant claimed that the plaintiff was negligent as to lookout and speed at the time of the accident in question and that Gordon was negligent in securing the bicycles to the Yakima rack.

MOTOR VEHICLE ACCIDENT: $128,000 settlement

Case name: *Tracy et al. v. American Standard et al.*

Injuries claimed: Subdural hematoma, post traumatic seizure and left lung contusion; Exacerbation of pre-existing migraine headaches

Court: Waukesha County

Case number: 08-CV-04374

Verdict & Settlement: Settlement reached in mediation

Award: $128,000

Special damages: Past medical expenses: $59,000; past wage loss: $1,864

Date of incident: Feb. 6, 2006

Plaintiffs attorney (firm): Robert L. Jaskulski, Habush Habush & Rottier S.C., Milwaukee

Defendants attorney (firm): James R. Sommers, Hunter & Sommers, LLC, Waukesha, Attorney for Chapman and American Standard; James S. Smith, Smith, Gunderson & Rowen, S.C., Brookfield, Attorney for Larosa and Society Ins.

Insurance carrier: American Standard Insurance Company (Chapman); Society Insurance (Larosa)

Plaintiffs expert witnesses: Dr. Jonathan Spivack, Neurologist

Defendants expert witnesses: Dr. Cass Terry, Neurologist

Summary of the facts: The plaintiff, Tasha Tracy, was a passenger in a vehicle being operated by one of the defendants, Stephanie Chapman. Chapman was driving her vehicle south on Highway 67 in Oconomowoc. The operator of the second vehicle involved in this accident, Angelo Larosa, was driving his car east approaching Highway 67. As Larosa began to turn left onto Highway 67, he was hit by Chapman's vehicle. Chapman ran a red light and failed to yield the right of way to the Larosa vehicle, pulling out directly into Larosa's path, causing a collision to occur between the two vehicles. As a result of the collision, Tracy suffered a subdural hematoma, post traumatic seizure and left lung contusion.

MOTOR VEHICLE ACCIDENT: $1.2 million settlement

Case name: *Jessica L. Rozga v. Whole Foods Market Group, Inc., et al.*

Case no.: 08-CV-612

Court: Chippewa County Circuit Court

Judge: Hon. Paul J. Lenz

Date of accident: Oct. 16, 2005

Settlement amount: $1.2 million paid by the insurer for Whole Foods Market Group, Inc.; also received a reduction of $85,000 in the worker's compensation lien.

Injuries: Rozga sustained the following injuries in the accident: fractures of her pelvis; fractures of her lumbar spine; fractures of her right hand; fracture of her septum; fracture of her right scapula; fractures of 6 ribs; laceration of her liver.

Date of settlement: Sept. 23, 2010

Attorney for Plaintiff: Dean P. Laing of O'Neil, Cannon, Hollman, DeJong & Laing S.C., Milwaukee

Attorneys for Defendants: Daniel A. Haws of Murnane Brandt, St. Paul, Minnesota, for Whole Foods Market Group Inc., Michael J. Kozlowski and Ace American Insurance Group; Michael S. Knippen of Traub Lieberman Straus & Shrewsberry, LLP, Chicago, for Westchester Fire Insurance Company; Jay R. Starrett of Whyte Hirschboeck Dudek S.C., Milwaukee, for Chippewa Trails, Inc. and Lancer Insurance Company; and Thomas J. Graham, Jr. of Weld, Riley, Prenn & Ricci S.C., Eau Claire, for Emcasco Insurance Company

Summary of the facts: While a student at UW-Eau Claire, Jessica L. Rozga was employed part-time as the color guard captain for the Chippewa Falls High School marching band. During the weekend of Oct. 14-16, 2005, the Chippewa Falls High School marching band participated in a band competition at the UW-Whitewater. On their way back from the competition, the motorcoach in which they were traveling collided with a semi owned by Whole Foods Market Group, Inc. and operated by one of its employees, Michael J. Kozlowski. Just prior to the accident, the semi left the right travel lane and entered the sloped grassy roadside on I-94, three miles south of Osseo, at which time Kozlowski steered hard to the left, causing the semi to re-enter the pavement and overturn onto its right side, completely blocking both westbound lanes and shoulders of I-94. Kozlowski contends that he was pulling off the road to urinate in the ditch when he lost control of the semi. The National Transportation Safety Board, which investigated the accident, determined that Kozlowski "fell asleep at the wheel because he did not use his off-duty time to obtain sufficient sleep to operate the vehicle," veered off the road, and lost control of the semi when attempting to reenter the road.

The motorcoach carrying the Chippewa Falls High School marching band in which Rozga was a passenger collided with the overturned semi at an estimated speed of 69-76 mph, killing five people and severely injuring numerous others, including Rozga. Kozlowski's attorneys admitted that Kozlowski "made a mistake in judgment" and "was going too fast" just prior to the accident, and Whole Foods Market Group, Inc. ultimately stipulated to liability.

Rozga underwent several surgeries to repair the fractures of her pelvis, right hand and septum, and to reconstruct the right side of her chest due to her extensive rib fractures. She remained in the hospital for approximately one month and incurred $304,136.78 in medical bills, but made a remarkable recovery and was able to return to UW-Eau Claire for the winter semester in January 2006.

Rozga has scarring from the accident and surgeries, and will likely need to deliver her children by cesarean section due to the hardware placed in her pelvis during her pelvic surgery.

MOTOR VEHICLE/TRUCK ACCIDENT: $1.975 million settlement

Case name: *Kendra A. Joseph vs. Randall J. Wolter, Van-Hof Trucking, Inc., and Continental Western Insurance Co.*

Case no: 09-C-743

Court: Hon. William M. Conley, United States District Court for the Western District of Wisconsin

Verdict/settlement: Settlement

Amount: $1,975,615, representing remaining policy limits.

Special damages: Past medical: $482,869; past wage loss: $23,261; future medical expenses: $83,670

Disposition date: July 14, 2010

Date of incident: April 8, 2008

Plaintiff counsel: Lynn R. Laufenberg, Michael J. Jassak, Laufenberg, Stombaugh & Jassak, S.C.

Defense counsel: Emile H. Banks, Jr., Vicki L. Arrowood, Emile Banks & Associates, LLC

Injuries: Left pneumothorax; right scalp laceration; right distal radius and proximal ulnar fracture; left clavicle fracture; right condyle fracture; Atlanto-occipital dislocation; left cerebellar stroke; transverse process fractures on the left at C7, T1 and T3; on the right at T8 and T9; rib fractures, multiple; permanent scarring

Procedures: Closed reduction right proximal ulnar and distal radius fracture; open reduction internal fixation of right wrist and forearm; inferior vena cava filter; halo placement; chest tube placement; right scalp laceration repair; occiput to C3 posterior instrumented fusion with left iliac crest bone graft; halo pin tightening twice.

Plaintiff's experts: Treating Medical providers, including, John A. Hanson, Ph.D. (psychologist), Golden Valley, Minn.; Gary J. Krupp, Ph.D., L.P. (neuropsychologist), Minneapolis; Thomas N. Conner, MD (orthopedic surgeon), Minneapolis; Matthias Feldkamp, MD (neurosurgeon), Maplewood, Minn.; F. Mahjouri, MD, FACS (plastic surgeon), Fridley, Minn.; and Charles M. Collins, (trucking expert), Appleton, Wis..

