

BUSINESS LAW: \$1,004,845

Case name: *I.E.A. Inc. v. Niagara Cooler, Inc. and Michael Sanders*

Court: Kenosha County

Case number: 06-CV-580

Judge: Barbara A. Kluka

Highest offer: \$50,505

Amount won: \$1,004,845

Verdict/settlement: Jury returned defense verdict (jury returned a defense verdict on defendant's counterclaim)

Original filing date: April 21, 2006

Plaintiff's attorney: Frederick L. Zievers, Zievers, Marry & Dowse, S.C., Kenosha; James D. Adducci, Adducci, Dorf, Lehner, Mitchell & Blankenship, P.C., Chicago, IL

Defendant's attorney: Gino M. Alia, O'Connor, DuMez, Alia & McTernan, S.C., Kenosha

Defense counsel's summary of the facts: Niagara Cooler, a manufacturer of railroad locomotive radiators, entered into an exclusive supplier contract with I.E.A., Inc. The contract included a non-compete clause. Niagara Cooler subsequently entered into negotiations with a prospective buyer of locomotive radiators, but was underbid by I.E.A. I.E.A. claimed that, although the contract prohibited competition after the termination of the contract, I.E.A. was free to compete with Niagara Cooler during the term of the contract. I.E.A. commenced a declaratory judgment action against Niagara Cooler, and Niagara Cooler counterclaimed for breach of contract and tortious interference with prospective contract. After three days of trial, the jury awarded Niagara Cooler \$638,112 in compensatory damages, plus \$366,733 in punitive damages, for a total verdict of \$1,004,845.

PERSONAL INJURY: \$180,942

Injuries claimed: Radius and humerus fractures, internal reduction and implantation of hardware.

Court: Marathon County

Case name: *Chong Lee vs. Mt. Morris Mut. Ins. Co. et al.*

Case number: 05-CV-1021

Judge: Honorable Greg Huber

Verdict & Settlement: Jury returned plaintiff verdict

Award: \$180,942 verdict

Special damages: \$100,000 of past pain and suffering, \$80,942 of past medical expenses, there was no wage loss, no future pain or medical expenses claimed due to Plaintiff's death), plus \$14,493 in statutory costs and \$30,399 in statutory interest for a total of \$225,835.

Date of incident: 08/22/2003

Disposition date: 01/09/2008

Plaintiffs attorney (firm): Lance Trollop, Bremer & Trollop Law Offices, S.C., Wausau, Antigo, Minocqua, Stevens Point

Insurance carrier: Mt. Morris Mut. Ins. Co.

Plaintiffs expert witnesses: Dr. Perico Arcedo, physical medicine Dr. Thomas Garver, orthopedic surgery

Defendants expert witnesses: Dr. William Dzwierzynski

Summary of the facts: Plaintiff claimed defendant's dog knocked her to the ground as she walked past defendant's house on a city sidewalk. Plaintiff did not receive a bite. Defendant's son claimed he was

watching the dog and plaintiff was not present and the dog did not knock anyone down. Defendants took the position that plaintiff was not injured by a dog or that it was not defendants' dog.

Defendants offered \$25,000 at Mediation. Following Mediation, plaintiff submitted a statutory settlement offer of \$100,000. Prior to trial, plaintiff died from causes unrelated to her accident-injuries and plaintiff (now the Estate) reduced its demand to \$50,000. No offer was made by defendants following plaintiff's death.

MEDICAL MALPRACTICE: \$35.1 Million

Injuries claimed: Spastic quadriplegia, hemiplegia, loss of speech, need for 24/7 care and supervision

Court: Walworth County Circuit Court

Case name: *Terry Bartowitz, et al. vs. Waukesha Memorial Hospital Inc, et al.*

Case number: 2005CV000217

Judge: Robert Kennedy

Verdict & Settlement: Jury returned plaintiff verdict

Original amount sought: \$9 million

Original offer: \$5.5 million

Award: \$35.1 million

Date of incident: 01/13/2004

Disposition date: 01/18/2008

Original filing date: 03/03/2005

Plaintiffs attorney (firm): Patrick O. Dunphy, Cannon & Dunphy, S.C., Brookfield

Defendants attorney (firm): James R. Gutglass, Gutglass, Erickson, Bonville & Larson, S.C., Milwaukee

Plaintiff's expert witnesses: Robert Zimmerman Harris Jacobs

Defendant's expert witnesses: Gordon Sze Stephen Glass, Mara Coyle, Drucilla Roberts

Plaintiff counsel's summary of the facts: Air introduced into IV line by hospital nurse during blood transfusion to 2-week-old, premature neonate. Air travelled to child's brain. Code resulted. Plaintiffs claimed air caused brain damage. Defendants claim child's deficits caused by prematurity, in utero placental problems and immediate post birth course.

