



# ANDREW D. ELLBOGEN

SHAREHOLDER



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## Practice Areas

- Arbitration
- Automobile Accident Defense
- Commercial Lines (Premises Liability)
- Employment Practices Liability
- Healthcare and Long-Term Care Defense
- Legal Malpractice (E&O)
- Mediation
- Medical Malpractice
- Municipal Liability Defense
- Personal Lines (Premises Liability)
- Products Liability
- Professional Liability
- Sexual Abuse Defense
- Toxic Tort Defense
- Transportation Defense
- UM/UM
- Wrongful Death Defense

Andrew D. Ellbogen concentrates his multistate practice in the areas of product liability defense, transportation law, construction litigation, legal and nursing home malpractice, adoption agent liability, municipal liability, employment law, dram shop, home insurance claim, and toxic tort defense, including asbestos cases. He has successfully tried several cases to verdict, including several high exposure cases in Illinois as well as Washington, California, Virginia, and Indiana.

Andrew has been Martindale Hubbell™ Rated AV® Preeminent™ for twenty years; this is the highest possible peer-review rating in legal ability and ethical standards. In addition, he has also been included on the list as one of the Top Lawyers in Chicago.

## Awards and Accolades

- Chicago Tribune's Chicago Top Lawyers – Personal Injury (2012)
- Chicago Tribune's Chicago Top Lawyers – Construction Law (2014)
- Chicago Tribune's Chicago Top Lawyers – Construction Law (2015)
- Martindale Hubbell™ Rated AV® Preeminent™ (1998-2018)

## Memberships

- Defense Research Institute (member, ADR committee)
- Federal Trial Bar
- Trucking Industry Defense Association (TIDA)

## Trial and Case Highlights

- Andrew tried a case in the Circuit Court of Lake County, which was the second civil Lake County trial before a 12-person jury after COVID-19 restrictions were put into place. The case involved an alleged pedestrian knock-down accident. The plaintiff claimed that she was struck by the defendant's vehicle, after the defendant failed to bring his car to a stop at a stop sign in a grocery store parking lot. Throughout the trial, Andrew Ellbogen argued that the plaintiff was not struck by the vehicle driven by the defendant. Instead, the alleged incident involved no more than a "close call." To further substantiate the defendant's liability arguments, a thorough assessment of the medical records was relied upon in order to demonstrate to the jury that any claimed injuries being made by the plaintiff were not related to the occurrence as she described it. The jury deliberated for approximately 90 minutes and rendered a complete defense verdict.
- Completed four successful jury trial in 15 months in Northern Illinois counties including Cook, McHenry, and Will. The total amount sought from these four juries was over \$3,000,000, yet the amount awarded was less than \$10,000. Of the four defense verdicts, no damages were awarded to the plaintiff in three of them. In the September 2018 trial, where damages were awarded to the plaintiff, the jury verdict was less than the offer made on behalf of the insured, as well as substantially less than the settlement demand and the amount demanded by the plaintiff's attorney at trial.
- Obtained a defense verdict after a four-day trial in a case involving a pedestrian being struck by the insured in a parking lot. Despite the fact that the parking lot was virtually empty the insured never saw the plaintiff. After the plaintiff requested pain and suffering expenses, the verdict request was \$2,125,000. Andrew countered the plaintiff's damages claims by introducing a spine surgeon, who in turn testified that all of the plaintiff's injuries predated the accident, and his review of the MRI films were consistent with the radiologists' reports, which was that there were no significant changes.
- Secured a not guilty verdict at arbitration on a wrongful death case with a demand in excess of \$2,000,000. The insured struck a pedestrian, the 24-year-old decedent, wearing dark clothing at night on a poorly lit road. The only eyewitness was driving the vehicle directly behind the insured, and testified that, despite the conditions, she was able to see the decedent prior to the incident. Andrew retained a human factors expert who determined that the insured would not legitimately expect to see a person in the road and combined with the medical toxicologist's finding that the decedent was intoxicated, Andrew presented a convincing case toward the

insured not being at fault and the intense arbitration concluded with a not guilty verdict.