Plaintiff's attorney summary of the facts: The plaintiff, a salesperson, traveling westbound on state Route 95 approaching the intersection of state Route 93 in Arcadia, was injured when a semi northbound on state Route 93 tried to make a right turn onto state Route 95 at a high rate of speed. While attempting to turn onto state Route 95 eastbound, the semi tipped over on top of the plaintiff's passenger vehicle and severely crushed the vehicle. The semi driver claimed that his brakes were not able to control the vehicle's speed as it traveled down the hill into Arcadia. Plaintiff alleged multiple violations of federal regulations by both the driver and his employer relating to: operation of unsafe vehicle; inspection, repair and maintenance of

brakes; pre and post-operation daily Inspection Reports; record keeping relating to sub. (3); violations of Hours-of-Service Rules; overweight — 36,500 lbs. vs. legal 34,000 lbs. (Axles 2 and 3); and negligent driving skills once confronted with emergency of his own making.

Case settled before depositions of the truck company's officers and owners were conducted.

MEDICAL NEGLECT: $2.25 million settlement

Case name: *Phillip Wilms, Special Administrator for the Estate of Cynthia Wilms vs. Extendicare Health Services, Inc.; Extendicare Health Network, Inc.; The Willows Nursing and Rehabilitation Center; Laurier Indemnity Company, Ltd*

Injuries claimed: Nursing home resident suffered post-surgical infection, which went untreated or unnoticed by nursing staff and lead to her death.

Court: Dane County

Case number: 09-CV-1602

Verdict & settlement: Settlement

Award: $2.25 million

Special damages: Medical and funeral bills in excess of $110,000

Disposition date: Sept. 16, 2010

Plaintiffs attorney (firm): Matthew Boller, Boller & Vaughan, S.C., Madison

Insurance carrier: Laurier Indemnity Company, Ltd

Summary of the facts: Cynthia Wilms was a 72 year old married woman who underwent voluntary hip replacement surgery at St. Mary's Hospital on July 25, 2007. She was discharged to The Willows Nursing and Rehabilitation Center, an Extendicare Health Services, Inc. nursing home. She was admitted to the facility for short-term rehab, specifically occupational and physical therapy. The nurses were also to monitor the surgical incision for signs and symptoms of infection. Thirteen days after admission to The Willows, Cynthia's wound went from being "healed," to being open in three areas with three different colors of drainage. The nurses noted that the orthopedic surgeon was to be called in the morning; however no orthopedic surgeon was ever called. Despite complaints from Cynthia Wilms and her husband Phil, the nurses simply changed the dressings once or twice daily, and did not notify the physician despite her complaints of increased pain at the incision site. Finally, on Aug. 27, 2007, Cynthia was at home with her husband and a physical therapist from Pro Step, to assess Cynthia's ability to be transferred home and ambulate in her home. When she began to have a fever and chills at home, Phil Wilms took her to the emergency room immediately. At the hospital, Cynthia told the emergency room doctors that she had increased drainage and saturation of her dressing daily, since Aug. 12, 2007. That day, she was diagnosed with "obvious" infection where her left total hip replacement was performed. Sadly, after the hardware was removed, Cynthia suffered known complications of the hip infection which included renal failure and caused her death. Mrs. Wilms suffered from the most common type of Staph aureus infection following total hip replacement. It was undisputed with both plaintiff's and defendants' experts that 99.5 percent of individuals who suffer from a staph infection post-surgical hip replacement, recover if treated timely.

MOTOR VEHICLE ACCIDENT: $29,867 verdict

Case name: *Bellamy v. Allstate Ins. Co.*

Court: Milwaukee County

Case number: 2008CV014027

Liability: Adverse driver's negligence in striking Robert Bellamy's vehicle while he was stopped at a red-light.

Injury: Muscle strain/sprain to lower back.

Jurisdiction: Milwaukee County.

Verdict: In plaintiff's favor for $29,867

Breakdown of award: Past pain & suffering: $10,000; future pain & suffering: $10,000; past medical expenses: $8,885; future medical expenses: $982

Verdict date: Sept. 22, 2010.

Judge: Hon. Timothy Dugan

Plaintiffs attorneys: Peter M. Young and Benjamin S. Wagner, Habush Habush & Rottier, S.C., Rhinelander and Milwaukee

Defendant attorney: Gregory Knapp, Smith Amundsen, LLC, Milwaukee.

Pretrial negotiation: Defense filed a statutory offer of settlement for $7,500; Plaintiff filed a statutory offer of settlement for $25,000

Trial type: Jury.

Plaintiffs experts: Dr. Jessica Heller, D.C.; Dr. Enid Trotman, M.D.

Defendant experts: Dr. James Flesch, M.D.

Liability apportionment: Defendant accepted 100 percent liability hours before the beginning of trial, and the parties stipulated to this percentage.

Summary of facts: On Nov. 5, 2005, Robert Bellamy — a retired building trades worker from Milwaukee — was legally stopped at the red light at the intersection of Atkinson and Capital in Milwaukee. Allstate's insured — Arvilla Hunter — failed to stop behind Mr. Bellamy and collided with Mr. Bellamy's automobile. Mr. Bellamy immediately began to feel pain in his lower back, and was transported to Columbia St. Mary's emergency room.

The jury learned that Mr. Bellamy had never been actively treated for a lower back injury during his entire 73 years of life prior to the accident. After the accident, he treated with his primary care physician —Dr. Enid Trotman — as well as with Dr. Heller of Downtown Chiropractic in Milwaukee. As a result of the accident, Mr. Bellamy endured more than 65 rounds of treatment to his lower back between emergency care, primary care, chiropractic care, and physical therapy. Ultimately, Mr. Bellamy's treating doctors determined that he had reached maximum medical improvement roughly one-year after the accident, and was thereafter subject to palliative care for his lower-back injury.

On Oct. 3, 2008 Mr. Bellamy and his wife of over 60-years — Ruby — filed suit in Milwaukee County Circuit Court against the defendant driver and her insurance company — Allstate. The Wisconsin Laborer's Health Fund and the United States Department of Health and Human Services were also included as defendants.

The Bellamys alleged that Arvilla Hunter was negligent in her operation and control of her automobile, and that as a result of her having caused the accident, she and her insurer — Allstate — were liable to the Bellamys for injuries sustained as a result of the accident.

Between the date of the accident and the first day of trial, Allstate Insurance denied that their insured caused the accident and the injuries. On Sept. 20, 2010, Allstate finally admitted that Arvilla

Hunter caused the accident. Allstate continued to dispute Mr. Bellamy's injuries and the dispute went before a Milwaukee County Jury between Sept. 20 and Sep. 22, 2010, Hon. Timothy Dugan, presiding.

The defendant — Allstate Insurance — hired Dr. James Flesch to review Mr. Bellamy's medical records and to examine Mr. Bellamy to determine the extent of his injuries. After reviewing Mr. Bellamy's records for two hours and forty-five minutes, Dr. Flesch met with Mr. Bellamy for 45 minutes on Feb. 5, 2010. Testifying live at trial, Dr. Flesch opined that Mr. Bellamy's low back was injured in the accident, but that injury was healed by Jan. 17, 2006, and that the low back pain experienced by Mr. Bellamy after that date was unrelated to the accident.

