STATE OF INDIANA
RETAIL COMPENDIUM OF LAW

Prepared by
James M. Hinshaw
Alex E. Gude
Bingham Greenebaum Doll LLP
2700 Market Tower
10 West Market Street
Indianapolis, IN 46204
Tel: (317) 635-8900
Email: jhinshaw@bgdlegal.com
agude@bgdlaw.com
www.bgdlegal.com

BINGHAM GREENEBAUM DOLL LLP

BGD

Retail, Restaurant, and Hospitality Guide to Indiana Premises Liability

Introduction

It is crucial for the owners or other persons or entities in control of retail properties to have a working understanding of common legal issues regarding premises liability, and how they impact their operations. Indiana, like many states, has its own unique legal structure, theories, and statutes. With that in mind, we have included a brief overview of the legal system in Indiana below. We hope the following serves as an easy-to-use reference guide to these issues and provides practical tips to help those in the retail, hospitality, hotel, and food industries prevent or defend against premises liability claims.

If you have any questions about the material covered in this guide, please contact the authors listed below or another member of Bingham Greenebaum Doll LLP.

James M. Hinshaw
Partner
Phone: 317.968.5385
Email: jhinshaw@bgdlegal.com

Alex E. Gude
Associate
Phone: 317.068-5451
Email: agude@bgdlegal.com

A. The Indiana State Court System

Indiana's trial courts are comprised of Superior Courts and Circuit Courts. Each county in the state has one Circuit Court, created by the Indiana Constitution, and at least one Superior Court, created by statute. Both the Superior Courts and Circuit Courts are courts of general civil jurisdiction and hear all manners of civil disputes. Circuit Court judges are elected and serve six-year terms. Superior Court judges are generally elected, with the exception of two counties.[1]

The intermediate appellate-level court is the Indiana Court of Appeals. Court of Appeals judges are chosen through Indiana's merit selection process. The state Judicial Nominating Commission performs an application and interview process to identify three candidates to present to the Governor for consideration. From this list of three names, the Governor appoints the Court of Appeals judge.

The Indiana Supreme Court is the highest court in the state. There are five Supreme Court justices, one of whom holds the title of Chief Justice. Supreme Court Justices are also chosen through Indiana's merit selection process.

The procedural rules in Indiana are controlled by the Indiana Rules of Trial Procedure, Indiana Rules of Appellate Procedure, and Indiana Rules of Evidence. Local courts may also have in place local rules that govern local procedure. These rules differ in many ways from federal court practice, and it is important to consult them and have a working knowledge of them.

B. Indiana Federal Courts

There are two federal districts in Indiana—the Northern District and the Southern District. Within the Northern District, there are courthouses in Hammond, South Bend, Fort Wayne and West Lafayette. Within the Southern District, there are courthouses in Indianapolis, Terre Haute, Evansville and New Albany. Appeals from the federal district courts go to the Seventh Circuit Court of Appeals. The federal courts are governed by the Federal Rules of Civil Procedure.

Negligence

A. General Negligence Principles

The mere fact that an accident occurred does not necessarily mean that a property owner or lessee is liable. A plaintiff must come forward with evidence that there has been negligence on the part of the property owner. Negligence is conduct which falls below the legal standard established to protect others from unreasonable risk of harm.[2] The standard of care required of all persons is the care that would be taken, under similar circumstances, by a reasonably prudent

[1] In Lake County and St. Joseph County, Superior Court judges are chosen through a merit selection process.
[2] *Sills v. Massey-Ferguson, Inc.*, 296 F. Supp. 776 (N.D. Ind. 1969).

person.[3] To recover in negligence, a plaintiff must establish: (1) a duty of care owed to the plaintiff by the defendant; (2) a breach by the defendant of that duty; and (3) an injury to the plaintiff resulting from the defendant's breach.[4]

The question of whether a duty is owed in a premises liability case depends on whether the defendant was in control of the premises when the accident occurred.[5] The law will only impose a duty on an individual who could have known of dangers on the premises and who could have acted to prevent any foreseeable harm.[6] Because the burden of proof is on the plaintiff, if a plaintiff is unable to show that a property owner owed a legal duty to him or her, the plaintiff's claim will be denied.

The question of what level of care is owed to an individual under Indiana law depends on the class of persons in which the individual falls.[7] Indiana recognizes distinctions between licensees, trespassers, and invitees.

Licensees and trespassers are individuals who enter or remain on land for their own "convenience, curiosity or entertainment."[8] A trespasser is an individual who is on the premises without the permission of the owner, while a licensee is present with the permission of the owner.[9] An owner owes a duty to both trespassers and licensees to refrain from willful or wanton injury or act in a manner to increase the possibility of harm to the individual.[10] However, an owner owes an additional duty to a licensee—to warn him of latent or hidden dangers on the premises known to the owner.[11]

An invitee is an individual who is invited or permitted to enter or remain on the premises for the benefit of the owner.[12] An invitee can be categorized as a public invitee, a business visitor, or a social guest.[13] An owner owes an invitee the highest duty of care—the duty to exercise reasonable care for the invitee's protection while on the premises.[14] However, an owner is not liable to an invitee for harm caused from an activity or condition if the danger is known or

---

[3] *Id.*
[4] *Schlotman v. Taza Café*, 868 N.E.2d 518, 520 (Ind. Ct. App. 2007).
[5] *Yates v. Johnson County Bd.*, 888 N.E.2d 842, 847 (Ind. Ct. App. 2008).
[6] *Id.*
[7] *Markle v. Hacienda Mexican Restaurant*, 570 N.E.2d 969 (Ind. Ct. App. 1991).
[8] *Gaboury v. Ireland Road Grace Brethren, Inc.*, 446 N.E.2d 1310, 1314 (Ind. 1983).
[9] *Burrell v. Meads*, 569 N.E.2d 637, 640 (Ind. 1991).
[10] *Id.*
[11] *Id.*
[12] *Id.*
[13] *Pickering v. Caesars Riverboat Casino, LLC*, 988 N.E.2d 385, 390 (Ind. Ct. App. 2013).
[14] *Id.*

obvious to the invitee.[15] Further, an individual may lose his or her status as an invitee when the invitee exceeds the scope of the invitation.[16]

A plaintiff must also establish that there was a dangerous or defective condition on the land. If there is no proof that there was something wrong with the premises, there can be no liability for resulting injuries.[17] At a bare minimum, a plaintiff is required to establish specific facts to establish the conditions on the landowner's premises that caused the injury.[18] Where a plaintiff cannot specify what caused the injury, summary judgment dismissing the plaintiff's complaint is warranted.[19]

