

# Kentucky Trial Court Review

The Most Current and Complete Summary of Kentucky Jury Verdicts

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## Civil Jury Verdicts

Complete and timely coverage of civil jury verdicts including circuit, division, presiding judge, parties, case number, attorneys and results.

**Auto Negligence - A retired coal miner complained of soft-tissue symptoms after a rear-end crash – a Hazard jury awarded the plaintiff \$110,000 for pain and suffering**

*Conley v. Gayheart*, 15-114

Plaintiff: M. Patrick Conley, *Collins Collins & Conley*, Hindman and Heidi Hopfensperger, Hazard  
Defense: Clayton O. Oswald and Katie Bing, *Taylor Keller & Oswald*, London

Verdict: \$122,000 for plaintiff

Court: **Perry**, J. Wells,  
3-21-17

Norman Conley, age 64 and a retired coal miner, was involved in a rear-end collision on 8-25-14. It occurred on Hwy 80 in Perry County. The defendant, Samantha Gayheart, had been looking to see if it was clear to pass, and she struck Conley. It was a moderate collision. Gayheart stipulated her fault.

Conley was treated and released at the local ER for an apparent neck and back strain. He then followed once with his family doctor before beginning a lengthy course of treatment with a chiropractor. There was also evidence of a disc protrusion in his neck. His medical proof at trial came from the chiropractor and a plaintiff's IME, Dr. Ronald Dubin, Orthopedics, Middlesboro.

In this lawsuit Conley blamed

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Gayheart for the wreck. If he prevailed at trial, the jury could award his medicals of \$18,156 and \$500,000 more for pain and suffering.

Gayheart's defense suggested that Conley was exaggerating his injuries. An IME, Dr. Rick Lyons, Orthopedics, Frankfort, suggested that Conley suffered just a temporary strain that should have resolved in a few weeks. Lyons also believed the disc protrusion was pre-existing and not related to this crash.

The defense also implicated Conley's credibility regarding a prior accident some 25 years earlier. Conley had denied any prior wrecks at his deposition, while in fact, he had pursued a lawsuit regarding that case. Conley for his part explained he simply forgot about the prior crash.

As the jury was deliberating this case, it had two questions for Judge Wells: Can we see the police report?



*M. Patrick Conley for the plaintiff*

Can we see the deposition from the plaintiff's car wreck case from 25 years ago? Judge Wells answered that they could not because they were not admitted into evidence.

The deliberations lasted some 90

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minutes. The jury considered damages only, and, Conley took \$12,000 of his medical bills and \$110,000 for pain and suffering. The raw verdict totaled \$122,000.

The parties entered a Hi-Lo agreement in this case prior to the verdict. The parameters were \$100,000-\$25,000. The judgment then will be entered for Conley in the sum of \$100,000.

**Case Documents:**

[The Jury Verdict](#)

**Premises Liability - The plaintiff tripped on a step at a used car dealership and sustained soft-tissue injuries – the defense suggested the plaintiff simply missed the step**

*Mudd v. Metro Motors*, 14-2843

Plaintiff: Michael A. Landisman, Louisville

Defense: Ashley K. Brown and J. Tucker Ellis, *Ward Hocker Thornton*, Lexington

Verdict: Defense verdict on liability

Court: **Jefferson**, J. Gibson, 2-9-17

Peggy Mudd visited Metro Motors in Louisville on South Third Street. It is a Buy Here Pay Here used car dealer. As she exited through a glass door, Mudd tripped on a step leading to the parking lot. Thereafter Mudd treated for a variety of injuries.

Mudd's primary injury related to the aggravation of a pre-existing arteriovenous malformation (AVM). The AVM was surgically removed a few months after the fall. It was Mudd's claim that the removal of the AVM was caused by the fall. Mudd has also complained of a mild brain injury affecting cognitive function as well as soft-tissue hip and knee pain.

Mudd sued Metro Motors and alleged the premises were unsafe. It was her argument that the step was in poor condition and difficult to



*Ashley K. Brown for the defense*

anticipate. In fact there was proof that the dealership had removed a "Watch Your Step" sign regarding the step.

As the case advanced to trial, Mudd claimed medicals of \$160,000 (most of those were related to the AVM surgery) and \$2.5 million for pain and suffering. However her neurologist failed to make a causal link between the fall and the AVM. He had concluded it was congenital in nature and also testified her brain injury was unrelated.

Metro Motors relied on this proof and moved for summary judgment regarding the link between the fall and the AVM. Judge Gibson granted the motion and thus Mudd's claim was significantly neutered at trial. Her claimed medical bills (representing her soft-tissue knee and hip pain) were just \$5,501. She still sought \$2.5 million for pain and suffering. Mudd had also presented a claim for impairment that was defeated at trial on a *Fratzke* motion.

Metro Motors defended on the merits and denied that, (1) the step was unsafe, or (2) there had ever been a Watch Your Step sign. It suggested that Mudd was inattentive and simply missed the step. Photographs introduced at trial revealed the scene of a glass door with a step below, there being no

obstruction or defect.

This case was tried in Louisville for three days, the jury then deliberating for 45 minutes. The court's instructions required Mudd to prove that, (1) the premises were not in a reasonably safe condition, (2) Metro Motors should have anticipated that Mudd wouldn't appreciate the step, and (3) the condition was a substantial factor in causing her to fall. The jury answered "no" for the defense and Mudd took nothing. A defense judgment was entered and the plaintiff has appealed.

**Case Documents:**

[Jury Verdict](#)

[Judgment](#)