

Kentucky Trial Court Review

The Most Current and Complete Summary of Kentucky Jury Verdicts

July 2006

Published in Louisville, Kentucky

10 K.T.C.R. 7

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.

Auto Negligence - A teenage girl's nose was pulverized in a one-car crash – she sued the driver, also a teenager and the son of a local attorney – the jury awarded suffering damages of \$2,000,000 as claimed

Bowman v. Gersh, 05-5315

Plaintiff: Chadwick H. Gardner, Louisville

Defense: Nancy B. Loucks and Michele D. Henry, *Frost Brown Todd*, Louisville

Verdict: \$2,542,188 for plaintiff

Circuit: **Jefferson**, J. Willett, 6-12-06

Early on the morning of 2-13-04, Samantha Bowman, then age 16, was on her way to Manual High School – she was a back seat passenger in a car driven by a friend, Maxwell Gersh. Gersh is the son of Louisville attorney, Wesley Gersh. [While not making an appearance, father also served as his son's personal counsel.]

Proceeding on Tucker Station Road in Middletown and near his home, Gersh came to a sharp ninety degree curve. His Hyundai didn't negotiate it and he ran off the road – the sedan stopped hard when it struck a concrete culvert. Both Gersh and his front seat passenger avoided injury – the Hyundai's airbags protected them.

Bowman in the back seat flew forward, her face smashing into the seat in front of her. Her nose suffered a severe comminuted fracture – a plastic surgeon would later describe it as pulverized.

Bowman remained in Kosair's Hospital for a week — beyond the nose injury, she had other facial fractures and a cut to her eye and cheek. Despite several repair surgeries, her vision and appearance are both affected. The crash also left her with three lumbar compression fractures. She has since treated with a chiropractor for ongoing back pain.

Her medical bills were \$149,002 and she sought \$43,185 for future care. Impairment as discussed by Anthony Gamboa, Vocational Expert, was limited to \$906,260. A star student who will start at UK in the fall, Bowman's proof developed that because of her injuries, she will likely earn less and have a shorter work career. [Bowman did miss two months of school after the wreck.]

The instructions capped suffering at \$2,000,000. Beyond compensatory damages, the girl also sought the imposition of punitives. It was her allegation that Gersh was traveling too fast for the conditions. An accident expert, Sonny Cease, Louisville (retired KSP) concluded that Gersh was traveling at 52 mph when he left the road. His excessive speed was corroborated by the passenger in the front seat. [This passenger was briefly linked romantically to Bowman, but that relationship was long since over by the time of trial.]

Gersh defended the case and conceded his fault for the wreck – at all times, he would explain, he was more than willing to pay Bowman's fair damages. In this case, he developed that Bowman was well-healed from this incident – notably, she dated, attended prom and even regularly worked out at the gym.

Gersh also thought the notion of punitives was misplaced – this wreck was just a simple accident. He wasn't drinking, racing or otherwise engaging in dangerous behavior. While not sure how fast he was going, Gersh thought it was closer to 40 mph. Bowman countered and remembered in the crash that it seemed like Gersh was gunning the Hyundai as he accelerated towards the curve.

As the jury deliberated the case, it asked questions: (1) Are the amount of the punitives final or are they subject to modification by the judge?, and (2) As to the future medicals, should we consider insurance coverage? Judge Willett didn't answer either question.

Then to damages, Bowman took her future medicals as claimed, plus \$250,000 for impairment. [The court

directed a verdict on the past medicals.] The suffering was also as claimed for \$2,000,000. This jury went a step further and imposed punitives of \$100,000. The verdict totaled \$2,542,188 – a consistent judgment followed.

Gersh has moved for a new trial and cited (1) the damages were excessive, and (2) punitives should not have gone to the jury. The motion is pending. It is believed in this case that the verdict is within Gersh's policy limits. The last demand before trial had been \$1.9 million – Gersh thought \$600,000 would be more fair.

Garbage Truck Negligence - A teenage girl was badly hurt when a garbage truck pulled into her path

Duffy v. Commercial Waste Disposal, 04-0015

Plaintiff: W. Douglas Myers, *Deatherage Myers Self & Lackey*, Hopkinsville

Defense: Robert E. Maclin, III and Pamela Adams Chesnut, *McBrayer McGinnis Leslie & Kirkland*, Lexington for Commercial Waste Disposal Richard L. Walter, Boehl Stopher Graves, Louisville for Murray Paving

Verdict: \$592,630 for plaintiff less 66.6% comparative fault against Commercial Waste only; Defense verdict for Murray Paving

Circuit: **Calloway**, J. Foust, 10-28-05

It was 5-12-03 and Jessica Duffy, then age 18, traveled on Hwy 641. Murray Paving was in the area on a construction job. It had a sign near the roadway warning motorists of the work.

