

# Law Reporter

## HANSEN LAW FIRM, LLC

Volume II, Issue I

### Special points of interest:

- Qualified Settlement Offers discussed in this issue
- Jury trial and settlement reporter included for this issue
- Case law summaries pertinent to insurance carriers included in this issue

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### Qualified Settlement Offers

On April 12, 2006, Lawrence M. Hansen of Hansen Law Firm, LLC appeared as a guest speaker at the Central Indiana Claims Association meeting. He provided a legal update regarding qualified settlement offers. This included a discussion of a recent case interpreting qualified settlement offers. The gist of the presentation reported that qualified settlement offers should not be forgotten or disregarded as a tool to resolve smaller BI / PD claims. By way of reminder, in essence a qualified settlement offer can only be used once litigation has commenced. The offer (either settlement offer or demand) must be made in writing and provide 30 days in which to accept or reject the offer. A failure to accept the offer operates as a rejection. In addition, each offer



must be for an individual claimant. In other words, a joint offer for multiple plaintiffs does not appear to satisfy the statutory requirements. In the event a valid qualified settlement offer is received and rejected and the rejector does not prevail at trial (do better than the offer), the rejector is liable for attorney fees and costs for each qualified offer rejected. This liability is capped at 1,000 per claim. This is true whether the rejected offer was from a claimant or from a defendant / insurance carrier.

The QSO should be regarded as a double edged sword. When a PD claim results in a demand from the claimant in excess of the actual damages (most likely due to claimant's belief that he is entitled to compensation for aggravation), a QSO could serve to reduce the actual judgment by \$1000. However, when claimants submit qualified demands for multiple plaintiffs and recover a judgment equal to or greater than the qualified demands, the defendant can owe additional fees on top of the judgment with a cap of \$1000 for additional fees and expenses.

Don't forget to consider whether a QSO is warranted in your next case

### Hansen Law Firm, LLC sponsors Fishers Freedom Festival

As a new member to the Fishers Business Community, HLF is pleased to announce its participation in the Fishers Freedom Festival. HLF was requested and gladly agreed to contribute to the festivities surrounding the 4th of July weekend. The festival is a staple in the community and all attendees are guaranteed a good time. In addition to financial support,



Activities include music, food, and a parade. This parade always generates strong community interest. We are sure this year will be no

different. We look forward to seeing any of you at the parade and festivities.

# Law Reporter

## Jury Trial and Settlement Reporter

**File Opening Date:** 11/23/2004

**Caption:** Melinda Cumberledge v. Bradford Bledsoe, 22C01-0303-CT-148

**Court:** Floyd Circuit Court

**Injuries:** neck, shoulder and head injuries; recommended neck surgery, could injure her vocal cords and potentially end her music career.

**Medical Specials:** \$5,009

**Lost Wages:** 3 days, amount unspecified

**Date of closing:** Pending Order of Dismissal

**Plaintiff's Initial Demand:** \$100,000

**Trial or Settlement:** Settled at mediation

**Trial Judge:** J. Terrence Cody

**Verdict/Settlement Amount:** \$10,000

**Plaintiff's Attorney:** Michael E. Krauser, Krauser & Brown

**Defense Attorney:** Lawrence M. Hansen

**Case Information:** On February 21, 2002, plaintiff, Melissa Cumberledge was traveling north on Grant Line Road in Evansville, Indiana and proceeding through the intersection of Grant Line Road and Hausfeldt Lane. At the same time, the insured Bradford Bledsoe, was traveling south on Grant Line Road and stopped in the left turn lane waiting to turn east onto Hausfeldt Lane. As plaintiff proceeded into the intersection, the insured attempted to execute his turn and the vehicles collided.

