

The Tennessee Jury Verdict Reporter

The Most Current and Complete Summary of Tennessee Jury Verdicts

April, 2006

Statewide Jury Verdict Coverage

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Unbiased and Independently Researched Jury Verdict Results

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The Tennessee Jury Verdict Reporter 2005 Year in Review

This important bound volume, 273 pp., has just been published, and is ready for immediate delivery. It includes detailed analysis of every kind of case in 2005, easily sorted and indexed. Over 20 individual reports are included, including car wrecks, medicals cases, discrimination suits, premises liability, plus breakdowns of loss of consortium and punitive damage claims. There is also an injury index, which places an average multiplier on several types of bodily injury. The Review includes the full text of the 426 reported cases in 2005, easily referenced by region, style, result and attorney.

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Medical Negligence - Plaintiff went to the ER in February of 2000 with symptoms of an apparent seizure – his internist missed signs of a treatable heart tumor – a year later almost to the day, the man sustained a devastating stroke related to the untreated tumor, blaming the original diagnosis error in 2000
Orr v. Razzak, 02-77

Plaintiff: Jeffrey S. Rosenblum,
Rosenblum & Reisman, Memphis and S.
Bradley Rhorer, *Rhorer Law Firm*, Baton
Rouge, LA
Defense: Robert H. Watson, Jr. and Jon
G. Roach, *Arnett Draper & Hagood*,
Knoxville
Verdict: \$8,500,000 for plaintiff less
15% comparative fault
County: **Sevier**
Judge: Duane O. Slone
2-15-06

Richard Orr, then age 37, and an accomplished professional photographer, was taken to the ER on 2-13-00 at Ft. Sanders Sevier Medical Center. He had collapsed at home. In the ER, he was evaluated by Dr. Ammar Razzak, an

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internist. Razzak concluded Orr was suffering from a new onset seizure – he also noted that Orr had an enlarged heart. Upon discharge from the hospital, Orr was given a boilerplate instruction to follow up with a physician. He didn't.

Almost a year later on 2-8-01, Orr was found unconscious in his bathroom by his girlfriend. She called 911 and he was taken back to the hospital. It was discovered that he had suffered a devastating stroke secondary to the embolization of a golf-ball sized myxoma in the left atrium of his heart. [A myxoma is a tumor.]

Orr who was in good health and frequently took outdoor photographs in remote locations, has been debilitated by the stroke. [In one striking photograph taken in the Alaskan wilderness, Orr captured a bear in a stream as it hunted a fish.] He is permanently disabled and will require near full-time care – he has difficulty understanding words said to him, and has only a limited vocabulary himself. While able to attend to his basic needs, Orr is unable to live alone. [His girlfriend has continued to stick with him through this ordeal.]

His injuries were discussed by Dr. Jeffrey Hecht, Physiatry, Knoxville and Peter Young, Neuropsychology, Knoxville. A life care plan was developed by Jane Colvin-Roberson, Knoxville – John Moore, Economist, Knoxville, quantified it. Orr's medicals were \$350,963.

In this lawsuit, Orr blamed his condition on negligence by Razzak in misdiagnosing him at the ER on the first visit. That is Razzak diagnosed a seizure without running a full battery of tests to rule out cardiac event. Had he run an EKG or consulted a neurologist or done any number of other things, the myxoma would have been identified. It then could have been removed in a relatively low-risk surgery. Instead it sat undiagnosed until it embolized, causing the stroke. A liability expert for Orr was Dr. Timothy Fournet, Neurology, Cookeville.

Razzak defended the case that his care and diagnosis on the 2-13-00 visit were proper. In that regard, Razzak wasn't sure the myxoma even existed at that time. Even if it did, the defense theory continued, it was no error to miss this exceptionally rare "one in a million" condition.

Razzak also developed comparative fault by Orr in failing to follow-up in the

intervening year – Orr countered the discharge instruction was just a boilerplate. Defense experts were Dr. Matthew Beuter, Internist, Nashville, Dr. Calvin Bard, Cardiology, Knoxville, Dr. Howell Roseman, Cardiology, Nashville and Dr. Frederick Killefer, Neurology, Knoxville.

The verdict in Sevierville was mixed on fault. The jury assessed 85% to Razzak, the remainder to Orr for having failed to follow up. Then to damages, Orr took a general award of \$8.5 million, which equaled \$7,225,000 after an adjustment for comparative fault. A consistent judgment followed.

