

Kentucky Trial Court Review

The Most Current and Complete Summary of Kentucky Jury Verdicts

October 2022

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26 K.T.C.R. 10

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.

Medical Negligence - Because of a communication error the plaintiff who was coming to a Lexington hospital by ambulance in a cardiac emergency was turned away at the first hospital – he was then directed to another hospital (UK Hospital) there being proof the treatment delay caused the plaintiff emotional distress – the plaintiff then sued and alleged the first hospital had violated the standard of care and engaged in an EMTALA violation – the hospital admitted fault in trial and the case considered damages only, awarding compensatory damages of \$545,000 and \$1.845 million more in punitives for a total of \$2.395 million

Williams v. Baptist Health Lexington, 3:16-236

Plaintiff: Hans G. Poppe and Kirk A. Laughlin, *The Poppe Law Firm*, Louisville

Defense: Clay M. Stevens, Kristen H. Fowler and K. Shay Owens, *Napier Gault Schupbach & Stevens*, Louisville

Verdict: \$2,395,000 for plaintiff

Federal: **Louisville**

Judge: Clara Horn Boom

Date: 9-13-22

William Williams, then age 58, was well-known tow-truck driver in Bourbon County on 4-5-15. Williams

is known as Tully. That evening he went to retrieve a vehicle stranded in high water. He experienced chest pain that felt like heartburn. Williams took a TUMs and had no relief.

Williams presented to the local fire station in Bourbon County. An EMT read an EKG as suggestive of a heart attack. She loaded Williams into an ambulance. The EMT also called Baptist Health Lexington hospital to alert they were on the way. The intake nurse told the EMT the hospital was ready and to bring in Williams.

In fact this was Final Four weekend in Indianapolis. The Kentucky Wildcats were 38-0 and were playing Wisconsin that evening. They would ultimately lose. However in advance of this epic basketball weekend, Baptist Health Lexington had developed a so-called diversion policy.

As the hospital didn't have an on-call cardiothoracic surgeon (it did have a cardiologist), a decision was made to divert all cardiac patients. The thinking was that if a patient needed open-heart surgery on an emergency basis, there would be no one on call to perform it. The intake nurse forgot about the "diversion" when she told the EMT to come to the hospital.

The intake nurse realized the mistake and tried to call the EMT back. She was unable to find the phone number. Williams proceeded in the ambulance to the hospital. They were unaware there was a diversion.

When Williams arrived at Baptist Health near midnight he exited the ambulance and was being wheeled inside. He was met immediately by the intake nurse and advised the hospital

could not treat him. Williams was directed to UK Hospital which was a little less than a mile away. The nurse didn't take Williams' vitals or otherwise insure he was stable and safe for a transfer.

Thereafter Williams was taken to UK Hospital. There was proof he was met by a cardiac team there which immediately took him to a cardiac lab. It was discovered the myocardial infarction (a so-called STEMI heart attack) was over. While Williams needed open heart surgery, it was not an emergency. He had a five-vessel open heart surgery the next day. Williams enjoyed a good recovery.

In his lawsuit Williams sued Baptist Health in Jefferson County (the hospital removed to federal court) and alleged two counts, (1) an EMTALA violation, and (2) a standard of care violation. The first claim was predicated that the hospital failed to do anything to stabilize Williams before directing him to UK Hospital.

Williams also characterized the entire sequence as a comedy of errors. It began first with the ill-fated diversion plan (this violated hospital policy) which was then poorly communicated to staff and local EMTs. Additionally, the hospital's policies required notifying local EMS services about any diversion status and re-notifying every three hours. No notice was ever sent to any ambulance service for 72 hours over the weekend the ER believed it was on diversion for heart attack patients. The nurses thought there were no

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Scott County

Uninsured Motorist (Loss of Consortium Only) - In this unusual case the plaintiff's husband settled his UM injury claim for \$79,938 of the \$100,000 policy limits – thereafter the plaintiff (she was just in the case for consortium and was not in the vehicle at the time of the crash) and her husband separated and ultimately divorced – then two years after the divorce the plaintiff presented her “orphan” consortium claim alleging the crash changed her husband ruined her marriage – a Georgetown jury deliberated the case twenty minutes and rejected it - Defense verdict p. 5

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Consumer Protection Act - A Lexington Ford dealer sold a brand-spanking new Ford F-250 Super Duty 4X4 truck for \$62,851 – it turned out the new truck had been wrecked by a dealership managership and repaired at an expense of \$6,300 – the plaintiff alleged a Consumer Protection Act violation and sought the diminution in value of the truck as well as punitive damages – a Lexington jury assessed punitives of \$100,000 - \$108,026 p. 10

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Whitt's physicians confirmed his injuries and linked them to this impact. He sought \$16,145 in past medicals plus \$136,875 for that in the future. Most of the future medicals represented a surgery for the rotator cuff. The jury could award him \$175,000 for pain and suffering – his wife (Linda) claimed \$50,000 for her consortium interest. Linda had been in the vehicle at the moment of the impact but was not injured.

Brotherton defended the case on several fronts. She argued the wreck was minor, there was no ambulance called, no ER visit and through trial, a surgery had not been scheduled. The defense also looked to the prior rear-end crash from eight days earlier.

A defense IME, Dr. Robinson Dyer, Orthopedics, Nashville, TN, testified that Whitt's pre- and post-accident treatment was the same. He also contested causation regarding the shoulder injury.

This case was tried for two days in Paducah. The jury answered that Whitt had not incurred \$1,000 of reasonably necessary medicals and thus rejected the case on the threshold. A defense judgment was

entered for Brotherton.

Case Documents:

[Plaintiff Trial Memorandum](#)

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