The Tennessee Jury Verdict Reporter

The Most Current and Complete Summary of Tennessee Jury Verdicts

January, 2006 **Statewide Jury Verdict Coverage** **3 TJVR 1**

Unbiased and Independently Researched Jury Verdict Results

In This Issue

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's hand was mostly severed in an industrial conveyor accident – a Murfreesboro jury assessed 25% of the fault to the conveyor manufacturer

Shirley v. Kossuth Fabricators, 49630
Plaintiff: William B. Jakes, III, *Howell & Fisher*, Nashville and R. Steven Waldron, *Waldron & Fann*, Murfreesboro
Defense: M. Kristin Selph, *Howard Tate Sowell Wilson & Boyte*, Nashville and Robert D. Flynn, *Spicer Flynn & Rudstrom*, Memphis
Verdict: $1,725,000 for plaintiff assessed 25% to the defendant
County: **Rutherford**
Judge: Robert E. Corlew, III
10-17-05

On 2-14-03, Ruth Wayne, in her fifties, was working in her production job for the Pillsbury Company in Murfreesboro. This day she was cleaning a conveyor belt. It hung from the ceiling.

Pillsbury bought the conveyor in 2002 from Kossuth Fabricators (KOFAB) – a

third company, the Washington Group designed the controls for the conveyor. As Shirley cleaned the conveyor, it continued to move.

Suddenly her hand became caught in a roller. It was mostly severed. Taken to Vanderbilt, it was sewn onto to her groin so that it could heal. While it has since been reattached, Shirley has significant impairment and is permanently disabled. Beyond her physical injury, Shirley also had psychiatric proof of post-traumatic stress. Her medical bills were $86,968. A derivative consortium claim was presented by her husband.

In this products liability lawsuit, Shirley targeted KOFAB implicating the conveyor design and warnings. Her engineer expert, George Starr, was critical of KOFAB in four regards, (1) there were no emergency stops, (2) no warnings given, (3) the conveyor wasn't guarded, and (4) there was no instruction manual provided.

KOFAB defended on several grounds. It first argued that Pillsbury was solely at fault for the incident and thus the claim was precluded by worker's compensation exclusivity. In that regard, KOFAB pointed out it only sold a conveyor – it had nothing to do with the design and installation of controls.

This implicated the fault of the Washington Group – Shirley filed an amended complaint against it, citing the design of emergency controls. This claim was resolved before trial – the duties of the Washington Group remained an issue for comparative fault.

KOFAB's liability expert was William Daly, Engineer, Maryland, who implicated both the carelessness of plaintiff and Pillsbury in electing to clean the conveyor while it was still operating. This defense went to the notion that warnings would have made a difference – even if there had not been a manual, the company noted, there was no proof Shirley or Pillsbury would have observed safety precautions.

The verdict in Murfreesboro was mixed, but ultimately for Shirley. The panel first found that Pillsbury was not solely at fault. It then went on to find fault with KOFAB, plaintiff and the non-party, Washington Group. That fault was then assessed 60% to Washington, 15% to Shirley and the remaining 25% to KOFAB.

Moving to damages, plaintiff took a general award of $1,700,000 – her husband took $25,000 more for his consortium interest. Adjusted for comparative fault, Shirley and her husband took $425,000 and $6,250, respectively. A consistent judgment followed and KOFAB paid it.

Wrongful Death - In a strange truck stop crash, plaintiff injured his knee when exiting the truck because it had been damaged in the crash – making an even more complex causation chain, plaintiff later died of cardiac arrest during a knee replacement surgery – thus what started as a minor parking lot collision morphed into a death case

Barron v. Vanguard Furniture Co., 3:04-616
Plaintiff: H. Douglas Nichol, *Nichols & Associates*, Knoxville
Defense: John M. Lawhorn, *Frantz McConnell & Seymour*, Knoxville
Verdict: Defense verdict
Federal: **Knoxville**
Judge: Thomas W. Phillips
12-9-05

It was 12-11-03 and Randall Barron was in a tractor-trailer at a Petro Fuel Center – he was waiting in line along with other truckers to be refueled. Suddenly another trucker, David Mize, driving for Vanguard Furniture Company, pulled out of line.

As Mize passed Barron, he clipped his truck. The impact was minor. However it did damage the step on Barron's elevated cab. That damage caused Barron to lose his footing as he exited – he fell and landed on his knee.

He treated for ongoing knee pain for a year – a knee replacement surgery was set for 11-30-04. Barron did not survive it. He died on the table from a cardiac arrest related to a pulmonary embolus.

In this lawsuit, his estate sought to link his death back to the parking lot crash. In order, (1) the crash damaged the step, (2) the damaged step caused him to fall, (3) the knee was hurt in the fall, (4) the surgery was needed, and (5) Barron died of a recognized risk.

Mize and his employer denied fault for the crash and raised fact disputes as to how it happened. They also defended that the causation trail from crash to death was too attenuated.

A federal jury in Knoxville found that Mize was not at fault and that ended the deliberations, the Barron estate taking nothing. A defense judgment was entered.

Medical Negligence - While a bowel obstruction was promptly noted at the ER, there was no surgical consult – plaintiff was dead the next morning from sepsis

Beard v. Thompson et al, CT-005869-00
Plaintiff: William W. Heaton, *Heaton & Moore*, Memphis and J. Tucker Montgomery and Timothy Pierce, *Montgomery & Pierce*, Knoxville
Defense: Jerry E. Mitchell and Marcy L. Dodds, *Thomason Hendrix Harvey Johnson & Mitchell*, Memphis for Thompson
James L. Kirby and Shannon E. Holbrook, *Harris Shelton Hanover Walsh*, Memphis for Baptist Memorial Hospital
Verdict: Defense verdict
County: **Shelby**
Judge: Donna Fields
10-13-05

In the summer of 1998, Rebecca Beard, then age 42 and an office clerk, underwent a gastric bypass surgery. A little over a year later in October of 1999, Beard complained of abdominal pain – she saw her surgeon and he considered a small bowel obstruction. He told Beard to see him in several weeks.

Beard's pain only got worse and she reported on 10-13-98 at 11:00 a.m. to the ER at Baptist Memorial Hospital. Nurses triaged her and thirty minutes later, she was seen by an ER doctor, Stanley Thompson. Thompson identified a bowel obstruction.