Auto Negligence - A plaintiff with a soft-tissue injury took more than 20 times her incurred medicals

Lewis v. Smith, 32375

Plaintiff: Robert A. Croy, Tullahoma

Defense: Herbert J. Sievers, III, Nashville

Verdict: \$90,000 for plaintiff

County: **Coffee**

Judge: Jerry Scott
10-24-05

On 11-15-01, Juanita Smith pulled from a community center onto Hwy 55E into the path of Karen Lewis. A moderate collision resulted. Fault was no issue.

Lewis, age 41 and a cashier at Lowe's, has since treated for chronic soft-tissue pain and headaches. She has also reported depression. Her medicals were \$4,000. Her neurologist was Dr. John Witt, Murfreesboro.

In this lawsuit, she sought damages from Smith regarding this collision. Smith diminished the claimed damages, noting there was little objective evidence of injury.

Tried on damages only, Lewis took a general award of \$90,000. A consistent judgment followed. Pending is Smith's motion for remittitur – she has argued the award was excessive as it represented 22 ½ times the medicals.

Auto Negligence - A vehicle pulled from a church parking lot and struck the plaintiff, sending her car into a utility pole

Harris v. Shacklett Construction, 04-1640

Plaintiff: Stanley A. Davis, Nashville

Defense: Greg Callaway, *Howell & Fisher*, Nashville

Verdict: \$182,260 for plaintiff less 10% comparative fault

County: **Davidson**

Judge: Thomas W. Brothers
2-1-06

Donna Harris, then age 50, traveled on Dickerson Pike. At the same time, Asuncion Elizalde, a Mexican illegal driving a truck for Earl Shacklett Construction, pulled from a church parking lot into her path. Elizalde struck Harris and knocked her car off the road and into a utility pole.

Harris was taken to the ER from the scene and treated for soft-tissue injuries. She has since complained of radiating pain related to a disc bulge injury. It was her proof that the wreck aggravated asymptomatic degenerative conditions. The claim also had a vocational component – for twenty years before the wreck, she worked in human resources and hardly missed a day. Only since the wreck did she miss work.

In this lawsuit, she sought damages from Shacklett Construction, predicated on Elizalde's driving – Elizalde defended and implicated plaintiff for having merged into his lane. The case was also defended on damages, Shacklett Construction pointing to the degenerative conditions. This was echoed by an IME, Dr. Thomas O'Brien, Orthopedics, Nashville, who believed Harris suffered only a temporary strain.

Fault was mixed – the jury assessed 90% to Elizalde, the remainder to the plaintiff. Then to damages, Harris took medicals of \$18,860, plus \$16,300 for future care. Lost wages were \$3,500, Harris taking \$5,500 more for property damage.

Suffering was \$50,000 and she took the same sum for loss of ability to enjoy life. Impairment was \$10,000. The raw verdict totaled \$182,260. A judgment less comparative fault was entered and it has been satisfied.

Medical Negligence - Presenting to the ER with radiating pain and an inability to control his bowel function, plaintiff was turned away by two ER doctors and the hospital nurses who explained he had no neurological injury – in fact he was suffering from an undiagnosed cauda equina disc injury that went untreated over the weekend – besides the error at the ER (the subject of this lawsuit), the neurologist who saw plaintiff several days later performed a repair surgery at the wrong level

Woodard v. Memorial North Park Hospital, 02-1305

Plaintiff: James T. Neal, *Summers & Wyatt*, Chattanooga

Defense: Randy Wilson, *Miller & Martin*, Chattanooga

Verdict: \$2,700,000 for plaintiff assessed 7% to the defendant

County: **Hamilton**

Judge: Samuel H. Payne
10-20-05

On 11-16-01 Michael Woodard, then age 38, was at home when he began to suffer extreme radiating pain in his back. It was so significant he doubled-over. Early in the morning, he was promptly taken to the ER at Memorial North Park Hospital.

In the ER that Friday morning, he was evaluated by Dr. Suzanne Corrington at 6:10 a.m. She could find no neurological involvement and concluded Woodard was suffering from back pain. She discharged him with pain medications and instructed that he apply ice.