**File Opening Date:** 11/23/2004

**Caption:** Fairmount State Bank, as Personal Representative of the Estate of Linda O'Banion vs. Gary C. Power, Polar Ice Transportation, Ltd., 90D01-0205-CT-0003

**Court:** Wells Superior Court

**Injuries:** death claim

**Medical Specials:** \$18,094.60

**Lost Wages:** \$560

**Date of closing:** remains open and will be re-set for trial

**Plaintiff's Initial Demand:** \$1,518,654.60

**Trial or Settlement:** Trial

**Trial Judge:** David L. Hanselman

**Verdict/Settlement Amount:** \$0

**Disposition:** Hung Jury

**Plaintiff's Attorney:** Vaughn Wamsley, Carmel, IN and Jeffery Cooke, Lafayette, IN

**Defense Attorney:** Lawrence M. Hansen and Linda Turner Jelks

**Case Information:** On May 22, 2000, Linda O'Banion was traveling south in the passing lane of I-69, when her vehicle traveled across the right lane of I-69, left the west side of the roadway, struck an earth embankment, became airborne and landed on the 93-B exit ramp, where it continued to travel south-west and strike the left rear end of a Polar Ice semi-trailer that was parked on the shoulder of the exit ramp. Mrs. O'Banion was pronounced dead at the scene. At the time of the accident, the driver, Gary Powers, was asleep in the tractor and not aware that the accident had occurred. Mr. Powers was cited for improper parking in violation of state statutes.

**File Opening Date:** 11/23/2004

**Caption:** Rick Grill and Kathy Grill v Kimberly Roseborough, 18C04-0312-CT-43

**Court:** Delaware Circuit Court 4

**Injuries:** concussion, muscle sprains and strains, complications of fibromyalgia, lower back injury and exacerbation of neurocardiogenic insufficiency disorder (NCS) and orthostatic hypotension.

**Medical Specials:** approximately \$4,000

**Lost Wages:** No claim

**Date of closing:** Pending court's issue of Dismissal

**Plaintiff's Initial Demand:** \$5,000

**Trial or Settlement:** Settled

**Trial Judge:** John M. Feick

**Verdict/Settlement Amount:** \$1,500

**Disposition:** Settled

**Plaintiff's Attorney:** Joe Davis

**Defense Attorney:** Linda Turner Jelks

**Case Information:** Plaintiff was northbound on Madison Street and the insured was westbound on 21<sup>st</sup> Street when the vehicles collided. The parties dispute all other details of the accident. Further, plaintiff was convicted in a related criminal matter of insurance fraud.

**File Opening Date:** 11/23/2004

**Caption:** Allstate a/s/o Jeffrey DeCamps v Lori Wentzel & Gilbert Wentzel, 82D03-0502-PL-750

**Court:** Vanderburgh Superior Court 3

**Injuries:** N/A

**Medical Specials:** N/A; property damage of \$8,056

**Lost Wages:** N/A

**Date of closing:** Pending Order of Dismissal

**Plaintiff's Initial Demand:** \$

**Trial or Settlement:** Settled

**Trial Judge:** Wayne Trockman

**Verdict/Settlement Amount:** \$3,000

**Disposition:** Settled

**Plaintiff's Attorney:** Ryan M. Rodgers, Grant & Grant

**Defense Attorney:** Thomas R. Harper

**Case Information:** On February 18, 2004, Gilbert Wentzel's car broke down while he was driving on the Lloyd Expressway. He coasted to a stop at the right-side edge of the road; there was no shoulder or emergency lane, and the car had no power for lights. Wentzel went to call and have the vehicle towed. Meanwhile, Jeffrey DeCamps, also driving on the Lloyd Expressway, ran into Wentzel's car.

**File Opening Date:** 8/25/2005

**Caption:** Michelle Estelle v Walter Wandersee and American Family Mutual Insurance, 49D03-0508-CT-0033163

**Court:** Marion Superior Court 3

**Injuries:** hip, knee, and back trauma; headaches

**Medical Specials:**

**Lost Wages:**

**Date of closing:** January 12, 2006

**Plaintiff's Initial Demand:** \$50,000

**Trial or Settlement:** Settlement

**Trial Judge:** Patrick McCarty

**Verdict/Settlement Amount:** \$18,000 and waiver of med pay lien

**Disposition:** Settled

**Plaintiff's Attorney:** Rodney Tucker

**Defense Attorney:** Lawrence M. Hansen

**Case Information:** On September 18, 2004, the insured, Michelle Estelle, walked out of a gas station in Marion, Indiana, and was hit or ran into a car driven by the defendant. Parties and witnesses disagreed on the issues; i.e., (1) whether the insured was paying attention or looking at her lottery ticket, and (2) whether the defendant was driving too fast through the gas station's parking lot.

Defendant's auto carrier denied coverage based upon a commercial exclusion; i.e., pizza delivery for Domino's Pizza.