Three hours later, he called Beard's gastroenterologist, Dr. John Ward – Ward ordered her admitted to the hospital. It took several hours for that to happen. She continued to be monitored by hospital nurses through the day and into the night. Early the next morning, Beard went into code and died. Her

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What's in the 2005 Year in Review. Here's the complete Table of Contents

The Tennessee Jury Verdict Reporter
2005 Year in Review
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What do the reports look like? This is a sample from the Million Dollar Verdicts Report

The 2005 Million Dollar Verdicts at a Glance

The twenty-four results are sorted in order from largest to smallest

(Awards are not adjusted for comparative fault)

County	Case#	Verdict	Description
Memphis	150	$509,000,000	A surgeon-inventor alleged patent infringement by a medical device manufacturer.
Plaintiff:	Robert Krupka, Marc Cohen & Stanley Gibson, Los Angeles, CA & Glen Reid, Memphis		
Davidson	78	$105,500,000	An infant rear-seat passenger in a Chrysler minivan was killed when the seat in front of collapsed onto him.
Plaintiff:	J.E. Baker, Jr., George Fryhofer Leigh May, Atlanta, GA and Gail Ashworth, Nashville		
Shelby	143	$58,278,000	Two passengers were killed in a Chrysler minivan crash that implicated both the B-Pillar design and the seat belts.
Plaintiff:	Larry Morris and Jeremy M. Knowles, Alexander City, AL & Richard Charlton, Memphis		
Davidson	84	$26,500,000	Two computer programmers at HCA alleged the company falsely them of stealing company secrets.
Plaintiff:	Thor Urness & Julie Burnstein		
Davidson	61	$16,400,000	A pediatric urologist botched a scrotal surgery and removed almost all of an infant's bladder.
Plaintiff:	Todd Rose, Paris, Les Jones Memphis and Rosella Shackelford, Clarksville		
Cumberland	424	$10,000,000	A woman was left a paraplegic when the seat in her Ford Escort broke during a crash
Plaintiff:	Andrew Tillman, Knoxville & Clifton Smart & Neil Chanter Springfield, MO		
Winchester	373	$8,000,000	A passenger on a Greyhound bus criticized security after a lunatic seized the bus and caused it to crash – plaintiff was left a paraplegic
Plaintiff:	Phillip Cossich and Walter LeBlanc, Belle Chasse, LA & Jodi Aamodt, New Orleans, LA Andrew Berke and Marvin Berke, Chattanooga		
Memphis	144	$6,000,000	A former El Salvadoran General living in Memphis was blamed for torture and murder a quarter century ago during that country's civil war.
Plaintiff:	David Esquivel, Nashville & Carolyn Blum, New York, NY & Matthew Eisenbrandt, San Francisco, CA		
Nashville	100	$5,815,000	An executive at a health care company alleged he was illegally forced out.
Plaintiff:	James Sanders & David Bridgers, Nashville		
Knoxville	220	$5,483,602	Plaintiff lost his arm in an industrial accident and blamed the injury on a negligently redesigned bucket loader
Plaintiff:	William Young, Knoxville & William Shults, Newport		

death was linked to sepsis secondary to the gastric bypass surgery.

Leaving behind a husband and two adult children, Beard's estate filed a lawsuit and alleged a combination of negligence by Ward, Thompson and the hospital nurses. Ward was implicated for failing to immediately seek a surgical consult. Plaintiff's gastroenterology experts were Dr. Bruce Salzburg, Atlanta, GA and Dr. Frederick Opper, Wilmington, NC. It turned out they were not needed. The estate settled with Ward.

The liability theory then shifted and focused on the two remaining defendants. In this regard, Thompson too was criticized for failing to arrange a surgical consult – distancing itself from the claim against Ward, plaintiff also noted that Thompson had a critical blood test that indicated a serious infection, but didn't tell Ward. [Thus in measuring fault, this superior knowledge, plaintiff argued, supported a finding that Thompson was more to blame.] The estate's ER expert was Dr. James Ellis, Hendersonville, NC.

The nurses were also blamed for inadequate monitoring of Beard. The nurse expert was Jennifer Glenn, Knoxville. Tying standard of care deviations to causation, plaintiff developed that with a prompt surgical intervention, Beard's sepsis could have been treated and it was more likely than not that she would have survived.

Thompson and the nurses defended the case and focused on several themes, (1) blaming the non-party Ward for not intervening when he was more familiar with Beard's condition, (2) their assessment and monitoring were within the standard of care, and most importantly, (3) regardless of intervention, Beard would not have survived the infection. Infectious disease experts were Dr. Kerry Cleveland and Dr. Bryan Simmons. Thompson's ER expert was Dr. Joseph Holley, Memphis – the nurse expert for Baptist Memorial was Joyce Jeffries, Memphis.

The jury in this case exonerated both Thompson and the hospital. The instructions were clear that the jury was to return to the courtroom. The jury wasn't finished yet.

Continuing, the jury found the non-party Ward 100% at fault – it went on to award damages of $180,000. The gesture was meaningless. There was no judgment entered in the record several months post-trial.

The defendants may have been nervous by a question the jury posed while deliberating: What do we use as a guideline in assessing damages? As it turned out, the jury was only considering damages against the non-party.

Ed. Note - For a detailed look at the forty-six medical negligence trials chronicled in 2005, see page 17 in the 2005 TJVR Year in Review. Of that total, fifteen were Nashville, nine more being tried in Memphis.

Medical Negligence - An elderly patient's death at a nursing home was linked to an exceptionally high potassium level

Gentry v. Haney, CC-10652
Plaintiff: Christopher K. Thompson, *Shuttleworth Williams*, Murfreesboro
Defense: Robert L. Trentham and Taylor B. Mayes, *Miller & Martin*, Nashville
Verdict: Defense verdict
County: **Giles**
Judge: Stella Hargrove
7-14-05

Lerlean Gentry, age 80, was admitted on 8-25-03 to the NKC Health Care nursing home to recuperate after breaking her leg. She was monitored at the nursing home by her family doctor, Charles Haney. Upon admission, Haney noted her potassium level was too low – he prescribed it for her as a supplement.

Over the next week, Gentry felt poorly but was stable. Suddenly on 9-1-03, she died of cardiac arrest. A blood sample taken after she coded indicated an exceptionally high potassium level of 9.5. While there was no autopsy and relying on the blood test, her death was linked to a potassium overdose.

Her estate, representing six adult children, sued Haney and alleged negligence by him in (1) prescribing too much potassium, and (2) not monitoring Gentry's potassium levels. This combination of errors caused the overdose and resulted in Gentry's death. An expert for Gentry was Dr. Robert Burns, Family, Memphis.

Haney defended the case that his treatment was consistent with the standard of care. The doctor's defense also focused on causation. It was his suggestion that the potassium level may not have been accurate – in fact, it virtually the highest level that any doctor in the case had ever seen. In light of the fact that before the arrest, Gentry was mostly stable and with normal kidney function, Haney concluded the test must have been a mistake. He postured that Gentry most likely sustained an acute cardiac event that was unrelated to her potassium level or his care. A defense expert was Dr. Harold Szerlip, Nephrology, Martinez, GA.

After three days of proof, the court's instructions asked if Haney was negligent. The answer in Pulaski was for the doctor and the estate took nothing. A defense judgment ended this litigation.

Medical Negligence - Thirty-two weeks pregnant, plaintiff was involved in a serious car crash and sustained abdominal trauma – taken to the ER, mother was diagnosed with a cervical strain, the baby having normal vital signs upon arrival – hours later her unborn baby died of a placental abruption

Basham v. Greaves, 00-1558
Plaintiff: W. Gary Blackburn, *Blackburn & McCune*, Nashville
Defense: Mitchell L. Geracioti, *Levine Orr & Geracioti*, Nashville
Verdict: Defense verdict
County: **Davidson**
Judge: Marietta S. Shipley
10-14-05

Galodriel Basham was involved in a series car crash on 6-5-99 on old Hickory Boulevard – her vehicle was hit by Charles Lipscomb. Basham, who was then 32 weeks pregnant, was pinned in her car. She was extracted by a rescue crew and taken to the ER at Summit Medical Center.

