



# Indiana Legal Foundation

## Friend of the Court, Ally of the Business Community

**By Symone Salisbury**

Consequences of court decisions extend beyond the plaintiff and defendant arguing their cases in the courtroom. Rulings often are broad based and impact individuals and businesses with no direct involvement in the court case.

Since 1978, the Indiana Legal Foundation (ILF) has informed the business community of pending court decisions that have the potential to adversely affect its interests. In addition, the ILF has protected those interests by filing amicus “friend of the court” briefs.

“Whereas a court decision most often involves two parties in an adversarial setting, the implication of a decision affects the entire business community,” contends Ed Simcox, president of the Indiana Energy Association and the ILF.

The foundation collaborates with parties and attorneys involved in a case, or acts independently to file the amicus brief.

Simcox reflects, “The impetus for forming the organization was the recognition that public policy is not only made in the legislative process, but is also a product of court decisions. The business community created the (Indiana) Legal Foundation so that it would have an entity that would monitor case law and judicial activity as it relates to business.”

Filing friend of the court briefs, Simcox asserts, allows the business community to “alert courts as to the broader implications of decisions that affect a small number of parties.”



**Dan Evans**

### **Chairman’s role**

Attorney Dan Evans, president and CEO of Clarian Health Partners, Inc., recently assumed the role of Indiana Legal Foundation chairman.

He notes that an amicus curiae “is a friend of the court – not a party to the case, but someone who believes that the court’s decision may affect its interests.”

Partnering with the foundation’s board of directors, Evans is involved in “setting the policies and procedures necessary to represent Indiana state business interests as broadly as possible and to identify the specific cases in which to intervene.”

He recognizes that the ILF cannot accommodate all requests for assistance.

“You have to pick and choose very carefully to make sure that the court is likely to grant your request to intervene,” he cautions.

He elaborates, “You have to have an interest in the legal question, not an interest in the specific facts of the case. You’re filing on behalf of a large class of entities and individuals, not on behalf of a specific business or individual, and must be seeking an impact. You’re filing an

amicus brief to assist the court.”

The ILF’s legal advisory committee and board of directors determine which cases to enter. When a business or individual requests assistance with a legal matter, the ILF consults its legal advisory committee. The committee then makes its recommendation to the board, which consists of approximately 20 business leaders.

Foundation efforts have contributed to victory in more than 70% of cases entered. A recent example:

*Allied Signal Inc. v. Ott – Black v. AC & S (2001)* dealt with asbestos litigation. Indiana law contained an exception to the 10-year statute of limitation for businesses that both mined and sold commercial asbestos. According to a lower court, companies selling asbestos products were equally liable as companies mining and selling asbestos, because the court maintained that the “and” also should be interpreted as an “or.” The Indiana Supreme Court concurred with the foundation’s argument that the exception applies only to companies that both mined and sold asbestos products, not to companies that only sell asbestos products.

## Organization’s relevance

How does the current business climate impact the ILF?

Simcox replies, “That question could be turned around and asked both ways. In the context of describing the business climate, I would say not just recession area trends, but also trends of loss of corporate headquarters and corporate leadership have caused a reduction in support of the foundation. Among the companies who participate in the foundation, there is recognition of the continued, even increased importance of the work of the foundation. If Indiana’s business climate is to be one that is attractive to new business creation, that’s kind of the flip side of the coin. So in some ways, this foundation is a well-kept secret.”

Evans agrees. He says that one of the first steps in moving the Indiana Legal Foundation forward is raising visibility.

“First thing it (ILF) has to do is inform the business community in the broadest way possible of its existence,” Evans says, “and of the importance of the business community’s understanding of how important the courts are.”

“The first thing I’m going to do,” he continues, “is ask the business community for feedback as to what individual businesses think is important and attempt to identify common areas of concern. Then the foundation itself will find cases at the court of appeals and Supreme Court levels that are dealing with the issues the business community thinks are the most important.”

Evans predicts that near future issues will include workforce, environmental, tax and tort matters. Thus far, the lion’s share of cases has been tax-related.

According to Evans, the ILF confronts three primary challenges: educating business on the importance of the court system, raising money to support its activities and being successful in obtaining meaningful results for the state’s business interests.

“At the end of the day,” Evans states, “the foundation is interested in economic development and jobs in Indiana. It wants Indiana to be able to attract and retain the best and the brightest.”

Simcox adds, “This foundation, as far as we can tell, is unique in the country. There is no other entity that we are aware of in any state that does precisely what the Indiana Legal Foundation does. And that is surprising to us because it is such an obvious need.”



## Key Case Examples

The Indiana Legal Foundation has, over the years, become involved in approximately three dozen court cases in which critically important business interests were at stake. Here are a few notable examples:

- *CTS Corporation v. Dynamics Corporation of America (1996)* – The facts of the case involved corporate takeover efforts. At issue was the constitutionality of Indiana’s newly enacted anti-takeover provision. The foundation intervened, contending that, under the 10th Amendment, this was a valid exercise of state powers, superseding the interstate commerce clause. In a landmark decision, the U.S. Supreme Court upheld the Indiana statute as a legally valid exercise of state powers.
- *Eula Bingham v. Indiana Commissioner of Labor (1980)* – The foundation joined the Indiana attorney general in resisting efforts by the U.S. Department of Labor to take over administration of the Indiana Occupational Safety and Health program. The foundation and the state ultimately prevailed, leading to official federal certification of the state plan.
- *McCraney v. City of Jasper (1985)* – Following a bitter labor dispute, striking workers began picketing the home of the company president. The city responded by adopting an ordinance prohibiting residential picketing. Strikers challenged the ordinance in federal courts as a violation of First Amendment rights. The foundation joined the city in asserting its rights to protect property and the rights of citizens. The plaintiff’s union and federal court agreed, ending any challenge to Jasper’s anti-residential picketing ordinance.

## INFORMATION LINK

**Resource:** Indiana Legal Foundation at (317) 684-6756