Before he left the hospital, Woodard screamed out in pain in the waiting room. He could no longer feel his legs and had lost bladder control. His family advised hospital nurses – they told him he had been discharged with an assessment of no neurological injury. Just to be safe, the nurses took their concerns to the new attending ER doctor, Jacqueline Miller. [Corrington's shift had ended and she was long gone.] Miller reviewed Corrington's notes and agreed with her assessment – she refused to see Woodard.

He left the hospital and went home for the weekend. His condition did not improve. On the following Monday morning, Woodard was back at an ER, this time at Erlanger Medical Center. His true condition was promptly identified as a cauda equina syndrome – this is a condition where a herniated disc compresses spinal nerves and affects

neurological function. In treating cauda equina, time is of the essence.

At Erlanger, Dr. Thomas Fulbright, Neurology, performed an emergency spinal repair. While Woodard's neurological deficits continued, it wasn't until two months later on 1-8-02 that Fulbright realized there had been a problem with his initial repair surgery. While he thought he operated on L4-5, in fact, Fulbright had cut at L3-4. Realizing the snafu, Fulbright initiated a corrective surgery six days later. Despite Fulbright's intervention (or in spite of it), Woodard has complained of permanent neurological deficits, notably with bowel and urinary incontinence.

Woodard believed his permanent injuries were a combination of medical negligence by several providers. He resolved a tort claim with Fulbright without filing suit. This action was predicated on the disc level confusion.

In this lawsuit, Woodard targeted Corrington and Miller at Memorial North Park, as well as the hospital nurses. While initially defending, the two doctors folded their cards before trial and settled. That left the claim at trial proceeding against Memorial North Park only. Plaintiff alleged error by the nurses in failing to acknowledge his complaints of pain – instead they sent him away.

The error was significant, plaintiff pointing to proof of a 48-hour rule in responding to a cauda equina injury – if identified and treated within that window, a permanent neurological deficit will likely be avoided. Because Woodard was sent away on Friday morning, the theory went, he was exposed to a permanent injury that was otherwise preventable.

Experts for Woodard included Deborah Haberstroh, RN, St. Louis, MO, Dr. David Kelly, Jack Sink, Life Care Plan, Atlanta, GA and Bruce Hutchinson, Economist, Chattanooga. Woodard's claim had also first encompassed an EMTALA count – he alleged the hospital turned him away because his admission form mistakenly indicated he was uninsured. [The EMTALA theory was not presented to the jury.]

Memorial North Park defended the cases and pointed fingers in all directions. That included implicating its own contract doctors, Corrington and Miller, in failing to make a proper diagnosis. It also focused on Fulbright, noting that it was he who (1) operated at the wrong level, and (2) failed to relieve

the compression within two months, having operated at the wrong level in his first surgery. The record is silent as to the defense experts.

Tried to a jury in Chattanooga, the verdict was mixed on liability. Fault was assessed just 7% to the hospital – the same sum was assigned to plaintiff. The lion's share was to the non-parties: Fulbright - 46%, Miller - 23% and Corrington - 10%. Then to damages, Woodard took a raw award of \$2.7 million – in the judgment and less comparative fault, it was assessed against Memorial North Park in the sum of \$189,000. The hospital paid the judgment.

Employment Retaliation - A security salesman was fired when he complained about a female co-worker who had been sexually harassed

Werlein v. Brinks Home Security, 3:04-911

Plaintiff: Tracy Robinson-Cole, Nashville

Defense: Keith D. Frazier, Elizabeth S. Washko and Kathryn Sawtelle, *Ogletree Deakins Nash Smoak & Stewart*, Nashville

Verdict: \$181,606 for plaintiff

Federal: **Nashville**

Judge: Robert Echols
2-3-06

Daniel Werlein started working in June of 2001 for Brinks Home Security – he was a security salesman, peddling the firm's home and business protection systems. Werlein did well and was a top seller.

His trouble started in May of 2003 when he made a call to human resources to report that a female co-worker was being sexually harassed by two supervisors. Werlein thought the call was confidential.

This belief was called into question when he was disciplined a month later for being rude to a customer. Thereafter he was placed on corrective status virtually every month – this increased scrutiny culminated with his firing on 4-6-04.

Werlein thought the firing represented retaliation for his having reported sexual harassment. In this federal lawsuit, he alleged a variety of counts. Two survived to trial: (1) common law retaliation, and (2) a Tennessee Public Protection Act (TPPA) whistleblower claim. If prevailing, Werlein sought both compensatory and punitive