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of the Judicial Conference of Indiana, which is charged with improving people’s access to Indiana courts and the quality of their experience there. In 2012, Judge Baker was appointed by the Indiana Supreme Court to a task force evaluating operations and procedures in Marion County Small Claims Courts. The task force’s report to the Supreme Court formed the basis recently adopted by the General Assembly.

Judge Baker received his LLM from the University of Virginia in 1995 and is a member of the American, Indiana State, Monroe County, Boone County, and Indianapolis Bar Associations. He served on the Indiana Judges’ Association Board of Managers from 1979 through 2011 and was its president from January 1987 through June 1989.

Judge Baker was a Captain in the U.S. Army Reserves and remains active in his community, his church, and the Boy Scouts of America, where he attained the rank of Eagle Scout as a youth. In 2011 he joined the Board of Trustees of Garrett-Evangelical Theological Seminary in Evanston, IL, where he serves on the Academic Affairs Committee.

Judge Baker was retained on the Court of Appeals by election in 1992, 2002 and 2012. He and his wife have five children and, so far, ten grandchildren. He is an avid reader, rower, and Nordic walker.

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revision of the Indiana Rules of Appellate Procedure, the first comprehensive review of the appellate rules in 30 years.

By designation of the Chief Justice of Indiana, Judge Najam has represented the Indiana judiciary on the Indiana Department of Homeland Security Counter-Terrorism and Security Council since it was created following the events of September 11, 2001. He also serves on the Court Security Committee of the Judicial Conference of Indiana. Judge Najam was an original member of the Indiana Supreme Court Judicial Technology and Automation Committee, which initiated the Odyssey electronic case and financial management system for Indiana courts.

While in practice he was a member of the Bloomington Rotary Club and the Greater Bloomington Chamber of Commerce. He has also served as a Director and President of the Monroe County YMCA and as a Director and Chair of the Community Foundation of Bloomington and Monroe County. He is currently a member of the Sycamore Land Trust Advisory Board.

Judge Najam is the author of “Public School Finance in Indiana: A Critique,” published in the Indiana Law Journal, and “Caught in the Middle: The Role of State Intermediate Appellate Courts” and “Merit Selection in Indiana: The Foundation for a Fair and Impartial Appellate Judiciary,” both of which were published in the Indiana Law Review. Judge Najam is a graduate of the Indiana Graduate Program for judges, a member of the American, Indiana, and Monroe County Bar Associations, and a Fellow of the American, Indiana, and Indianapolis Bar Foundations. He is a member of the Indiana University Maurer School of Law Board of Visitors, a member of Phi Delta Phi legal fraternity, and an Eagle Scout.

Judge Najam has authored over 3,500 majority opinions for the Court.

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chaired the Specialization Committee. She is currently on an Advisory Panel to the Specialization Committee. In 2005, she was named to the Indiana Pro Bono Commission and in July 2008, she was named as Chair of that Commission. While chair, she worked with the fourteen pro bono districts to train lawyers and mediators on how to assist homeowners facing foreclosure. In addition, she was a member of the Board of Directors of the Indiana Continuing Legal Education Forum from 1994-1999 and has been a co-chair of ICLEF’s Indiana Trial Advocacy College from 2001 to present. Judge May also serves on the Civil Instruction Committee, an Indiana Judicial Conference Committee, which has been working to translate all of the civil jury instructions into “plain English.” She frequently speaks on legal topics to attorneys, other judges, schools, and other professional and community organizations.

In 2003, Judge May was named to the American Bar Association’s Standing Committee on Attorney Specialization. She is now special counsel to that committee. In the spring of 2004, Judge May became adjunct faculty at Robert H. McKinney School of Law, where she teaches a trial advocacy course. Also in the spring of 2004, she was awarded an Honorary Doctor of Civil Law from the University of Southern Indiana. In 2015, Judge May became a member of the American Board of Trial Advocates. Judge May was retained on the Court of Appeals in 2010, and lives in Morgan County.

SYNOPSIS

After Mr. and Mrs. Earl succeeded on a liability claim lawsuit against State Farm, State Farm updated discovery to the Earls and disclosed an additional policy for which the Earls paid that also covered the Earls’ damages. The Earls filed a new lawsuit against State Farm alleging fraud, constructive fraud, bad faith, and breach of contract based on State Farm’s non-disclosure of that policy information during discovery in the prior action. The trial court granted State Farm’s motion for summary judgment, finding the claim was an impermissible collateral attack on the prior judgment. The Earls appeal the trial court’s entry of summary judgment in favor of State Farm.