B. Attractive Nuisance

Indiana recognizes a difference in the duty owed to a trespasser in some circumstances if the trespasser is a child. An attractive nuisance is a dangerous condition on a landowner's property that may attract children onto the land and may involve risk or harm to them.[20] Under Indiana's attractive nuisance doctrine, a landowner will be held liable to a trespassing child if the following elements are met: 1) the condition is maintained or permitted on the property by the owner or renter; 2) the condition is particularly dangerous to children and the danger is unlikely to be comprehended by them; 3) the condition is especially attractive to children; 4) the owner or renter has actual or constructive knowledge of both the condition and the likelihood that children will trespass and be injured; and 5) the injury is natural, probable, and foreseeable.[21]

Examples of attractive nuisances may include an unenclosed junkyard,[22] a partially constructed house containing latent dangers,[23] and a trampoline.[24] The attractive nuisance doctrine does not generally apply to "common or ordinary objects or conditions" such as walls, fences, or gates.[25] The doctrine also does not apply to conditions which are common to nature, including ponds, pools, lakes, streams, or other bodies of water.[26]

The purpose of the attractive nuisance doctrine "is to protect children from dangers which they do not appreciate."[27] As such, where a landowner can reasonably anticipate that children might come into contact with the dangerous condition on his land and that contact with the

---

[15] *Johnson v. Pettigrew*, 595 N.E.2d 747 (Ind. Ct. App. 1992).
[16] *Markle v. Hacienda Mexican Rest.*, 570 N.E.2d 969, 974 (Ind. Ct. App. 1991).
[17] *Ogden Estate v. Decatur County Hospital*, 509 N.E.2d 901, 903 (Ind. Ct. App. 1987).
[18] *Id.*
[19] *Id.*
[20] *Black's Law Dictionary* 1094 (7th ed. 1999).
[21] *Kopczynski v. Barger*, 887 N.E.2d 928, 932 (Ind. 2008).
[22] *See Borinstein v. Hansbrough*, 82 N.E.2d 266 (Ind. 1948)
[23] *Caroll by Caroll v. Jagoe Homes, Inc.*, 677 N.E.2d 612 (Ind. Ct. App. 1997).
[24] *Kopczynski*, 887 N.E.2d at 930.
[25] 62 Am. Jur. 2d Premises Liability §§ 290, 366, 368.
[26] *City of Indianapolis v. Johnson*, 736 N.E.2d 295, 299 (Ind. Ct. App. 2000).
[27] Restatement (Second) of Torts § 339 cmt. *m*.

condition may inflict serious injury, the landowner must take reasonable steps to protect against injury.[28]

C. Off Premises Liability

While one may typically think of landowners as having liability for accidents that occur *on their land*, Indiana law may also impose liability on landowners who use their land in such a way as to unreasonably injure individuals *not on their land*.[29] This typically includes owners of adjacent property, other landowners, and users of public ways.[30]

There are several Indiana cases relating to the natural condition of land. Generally, Indiana law does not impose liability on a landowner for physical harm to those off premises caused by a natural condition of the land.[31] However, urban landowners may be held liable for injury to those using a public highway "resulting from [a] failure to exercise reasonable care to prevent an unreasonable risk of harm arising from the condition of trees on the land near the highway."[32] The test for whether a landowner exercised reasonable care requires a weighing of "the seriousness of the danger against the ease with which it may be prevented."[33] It has been held, though, that a landowner has no obligation to continually inspect his property for natural dangers.[34]

D. Defenses

Indiana law recognizes various defenses to claims for negligence.

a. Statute of Limitations

Generally speaking, personal injury actions for negligence are subject to a two-year statute of limitations.[35] This means that claims filed more than two years after they "accrue" will be barred as a matter of law. Negligence claims "accrue," and the statute of limitations begins to run, "when the plaintiff knew or, in the exercise of ordinary diligence, could have discovered that an injury had been sustained as a result of the tortious act of another."[36]

b. Open and Obvious Defects—No Defense Under Indiana Law

In some jurisdictions, a landowner may raise a defense that the defects on his property were "open and obvious," and therefore the plaintiff was on notice of the dangerous condition.

---

[28] *Neal v. Home Builders, Inc.*, 111 N.E.2d 280, 286-87, 290 (Ind. 1953).
[29] *Neal v. Home Builders, Inc.*, 111 N.E.2d 280, 286-87 (Ind. 1953).
[30] *Id.*
[31] Restatement (Second) of Torts § 363; *Neal*, 111 N.E.2d at 286-87.
[32] *Id.*
[33] *Neal*, 111 N.E.2d at 290.
[34] *Morningstar v. Maynard*, 798 N.E.2d 920 (Ind. Ct. App. 2003).
[35] I.C. § 34-11-2-4.
[36] *Wehling v. Citizens Nat'l Bank*, 586 N.E.2d 840, 843 (Ind. 1992).

Indiana courts have declined to adopt this as an absolute defense in premises liability actions.[37] The Indiana Supreme Court has stated that Indiana's contributory law principles (now codified in the Comparative Fault Act, discussed below) and the assumption of risk doctrine (discussed below) sufficiently cover situations where dangerous conditions are open and obvious.[38]

c. Comparative Fault

The Indiana legislature enacted the Indiana Comparative Fault Act,[39] effective January 1, 1985, to govern all fault-based actions except for those actions brought under the Indiana Medical Malpractice Act[40] or the Indiana Tort Claims Act.[41] The Indiana Comparative Fault Act changed the law in Indiana (previously, a plaintiff could not recover any damages if he contributed at all to the injury; thus, even if a defendant was 99% at fault for a plaintiff's injury, if the plaintiff himself contributed 1% of the fault, the plaintiff was barred from recovery).

Under the Comparative Fault Act, a plaintiff may not recover any damages for which he is more than 50% at fault.[42] If a plaintiff is 50% at fault or less, the amount of the plaintiff's damages is reduced proportionately to the plaintiff's fault.[43] For example, if a plaintiff is found to be 30% at fault for the accident, he may recover 70% of his total damages.

