

Kentucky Trial Court Review

The Most Current and Complete Summary of Kentucky Jury Verdicts

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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 - The plaintiff, a woman, age 39, alleged she came to an ER with signs of an apparent stroke – she was not seen by a doctor for hours and in that interim, the chance to begin tPA therapy was missed

Featherston v. Lourdes Hospital,
05-0299

Plaintiff: William F. McMurry and
Ross T. Turner, *McMurry & Associates*,
Louisville

Defense: Richard L. Walter, *Boehl
Stopher & Graves*, Paducah

Verdict: \$2,110,708 for plaintiff

Circuit: **McCracken**, J. Clymer,
10-5-06

On 1-25-05, Cynthia Featherston, then age 39 and of Metropolis, IL, was taken by EMS to the ER at Lourdes Hospital in Paducah. She had passed out at home in the bathroom. She initially complained of left-side weakness, facial drooping and confusion. Her history was clouded as she suffered from MS and had recently been diagnosed with symptoms weeks before.

Arriving at Lourdes and triaged, Featherston was kept in the ER for five hours. It was her allegation she was not seen by a doctor. The ER doctor in the hospital, John Brazzell, had no memory of seeing her, nor did his notes reflect it. [Interestingly, Brazzell was considered a hospital employee as a matter of law because plaintiff was not given a form describing his independent contractor status.]

After nearly five hours in the ER with virtually no treatment, plaintiff postured she was parked, she was finally seen by a neurologist. He promptly took her to the CCU. However her stroke was severe and Featherston had suffered significant damage to the right side of her brain. While living with her family, Featherston developed proof she needs assisted living.

In this lawsuit, she alleged negligence by the hospital in failing to have her seen and evaluated by a doctor. Then the physician's assistant and triage nurse failed to record her symptoms, making it impossible to begin clot-busting tPA symptoms within a three-hour window.

That then went to the ancillary negligence in the case – the failure to begin tPA within the three-hour window. While the drug is risky, it was indicated for Featherston and gave her a more-than-likely chance of reducing the severity of her stroke. This error then was ancillary because within the first few hours (Featherston was taken to the hospital within an hour of her fall), no one even evaluated her.

Plaintiff's liability expert was Dr. James Unger, ER, Palmdale, CA. A life care planner, Laura Lampton, Louisville, quantified Featherston's future care at \$5,281,963. The incurred medicals were \$90,708. The instructions limited pain and suffering to \$2,000,000. Plaintiff also alleged gross negligence from this entire course of conduct – she sought punitives of up to \$2,000,000.

Lourdes defended that Featherston was properly seen and evaluated at the hospital. That is upon her arrival, it wasn't clear if Featherston was having a stroke or was suffering from her MS. In any event, it further postured that she was not a good candidate for tPA therapy and had it been used, it might very well have caused more harm than good – it kills 10% of those that use it and only 30% return to normalcy. The defense experts were Dr. Alfred Callahan, Neurology, Nashville, TN and Dr. George Thomas, ER, Bowling Green.

Plaintiff countered that she was a good candidate and should have been advised of the risks and benefits associated with tPA. It wasn't just the failure to administer tPA, it was the utter failure to even consider it as well as the violation of the hospital's own policies that constituted plaintiff's case.

The verdict was mixed after four days of proof. The jury found Lourdes had not violated the hospital standard with regard to establishing procedures related

to regulating the care of patients.

However more specifically, it did find a deviation with respect to the care given to her, this standard encompassing both the treatment by the doctors and the nurses.

Moving to damages, Featherston took her medicals as claimed plus \$1.67 million for future care. Suffering was \$350,000, the jury further rejecting the imposition of punitives. The verdict totaled \$2,110,708 and a consistent judgment followed.

Construction Negligence - The plaintiff, a trucker, was injured when while delivering and unloading pipe to a contractor, he was knocked off the truck by an employee of the contractor who was operating a forklift – in the fall, the plaintiff sustained a broken elbow and separated shoulder

Justice v. KAT Construction, 04-1410

Plaintiff: Lawrence I. Young, *Romines
Weis & Young*, Louisville

Defense: Frank Hampton Moore, Jr.,
Cole & Moore, Bowling Green

Verdict: \$478,398 for plaintiff less
20% comparative fault

Circuit: **Warren**, J. Grise, 4-28-06

On 9-16-03, Robert Justice, age 51 and a trucker for Hughes Supply, delivered a load of pipe to a KAT Construction work site in Warren County. Justice stood on the truck, helping to unload the pipe – at the same time, a KAT employee was assisting with a forklift.

The employee lifted pipe and then dropped it. As the heavy pipes rolled towards Justice, Justice jumped from the truck. In the resulting fall, Justice broke his elbow and separated his shoulder. The injury has been disabling.

Plaintiff's medicals were \$51,891 and he sought lost wages of \$33,706. Impairment was limited to \$291,000, Justice also seeking \$500,000 for pain and suffering. His wife, Mary, sought \$100,000 for her consortium interest.

The liability theory at trial was simple – the KAT employee negligently operated the loader, leading to Justice's fateful jump. KAT defended and denied

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