PERSONAL INJURY: \$500,000

Case name: *Isidoro Lugo v. American Family, et al.*

Court & case no.: Milwaukee County Circuit Court Case No. 05 CV 007809

Nature of action: Automobile accident — personal injury

Injuries claimed: Chronic back pain with radiculopathy

Original amount sought: \$800,000

Highest offer: \$500,000

Amount won: \$500,000

Judge: Hon. Christopher Foley

Verdict/Settlement: Settled prior to trial

Disposition date: 04/23/08

Original filing date: 08/31/05

Date of incident: 01/14/03

Plaintiff's attorney: Merrick R. Domnitz & Anthony J. Skemp of Domnitz & Skemp, S.C., Milwaukee, Wisconsin

Defendants' attorneys: Ellen Spahr, of Emile Banks & Associates, LLC, Milwaukee, Wisconsin

Insurance carrier: American Family Mutual Insurance Company
Plaintiff's experts: Daniel C. Kuemmel, Racine; Dennis Maiman, M.D., Milwaukee; Karl A. Egge, St. Paul, Minnesota

Defendant's experts: Dr. Lawrence J. Frazin, Brookfield; John Schroeder, New Berlin

Plaintiff counsel's summary of case: Isidoro Lugo was rear-ended by the Defendant in January 2003. The impact caused significant damage to the vehicles. Lugo had a 20-year history of back problems and had received an epidural steroid injection in his back five days before the subject collision. Following the collision, Lugo was initially able to continue with his employment as a carpenter, but with greatly increased symptoms. Several months later, while still receiving treatment, he was involved in another minor motor vehicle accident. Over the course of the next several years, he continued to receive conservative care for his back but refused to submit to surgery. Finally, in 2006 his symptoms were so bad that he was referred to Dr. Dennis Maiman. Dr. Maiman suggested a last attempt at a work hardening program since Lugo's symptoms were not sufficiently pervasive for him to require surgery. However, when the program failed to provide relief and the symptoms continued to progress, Dr. Maiman performed a multi-level fusion. A second surgery was required six months later due to the destabilization of the vertebra above the level of the initial fusion. Lugo has been unable to return to his previous occupation.

Dr. Maiman testified that the subject motor vehicle collision was a substantial factor in causing Lugo's injuries and need for surgery. Dr. Maiman also imposed permanent restrictions that prohibited Lugo from returning to his job as a carpenter. As a result, the Plaintiff hired Daniel Kuemmel, who opined that Lugo has sustained a future loss of earning capacity due to the injuries he sustained in the subject collision.

The Defendant hired Dr. Lawrence Frazin. Dr. Frazin opined that Lugo was, in fact, injured in the subject motor vehicle collision. Dr. Frazin determined that any treatment after October of 2003 was not related to the collision but to Lugo's longstanding prior back problems. In light of Dr. Frazin's opinions, the Defendant subsequently attempted to have Lugo undergo a second defense medical examination with Dr. Timothy O'Brien. The Plaintiff objected to this substitution and Judge Foley did not allow the substitution.

MEDICAL MALPRACTICE: \$750,000

Case name: *Kathleen M. Kretschmer, et al. v. Medical Protective Company*

Court & Case No.: Milwaukee County Circuit Court

Case No.: 06 CV 4665

Injuries claimed: Complex regional pain syndrome of right leg

Original amount sought: \$1,000,000

Highest offer: \$750,000

Amount won: \$750,000

Judge: Patricia McMahon

Verdict/settlement: Settled prior to trial

Disposition date: 10/25/06

Original filing date: 05/24/06

Date of incident: 02/10/03

Plaintiff's attorney: Merrick R. Domnitz & Anthony J. Skemp of Domnitz & Skemp, S.C., Milwaukee

Defendant's attorneys: Mary K. Wolverson of Peterson, Johnson & Murray, S.C., Milwaukee; Jeffrey T. Nichols of Crivello, Carlson

& Mentkowski, S.C., Milwaukee; Mary Smrz of Hinshaw & Culbertson, Chicago

Insurance carrier: Medical Protective Company and Physicians Insurance Company

Plaintiff's experts: Clayton J. Frank, M.D., Milwaukee; John E. Brusky, M.D., Milwaukee; Cully R. White, M.D., Milwaukee; Anita Habetler, Milwaukee

Plaintiff counsel's summary of facts: In 1998, while an employee of Piggly Wiggly, Kathleen Kretschmer suffered a back injury in a work-related accident. She treated by numerous care providers over the next several years to no avail. This treatment included physical therapy, epidural steroid injections, and medication management. She continued to work throughout these attempts at treatment.

In April 1999, Kretschmer came under the care of Dr. Clay Frank, a local orthopedic surgeon. Frank managed her care over the next four years and when all conservative measures had failed to relieve the difficulties he recommended a lumbar inter-body fusion from L5-S1. Up to that time, all descriptions of the etiology of Kretschmer's symptoms speak of disc-related problems.

Finally on Feb. 10, 2003, Frank performed an L5-S1 anterior lumbar inter-body fusion (ALIF) and anterior plating utilizing a Medtronic's triangular plating system. The system utilizes a triangular plate anchored to L5 at its tip and anchored at its base to S1 on the left and right by screws, the length of which are determined by the surgeon based upon pre-op MRI. Frank determined that the screws appropriate for Kretschmer's anatomy were 30mm in length. He performed the surgery and felt all went well. However, immediately upon waking in the recovery room, Kretschmer complained of severe and unremitting pain. Frank was summoned and physical exam and radiographic study determined that there was an S1 nerve-related problem.

