Kentucky Trial Court Review

The Most Current and Complete Summary of Kentucky Jury Verdicts

March 2016 **Published in Louisville, Kentucky Since 1997** **20 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.

* * *Order the 2015 KTCR Year in Review * * *

Now Shipping

The KTCR 2015 Year in Review

Eighteenth Edition (The first was 1998)

Order the 2015 KTCR Year in Review for $349.00.

The 18th edition is here

($369.94 including sales tax for Ky. Residents)

See the order form on page 4 or call us toll-free at 1-866-228-2447 to pay by MC/Visa/Amex

Order Securely Online at

store.juryverdicts.net

Underinsured Motorist - The plaintiff linked a C5-6 disc injury and a minor rotator cuff tear to a moderate broadside collision – the proof was that the plaintiff will require a future disc repair surgery – the plaintiff prevailed at trial and took $75,000 for that future surgery and half that sum for pain and suffering

Murika v. Consolidated Insurance, 14-4477

Plaintiff: Gary R. Hillerich, Louisville

Defense: Charles H. Cassis and Kelley M. Rule, *Goldberg & Simpson*, Louisville

Verdict: $157,282 for plaintiff

Court: **Jefferson**, J. Shake, 1-13-16

Vincent Murika, then age 53 and a self-employed installer of speciality acoustic tile, traveled in a large 4X4 pick-up truck on 12-11-13. As he proceeded on Fern Valley Road near Industrial Boulevard, he was broadsided by William Bruce. It was a moderate impact, the force of the collision enough to break the axle on Murika's truck. His door was also jammed by the impact, another motorist helping Murika get out of his truck.

After a trip by ambulance to Audubon Hospital, Murika has since treated for two injuries. He suffered a minor rotator cuff tear. More significantly he has complained of radiating C5-6 pain related to a disc herniation.

Murika's treating orthopedist, Dr. Ryan Krupp, Louisville, confirmed the injury. He indicated that Murika needs a repair surgery. Murika's medical bills were $30,432 and he sought $100,000 for future care.

Murika first moved against Bruce. Bruce settled and paid his $25,000 policy limits. Above that sum Murika sought UIM coverage from his insurer, Consolidated Insurance.

If Murika prevailed at trial he sought his medical specials as noted above as well as $14,350 in lost wages. The instructions capped his impairment at $132,500. There was proof that while Murika continues to work, he does so in pain and with less efficiency.

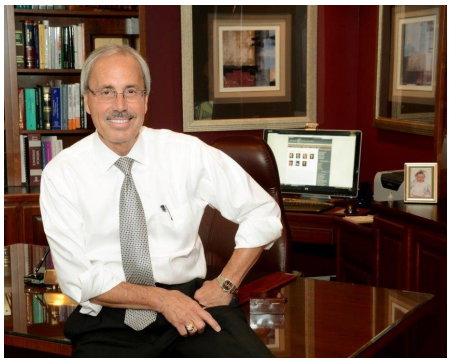
While Consolidated Insurance conceded fault for the wreck, it defended the UIM case on several fronts. It first minimized the impact itself, noting, (1) Murika's airbags didn't even deploy, and (2) that while the axle broke, this was only because Murika's large pick-up truck sat so high.

Consolidated Insurance also relied on an IME. Dr. Mark Gladstein, Orthopedics, Louisville, suggested the alleged disc injury was related to degenerative conditions and that Murika had only sustained a temporary strain injury. Gladstein also thought the claimed future medicals represented "absurdly" high estimates.

This case was tried for two days in Louisville. The jury deliberated damages only. Murika took his medicals as claimed plus $75,000 more for future care. The jury rejected an award of lost wages.

The jury continued and valued

Kentucky Trial Court Review
March 2016
Table of Contents



Gary R. Hillerich

Hillerich has tried several notable cases going back to 2004:
(1) Truck Negligence - $597,779, Trimble County, January 2015, Case No. 5223
(2) UIM - $156,469, Jefferson County, October 2009, Case No. 4038
(3) Medical Negligence - $2,091,000, Jefferson County, November 2004, Case No. 2960

Murika's impairment at $17,350. He took $37,500 more for pain and suffering. The raw verdict totaled $157,282. Less a reduction for the underlying limits ($25,000) and $10,000 more for PIP, the court's judgment was for Murika in the sum of $122,282.

