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.

National Origin Discrimination

A Nicaraguan worker at a commercial bakery alleged a hostile environment based on her national origin, the company having brought in seven Hispanic workers as an affirmative action gambit

Angel v. Sara Lee Bakery, 04-1309
Plaintiff: Cheryl U. Lewis, Hyden
Defense: Erin M. Alkire and Deborah S. Brenneman, *Thompson Hine*, Cincinnati, OH and J. Warren Keller, *Taylor Keller Dunaway & Tooms*, London
Verdict: $100,000 for plaintiff
Circuit: **Laurel**, J. Messer, 4-27-06

Maria Del Rosario Angel, then age 50, went to work in June of 2003 at a factory job at the Sara Lee Bakery plant in London – the company has 146,000 employees in 55 countries. Angel joined Sara Lee as a part of a recruiting effort to bring Hispanic employees – it had reached out to a local pastor who helped it identify Hispanic applicants.

Along with the seven other workers, the job seemed like a good opportunity. Angel, living in Somerset and a permanent resident from Nicaragua, had a history of gainful employment. Before leaving her home country, she'd worked fourteen years as the secretary to a bank president.

At the Sara Lee plant in London, before the new Hispanic workers started, there was some consternation about their arrival by existing workers. There were rumors abounding that Sara Lee was bringing in Mexicans by the truckload to take their good-paying American jobs.

Angel was not prepared for the harassment she would endure at Sara Lee. She recalled the Hispanic worker were commonly called Fucking Mexicans and Wetback. It also seemed that her boss subjected her to more supervision, as if because of her background, she could not be trusted to do reliable work.

It came to a head for Angel on 10-12-03. That day, like many others, she was told when she reported to work at 4:00 a.m. that she would have a twelve-hour shift. [Many times Angel was not given a set schedule – white employees were not treated this way.]

When four in the afternoon came, Angel prepared to leave – her supervisor had left for the day and she had no one to discuss the matter with. She simply clocked out and went home.

Sara Lee managed accused her of leaving the jobsite without permission. Angel was sacked a week later. Protesting that the termination was unfair, Angel grieved it – in December, Sara Lee offered Angel her job back. She refused. By this point, all of the seven original Hispanic workers were gone. Five were fired and two quit.

From this set of facts, Angel alleged Sara Lee subjected her to a work environment that was hostile to her national origin. The hostility, she thought, started with the whole idea to hire the seven workers – Angel thought it represented a scheme to puff up the company's affirmative action numbers.

Then once hired, Angel and the other Hispanic hires were run off, either through phony terminations or by constructive discharge. Constructive discharge then represented Angel's second count – she postured the company left her no choice but to quit. If she prevailed at trial, she sought humiliation and lost wages damages.

Sara Lee defended that Angel's allegations of harassment were vague and unsupported. That her boss might not have liked her, the company explained, did not represent harassment. Then to the constructive discharge count, Sara Lee countered that Angel simply walked off the job – finally it pointed out that in any event, Angel was offered her job back just two months later, thus mitigating any damages.

Angel prevailed on the harassment count, proving it was severe and pervasive, Sara Lee knew or should have known about it and the company didn't corrective action. The verdict was also for her on constructive discharge – she took $70,000 for humiliation damages, plus $30,000 more in lost wages. The award totaled $100,000 and three weeks post-trial, no judgment had been entered.

Wrongful Use of Civil Proceedings

- A lawyer filed a medical negligence suit against an orthopedist without conducting an investigation, acquiring the medical records or securing a standard of care opinion – after the suit was volitionally dismissed, the doctor sued the lawyer alleging wrongful use of civil proceedings

Bonnarens v. Bedford, 04-0423
Plaintiff: William E. McMurry, *McMurry & Associates*, Louisville
Defense: Fred R. Radolovich, *The Radolovich Law Office*, Louisville
Verdict: $450,000 for plaintiff
Circuit: **Jefferson**, J. Shake-2, 5-11-06

This case began on 7-25-02 at Liberty High School – Iman Talaat, a principal, injured her shoulder when a bookshelf fell on her. On 11-19-02, an orthopedist, Dr. Frank Bonnarens, performed an arthroscopic repair.