Mr. Bellamy's treating physicians — Dr. Enid Trotman, M.D. and Dr. Jessica Heller, D.C. — testified that the musculature in Mr. Bellamy's lower back had been injured as a result of the accident, and that his dormant pre-existing degenerative disc disease had been aggravated by the accident. His treating doctors further testified that Mr. Bellamy's lower back had not healed as of the date identified by IME Dr. Flesch, but rather that Mr. Bellamy continues to suffer from the lower back injury caused by the accident.

After three days of trial, the jury returned a verdict in plaintiff's favor.

PRODUCT LIABILITY/ WRONGFUL DEATH: Zero dollar verdict

Case name: *Sara Simonson, Ashley Simonson, Alexandra Simonson vs. Morbark, Inc.*

Injuries claimed: Massive head trauma led to near-instant death.

Court: Jackson County Circuit Court

Case number: 07-CV-96

Verdict & settlement: Verdict for defendant

Award: Zero dollars

Special damages: Plaintiffs claimed approximately $614,000 in loss of earning capacity, and unspecified loss of society and companionship damages, which would be capped by statute at $350,000. Medical and funeral expenses were stipulated to at $9,767; defendant's economist calculated economic damages at approximately $80,000.

Disposition date: Oct. 8, 2010

Plaintiffs attorney (firm): Jesse M. Cohen, Law Offices of Robert A. Stutman, Fort Washington, Penn.; Robert Caplan, Law Offices of Robert A. Stutman, Fort Washington, Penn.; Ronald Poquette, Law Offices of Ron Poquette, Eau Claire

Defendants attorney (firm): Josh Johanningmeier, Godfrey & Kahn S.C., Madison; Bryan Cahill, Godfrey & Kahn S.C., Madison

Plaintiffs expert witnesses: Jeffery Petersen, P.E., Engineering, Skogen Engineering, Madison; Jay Smith, Vocational Expert, Red Cedar Consulting, Menomonie

Defense expert witnesses: Jeffrey Cordray, Economist, Christensen Associates, Madison

Summary of the facts: On Oct. 8, 2010, at the conclusion of a four-day jury trial in Jackson County, a 12-person jury returned a unanimous defense verdict in a wrongful death product liability case.

The plaintiffs — three adult daughters of a man killed in a workplace accident at a Black River Falls, Wisconsin sawmill in 2006 — brought strict liability and negligence claims to trial against Morbark, Inc., the manufacturer of a commercial wood chipper in use at the mill.

The wood chipper, manufactured in 1979, included a chipper with a shaker unit (for sorting the chips by size) attached to the top of the chipper. A 150-pound steel counterweight, rotating at 220 revolutions per minute, located approximately six feet above the floor of the mill and just below the shaker box, shook the shaker box. The counterweight was guarded by Morbark laterally with a steel shield, but had no factory guard beneath it. Plaintiffs and their expert contended that the lack of a full guard beneath the counterweight rendered the product defective.

There were no eyewitnesses to the accident, but the decedent was seen seconds before cleaning up in the area below the rotating counterweight while the chipper was running, and was found unresponsive on the floor below, with a serious head injury. Evidence at the scene suggests he somehow raised himself up and came in contact with the rotating counterweight; the autopsy confirmed that massive head trauma killed him instantly.

OSHA investigated the accident and issued a single citation, with 32 violations, to the employer. Five of the violations related directly to the accident scenario, including failures to abide by lockout-tagout requirements and a failure to guard the counterweight, an obligation that fell to the employer based on the manner of installation of the chipper. Evidence of those violations was admitted and the employer witnesses conceded not only the violations, but their ignorance of the requirements prior to the accident.

Between 1979 and 2006, Morbark added a full guard beneath the rotating counterweight to new production chippers. Because Wisconsin law treats this as a subsequent remedial measure admissible to prove defect in a strict liability case (but not in a negligence case), it is inadmissible to prove negligence. Consequently, during the plaintiffs' case-in-chief evidence of the design change was admitted.

Morbark countered with evidence that this accident was the only one of its kind since the product was designed and first sold in 1968, and also presented evidence of more than 11 million estimated safe hours of use for the same model of chipper with identical guarding prior to the 2006 accident. The negligence of the employer and the decedent were, of course, emphasized.

Morbark moved for directed verdict on the strict liability claim at the close of plaintiffs' case, based on substantial modifications to the chipper between the time it left Morbark in 1979 and the accident in 2006, including the removal or painting over of all warning and instruction decals and a modification to a chip chute on the machine that led the decedent to the area where the accident occurred. The judge granted directed verdict on the strict liability claim, leaving just negligence for the jury, and taking the design change — already shown to the jury — out of consideration (a curative instruction was

required).

The 12-person jury deliberated for approximately three hours before returning a unanimous verdict that Morbark was not negligent, and assigning negligence and fault to the employer (60 percent) and the decedent (40 percent).

PERSONAL INJURY: $525,000 settlement

Case name: *Tyrone Vinson vs. Rafal Wyroslak, JAS Trucking, Occidental Fire & Casualty*

Injuries claimed: Crush injury to right thigh, back sprain; Vinson sustained a permanent (eight percent ppd) injury to his right thigh, which has permanent scarring and some tissue loss. He also sustained a permanent (three percent) thoracic soft tissue injury. Finally, Vinson suffered psychological trauma due to the incident. Vinson made an excellent recovery and returned to work.

Court: Milwaukee County Circuit Court

Case number: 09-CV-7800

Verdict & settlement: Settlement

Award: $525,000

Special damages: $125,000 in past medical bills; $25,000 in past wage loss

Disposition date: Oct. 15, 2010

Plaintiffs attorney (firm): Benjamin S. Wagner, Habush Habush & Rottier, Milwaukee

Defendants attorney (firm): Thomas Klug, Borgelt, Powell, Peterson & Frauen, Milwaukee

Insurance carrier: Occidental Fire & Casualty

Plaintiffs expert witnesses: Carl Rieken, trucking expert, Milwaukee; Dennis Skogen, accident reconstructionist, Skogen Engineering, Madison; Dr. N.M. Reddy, MD Physical Medicine and Rehabilitation, Froedtert/MCW, Milwau-kee; Dr. Brad Grunert, Psychologist, Froedtert/MCW, Milwaukee

Summary of the facts: Tyrone Vinson was a dock worker/materials handler at the XpedX plant in Pewaukee. The defendant arrived at the plant on the morning of March 12, 2009 to deliver a load. Upon arrival, the defendant backed into the dock and disengaged his tractor from the trailer. Vinson placed a jackstand at the nose of the trailer for support. After Vinson unloaded the trailer, the defendant backed his tractor into Vinson, pinning him between the tractor and trailer. Vinson was behind the tractor attempting to free the jackstand from underneath the trailer. Liability was contested.