**File Opening Date:** 4/19/2005

**Caption:** Sharron Morris (Crumpton) vs. Founders Insurance Company, 49D13-0504-CT-013388

**Court:** Marion Superior Court 13

**Injuries:** Exacerbation of pre-existing lower back pain, radiating into legs

**Medical Specials:** \$7,777

**Lost Wages:** \$7,200

**Date of closing:** Pending return of Stipulation of Dismissal

**Plaintiff's Initial Demand:** policy limits of \$25,000

**Trial or Settlement:** Settled at mediation

**Trial Judge:** S. K. Reid

**Verdict/Settlement Amount:** \$20,000

**Disposition:** Settled

**Plaintiff's Attorney:** Paul Ogden, Roberts & Bishop

**Defense Attorney:** Lawrence Hansen

**Case Information:** On October 7, 2004, the plaintiff, Sharon Crumpton, was involved in a collision with an unidentified motorist. Prior to the accident, Crumpton was approaching a traffic light, traveling at about 30 -35 mph. Crumpton claims that as she was traveling through the intersection, the unidentified motorist turned left directly in front of her. The impact caused her vehicle to spin around 1.5 times. The unidentified driver then fled the scene. Crumpton claimed to have sustained injury and underwent medical treatment. At the time of the collision, Crumpton was insured with Founders Insurance Company. Crumpton's pre-existing back condition dates back at least to the 1990s, possibly beginning after she fell on ice and landed on her tailbone in 1996. She had another fall on ice in 2003. Crumpton's pre-existing conditions and excessive medical treatment created the issue giving rise to the litigation and provided the defense with a substantial reduction from plaintiff's initial demand. In addition, plaintiff asserted a claim for bad faith damages. The matter was resolved within the policy limit with no ECO damages.

**File Opening Date:** 11/24/2004

**Caption:** Paul F. Muse v. Harold Hilligas, 49D11-0409-CT-001701

**Court:** Marion Superior Court 11

**Injuries:** neck, upper back, and shoulder strain, exacerbation of a heart condition and high blood pressure; trauma to testicles

**Medical Specials:** \$4,214

**Lost Wages:** N/A

**Date of closing:** 3/9/2006

**Plaintiff's Initial Demand:** \$23,500

**Trial or Settlement:** Settled

**Trial Judge:** John Hanley

**Verdict/Settlement Amount:** \$7,000

**Disposition:** Settled

**Plaintiff's Attorney:** Mitchell E. Pippin

**Defense Attorney:** Linda Turner Jelks

**Case Information:** On or about November 16, 2003, Plaintiff northbound on Arlington Street and stopped at the intersection of Arlington and 10<sup>th</sup> Street in Indianapolis. Our insured, Harold Hilligas, was eastbound on 10<sup>th</sup> Street and turned south onto Arlington. Hilligas's light had turned yellow prior to his turn, he lost control of his vehicle, and struck plaintiff's vehicle.

**File Opening Date:** 3/21/2005

**Caption:** Glen W. Winters vs. Rebecca Hatfield, 27D03-0507-SC-2918

**Court:** Grant County Superior Court 3, Small Claims Division

**Injuries:** Property damage to plaintiff's vehicle; towing and storage

**Medical Specials:** N/A

**Lost Wages:** N/A

**Date of closing:** Pending executed Release, and satisfaction of judgment

**Plaintiff's Initial Demand:** \$3,975

**Trial or Settlement:** Trial

**Trial Judge:**

**Verdict/Settlement Amount:** \$1,814.55

**Disposition:** Trial

**Plaintiff's Attorney:** Pro se

**Defense Attorney:** Thomas R. Harper

**Case Information:** On June 2, 2005, after stopping at a

stop sign, Rebecca Hatfield pulled her vehicle out into an intersection in the path of Glen Winters' vehicle. She didn't see the Winters vehicle due to glare from the sun. Winters sued for damages including property damage, costs of towing and storage, and court fees.