Basham arrived at 10:37 a.m. and was seen thirty-one minutes later by an ER doctor, Mark Greaves. He noted that Basham had a back strain – he also took an x-ray of her knee. There was no fracture. Greaves cleaned a knee abrasion.

Greaves was also concerned with the unborn baby. While Basham's chest was bruised, the infant seemed to be unhurt and had a normal fetal heart rate of 124 beats per minute. In an abundance of caution, from the perspective of Greaves, he called Basham's Ob-Gyn an hour later.

The Ob-Gyn suggested that Basham be kept for observation. Just after Basham was transferred to the Ob-Gyn unit, the fetus was checked again. There

were no fetal heart tones and Baby Girl Basham was pronounced dead.

An autopsy of the baby was performed by the very interesting, Dr. Charles Harlan, Pathology, Nashville. Looking to bruises on the infant's skull, he concluded the baby died of head trauma. As this case progressed, Harlan's impressions would be important.

Basham sued Greaves and the hospital nurses, linking the baby's death to substandard care. It was argued that after the initial assessment upon arrival, the baby's vitals were not checked again. Simply taking a single fetal heart rate was not enough as explained by Dr. Frederick Carlton, ER, Jackson, MS.

The baby's real peril was a trauma-induced placental abruption – in an abruption, the placenta is torn from the uterine wall and diminishes oxygenated blood, the infant sustaining a hypoxic event. Carlton explained that Greaves should have suspected abruption and immediately consulted an Ob-Gyn. The expert also opined that the monitoring of the infant, instead of being a single-shot, should have been frequent and serial.

This complacency by Greaves and the nurses, it was alleged, led to the untreated abruption and the missed opportunity for a life-saving c-section to be performed. The hospital prevailed by summary judgment, the case advancing to trial against Greaves only.

Greaves first raised a procedural defense – he argued that any claim against him had already been fully compromised, Basham having settled with Lipscomb, the driver of the car, for his $100,000 policy limits. The court sided with the plaintiff, Greaves defending on the merits.

In that regard, he relied first on Harlan's autopsy, concluding Baby Girl Basham died of head trauma. Retained experts for Greaves picked up on this theme, focusing that because of the head trauma, any error related to the abruption was irrelevant.

Basham challenged Harlan's opinion and suggested not only was it incorrect, Harlan had confused different babies in the autopsy. Whether that was true or not, Harlan had troubles of his own. Because of his literal pathological propensity to fake autopsy results, Tennessee permanently revoked his medical license.

While the Harlan matter was interesting, it ultimately didn't have a bearing on the case. Greaves abandoned the brain injury theory and ultimately conceded Baby Girl Basham's sole cause of death was placental abruption.

Finally to the merits of his care, Greaves argued he promptly saw and evaluated Basham – in that regard, the fetal vital signs were all normal. As noted above, he contacted her Ob-Gyn and arranged her transfer to the obstetrical unit. Defense experts were Dr. Bruce Day, ER, Madison, Dr. Steven White, ER, Dr. David Wellman, ER, Durham, NC and Dr. Baha Sibai, Ob-Gyn, Cincinnati, OH.

The jury's verdict in Nashville was for the doctor and the estate took nothing. A defense judgment followed.

The estate moved for a new trial and challenged the court's use of a narrow locality standard of care instruction. It was conceded that the instruction represented the current state of the law – however the estate presented the issue for purposes of pursuing an appeal. The motion was denied and the case has been appealed.

Auto Negligence - Plaintiff sustained a soft-tissue neck injury in a rear-end crash

Myers v. Burton, 50324
Plaintiff: Frank M. Fly and James Bryan Moseley, *Bullock Fly & Hornsby*, Murfreesboro
Defense: Stewart C. Stallings, Brentwood
Verdict: $13,483 for plaintiff
County: **Rutherford**
Judge: Robert E. Corlew, III
9-30-05

There was a rear-end crash in Smyrna on 5-3-04, Deborah Burton crashing into Paula Myers. Myers, then age 66, was stopped in her 1992 BMW. The impact knocked her forward into the next car. Fault for the wreck was no issue.

At the scene, Myers called her son to come get her. She went on to work the next day, only later reporting to the ER. Myers has since treated for soft-tissue neck pain. Her incurred medicals were $1,899.

In this lawsuit, Myers sought damages from Burton, blaming her for the crash. Burton defended and minimized the claimed injury, noting that Myers did not immediately seek treatment.

Tried on damages only, Myers took $8,883 for personal injury – the jury added $4,600 for property damage to her BMW. A consistent judgment followed and Burton paid it.

Race Discrimination - A black Clarksville police officer alleged a pattern of racial hostility permeated the police department

Blakely v. City of Clarksville, 3:01-1186
Plaintiff: Robert J. Martin, Clarksville and Andy L. Allman, *Kelly Kelly & Allman*, Hendersonville
Defense: W. Timothy Harvey, *Harvey & Silvus*, Clarksville
Verdict: $325,000 for plaintiff
Federal: **Nashville**
Judge: William J. Haynes
8-18-05

Tony Blakely, who is black, started working in 1990 as a patrol officer for the City of Clarksville police department. By 1996 he was promoted to detective. Beginning in 1998 and through 2000, Blakely sought promotion to sergeant. He was repeatedly passed over.

He filed an EEOC charge in response and then alleged a pattern of racial hostility commenced against him. A lieutenant referred to him as nigger. On another occasion, a noose was hung near his desk.

Blakely also found himself under scrutiny. On a medical application with the department, he listed that he had used marijuana. Being honest, Blakely had done so many years ago when he was a teenager. Despite this apparently innocuous behavior, the police launched an investigation. This, Blakely thought, was just more racially-motived retaliation.

Beyond these particular incidents concerning him, Blakely thought a more racial animus had infected the police department. It existed for many years, Blakely noting that Clarksville police bigwigs told racially insensitive jokes and were otherwise hostile to blacks.

In this lawsuit, Blakely presented six race-based counts, (1) racially hostile environment, (2) discriminatory discipline, (3) retaliation for the EEOC charge, (4) outrage, (5) malicious harassment, and (6) discrimination in the failure to promote. He sought compensatory damages on all six counts.

The Clarksville Police defended the case and denied any harassment. It noted that much of the evidence of racial

hostility was either (1) sporadic or (2) spread over many years. Also much of it, notably the racial jokes, were not told to Blakely nor were they even about him.

Blakely prevailed at trial on five of six presented counts, losing only on race discrimination regarding the failure to promote in 2000. On each of the five upon which he did prevail, Blakely took damages of $65,000. The verdict totaled $325,000. A consistent judgment followed. In late December, assorted post-trial motions were still pending.