ACCOUNTING MALPRACTICE AND MISREPRESENTATION: $3.8 MILLION SETTLEMENT

Case names: Two separate actions were brought and settled among the same parties: *American Trust & Savings Bank v. Philadelphia Indemnity Insurance Company, et al., Dane County Case No. 07-CV-1175; American Trust & Savings Bank v. Philadelphia Indemnity Insurance Company, et al., Western District of Wisconsin Case No. 09-474*

Injuries claimed: Lender's loss of funds; Borrower's insolvency

Court: Dane County, Western District of Wisconsin

Case numbers: 07-CV-1175, 09-474

Verdict & settlement: Settlement

Original amount sought: $1.65 Million

First offer: $400,000

Last offer: $3.8 Million

Special damages: Damages in state action: loss of loaned funds to corporate borrower; Damages in federal action: borrower's insolvency (borrower's claims assigned to American Trust)

Disposition date: Oct. 5, 2010

Plaintiffs attorney (firm): Robert J. Kasieta, Andrew J. Parrish, Kasieta Legal Group, LLC, Madison

Defendants attorney (firm): Bruce Schultz, Joseph Cavitt, Coyne, Schultz, Becker & Bauer, S.C., Madison

Summary of the facts: Between 2001 and 2005, Shullsburg Creamery, Inc., received accounting services from certified public accounting firms Vaassen Pluemer, CPA's, LLC, Bremser, Schommer, & McHugh, LLC and its successor, Bremser Group, Inc. During that same time, American Trust & Savings Bank was the commercial lender for Shullsburg Creamery. In December 2005, Shullsburg Creamery entered Chapter 128 receivership, where it was liquidated.

In April 2007, American Trust filed suit in Dane County Circuit Court against the accounting firms alleging claims for accounting malpractice and misrepresentation. The claims against Vaassen Pluemer, CPA's settled at mediation with Susan Steingass. In April 2009, the receiver for Shullsburg Creamery assigned all of its claims to American Trust, and a separate action was commenced against the Bremser firms in June 2009 in the Federal District Court for the Western District of Wisconsin.

American Trust alleged that the Bremser accountants failed to meet the standard of care for certified public accountants and committed negligent and intentional misrepresentations about Shullsburg Creamery's financial condition, upon which both American Trust and Shullsburg Creamery were relying. The defendants claimed that they met the standard of care, that their representations were true, and that American Trust and Shullsburg Creamery did not rely on their representations.

The state court action against the Bremser accounting firms and their malpractice insurer was tried in October 2009, and the jury found in favor of American Trust on all claims and awarded $3 million in compensatory damages. The defendants appealed the judgment.

While the state court appeal was pending, the federal action proceeded to trial in October 2010. During that trial, the parties reached a global settlement of $3.8 million on all of American Trust's claims against the defendants.

PATENT INFRINGEMENT: ZERO DOLLARS

Case name: *Learning Curve Brands, Inc. v. Munchkin, Inc.*

Injuries claimed: Damages

Court: Western District of Wisconsin

Case number: 09-CV-416

Judge: Barbara B. Crabb

Verdict & Settlement: Summary Judgement of Non-

Infringement in Favor of Defendant

Disposition date: Sept. 29, 2010

Original filing date: June 30, 2009

Plaintiffs attorney (firm): Marshall Schmitt, Michael Best & Friedrich

Defendants attorney (firm): Josephine K. Benkers, Quarles & Brady LLP; John L. Knoble, Knoble, Yoshida and Dunleavy

Plaintiffs expert witnesses: Timothy Osswald and Mark Hosfield

Defendants expert witnesses: Timothy Shedd and Mark Meitzen

Summary of the facts: Plaintiff Learning Curve Brands Inc. alleges that one of Munchkin's sippy cup products infringed one of its patents. The District Court found in favor of Defendant on non-infringement.

PERSONAL INJURY: $56,934 verdict

Name of case: *Wundrow v. Ryall, et al.*

Court: Rusk County

Case number: Case No. 09 CV 41

Judge: Hon. James C. Babler, Barron County

Injuries alleged: Right lower back pain radiating into hips and legs and left rotator cuff tear

Original amount sought: Aug. 13, 2008: demand for $100,000

Highest offer: Feb. 12, 2009: $20,000

Outcome of case: $56,934 Verdict

Verdict or settlement date: June 22, 2010

Original filing date: March 4, 2009

Incident date: Dec. 3, 2007

Plaintiff attorney: Tracy N. Tool, Bye, Goff & Rohde, River Falls

Defense attorney: Charles G. Norseng, Wiley Law, Chippewa Falls

Plaintiff experts: John Cragg, MD

Defense experts: Paul T. Wicklund, MD

Insurance company: American Family Insurance

Summary of case: Plaintiff, Alan Wundrow, was a passenger in a Chevy truck driven by defendant, Lawrence A. Ryall. The two had gone out for dinner. On the return home, defendant encountered slippery conditions and saw an animal in the road. Defendant lost control of the truck and entered a ditch, striking a tree head on. Plaintiff and defendant walked away from the vehicle to a nearby residence, the owner of which drove them home. Plaintiff did not seek medical treatment for about five weeks following the accident.

MOTOR VEHICLE ACCIDENT: $1.4 Million Settlement

Case name: *Kathleen Kreie vs. ITC Electrical Technologies*

Court and case number: U.S. District Court, District of Wyoming, Case No.: 10-CV-2035

Injuries alleged: Trauma to the right eye, necessitating surgical removal; Extensive midfoot injuries including Lisfranc fractures to both the second and third metatarsal head, fractures to the medial cuneiform and fracture to the lateral aspect of the cuboid of the right foot; Permanent orthopedic injuries to right foot.

Special damages: Past medical expenses: $197,033.10; Future medical expenses: $67,711 to $76,698; Past lost earnings: $15,435.03; Future lost earning capacity of plaintiff, a Roman Catholic nun, was disputed

Settlement amount: $1.4 million

Description of outcome: Settlement

Original filing date: July 19, 2010

Date of incident: Sept. 26, 2008

Plaintiff's attorneys: Donald J. Jacquart, Paul R. Jacquart, Jacquart & Lowe, Milwaukee; local counsel: Robert Tiedeken, Wolf & Tiedeken, Cheyenne, Wyo.

Defendant's attorney: John Fairless, Lambdin and Chaney, Denver.

Insurance company: EMC Insurance Company

Summary of case and noteworthy issues: Plaintiff Sister Kathleen Kreie was traveling southbound on Highway 135, in Fremont County, Wyo. A driver employed by Defendant ITC Electrical Technologies, failed to yield the right of way and made a left-hand turn into plaintiff's lane of traffic, colliding nearly head on at a high rate of speed into plaintiff's vehicle.

PERSONAL INJURY: $703,802 verdict for plaintiff

Case name: *Darcey Swenson, Individually and as Special Administrator for the Estate of Ricky M. Swenson v. Oshkosh Truck Corporation and General Casualty Company of Wisconsin*

Case no.: 08-CV-0600

Court: State of Wisconsin, Circuit Court, Dane County

Judge: Hon. Maryann Sumi

Damages or injuries incurred: Death

Verdict: $703,820

Disposition date: July 21, 2010

Date of incident: Sept. 6, 2007

Place of incident: Stoughton

Plaintiff's attorney, firm: Timothy S. Trecek, Habush Habush & Rottier, Milwaukee

Defense counsel: Jeff Spoerk, Quarles & Brady, Milwaukee

Plaintiff: Ricky Swenson

Age: 47 at the time of incident

Occupation: Cement truck driver

Annual earnings at time of injury: About $38,000

Medical expenses: $53,820

Plaintiff's allegations of liability: Negligence and strict liability.

Defect: Oshkosh Truck failed to design a railing, guard, or barrier to prevent inadvertent contact with the rotating fins of the front discharge cement mixer at the discharge area.

Defendants' counter-allegations or defenses: Oshkosh Truck claimed that Ricky Swenson's negligence was the sole cause of the accident and that in order for his head to contact the rotating blades of the drum, Mr. Swenson would have had to work and contort his body in order to get into the pinch point, which was adequately guarded by location.

