Kentucky Trial Court Review

The Most Current and Complete Summary of Kentucky Jury Verdicts

January 2011 **Published in Louisville, Kentucky Since 1997** **15 K.T.C.R. 1**

Comprehensive Statewide Jury Verdict Coverage

Civil Jury Verdicts

Complete and timely coverage of civil jury verdicts including circuit, division, presiding judge, parties, case number, attorneys and results.

Premises Liability - The plaintiff fell in an icy parking lot and broke her ankle – a Prestonsburg jury valued her pain and suffering at $1,000,000

Holbrook v. Highlands Hospital, 09-658
Plaintiff: Earl M. McGuire, Prestonsburg
Defense: Thomas M. Smith, Prestonsburg
Verdict: $1,424,366 for plaintiff
Court: **Floyd**, J. Caudill (2), 8-18-10

Trena Holbrook, then age 37 and an allergy LPN, worked for an ENT at Highlands Hospital. She came to work on 12-5-08 and parked in the parking lot. Snow had recently fallen. Holbrook took note that the parking lot had been cleared and de-iced.

Holbrook parked her car and exited. She fell on her first step and twisted her ankle in the process. The fall resulted in a complex trimalleolar fracture. It was surgically set by Dr. Kevin Pugh, Orthopedics – despite that repair and a good healing of the fracture, Holbrook has since developed RSD. A treating physiatrist, Dr. Scott Akers, explained the RSD injury.

Holbrook incurred medicals of $41,932 and she sought $250,255 for future care. While she has returned to work, she only does so three days a week. Her lost wages and impairment were presented in a single category – the instructions limited an award for wage loss to $264,357. Holbrook also sought pain and suffering damages.

In this lawsuit against the hospital, Holbrook alleged negligence by it regarding its efforts to clear the parking lot. Namely, while the snow was a naturally occurring hazard, the negligence was in salting part of the parking lot (but not of all of it), in the process creating an impression the parking lot was safe.

The hospital defended that it had acted reasonably to clear the parking lot. It also argued the hazard (whatever it was) was open and obvious to Holbrook. The defense also employed an IME, Dr. Joseph Berger, Neurology, Lexington. The expert disputed causation regarding the RSD diagnosis.

This rather ordinary trial was conducted in the greatest of secrecy. Not only are the court's jury instructions a court secret, so too was the actual verdict and even the court's judgment. All sealed state secrets.

The KTCR has learned there was a verdict, the jury finding Highlands Hospital 100% at fault. The liability charge had required Holbrook to prove that (1) she fell on the ice, (2) the ice was not open and obvious to her, (3) she couldn't discover it through ordinary care, (4) because of the ice, the parking lot was hazardous, and (5) it existed long enough that the hospital should have discovered and remedied the hazard. [**Ed. Note** - An odd instruction, it melded all at once, open and obviousness, notice and causation. As interesting, it didn't even comport with the plaintiff's theory, namely, that the hospital was negligent in salting a part of

Kentucky Trial Court Review
January 2011
Table of Contents

Verdicts

Jefferson County
Premises Liability - *Walking near her home, the plaintiff tripped over an unsecured water meter lid* - Defense p. 5

Floyd County
Premises Liability - *The plaintiff fell in any icy parking lot and sustained a broken ankle* - $1,424,366 p. 1

Warren County
Auto Negligence - *The plaintiff suffered serious injures in a red light crash when his dump truck turned over* - $1,000,000 p. 3

Rockcastle County
Underinsured Motorist - *An ER doctor complained of a rotator cuff tear after a rear-end wreck on I-75* - $382,000 p. 3
Medical Negligence - *A mentally retarded man died of complications related to the failure to diagnose a fecal impaction – his estate blamed an ER doctor for his death* - Defense p. 8

Boyd County
Employment Retaliation - *A hospital bigwig was fired after he raised concerns about patient care* - $182,394 p. 4
Medical Negligence - *A court clerk alleged her bariatric surgeon failed to properly monitor her thiamine levels following a gastric bypass* - Defense p. 8

Fayette County
Auto Negligence - *A drunk executive of a Japanese company crashed into the plaintiff* - $172,062 p. 5
Medical Negligence - *A stillborn death was blamed on the failure to appreciate a vasa previa risk* - Defense p. 7

Franklin County
Underinsured Motorist - *A tortfeasor fled from the police and crashed into the plaintiff* - $297,936 p. 5

Johnson County
Auto Negligence - *Medicals/No Suffering result* - $10,231 p. 6
Truck Negligence - *A right of way crash on a narrow mountain road was resolved for the defendant* - Defense p. 8

Woodford County
Auto Negligence - *Soft-tissue pain and suffering in Versailles valued at $6,000* - $11,000 p. 6

Federal Court - Covington
Excessive Force - *The plaintiff was tasered after mouthing off to a policeman* - Defense p. 7

Lawrence County
Assault - *A case starting about a game chicken ended in a neighbor on neighbor fight* - Defense p. 7

Federal Court - Owensboro
Mining Negligence - *Homeowners in rural Henderson County alleged their farm was damaged by underground mining operations* - $146,500 p. 9

Federal Court - Paducah
Real Estate Fraud - *Homeowners alleged the sellers of the home failed to reveal a history of water damage* - Defense p. 9

Settlements, Opinions, News and Views p. 10

the parking lot and creating an illusion it was safe when certain areas were not iced at all.]