Truck Negligence - In a truck versus truck collision, plaintiff sustained a closed head injury

Walton v. Werner Enterprises, 9793
Plaintiff: Stanley A. Davis, Nashville
Defense: John M. Griffin, Jr., *Kay Griffin Enkema & Brothers*, Nashville
Verdict: $240,428 for plaintiff less 27% comparative fault
County: **Bedford**
Judge: Lee Russell
12-20-05

On 3-21-03, Sammie Walton, then age 52 and a truck driver for Sara Lee Bakery from LaVergne, traveled on US 41-A in the middle of the night near Tullahoma. At the same time, another trucker, Jose Ortiz from California driving for Werner Enterprises, was in the process of backing out from a private drive. His big rig blocked the roadway.

Ortiz, then a driver in training, had not marked his location with either lights or flares. Walton didn't see his truck until it was too late. He crashed hard into the Ortiz truck. The impact knocked Walton out.

He was flown by helicopter to a Nashville hospital where he was acutely treated for a broken rib, a concussion and other soft-tissue injuries. More persistently, Walton has complained of a residual closed head injury.

It has manifested as vertigo, dizziness, memory loss and a seizure disorder. The injury was quantified and linked to this wreck by a Nashville neurologist, Dr. Paul Buechel. Buechel explained in the collision that Walton's brain was bounced around the inside of his skull.

Plaintiff's medical bills as stipulated were $37,519. He also sought both lost wages and loss of earning capacity, this disabling brain injury limiting his career as a trucker. Beyond his primary claim, Walton's wife, Cynthia, presented a derivative consortium claim. In this lawsuit, the Waltons sought damages from Werner Enterprises.

Werner Enterprises defended on both fault and damages. To the wreck itself, it suggested that but for Walton's improper look-out, he could have avoided the Ortiz truck. It was further noted that other truckers were able to pass Ortiz without incident. While conceding some fault, defense counsel asked the jury: How much fault is Mr. Walton's?

Then to damages, Werner Enterprises conceded there was something owed, asking the jury to keep its award reasonable. In making that decision, it could rely on testimony from an IME, Dr. Martin Wagner, Neurology, Hermitage. The expert thought Walton had just a mild concussion that quickly resolved.

The jury needed five hours to reach a verdict. It concluded both drivers were at fault – that was assessed 73% to Ortiz, the remainder to plaintiff.

Then to damages, Walton took his medicals as claimed, plus $25,000 in the future. Lost wages were $4,608, while future lost earning capacity was $113,300. Impairment was $50,000.

Walton took $10,000 for past suffering, but nothing for future care and loss of ability to earn money. Wife's consortium claim was also rejected. The raw verdict totaled $240,428 or $185,129 after a reduction for comparative fault. A week post-trial, no judgment had been entered.

Ed. Note - In light of the lengthy deliberations and unusual comparative fault assessment 73-27, it is considered highly likely this was reached by a quotient method.

Food Server Negligence - As plaintiff dug into her *Boss's BLT* sandwich at Rafferty's, several teeth were damaged when she bit into an unknown hard object

Winford v. Rafferty's, 50301054
Plaintiff: Mart G. Fendley, Clarksville
Defense: James Catalano, *Leitner Williams Dooley & Napolitano*, Nashville
Verdict: Defense verdict
County: **Montgomery**
Judge: Ross H. Hicks
9-14-05

On 1-29-03, Linda Winford, then age 56, met several friends for lunch at Rafferty's, a restaurant in Clarksville. She ordered a *Boss's BLT* sandwich – Winford had ordered this before. The Boss's BLT was served open-face on french bread.

As Winford started on the second half of the sandwich, she bit into something hard. Immediately she was in pain, one of her teeth falling out. Two others were badly damaged. While the foreign object was not recovered, Winford did keep the tooth.

She sued Rafferty's and sought damages regarding the presentation of the sandwich – while not sure what happened, Winford posited a res ipsa theory. Rafferty's defended that (1) Winford didn't know what she bit into, (2) she never saw it, (3) it wasn't recovered, and (4) more likely than not, there was no object, Winford's problems being related to a lengthy history of pre-existing dental problems. Winford countered that while she wasn't sure exactly what the object was, there could be no question that there was a foreign object in the BLT.

This sandwich case was resolved by a Clarksville jury. It returned a verdict on liability for Rafferty's and Winford took nothing. A defense judgment followed and there was no appeal.

Ed. Note - For other food related verdicts, see the General Negligence Report in the 2005 TJVR Year in Review at page 23. That includes Case No. 65 from Nashville where plaintiff's glass of water from Krystal's had cleaner in it.

Auto Negligence - A pedestrian was killed when struck while crossing the street – his estate blamed both Metro Government (it prevailed by a DV) for a blown light in the "Don't Walk" sign as well as the driver that hit him

Gentry v. Cook, 02-3326
Plaintiff: Larry R. McElhaney, II, *Arena & McElhaney*, Nashville and R. Eric Thornton, *Ramsey & Thornton*, Dickson
Defense: Michael H. Sneed, Nashville
Verdict: $1,638,561 for plaintiff less 25% comparative fault
County: **Davidson**
Judge: Thomas Brothers
11-7-05

Eddie Gentry, then age 54 and a vice-president of lending for Educator's Credit Union, was killed on 11-20-01 in a pedestrian crash. While crossing the street on 21st Avenue South and

Wedgewood Avenue, he was struck by a car driven by Dereck Cook. Suffering significant trauma, Gentry died eight days later.

In this lawsuit, the Gentry estate alleged negligence by Cook in failing to keep a proper look-out. It was also noted that at the time of the crash, Gentry was fully in the crosswalk.

The estate also raised a more nuanced theory against Metro Government – it cited that the bulb in the "Don't Walk" sign had failed. But for that failure, Gentry wouldn't have crossed against the light and there wouldn't have been a collision.

Cook defended the case and pointed to a (1) combination of Gentry's having crossed against the light, and (2) the failed "Don't Walk" signal. Metro Government's defense of the case focused on proving it lacked any notice, constructive or otherwise, that the bulb in the signal had failed. Plaintiff countered that as the bulbs failed on a regular basis, constructive notice had been proven.

The case advanced to trial against both Cook and Metro Government. The court directed a verdict for Nashville, finding it had no notice of the bulb being out. Metro Government was represented by Philip D. Baltz, *Metro Government Department of Law*, Nashville.

Then the jury only considered the claim against Cook. It found him 75% at fault, assessing the remainder to the decedent. Then to damages, the estate took $1,638,561 in damages. That included $100,000 for suffering and lost earning capacity of $1,169,023. His wife's consortium interest was valued at $3144,801. A consistent judgment less comparative fault was entered for $1,228,921.

FELA - In this unusual train abandonment case, a locomotive conductor alleged he was left by the side of the train tracks for hours in the hot sun without his blood pressure medicine, cover or water

Watkins v. CSX, 1:04-1124
Plaintiff: Frank O. Burge, *Burge & Burge*, Birmingham, AL
Defense: Ed E. Wallis, Jr. and Ed E. Wallis, III, *Moss Benton & Wallis*, Jackson
Verdict: Defense verdict
Federal: **Jackson**
Judge: James D. Todd
11-29-05

Joe Watkins is a locomotive conductor for CSX. On 7-7-01, he was piloting a train that was traveling from Memphis. Near Milan, TN, the train tripped an automatic defect detector. Following protocol, Watkins stopped the train and set about identifying the problem.