Talaat's condition improved for a short time – after symptoms returned, she switched to Dr. Edmund Tillett. Tillett thereafter performed a SLAP lesion repair surgery. Following this second surgery, Talaat began to suspect she was victim of medical error by Bonnarens – that is, in the first surgery, he failed to identify the SLAP lesion. [There was also proof in this intervening period that Talaat hurt her shoulder while breaking up a fight between two students at Liberty High.]

She hired a lawyer, Walter Bedford, to pursue a claim against Bonnarens. As he prepared his prosecution, Bedford met with an orthopedist, Dr. David Seligson, regarding a potential standard of care testimony. There would be fact disputes about their meeting.

Bedford came away from his discussions with Seligson that Talaat had a meritorious claim – however, Seligson

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was unwilling to testify against a local orthopedist. [Seligson would later deny saying any such thing, noting that Bedford didn't even provide him records – Seligson's recollection was that he told Bedford someone should look at the case.]

Whatever Seligson said, Bedford felt confident enough to file suit. He did so on 11-18-03. Bonnarens hired John Parker, Jr., Phillips Parker Orberson and Moore, Louisville to defend the suit – 03-CI-10097 before Judge Stephen Ryan. Eight months later, Bedford having refused a thumbs-down on liability from a doctor, the case was volitionally dismissed.

In this lawsuit, Bonnarens turned the tables and sued Bedford – the doctor alleged wrongful use of civil proceedings. That is, Bedford didn't conduct an investigation of any kind and thus lacked probable cause to institute the negligence against Bonnarens. Plaintiff's proof noted that Bedford (1) didn't get the medical records, (2) didn't call Tillett, and (3) failed to secure a standard of care opinion. If Bonnarens prevailed, he sought $50,000 for his own lost time defending the case. Also claimed was $200,000 each for emotional distress and punitive damages.

Bonnarens is no stranger to litigation. He has previously defended four lawsuits alleging medical negligence – all four were dismissed. This is also his second wrongful use of civil proceedings prosecution – he sued and settled with another lawyer that had the temerity to question his medical judgment.

Bedford defended the case and cited the fact dispute noted above – it was his belief that Seligson had given the green light on this case. Then as soon as Bedford learned the case didn't have merit, he promptly and apologetically dismissed it. Thus at all times, he was motivated by the pursuit of justice on behalf of his client.

The court's liability instruction queried if Bedford filed the suit for the purpose of intimidating a settlement and not in the good faith pursuit of justice. Unanimously the jury answered for the doctor and then to damages, it awarded everything that was sought for both compensatory and punitive damages. A judgment for $450,000 was entered for Bonnarens.

Bedford has since moved for a new trial. He has argued that (1) the damages were excessive, and (2) the court erred in refusing to let him apologize at trial. The motion is pending.

Nursing Home Negligence - **An elderly nursing home patient died of a heart attack secondary to an undiagnosed bowel obstruction – the man's estate blamed the nursing home for substandard care, implicating both statutory and negligence claims**

Richards v. Beverly Health & Rehabilitation of Frankfort, 02-1119
Plaintiff: Stephen M. O'Brien, III, *Garmer & O'Brien*, Lexington and Kenneth Luke Connor, *Wilkes & McHugh*, Leesburg, VA
Defense: Norris C. Cunningham, Indianapolis, IN and A. Courtney Guild, Jr., Louisville, both of *Hall Render Killian Heath & Lyman* and Kirsten K. Ullman, *Ullman Bursa Hoffman & Ragano*, Tampa, FL
Verdict: $20,000,000 for plaintiff
Circuit: **Franklin**, J. Graham, 5-4-05

Loren Richards, then age 80, became a patient in March of 1997 at a nursing home, Beverly Health and Rehabilitation of Frankfort. He remained there until his death on 3-2-02. His family received a call from the nursing home informing them that he had died quietly and quickly of a heart attack

The family did not accept that conclusion. They cited proof that Richards suffered on the day of his death from an untreated and undiagnosed bowel obstruction – despite crying out in pain, his bowel being distended and vomiting, Beverly nurses ignored him. It was also alleged that they failed to notify either his family or a doctor.

Thus Richards laid in bed in agony for hours without either intervention or pain management. While his ultimate death was cardiac in nature, the estate blamed it on stress related to pain from the obstruction. A pathology expert for the plaintiff was Dr. George Nichols, Louisville.