Kretschmer was returned to the OR and Frank removed all three screws, replaced them with shorter ones, and measured the removed screws. It was determined that the screw that had been inserted into the right sacrum was 35mm in length instead of the 30mm Frank had ordered. In discovery the defense admitted that the too long screw was negligently provided to Frank by a Surgical Tech.

Injury to the S1 nerve root was confirmed in an EMG study performed by a Board Certified neurologist during the continuing hospitalization. The study showed a chronic L5 radiculopathy (the condition which occasioned the original need for surgery) and "...very acute S1 root involvement." In his Discharge Summary, Frank described Kretschmer's immediate symptoms as "...intense postoperative S1 radiculopathy." Despite innumerable trials of pain controlling modalities during her hospitalization, Kretschmer's symptoms persisted. Epidural steroid injections, spinal cord stimulators, and radio frequency ablation all failed to relieve the symptoms. Following her discharge, Kretschmer sought a second opinion from a Dr. Salehi at Northwestern who opined that she had the beginnings of Reflex Sympathetic Dystrophy (RSD) n/k/a Complex Regional Pain Syndrome (CRPS). Kretschmer's pain management was under the supervision of Dr. John Brusky who saw her during her initial hospitalization and many times over the ensuing 4 years. Frank and Brusky both confirmed the diagnosis of CRPS. Kretschmer's CRPS is designated as Type II because it stems from a direct injury to a nerve.

MOTOR VEHICLES:

\$1.1 MILLION

Injuries claimed: Permanent neck and back
Court: Racine County Circuit Court
Case name: *John H. Anderson vs. Randy Sexton, Cass Trucking, Inc. and West Bend Mutual*
Case number: 07-CV-1064
Judge: Emily Mueller
Verdict & settlement: \$1,145,000
Original amount sought: \$250,000 - \$350,000
Original offer: Defendants offered \$75,000
Award: Past medical expenses: \$45,000; past pain, suffering and disability: \$225,000; future medical expense: \$100,000; future pain, suffering, and disability: \$775,000.
Date of incident: July 13, 2004
Disposition date: Aug. 27, 2008
Original filing date: March 21, 2007
Plaintiff's attorney (firm): Timothy S. Knurr, Schoone, Leuck, Kelley; Pitts & Knurr, S.C., Racine
Defendants' attorney (firm): Emily Zapotocny, Jeffrey Leavell, S.C., Racine
Insurance carrier: West Bend Mutual Insurance Company
Plaintiff's expert witnesses: Dr. Stephen Callaghan: Board Certified Psychiatrist; Dr. Subbanna Jayaprakash: Board Certified Physical Medicine and Rehabilitation Specialist
Defendants' expert witnesses: Dr. Marc Novom

Noteworthy evidentiary issues: The only noteworthy evidentiary ruling concerned the judge allowing defendants to ask plaintiff if he has ever been convicted of a crime and how many times. That was not well received by the jury.

Plaintiff counsel's summary of the facts: This matter arose out of a motor vehicle accident which took place on July 13, 2004 wherein John H. Anderson, who was stopped waiting to make a left turn, was rear ended by a 75,000 lb. dump truck traveling at a relatively high rate of speed. He was crushed from behind and pushed into the path of an oncoming vehicle and struck again. The property damage to his vehicle was catastrophic. Though he was removed from the scene on a back board, Anderson did not sustain any broken bones or other internal injuries.

The primary issue involved the fact that several years prior to the motor vehicle accident, Anderson had fallen 15 feet through a hole on a construction site to the concrete below and sustained multiple thoracic and cervical fractures. Anderson candidly conceded from the start of this case that those injuries left him with substantial, permanent, ongoing pain and discomfort concerning which he was taking narcotic pain medicines. (Even on the date of the motor vehicle accident in question).

Despite that fact, within four months of that injury, Anderson was back at work at light duty. Approximately one year later, he was released to return to his construction job, albeit with restrictions.

Plaintiff's experts testified that this motor vehicle took all those underlying problems and aggravated them to the point where Anderson was totally physically disabled. Anderson had to very carefully maneuver through the evidence that established that, before the motor vehicle accident, he had in fact applied for social security disability and Dr. Callaghan had actually rendered an opinion (from a psychological standpoint) that he was 100 percent disabled. Despite his attempts to achieve a finding of 100 percent of total disability for Social Security purposes, he was denied. It was only after the motor

vehicle accident that the Department found him 100 percent disabled and found that the event causing the same was the motor vehicle accident.

Anderson did not bring a wage loss claim or a loss of earning capacity because of the numerous pre-motor vehicle documents, forms, etc. opining 100 percent disability for Social Security purposes. Anderson tried to convince the jury that he had a life before the motor vehicle accident, and now did not and was going to spend the next 40 years of his life in constant chronic pain, taking narcotic pain medications, and engaging in a quality of life that no reasonable plaintiff would trade for any verdict that they might receive in these proceedings. Defense counsel urged the jury to award approximately \$45,000. It took the jury exactly 1 hour to return a unanimous verdict finding 100 percent liability on the part of Sexton and \$1,145,000 in total damages.

Post-trial motions: Plaintiff filed a motion for judgment on the verdict but the matter was resolved prior to the motion hearing.