That process meant walking the length of the mile and a half long train. Watkins walked the train and could find nothing wrong. CSX bigwigs were monitoring the situation and made a decision that the train had to start moving again right away. There was no time for Watkins to walk back to the engine room.

In making this decision, CSX noted that (1) the train was already late, (2) other trains were waiting to cross in this area, and (3) it might actually be easier for Watkins than having to walk back to the front of the train. CSX promptly called a cab to come get Watkins. It was supposed to arrive in hour.

While the cab got to the area in an hour or so, the cabbie couldn't find Watkins. That left Watkins sitting outside in sun for nearly three hours. He had no cover or water – temperatures in that period rose from 93 to 104 degrees.

Even worse, Watkins had left behind his "grip" on the train that contained his blood pressure medicine. When finally found by the taxi, he was promptly taken to the ER. There he was treated for chest pain and elevated blood pressure. Watkins has since fully recovered.

He then sued his employer in this FELA lawsuit and alleged it negligently abandoned him by the side of the tracks – the combination of factors, the heat, no water or cover and the failure to have his blood pressure medication, it was argued, all led to a compensable injury. This injury had not just a physical element, but also significant mental anguish, Watkins baking for three hours in the hot July sun.

CSX defended as above that it acted reasonably to get the train rolling – concurrently, a taxi was immediately called. While it was unfortunate that the taxi had trouble finding Watkins, CSX denied this represented negligence. Damages were also diminished, the railroad noting that while plaintiff's blood pressure was briefly elevated, he responded quickly to treatment and was released within hours.

A federal jury in Memphis resolved this case for CSX on liability and Watkins took nothing. A defense judgment was entered.

Auto Negligence - A right of way crash left plaintiff with both radiating neck pain and a broken finger

Eaton v. Reeder, CT-003967-00
Plaintiff: Robert A. Chamoun, Memphis
Defense: Mark Lambert, *Allen Summers Simpson Lillie & Gresham*, Memphis
Verdict: $53,250 for plaintiff
County: **Shelby**
Judge: Karen R. Williams
9-23-05

On 7-20-99, David Eaton, then age 50, traveled in his Mercedes sedan on Walnut Grove Road. Suddenly Elizabeth Reeder turned left in front of him. A moderate crash resulted – Reeder conceded her fault.

Eaton has since treated for a mildly broken finger and more persistently for radiating neck pain. That injury was linked the aggravation of degenerative conditions. Eaton's medicals were $35,538.

Reeder defended the case and diminished the claimed injury. She noted that (1) Eaton had a prior back surgery, and (2) that following this wreck, he complained of neck pain and linked it to an incident lifting a box of dog food.

Eaton prevailed on causation and then took a general award of $53,250. A consistent judgment followed. Pending is plaintiff's motion for additur, arguing the award was inadequate in light of his medicals. Reeder has opposed that the jury fairly resolved fact disputes.

In deliberations, the jury had two interesting questions: (1) What is the proof his finger was broken?, and (2) Can we divide the medical bills? To the second question, Williams replied that

the jury had "total control" over the amount of damages.

Farm Negligence - A little boy lost vision in one eye in a tractor accident involving his grandfather

Wilkes v. Wilkes, 10536
Plaintiff: Charles P. Yezbak, III and Stephen W. Grace, Nashville
Defense: William R. Goodman, *Goodman & Walker*, Springfield
Verdict: Defense verdict
County: **Robertson**
Judge: Ross H. Hicks
8-16-05

There was a farm accident on 3-5-00 in White House. Parker Wilkes, then age 4, was with his family for Sunday dinner at the farm of his paternal grandparents. His grandfather, David Wilkes, had been operating a farm tractor with a hay spear attached to it.

As grandfather worked on the tractor, all were careful to keep an eye out for Parker – this included his father. All were well aware that Parker was a boisterous child who didn't also listen to directions.

The call came to come inside for dinner. Parker took off with his twin brother and father and headed inside. As they walked away, grandfather went to put the tractor away. He started to back up.

Parker saw the tractor moving again and ran straight for it. The boy's father yelled at him to stop. Parker didn't stop. He was hit in the eye by the hay spear. A significant optical injury was sustained – little Parker lost vision in the eye.

He filed this lawsuit against his grandfather and blamed him for failing to keep a proper look-out. Implicit in this theory was the knowledge that Parker was an active boy. But for grandfather's failure to keep a proper look-out, there would have been no collision. Grandfather defended the case and denied fault.

The case of the boy versus his grandfather was heard in Springfield – the verdict on liability was for the defendant. A consistent judgment followed.

The boy moved for a new trial citing that a directed verdict should have been granted – grandfather admitted he wasn't keeping a look-out for the boy. The motion was denied and plaintiff has since appealed.

Civil Rights - Plaintiff alleged he was illegally stopped, seized and sexually abused by a policeman – just coincidentally, another man in another part of Memphis with no connection to the plaintiff made a near identical claim of sexual abuse against the same officer on the same night

Chalmers v. Memphis Police, 2:04-2694
Plaintiff: Jock M. Smith, Tuskegee and David A. McLaughlin, Memphis, both of *The Cochran Firm*
Defense: Deborah Godwin, *Godwin Morris Laurenzi & Bloomfield*, Memphis for Clemons
Henry L. Klein, *Apperson Crump & Maxwell*, Memphis for City of Memphis
Verdict: Defense verdict
County: **Memphis**
Federal: Bernice B. Donald
11-30-05

David Chalmers, who lives on Elvis Presley Boulevard, walked from his home at 1:00 a.m. on 8-27-03. It was his intention to buy something at a nearby Shell Station.

At the same time, Davin Clemons, a Memphis police officer, was patrolling in the area. Particularly, he was looking for a runaway suspect. He saw Chalmers and suspected he might be the runaway.

Clemons illuminated his lights and stopped the pedestrian. He then placed Chalmers in the back of his cruiser and commenced an investigation. Chalmers first showed his identification – it was now quite clear to Clemons that Chalmers, then age 22, was not the teen runaway. [In fact, Clemons knew Chalmers having arrested him earlier on a marijuana charge – at the time of this arrest, Chalmers was on probation related to this arrest.]

It was at this juncture that this middle-of-the-night arrest took a dark turn. Chalmers recalled that Clemons drove behind a nearby car wash. He asked Chalmers to pull up his shirt and pull down his pants to expose his genitals. This was purportedly to conduct a weapons search. Chalmers remembered Clemons conducting this search 17 times.

To be even more sure that Chalmers didn't have a weapon, Clemons also fondled Chalmers. The search and seizure lasted for nearly two hours. Ultimately Chalmers was released. [Clemons for his part, flatly denied this version or doing anything improper.]