Court of Appeals Mission Statement

“To serve all people by providing equal justice under law”



Court of Appeals of Indiana

Hearing oral argument at
French Lick Resort
French Lick, IN
Friday, November 17 @ 2:30 p.m.



Kimberly S. Earl, Individually, and as Personal Representative of the Estate of Jerry L. Earl

v.

State Farm Mutual Automobile Insurance Company, State Farm Fire and Casualty Company, and Sarah Smith Vinnedge

36A01-1703-CT-00542

*On appeal from
Jackson Superior Court 1*

Attorneys For The Parties

Appellant Attorney

Matthew J. Schad is an Martindale-Hubbell AV-rated plaintiff's trial attorney handling serious injury and death cases, including products liability, construction site accidents, highway design, motor vehicle collisions, and premises liability.

Matt grew up in Floyd County, Indiana. After graduating from Floyd Central High School he majored in Ancient Greek at Indiana University, where he earned high honors. He went on to attend the Florida State College of Law and graduated cum laude in 1994.

After law school Matt joined the United States Army and served in the Judge Advocate General's Corps overseas in the Republic of Panama. After promotion to captain he became the chief Army military prosecutor for U.S. Army South. At the conclusion of his military career Matt returned home and joined his father Larry at Schad & Schad, the family law firm in New Albany.

Matt has tried over 50 civil jury trials in Indiana and Kentucky and has multiple seven and eight figure verdicts.

Matt has lived in Indiana, Kentucky, Florida, Virginia, Colorado, Central America, and Germany. In his spare time he enjoys playing guitar, fishing, and hiking. Each summer he takes a month long sabbatical to camp and explore the American West.

Appellee Attorney

John Drummy was born and raised in Terre Haute, Indiana. He graduated with honors from Creighton University with a major in accounting and then attended the Indiana University School of Law in Indianapolis, where he graduated with honors in 1985. His practice is focused on insurance coverage, bad faith, appeals, commercial litigation, class actions and professional liability matters. He is a frequent presenter and writer on those topics. He currently serves as the vice chair of publications for the Appellate Practice Committee of the International Association of Defense Counsel and Vice Chair of Diversity for the Professional Liability Committee of the same organization. Since 2010, John has been selected as an Indiana Super Lawyer. John is admitted to the State Bar of Indiana, the U.S. District Courts for the Northern & Southern Districts of Indiana, the U.S. Court of Appeals for the Sixth and Seventh Circuits and the Supreme Court of the United States.

About the Court of Appeals

As the second-highest court in Indiana, the Court of Appeals hears appeals from the state's trial courts and some state agencies. The Court does not preside over trials and must accept all appeals sent to it, with the exception of:

- Cases in which the death penalty or life-without-parole is rendered (appealed directly to the Indiana Supreme Court);
- Cases in which statutes are declared unconstitutional by a trial court (automatically appealed to the Supreme Court);
- Attorney disciplinary cases (which also go to the Supreme Court); and,
- Cases involving taxation (which go to the Indiana Tax Court).

As a result, the 15 members of the Court issue approximately 2,000 written opinions each year. A decision of the Court of Appeals of Indiana is final unless granted further review by the Indiana Supreme Court.

The Court hears cases only in three-judge panels. All panels have statewide jurisdiction and rotate three times per year. Cases are randomly assigned. In addition, there is no deadline for the Court to reach a decision in each case; however, the Court strives to issue decisions within four months of receiving an appeal. Opinions are often issued earlier.

What happens after oral argument?

After oral argument, the judges confer to decide the outcome. A designated writing judge drafts an opinion for the others' review. Final language may involve several drafts and significant collaboration. Generally, opinions affirm or reverse lower court rulings in whole. But some affirm in part, some reverse in part, and some do both. Not infrequently, the opinion instructs the trial court about the next appropriate course of action. Many opinions are unanimous, although non-unanimous decisions (2-1) are not uncommon. Dissenting judges usually express their views in a separate opinion that becomes part of the permanent record of the case. Judges might also write separate, concurring opinions that emphasize different points of law or facts than the main opinion. No rules or laws govern how fast the court must issue an opinion. But the court strives to decide cases within four months of receiving all briefs, transcripts and other records. Once issued, all opinions are published on www.courts.in.gov and maintained in the permanent records of the Clerk of Appellate Courts. Parties can appeal decisions of the Court of Appeals to the Indiana Supreme Court by filing a petition to transfer within a prescribed number of days. But transfer is not automatic; the Supreme Court can grant or deny transfer with or without giving a reason. If the petition is denied, the Appeals Court decision stands.

