

# Kentucky Trial Court Review

The Most Current and Complete Summary of Kentucky Jury Verdicts

September 2007

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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.

### Medical Negligence - A hospital pathologist was blamed for missing signs of cancer while reviewing a portion of the plaintiff's appendix after an appendectomy – after a treatment delay of eighteen months, widespread abdominal cancer was identified and the plaintiff was given a grim prognosis

*Powers v. Ally et al*, 04-0339

Plaintiff: John C. Dodson, *Thomas Dodson & Wolford*, Louisville and J.P. Cline, III, Middlesboro

Defense: John G. Prather, Jr., Somerset

Verdict: \$11,754,990 for plaintiff

Circuit: **Bell**, J. Bowling, 6-28-07

Jennifer Powers, then age 24 and a Masters-educated biologist, suffered an attack of appendicitis. Her appendix was removed at Appalachian Regional Hospital (ARH) in Middlesboro. That procedure was routine. As a part of her care, an ARH pathologist, Dr. Syed Ally, reviewed samples of her appendix. It appeared normal to him.

Eighteen months later, Powers was suffering from ongoing abdominal symptoms. During a surgery to remove her gallbladder, abdominal cancer was noted. It was severe and transferred to Cincinnati, OH, Powers underwent a twelve-hour procedure to remove a total of 21 malignancies from her abdominal cavity.

Despite additional surgeries and chemotherapy, Powers' prognosis is grim. An oncologist, Dr. Andrew Lowy, Cincinnati, OH, provided her a 30% survival rate in five years, the rate dropping to zero in ten years. With prompt intervention (that is Ally had caught it), the survival rates for five and ten years, respectively, would have been 70% and 30%.

While Lowy provided the causation proof, it was Dr. Cecilia Fenoglio-Preiser, Pathology, Liberty Township,

PA, who discussed the standard of care. She was critical of Ally for missing signs of precursor cancer in evaluating the portion of plaintiff's appendix. Beyond Ally alone, the plaintiff also sued his employer on a vicarious liability theory.

If prevailing, Powers sought her medicals of \$1,054,990, plus \$500,000 for future care. Impairment, as discussed by William Baldwin, Economist, Lexington, was \$2,631,212. Before the cancer struck, Powers had planned to seek a doctorate. Finally for pain and suffering, Powers could be awarded \$3,000,000 for that in the past, plus \$5,000,000 for future suffering.

Ally and the hospital defended the case on two fronts. First their expert, Dr. James Stark, Pathology, Suffolk, VA, explained that the appendix sample didn't show "frank cancer" and thus it was no error to not make the diagnosis. Secondly and as important, it was the defense theory that even with prompt intervention, the result would have been the same. [Ally has since relocated his medical practice to Bradford, PA.]

Navigating the court's instructions, this jury in Pineville concluded that Ally had violated the pathology standard of care and separately that this deviation had caused injury. Then to damages, Powers took everything that was claimed for every element except impairment. That was valued at \$2.2 million, the verdict totaling \$11,754,990. A judgment in that sum has been entered and the parties have since entered a confidential settlement agreement.

### Medical Negligence - While undergoing a routine laparoscopic surgery, the plaintiff went into cardiac arrest because of an apparent injection of mercury into her system – she sued the hospital and alleged negligence regarding the injection – the hospital defended and suggested it was the plaintiff who injured herself

*Grout v. St. Elizabeth Medical Center*, 99-0633

Plaintiff: David L. Barth, David J. Schmitt and R. Scott Hughes, *Cors & Bassett*, Cincinnati, OH

Defense: Michael W. Westling and Cathy L. Stickels, *Deters Benzinger & LaVelle*, Covington

Verdict: Defense verdict on liability

Circuit: **Kenton**, J. Summe, 8-10-07

Julia Grant, then age 31 and a cook for a parish priest, was preparing to undergo a routine surgery to treat endometriosis. She arrived on 3-31-98 at St. Elizabeth Medical Center and was being prepped for the procedure. That included the placement of an IV line.

Within minutes of the line being placed, Grant went into a sudden cardiac arrest. She was resuscitated with electric shock and awoke two days later. Grant has since treated for serious physical and emotional injuries related to a mercury exposure. Grant's proof developed it was mercury and the injection occurred at the hospital, a family member seeing the metallic liquid in her IV line.

In this lawsuit against the hospital, Grant alleged negligence regarding the injection of her IV line with mercury. Her standard of care expert was identified in the record as Amy Herrington, RN. The effect of the exposure was discussed by Nachman Brautbar, Toxicology, Los Angeles, CA and Robert Lubow, Psychology.

If Grant prevailed at trial, she sought her past and future medicals, as well as impairment and suffering damages. Her husband, Gregory, presented a derivative consortium claim.

The hospital defended the case and denied that its nurses had anything to do with the mercury injection. It suggested

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# Here's a UK football story that may be hard to believe

By EARL COX  
Sports Columnist

If I hadn't lived through the University of Kentucky's shameful Thin Thirty Days, I would swear that a new book, "The Thin Thirty," is a work of fiction. But you couldn't make up what a Louisville author, Shannon Ragland, has written about the shameful period when Charlie Bradshaw coached UK and so brutalized the UK football players that all but 30 quit the team.

Shortly after Bradshaw returned to Lexington to coach his alma mater, I had a conversation with him in front of the Wildcat Bowling Lanes next to Memorial Coliseum. He said that Dr. Ralph Angelucci, the team physician and a member of the UK trustees, told him that the first thing the coach had to do was run off the gays, including actor Rock Hudson, who were dating some of the football players.

You read that right.