Chalmers wasn't happy and almost immediately filed a complaint with the police about Clemons's conduct. He wasn't the only one. Another man alleged a virtually identical pattern of conduct by Clemons on the same night. This second man had no connection to Chalmers. Ultimately Internal Affairs, relying on this incredible coincidence, substantiated the complaints against Clemons.

In this federal lawsuit, Chalmers alleged two civil rights counts, the officer unconstitutionally seizing and searching him. Plaintiff cited there was no basis, beyond the initial stop, to place him in the cruiser. Two other state law claims were also presented, Chalmers alleging sexual assault and false imprisonment. Finally the Memphis Police was implicated in a negligence count regarding Clemons. If prevailing, Chalmers sought compensatory and punitive damages.

Clemons's defense of the case was not complex – he denied everything. He even had an explanation for Chalmers's complaints against him. He suggested it was in retaliation for the earlier marijuana arrest. Memphis also denied fault.

The key issue in this case in terms of litigation turned out to be the report by the other man. The plaintiff thought the jury should hear all about it – Clemons by contrast didn't want any mention of it. The court split the issue and permitted only its very limited admission, the jury not learning the scope of the second report, that there was an internal affairs investigation or its results.

The jury's verdict was for Clemons on all four counts, (1) search, (2) seizure, (3) false imprisonment and (4) sexual abuse. Having exonerated the officer, the jury then did not reach the negligence claim against the city. A defense judgment followed.

Uninsured Motorist - A pedestrian was hit by a car that ran a red light – the crash left her with a significant dental injury

Bone v. Nationwide, 04-2610
Plaintiff: Larry L. Roberts, *Roberts & Associates*, Nashville
Defense: Glen L. Krause, *Brewer Krause Brooks Chastain & Burrow*, Nashville
Verdict: $22,527 for plaintiff
County: **Davidson**
Judge: Marietta S. Shipley
10-4-05

Katherine Bone, age 56, was a pedestrian on 2-26-04. She was crossing 8th Avenue North – Bone was in the crosswalk and had an illuminated "Walk" signal. At the same time, Cornisha Ray, turned onto 8th Avenue from Tenth Circle North.

As Bone crossed, she was hit by Ray – Bone was knocked onto the hood and then fell onto the asphalt. From the scene, Ray fled. [She was uninsured.]

Bone sustained a serious dental injury in the crash. Her already fragile dental condition was made worse when her jaw was forced together. Essentially Bone was an egg-shell toothed plaintiff. Her medical bills were $37,570.

In this lawsuit, Bone targeted her UM carrier, Nationwide. Beyond her primary claim, her husband presented a derivative consortium claim. Nationwide defended and minimized the claimed injury – in this regard, the insurer focused not on this collision, but Bone's pre-existing dental condition.

Tried on damages only, Bone took medicals of $18,442, plus lost wages of $1,085. Pain and suffering was $3,000, the verdict totaling $22,527. A consistent judgment followed and Nationwide has paid it.

Underinsured Motorist - A right of way turning crash left plaintiff with a disc injury

Miller v. Encompass Insurance, 33501
Plaintiff: Clifton N. Miller, *Henry McCord Bean Miller Gabriel & Carter*, Tullahoma
Defense: Dennis E. Blevins, Nashville
Verdict: $64,703 for plaintiff
County: **Coffee**
Judge: John W. Rollins
5-24-05

There was a right of way crash in Tullahoma on 4-14-03. Rose Griffin turned left in front of Vernon Miller as she attempted to reach the Cherokee Square Shopping Center. A moderate collision resulted. Fault was no issue.

Miller, then age 60, has since complained of radiating low back-pain. Dr. Paul McCombs, Neurology, Nashville performed a spinal fusion at L5-S1 that August. Plaintiff's medicals were $22,003.

Miller first moved against Griffin and took her $25,000 policy limits. Above that sum, she sought UIM coverage from her carrier, Encompass Insurance. It defended at trial in the name of Griffin.

In making that defense, Encompass noted that Miller had a lengthy history of back pain – that included treating with McCombs since 1992. Miller countered this collision aggravated pre-existing conditions.

Tried in Manchester on damages only, Miller took a total award of $64,703. That included his medicals, plus $17,000 for pain and suffering. He took $15,000 more for loss of ability to enjoy life. A consistent judgment followed.

Pharmacy Negligence - While plaintiff's prescription for a hypothyroid medicine was for a .25 dose, it was filled at the pharmacy as .025 – the imbalance in plaintiff's system led to a sudden weight gain that will require a bariatric surgery

Larson v. Walgreens., 4:03-79
Plaintiff: J. Stanley Rogers and Christina Henley Duncan, *Rogers & Duncan*, Manchester
Defense: Marc O. Dedman and David M. Sanders, *Spicer Flynn & Rudstrom*, Nashville
Verdict: $36,051 for plaintiffs
Federal: **Winchester**
Judge: James H. Jarvis
12-15-05

Kay Larson has suffered for years from hypothyroidism. In October of 2002, her doctor, Nancy Blevins, prescribed Larson a drug known as Synthroid. It was provided in a .25 mg dose per day.

Larson had the script filled at Walgreens. However instead of being given .25 dosage, Walgreens filled it at .025 or 1/10th the prescribed dosage. While this error was clearly noted on the packaging, Larson took the improper dose for several months.

It was repeatedly filled improperly by Walgreens – this occurred not just on the first trip on 10-15-02, but again on 11-13-02, 12-9-02 and 1-10-03. By that time, Larson had developed associated complications related to the dosage error. That included a sudden weight gain – Larson, already big at 360, shot up to 400 pounds. It was her proof that this weight gain tipped her from obese to morbidly obese, a status that will require bariatric surgery.

She sued Walgreens and sought damages in this federal lawsuit – her husband also presented a derivative consortium claim. Walgreens first defended on fault that had Larson bothered to look at the bottle, she would have noted the pharmacy had screwed up the dosage. By the time of trial, this defense was abandoned and the case was tried on damages only. In that regard, Walgreens focused on Larson's pre-existing conditions.

Tried on damages only, Larson took $20,000 in compensatory damages – her husband took $16,051 on his consortium claim. The verdict totaled $36,051. A consistent judgment followed.

Truck Negligence - A right of way crash with a tractor-trailer left plaintiff with a claimed L5-S1 disc injury

Morris v. AJAX Turner Co., 49162
Plaintiff: E. Joseph Warwick, *McMahan Law Firm*, Chattanooga
Defense: Raymond D. Lackey, *Sneed & Associates*, Brentwood
Verdict: $48,825 for plaintiff
County: **Rutherford**
Judge: J. Mark Rogers
9-8-05

On 10-28-02, Pasha Morris, then age 20, traveled on Greenland Drive in Murfreesboro. Suddenly Brent Bozich, driving a tractor-trailer for Ajax Turner Co. pulled from a private drive and into her path. She was then in a center turn-lane, intending to turn left onto Tennessee Avenue. A crash resulted.

Ajax defended on fault – Bozich recalled that two lanes of traffic stopped for him to pull out. Then as he did so, Morris struck her truck as she sped through the turn lane. Morris denied seeing Bozich before the impact.