In this lawsuit, the estate alleged two distinct theories against Beverly Healthcare. The first went beyond simple negligence, it being alleged the company was indifferent to its residents not just because of incompetence, but greed. The theory continued that the 100-bed nursing home was severely understaffed – this was linked to a company-wide cost-cutting that was designed to improve its stock price. [Based in Fort Smith, AR, Beverly Health operates 400 nursing homes in twenty three states – it has 34,000-plus employees.]

Other experts for the estate were Judith Kidd, RN, Azle, TX and Byron Arbeit, Nursing Home Administration, Sacramento, CA. If prevailing on the negligence claim, plaintiff sought the funeral bill of $8,477, plus $64,680 for impairment. Decedent's suffering was capped at $5,000,000 – $150,000,000 million in punitives was claimed. The jury could also assess up to $500 in punitives against eleven individual nurses.

To the second KRS 216.515 claim, the estate sought $1,000,000 in damages for each of four statutory violations, (1) mental and physical abuse, (2) a right to be treated with dignity, (3) a right to have his family informed, and (4) that the family be informed of his illness. Another $150,000,000 was sought on this statutory claim.

Beverly Health defended the case on three significant fronts, (1) the care was proper, (2) Richards died of a heart attack, having had a history of cardiac problems, and (3) the family was greedy. On the first notion, it was developed that Richards was properly monitored. An internist from Lexington, Ralph Caldroney, thought the care was excellent. The nurses also described that they loved and adored Richards who told jokes and shared his candy.

Dr. Gregory Balko, Fort Wright, Pathology, linked plaintiff's death to heart disease, not the obstruction. A third identified expert for Beverly Health was Jean Shook, RN, Alexander, AR.

Then to the greed defense, attorney Cunningham told the jury that the plaintiffs prayer for $150,000,000 million was designed to make an award of $5,000,000 or even $3,000,000 seem reasonable. Cunningham countered that $1,000,000 was offensive or even $100,000 would be as the nursing home provided good care.

This case was tried for more than a month in Frankfort. The estate prevailed on both the statutory and the negligence claims – interestingly, the damage awards on each claim were separate.

On the KRS 216.515 count, the estate took $150,000 for the depravation from the right to be free from abuse – $50,000 more was awarded for the failure to notify the family of illness. On this claim, the jury assessed $8,799,000 in punitives.

Then to negligence, the jury implicated the nursing home and 2 of 11 individual nurses. They were Connie O'Brien and Deborah Cunnigan.

Turning to a new damage form, the estate took $1,000,000 for pain and suffering – both impairment and the funeral bill were rejected. Finally to a second punitive damage form, the nursing home was hit with $10,000,000 – the two implicated nurses were assessed $500 as claimed. The combined verdict against the nursing home totaled exactly $20,000,000.

Nearly a month post-trial, the parties were still dickering over the entry of a judgment. Plaintiff has also sought an award of attorney fees on the statutory count. Joining the defense team in the post-trial phase, Beverly Health has employed William E. Johnson of the Frankfort firm, *Johnson Judy True & Guarnieri*.

Insurance Fraud - **An elderly couple alleged they were defrauded about a switch in their life insurance policy – they recalled a promise that their $150,000 policy would be converted to $235,000 – they only later learned it had been upped to just $185,000**

Easterly v. Metropolitan Life Insurance, 99-3811
Plaintiff: Gregory M. Zarzaur and Ted Taylor, *Taylor & Taylor*, Birmingham, AL and E. Patrick Moores, Lexington
Defense: David C. Trimble, *Frost Brown Todd*, Lexington and B. John Pendleton, Jr., *McCarter & English*, Newark, NJ
Verdict: $2,550,000 for plaintiff
Circuit: **Fayette**, J. Goodwine, 5-10-06

In 1977, Charles and Marjorie Easterly, GM dealers in Kentucky, bought a whole life insurance policy from Metropolitan Life Insurance. [The policy was made available to them by GM.] It provided a death benefit of $150,000.

Twelve years later the policy had a cash-value of $41,000. At this time, a Metropolitan sales person called on the Easterlys. She persuaded them to convert their whole life policy to universal life. Important to the Easterlys, (1) the new policy had a benefit of $235,000 and (2) their premiums would be significantly decreased. [The cash value they had accumulated funded the switch.]