Length of trial: 2 days.

Jury or bench: Jury trial

MEDICAL MALPRACTICE:

\$2 Million

Injuries claimed: Cognitive injuries and left-sided weakness (paralyzed left hand and weakened left leg)

Court: Fond du Lac County

Case name: *Thomas Jandre vs. Therese Bullis, M.D.*

Case number: 04CV363

Judge: Robert Wirtz

Verdict & Settlement: Verdict in favor of plaintiff

Original offer: No offers of settlement from defense

Award: \$2,011,185

Special damages: Plaintiff's past medical expenses: by stipulation \$200,000; plaintiff's past wage loss: \$293,159; plaintiff's future medical expenses: \$209,112; plaintiff's future loss of earning capacity: \$673,706; plaintiff's future pain and suffering (other): \$357,812; plaintiff's past pain, suffering and disability: \$119,271; losses for Mrs. Jandre: society and companionship: \$112,500; nursing services: \$45,625

Date of incident: June 13, 2003

Trial dates: Feb. 25 to March 7, 2008

Plaintiffs attorney (firm): D. James Weis; James M. Fergal, Habush Habush & Rottier, S.C.

Defendants attorney (firm): James Gutglass/John Mayer, Gutglass Erickson Bonville and Larson/Nash, Spindler, Grimstad and McCracken, LLP

Insurance carrier: Physicians In-surance Company of WI; Wisconsin Injured Patients and Family Compensation Fund

Liability policy limits: \$1,000,000 for PIC; Infinity for the Fund

Plaintiff counsel's summary of the facts: On June 13, 2003, Mr. Jandre presented at the E.D. of St. Joseph's Hospital West Bend with a history of slurred speech, droopiness of lower left side of face and unsteadiness on feet. Dr. Bullis diagnosed Bells Palsy. Thereafter Thomas Jandre suffered a stroke on June 24, 2003 caused by a blockage in his right carotid artery. Plaintiff argued that Dr. Bullis should have ruled out an ischemic neurologic event as well. If so, the stroke and resulting injuries would not have occurred.

Plaintiff's negligence theory: Lack of informed consent and negligence in care and treatment.

Defendant's position: Denied negligence and/or need to give informed consent to Mr. Jandre re: diagnostic procedures available to rule out a stroke-like event.

Jury or bench: Jury trial

PERSONAL INJURY: \$7,697

Case name: *Ginger Gates v. Samuel Goodall and American Family Mut. Ins. Co.*

Court: Dane County Circuit Court 06CV1732

Injuries alleged: Right shoulder, neck and arm pain

Original amount sought: \$49,000 at mediation

Highest offer: Defendants' statutory offer for \$9,000, plus costs

Amount won: \$7,697

Judge: Juan B. Colas

Verdict/settlement: Jury returned a defense verdict

Disposition date: April 1, 2008

Original filing date: May 25, 2006

Date of incident: Nov. 11, 2003

Plaintiff's attorney: Briane Pagel, Krekeler Strother, S.C., Madison

Defendants' attorney: Kevin L. Ferguson, senior staff attorney, American Family Mutual Insurance Company, Madison

Insurance company: American Family Mutual Insurance Company

Plaintiff's expert: Nathan Considine/ Chiropractor/Middleton

Defendants' expert: Michael Borkow-ski/Occupational Medicine/Waukesha

Defense counsel's summary of case: This case arose out of a minor traffic accident on Nov. 11, 2003. Police came to the scene but there were no complaints of injury and the officer did not believe there was sufficient damage to prepare a Wisconsin Motor Vehicle Accident Report. Plaintiff left the scene and went to a restaurant for dinner. She did not seek any treatment until the following day when she went to her established chiropractor complaining of right shoulder, neck and arm pain. Despite being released from her chiropractor's care on Jan. 31, 2005, she continued to complain of pain in her neck and shoulder.

After a trial, the jury awarded \$2,697 for past medical and hospital expenses and \$5,000 for past pain, suffering and disability. Plaintiff failed to present sufficient proof to get any future damages questions on the verdict.

In motions after verdict, the defendants asked the court to reduce the verdict by their taxable costs. The court granted the defense motion and reduced the verdict to \$6,470 and judgment was entered. The judgment was satisfied for a payment of \$6,546.

PERSONAL INJURY: \$1.15 MILLION

Case name: *Jill A. and Jeffrey A. Farvour v. American Family Mutual Insurance Company*

Injuries claimed: Comminuted fractured hip, fractured ankle, lacerated knee, bilateral rotator cuff tear, fractured wrist and fractured index finger.

Original amount sought: \$1,150,000

Settlement amount: \$1,150,000

Verdict/settlement: Settlement reached prior to filing a cause of action.