"Fault," for purposes of the Comparative Fault Act, is defined to include "any act or omission that is negligent, willful, wanton, reckless, or intentional toward the person or property of others."[44] The term also includes "unreasonable assumption of risk not constituting an enforceable express consent, incurred risk, and unreasonable failure to avoid an injury or to mitigate damages."[45] Thus, the concept of "fault" under the Comparative Fault Act subsumes the common law doctrine of assumption of risk in cases where the Comparative Fault Act applies.

d. Assumption of Risk

Although Indiana is a modified comparative fault state, courts here still recognize the doctrine of incurred or assumed risk in limited circumstances. There are four categories of assumption of risk in Indiana: (1) express assumption of risk, where the plaintiff gives his express consent (*e.g.*, in the form of a written waiver, to relieve the defendant of an obligation to exercise

[37] *Bridgewater v. Economy Engineering Co.*, 486 N.E.2d 484, 489 (Ind. 1985).
[38] *Id.*
[39] I.C. § 34-51-2-1 *et seq.*
[40] The Indiana Medical Malpractice Act, I.C.§ 34-18-1-1 *et seq.* & 34-4-33-8, governs claims against a qualified health care provider.
[41] The Indiana Tort Claims Act, I.C. 34-4-16.5; 34-4-33-1 & 34-4-33-8, governs claims against governmental entities or public employees.
[42] I.C. § 34-51-2-6.
[43] I.C. § 34-51-2-5.
[44] I.C. § 34-6-2-45(b).
[45] I.C. § 34-6-2-45(b).

care); (2) implied primary assumption of risk, where a plaintiff enters voluntarily into a relationship with the defendant that he knows will involve risk and has impliedly agreed to assume that risk; (3) implied secondary assumption of risk, where a plaintiff is aware of a risk created by the defendant's negligence, but proceeds voluntarily to encounter it; and (4) unreasonable assumption of risk, where a plaintiff's conduct in voluntarily encountering a known risk is unreasonable and amounts to contributory negligence.[46] Assumption of risk prevents a plaintiff who consents to a known risk from suing for damages arising from that risk under certain limited circumstances.[47] The consent must be based on actual knowledge of the risk, not merely "general awareness of a potential for mishap."[48]

Assumed or incurred risk is generally no longer a complete defense to negligence (the exception being where the assumed risk amounts to "unforeseeable express consent"), but rather is fault to be allocated under the Indiana Comparative Fault Act, discussed above.[49] However, the doctrine retains its viability in narrow circumstances where the Comparative Fault Act is inapplicable, e.g., medical malpractice claims and claims against governmental entities under the Indiana Tort Claims Act.[50]

Examples of Negligence Claims

There are various types of conditions that can form the basis for a traditional negligence claim. The following are examples of typical negligence claims in the premises liability context.

A. "Slip and Fall" Type Cases

1. Snow and Ice

One common basis for negligence claim is in a "slip and fall" case where an individual claims that a parking lot or other walkway on a landowner's property was not properly plowed or salted following a snow or ice storm.

There exists a general duty under Indiana law for business owners to remove snow and ice from their premises.[51] This duty stems from the landowner's inherent duty to exercise reasonable care in the maintenance of a business premises.[52] However, a landowner is not liable

[46] *Spar v. Cha*, 907 N.E.2d 974, 980 (Ind. 2009).
[47] *Spar v. Cha*, 907 N.E.2d 974 (Ind. 2009).
[48] *Clark v. Wiegard*, 617 N.E.2d 916, 918 (Ind. 1993) (quoting *Beckett v. Clinton Prairie School Corp.*, 504 N.E.2d 552, 554 (Ind. 1987)).
[49] I.C. § 34-6-2-45; *Smith v. Baxter*, 796 N.E.2d 242 (Ind. 2003).
[50] *See Spar v. Cha*, 907 N.E.2d at 980; *Town of Highland v. Zerkel*, 659 N.E.2d 1113 (Ind. Ct. App. 1995).
[51] *Hammond v. Allegretti*, 311 N.E.2d 821, 826 (Ind. 1974), *overruled on other grounds by Burrell*, 569 N.E.2d at 641.
[52] *Id.*

in every situation. The inquiry of whether a landowner breached its legal duty is highly fact sensitive and will depend on the circumstances of each case.[53]

One common consideration in snow and ice cases is the reasonableness of the time period in which a landowner may clear snow and ice. In one case, an Indiana court found that a landlord had breached his duty of care where he had not cleared a stairwell that had been accumulating ice and snow for a week.[54] On the other hand, a federal court, applying Indiana law, found that a motel was not liable where the ice storm had only started five to twenty minutes prior to a motel guest's slip and fall.[55]

Another related consideration is the timing of the notice provided to the landowner. In situations where there is a sudden change in weather or where ice forms suddenly with little to no warning before a person slips and falls, there is less potential for liability on the part of a landowner.[56] However, where a landowner has actual notice of a continuous problem of ice forming on his or her property, the landowner may more readily be held liable for resulting injuries.[57]

There is no pre-existing duty under Indiana law to remove snow and ice from public sidewalks. That duty rests with the municipality.[58] However, a landowner may be held to have assumed a duty to pedestrians on public sidewalks when he or she creates artificial conditions that *increase* the risk of injury.[59] Even then, "the simple removal of the natural accumulation of snow and ice from a public sidewalk has never been held to be an artificially created condition that increases risk so as to serve as the basis of liability in Indiana."[60]

2. "Black Ice"

"Black ice" is a condition well known to people who live in cold weather areas. It is a thin layer of ice that forms on pavement or sidewalks and blends into the color of the surface upon which it rests. Courts recognize that "black ice" is very difficult for anyone to see, including a premises owner. Courts have held that where an individual slips and falls on black ice which is

[53] *Id.* ("There will be situations when the natural accumulation of ice and snow will render the inviter liable, and others when it will not. The critical point to be made is that the condition of the premises and the actions taken or not taken by the inviter and invitee must all be considered by the trier of fact in determining the existence or non-existence of legal liability.").
[54] *Rossow v. Jones*, 404 N.E.2d 12, 14 (Ind. Ct. App. 1980).
[55] *Rising-Moore v. Red Roof Inns, Inc.*, 368 F. Supp. 2d 867 (S.D. Ind. 2005), *abrogated on other grounds as stated in Bailey v. ConocoPhillips, Co.*, 2006 U.S. Dist. LEXIS 87653 (S.D. Ill.).
[56] *See Orth v. Smedley*, 378 N.E.2d 20 (Ind. Ct. App. 1978).
[57] *Bell v. Grandville Coop., Inc.*, 950 N.E.2d 747, 752 (Ind. Ct. App. 2011) (tenant's daughter notified landlord on numerous occasion of are where ice regularly formed after snowfall; landlord did nothing to prevent or rectify condition and tenant slipped and fell).
[58] *Denison Parking, Inc. v. Davis*, 861 N.E.2d 1276, 1279-80 (Ind. Ct. App. 2007).
[59] *Id.*
[60] *Id.*

extremely difficult to see, it may be reasonable to conclude that the landowner bears no fault for the individual's injury.[61]