Premises Liability - The plaintiff tripped in a gas station parking lot and broke her elbow – a Munfordville jury awarded the plaintiff $85,000 in special damages, but just $7,500 for her pain and suffering

Brown v. Zack Brothers Truck Stop, 14-31
Plaintiff: Brian R. Dettman, *Dettman & Associates*, Louisville
Defense: Thomas L. Travis and L. Tucker Willis, *Ward Hocker & Thornton*, Lexington
Verdict: $93,615 for plaintiff less 30% comparative fault
Court: **Hart**, J. Simms, 2-23-16

Sherie Brown, then age 51, was a patron on 12-30-13 at the Zack Brothers Truck Stop in Horse Cave. She arrived early that morning with her husband and planned to go inside and eat – she is a diabetic and observes a strict eating schedule.

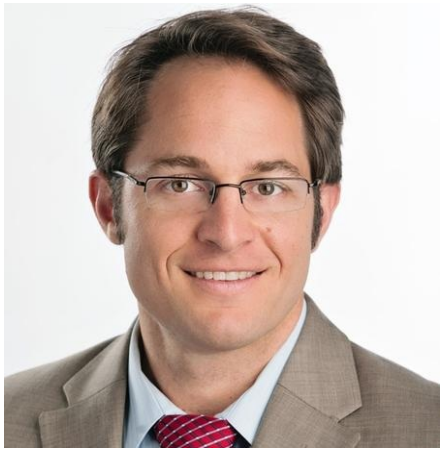
As Brown left the truck stop, she approached her husband's big rig. He's an over-the-road trucker and she accompanies him on his trips. Brown (who was carrying a cup of coffee) caught her left foot in an inch and a half deep crack in the pavement some ten feet from the door.

Brown tripped and fell forward several feet. She landed on her elbow and fractured it. The fracture was surgically repaired at U of L Hospital. Despite a course of physical therapy, Brown has continued to complain of pain. There was also proof she will require a second surgery to remove hardware from the initial repair. The injuries were confirmed by the treating Dr. David Seligson, Orthopedics, Louisville.

In this lawsuit Brown alleged negligence by Zack Brothers in failing to maintain the parking lot. She cited proof that the current owner (who has had the property for eight years) hadn't done any re-surfacing, inspection or repairs. If she prevailed she sought her medicals of $60,815 plus $50,000 more for future care. The jury could also award her $500,000 for past and future suffering in two categories.

Zack Brothers denied fault and blamed the fall on Brown's own inattention. To the crack itself, the defense suggested it was, (1) open and obvious, and (2) of the normal variety that one would observe on any paved surface. A defense IME, Dr. Rick Lyons, Orthopedics, Lexington, disputed the need for a future surgery.

This case was tried for two days in



Brian R. Dettman

Munfordville. The jury first found that Zack Brothers had failed to exercise ordinary care to maintain its premises. The jury also found Brown at fault. The fault was then apportioned 70% to the truck stop and the remaining 30% to Brown.

Turning to damages Brown took her medicals as claimed plus $25,000 for future care. She was awarded $5,000 for past suffering and $2,500 more for in the future. The raw verdict totaled $93,615. It was reduced by comparative fault in the court's judgment to $65,320. The defense offer of judgment before trial had been for $45,000.

Read from documents in *Brown v. Zack Brothers Truck Stop*:
The Jury Verdict

didn't have notice of the hazard. This was coupled with proof from Humphrey herself who indicated she'd walked by the drain several times soon before the fall and had not noticed any damage.

The jury in this case answered "no" that Princeton had not failed to maintain its premises in a reasonably safe condition. That ended the deliberations and Humphrey took nothing. A consistent defense judgment was entered.