Past medical expenses: \$257,944

Future medical expenses: \$85,000

Loss of wages: \$56,282

Date of accident: July 25, 2007

Disposition date: July 30, 2008

Claimant's attorney: Willard P. Techmeier of The Techmeier Law Firm, Milwaukee, Wisconsin

Insurance carrier: American Family Mutual Insurance Company

Claimant's experts: Francis J. Rotter, M.D., Orthopedic Surgery, Glendale; Timothy J. Riley, M.S., CRC, Vocational Rehabilitation, Milwaukee; and Richard J. Meadows, Ph.D., Economist, Milwaukee

Claimants' counsel's summary of case: On July 25, 2007, Jill A. Farvour, 47 years old, was driving northbound on Cty. Hwy. KK in Ozaukee County when an insured American Family Mutual Insurance driver, driving southbound, lost control of his truck, crossing the center line, smashing head on with Farvour's vehicle. The impact of the collision caused both vehicles to be totaled.

The driver of the truck was cited for failing to drive on the right side of the roadway.

Damages injuries and permanency: From the accident scene, after a one-hour extrication from the car by the Jaws of Life, Farvour was transported by Flight For Life to Froedtert Memorial Lutheran Hospital in Milwaukee where she received emergency medical treatment. She was diagnosed with the following injuries:

- A fractured and dislocated left hip required extensive surgical intervention and resulted in a 50 percent permanent disability.
- A fracture and dislocation of the left ankle will require an ankle fusion and resulted in a 40 percent permanent disability.
- Farvour's knees were injured resulting in a 5 percent permanent disability.
- Rotator cuff injuries resulted in 5 percent permanency to each of Farvour's shoulders.
- A fracture to her left arm was treated and stabilized with a plate.
- She broke her right index finger.

Farvour required extensive in-patient hospitalization and out-patient medical treatment including orthopedic surgeries, out-patient follow-up, medical appointments, x-rays and MRI's, rehabilitation and therapy causing her to incur \$257,943 in medical expenses.

Farvour's future \$85,000 in medical expenses are as follows:

- \$50,000 for a total hip replacement;
- \$25,000 for an ankle fusion;
- \$10,000 surgical removal of the plate from Farvour's left forearm.

Farvour will require analgesic narcotic medication for the duration of her life. She will have a permanent limp and have limited community ambulatory capabilities. Farvour's shoulder symptoms will preclude competitive use of her hands above her shoulder for the duration of her life. Farvour will require lifetime support and assistive report with respect to ambulation, either a cane, crutches or a walker.

Farvour's treating orthopedic surgeon testified that Farvour would be unable to return to gainful employment given her marked limited ambulatory endurance mobility and need for narcotic analgesic medication.

Damages loss of household services/ loss of earnings: At the time of the July 25, 2007 accident, Farvour was a full-time employee of Simplicity Mfg., Inc. in Port Washington, Wisconsin, where she worked as a progressive assembler for the manufacturing of snow

blowers and tractors. Farvour was rendered totally disabled since the July 25, 2007 accident. It was the opinion of Farvour's economist that Farvour sustained a total economic loss, loss of past wages of \$56,282; and present value loss of earnings of \$680,000.

Settlement: On Feb. 22, 2008 settlement for American Family Mutual Insurance Company's underlying primary policy limits of \$150,000 for its insured was reached with a partial release which reserved the claim against the umbrella policy.

On July 7, 2008, Farvour's attorney submitted to American Family a complete and comprehensive documentation of Farvour's damage claim and demanded that American Family pay its \$1M dollar excess policy limits for its insured by July 31, 2008 or a lawsuit would be filed against American Family and its insured.

On the morning of July 31, 2008, the adjuster from American Family Mutual Insurance Company telephoned Farvour's attorney, agreeing to pay Farvour the \$1M limits from the umbrella policy of its insured.

MEDICAL MALPRACTICE: \$18.2 MILLION

Injuries claimed: Brain damage due to lack of oxygen during birth, causing cerebral palsy and developmental delays

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

Case name: *Jessica Fonseca, et al. v. United States of America*

Case number: 01-C-544

Judge: Lynn Adelman

Original amount sought: \$7.3 million

Original offer: Less than \$7 million

Award: \$18.2 million

Date of incident: June 19, 1998

Disposition date: July 17, 2008

Original filing date: May 30, 2001

Plaintiffs attorney (firm): Euel W. Kinsey, McKeen & Associates, P.C.; Michael F. Hupy, Hupy and Abraham, S.C.; Robert B. Moodie, Hippenmeyer, Reilly, Moodie & Blum, S.C.

Defendants attorney (firm): Lisa Warwick, United States Department of Justice, Office of U.S. Attorney

Insurance carrier: None

Plaintiffs expert witnesses: Garrett Burris, M.D., pediatric neurologist; Kevin L. Schutz, life care planner; Robert Niendorf, Ph.D., economist; Dr. Kovnar, advanced healthcare, outpatient records

Defendants expert witnesses: Trudy Koslow, life care planning; Richard Meadows, M.D.

