

Kentucky Trial Court Review

The Most Current and Complete Summary of Kentucky Jury Verdicts

August 2006

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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.

Products Liability - The plaintiff, an electrician, suffered a catastrophic burn injury when his voltage meter purportedly malfunctioned and an electrical arc exploded in a power source where the plaintiff believed the power had been cut off

Arnett v. Fluke Corporation, 01-0214
Plaintiff: Robert J. Patton and Mitchell D. Kinner, *Kinner & Patton*,
Prestonsburg

Defense: Margaret A. Miller and Brian M. Johnson, *Greenebaum Doll & McDonald*, Lexington and Randall S. May and Denise H. Davidson, *Barrett Haynes May Carter & Davidson*, Hazard
Verdict: \$14,999,997 for plaintiff less 85% comparative fault

Circuit: **Perry**, J. Engle, 6-27-06

Travis Arnett, then age 24, worked as an electrician for Eagle Electrical Contractor. On 4-25-00, the tippie at Leslie Resources coal mine was not working. A call went out and Arnett arrived to investigate. The tippie malfunction with the crusher, it was thought, was related to an electrical problem.

Arnett first made sure the MAIN power source was cut off as he began to investigate the outage. This was accomplished and working in a small, dark shack, Arnett sought to confirm the power was turned off. He used a Fluke voltage meter – it indicated there was no power in the crusher.

As he began his work in the shack, there was an explosion – it was linked to an electrical arc. Arnett sustained a catastrophic burn injury in the incident. The burns covered 80% of his body, photographs revealing a horrific injury. Beyond the burns to his skin, Arnett has been left legally blind and with an auditory dysfunction. The injury has also had an emotional effect as discussed by Dr. Robert Granacher,

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Neuropsychiatry, Lexington.

His medicals were \$833,203 and he sought \$304,830 for future care. His life care expert was Bonnie Hostetler, Crestwood. Lost wages totaled \$173,932. An economist from Chicago, IL, Stan Smith, valued Arnett's impairment at \$2,522,304. The jury could also award Arnett \$32,899,350 each for past and future suffering.

In this suit, Arnett first targeted Leslie Resources. The theory was simple – in wiring the coal yard, the crusher was not connected to the MAIN. It was simply wired to the pole – thus when the power was turned off at the MAIN, the crusher was still on. Before trial the plaintiff settled with Leslie Resources.

The claim that advanced to trial was

presented against Fluke, a corporation headquartered in Everett, WA. The voltage meter was blamed for failing to warn Arnett the crusher still had power. Particularly, the defect was blamed on a low battery – that is, when the battery was low, it gave an inaccurate reading. As presented to the jury, plaintiff alleged both design defect and an inadequate warning. His liability experts were Mark Podany, Engineer, Cleveland, OH and Paul Thorgerson, Battery, Indianapolis, IN.

Fluke defended the case on several fronts – it first noted the electrical snafu by Leslie Resources that set the stage for this tragedy. Plaintiff was also blamed for not confirming the electrical schematic himself – had he done so,

Kentucky Trial Court Review

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Arnett would have learned that the crusher was not on the MAIN.

To the voltage meter itself, Fluke noted there was no competent proof the voltage meter's battery had failed – thus as a matter of law, plaintiff's entire theory, (the battery had failed) was mere speculation. Experts for Fluke were Larry Eccleston, In-house Engineer, Everett, WA, Marc Boolish, Battery, Cleveland, OH and Jerry Purswell, Engineer, Colorado Springs, CO.

The verdict was mixed on liability. The jury first found for Arnett on the statute of limitations questions, finding he was not of sound mind until 9-7-00 after the accident. Continuing the jury found fault with the non-party Leslie Resources, Fluke and the plaintiff.

That fault was then assessed 75% to Leslie Resources, 15% to Fluke and the remainder to Arnett. Moving to damages, Arnett took his medicals, future medicals, lost wages and impairment all as claimed. Past and future suffering were both \$5,582,864. The raw verdict totaled \$14,999,997 – it was assessed, less a worker's compensation lien, 15% to Fluke in the amount of \$2,049,397. When reviewed by the KTCR, no post-trial motions had been filed.