At the same time, Normand Feezor, a garbage man, was piloting a Commercial Waste Disposal garbage truck. He was pulling from a driveway at the Henry County (TN) Cooperative. As Feezor pulled out, Duffy perceived he was in her lane.

She swerved across the double-yellow line. The garbage truck properly entered its lane of traffic – Duffy was now in that lane. In a hard crash, Duffy's vehicle hit the garbage truck.

Kentucky Trial Court Review July 2006 Table of Contents

Verdicts

Jefferson County

- Auto Negligence - *Teenager suffered a serious facial injury in a one-car crash on the way to school* - \$2,542,188 p. 1
- Vending Machine Negligence - *A U of L professor tripped over a vending machine cart that blocked a hallway* - \$305,075 p. 6
- Auto Negligence - *Medicals/No Suffering* - \$4,499 p. 8
- Auto Negligence - *Plaintiff was injured in a crash with a Bunny Bread truck* - Zero p. 9

Calloway County

- Garbage Truck Negligence - *A garbage truck driver pulled into the path of a teen plaintiff – she suffered a broken leg* - \$592,630 p. 1
- Auto Negligence - *Disputed stop sign crash* - Zero p. 5
- Dental Negligence - *During the removal of a tooth, plaintiff's sinus cavity was perforated* - Zero p. 7

Hardin County

- Medical Negligence - *The delay in treating a football player's knee injury was linked to vascular complications* - \$1,000,000 p. 3
- Insurance Coverage - *Was it an accident when the tortfeasor shot at plaintiff five times?* - Shooting accidental p. 5

Jessamine County

- Auto Negligence - *An elderly driver in Jaguar ran a red light and struck the plaintiff – she still prevailed at trial* - Zero p. 4
- School Bus Negligence - *A school bus clipped an oncoming car, leaving that driver with a serious injury* - Zero p. 7
- Auto Negligence - *Plaintiff, a passenger, was injured when a truck turned in front of his car – settling with the truck driver, plaintiff proceeded against the driver of his car* - Zero p. 10

McCracken County

- Intentional Interference with Contract - *Insurer blamed for directing business from a body shop* - Zero p. 4
- Auto Negligence - *Rotator cuff injury – pain and suffering valued at \$12,500* - \$22,757 p. 9

Fayette County

- Medical Negligence - *An orthopedist was criticized when plaintiff's broken wrist healed poorly* - Zero p. 5
- Disability Discrimination - *A bill collector alleged she was fired because of her MS* - Zero p. 7

Kenton County

- Auto Negligence - *The defendant avoided a deer and crashed into the plaintiff* - \$19,628 p. 6

Christian County

- Auto Negligence - *Two plaintiffs were injured when in a snowy interstate crash* - Zero p. 6

Harrison County

- Breach of Contract - *An automated bagging machine didn't work properly* - \$34,343 p. 7

Hart County

- Breach of Contract - *Was a debt forgiven?* - For plaintiff p. 8

Kenton County

- Medical Negligence - *Plaintiff cited error by his orthopedist in treating a shoulder fracture – the jury found fault, but exonerated the doctor on causation* - Zero p. 9

Supreme Court Tort Opinions

Medical Negligence - In an informed consent case where a plaintiff signed a consent form indicating it was proper to remove her ovaries and uterus, summary judgment was properly granted for the doctor despite the plaintiff's protestations that she still did not intend for those organs to be removed p. 11

Discretionary Review at the Supreme Court

Court of Appeals Published Tort Opinions

Medical Negligence - A doctor who makes an erroneous but good faith report that an infant had been exposed to drugs is entitled to statutory immunity in making that report p. 12

Verdicts Revisited

Auto Negligence - In considering a medicals-no suffering verdict, the review standard is clearly erroneous – in this case, despite proof of an L-2 disc fracture, the trial court's denial of a CR 59 motion was not clearly erroneous p. 13

Medical Negligence - A \$2.091 million verdict, involving the failure to protect a hospital patient that was raped, was affirmed on appeal p. 13

Car Dealership Negligence - A car dealership cannot be held liable for a crash that occurs on a test drive based on the theory that the dealership violated its own internal rule that customers could not test drive without a salesman present p. 14