Kentucky Trial Court Review

The Most Current and Complete Summary of Kentucky Jury Verdicts

January 2006 **Published in Louisville, Kentucky** **10 K.T.C.R. 13**

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.

Products Liability - A remodeler suffered a serious heel injury when his aluminum stepladder allegedly collapsed under him

Hopkins v. Werner Co., 5:02-121
Plaintiff: David V. Oakes, *Saladino Oakes & Schaaf*, Paducah
Defense: John G. McNeill, *Landrum & Shouse*, Lexington
Verdict: Defense verdict on liability
Federal: **Paducah**, J. Russell, 11-10-05

Danny Hopkins was working on 5-30-01 as a self-employed exterior remodeler in Murray. He was experienced and owned a variety of ladders. On this day, he was placing seamless guttering on a house on the campus of Murray State.

He had ascended an eight foot Model 368 aluminum stepladder manufactured by Werner Company. On the top step, Hopkins was busy installing the guttering. In one hand, he had a cordless drill – in the other, he held the gutter.

Suddenly the ladder collapsed under him. Hopkins fell hard and sustained a calcaneus heel fracture. He later underwent a bone graft surgery. Released from his doctor in February of 2002, he has continued to complain of pain.

In this lawsuit, he alleged the ladder had both a design and manufacturing defect that caused it to collapse. His expert, Campbell Laird, Engineer, Philadelphia, PA (Professor at Penn), implicated the ladder's tactile strength. If prevailing, Hopkins sought medicals, lost wages, impairment and suffering – all categories were uncapped.

Werner Company defended the case that there was no defect in the ladder. Its expert, Robert Collins, Tampa, FL, explained the ladder was well-designed and far exceeded the state of the art. Plaintiff's own comparative fault was also implicated.

The verdict on liability was for Werner on the products claim, Hopkins taking nothing. A defense judgment followed and Hopkins has appealed.

Medical Negligence - While one doctor admitted fault in a drug toxicity case, he still prevailed on causation (a second doctor won at trial on liability)

Crisp v. Bush et al, 02-1272
Plaintiff: Arden J. Curry, II, *Curry & Tolliver*, Charleston, WV and Ralph T. McDermott, Ashland
Defense: Richard P. Schiller, *Schiller Osbourn & Barnes*, Louisville for Bush
James P. Grohmann and Andie Brent Camden, *O'Bryan Brown & Toner*, Louisville for Yang
Verdict: Defense verdict on causation for Bush; Defense verdict on liability for Yang
Circuit: **Boyd**, J. Rosen, 9-27-05

Shirley Crisp, then age 65, suffered chest pain on 8-27-01. An emergency coronary artery bypass grafting surgery was performed at Kings Daughter Medical Center by a cardiologist, Dr. Richard Heuer. As a part of her post-operative care, Heuer prescribed Amiodrone, a drug with anti-arrythmic properties.

Crisp stayed in the hospital for another nine days, her care being supervised by a second cardiologist, Dr. David Bush – while Bush did not initially order the Amiodrone, he didn't end its use. [The drug has a significant risk of side effects, notably toxicity.]

On 9-6-01, Crisp was transferred to the KDMC rehabilitation unit. There her admitting doctor was an internist, Dr. Hazel Yang. While managing Crisp's overall care, Yang did not alter her cardiac prescription for Amiodrone. Crisp remained on the drug while in rehabilitation until her discharge on 9-21-01 – she stayed on it after discharge as well.

By December of 2001, Crisp had become very ill. She was admitted to the hospital on 12-26-01 and her symptoms were linked to Amiodrone toxicity. She suffered several injuries including, (1) to her thyroid, (2) diminished vision in one eye linked to an optic nerve injury, and (3) pulmonary fibrosis. Crisp developed

Kentucky Trial Court Review
January 2006 Table of Contents

The KTCR 2005 Year in Review

Available in both a Print and PDF Format (Adobe)

Another year has passed and the one-of-a-kind text Kentucky litigators have relied upon since 1998 is back with its eighth edition. At more than 500 pages, the KTCR 2005 Year in Review includes the complete verdict summary from every reported case in 2005, statewide from Paducah to Pikeville, Covington to London and all points in between. Beyond the full text of the 292 verdict summaries, the Year in Review has all the reports that makes the individual cases useful – even better for this year, all the reports bring together **eight** years of data in an encyclopedic format.

What else is included in 2005?