Employment Retaliation/Race Discrimination - Two county jail employees alleged a combination of race-based claims – the first, a black man suffered discrimination because of the application of a no-facial hair policy (he has a race-related skin condition that makes shaving difficult), and then his boss suffered retaliation when she came to his aid – tried a first time in 1999 to a defense verdict, the matter returned again after a reversal at the Court of Appeals

Martin et al v. Jefferson County Corrections, 98-2519

Plaintiff: Thomas Clay, *Clay Kenealy Wagner & Adams*, Louisville for Martin
Craig Dilger, *Stoll Keenon Ogden*, Louisville for Brooks

Defense: Stephen P. Durham and Kungu Njuguna, *Assistant County Attorneys*, Louisville

Verdict: \$825,000 for Martin;
\$7,000 for Brooks

Circuit: **Jefferson**, J. Willett, 7-14-06

Kelvin Brooks, who is black, worked in 1997 as a guard for the Jefferson County Jail. The jail's personnel director, also black, was Donna Martin.

Important to this case, Brooks suffers from pseudo folliculitis barbae.

It is a skin condition that only afflicts black men – the effect of the condition is to make shaving painful and difficult. This caused problems at the jail which through its then-director, Ron Bishop, enforced a no-facial hair policy. Martin came to the defense of Brooks on this matter – ultimately Brooks did not comply and he was fired.

Concurrently, it was Martin's testimony that Bishop began to retaliate against her. That included taking away her duties, reassigning her and referring to her as Miss ADA and Miss EEOC. There was also an allegation of retaliation by Bishop because of the filing of this suit.

While Martin pursued retaliation, Brooks (since-reinstated and still with the jail) advanced a race-based claim. It was his position that the no-shaving policy, which had a disparate impact on black employees, represented race discrimination. If Brooks prevailed, he sought lost wages of \$6,484, plus \$1,000,000 more in emotional damages. Martin, since retired, claimed \$300,000 in lost wages, plus \$2,000,000 for her emotional harm.

The county defended the no-shaving policy that the plaintiff's claim was fatally flawed in that it lacked statistical evidence in support of the purported disparate impact. The then-presiding Judge Ernest Jasmin (since retired and deceased) sided with the government and dismissed his claim.

In defending retaliation regarding Martin, the county explained it wasn't retaliation, but rather a reaction by colleagues in a small office that opposed one another in litigation. Simply being disgruntled, the government postured, did not equal retaliation.

Martin's claim first came to trial in February of 1999 before Jasmin. A defense verdict was returned, the court requiring her to prove a hybrid of retaliation and hostile environment. See Case No. 731 in the KTCR 1999 Year in Review. [The county was defended in that first trial by Susan Spickard, Louisville.]

Both plaintiffs appealed. In December of 2003, the Court of Appeals reversed in a non-published opinion. It was authored by Judge Barber – joining the opinion were McAnulty and Combs. Barber concluded that (1) statistical evidence was not required to prove the facial hair claim, and (2) the hybrid harassment instruction was erroneous.

The matter returned for a second trial.

That second trial concluded more than seven years after the first. Brooks prevailed on the disparate impact claim and took \$3,500 each for lost wages and suffering, his verdict totaling \$7,000. The verdict was also for Martin on retaliation. Her lost wages were \$175,000, the jury adding \$650,000 for emotional suffering. A consistent judgment followed.

While deliberating this case, this jury asked: Did the shaving regulation apply only to Brooks or all of corrections? Willett didn't answer. Then in trial, a juror posed a tough question for a corrections bigwig: If the facial hair policy is so important, as you've said, why would you let your own facial hair grow to the point of non-compliance? [Apparently this bigwig had facial hair.]

Truck Negligence - Plaintiff struck a coal truck that had backed into the roadway on a foggy morning – a Pikeville jury valued suffering from plaintiff's wide-ranging injuries at \$625,000

Tackett v. Heartbeat Trucking, 05-1034
Plaintiff: Ray S. Jones, II and William Hickman, III, *Jones & Hickman*, Pikeville

Defense: C. Tom Anderson, *Boehl*

Stopher & Graves, Pikeville

Verdict: \$957,816 for plaintiff

Circuit: **Pike**, J. Combs, 6-29-06

Early on the foggy morning of 4-14-05, Ronald Hensley of Heartbeat Trucking, was beginning his job as the driver of a coal truck. To reach Longfork Road near Virgie, he backed his rig out. It blocked both lanes.

At the same time, Frankie Tackett, age 61 and a convenience store clerk, was approaching. She didn't appreciate the truck until it was too late – a hard crash followed.

Tackett has since treated for wide-ranging symptoms. They've included radiating neck pain, headaches and a bruised knee. She's also been plagued by weakness in her legs. The sum of her injuries has left her disabled. Her treating neurologist was Dr. John Gilbert, Lexington.

The medicals were \$21,056, Tackett claiming \$153,000 for that in the future. Lost wages were \$14,725 – Tackett sought \$140,144 for impairment. [Property damage to her vehicle was \$1,891.] The jury could also award her \$1,000,000 each for past and future suffering.

In this suit, her theory against Hensley