3. Slippery Surfaces – Cleaner, Polish, and Wax

Another common claim by a plaintiff is that the reason he or she fell was the nature of the tile or the application of some cleaner, polish, or wax. The mere fact that a floor is slippery due to the application of polish or wax does not give rise to a cause of action.[62] To establish a cause of action, a plaintiff must prove that the wax or polish was applied in a negligent - for example an application of wax lacking uniformity in distribution which results in slick spots.[63]

4. Liability of Third Party Contractors

Oftentimes, a landowner will contract to a third party various tasks such as snow removal or janitorial services. This raises the question of what the liability of both the third party contractor and the landowner is if an individual is injured due to negligence of the contractor. An independent contractor generally has a duty to use reasonable care both in his or her work and in the course of performance of the work.[64] This duty is only owed to those who might reasonably be foreseen to be injured as a result of a breach of the duty.[65]

As a general rule, a landowner is not liable for the negligence of an independent contractor.[66] There are five exceptions to this general rule: "(1) where the contract requires the performance of intrinsically dangerous work; (2) where the principal is by law or contract charged with performing the specific duty; (3) where the act will create a nuisance; (4) where the act to be performed will probably cause injury to others unless due precaution is taken; and (5) where the act to be performed is illegal."[67] These exceptions reflect the idea that in certain circumstances, the landowner should not be permitted to transfer his duties to the contractor because the landowner is in the best position to minimize the risks involved in the contractor's activities.[68]

B. Liability for Violent Crime

Jury verdicts for liability arising from criminal acts perpetrated upon a shopper, restaurant, or hotel guest or visitor can expose a business owner to significant damages. This exposure exists despite the fact that the criminal act is committed by someone over whom the defendant typically has no control. In addition to the damages for personal injury, the economic

---

[61] *See, e.g., Hall v. Eastland Mall*, 769 N.E.2d 198, 206 (Ind. Ct. App. 2002).
[62] *See Daben Realty Co. v. Stewart*, 290 N.E.2d 809, 811 (Ind. Ct. App. 1972).
[63] *Id.*
[64] *Peters v. Forster*, 804 N.E.2d 736, 743 (Ind. 2004).
[65] *Thiele v. Faygo Beverage, Inc.*, 489 N.E.2d 562, 574 n.4 (Ind. Ct. App. 1986).
[66] *PSI Energy, Inc. v. Roberts*, 829 N.E.2d 943, 951 (Ind. Ct. App. 2005).
[67] *Carie v. PSI Energy, Inc.*, 715 N.E.2d 853, 855 (Ind. 1999).
[68] *Id.*

impact of a highly publicized trial can cause damage to a restaurant's, hotel's, retailer's, or retail center's reputation in the community.

However, generally speaking an owner of property may be held liable under certain circumstances for the injuries inflicted by a trespasser who, while on the owner's property, commits a violent crime against a third person.[69] Although owners, landlords, tenants, and "permitees" have a common law duty to minimize foreseeable dangers on their property, including the criminal acts of third parties, they are not the insurers of a visitor's safety.[70]

1. Control

In Indiana, a critical element of a cause of action based on a defendant's alleged failure to protect a patron is an allegation that the plaintiff's injury occurred on the defendant's property, or in an area under the defendant's control.[71] It is not enough to allege that the incident resulting in a plaintiff's injury was foreseeable where the defendant lacked the opportunity to supervise and control the assailant.

2. Foreseeability

Foreseeability is the critical point of analysis in claims for liability arising from criminal acts. Liability can arise only where a landowner fails to take reasonable precautions to protect their invitees from foreseeable criminal attacks.[72] Whether this duty has been satisfied in a particular case depends on the "totality of the circumstances."[73] The court must examine "all of the circumstances surrounding an event, including the nature, condition, and location of the land, as well as prior similar incidents to determine whether a criminal act was foreseeable."[74]

There is no requirement that the past experience relied upon to establish foreseeability be of the same type of criminal conduct to which the plaintiff was subjected. Nonetheless, the inquiry must still be made as to the location, nature, and extent of those previous criminal acts and their similarity, proximity, or any other relationship to the crime in question. For example, in one case where it was claimed that a property owner failed to provide adequate security to prevent an attack in its parking lot, the Indiana Supreme Court held that a single event of criminal activity occurring over a year before the assault at issue could be sufficient to create foreseeability that would subject a business to negligence.[75] In that case, the Court found

[69] *Ellis v. Luxbury Hotels, Inc*., 716 N.E.2d 359, 360-61 (Ind. 1999); *Dennis v. Greyhound Lines, Inc*., 831 N.E.2d 171, 174 (Ind. Ct. App. 2005).
[70] *Booher v. Sheeram, LLC*, 937 N.E.2d 392, 395 (Ind. Ct. App. 2010).
[71] *Cox v. Stoughton Trailers, Inc*., 837 N.E.2d 1075, 1082 (Ind. Ct. App. 2005); *Jump v. Bank of Versailles*, 586 N.E.2d 873, 881 (Ind. Ct. App. 1992).
[72] *Centerfield Bar, Inc. v. Gee*, 930 N.E.2d 622, 626 (Ind. Ct. App. 2010).
[73] *Id.*; *Kroger Co. v. Plonski*, 930 N.E.2d 1, 7 (Ind. 2010).
[74] *Kroger*, 930 N.E.2d at 7.
[75] *Id.* at 8-9.

that an assault could be foreseeable even though the prior criminal act on the premises was of a different nature, namely, theft of an automobile.[76] Therefore, prior criminal acts on a premises must be neither frequent nor identical to the criminal act at issue in order to be foreseeable.

