The Tennessee Jury Verdict Reporter

The Most Current and Complete Summary of Tennessee Jury Verdicts

February, 2006 **Statewide Jury Verdict Coverage** **3 TJVR 2**

Unbiased and Independently Researched Jury Verdict Results

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Civil Jury Verdicts

Timely coverage of civil jury verdicts in Tennessee including court, division, presiding judge, parties, case number, attorneys and results.

Products Liability - Plaintiff was killed when he became caught in a large shrink wrap machine – his estate criticized the machine's manufacturer for not having a locking safety switch

Wilkerson v. Lantech, 3:03-1145
Plaintiff: Marc A. Walwyn and Parke S. Morris, *The Cochran Firm*, Memphis
Defense: Anthony M. Kester, Jr., *Allen, Kopet & Associates*, Nashville
Verdict: Defense verdict
Federal: **Nashville**
Judge: William J. Haynes
10-14-05

Donald Wilkerson was working in Clarksville on 12-20-02 for a company called Quebecor – this day he was performing maintenance on a shrink wrap machine manufactured by Lantech. The device, which has rollers, is used to secure magazine pallets.

For reasons that aren't clear, Wilkerson violated company rules and entered the perimeter of the machine – he did so even though he had not pressed the E-stop button to shut it down.

As Wilkerson worked near the machine, it suddenly cycled – he was entrapped by a wrap arm, his head having been drawn into it. Wilkerson died of asphyxiation and multiple traumas.

In this lawsuit, his estate targeted Lantech and implicated its safety design. The claim focused on the failure to have a mechanical interlocking safety device – if this $180 part had been included on the $227,000 machine, it would have shut down when the perimeter was compromised. Plaintiff's expert engineer was Russ Rasnic, Siloam Springs, AR.

Lantech defended that the shrink-wrapper wasn't unsafe, it was unsafely used. In this regard, the company noted that (1) Wilkerson didn't hit the E-stop button, and as importantly, (2) he had been drinking. His BAC at death was .07. [The estate countered that because of decedent's long-term alcoholism, that BAC had very little effect upon him.] Lantech's expert was Charles Hayes, Engineer.

Tried to a federal jury in Nashville, the verdict was for Lantech and the estate took nothing. A defense judgment followed and there was no appeal.

Workplace Negligence - An ETSU co-ed working as a flagger at a road construction site was fatally injured just minutes after she clocked out by an inattentive driver as she stood by her pick-up – she blamed not just the driver, but her employer (arguing she was off the clock) for failing to provide a safe workplace

Clawson v. Summers-Taylor et al, C-8896

Plaintiff: Richard Baker, *Law Office of Richard Baker*, Knoxville and James S. MacDonald, *Dunn MacDonald Coleman & Reynolds*, Knoxville

Defense: Robert L. Vance and Howard E. Jarvis, *Woolf McClane Bright Allen & Carpenter*, Knoxville for Summers-Taylor

James N.L. Humphreys and Suzanne S. Cook, *Hunter Smith & Davis*, Kingsport for Burrow

Verdict: $7,050,000 for plaintiff assessed 98% to Summers-Taylor and 2% to Burrow

County: **Carter**

Judge: Thomas J. Seeley, Jr.

9-1-05

On 6-19-02, Rachel Clawson, then age 19, was working a summer job – during the school year, she studied art design at ETSU. This day she was a flagger for Summers-Taylor construction on roadwork on Hwy 91. Her shift that day ended at 4:00 p.m. – she had been released at that time by her supervisor, although Summers-Taylor paid her until 4:30.

Just one minute later, Clawson stood next to the bed of her pick-up truck. She was talking with co-workers. This was common at Summers-Taylor. She did so several feet off the paved portion of the roadway.

At the same time, Michael Burrow approached in a pick-up truck. While tuning his radio, Burrow disengaged his attention from the roadway. He veered three feet outside the yellow line. His truck struck Clawson. She was gravely injured with both a head injury and grave lower extremity fractures. While there would be some dispute about her level of conscious suffering, Clawson was unconscious when paramedics arrived. She died soon after.

In this lawsuit, Clawson's estate, through her parents with whom she lived, blamed Burrow for his inattentive driving – the theory was simple. But for his failure to watch the road, there would have been no collision. Burrow defended the case as well as he could, diminishing damages.

The estate also targeted Clawson's employer and raised a tort theory. It was argued that at the time of the collision, Clawson was off-the-clock – thus a negligence claim was not precluded by worker's compensation exclusivity. Then to that claim, Summers-Taylor was implicated for failing to provide a safe workplace. The estate argued that safe employee parking should have been provided – the proof indicated this required that the parking area be either nine meters from the roadway or protected by a barrier.

Summers-Taylor's defense began with its argument that at the time of the crash, Clawson was still employed – while technically off the clock, her discussions with co-workers was regular, consistent and incident to her employment. Then to the crash itself, it was argued that Burrow's conduct was the sole cause – who could foresee that he would run off the road and into Clawson? It was the estate's retort that had Summers-Taylor complied with the reasonably competent road construction standard, there would have been a barrier and the tragic resulted avoided.

Tried in Elizabethton, the jury's verdict found fault with both Burrow and Summers-Taylor. It assessed that fault 98% to Summers-Taylor and just 2% to the driver. Then to damages, the estate took medicals and funeral expense, respectively of $23,000 and $22,000. Pain and suffering was $5,000.

While lost earning capacity was rejected, the parents took $7,000,000 for their consortium interest. The verdict totaled $7,050,000. It was assessed in the judgment $141,000 to Burrow and $6,909,000 to Summers-Taylor.

All involved made post-trial motions. The plaintiff challenged the failure to award damages for lost earnings. Burrow thought the verdict was excessive. Summers-Taylor repeated its worker compensation exclusivity argument, also noting the assessment of

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