Read from documents in *Humphrey v. Princeton*:
The Court's Judgment

Auto Negligence - A disputed icy car crash case was resolved for the defendant on liability

Bradley v. Crouch, 13-4161
Plaintiff: Bradley A. Sears and Jay R. Vaughn, *Morgan & Morgan*, Louisville
Defense: Kenneth E. Dunn, *Barnett Porter & Dunn*, Louisville
Verdict: Defense verdict on liability
Court: **Jefferson**, J. Edwards, 8-19-15

There was an icy car crash on 1-25-13 on Maywood Place. The plaintiff, Mark Bradley, age 48, alleged that Cassandra Crouch lost control and slid into his pick-up truck. Crouch for her part explained she tapped her brakes on the icy roads, only to have Bradley hit her.

In any event there was a collision and Bradley has since treated for a hand injury with Dr. Thomas Wolff, Orthopedics, Louisville. His medical bills were $19,405 and he sought $4,614 in lost wages. The jury could award him $150,000 each for past and future suffering.

In this lawsuit Bradley blamed Crouch for crashing into him. His accident expert was Rob Miller, Taylorsville. Crouch for her part denied fault.

Interestingly this lawsuit began as State Farm (as subrogee for Crouch) versus Bradley. He filed a personal injury counterclaim and thus for purposes of this report, the case was aligned Bradley v. Crouch.

The jury's verdict was for Crouch on liability and Bradley took nothing. A defense judgment concluded this case.

News and Notes

$18,000,000 Nursing Home Verdict Set Aside

In June of 2015 a Richmond jury awarded $18,000,000 in a nursing home verdict in the case of *Jennings v. The Terrace*. See Case No. 5311. The verdict included $4,000,000 on the nursing home negligence claim and $4.5 million more on assorted Resident's Rights Act claims. The jury added $9,000,000 in punitive damages.

Following the entry of a consistent judgment The Terrace moved for JNOV relief on a variety of grounds. While that motion was pending the Kentucky Supreme Court issued a key ruling in *Overstreet v. Kindred Nursing*, 2013-SC-620 (on August 20, 2015) that a Resident's Rights claim does not survive the death of the resident. In this case it was an estate that pursued the claim.

The Terrace then filed a supplemental memorandum of law in support of a motion for a new trial. The trial judge (Logue) granted the motion in a 9-23-15. Judge Logue concluded in light of the subsequently decided *Overstreet v. Kindred Nursing* that her jury instructions were erroneous. She thus set aside the entire verdict (not just the Resident's Rights portion) concluding that to do otherwise would result in an injustice.

The plaintiff has since moved to vacate that order. At the time of this writing Judge Logue had not ruled on the motion to vacate. It was expected she would do so after *Overstreet v. Kindred Nursing* became final. It just became final a few weeks ago on 2-18-16.

Read from documents in *Jennings v. The Terrace*:
The Court's New Trial Order
Plaintiff's Motion to Vacate the New Trial Order
The Overstreet v. Kindred Nursing Supreme Court Opinion (Link directly to the Supreme Court website)

$11,705,848 Bench Verdict in Harlan Arising from a Domestic Murder

There was a tragic and senseless murder in December of 2009. The tortfeasor, Christopher Smith, came upon a vehicle containing his girlfriend (Melissa Smith) that was driven by Kimberly Ealy. Ealy's teenage son was a passenger. The encounter occurred on Ky. 522 near Hiram in Harlan County.

Smith passed the Ealy vehicle and then blocked the roadway. This caused Ealy to stop. Smith approached the now-stopped Ealy vehicle and fired a gun at it. Ealy was shot several times and suffered fatal injuries in front of her son. The son was able to escape and run away. Nearby residents heard the commotion and indicated they were calling the police. Smith ran away.

Smith was soon apprehended and charged with murder among other charges. He was convicted and is now serving a life sentence.

In this lawsuit the Ealy estate first moved against Smith and sought to impose liability against his automobile insurer. The theory was that the murder arose from the use of