3. Joint and Several Liability

Until recently, Indiana courts held landowners jointly and severally liable along with the intervening third party assailant who caused the harm. However, in 2013, the Indiana Supreme Court explained that this doctrine was abrogated by the Indiana Comparative Fault Act (discussed above).[77] The Comparative Fault Act requires that when determining how to assign percentages of fault in these situations, a jury must consider the intentional acts of third-party actors in addition to the negligent acts of business owners.[78] Ultimate allocation of fault is left to the jury. And, it is thus possible that a jury could allocate a greater percentage of fault to a negligent landowner than to an intentional tortfeasor.[79]

4. Security Contractors

A plaintiff's claim against a security contractor is limited. "A contractor is liable for injuries or death of third persons after acceptance by the owner where the work is reasonably certain to endanger third parties if negligently completed."[80] However, although in general a contractor has a duty to use reasonable care both in his or her work and in the course of performance of the work, that duty is not owed to the world at large, but rather only to those who might reasonably be foreseen as being subject to injury by the breach of the duty.[81]

5. Defenses

In cases where a plaintiff is injured by a criminal attack, a plaintiff's allegations of foreseeability and control may be negated where a defendant shows that it has undertaken security measures or otherwise taken sufficient precautions to prevent against criminal attacks.[82] For instance, where a defendant can show that it undertook affirmative steps to prevent criminal attacks, such as the provision of security guards or operable locks that would have served to prevent the attack, a defendant may avoid liability for a plaintiff's injuries.

C. Claims Arising From the Wrongful Prevention of Thefts

"Inventory shrinkage" is the phenomenon of the loss of retail inventory due to theft. It is a multi-billion-dollar problem faced by retailers worldwide. The biggest threat facing store

---

[76] *Id*.
[77] *Santelli v. Rahmatullah*, 993 N.E.2d 167, 178 (Ind. 2013)
[78] *Id.* at 177.
[79] *Id.* at 178.
[80] *Peters v. Forster*, 804 N.E.2d 736, 742 (Ind. 2004).
[81] *Id.* at 743.
[82] *Kroger*, 930 N.E.2d at 10; *Gee*, 930 N.E.2d at 628.

owners is employee theft, which accounts for nearly half of all inventory shrinkage.[83] However, another substantial problem faced by retailers is shoplifting by non-employees. In addition to the financial impact of the loss of inventory and sales, the threat of shoplifting poses an additional problem when retailers attempt to thwart a perceived attempt to shoplift — *i.e.*, lawsuits for assault, battery, wrongful detention, and negligence, along with claims for punitive damages.

1. False Arrest and Imprisonment

False imprisonment involves an unlawful restraint upon someone's freedom of movement or the deprivation of liberty of another without his consent.[84] False imprisonment may be committed by words alone, acts alone, or through a combination of the two.[85] It may be accomplished by acting on the will of the individual, by personal violence, or both.[86]

A store owner who detains an individual on a suspicion of shoplifting is protected by the Indiana Shoplifting Detention Act which provides that an owner or his agent who has probable cause that a theft has occurred or is occurring and who has probable cause as to the individual involved may detain the person and request that the person identify himself, verify the identification, determine whether the person has the merchandise in his possession, inform appropriate law officers, and inform other interested parties (*e.g.*, parents) that the person has been detained.[87] The Shoplifting Detention Act grants immunity to a store owner who makes a good faith mistake as to the charge of shoplifting.

Although the term "false arrest" is often used interchangeably with the term "false imprisonment," the two are distinct. A false arrest is a means of committing a false imprisonment under assumption of legal authority.[88]

2. Malicious Prosecution

A malicious prosecution action is a civil proceeding brought by an individual who has been improperly subjected to a legal process, whether criminal or civil.[89] To succeed in a malicious prosecution action, the plaintiff must prove (1) the defendant instituted, or caused to be instituted, a prosecution against the plaintiff; (2) in doing so, the defendant acted maliciously; (3) the prosecution was instituted without probable cause; and (d) the prosecution terminated in the

---

[83] *See Retail Fraud, Shoplifting Rates Decrease, According to National Retail Security Survey*, June 15, 2010, (available at http://www.nrf.com/modules.php?name=News&op=viewlive&sp_id=945).
[84] *Crase v. Highland Vill. Value Plus Pharmacy*, 374 N.E.2d 58, 60-61 (Ind. Ct. App. 1978).
[85] *Dietz v. Finlay Fine Jewelry Corp.*, 754 N.E.2d 958, 967 (Ind. Ct. App. 2001).
[86] *Id.*
[87] Ind. Code. § 35-33-6-2.
[88] 35 C.J.S. False Imprisonment § 3 at 435-36 (1999).
[89] *See, e.g., Board of Comm'rs v. King*, 481 N.E.2d 1327 (landowner sued county commissioners and county sanitarian for malicious prosecution based on a dismissed criminal prosecution against him for violation of sewage disposal ordinance).

plaintiff's favor.[90] These elements remain the same whether a plaintiff brings a malicious prosecution suit for a criminal charge or a civil charge.[91] However, one important distinction exists between civil and criminal cases. Indiana courts have found that a judicial determination of probable cause in a criminal proceeding constitutes prima facie evidence of probable cause in a malicious prosecution action.[92] "The element of malice may be inferred from a total lack of probable cause, from the failure to make a reasonable or suitable inquiry, and from a showing of personal animosity."[93]

Recoverable damages in a malicious prosecution action include all damages that are the natural and probable consequences of the malicious prosecution, including compensatory damages resulting directly from the prosecution.[94] A plaintiff may also recover punitive damages where warranted.[95] One unique aspect of damages in a malicious prosecution action is that the plaintiff may recover damages suffered due to loss of reputation.[96] This is due to the fact that loss of reputation is a foreseeable result of a malicious prosecution.[97]

3. Defamation

If a shopper is wrongfully accused of committing a crime, the shopper may have a claim for defamation.[98] Under Indiana law, where a communication imputes criminal conduct, the communication is considered defamatory *per se*.[99] This means that a plaintiff is entitled to presumed damages as a natural and probable consequence of the defamatory statement.[100] In other words, a plaintiff suing based on a false statement accusing him of a crime need not prove that he suffered actual damages.

However, Indiana recognizes a "qualified privilege" where a communication is made in good faith on any subject matter in which the party making the communication has an interest.[101] The qualified privilege will be lost if the speaker is primarily motivated by ill will, if there is excessive publication of the defamatory statement, or if the statement is made without grounds for belief in its truth or falsity.[102] Thus, a store owner, who has an obvious interest in the goods in his store, may not be liable for defamation if he accuses a shopper of theft so long as the

[90] *Id.* at 1329.
[91] *Snider v. Lewis*, 276 N.E.2d 160, 173 (Ind. Ct. App. 1971).
[92] *Glass v. Trump Ind., Inc.*, 802 N.E.2d 461, 467 (Ind. Ct. App. 2004).
[93] *Kroger Food Stores, Inc. v. Clark*, 598 N.E.2d 1084, 1089 (Ind. Ct. App. 1992).
[94] *Snider*, 276 N.E.2d at 174.
[95] *Id.*
[96] *See Greives v. Greenwood*, 550 N.E.2d 334, 338 (Ind. Ct. App. 1990).
[97] *Wells v. Stone City Bank*, 691 N.E.2d 1246, 1249 (Ind. Ct. App. 1998).
[98] *See Street v. Shoe Carnival*, 660 N.E.2d 1054 (Ind. Ct. App. 1996).
[99] *Id.* at 1058.
[100] *Id.*
[101] *Conwell v. Beatty*, 667 N.E.2d 768, 779 (Ind. Ct. App. 1996).
[102] *Id.*

statement is made in good faith, is not motivated by ill will, is not excessively published (that is, communicated to an unreasonable number of people who otherwise have no interest in the statement), and is made with a reasonable belief as to the truth of the statement.

