The Tennessee Jury Verdict Reporter

The Most Current and Complete Summary of Tennessee Jury Verdicts

July, 2006 | **Statewide Jury Verdict Coverage** | **3 TJVR 7**

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.

FELA - As a train conductor worked on a narrow bridge, he was struck by a passing train and sustained serious injuries – he blamed his employer and cited the track design, this bridge having been built in the 1880's

Jordan v. Norfolk Southern et al, CT-004175-03
Plaintiff: Stephen R. Leffler, Memphis and Christopher A. Keith, *Wettermark Holland & Keith*, Birmingham, AL
Defense: Everett B. Gibson and S. Camille Reifers, *Bateman Gibson*, Memphis for Norfolk Southern
William C. Spencer, Jr., *Mitchell McNutt & Sams*, Tupelo, MS for Burlington Northern
Verdict: $5,000,000 for plaintiff assessed against Norfolk Southern only; Defense verdict for Burlington Northern
Court: **Shelby**
Judge: James Russell
2-9-06

Thomas Jordan, then age 52, was working as a conductor on 11-13-02 for Norfolk Southern. His task this evening was to uncouple a train on a narrow bridge in Memphis above Danny Thomas Boulevard. The track was designed in the 1880's.

As Jordan stepped from one train, he was struck by a passing train operated by Burlington Northern. The impact left Jordan badly hurt. His injuries included a broken leg and scapula, as well as

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The Tennessee Jury Verdict Reporter

2005 Year in Review
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vertebral injuries. Jordan's spleen was additionally lacerated. Beyond his physical injuries, plaintiff has complained of amnesia. Jordan hasn't worked since the crash.

In this lawsuit, Jordan targeted Norfolk Southern for failing to provide him a safe place to work – he focused that the bridge was too narrow, there being inadequate clearance for trains to pass. Plaintiff also alleged negligence by the operator of the Burlington Northern train – that included not having his headlights on and failing to sound a horn. The liability expert for Jordan was Ronald Dunn, Engineer, Williamsburg, VA.

Norfolk Southern defended that its tracks were safe – it also blamed Jordan for stepping into the path of the oncoming train. Burlington Northern also denied fault.

The verdict was mixed on liability, the jury finding fault with Norfolk Southern, but exonerating Burlington Northern. Then to damages, Jordan took a general award of $5,000,000.

The focus of the litigation has turned to the entry of a judgment – Jordan has argued the judgment should be for the entire $5,000,000 or at least for the amount of his last *ad damnum* prayer of $4,000,000. [It was ordered increased just as the trial began from $2,000,000.] Norfolk Southern has countered that $2,000,000 would be more fair. Also pending is its JNOV motion that has challenged the verdict as excessive.

Age/Race Discrimination - An IT employee at a Federal Express spin-off lost his discrimination case, the trial judge concluding that there were no similarly situated employees to compare to the plaintiff

Jackson v. FedEx Services, 2:04-2470
Plaintiff: Bradley W. Eskins and James F. King, Jr., *Eskins King*, Memphis
Defense: Karen V. McManus and Michael E. Gabel, *Federal Express*, Memphis
Verdict: Judgment as a matter of law for defendant
Federal: **Memphis**
Judge: Samuel H. Mays, Jr.
6-22-06

Willie Jackson started working in 1997 for Federal Express – he was employed in the firm's IT department. In the summer of 1999, his division began to be headed by Charles Sherwood.

Jackson, who was then age 52 and who is black, asserted that Sherwood began to assign critical tasks to younger white workers. This discrimination, in Jackson's view, continued when the IT department was spun off in the summer of 2000 – the new employer, a subsidiary of Federal Express, was FedEx Services.

Within two months of the spin-off, Jackson was out of work. FedEx cited his poor performance and lack of computer skills. Jackson by contrast thought the firing represented a combination of age and race discrimination – his proof was circumstantial, plaintiff noting that in leading up to the firing, he was treated differently.

FedEx defended that Jackson was not treated differently and was let go as part of a workforce reduction. Importantly, there were no similarly situated employees. It explained that Jackson only installed software and was not a computer programmer – the critical tasks discussed by Jordan went to programmers, not installers.

Jordan countered that while he may have lacked formal training in programming, he had done that work before being supervised by Sherwood – thus the programmers, in his view, were comparators for the purpose of considering if he suffered discrimination.

This case advanced to trial, but fell short of a jury resolution. The court concluded there were no other similarly situated employees and thus Jackson's claims that he was treated differently failed. A consistent judgment followed and Jackson has appealed.

Premises Liability - Plaintiff slipped at a chicken wing restaurant on a stray piece of cheese

Hawkins v. Hooters, 50400862
Plaintiff: Dan L. Nolan and Philip M. Mize, *Batson Nolan Williamson Pearson & Miller*, Clarksville and Herbert E. Patrick, Clarksville
Defense: Tom Corts, *Ortale Kelley Herbert & Crawford*, Nashville
Verdict: $49,528 for plaintiff
Court: **Montgomery**
Judge: Ross H. Hicks
3-14-06

Kendra Hawkins, then age 31, ate at a Hooters Restaurant in Clarksville on 9-11-03. As she walked to the restaurant, Hawkins failed to appreciate a hidden peril – a stray piece of cheese was on the floor. Hawkins slipped on the cheese and fell hard.

Hawkins treated with Dr. Keith Starkweather, Orthopedics, Clarksville for a knee injury. Three months after the fall, Starkweather performed a meniscal repair surgery. Despite the repair, Hawkins has continued to complain of pain – she is also at risk for arthritis in the future.

In this lawsuit, Hawkins targeted the owl-themed restaurant citing that the cheese-on-the-floor made the premises unsafe. Hooters agreed and admitted fault. The matter then was tried on damages only.

Tried on damages only, Hawkins took medicals of $10,028, plus $20,000 for future care. Lost earnings were rejected, Hawkins taking $8,500 for loss of ability to enjoy life. Suffering was valued at $11,000, the verdict totaling $49,528. A judgment in that sum followed for the plaintiff.