



## FOR IMMEDIATE RELEASE

### Indiana Court of Appeals Holds that “Digital Evidence Should Not be Relegated to Muteness” During Jury Deliberations

*Indianapolis, Indiana – November 24, 2010:* The Indiana Court of Appeals recently overturned a jury verdict because the trial court did not provide the jury with the ability to examine digital evidence during its deliberations in [Arlton v. Schraut](#), Cause No. 79A02-0906-CV-541. The court’s ruling, reported on November 10, 2010, is likely to be an important decision governing how digital evidence is to be made accessible to juries in the future. Ron Waicukauski and Carol Joven of Price Waicukauski & Riley, LLC represented the plaintiff Paul Arlton in his successful appeal.

Key exhibits at the trial were three CD-ROMs containing a series of digital photos, called angiograms, which showed the back of Arlton’s left eye before and after laser surgery on the retina. During testimony from various witnesses, both parties showed the jury enlarged images of the angiograms using the CD-ROM discs, a projector and a screen. But the trial court did not provide the CD-ROMs to the jury to examine during deliberations.

The Indiana Court of Appeals held that the jury should have been allowed to view the CD-ROM discs during deliberations:

We do not presume to set forth one all-encompassing rule regarding providing the jury access to digital evidence. The solutions could be as simple as ... transforming the evidence into a medium that is accessible without a computer. Or the court or parties could provide the jury with a "clean" computer, *i.e.*, one that contains no other information and which has no ability to access the Internet.... But whatever solution is agreed upon or decided upon is better than admitting digital evidence, and then giving the jurors no means of accessing it. Digital evidence should not be "relegated to muteness."

In this digital age, more and more evidence is to be found in digital form. Such evidence presents special problems during jury deliberations since jury rooms are not usually equipped to examine digital evidence. With this groundbreaking decision, the Indiana Court of Appeals has made it clear that the parties and the trial judge should take whatever steps are necessary to provide the means for juries to consider such evidence as they deliberate on their verdicts. The Arlton case has been remanded to the trial court for a re-trial



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