4. Negligent Hiring, Retention, or Supervision of Employees

Another claim often raised by plaintiffs who claim to have been wrongfully accused of shoplifting is that the accuser was an improperly hired, trained, or supervised employee.[103] In order to determine if an employer is liable for negligent hiring or retention of an employee, courts must determine if the employer exercised reasonable care in hiring or retaining the employee.[104] Indiana has adopted the Restatement (Second) of Torts § 317 concerning the supervision of employees. That provision requires employers to use reasonable care to prevent their employees from intentionally harming others or creating an unreasonable risk of bodily harm. However, the Restatement standard applies only if the employee is acting *outside the scope of his employment*. If an employee is acting within the scope of his employment, an employer may be liable for the employee's negligence under the theory of *respondeat superior*.[105]

Indemnification and Insurance-Procurement Agreements

Parties often attempt to shift the risk of loss stemming from a plaintiff's claims by entering into agreements that contain indemnification provisions and/or require that insurance be purchased for the benefit of one or more parties. While the ability to shift losses may vary with the particular circumstances involved and the language of the agreement at issue, the following is an overview of the law covering indemnification and insurance-procurement agreements in Indiana.

A. Indemnification

Where sophisticated parties negotiate at arm's length to enter into agreements containing an indemnification clause, such a clause is valid and enforceable inasmuch as the parties have allocated the risk of liability to third parties between themselves.[106] Further, it is a basic premise of contract law that an agreement will be interpreted so as to carry out the intentions of the parties involved.[107]

Indemnification agreements commonly impose a duty to defend (discussed below) and indemnify. As a general rule, indemnification agreements will require the indemnitor (the party paying indemnity) to "defend, indemnify, and hold harmless" the indemnitee (the party receiving

[103] *Levinson v. Citizens Nat. Bank of Evansville*, 644 N.E.2d 1264, 1269 (Ind. Ct. App. 1994).
[104] *Frye v. American Painting*, 642 N.E.2d 995, 998 (Ind. Ct. App. 1994).
[105] *Tindall v. Enderle*, 162 Ind. App. 524, 529-530, 320 N.E.2d 764 (Ind. Ct. App. 1974).
[106] *Center Township of Porter County v. Valparaiso*, 420 N.E.2d 1272, 1275 (Ind. Ct. App. 1981).
[107] *Rieth-Riley Constr. Co. v. Auto-Owners Mut. Ins. Co*., 408 N.E.2d 640, 645 (Ind. Ct. App. 1980).

indemnity) from claims made against the indemnitee arising out of the acts or business of the indemnitor. For example, an owner may require a contractor to indemnify the owner for accidents arising from the contractor's work.

Often, particularly in situations where the parties have unequal bargaining power, the proposed indemnitee will seek full indemnification for all claims, including claims resulting from the indemnitee's own negligence. In those situations, to be valid, the exculpation must be knowingly and willingly given.[108] A written contract between the indemnitor and the indemnitee containing a clear and unequivocal provision stating that the indemnitor has knowingly and willingly assumed the burden of indemnification for the indemnitee's negligence is required before such agreement will be enforced.[109]

B. Insurance Procurement Agreements

To avoid problems with indemnification provisions and to make sure that there is a financially responsible entity to satisfy claims, contracts and leases frequently contain insurance procurement provisions. A person who agrees to procure insurance on behalf of another becomes the agent of the proposed insured and incurs a duty to use reasonable care to procure the desired insurance.[110] If the agent fails to obtain the desired insurance, he may be held liable for damages if the principal suffers a loss.[111]

C. The Duty to Defend

The duty to provide a defense to another party can arise in the context of a lease or other agreement and in the context of an insurance policy. Under both, the duty to defend is broader than the duty to indemnify and will often require the indemnitor to pay for all costs associated with the defense of a plaintiff's action.

Under an insurance policy, an insurance company's duty to defend is "determined from the allegations of the complaint and from the facts known or ascertainable by the insurer after an investigation has been made."[112] The duty is broader than the duty to indemnify, and an insurer, after making an independent determination that it has no duty to defend, must protect its interest by filing a declaratory judgment action for judicial determination of its obligations under the policy or defend its insured under a reservations of rights. [113] An insurer refuses to defend at its own peril.[114]

---

[108] *Weaver v. American Oil Co.*, 276 N.E.2d 144, 148 (Ind. 1971).
[109] *State v. Daily Exp., Inc.*, 465 N.E.2d 764, 767 (Ind. Ct. App. 1984).
[110] *Anderson Mattress Co. v. First State Ins. Co*., 617 N.E.2d 932, 939 (Ind. Ct. App. 1993).
[111] *Id.*
[112] *Mahan v. Am. Std. Ins. Co*., 862 N.E.2d 669, 676 (Ind. Ct. App. 2007).
[113] *Employers Ins. v. Recticel Foam Corp*., 716 N.E.2d 1015, 1025 (Ind. Ct. App. 1999).
[114] *Id*.

When an insurer has a duty to defend an insured, the insurer is liable for the reasonable and necessary expenses incurred by the insured in defending the actions. Nevertheless, the insured has the burden of establishing the nature of the services rendered and the reasonableness of the charges.[115]

Damages in Premises Liability Cases

At the conclusion of a trial, Indiana juries are entrusted to determine not only whether liability exists on the part of a landowner, but if liability is found, what amount of damages is appropriate under the circumstances. Damages awarded may include economic losses (*e.g.*, wages, medical expenses) and non-economic losses (*e.g.*, pain and suffering).