Today's Panel of Judges



The Honorable
John G. Baker

Monroe County

John G. Baker was named to the Court of Appeals in 1989, which makes him the longest-serving member on the current Court. He served as Chief Judge of the Court of Appeals from 2007-2010.

Judge Baker is a southern Indiana native who grew up along the Ohio River in Aurora, but attended high school at Culver Military Academy in northern Indiana. He earned a B.A. in history from Indiana University in 1968 and his J.D. from Indiana University School of Law-Bloomington in 1971.

He then practiced law in Bloomington as a partner in Baker, Barnhart and Andrews, and later served for 13.5 years as judge of Monroe County and Monroe Superior Courts. In that time, he disposed of more than 15,000 cases – solid preparation for the more than 5,000 majority opinions he has written for the Court of Appeals.

In 2013, Judge Baker retired after 33 years of teaching at the School of Public and Environmental Affairs, Indiana University-Bloomington. He retired in 2015 after teaching a class for foreign lawyers at Indiana University McKinney School of Law for over 10 years. He has also served on the faculties of the Indiana Judicial College, Indiana Continuing Legal Education Forum and the National Institute of Trial Advocacy.

Judge Baker has long been interested in court and judicial reform and history. He's been a member since its inception of the Strategic Planning Committee
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The Honorable
Edward W. Najam,
Jr.

Monroe County

Edward W. Najam, Jr., of Bloomington, Monroe County, was appointed to the Court of Appeals by Governor Evan Bayh in 1992 and retained by the electorate in 1996, 2006, and 2016. Judge Najam graduated from Indiana University High School in Bloomington, where he grew up. He attended Indiana University-Bloomington, where he earned a B.A. in political science, with Highest Distinction, in 1969. Judge Najam earned his J.D. from Harvard Law School and was admitted to the Indiana Bar in 1972. While at I.U. he was elected to Phi Beta Kappa and was elected Student Body President. He was also the recipient of the Herman B Wells Senior Recognition Award for academic excellence and campus leadership, an award named for I.U.'s legendary President and University Chancellor.

After his admission to the Bar, Judge Najam served as Administrative Assistant to the Mayor of Bloomington for two years and was a practicing attorney with a general civil and trial practice for eighteen years before joining the Court. The Indiana Supreme Court appointed Judge Najam to the Supreme Court Committee on Rules of Practice and Procedure, which conducts a continuous study of the Indiana Rules of Procedure and the Indiana Rules of Evidence. He served on this committee for 10 years. As Chair of the Appellate Practice Section of the Indiana State Bar Association, Judge Najam initiated the Appellate Rules Project, which culminated in a complete
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The Honorable
Melissa S. May

Vanderburgh County

Melissa S. May was appointed to the Indiana Court of Appeals by Governor Frank O'Bannon in April of 1998. She was born in Elkhart, Indiana. She received a B.S. in criminal justice from Indiana University-South Bend and, in 1984, a J.D. from Indiana University School of Law-Indianapolis. She is also a graduate of the Graduate Program for Indiana Judges.

Prior to her appointment to the Court, Judge May practiced law for fourteen years in Evansville, Indiana, where she focused on insurance defense and personal injury litigation.

Judge May has been active in local, state, and national bar associations and bar foundations. She served the Indiana Bar Association on the Board of Managers from 1992-1994, as Chair of the Litigation Section from 1998-1999, as Counsel to the President from 2000-2001, as Chair of the Appellate Practice Section from 2008-2009, and as Secretary to the Board of Governors in 2008-2009. She is also a member of the Indianapolis Bar Association and the Evansville Bar Association. She is a fellow of the Indiana Bar Foundation and is currently serving on their Board of Directors. Judge May is a fellow for the American Bar Association, and a Master Fellow of the Indianapolis Bar Association.

From 1999 until December 2004, Judge May was a member of Indiana's Continuing Legal Education Commission, where she
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