- In the plaintiff's appeal of *Kamil Macias v. Naperville Gymnastics Club*, the appellate court, in its ruling on March 10, 2015, affirmed the defendant's position that the release agreement for the gym was sufficiently clear, explicit, and unequivocal to protect the facility from liability arising from the plaintiff diving into a "foam pit." In *Macias*, the plaintiff sued the Naperville Gymnastics Club for injuries he received after jumping off a springboard and landing into a foam pit. The plaintiff fractured his neck as a result of the incident and incurred more than \$300,000 in medical bills. The appellate court agreed with Andrew's contention that the language within the release placed the plaintiff on notice of a range of dangers, and that the act of jumping from the springboard to the foam pit below fell within the scope of possible dangers set forth in the release. The oral arguments were presented on February 26, 2015. The appellate court's decision, which was unanimous, was rendered in only two weeks.
- Successfully tried a Cook County jury case during the week of January 13, 2014. The verdict was in the amount of \$18,290.66. The total amount of the plaintiff's medical specials was \$173,000. The plaintiff's demand at the conclusion of the trial was \$273,000. Andrew recommended that the jury award the plaintiff her emergency room bills in the amount of \$10,290.66 with another \$1,000 for any pain and suffering, but no award for loss of a normal life. Prior to the trial, State Farm had offered \$19,490.10 to settle the claim. Therefore, the verdict is \$1,200 less than what State Farm had offered. In view of the fact that the medical specials were in the amount of \$173,000 and the plaintiff's treating cardiologist linked the motor vehicle accident to the need for the ablation surgery in May of 2009, this result was exceptionally favorable for the defense.
- Successfully completed a trial involving a complicated product liability/spoliation of evidence case. The plaintiff, while attending a personal function hosted by our insured, was leaning over a small wooden table which collapsed, and the plaintiff was blinded in her right eye. She had three surgeries and never regained vision in her eye. About two months after the accident, the insured disposed of the table. The plaintiff also filed a spoliation case against the insured, which then brought the co-defendant into the case. While the defendants settled with the plaintiff, the co-defendant was unwilling to relinquish a contribution action in spoliation against us. The main issue at trial was whether there was a duty to preserve the table. The demand at the trial was \$300,000. A defense verdict was returned, and our client paid nothing.
- Successfully tried a premises liability case where the demand was for over \$500,000. The case involved a trip and fall accident on the premises of the defendants' home, resulting in a serious fracture and multiple surgeries. Numerous issues were raised as to industry standards that were applicable to the property in question. The case was tried before a jury. After the plaintiff presented his

testimony and his witness, Andrew successfully convinced the court to direct a verdict on behalf of the defendants.

- Successfully completed a trial, *Lichtenberger v. Carter*, where the plaintiff's vehicle rear-ended the defendant's vehicle at 20-30 m.p.h. Negligence was admitted. The plaintiff went to the emergency room for neck pain and a concussion. The plaintiff followed up with his surgeon 27 days after the accident. His surgeon opined that the plaintiff aggravated a pre-existing labral tear in his left shoulder and that the accident was the cause of the surgery, which was performed about three months after the accident. Andrew countered by retaining a medical expert, who testified the accident was not a cause for the surgery. The facts were that the plaintiff was lifting weights and golfing after the accident, but before being treated for the first time by his surgeon. His surgeon was not aware of the lifting of the weights or the golfing incidents when he issued his narrative report, which contained his causation opinions. There was no prior medical history of shoulder pain or treatment to the left shoulder and there was no other explanation for the pain the plaintiff had in his left shoulder after the accident. We argued that the plaintiff did not have the classic symptoms of a labral tear aggravation following the accident. The plaintiff sought \$74,000 for medical bills and noneconomic damages, as well as lost earnings. Prior to the trial the plaintiff demanded the policy limits of \$250,000 and we offered \$20,000. The verdict was \$8,758.
- Tried case whereby plaintiff sustained \$36,000 in medical specials, primarily through physical therapy. Liability was not contested, and the plaintiff's physician testified all of the treatment was related to the accident. Through the defendant's expert, Andrew convinced the jury that only half of the treatment was related to the occurrence. The verdict was for \$26,000 which was about \$3,000 less than the offer before the trial, and significantly less than the \$100,000 demand.
- Successfully tried a case in which the plaintiff, a pedestrian on Clark Street in Chicago, was struck by the defendant's vehicle. The injury involved a fractured hip, which was surgically repaired the next day. Andrew was able to convince the two witnesses, who lived in St. Louis, to testify live at trial. Both witnesses testified that the plaintiff was running outside of the crosswalk at the time of the occurrence. Andrew had the witnesses stand up in front of the jury and use a magnetic demo board, with cars and a depiction of the plaintiff, to convince the jury the plaintiff was at fault. The jury deliberated for five minutes and returned a verdict for the defendant.
- Settled a wrongful death nursing home case. The demand was originally more than \$2,000,000. Andrew settled the case for \$400,000. The case involved adverse liability, as the decedent choked on food and there was a state investigation that indicated the defendant's employees were not properly trained to handle the choking emergency that the decedent encountered. Fred Lane, the mediator, offered Andrew a great deal of praise at the conclusion of the mediation.

## Admissions

- Illinois
- U.S. District Courts for the Northern and Central Districts of Illinois

## **Education**

- University of Iowa School of Law, J.D., 1988
- University of Iowa, B.A., 1985