A. Compensatory Damages

Compensatory, or "actual," damages are intended to compensate one party after a loss or injury caused by another party.[116] Compensatory damages are meant to place the plaintiff in the same financial position he would have been in had the incident never occurred[117] and are limited to the actual loss suffered by the plaintiff.[118] The following are the various types of damages that may be awarded in a personal injury action under Indiana law:

1. Past and future medical bills;
2. Lost income, wages, and earnings; and
3. Past and future physical and mental pain and suffering.

1. Past and Future Medical Bills

In order to recover an award of damages for medical expenses, the party seeking to recover these damages must prove that the expenses were both reasonable and necessary.[119] In an award of past medical bills, the plaintiff is entitled to the "reasonable value of medical services," as determined by the jury.[120] This value is not exclusively determined by either the amount originally billed to the plaintiff for medical services, or the amount actually paid by the plaintiff (or his insurer) for medical services, although evidence of both of these measures may be introduced to show reasonableness.[121] An award of damages for future medical bills must be based on evidence from competent witnesses testifying to the calculation of such future medical expenses.[122]

---

[115] *Id*. at 1026-27.
[116] *A.J.'s Auto. Sales v. Freet*, 725 N.E.2d 955, 970 (Ind. Ct. App. 2000).
[117] *Id.*
[118] *Shelby Federal Sav. & Loan Ass'n v. Doss*, 431 N.E.2d 493, 501 (Ind. Ct. App. 1982).
[119] *Smith v. Syd's Inc.*, 598 N.E.2d 1065, 1066 (Ind. 1992).
[120] *Stanley v. Walker*, 906 N.E.2d 852, 858 (Ind. 2009).
[121] *Id.*
[122] *Cook v. Whitsell-Sherman*, 796 N.E.2d 271, 278 (Ind. 2003).

2. Lost Income, Wages, and Earnings

Like other forms of damages, an award of damages for lost income, wages, and earnings is a determination to be made by the jury. The amount of lost earnings must be reasonably attributable to the incident at issue at trial.[123] Even where the evidence relating to lost earnings put on by the plaintiff is uncontroverted, the jury is not required to award damages in the full amount requested.[124] Lost earnings are typically proven by presenting documentary evidence such as pay stubs showing reduced net earnings for the period of time after the incident or by tax returns.[125]

3. Past and Future Pain and Suffering

Indiana courts have found that awards for pain, suffering, fright, humiliation, and mental anguish are particularly within the province of the jury because they involve the weighing of evidence and credibility of witnesses.[126] Pain and suffering damages may include a wide range of topics. For example, loss of normal life refers to an individual's lack of personal enjoyment or the inability to enjoy life in the manner previously accustomed to. Topics such as this may only be included as a factor of pain and suffering damages; it is an error for the court to instruct the jury on the loss of quality and enjoyment of life as a separate element of damages.[127]

Courts have also found that someone who witnesses an accident may be permitted to recover emotional distress damages under the "bystander rule."[128] However, such damages are only permitted in two circumstances: (1) where the individual witnesses or comes to the scene of an accidently shortly after the death or severe injury of a close relative; or (2) where the witness has suffered a direct impact.[129]

B. Nominal Damages

In personal injury cases, even if the jury finds liability, the jury is not required to award substantial damages if no actual damages stem from the injury.[130] Nominal damages arise in cases where an individual has been wronged but has not suffered any damage or harm, or merely minimal harm, as a result.[131] Where compensatory damages are awarded to make an injured party

---

[123] *See Symon v. Burger*, 528 N.E.2d 850, 852-53 (Ind. Ct. App. 1988) (finding that the jury was not required to believe plaintiff's testimony concerning lost wages because they may not have been attributable to the accident where plaintiff missed twenty days of work and another employee involved in the accident missed only three days).
[124] *Id.*
[125] *K Mart Corp. v. Beall*, 620 N.E.2d 700, 707 (Ind. Ct. App. 1993).
[126] *See, e.g., Landis v. Landis*, 664 N.E.2d 754, 757 (Ind. Ct. App. 1996).
[127] *Frito-Lay, Inc. v. Cloud*, 569 N.E.2d 983, 989 (Ind. Ct. App. 1991).
[128] *Spangler v. Bechtel*, 958 N.E.2d 458 (Ind. 2011).
[129] *Id.* at 466.
[130] *Dee v. Becker*, 636 N.E.2d 176, 178 (Ind. Ct. App. 1994).
[131] *See, e.g., Wagner v. Riley*, 499 N.E.2d 1155 (Ind. Ct. App. 1986) (jury free to accept expert testimony evidencing range of impairment after accident from 1% to 15% and award damages accordingly).

whole, nominal damages exist to vindicate a legal right where there has been no actual harm caused.[132] Nominal damages usually take the form of miniscule awards, such as one dollar.

C. Punitive Damages

Whereas compensatory damages exist to make an injured party whole, punitive damages exist solely to deter and punish wrongful activity.[133] Plaintiffs have no right to receive punitive damages.[134] Rather, the standard is whether, considering only the evidence and reasonable inferences supporting the judgment, a reasonable factfinder could find that the defendant acted with malice, fraud, gross negligence, or oppressiveness which was not the result of a mistake of fact or law, mere negligence, or other human failing.[135] The plaintiff must prove this by clear and convincing evidence.[136]

The Indiana General Assembly has limited the amount of punitive damages recoverable to either three times the amount of compensatory damages awarded in the action, or $50,000, whichever amount is greater.[137] Moreover, when a verdict includes a punitive damages award, the plaintiff receives only 25% of the punitive damages award, with the remaining 75% paid into the Violent Crime Victims Compensation Fund.[138] This is consistent with the public policy behind punitive damages, to punish and deter wrongful activity, rather than to give a windfall to the plaintiff. However, a jury is not allowed to be advised of any limitation on the amount of a punitive damage award or the allocation of money received in a payment of a punitive damages award.[139]

D. Mitigation of Damages

As a general rule, a plaintiff has a duty to mitigate its damages in order to minimize the overall cost of the injury.[140] Failure on the part of the plaintiff to mitigate damages is a defense available to negligent defendants, and this defense addresses conduct by the injured party that aggravates or increases their own injuries.[141] The liable party bears the burden to prove that the plaintiff has not used reasonable diligence in mitigating its damages.[142] If the jury finds that the non-liable party has failed to reasonably mitigate damages, the damages award may be reduced accordingly.