However it happened, there was a crash and Morris has since complained of low-back pain. A plaintiff's IME, Dr. Gregory White, Physical Medicine, Chattanooga, identified an L5-S1 disc injury with nerve impingement. Plaintiff's medicals were $5,400 – she

has reported chronic pain.

Ajax defended on fault as noted above – it also diminished damages and poo-pooed White's opinions noting Morris only saw her upon the recommendation of her attorney.

Fault was split assigned at trial 77.5% to Ajax, the remainder to plaintiff. Then to damages, Morris took a general award of $63,000. A consistent judgment less comparative fault for $48,825 was entered and it has been satisfied.

Ed. Note - Can there be any question that in reaching that the comparative fault finding represented a quotient verdict? That is the jurors added their individual assessments of fault together and divided by twelve. The .5% assignment of fault is highly indicative of this. It is also reasonable to assume the award of compensatory damages was reached by the same method.

Premises Liability - Plaintiff tripped and broke her foot as she stepped from an elevated platform at a restaurant

Bogue v. Baudo's Restaurant, 04-246
Plaintiff: Mark L. Agee, *The Agee Law Firm*, Trenton
Defense: Russell E. Reviere, *Rainey Kizer Reviere & Bell*, Jackson
Verdict: $29,500 for plaintiffs less 43% comparative fault
County: **Madison**
Judge: Donald H. Allen
8-19-05

Donna Bogue ate on 6-14-03 at Baudo's Restaurant and Comedy Club in Jackson. Her table was on an elevated platform. Bogue got up to go to the bathroom. As she stepped off the platform, she lost her balance and fall – in the process, she broke her foot.

Bogue alleged negligence by the restaurant, citing the uneven level of the floor. Besides her primary, her husband, John, presented a derivative consortium claim. Baudo's defended that the condition of platform was open and obvious.

The jury's verdict was mixed on fault. It assessed 57% to Baudo's, the remainder to plaintiff. Then to damages, Bogue took a general award of $25,000 – her husband took $4,500 more for his consortium interest, the raw verdict totaling $29,500. A consistent judgment less comparative fault was entered and it has been satisfied.

Dog Attack - An elderly woman suffered a fatal head injury when a too-friendly Golden Retriever knocked her over – the dog's owner denied there was any bump, noting that while the dog's paws were muddy, there was no mud on the plaintiff

Clayton v. Pierson, CT-004619-03
Plaintiff: Fred M. Acuff, Jr., Memphis
Defense: Randall N. Songstad, Cordova
Verdict: Defense verdict
County: **Shelby**
Judge: Rita L. Stotts
10-27-05

Mildred Clayton, age 91 and a retired teacher, lived on 8-18-02 in a unit at Appling Lake Apartments with her husband, Ralph. On this day, Clayton stood on a breezeway outside her apartment.

At the same time, a neighbor, Pamela Pierson, was walking her Golden Retriever, Duke. Duke was restrained on a leash. Despite this, it was alleged that Duke rounded a corner and exuberantly rushed at Clayton.

She was knocked backwards and struck her head on the concrete. While briefly unconscious, Clayton came to and was taken to the ER. She died later that day of a cerebral hematoma. Her estate incurred medical bills of $10,311.

In this simple case, Clayton's estate linked her death to the dog having knocked her over. Pierson defended the case and denied the friendly Duke had anything to do with Clayton's fall. Namely, it had rained the night before and on his walk, Duke's paws got muddy.

Yet despite having purportedly knocked Clayton over, there was no mud on her. This led Pierson to conclude Clayton simply fell, Duke being under control on his leash. The estate countered that it was dog, there being no reason for Clayton to simply fall on the smooth concrete surface.

This rare dog attack death case was heard by a Memphis jury in late October. The verdict was for Pierson on liability and the Clayton estate took nothing. A defense judgment ended this litigation.

Ed. Note - For a summary of all twenty-one death cases in 2005, see the Death Verdict Report in the 2005 TJVR Year in Review at page 27.

Negligent Supervision - An elderly Alzheimer's nursing home patient was beaten and knocked to the ground by a fellow resident – she sued Metro Government, which operated the nursing home, blaming it for failing to protect her.

Tate v. Metro Government, 04-408
Plaintiff: Phillip L. Davidson, Nashville
Defense: Jennifer L. Bozeman, *Metro Government Department of Law*, Nashville
Verdict: Directed verdict
County: **Davidson**
Judge: Walter Kurtz
10-31-05

Evelyn Tate, age 85, suffered from advanced Alzheimer's in January of 2004. On 1-23-04, she was a resident at Metro Bordeaux Hospital – it is operated by Metro Government. On this date, another resident, referred to only as Mrs. B., entered Tate's room.

Mrs B. had a history of being difficult. On this date, Mrs. B. quarreled with Tate and threw her down. Tate landed hard and sustained a broken him.

Tate has since passed away. Her estate pursued a negligence lawsuit against Metro Government – it blamed Bordeaux nurses for failing to protect her. Notably, Tate should not have been left alone and as importantly, the aggressive Mrs. B. should not have been allowed to enter Tate's room.

Metro Government defended the case that Tate was regularly and frequently checked – a nursing home expert, David Jackson, Safety Harbor, FL, explained there is no way to have continuous 24-hour coverage, there being no zero-risk facility.

Metro Government prevailed at trial by a directed verdict – the court put no explanation for its order in the record. There was no appeal from the court's judgment.

Truck Negligence - While injured in a car versus truck collision and taking a verdict in excess of $170,000, plaintiff took nothing for non-economic damages

Binion v. Highland Transport, 3:02-136
Plaintiff: Malcolm L. McCune and Sean C. Kirk, *Blackburn & McCune*, Nashville
Defense: Randall L. Ferguson, *Branstetter Kilgore Stanch & Jennings*, Nashville
Verdict: $170,550 for plaintiff
Federal: **Nashville**
Judge: John T. Nixon
9-1-05

On 3-3-01, Linda Binion traveled on I-40. Suddenly a tractor-trailer driven by John Hatejekimana for Highland Transport changed lanes. It clipped Binion's sedan and pushed her in front his truck. The truck then pushed her car 200 feet down the highway.

Binion has since treated for shoulder pain as well as a herniated disc. In this lawsuit, she blamed Hatejekimana for traveling too fast and losing control. Highland Transport defended and noted photographs indicated the impact was low-speed. The trucking company further argued there was no link between the crash and her claimed disc injury. Plaintiff's care was also implicated.

The jury's verdict found Hatejekimana solely at fault for the crash. Then to damages, Binion took her medicals of $21,660, plus lost wages of $31,384. Future lost wages were $117,500. The jury went on to reject future care, pain and suffering and impairment. The verdict for Binion totaled $170,550.

Pending in late December was her motion for a new trial that criticized the failure to award non-economic damages. Highland Transport replied that just because the verdict was not as big as Binion wanted, that did not mean there was any error.

