

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.

Jetski Negligence - Plaintiff was badly hurt at Lake Cumberland when her boyfriend ran her over on his jetski – the romance lasted four more months, while the litigation terminated in a defense verdict nearly four years later

Henson v. Klein, 03-7021

Plaintiff: Brian E. Clare, Louisville

Defense: Peter J. Sewell, *Sewell & Associates*, Louisville

Verdict: Defense verdict on liability

Circuit: **Jefferson**, J. Willett, 3-27-06

In 2002 Elaine Henson, then age 43, was working for MAC Construction – as a part of her duties, she sometimes entertained company guests on Lake Cumberland. [She did so on the houseboat of the MAC construction principals.]

On the afternoon of 8-17-02, Henson was working for MAC – her boyfriend, David Klein also made the trip. There was proof that Henson was drinking that day – she consumed two glasses of a concoction described as hooch.

She later rode a jetski on the lake – her boyfriend was also piloting one. [Both were SeaDoo models.] As the pair returned to the houseboat, Henson slowed down as she approached it in a cove. Klein was behind her.

As Henson stopped, she turned to speak to Klein. Klein couldn't stop in time and he crashed into Henson. She suffered severe facial injuries and was airlifted to the hospital from the lake.

Henson has since undergone ten surgeries to repair her face – her medical bills totaled \$203,419. \$40,000 was sought for future care. Her lost wages were \$2,138, while suffering was capped at \$75,000. [A worker's compensation carrier intervened to recover the medicals.]

In this lawsuit, Henson sued her

boyfriend and alleged negligence regarding his operation of the jetski. [The pair broke up four months after the crash.] The liability theory blamed Klein for following too closely. Plaintiff's water safety expert was Captain Stephen Owens, a retired state water patrol officer.

Klein's primary defense raised a fact dispute. He denied following too close and blamed the impact on Henson who suddenly turned into his path. Thus whether he was close or not was irrelevant, the key event being her turn into his path. He also noted that Henson had been drinking.

This case was resolved on liability for Klein by a 9-3 count. Having so found, the jury didn't reach plaintiff's duties, apportionment or damages. A defense judgment followed.

Pending is plaintiff's motion for a new trial. It has argued error by Judge Willett in giving a sudden emergency instruction – Henson explained that in this case where Klein followed too closely, the instruction was not appropriate.

Ed. Note - The last jetski case was tried in 1999 – it involved a plaintiff that was injured when riding as a passenger when

he thrown off the jetski. A defense verdict was returned. See Case No. 728, the *KTCR 1999 Year in Review*.

The most famous jetski case of all time was tried in Elmore County, AL in November of 2002. In that case, a British Lord, vacationing on a lake with his American girlfriend, proceeded to run over the girlfriend's brother-in-law. Brother-in-law's leg was amputated. He sued the Lord for negligence and won \$3.43 million. [The Lord, William Petty-Fitzmaurice, by the way is a direct descendent of Marquess of Lansdowne and then British Prime Minister, who signed the Treaty of Versailles in 1784 that concluded the American Revolutionary War. See Case No. 789, the *2005 Alabama Jury Verdict Reporter Year in Review*.

In a much more tragic case, from Jasper County, Alabama and also in 2002, a teenage girl sustained a catastrophic brain injury in a jetski accident. A defense verdict was returned in a products liability claim against Kawasaki Motors that criticized jetski off-throttle steering. See Case No. 308, the *2002 Alabama Jury Verdict Reporter Year in Review*.

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