## Can't win with mules

And Bradshaw went to work. He ran off the homosexuals. The party sites switched to Richmond and involved some of the Eastern players. Hudson helped one of the ECU players, Harvey Yearly, make it big in Hollywood with a new name: Lee Majors!

But Bradshaw also ran off most of his UK football players. All but 30 – thus The Thin Thirty.

I think it was a high school coach named Jim Pickens who told Bradshaw that he had run off the thoroughbreds and was left with mules – "and you can't win on Saturdays with mules." He also told him that Bradshaw shouldn't ever bother to recruit Bowling Green players again because he had run off Dale Lindsey, probably the best player Bowling Green had ever produced. Lindsay finished at WKU and was a star line-backer in the NFL.

## Bear Bryant Jr.

I walked with Bradshaw one

day from the Coliseum across the Avenue of Champions to Stoll Field. I told him I was worried about him and I thought what was wrong with him was that he was trying to be someone else – Bear Bryant Jr.

He objected violently to that.

That first season I flew on the UK team plane to a game with the University of Detroit. I have never seen such a beaten-down group of individuals. Actually there were only 29 on the trip. I was the last one on the plane and I couldn't see an empty seat. But Junior Hawthorne, a big tackle, made his teammates squinch up in the back to make room for me.

Homer Rice, a friend who turned Fort Thomas Highlands into a football powerhouse, was a mild-mannered man who was a Bradshaw assistant. He called one day at The Courier-Journal. He said things were so bad that he had told Bradshaw that he would quit if the mistreatment of players didn't stop.

Rice stayed.

## Gambling on Xavier?

Earl Ruby, the legendary Courier-Journal sports editor, and I flew on the team plane to Knoxville for the season-ending Kentucky-Tennessee game in 1962. UK won 12-10 and the Wildcats finished the season 3-5-2. Bradshaw lasted six more seasons before he was replaced by the luckless John Ray, who did make a major contribution to UK by being the catalyst for the building of Commonwealth Stadium.

In addition to the sex, Shannon Ragland discovered something I had never heard. He writes that some of the Wildcats tried to throw the Xavier game (the week before Tennessee). Xavier upset the Cats 14-9.

Ragland has done thorough research. I told him that his book could be a good textbook for use by colleges. It should be required for football players planning to be coaches.

Ragland played in two state tournaments as a member of the Eastern High team led by Felton Spencer. He is a graduate of WKU and also of UK's law school.

His book is \$18.95. It's on sale now at Joseph Beth in Lexington, and will be available in Louisville later.

## Special Notice

Our publisher, Shannon Ragland, has a new book that was just released last week, *The Thin Thirty*, which chronicled Charlie Bradshaw's first year as the football coach at the University of Kentucky in 1962.

This remarkable story chronicles not just the brutality of the Bradshaw system (he was a Bear Bryant disciple), but also reveals a gay sex scandal on the football team that involved of all people . . . Rock Hudson. *The Thin Thirty* also describes how the 1962 football team fixed a game.

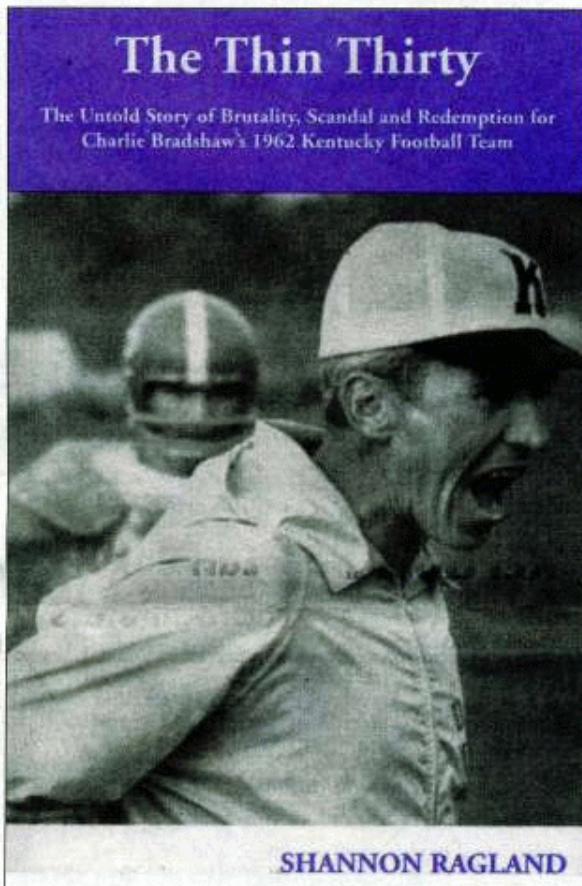
A review from Earl Cox in last week's *Louisville Voice-Tribune* (the insert to the left) describes this remarkable story.

*The Thin Thirty* is available at Amazon.com and fine bookstores. For more information, contact Shannon: [ragland@juryverdicts.net](mailto:ragland@juryverdicts.net) or see our the website for the book, [setshotpress.com](http://setshotpress.com)

the evidence was "overwhelming" that the injury was self-inflicted. That tied into proof from defense experts that Grant had either a factitious disorder and/or she suffered from Munchausen's Syndrome. A key defense expert was Dr. James Hartford, Psychiatry. [Plaintiff's expert, Lubow, also a treating doctor, discounted the notion that Grant had injured herself.]

The jury's verdict on liability was for the hospital, that is a nurse had not violated the standard of care with regard to the mercury injection and having so found, plaintiff's care, apportionment and damages were not reached. A defense judgment was entered.

While the jury deliberated, they asked a question: Why was the lawsuit dropped against Baxter Healthcare. There was no answer.



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