Defendant argued that no other injuries of deaths occurred in the approximately 30 years the mixer was manufactured, no other manufacturer designed a dedicated guard on a front discharge mixer, and any potential hazard was guarded by location and the component bracketry made it impossible to accidently go where Mr. Swenson went in order to cause his death.

Plaintiff's experts: Karl Egge, Ph. D, Economist, St. Paul, Minnesota; Kevin L. Schutz, M.S. LPC, Earnings, Madison; Dennis Skogen, P.E., Design, Madison

Oshkosh Truck expert: Mike Rogers, Design, Naperville, Illinois; Tom Quigley, Design, Oshkosh Truck, Oshkosh

Summary of the case: Ricky M. Swenson was killed on Sept. 6, 2007 when his head inadvertently came into contact with the rotating fins at the discharge end of a front discharge cement mixer while performing his normal operating duties. The subject mixer, known as an S-series mixer, was designed and manufactured by defendant Oshkosh Truck Corporation. There were no witnesses to the incident, so it is unknown how he came into contact with the rotating fins. Although there is a platform to access the area where the fins are located, there are no dedicated guards, barriers, or railings separating the operator from the rotating fins.

Because of this design, plaintiff contended that Oshkosh Truck was negligent in the design of the subject mixer. Discovery revealed that Oshkosh Truck owned two subsidiary corporations, McNeilus and London, who manufactured rear discharge mixers and incorporated dedicated guards on its rear discharge mixers at the discharge end. Plaintiff contended that this type of design should have been utilized on the subject mixer, and such a design would have prevented Ricky Swenson's death.

Defendant argued that in the history of Oshkosh Truck manufacturing front discharge mixers (almost 30 years), there were no known injuries, let alone deaths, caused by plaintiff's alleged defect of failure to provide a dedicated guard. Additionally, Oshkosh argued that no other manufacturer of front discharge mixers provided a guard, like suggested by plaintiff in this case.

Although the court ordered mediation at the initial scheduling conference, counsel for Oshkosh Truck informed the court approximately six months before trial that they would not offer any money, and refused to participate in a mediation.

After an eight day trial and nine hours of deliberation, the jury found that Oshkosh Truck was 100 percent negligent in the design of the Oshkosh front discharge cement mixer.

Ricky Swenson was survived by his wife, one adult daughter and one 17-year-old daughter as of the date of the trial.

PERSONAL INJURY: $183,549 verdict

Case name: *Dobrzynski v. M.J. Electric, Inc.*

Case number: 07-CV-9

Court: Clark County Circuit Court

Judge: Hon. James Mason

Injuries alleged: Right ankle malleolar fracture with associated ligament/tendon damage; injuries to the left foot including metatarsalgia and hammer toe resulting from gait changes associated with right ankle fracture.

Highest offer: No offers

Jury verdict: Liability: M.J. Electric 83 percent, Dobrzynski 17 percent

Verdict amount: $183,549

Past medical expenses: $50,300

Future medical expenses: $26,560

Past pain and suffering: $106,240

Property damage: $449

Verdict date: Nov. 5, 2010

Original filing date: Jan. 8, 2007

Incident date: July 23, 2006

Plaintiff attorney: Brian F. Laule, Bye, Goff & Rohde, Ltd., River Falls

Defense attorney: John Schroth, Chapin & Associates

Plaintiff experts: Eric Caporusso, DPM

Defense experts: Douglas A. Becker, MD

Insurance company: Travelers Insurance

Summary of case: In the fall of 2005, Mr. Dobrzynski, a central Wisconsin dairy farmer, granted an easement to companies erecting a transmission line through rural Clark County. Plaintiff alleged that, toward the end of construction, Mr. Dobrzynski sustained injuries, including an ankle fracture, when he stepped from his tractor, on a site on or near the easement, and landed on fence posts left in the tall grass of Mr. Dobrzynski's hayfield. Plaintiff argued that M.J. Electric, as the general contractor, was negligent in causing Mr. Dobrzynski's injuries, and that the fence posts that caused his injury were identical to fence posts used on the construction site. The defendant maintained that there was no liability on the part of M.J. Electric because there was no information indicating who placed the posts in the injury-causing location, and argued that in any event damages were minimal.

Procedurally, defendant M.J. Electric, along with other defendant-contractors, had been granted summary judgment in early 2008, a decision reversed by the Court of Appeals with respect to defendant M.J. Electric.

WRONGFUL DEATH: $2.2 million verdict

Case name: *The Estate of Benjamin Koppa and Jeff and Kathy Koppa v. Sheboygan Falls Mutual Insurance Company and Patricia S. Ward*

Injuries claimed: Wrongful death of an adult, 23 year old son and conscious pain and suffering by the son from the time of the collision to the time of death.

Court: Oneida County Circuit Court

Case number: 09-CV-249

Judge: Hon. Mark A. Mangerson

Verdict: $2,201,292.13

Special damages: $51,292.13 in past medical, hospital and funeral expenses

Date of verdict: Aug. 12, 2010

Plaintiffs' attorneys: Russell T. Golla of Anderson, O'Brien, Bertz, Skrenes & Golla, Stevens Point

Defendants' attorneys: James O. Conway of Olsen, Kloet, Gunderson & Conway, Sheboygan

Insurance carrier: Sheboygan Falls Mutual Insurance Company

Plaintiffs' expert witnesses: Larry Sparling, accident reconstruction; Dr. David Strayer, Salt Lake City, Utah, expert on impairment caused by cell phone use; Chris Caruso, Henderson, Nevada, expert on interpretation of "black box" data; and Dr. Randy Wojciehoski, conscious pain and suffering

Defendants' expert witnesses: Dr. Donald Gore, conscious pain and suffering; and Dennis Skogen, accident reconstruction and interpretation of "black box" data

Noteworthy evidentiary issues: Admissibility of evidence of cell phone use; pre-impact fear and apprehension of serious injury or

death; conscious pain and suffering post impact; and seatbelt use

Summary of case: Benjamin Koppa entered a gentle curve to his right going 73 miles per hour in a 55 mile per hour zone. Defendant driver was approaching from the opposite direction. As Koppa continued through the curve, according to the "black box," his vehicle gradually slowed from 73 to 71 to 65 and to 62 miles per hour approximately two seconds before the collision when he slammed on the brakes and made an evasive hard steering input to his left. His vehicle left yaw marks from two of the four tires on his vehicle which started in his lane of travel, crossed the centerline and continued through the point of impact near the shoulder of the defendant's lane of travel. Liability and damages were contested. The defendants contended that Benjamin lost control coming through the curve, entered the defendant's lane of travel and caused the collision. The plaintiffs contended that Benjamin was in full control of his vehicle which gradually slowed coming through the curve when he was suddenly confronted with the defendant's vehicle in his lane of travel and engaged in a very strong evasive maneuver by slamming on his brakes and turning to his left. Evidence also suggested that the defendant driver may have been talking on her cell phone at or immediately before the time of the collision. The jury apportioned negligence at 70 percent to the defendant and 30 percent to Benjamin. The jury awarded $150,000 for the 66 minutes to 2 hours that Benjamin endured conscious pain and suffering before his death and $2 million for Benjamin's parents' loss of society and companionship. The parties stipulated that the past medical expenses were $51,292.13. Given the cap of $350,000 on the parents' claim for loss of society and companionship, the verdict would have resulted in a judgment in the amount of $490,904.50. However, as a result of a statutory offer of settlement, the defendants paid $527,000 to settle the claim post verdict.