---

[132] *Id.*
[133] *Wohlwend v. Edwards*, 796 N.E.2d 781, 784-85 (Ind. Ct. App. 2003).
[134] *Durham v. U-Haul Int'l*, 745 N.E.2d 755, 762 (Ind. 2001).
[135] *INS Investigations Bureau, Inc. v. Lee*, 784 N.E.2d 566, 582 (Ind. Ct. App. 2003).
[136] *Id.*
[137] Ind. Code § 34-51-3-4.
[138] Ind. Code § 34-51-3-6.
[139] Ind. Code § 34-51-3-3.
[140] *Deible v. Poole*, 691 N.E.2d 1313 (Ind. Ct. App. 1998), *aff'd*, 702 N.E.2d 1076 (Ind. 1998).
[141] *Id.*
[142] *Id.*

E. Wrongful Death

There are three separate causes of action in Indiana for wrongful death. First, the general Wrongful Death Act,[143] second, the Child Wrongful Death Act,[144] and finally, the Adult Wrongful Death Act.[145] Each of these three statutes provides a mutually exclusive avenue for recovery.

1. Wrongful Death Act

The Indiana Wrongful Death Act provides that, where the death of an individual is caused by the wrongful act or omission of another, the personal representative of the deceased may bring any action against the wrongdoer that the deceased could have brought.[146] The Indiana Wrongful Death Act provides recovery for pecuniary damages including, but not limited to, reasonable medical, hospital, funeral, and burial expenses, lost earnings, and legal costs of bringing the action, including attorneys' fees.[147] The action must be commenced within two years.[148] Spouses, dependent children, and dependent next of kin are the only classes of people who may recover damages resulting from lost earnings and non-pecuniary damages such as loss of love, care, and affection.[149] If the deceased leaves behind no surviving spouse, dependent children, or dependent next of kin, the Indiana Wrongful Death Act limits damages to hospitalization or hospital services, medical and surgical services, funeral expenses, and costs and expenses of administration, including attorneys' fees.[150] Punitive damages are not recoverable in a wrongful death action.[151]

2. Child Wrongful Death Act

A separate statute exists that allows the parent(s) or guardian of a child to bring an action for the wrongful death of a child.[152] Under the Child Wrongful Death Act, a "child" is defined as (1) an unmarried individual, with no dependents, who is less than twenty years old; (2) an unmarried individual, without dependents, who is less than twenty-three years old, who is enrolled in postsecondary education; and (3) a fetus that has attained viability.[153] Unlike the Wrongful Death Act, the Child Wrongful Death Act contains no express statute of limitations. However, Indiana's courts have determined that an act arising for a child's wrongful death must

---

[143] Ind. Code § 34-23-1-1.
[144] Ind. Code § 34-23-2-1.
[145] Ind. Code § 34-23-1-2.
[146] Ind. Code § 34-23-1-1.
[147] *Id.*
[148] *Id.*
[149] *Ed Wiersma Trucking Co. v. Pfaff*, 643 N.E.2d 909, 913 (Ind. Ct. App. 1994).
[150] *Chamberlain v. Walpole*, 822 N.E.2d 959, 961 (Ind. 2005).
[151] *Durham*, 745 N.E.2d at 763.
[152] Ind. Code § 34-23-2-1.
[153] *Id.*

generally be brought within two years after the date of death.[154] The damages recoverable under the Child Wrongful Death Act include (1) loss of the child's services; (2) loss of the child's love and companionship; and (3) expenses and debts arising out of the child's death.[155] Like general wrongful death actions, punitive damages are not recoverable in a child's wrongful death action.[156]

3. Adult Wrongful Death Act

In cases where the Wrongful Death Act does not apply, e.g. where the wrongfully deceased has no surviving spouse and no dependents, the personal representative of the deceased may bring an action for wrongful death under the Adult Wrongful Death Act.[157] Damages may include "[r]easonable medical, hospital, funeral, and burial expenses necessitated by the wrongful act or omission that caused the adult person's death, [and] [l]oss of the adult person's love and companionship."[158] Subsection (e) of the Adult Wrongful Death Act caps damages for loss of love and companionship at $300,000.[159] The Adult Wrongful Death Act prohibits recovery of damages for grief, lost earnings, and punitive damages.[160]

---

[154] *Ellenwine v. Fairley*, 846 N.E.2d 657, 663 (Ind. 2006).
[155] Ind. Code § 34-23-2-1.
[156] *See Forte v. Connerwood Healthcare, Inc.*, 745 N.E.2d 796, 798 (Ind. 2001).
[157] *Id.*
[158] *Id.*
[159] *Id.*; *Ind. Patient's Comp. Fund v. Patrick*, 929 N.E.2d 190, 191 (Ind. 2010).
[160] *Id.*

Bingham Greenebaum Doll LLP's Litigation Practice

From straightforward contract disputes to complex national class actions, clients turn to Bingham Greenebaum Doll's litigation attorneys to provide a comprehensive range of business litigation services. Our attorneys are experienced in all aspects of trial and appellate work in federal and state courts, and have substantial experience in alternative dispute resolution matters, such as arbitration, mediation and negotiation, including proceedings before the American Arbitration Association and other tribunals. We help our clients meet their business goals through a wide array of business litigation, including antitrust, class actions, construction, environmental/mass tort, product liability, securities, trade secrets, and many other types of commercial disputes.

Our attorneys have become trusted advisors to our clients by offering a combination of legal strategy, industry background and a practical understanding of business principles and objectives. We handle business disputes large and small for clients engaged in a broad range of industries. Whether our client is a Fortune 100 company, an entrepreneurial start-up, or an individual, we focus on the client's objectives.

Our services include:

- Alternative Dispute Resolution
- Antitrust and Securities
- Appellate
- Asset Protection
- Beverage Alcohol
- Class Action Defense
- Collaborative Law
- Construction Litigation
- Covenant Not to Compete and Trade Secrets
- Custody
- Divorce
- Domestic Partnership
- E-Discovery
- Entertainment and Sports Talent
- Estate and Trust Litigation
- Guardianship
- Intellectual Property Litigation
- Long Term Care
- Matrimonial Law
- Media Law
- Plaintiff Personal Injury
- Product Liability
- Professional Liability
- Retail
- White Collar Criminal Defense

Bingham Greenebaum Doll LLP's litigation experience includes serving as national and regional counsel for large companies and trade associations. Our litigation attorneys are experienced in the coordination and handling of complex litigation, and we are equipped with state of the art information technology to manage cases efficiently and to share information with our clients.

Sometimes the best solution avoids a lawsuit or trial. Our attorneys help clients evaluate the costs, benefits and risks of litigation. We believe that our reputation of being prepared to

present a case in court often leads to settlement. And, once settlement is on the table, our attorneys are skilled negotiators who work to achieve each client's business goals.