**File Opening Date:** 12/5/2005

**Caption:** State Farm Mutual Automobile Insurance Co. a/s/o Debbie Donathon vs. Timothy A. Herrod, 89D03-0510-SC-2259

**Court:** Wayne County Superior Court 3

**Injuries:** Property damage to plaintiff's vehicle

**Medical Specials:** N/A

**Lost Wages:** N/A

**Date of closing:** 3/14/2006

**Plaintiff's Initial Demand:** \$1,389

**Trial or Settlement:** Settlement

**Trial Judge:** Darrin M. Dolehanty

**Verdict/Settlement Amount:** \$976.70

**Disposition:** Dismissed

**Plaintiff's Attorney:** Kent G. Klinge, Boston Bever Klinge Cross & Chidester

**Defense Attorney:** Linda Turner Jelks

**Case Information:** This matter involved a dispute over the value of property damage.

**File Opening Date:** 3/21/2005

**Caption:** Founders Insurance Company vs. Twanna Davis, 49K06-0505-SC-03445

**Court:** Marion County Small Claims Court, Warren Township Division

**Injuries:** Property damage to insured's vehicle

**Medical Specials:** N/A

**Lost Wages:** N/A

**Date of closing:** Pending Pro Supp hearing 4/19/2006

**Plaintiff's Initial Demand:** \$2,341

**Trial or Settlement:** Trial

**Trial Judge:**

**Verdict/Settlement Amount:** \$2,341

**Disposition:** Judgment awarded

**Plaintiff's Attorney:** Thomas R. Harper

**Defense Attorney:** Jeffrey S. McQuary

**Case Information:** This is a small claims subrogation matter that arose out of payments made by Founders to its insured, for damages caused by Twanna Davis when she crashed into the insured's parked vehicle.

**File Opening Date:** 6/1/2005

**Caption:** Daniel Guyinn v. Rodney C. Richardson,

Judge John F. Handley, Judge Thomas J. Carroll, Judge Patrick T. McCarty, City of Indianapolis, Indiana; Department of Metropolitan Development; Jacob A. Atanga, Yvonne Ferguson-Watkins, Lawrence Aldridge Lewis, Jr., Citizen Neighborhood Coalition, Inc., Associated Right of Way & Engineering Service, Inc., Dura Builders, Inc., Edmund Mahern, Burnetta Sloss-Tanner, Sue Shively, Laurence Allen, Dayene Thorpe, Cedella Rufus and Phillip Smith, 49D12-0303-CT-011085

**Court:** Marion Superior Court 12

**Injuries:**

**Medical Specials:** \$

**Lost Wages:** n/a

**Date of closing:** 3/31/2006

**Plaintiff's Initial Demand:** \$

**Trial or Settlement:** Hearing on our Motion to Dismiss

**Trial Judge:** Judge Charles O'Connor, Shelby Circuit Court

**Verdict/Settlement Amount:** \$0

**Disposition:** Dismissed

**Plaintiff's Attorney:** Pro Se

**Defense Attorney:** Linda Turner Jelks

**Case Information:** Several years ago, the City of Indianapolis sought to purchase property owned by Mr. Guyinn. Apparently, the City obtained an appraisal of the property and made an offer to Mr. Guyinn, which he accepted. Thereafter, Mr. Guyinn apparently believed that he was taken advantage of and that the City, the appraisers and anyone else involving that transaction were in collusion to "steal" his property. We attempted to review that particular lawsuit which was filed in 1998 in Judge Patrick McCarty's Court, and was subsequently dismissed. Plaintiff later filed an Amended Complaint

**File Opening Date:** 6/21/2005

**Caption:** David D. Hall and Carmella Hall vs. Loren D. Perdue and Nina D. Patterson, 29D03-0505-CT-0551

**Court:** Hamilton County Superior Court, #3

**Injuries:** soft tissue injuries to the neck, back and left shoulder

**Medical Specials:** \$11,414

**Lost Wages:** \$313

**Date of closing:** Pending

**Plaintiff's Initial Demand:**

**Trial or Settlement:** Settled at mediation

**Trial Judge:** William J. Hughes

**Verdict/Settlement Amount:**

**Disposition:** Dismissal pending

**Plaintiff's Attorney:** Jason R. Reese, Wagner

Reese & Crossen, LLP

**Defense Attorney:** Thomas R. Harper

**Case Information:** On June 21, 2003, just before 3:00 P.M., this accident occurred at the intersection of 96<sup>th</sup> Street and North by Northeast Boulevard (next to I-69 on the northeast corner of Indianapolis). Lauren Perdue was eastbound on 96<sup>th</sup> Street turning left to northbound North by Northeast Boulevard. Mr. Hall was stopped southbound on North by Northeast Boulevard, and our client, Diane Patterson, was traveling westbound on 96<sup>th</sup> Street through the intersection. Patterson was in a combination through/right-turn lane attempting to travel through the intersection when Lauren Perdue turned in front of her and the vehicles collided. The other through lanes were stopped due to traffic blockage, however, Mrs. Patterson's lane was completely clear for her to travel through the intersection. After the two vehicles hit, they pushed each other into Mr. Hall's car, which was stopped at the intersection.