PERSONAL INJURY: $4.5 million settlement

Case name: *Diane Moreau-Stodola, and Andrew J. Stodola v. Veolia Solid Waste Midwest, Inc, and Kenneth Heller, et al.*

Case no.: 09-CV-1494

Court: State of Wisconsin, Circuit Court, Brown County

Judge: Hon. Donald R. Zuidmulder

Settlement amount: $4.5 million

Settlement date: Oct. 21, 2010.

Plaintiff's attorneys: Robert L. Habush, Colleen B. Beaman, Habush Habush & Rottier, Milwaukee; Ralph J. Tease, Jr., Byron B. Conway, Habush Habush & Rottier, Green Bay

Defense attorney: Ken Halvachs, of Boyle Brasher, LLC, Belleville, IL

Plaintiff: Diane Moreau-Stodola

Age: 49 at time of incident

Occupation: Public Health Nutrition Consultant, Wisconsin Department of Health Services, Division of Public Health.

Annual earnings at time of injury: Approx. $74,000

Plaintiff: Andrew J. Stodola

Age: 14

Occupation: Student

Annual earnings at time of injury: N/A

Plaintiffs' allegations of liability: Plaintiffs alleged negligence claims against Kenneth Heller and Veolia.

Damages or injuries incurred: Left leg amputation above the knee, right ankle fracture, multiple rib fractures, scalp lacerations and hematoma, pulmonary contusions, left wrist fracture, pneumothorax, spinal fractures of T12 and L1.

Defendants' counter-allegations or defenses: Defendants claimed that Ms. Moreau-Stodola entered the cross walk when the "Don't Walk" was flashing and also claimed she should have seen the truck before it hit her. These allegations dissolved due to the liability stipulation.

Plaintiffs' experts: Karl Egge, Ph. D, Economist, St. Paul, Minn.; Angela M. Heitzman, MA, CRC, CLCP, MSCC, Life Care Plan, St. Louis Park, Minn.; Kevin L. Schutz, M.S. LPC, Earnings, Madison; Dennis Skogen, P.E., Reconstruction, Madison

Heller and Veolia's experts: Dana Beining, Vocational Rehabilitation, Green Bay; William Burke, PhD, Rehabilitation Counseling, Portsmouth, N.H.; Donald Gore, M.D., Orthopedic Surgery, Sheboygan; Kurt Krueger, Economist, Prairie Village, Kan.; Robert H. Meier, M.D., Amputations, Denver, Colo.; Charles Scalia, Reconstruction, Madison

Summary of the case: On Feb. 23, 2009 Diane Moreau-Stodola was a healthy 49-year-old woman and, while crossing Monroe Street in downtown Green Bay, within the crosswalk and with a walk signal, was run over by a Veolia garbage truck operated by Kenneth Heller. Heller struck Ms. Moreau-Stodola because he was rushing through his route and not paying attention. Diane's left leg was almost completely torn off in the incident. Her leg could not be saved.

Plaintiffs sued Veolia and Heller on negligence theories. Shortly before trial, the parties stipulated to liability.

PERSONAL INJURY: ZERO DOLLARS

Name of case: *Alkaraki v. Dells Boat Tours, LLC, et al.*

Case number: 08-CV-647

Court: Sauk County

Judge: Hon. James Evanson

Injuries alleged: Compression fracture at T12-L1 and herniated disk at L5-S1 requiring surgery and significant recovery time.

Original amount sought: $450,000 prior to trial / $1,000,000 at trial

Highest offer: $39,000 on behalf of defendant, Dells Boat Tours

Verdict or Settlement: Jury verdict; Dells Boat Tours found not negligent

Verdict/settlement date: Dec. 1, 2010

Original filing date: July 14, 2008

Incident date: Aug. 17, 2005

Plaintiff attorney/firm: Rodney Seefeld, Conway & Seefeld, Baraboo

Defense attorney/firm: Matthew R. Rosek for Dells Boat Tours and Markel American Insurance Company, McCoy & Hofbauer, Waukesha

Plaintiff experts: Dale Morey, liability; Dr. Rashid Abu-Shanab, chiropractor; and Dr. Michel Malek, neurosurgeon

Defense experts: Robert Taylor, liability; and Steven Weiss, orthopedic doctor

Insurance company: Markel American Insurance Company

Summary of case: Matthew R. Rosek successfully tried his second case in three months defending Dells Boat Tours in a personal

injury action arising out of an alleged back injury during a jet boat adventure ride in the Wisconsin Dells. Dells Boat Tours provides thrill rides on the Wisconsin River. The plaintiff alleged that the jet boat went over a wake or other object in the river causing a compression fracture and herniated disk in his back. The case, *Alkaraki v. Dells Boat Tours, LLC, et al*., was tried in Sauk County, Wisconsin. The plaintiffs' demand at trial was over $1 million. After a three day trial, the jury returned a verdict finding no negligence.

PERSONAL INJURY: $22,116

Case name: *Cheryl Buckner, et al. v. American Family, et al.*
Court: Dane County Circuit Court
Case number: 08-CV-5921
Judge: Hon. Nicholas J. McNamara
Injuries claimed: Left chest/rib pain, permanent left knee pain, left elbow pain, permanent right sided neck pain with associated headaches.
Verdict & Settlement: Verdict
Damages requested in closing by: Plaintiff: $16,216.30 for past medical expenses; $25,000 for past pain and suffering; $25,000 for future pain and suffering; $800 for future medical expense.
Defendants: $1,024.45 for past medical expenses; $2,000 for past pain and suffering; $0.00 for future pain and suffering; $0.00 for future medical expenses.
Award: $16,216 for past medical expenses; $5,100 for past pain and suffering; $800 for past medical expenses; $0.00 for future pain and suffering;
Special damages: $16,216.30 past medical expenses
Date of incident: April 7, 2005
Disposition date: Feb. 22-25, 2010
Original filing date: Jan. 28, 2008
Plaintiffs attorney (firm): Lee R. Atterbury, Atterbury, Kammer & Studinki
Defendants attorney (firm): Roger S. Flores, American Family Insurance Group
Insurance carrier: American Family Mutual Insurance Company
Plaintiffs expert witnesses: Dr. Jeffery J. Petterson, Northeast Family Medical Center
Defendants expert witnesses: Dr. Randal F. Wojciehoski M.D. and Robert J. Wozniak, Accident Reconstruction Engineer.
Noteworthy evidentiary issues: Liability as this was a car v. pedestrian dart out case. Both the plaintiff and defendant were found negligent with respect to their conduct in this accident. The jury apportioned 67% negligence on the plaintiff and 33% negligence on the defendant.
Summary of the case: The insured was southbound on Aberg Avenue at an estimated speed of 20-25 MPH (25 MPH speed limit). As the insured neared Ruskin Street, the plaintiff darted out from the insured's right side. Upon seeing the plaintiff running out towards her, the insured swerved her vehicle to the left over the center-line and came to an abrupt stop. The plaintiff collided with the front passenger side fender of our insured's vehicle. The plaintiff bounced back off the insured's vehicle, spun, and then fell to the ground. Based on a skid mark left by the defendant's vehicle, the defense's accident reconstruction expert was able to estimate the defendant's speed at 16 to 17 mph immediately before commencing the skid.
Length of trial: 3 days
Jury or bench: Jury