A year later, the Easterlys met with an estate planning attorney. He read the policy and it was quite clear. While the original application said $235,000, that was crossed out (C.E. initialed next to it) and the face value of the policy was just $185,000. Charles always denied the initials were his.

Promptly the Easterlys advised Metropolitan of the discrepancy. They were told it would be resolved. Nothing more was made of it and the annual premium was paid through 1999. At that time, a letter in the mail prompted new interest to the Easterlys.

It advised them of a class action against Metropolitan implicating fraud in the conversion of life insurance policies. Learning they still had a $185,000 policy, instead of the promised $235,000, they opted out and filed this lawsuit. [Charles did not survive to trial – along with Marjorie, his estate continued the prosecution of this claim.]

It alleged Metropolitan engaged in fraud in the conversion of the policy. That is the company churned the Easterly's policy – this has also been described as piggybacking. This practice involves using cash value policies to fund a new policy – the benefit for the Metropolitan sales person is a new sale.

Beyond having churned the Easterlys, they alleged both breach of contract and fraud – quite simply, they were promised a $235,000 policy, something that was reflected on the application. Then by some malfeasance, that figure was crossed out and $185,000 substituted. If prevailing, the plaintiffs sought compensatory damages and punitives.

Metropolitan defended the case that there was no fraud – an insurance expert, Jack Taylor, Birmingham, AL, explained the policy was clear on its face. That the plaintiffs knew it, Metropolitan noted numerous changes that were made to it through the years. On each occasion, the value of the policy was evident.

These facts formed the basis of a statute of limitations defense – Metropolitan explained that while the Easterlys knew in 1990 that there was a problem, yet they waited until 1999 to sue. Plaintiff countered the limitation was tolled by Metropolitan's promises to resolve the problem. Summary judgment on this matter was denied.

Metropolitan further defended the merits and noted alternatively that even if the Easterlys were misled, it inured to their benefit. That is, with the significant decrease in their premium because of the conversion, they still did significantly better than if they had not converted. Punitives were also diminished, Metropolitan citing this case was about just a single transaction by one sales person who is no longer with the company. [The Easterlys countered there was a pattern of perpetuating this fraud even after the initial sale.]

While the jury verdict is not in the court record, the estate apparently prevailed on both contract and fraud. Then to damages, plaintiffs took $50,000 in compensatory damages, plus $2.5 million more in punitives. A judgment for $2.55 million was entered.

Pending is Metropolitan's motion for a new trial. It has argued among other things, that the award of punitives was excessive – the jury was inflamed, Metropolitan thought, an elderly widow facing off with a national life insurance company. This was exacerbated by the plaintiff who focused on punishing the big insurer, asking the verdict be large enough that it is written about in the *New York Times* and the *Wall Street Journal*. [This also supported an ancillary argument, that Metropolitan had been improperly punished by this jury for extra-territorial conduct.

Hospital Negligence - **During a simple barium enema test, plaintiff alleged the balloon was inflated in his anus, leading to a sphincter injury and permanent incontinence**

Seratt v. Russell Co. Hospital, 02-0247
Plaintiff: Peter D. Palmer and Matthew J. Schaad, *Schaad & Palmer*, New Albany, IN
Defense: Tiara B. Silverblatt, *Boehl Stopher & Graves*, Louisville
Verdict: $313,036 for plaintiff
Circuit: **Russell**, J. Miniard, 4-26-06

In the summer of 2001, Rick Seratt, then age 43, was healthy, happily married and operating his own auto repair shop. That June he saw his family doctor complaining of abdominal pain. Seratt was referred to Russell County Hospital for a barium enema test.

It was performed on 6-15-01 by a radiology technician, Kimberly Stapp. As the test began, Stapp inflated a balloon in Seratt's colon. Instantly Seratt felt a searing pain. He tolerated it and the procedure was completed.

Following the test and over the next few months, Seratt noticed fecal leakage. He thought at first that it was just a temporary side effect. Seeing his doctor again, the cause of his problem was identified until a year later.

A Louisville colorectal surgeon, Dr. Susan Golandiuk, recognized that Seratt had sustained a torn sphincter muscle. She linked the injury back to the barium