## Case Law Summaries

**STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY v. GUTIERREZ**, 844 N.E.2d 572, Ind. Ct. App. (2006)

**Background:** Automobile accident victim brought action against driver to recover for personal injuries and against automobile insurer to recover for breach of contract and **bad faith** failure to pay medical benefits. The Circuit Court, Lake County, denied motion for bifurcation and entered judgment on jury verdicts in favor of victim. Driver and insurer appealed.

**Holdings:** The Court of Appeals held that trial court should have bifurcated trial; insurer's denial of medical payments coverage was not done in **bad faith**; victim was occupying insured truck after he exited it to retrieve cargo; and insurer waived the attorney-client privilege. Affirmed in part, reversed in part, and remanded for new

trial.

**GRANGE INSURANCE COMPANY v. GRAHAM**, 843 NE2d. 597 Ind. Ct. App. (2006)

**Background:** Insureds brought action against automobile insurer to recover underinsured motorist (UIM) benefits after splitting per accident limits of liability coverage equal to UIM limits. The Superior Court, Lake County, entered summary judgment in favor of insureds. Insurer appealed.

**Holding:** The Court of Appeals held that the tortfeasor's vehicle was not underinsured under application of limit-to-limit comparison.

Reversed and remanded with instructions.

**VASQUEZ v. PHILLIPS**, 843 NE2d 61 (Ind. Ct. App. 2006)

**Background:** Victims in automobile accident sued tortfeasor for personal injuries. Each plaintiff made a **qualified settlement offer** to tortfeasor, who rejected all of them. The Superior Court, Lake County, entered judgment for plaintiffs and awarded **damages**, and later granted plaintiffs' motion to enforce settlement offer and awarded \$1,000 attorney fees for each plaintiff. Tortfeasor appealed.

**Holdings:** The Court of Appeals held that: (1) each victim was entitled to an attorney fee award of not more than \$1,000, and (2) evidence was insufficient to support attorney fee award of \$1,000 to each victim.

Affirmed in part, reversed in part, and remanded.

*If you would like copies of any of the opinions to the right, please do not hesitate to call. We would be happy to provide complete copies.*

## Aggressive, Efficient & Effective Representation

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Hansen Law Firm, LLC is a litigation firm serving the insurance industry and criminal defendants. We are a full service law firm. We concentrate our practice in the areas of insurance defense, coverage and criminal defense.

As to insurance defense, our practice covers the gamut of insurance defense matters; from automobile to commercial general liability to worker's compensation. In addition to our insurance defense practice, we also assist businesses and individuals with various legal matters important to protection of their interests.

In addition, we also focus upon all aspects of criminal defense, including drunk driving, drug charges (possession, manufacturing, and sales), habitual traffic violations, assault, battery, burglary, murder, criminal recklessness and domestic violence. We assist individuals involved in these life changing circumstances. We focus upon maintaining strong communication with our clients. Each matter handled by our office is personal and important to our clients and therefore is personal and important to us.



## Spring has arrived!

It has been a long time coming, but spring has arrived. Our minds turn to outdoor activities such as barbecues, golf outings, family gatherings, picnics and the like. Please enjoy yourselves, refresh your energies and do the best we can in all our endeavors.

Do not forget that even though we want to play a little more, claimants will be of the same mindset. Now may be the time to consider surveillance on the those few matters that just do not seem to add up. Now may be the time to conduct investigations to see if the injuries complained of are really as bad as the plaintiff's attorney contends.

Unless we intend to use the surveillance at trial, the results of the investigation remain privileged as work product and material prepared in anticipation of litigation. Therefore, our efforts remain protected. Even if we do intend to use the results at trial, the results remain privileged until after the plaintiff's deposition.