

# Kentucky Trial Court Review

The Most Current and Complete Summary of Kentucky Jury Verdicts

March 2013

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17 K.T.C.R. 3

*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.

**Workplace Negligence - A highly paid union plumber suffered a career-ending ulnar injury in a construction accident – this Louisville jury awarded him \$3.3 million for impairment – the jury was also confused on comparative fault, first finding the plaintiff had not violated the standard of care and then further assessing 5% of the fault to him**

*Childers v. Harpring*, 09-5196

Plaintiff: John R. Shelton, *Shelton Law Group*, Louisville and Phillip H. Cade, *Sales Tillman Wallbaum Catlett & Satterley*, Louisville

Defense: Mark A. Osbourn and Kyle M. Vaughn, *Schiller Osbourn Barnes & Maloney*, Louisville

Verdict: \$4,852,028 for plaintiff less 5% comparative fault (Jury's decision on comparative fault inconsistent)

Court: **Jefferson**, J. Stevens,  
2-18-13

Construction was underway on 6-5-08 at U of L's Shelby Campus on the Center for Predictive Medicine. The general contractor on the project was Messer Construction. Donald Childers, then age 30, worked as a union plumber for Lusk Group. Another contractor on the project, Harpring Inc. (a sheet metal firm), was doing duct work.

As Childers did his work, he stepped through an unprotected area of duct work. Losing his balance, Childers fell and landed hard on sharp stainless steel scrap that had

been left by Harpring. In that process his arm struck the scrap metal – he suffered a severe laceration at his wrist.

The scrap metal completely severed his ulnar nerve. Despite aggressive intervention by Dr. Tuna Ozyurekoglu, Hand Surgery, Louisville, Childers has limited use of his hand. Sensations in his fingers are limited. He also reports a shooting pain that extends to his shoulder when he uses his arm. Essentially the arm is dead to him. The effect of this injury has been to end his career as a plumber – he was earning \$100,000 a year.

In this lawsuit Childers targeted Harpring and alleged negligence by it in two ways, (1) failing to cover the duct work, and (2) not cleaning up the scrap metal. His workplace safety expert was Mike Palmer, Knoxville, TN. Childers had also pursued a claim against Messer Construction – that company was exonerated by summary judgment as an “up-the-

ladder” employer.

If Childers prevailed at trial he could be awarded his medicals of \$115,000 and \$250,000 more for future care. His lost wages were \$404,015, his impairment being quantified at \$3,333,013 by Sharon Lane, Vocational Expert, Louisville. Childers could take \$1.75 million more for pain and suffering.

Harpring defended the case and denied liability. It also sought to apportion fault to Childers and two non-parties, Messer Construction and the Lusk Group. Damages were also diminished by an identified vocational expert, Donald Shrey, Cincinnati, OH. Shrey suggested the impairment could be ameliorated if Childers were to train for a new career.

The jury's verdict was for Childers – it found Harpring solely at fault and rejected the imposition of liability to either the plaintiff or the two non-parties. Despite that finding the jury continued to

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