Noteworthy evidentiary issues: Placement of any award for future medical costs in a reversionary trust; Government's obligation with respect to Plaintiffs' past medical expenses paid by Medicaid funds

Plaintiff counsel's summary of the facts: This suit arose from the birth complications surrounding the minor's delivery on June 19, 1998. The complaint alleged that Jacqueline Lugo's daughter sustained personal injuries as a result of the negligent and wrongful acts by the staff at the Sixteenth Street Community Health Center. Lugo was at high risk for complications because of her history of having large babies and her symptoms of gestational diabetes; however, despite these risks, Lugo was not referred to a specialist or obstetrician. The Sixteenth Street Community Clinic provided pre-natal care to Lugo by general practitioners and midwives through a federally funded program for the poor. Three months later, Lugo was advised by a clinic physician to deliver at Sinai-Samaritan. She was admitted

into the hospital on June 18, 1998 and assigned a nurse midwife from the clinic. The midwife did not arrive at the hospital until the next morning where she delivered the baby without the aid of a physician. There were complications during the delivery, which caused the baby to be stuck in the birth canal for more than 20 minutes. As a result, the minor suffered severe brain injuries due to the lack of oxygen. The minor is now permanently and totally disabled. The U.S. District Court Judge Lynn S. Adelman awarded Lugo and her minor daughter 21 million dollars in damages. The parties later negotiated the 18.2 million dollar settlement to avoid appeal.

Length of trial: 2 days

Jury or bench: Bench trial

PERSONAL INJURY: \$457,500

Case name: *Tracy Olson v. Progressive Insurance, et al.*

Court: Taylor County Circuit Court

Case no.: 06-CV-90

Judge: Gary Carlson; mediator: Stephen Hansen

Liability insurer(s): Progressive Insurance

Plaintiff attorney: Brenda K. Sunby, Habush Habush & Rottier

Defendant attorney: Spencer Davczyk, Davczyk & Varline

Date of incident: May 6, 2006

Plaintiff's negligence theory: Gate should not have been left open by the farmer allowing his cow to escape the pasture and enter the roadway. Additional defendants who were working the field earlier that day knew the gate was open and did not close it. Claim against motorcycle driver who was operating while intoxicated. Claim against farmer who left gate open. Claim against neighbor farmer and his brother who were working in the field earlier that day and did not close the gate when they left.

Defendant's position: Plaintiff was intoxicated and got on the back of a motorcycle with a person she knew was intoxicated.

Plaintiff's injuries: Skull fracture requiring two brain surgeries; three blood clots on brain, fractured pelvis and six fractured ribs.

Plaintiff's past medical expenses: \$461,611

Plaintiff's past wage loss: \$16,281

Plaintiff's future loss of earning capacity: \$1,275,071

Plaintiffs expert(s): Dr. Kenneth Britton; Dr. John Neal; Dr. Owen Keenan; Dr. John Ehrfurth; Dr. James Hyzer; Jerrold Odness

Defense expert(s): Kim Anderson, Ph.D.; Hugh Harrison Hurt, Jr., P.E.; Jeffery J. Peterson

Amount of settlement: \$457,500

Plaintiff counsel's summary of facts: Passenger on husband's motorcycle injured when they hit a cow that got out through an open gate.

PERSONAL INJURY: \$850,000

Case name: *Patrick J. Pollack v. Pepsi Cola Co. of Antigo*

Court: Shawano County Circuit Court

Case number: 07-CV-86

Mediator: Skip Beisenstein

Plaintiff attorney: David E. Sunby, Habush Habush & Rottier

Defendant attorney: Thomas L. Williams, Gabert, Williams & Farb

Date of incident: Jan. 26, 2005

Plaintiff's negligence theory: Regular failure to yield case

Defendant's position: Some contributory negligence
Plaintiff's injuries: Fractured both legs, 8 ribs, nose; whiplash; back. He underwent open reduction internal fixation of his right ankle right after the accident. Several months later he underwent surgery on his right knee.

Plaintiff's past medical expenses: \$118,575

Plaintiff's past wage loss: \$45,675

Plaintiff's future loss of earning capacity: \$400,000 - \$800,000

Plaintiff's first demand: \$1,760,000

Defendant's first offer: None

Amount of award: \$850,000

Plaintiff counsel's summary of the facts: Belted driver of Coca-Cola truck. Driver of a Pepsi truck turned left in front of plaintiff.

PERSONAL INJURY:

\$1.4 MILLION

Case name: *Thomas C. Ritchie v. Speedway Sand & Gravel Inc.*

Court: Dane Count Circuit Court

Case Number: 06CV2584

Mediator: John R. Teetaert

Insurer(s): Cincinnati Insurance Company

Plaintiff attorney: Craig A. Christensen, Habush Habush & Rottier S.C.

Defendant attorney: Brian C. Hough, Axley Brynerson LLP

Date of incident: Oct. 30, 2003

Plaintiff's injuries: Knee contusion, Chronic Regional Pain Syndrome (CRPS) and Post Traumatic Stress Disorder (PTSD).

Plaintiff's past medical expenses: \$148,681

Plaintiff's past wage loss: \$169,791

Amount of award: \$1,425,000

Plaintiff's expert(s): W. Bradford Lyles, M.D., Child and Family Consultants, Green Bay; Douglas A. Yeatman, M.D., Bellin Health Brain, Spine & Pain Center, Green Bay; John D. Birder, M.S., DePere

Defense expert(s): Jerome Lerner, M.D., Advanced Pain Management, Franklin; Sridhar V.Vasudevan, M.D., Sheboygan

Plaintiff counsel's summary of the facts: Plaintiff was working on a job site when an employee of defendant who was operating a soil compactor in an area located above a retaining wall allowed the soil compactor to fall over the retaining wall striking plaintiff.

