

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.

Construction Negligence - While a real estate developer was walking on a set of stairs in a still-under-construction office building, he tripped on a purported double-step (the step being nearly twice as long as a regular step) and sustained a brain injury

Burnett v. Boland-Maloney, 03-6665

Plaintiff: Thomas H. Hughes, *Kaufman Stigger & Hughes*, Louisville

Defense: James M. Gary and Patrick W. Gault, *Weber & Rose*, Louisville

Verdict: \$2,268,878 for plaintiff less 20% comparative fault

Circuit: **Jefferson**, J. Gibson, 8-17-07

Douglas Burnett, age 43, is a real estate developer and entrepreneur of sorts. In the winter of 2002, he was constructing a two-story 12,000 square foot office building in Shelbyville through his company Citadel

Construction. As Burnett began to bid out the project, he went to Boland-Maloney in Louisville to purchase lumber.

Burnett got an even better deal. Boland-Maloney indicated it could provide not just the lumber, but it could frame the entire building. Burnett agreed and with Boland-Maloney doing the design, the framing work was farmed out to a sub-contractor, Second Framing.

To the key event in this case, on 12-17-02, Burnett visited the site of the still-under-construction building. He was navigating a set of unfinished stairs when he suddenly missed a step. [The stairs featured a top landing, then seven or steps down, before making a u-turn at a second landing and descending to the ground floor.] Burnett fell face first nearly ten feet to the concrete floor.

As a result of that fall, he sustained an orbital fracture that has also resulted in a permanent double vision complication in his right eye. Besides breaking a

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finger, more seriously he was left with a mild to moderate brain injury. While in speaking to Burnett, the injury would not be perceptible, it has manifest subtly with cognitive problems and a seizure disorder. The injury was discussed by a Louisville neurologist, Dr. Krista Brooks-Horror.

Burnett s medicals were \$125,062 and he claimed \$1,586,745 for impairment. His vocational expert was John Tierney, Louisville. The instructions limited pain and suffering to \$1.7 million.

In this lawsuit, Burnett sought damages from Boland-Maloney, criticizing its framing design of the steps.

Particularly at the point where Burnett fell, there was a double-step, that is every other step was seven inches high, while this perilous double-step was 13 ½ inches. That then caused his stumble and resulting injuries. Plaintiff relied on two experts in developing liability proof, Gary Kleier, Architect, Louisville and Jim Guthrie, a state code enforcement officer. [Guthrie was not a retained expert.]

Burnett had also sued Second Framing as it had done the actual work. Second Framing was dismissed by summary judgment, successfully arguing that double-step or not, it simply framed the

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