Having resolved fault and rejecting any apportionment to Holbrook, the jury awarded medicals and future medical as claimed. Her lost wages were $132,178 (half of the claimed amount) and $1,000,000 more for plaintiff's pain and suffering. The (secret) verdict totaled $1,424,366. A consistent (secret) judgment was entered.

The hospital sought JNOV relief and argued the award was excessive. It cited that damages are to compensate the plaintiff, "**but nothing more**." The motion continued that this award immediately shocked and surprised the conscience – in support of the motion, the hospital extensively cited the 2009 KTCR Year in Review. Holbrook replied that the $1,000,000 suffering award was reasonable, noting that if she lived to be 90, it would only represent $61.22 a day. She also defended the reasonableness of the award and cited an award made in New York before its Board of Claims equivalent. The motion was denied in a barebones order and the hospital has satisfied the court's judgment.

Auto Negligence - The plaintiff suffered serious injuries when his dump truck was struck by an ambulance

Wix v. The Medical Center, 09-88
Plaintiff: Brian Schuette, Bowling Green
Defense: Norman E. Harned and W. Greg Harvey, *Harned Bachert & McGehee*, Bowling Green
Verdict: $1,000,000 for plaintiff less 50% comparative fault
Court: **Warren**, J. Wilson, 11-20-10

James Wix, then age 38 and a dump truck driver hauling asphalt, was driving in Bowling Green on 10-31-08 at the busy intersection of Campbell Lane and Industrial Boulevard. Wix alleged that he entered the intersection with a green light that was turning yellow.

As Wix did so, he was broadsided by an ambulance driven by John Holder. [Holder was working for The Medical Center of Bowling Green.] It was a significant collision and Wix's dump truck overturned.

Wix sustained several serious injuries including, (1) a broken arm, ankle and nose, (2) a crushed hand, (3) rib fractures and (4) a degloving knee injury. His medical bills were $196,122 and he sought lost wages of $100,000. [Wix, with a 9th grade education, has worked as a trucker.] Impairment was valued at $666,016 by a vocational expert, Stephen Schnacke, Bowling Green. The jury could also award Wix $1,000,000 each for past and future suffering – his wife sought $500,000 more for consortium.

In this lawsuit, Wix alleged negligence by Holder in running the red light. The plaintiff's accident expert was Sonny Cease, Prospect. Cease described that Wix attempted to evade the ambulance and hit the brakes – the expert described that Holder had run the light.

Holder for his part would not remember the crash – he was hurt too. However his employer defended (with witnesses and other evidence) that Holder had a green light and it was Wix who ran the light. Defense accident experts, Jerry Pigman, Lexington and Joseph Stidham, blamed the crash on a combination of Wix's speed, look-out and his truck having been overloaded. [It weighed some 76,000 pounds, it just being over the limit of 74,000 pounds for this type of truck.]

As the jury deliberated, it had a question for Judge Wilson: If fault is 50-50, are damages reduced by 50% or does he get whatever we write down? Judge Wilson wrote that the first option was the correct choice.

Having presaged the result, the jury returned with a verdict finding both

The Kentucky Trial Court Review
9462 Brownsboro Road, No. 133
Louisville, Kentucky 40241
502-326-9794 or 1-877-313-1944
Online at Juryverdicts.net

From Paducah to Pikeville, Covington to London
Comprehensive and Timely Kentucky Jury Verdict Coverage

Ordering is Easy

The Kentucky Trial Court Review
The Most Current and Complete Summary of Kentucky Jury Verdicts
Call to Place your MasterCard/Visa Order - 1-877-313-1944

Pre-Order the 2010 Year in Review in December for $225.00 and save $20.00 off the regular price
Simply select print or PDF version and complete this order form
Call us at 1-877-313-1944 to pay by MasterCard/Visa

Return with your check to:
The Kentucky Trial Court Review
At the above address

___ $249.00 for a one year subscription to the Kentucky Trial Court Review ($263.94 including 6% sales tax for KY residents)

___ *$245.00 to* ***order*** *2010 KTCR year in Review* ($259.70 including 6% sales tax for KY residents)
____ ***Print Version***
____ ***PDF Version***

Your E-Mail

_____
Name

_____
Firm Name

_____

_____
Address

_____
City, State, Zip