PERSONAL INJURY: \$375,000

Case name: *Craig R. Winkler v. Lakeside International Trucks*

Court: Portage County Circuit Court

Insurer(s): Progressive

Plaintiff attorney: David E. Sunby, Habush Habush & Rottier,

Date of incident: March 7, 2007

Plaintiff's negligence theory: Failure to have control, speed too fast for conditions

Defendant's position: Plaintiff had lost control at some spot — possible no negligence finding

Plaintiff's injuries: Massive injuries including broken pelvis, collarbone, left arm (left handed), ribs and pneumothorax.

Plaintiff's past medical expenses: \$153,775

Plaintiff's past wage loss: \$8,079

Plaintiff's medical expert(s): Dr. Robert E. Leggon, Marshfield

Plaintiff's first demand: \$500,000

Defendant's first offer: \$350,000

Amount of settlement: \$375,000

Plaintiff counsel's summary of facts: Lost control on Highway 10. Defendant rolled van and hit plaintiff on side of road.

PERSONAL INJURY:

\$2.2 MILLION

Case name: *Darryl L. Scheel v. Thomas Mielke*

Court: Dodge County Circuit Court

Insurance: West Bend Mutual Insurance

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

Date of incident: April 16, 2005

Plaintiff's injuries: Amputation of right leg below the knee, facial injuries, forehead lacerations, cracked/missing teeth, fractured right forearm.

Plaintiff's experts: Skogen Engineering

Past medical expenses: \$263,312

Past wage loss: \$19,440

Future medical expenses: over \$1 million

Plaintiff's first demand: \$4 million

Defendant's first offer: \$1 million

Amount of settlement: \$2.2 million

Plaintiff counsel's summary of the facts: Plaintiff was driving his motorcycle in Dodge County. Defendant was driving a truck owned by Rennhack Construction and was stopped at a stop sign. Plaintiff was leaving intersection and defendant pulled out from the stop sign into the path of plaintiff causing the two vehicles to collide. Plaintiff flew off of his motorcycle and landed in a ditch off the roadway.

Issues: Plaintiff had marijuana in his system and drug paraphernalia and marijuana on his person at the time of the accident.

PERSONAL INJURY:

ZERO DOLLARS

Case name: *Kristin M. Hinkel, et al. vs. American Family, et al.*

Court: Dane County Circuit Court

Case number: 07-CV-1061

Judge: C. William Foust

Verdict & settlement: Jury returned defense verdict

Injuries claimed: Right broken clavicle

Original amount sought: \$45,000

Original offer: \$20,000

Award: Zero dollars; plaintiff: 63 percent causally negligent; defendant: 37 percent negligent

Date of incident: April 1, 2004

Disposition date: Oct. 14, 2008

Original filing date: March 29, 2007

Plaintiffs attorney (firm): Thomas E. Goss, Jr., Mueller, Goss & Possi, Milwaukee

Defendants attorney (firm): Roger S. Flores, American Family Insurance Company, Madison

Insurance carrier: American Family Insurance Company

Defense counsel's summary of the facts: A pedestrian received no money for injuries sustained in a 2004 collision with a bicyclist after a jury determined the pedestrian was more at fault than the bicyclist.

Kristin Hinkel was crossing Langdon Street at North Frances Street on foot, and Michael Fidler was traveling westbound on Langdon Street on his bicycle when the two collided April 1, 2004. Both Fidler and Hinkel were in their final year of school at the University of Wisconsin-Madison when the accident occurred. Hinkel sustained a fractured clavicle, a fractured scapula and a laceration to the left side of her head. Neither party was cited responsible at the incident.

After a three hour deliberation Oct. 14, the jury found both Hinkel and Fidler causally negligent for Hinkel's injuries. The jury found Hinkel 63 percent at fault and Fidler 37 percent at fault. Because Hinkel was found more responsible for the accident, she lost and received no award for her injuries. Hinkel also owes American Family attorney fees of \$300 plus costs, totaling nearly \$2,000.

Although the parties agreed to an amount of \$40,000 for the damages, they could not reach an agreement as to who was responsible for the accident. The case was tried strictly on liability.

Roger Flores, associate staff attorney with American Family Insurance, maintained his client, Fidler, looked down quickly, looked up and saw Hinkel looking at her feet, speed walking across Langdon Street. Fidler hit his brakes and attempted to veer left to avoid Hinkel, but Hinkel moved the same way and the two collided.

The plaintiffs attorney, Tom Goss, alleged his client, Hinkel, was well into the crosswalk and crossing the street in a normal manner when the accident occurred. Goss said the accident occurred because Fidler did not see Hinkel.

Flores argued that Hinkel was liable for the accident because she darted into the crosswalk without looking.

A Wisconsin Statute says that no person should suddenly leave a curb or place of safety and enter the path of a vehicle that is so close that it is difficult for the operator of the vehicle to yield.

The defendant offered to settle the case on a 50/50 basis and offered Hinkel \$20,000, but because Hinkel claimed she did not bear any fault for the accident, she believed she was entitled to the full \$40,000.

