

**JASON WAGENER'S**  
**SIGNIFICANT JURY TRIALS AND CASE EXPERIENCE**

1. **In Re: Wilcox**  
*LaSalle County, Illinois*

A Crete Carrier Corporation tractor/trailer was involved in a motor vehicle accident at a rural intersection in Marseilles, Illinois (about 80 miles from Chicago) with a passenger car in which the mother and daughter in the car were killed. On the date of accident, we retained an accident reconstruction expert and met with him and the Crete driver at the scene before the vehicles were moved. We also met with the Crete driver at the scene before we presented the driver to the police for an interview. We coordinated with a field adjustor on the date of the accident and took the necessary steps to preserve evidence. We talked to local and state investigating police and the tow driver. We were able to locate witnesses to the accident very early and establish that the Crete Carrier driver had the right-of-way at the time of the subject accident and was not speeding or otherwise driving carelessly and that the driver of the car failed to stop at her stop sign and entered the intersection directly in front of the truck. Shortly after the accident, we learned the estate of the passenger retained an attorney. We contacted the attorneys representing the estate and learned their theory would be that the Crete driver may have been speeding, should have seen the claimants' vehicle, and had the opportunity to stop or slow down. We put forth the results of our investigation that there was no fault on the part of Crete Carrier or its driver, identifying photos of the scene and witness statements. We were able to settle this matter for a very low, less than cost of defense amount and obtain a full release of all claims from the estate, without a lawsuit being filed and without incurring the expense of discovery.

2. **William P. Sonnenberg v. RMDS, et al.,**  
*McHenry County, Illinois – Jury Trial*

The lawsuit arose as the result of a head-on collision that allegedly occurred when an RMDS truck pulled into traffic at right from a hospital parking lot. The RMDS truck did not make contact with any vehicles but the plaintiff pulled into oncoming traffic to avoid the truck. Several independent witnesses and the investigating police officer testified that the plaintiff had the right-of-way and the RMDS driver pled guilty to exiting from a prohibited emergency vehicle entrance. The plaintiff was found to be intoxicated upon admission to the hospital but, interestingly, none of the witnesses had any criticism of the plaintiff's driving and there was no evidence he was speeding or driving erratically. A defense retained toxicologist reviewed the plaintiff's lab work and, after the plaintiff's attorney disputed the relevance and validity of the blood test results and sought to have the evidence excluded, the court allowed the expert to testify to the plaintiff's diminished reaction time and perception. The court also granted the defendants' motion in limine to exclude the RMDS driver's plea of guilty to the traffic violation. The plaintiff sustained significant injuries, had three surgeries, presented verified special damages exceeding \$150,000.00 and asked for \$680,000.00 from the jury in closing. After a 50% reduction for the plaintiff's contributory negligence, the net verdict was \$130,000.00, the exact midpoint

between the last demand (\$200,000.00) and the last offer (\$60,000.00) at the mediation prior to trial.

3. **Illinois Farmers Insurance Company v. Veolia Environmental Services,**  
*DuPage County, Illinois*

The lawsuit arose as the result of a fire that started after a Veolia garbage truck allegedly clipped a power line, started a fire and a residence was nearly burned to the ground. Illinois Farmers filed a large subrogation action against Veolia. Investigation revealed a Veolia truck serviced the subject location at the time the fire started and power lines had been pulled down above the waste containers that Veolia serviced. While it appeared there was no question Veolia was a cause of the incident, we argued that the proximate cause of this accident was the low-hanging utility lines. We advised the plaintiff that we would file third party complaints against various utilities, and argue Veolia was not the proximate cause of the subject accident. Illinois Farmers eventually settled for 50% of its claim.

4. **Allan D. Stirling v. SDR Contracting Inc., et al.,**  
*Cook County, Illinois*

We represented a trucking company, SDR, that was involved with the delivery of very large steel beam to a construction site. The plaintiff, a construction worker, was seriously injured when one of the picked beams rolled toward him as he and a co-worker were unloading the beam. It was alleged the load was not properly secured by SDR and/or the load shifted during transit. Two witnesses testified that the SDR driver stated the load shifted during transit. The plaintiff sustained serious injuries when he jumped from the trailer to avoid the beam. At mediation, the plaintiff's demand was over \$3,000,000.00. The case eventually settled for \$500,000.00, with the steel fabricator and party responsible for loading the beams paying the bulk of the settlement and SDR contributing approximately 20% of the total settlement.

5. **Brian A. Davis v. Michael P. Reilly,**  
*DuPage County, Illinois – Jury Trial*

This matter involved a fight at a drinking establishment. We defended one of the combatants - all witnesses testified our client was the instigator of the melee. He was defended under his homeowner's insurance policy. While we could not admit negligence due to a related coverage action, our client did not recall how the fight started and we did not dispute the eyewitness testimony, instead focusing our defense on the damages. At the conclusion of the trial, a judgment was entered on the jury verdict in the amount of \$58,871.61. Based on the amount of verified specials and injury (fractured orbital bones requiring insertion of titanium plate, approximately \$27,000.00 in medical bills) and the lack of any defense witnesses, this was an excellent result.