PERSONAL INJURY: $7,500

Case name: *James W. Kealy, et al. vs. American Family*
Court: Rock County Circuit Court
Case number: 08-CV-745
Judge: Hon. James E. Welker
Injuries claimed: C5-C6 disc bulge with anterior C5-C6 discectomy and cervical fusion surgery.
Verdict & Settlement: Verdict
Damages requested in closing by plaintiff: $200,000 for past pain and suffering; $10,000 for future pain and suffering; $25,000 for loss of services for plaintiff's wife; $10,000 for loss of society and companionship.
Defendant: $2,500 for past pain and suffering; $5,000 for past medical expenses; $0.00 for future pain and suffering; $0.00 for loss of services for plaintiff's wife; $0.00 for loss of society and companionship.
Last demand: $150,000
Last offer: $36,000
Award: $2,500 for past pain and suffering; $5,000 for past medical expenses; $0.00 for future pain and suffering; $0.00 for loss of services for plaintiff's wife; $0.00 for loss of society and companionship.
Special damages: $127,000 in past medical expenses.
Date of incident: June 7, 2005
Disposition date: September 28-30, 2010
Original filing date: April 21, 2008
Plaintiffs attorney (firm): James A. Carney, of Carney Davies and Thorpe LLC
Defendants attorney (firm): Roger S. Flores, American Family Insurance Group
Insurance carrier: American Family Mutual Insurance Company
Plaintiffs expert witnesses: Dr. Mark E. Lanser, Neurologist Dean Health Plan and Dr. Todd T. Trier, Neurosurgeon Dean Health Plan
Defendants expert witnesses: Dr. Kenneth H. Yuska, MD.
Summary of the facts: The plaintiff's vehicle was broadsided on the rear driver's side by the defendant's insured at the intersection of Garfield Avenue and E. Milwaukee Street in the of Janesville. The plaintiff complained of left sided neck pain and with radiculopathy in the upper extremity.
Pre-trial motions: None.
Post-trial motions: None.
Length of trial: 3 days.
Jury or bench: 12-person jury trial

PERSONAL INJURY/ WRONGFUL DEATH: ZERO DOLLARS

Name of case: *The Estate of Patel, et al. v. Lake Geneva Boat Line, Inc., et al.*
Case number: 07-CV-644
Court: Circuit Court, Walworth County, Wisconsin
Judge: The Hon. John R. Race

Injuries alleged: With respect to Deep Patel's survivorship claim: $1,634,646 for past medicals; $283,704 for past wage loss; and an unidentified sum for six years of conscious pain, suffering and disability. With respect to the parents' wrongful death action: $350,000 — the maximum allowed in Wisconsin.

Original amount sought: $1 million prior to trial/$5.2 million at trial.

Highest offer: $120,000

Verdict or settlement: Zero dollars

Outcome: Complete defense verdict

Verdict/settlement date: Nov. 11, 2010

Original filing date: May 23, 2007

Incident date: July 10, 2004

Plaintiff attorney/firm: Stephan D. Blandin, Romanucci & Blandin, Chicago

Defense attorney/firm: David F. Andres, McCoy & Hofbauer, Waukesha

Plaintiff experts: David S. Smith, Ph.D.; Henry P. Brennan; Charles M. Linke

Defense experts: Henry S. Woods, III; Charles H. Breeden, Ph.D.; Laura J. Liddicoat

Insurance: Markel American Insurance Company

Summary of case: David F. Andres successfully defended Lake Geneva Boat Line and Markel American Insurance Company in a near drowning boat accident which resulted in the filing of a survivorship claim and wrongful death action. The case, *The Estate of Deep Patel, et al. v. Lake Geneva Boat Line, et. al.,* was venued in Walworth County and was tried the week of Nov. 8, 2010.

At the conclusion of trial, plaintiffs asked for more than $5,200,000 in damages. After deliberating for approximately two hours, a unanimous jury found defendants not negligent, awarded the estate $0 for conscious pain and suffering, and awarded each parent $70,000 for loss of society and companionship. Due to the finding of no negligence, plaintiffs received nothing.

The above matter stemmed from a boat rental that occurred on July 10, 2004. On the day of the incident, a pontoon was rented to a group of approximately ten adults from the Chicago area. Due to the size of the boat, it was Lake Geneva Boat Line's practice to supply an employee to navigate the pontoon away from the dock and return it safely to shore. On this occasion, the boat was manned by Chad Wippermann, a 17-year-old high school student.

Once the boat was taken past a no-wake buoy, another driver took control of the boat and the group made a request to go swimming. In response, Wippermann told the group the rental agreement prohibited swimming, but if the renters wanted to do so, it was at their own risk. This policy was also stated in the rental agreement signed by one of the passengers.

Despite the above, the group indicated they still wanted to go swimming. At that point, Wippermann told the renters they should move closer to shore where they would avoid the risk of being hit by heavy boat traffic. He then drove the boat to a secluded area of the lake, anchored the pontoon, and made life jackets available to everyone.

At or about this time, Deep Patel indicated he wanted to swim to a buoy approximately 50 feet away from the boat. Patel told Wippermann he was a good swimmer and rejected a life jacket on two separate occasions. Although it was undisputed Patel had been drinking, he never gave any indication of physical impairment. This was confirmed by Wippermann and at least two other passengers.

Patel then dove into the water and proceeded to swim towards the buoy. During this time, Wippermann casually watched the swimmers. Eventually he noticed Patel stopped and went underwater. As more time passed, he became concerned and told the other swimmers to get on board so they could move closer to where he last saw Patel. After numerous efforts by Wippermann and the other renters, the group eventually retrieved Patel from the water. He was unconscious at that time.

Shortly after arriving at the hospital, Patel was diagnosed as being in a persistent vegetative state. Approximately four hours after the incident, toxicology reports indicated he had a blood alcohol level of 0.14. Patel remained in the above condition until he passed away on May 23, 2010. He was 24-years-old at the time of the loss.

As a result of the incident, the estate of Deep Patel filed a personal injury action against Lake Geneva Boat Line and Chad Wippermann. A defense was provided by Markel American Insurance Company. There was a $1,000,000 liability policy in affect at the time of the loss.

Due to the tragic nature of Deep Patel's injury, plaintiffs' served an offer of settlement for policy limits shortly after the case was filed. Plaintiffs also indicated their intent to proceed with a bad faith claim in the "likely" event of an excess verdict. Demands for policy limits were made repeatedly prior to trial. It was undisputed that policy limits were insufficient to cover the loss if defendants were found to be more than 49 percent at fault. (Prior to Patel's death, plaintiffs submitted a life care plan in the amount of $3,703,770 and a future wage loss report in the amount of $3,393,266. Post death, these damages were no longer recoverable.)

Subsequent to Deep Patel's death, plaintiffs amended the complaint and converted the personal injury action to a survivorship claim. The parents also joined suit and asserted a claim for loss of society and companionship. For the first time, Markel American Insurance Company was named as a defendant. By stipulation, plaintiffs agreed to dismiss Chad Wippermann as a party on the first day of trial.