DISCRIMINATION: \$686,192

Case number: 07-C-0213S, Western District of Wisconsin; 08-1110, 7th Circuit Court of Appeals

Verdict & Settlement: Settlement

Settlement amount: \$686,192.35

Disposition date: Sept. 8, 2008

Plaintiffs attorney (firm): Marilyn Townsend, Frederick B. Wade, and Robert J. Kasieta

Plaintiff counsel's summary of the facts: In October 2007, a federal court jury in Madison, Judge John Shabaz presiding, found that the City of Watertown violated anti-discrimination laws: (1) on the basis of age when it terminated her employment and retained the services of two younger less experienced women; (2) on the basis of sex when it selected a male supervisor for promotion to a newly created Assistant manager position; and (3) on the basis of age when it failed to hire her to fill an account clerk vacancy in the office of the city treasurer.

At the time the employment of Herzog was terminated, she had worked for the City for 13 years and had advanced from the entry level position of bookkeeper to a supervisor in the Water Department. Her performance evaluations were uniformly outstanding.

In addition to finding that the City discriminated against Herzog, the Jury recommended that "City of Watertown administrators and staff receive training in hiring practices, affirmative action, harassment and cultural sensitivity."

MEDICAL MALPRACTICE: \$400,000

Court: Washington County Circuit Court

Case name: *Jane Knight v. Physicians Insurance Company of Wisconsin, Inc.*

Case number: 06-CV-000424

Judge: Andrew T. Gonring

Verdict & Settlement: Jury verdict in favor of plaintiff

Original offer: \$399,000

Award: \$450,000

Special damages: For damages, the jury awarded \$64,839 for medical expenses and \$385,161 for past and future pain, suffering and disfigurement. Motions after verdict were denied.

Disposition date: July 10, 2008

Plaintiffs attorney (firm): David P. Lowe of Jacquart & Lowe, S.C., Milwaukee

Defendants attorney (firm): Medical Associates of Menomonee Falls, Ltd. was represented by Lori Gendelman of Otjen & Van Ert & Weir, S.C., Milwaukee, and defendant Neysan Bayat, M.D. was represented by Randy Parlee of Peterson, Johnson & Murray, S.C., Milwaukee

Plaintiffs expert witnesses: Rita Wickham, PhD., Chicago, IL, Oncology Nursing; David Larson, M.D., Milwaukee, Plastic Surgery

Defendants expert witnesses: Lisa Schulmeister, RN, MN, New Orleans, LA, Oncology Nursing; James May, MD, Boston, MA, Plastic Surgery

Plaintiff counsel's summary of the facts: Jane Knight, aged 69, was diagnosed with breast cancer in her right breast in the summer of 2004. She was prescribed chemotherapy to take place at Medical Associates of Menominee Falls. A venous access port was surgically implanted under the skin above her left breast to facilitate administration of the chemotherapy drugs, which are then hung from a bag and administered via an IV line, through a Huber needle that is placed through the skin and into the implanted port. Knight's first two sessions were uneventful. During the third session, however, the chemotherapy drug, Adriamycin, leaked out of the port and into Knight's healthy breast tissue, causing her to suffer an extravasation injury.

Knight's suit alleged that the chemotherapy nurses either improperly positioned the Huber needle in the port during the third session, or that the needle became dislodged and, due to inadequate monitoring, the dislodgement was not detected by the chemotherapy nurses before the entire bag of the drug was administered. It was the patient's daughter, who had accompanied her mother for the session, who first noticed swelling and redness and notified the nurses.

Upon discovery of the extravasation, Knight was referred the same afternoon to Dr. Neysan Bayat, a plastic surgeon, for evaluation and treatment of the injury. Dr. Bayat ordered her admitted to the hospital for intravenous antibiotics and evaluation by an infectious disease

specialist, but did not treat her with application of ice, as recommended by Adriamycin's manufacture and medical literature. The injury progressed over the ensuing months to the point that the left breast became necrotic, requiring a mastectomy and reconstruction.

WRONGFUL DEATH: \$633,682

Injuries claimed: Death by vehicular striking

Court: Milwaukee County

Case name: *Davizonni Kimbrough, et al. vs. Heidi L. Allison et al*

Case number: 2007 CV 006473

Judge: Thomas Cooper

Verdict & settlement: Jury returned plaintiff verdict

Original amount sought: \$1,000,000

Highest offer: \$130,000

Award: 85 percent negligence on part of driver; 15 percent negligence on part of uncle: \$633,682; \$56,332 medical expenses; \$2,350 funeral expenses; \$300,000 conscious pain and suffering; \$275,000 loss of society and companionship by mother

Date of incident: Feb. 8, 2007

Disposition date: Dec. 18, 2008

Original filing date: June 5, 2007

Plaintiffs attorney (firm): Geoffrey D. Wilber and Werner Erich Scherr, Gruber Law Offices, LLC, Milwaukee

Defendants attorney (firm): Roger H. Weede, Law Office of Roger H. Weede, LLC, Milwaukee

Insurance carrier: National Indemnity Company

Plaintiffs expert witnesses: Dr. Robert Niebler

Defendants expert witnesses: Dr. Randal Wojciehoski

Plaintiff counsel's summary of the facts: While being accompanied to school with 15-year-old uncle, a 7-year-old was run over several times by a day care van.