6. **Estate of James Flach, Deceased v. Ag-Chem Corp. & AGCO Corp. v. VH Associates, Inc.,**  
*Macon County, Illinois; Settled during Jury Trial*

The lawsuit arose as the result of an accident which occurred when Flach, an employee of VH Associates, was operating a Terra-Gator, a type of spreader, underneath power lines when the extension arm of the machine came in contact with the line, the machine became energized and, while attempting to exit the machine, Flach sustained severe injuries and died about six months after the accident. We represented the employer, VH Associates. The employer replaced parts and repaired the machine within weeks after the accident and modified the part of the machine involved in the subject accident about eighteen months after the accident before a wrongful death suit was filed and before the manufacturer had an opportunity to inspect the equipment, but after the manufacturer had notice of the incident. The Estate of Flach sued the manufacturer of the Terra-Gator and the manufacturer filed a third party complaint against the employer for contribution and for spoliation of evidence and later, wrongful destruction of evidence. After discovery, research and extensive motion practice, the employer successfully moved to dismiss all spoliation and destruction of evidence counts against it. While the employer's actions did not allow the manufacturer an opportunity to ever inspect the equipment in the condition it was in at the time of the accident, the employer's motion to dismiss was granted three times as to three amended third party complaints, the last with prejudice, on the basis that there was no special relationship between the employer and manufacturer alleged from which any duty arose to preserve the evidence. The workers compensation lien was over \$1.4 million with probable liability on the employer. The suit settled with the employer recovering a significant portion of its lien, which would never have been possible had the spoliation counts not been dismissed.

7. **Brant v. Allied Metal** – Premises, Construction  
*Jury Trial*

Plaintiff, an independent contractor, was severely injured after falling through Allied Metal's facility. We represented Allied Metal and the individual property owner in a jury trial in Cook County. We obtained a verdict of not guilty for the individual owner of Allied and a 50% reduction of the final verdict for Allied based on plaintiff's contributory negligence. Plaintiff's injuries included a shattered tibial plateau, knee replacement, fractured heel, fractured jaw, multiple broken ribs, collapsed lung, skull fracture, and memory problems. Plaintiff admitted into evidence \$490,000.00 past/future medical and \$523,000.00 lost wages. Plaintiff made a demand of \$5,000,000.00 prior to entering a high/low agreement of \$500,000.00 - \$3,000,000.00. Final verdict of \$800,000.00, which was under settlement authority of \$1,000,000.00.

8. **Kalis v. Colgate**  
*Seventh Circuit – Product Liability*

Defended Colgate-Palmolive in a product liability suit arising when a fondue pot allegedly manufactured by Colgate exploded at a children's birthday party, permanently injuring one child. The trial court granted our summary judgment motion on the basis that another manufacturer, rather than Colgate, could have manufactured the product at issue. The trial court's decision was upheld on appeal.

9. **Harb v. ANR** – *Trucking*  
*Jury Trial*

Plaintiff alleged severe internal injuries as the result of a loading dock accident when plaintiff was pinned between the dock and defendant's truck. The truck had backed in while plaintiff was clearing materials off the dock. The Cook County jury was persuaded that plaintiff should have been aware of traffic in the area and was negligent in not being aware of her surroundings. The jury returned a verdict of not guilty on behalf of the defendants.

10. **Patel v UPS** – *Trucking*  
*Jury Trial*

Multiple plaintiffs alleged injuries involving a collision with a UPS truck in an intersection-related accident. The UPS driver made a left-turn in front of a vehicle containing five individual plaintiffs. They all testified their vehicle had a green light and that the UPS vehicle turned into their vehicle. The UPS driver testified he turned on a red light after he already entered the intersection. The defense presented several independent witnesses to cast doubt on the plaintiffs' version of events and a jury found that the driver of the plaintiffs' vehicle was 50% at fault.

11. **Barraza v. Bonsack Trucking** – *Trucking*  
*Jury Trial*

Obtained a not guilty verdict for Bonsack trucking company and its driver in a case where the defendant was turning right at an intersection and clipped plaintiff's vehicle, which was passing on the right. The jury found that Plaintiff was following too closely in the turning lane and did not pay attention to defendant's turn signal.

12. **Butler v. John Burns** – *Construction*

Plaintiff died when his motorcycle hit an excavation site in a street. Several warning signs had blown down the night before the accident and were not replaced by the defendant prior to plaintiff's accident. The case settled for approximately \$500,000.00 after the court granted various motions in limine presented by the defense allowing evidence of plaintiff's excessive speed and evidence of plaintiff consuming alcohol.