Medical Outrage - A lawyer turned car dealer alleged his home nursing care abandoned him in the middle of a IV nutritional treatment – that left plaintiff with a grave but unfounded fear that when the IV bag was finished, air would be fatally injected into his veins

Snell v. MTMC@Home, 46959
Plaintiff: John W. Rodgers, *Kious & Rodgers*, Murfreesboro
Defense: William C. Moody, *Moody Whitfield & Castellarin*, Murfreesboro
Verdict: Directed verdict
County: **Rutherford**
Judge: Robert E. Corlew, III
10-7-05

Kenneth Snell, then age 56 and a lawyer turned car dealer (he operates Stones River Nissan), was discharged from the hospital with pancreatitis. As a part of his homebound care, Snell required an intravenous nutritional supplement.

These services were provided by the Middle Tennessee Medical Center doing business as the MTMC@Home. Through a central line, nurses changed the solutions in twelve hour treatments.

In the days following the commencement of care, MTMC@Home bigwigs became concerned Snell was not eligible to have his IV changed as a part of Medicare. This was because he wasn't homebound. On several occasions, nurses came to Snell's home and he wasn't there. Reaching him at his office, Snell explained he would be there when he got there.

An MTMC@Home nurse dropped the bomb on Snell on 8-22-05. When she came to change the solution, she told Snell he could no longer participate in the free Medicare program. He would have to begin to pay out of pocket.

There would be fact disputes about what happened next. Snell recalled that the discussion and he left it with the impression a decision would be made soon. He was not concerned as there was an IV in his arm. Snell fully expected a nurse to come back in twelve hours and change the solution.

The MTMC@Home nurse took a different spin on what happened – she thought Snell ordered that the treatment be discontinued. From the perspective of MTMC@Home, Snell was on his own.

It came to a head the next morning as the IV solution was about to empty from its bag. No nurse came to change it. Snell became fearful he faced a peril – when the bag emptied, air would be fatally flushed into his veins.

He called MTMC@Home to explain his concern. Snell recalled being told not to worry about it. Snell did worry and he made repeated calls, also putting in a call to his lawyer. While it turned out there was no danger, Snell was scared for nearly thirty minutes.

In this lawsuit, he sued MTMC@Home and alleged outrage, the hospital abandoning him in his moment of need. MTMC@Home defended and noted that (1) Snell terminated their care, and (2) there was no danger in the IV being emptied, a fact that was communicated to Snell that morning.

This unusual medical case advanced to the close of plaintiff's proof. At that juncture, the court entered a directed verdict and that concluded the matter.

Retaliatory Discharge - An oxygen deliveryman was fired after he complained that a resident in a retirement community was smoking in the presence of compressed oxygen – he asserted in this lawsuit that the firing was in retaliation for his having blown the whistle on illegal conduct – the company successfully defended that the employee's report did not touch illegal conduct

Bright v. Med of Tennessee, 03-1642
Plaintiff: Stephen W. Grace, Nashville
Defense: Luther Wright, Jr., *Boult Cummings Connors & Berry*, Nashville
Verdict: Directed verdict
County: **Davidson**
Judge: Thomas W. Brothers
10-15-05

Thomas Bright was working on 5-2-03 as an oxygen deliveryman for the Med of Tennessee. This day he made a delivery of compressed oxygen to a resident, Jewell Henderson at the Sycamore Terrace Retirement Community. Bright was concerned that Henderson didn't appreciate the hazard of smoking around oxygen. He told her to be more careful after observing her smoking near the oxygen.

Before leaving, he also made a visit to the Sycamore management office. There he told an employee that this sort of conduct was very dangerous. He didn't name Henderson and would later explain he was motivated solely by safety.

There would be fact disputes about what was said in the office. Sycamore

bigwigs would explain that Bright did name Henderson. Based on this, Henderson was evicted form her apartment.

Henderson's doctor, who had recommended that she use the Med of Tennessee's services, was not happy. He called the Med of Tennessee and complained. A week later Bright was out of work, the company apparently concerned that his meddling in safety matters might affect bottom line profits.

Bright thought the firing was unlawful and filed this lawsuit. In it he cited he was discharged in violation of the Tennessee Public Protection Act. Namely he reported illegal activity, smoking around oxygen, and because of it, he was fired.

The Med of Tennessee defended the case and focused that Bright's report was not about unlawful activity. His communications were an effort to educate the resident and management at Sycamore, not a protected report of illegality. Plaintiff countered that the Med of Tennessee fired him because it placed profits over safety.

The court granted Med of Tennessee's motion for a directed verdict. Brothers reasoned that Bright was not concerned with illegal activity, but rather with protecting his employer from liability. Then to the firing decision, while it might have been a bad reason, it was still permitted by the at-will doctrine. Bright has since appealed.

Insurance Contract - Did the plaintiffs play a part in burning down their own house?

Honeycutt v. Allstate, 2:05-32
Plaintiff: Thomas E. Cowan, Jr., *Cowan & Landstreet*, Elizabethton
Defense: S. Morris Hadden and Leslie T. Ridings, *Hunter Smith & Davis*, Kingsport
Verdict: For plaintiff
Federal: **Greeneville**
Judge: Dennis H. Inman
10-27-05

Bradley and Lisa Honeycutt from Carter County sustained a fire loss on 6-17-04. In this accidental fire, their home was burned down. Insured with Allstate, the Honeycutts made a claim for coverage.

Allstate denied the claim and suggested the Honeycutts were behind the fire. The insurer argued that (1) the fire was intentionally set, (2) the plaintiffs, who had financial problems, had a motive to set it, and (3) they had the opportunity. The Honeycutts denied involvement in setting the fire. Removed to federal court by Allstate, this insurance contract claim was tried in Greeneville.

The jury's verdict was mixed, but ultimately for the Honeycutt. It found that they were not involved in setting the fire and that they had not misrepresented facts as a part of their claim of coverage. However Allstate did prevail on plaintiff's claim for pre-judgment interest. Damages having been stipulated, a judgment was entered for the plaintiffs in the sum of $55,918. It has been satisfied.

Auto Negligence - A mother and son injured in a rear-ender took awards equal to their ER bills

Phinnessee v. Bishop, 9636
Plaintiff: Gayden Drew, IV, *Drew & Martindale*, Jackson
Defense: Stephen Craig Kennedy, *Duesner & Kennedy*, Selmer
Verdict: $586 for Stephanie and $257 for Dennis
County: **Hardeman**
Judge: J. Weber McCraw
9-28-05

It was 8-26-02 and Stephanie Phinnessee traveled on Butler Street in Bolivar. A passenger with her was her minor son, Dennis. Phinnessee stopped to let a school bus pull from an elementary school. An instant later she was rear-ended by Alicia Bishop.

Both Phinnessees were taken to the ER where they were treated for minor soft-tissue injuries. In this lawsuit, they sought damages from Bishop. Bishop defended and minimized the claimed injury.

The court having directed a verdict on fault, the jury considered damages only. Mother took $586, Dennis taking $257. A consistent judgment followed. The court denied an oral motion for a new trial from the bench and there was no appeal. [The awards to plaintiff were equal to the ER bill.]

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