Further complicating the defense, the court ruled Lake Geneva Boat Line was a commercial carrier which exposed the company to a higher standard of care. Consequently, although Patel's conduct was assessed under the principles of common law negligence, Lake Geneva Boat Line was required to exercise the "highest degree of care" for the safety of its passengers. The level of care required by this standard was, "the highest that [can] be reasonably exercised by persons of vigilance and foresight when acting under the same or similar circumstances."

At trial, plaintiffs argued defendants were negligent for allowing passengers to swim from the boat in violation of the company's policy, allowing Patel to swim despite his obvious drinking of alcohol and allowing Patel to swim without wearing a life jacket. Plaintiffs' expert also testified that Wippermann was negligent for failing to properly monitor the individuals in the water, for failing to stay within a safe distance of the swimmers, and for failing to have a tethered life-saving device that could be thrown to anyone in danger. Finally, plaintiffs argued Lake Geneva Boat Line was negligent for failing to properly train Wippermann with respect to the above matters.

In response, Lake Geneva Boat Line argued the standard of care for commercial boating operations on Lake Geneva was controlled exclusively by the applicable Wisconsin statutes and regulations issued by the Department of Natural Resources. Pursuant to those requirements, there were no prohibitions against swimming from boats, against swimming without a life jacket, and against drinking on any type of watercraft. More significantly, there was no training

requirement for commercial boat operators and no requirements mandating instruction on life-saving techniques.

In closing arguments, plaintiffs claimed there was an industry standard which required Lake Geneva Boat Line to prevent Deep Patel from swimming and to provide an operator who was adequately trained to monitor, protect and provide for the safety of its passengers consistent with their expert testimony.

Defendants argued Lake Geneva Boat Line exceeded its standard of care under the circumstances presented. The applicable standard was tempered by "the mode of transportation provided" and "the practical operation of [the company's] business." Ultimately, Lake Geneva Boat Line was a boat rental company. Although an employee was provided to ensure the pontoon left the dock and was returned safely, the renters were entitled to use the boat as they saw fit — just as if an employee had not been provided in the first instance.

When it became clear the group was intent on swimming, Wippermann went out of his way to ensure the renters were taken to a safe location, told them of the company's prohibition against swimming and provided the passengers with life jackets. Significantly, there was no legal prohibition against drinking on the boat or swimming from the pontoon.

Defendants also argued Patel was negligent for failing to adequately protect for his own safety. He drank to a level of intoxication, made a decision to swim while being impaired, refused a life jacket on two separate occasions, jumped in the water despite knowing his level of intoxication, swam away from the boat, and then separated himself from one of his friends. In the absence of any of the above decisions, the accident would not have occurred.

In closing arguments, plaintiffs asked for more than $5,200,000. Prior to trial, the parties stipulated to past medical expenses of $1,634,646 and a past wage loss of $283,704. Plaintiffs' also asked for $2,000,000 to $3,000,000 for conscious pain, suffering and disability. With respect to the parents' wrongful death action, plaintiffs asked for $350,000, the maximum allowed in Wisconsin. After deliberations, the jury found Lake Geneva Boat Line not negligent.

PERSONAL INJURY: $1.05 million settlement

Case name: *Karen Hoffmann v. American Family Insurance Co., et al.*

Case no.: 10 CV 4033

Court: State of Wisconsin, Circuit Court, Dane County

Judge: Hon. John C. Albert

Settlement amount: $1,050,000

Settlement date: Sept. 15, 2010

Plaintiff: Karen Hoffmann

Age: 44 at time of incident

Occupation: Registered nurse

Annual earnings at time of injury: Had not worked for a number of years

Plaintiff's allegations of liability: Plaintiff alleged negligence claims against Patrick Hoffmann

Damages or injuries incurred: Right and left rib fractures, C2 right lamina fracture, C1 right posterior ring fracture, T1 left lamina fracture, spinous process fractures at C7, T2, T5-T8; left transverse process fractures at T8 and T10; burst fractures of T6 and T8; anterior vertebral body fractures at T3 and T7; left distal radius/ulnar styloid fractures and splenic laceration open mandibular fracture and open left tibula/fibular fractures. Mrs. Hoffmann's past medical expenses totaled approximately $398,581 and her alleged future medical expenses will amount to approximately $150,000 over her life expectancy. In addition, she claimed lost future earnings of approximately $6,000 a year.

Plaintiff's attorney: Timothy S. Trecek, Habush, Habush & Rottier, SC, Milwaukee

Defendant's attorney: Mark Koss, American Family Insurance In-house legal department

Defendants' counter-allegations or defenses: Defendant claimed that Mrs. Hoffmann did not sustain a future loss of earning capacity.

Plaintiff's experts: Kevin L. Schutz, M.S. LPC, Earnings, Madison

Summary of the case: On Aug. 15, 2007, Karen Hoffmann was a passenger on the motorcycle being driven by her husband. They were traveling with a group of motorcyclists on Hwy. 78 near Mazomanie. When coming upon a curve in the highway, Mr. Hoffmann was unable to turn the motorcycle, failed to negotiate the turn and was unable to keep his motorcycle under control. They went off the road, hit a ditch and Mrs. Hoffmann was thrown from the cycle. Initially, Mr. Hoffmann believed there was a defect in the steering mechanism of the motorcycle and claimed the alleged defect was the cause of the accident and his wife's injuries. Experts were retained by plaintiff, American Family Insurance and Harley Davidson. The experts conducted a joint inspection of the accident motorcycle. In finding no defect, plaintiff claimed negligent management and control on behalf of Mr. Hoffmann and pursued a claim against Mr. Hoffmann's insurer, American Family Insurance on the basis of Mr. Hoffmann's negligent management and control of the motorcycle. Shortly after the lawsuit was filed, the parties reached a settlement.

PERSONAL INJURY/PREMISE LIABILITY: ZERO DOLLARS

Name of case: *Culver v. Compass Properties Germantown, LLC, et al.*

Case number: 08-CV-0777

Court: Washington County

Judge: Hon. James K. Muehlbauer

Injuries alleged: Fractured knee cap requiring surgery and significant recovery time

Original amount sought: $150,000 prior to trial/$342,000 at trial

Highest offer: $5,000 on behalf of defendant, Suburban Lawns

Verdict or settlement: Jury verdict

Outcome: Suburban Lawns found not negligent

Verdict/settlement date: Sept. 16, 2010

Original filing date: July 18, 2008

Incident date: Jan. 2, 2008

Plaintiff attorney/firm: Mark D. Baus, Murphy & Prachthauser, Milwaukee

Defense attorney/firm: Matthew R. Rosek for Suburban Lawns and Rural Mutual Insurance Company, McCoy & Hofbauer, Waukesha

Plaintiff experts: David Rudig, liability, and Dr. Michael

Anderson, orthopedic surgeon

Defense experts: None on liability; IME: Dr. Gary Guten

Insurance company: Rural Mutual Insurance Company

Summary of case: Matthew R. Rosek successfully defended Suburban Lawns and Rural Mutual Insurance Company in a personal injury/premise liability action arising out of an injury to the plaintiff at a Pick 'N Save store in Wisconsin. Suburban Lawns was the snowplowing company. The plaintiff alleged that she slipped and fell on ice in the parking lot serviced by Suburban Lawns. The property was owned and managed by Compass Properties. The case, *Culver v. Compass Properties, et al*. was filed in Washington County. The plaintiffs' demand at trial was $342,000 plus. After a four-day trial, the jury returned a verdict finding no negligence on the part of Suburban Lawns.