Combined Verdict Summary	Detailed won-loss percentages for every variety of case with average results by category.
Million Dollar Verdicts	How many were there in 2005? In what sort of cases were they returned? The report also summarizes all 115 million dollar results since 1998.
The Bad Faith Report	Since 1998, Kentucky has featured twenty-three bad faith results. This year's report summarizes each verdict in detail.
The Products Liability Report	Eight years worth of products verdicts – we've chronicled a total of 56 since 1998. Who won? Who tried the cases? Verdicts by defect? It's all in the Products Liability Report.
Other One-of-A-Kind Analysis	Beyond the articles above, the 2005 Book has a detailed review of all the death cases. Does your case involve punitives? We've got all the results since 1998 sorted by tortious conduct. How have loss of consortium claims been valued? Are you aware of the Consortium Rule? It's in the Book. **For more details** on the 2005 Book, see samples online at *Juryverdicts.net/kentuckytrial.htm*

If it's important to litigators, It's in the Book

How to Order - The 2005 Volume is just $225.00, tax and shipping included

Return with your check to:
Kentucky Trial Court Review
9462 Brownsboro Road, No. 133
Louisville, KY 40241

Print Version ____

PDF Version ____ (E-Mail Required)

Your E-Mail _____

_____
Name

_____
Address

_____
City, State, Zip

We accept MasterCard/Visa. Call 1-877-313-1944 to place your credit card order.
Have you procrastinated? Do you need the book *yesterday*? We can **ship** it overnight for $20.00.
Even faster? Got a problem with Federal Express? We can **e-mail** it immediately for free!!

appropriate proof of her injury from Daniel Hilleman, Pharmacology, Omaha, NE and Dr. Angelo Licata, Toxicology, Cleveland, OH.

She blamed her permanent condition on a combination of negligence by Bush and Yang. [She also sued Heuer, but later volitionally dismissed him.] Bush was blamed for failing to discontinue the Amiodrone – Yang too was criticized for mismanaging Crisp by continuing to keep her on the drug through rehabilitation and beyond.

Experts for Crisp on liability were Dr. Jeffrey Kluger, Cardiology, Hartford, CT and Dr. Kushagra Katriya, Cardiology, Miami, FL. She did not have an internist expert. If prevailing on liability, she sought medicals of $70,201, plus $513,858 for future care. Pain and suffering was capped at $1.9 million.

As the proof came in, no one on the planet disputed that Crisp should not have been on Amiodrone as long as she was or in as high a dose. Bush apparently recognized that reality and conceded he violated the standard of care. Yang continued to defend that as an internist, she wasn't about to interfere with the ongoing prescription that began with Heuer and was continued by Bush.

Bush's concession left his defense focusing on causation – that process placed him on equally thin ice. His retained pulmonary expert, Dr. Judah Skolnick, Louisville, was apparently not clear who hired him – he gave causation proof that was favorable to the plaintiff.

Bush then wisely made a decision to not use Skolnick at trial and thus while his discovery deposition was taken, there was no trial deposition. At trial, Crisp read Skolnick's discovery deposition in her case-in-chief, buttressing her causation proof. However as soon as the deposition was over, the court told the jury to disregard Skolnick's testimony. Why? No foundation for his expertise had been laid, plaintiff failing to ask prefatory questions regarding his education and training.

To experts who didn't stray from the reservation, Bush had two – they were Dr. Leonard Lichtenstein, Internist, Charleston, SC and Dr. George Stacy, Cardiology, Louisville. While a cardiologist, Stacy focused on pulmonary proof, linking Crisp's respiratory condition to other factors, including smoking. He also identified that Crisp's lung tissue did not have the tell-tale indicia of Amiodrone toxicity.

Yang had two experts. The first, Dr. Mark Wheeler, Internist, Louisville, provided a standard of care defense. A second expert, Dr. Nancy Newman, Ophthalmology, Atlanta, GA, developed there was no link between the optical injury and the toxicity. Key in this analysis was that Crisp's vision impairment was unilateral – had it been related to toxicity, Newman explained, the condition would have been bilateral.

The proof completed, the jury was instructed that Bush was negligent, the court asking if his failure to discontinue the drug caused injury. The answer was no, the jury also rejecting a claim that Yang violated the standard of care.

A defense judgment followed. Crisp filed a JNOV, citing a variety of evidentiary errors. The motion was denied. At the time the case was reviewed by the KTCR, the time for appeal had not yet run.

Premises Liability - Arriving at a pizza store, plaintiff tripped in a hole in the parking lot

Hardin v. Donatos Pizza, 01-3362
Plaintiff: Joe F. Childers, Lexington
Defense: Michael G. Riehlmann, Undisclosed Location
Verdict: $73,747 for plaintiff less 40% comparative fault
Circuit: **Fayette**, J. Clark, 12-20-05

On 9-7-00, Gladys Hardin, then age 55, drove with her daughter to Donatos Pizza. In the parking lot, Hardin got out of the car. Near the door, she tripped in a hole. She landed hard.

Hardin has since treated for wide-ranging injuries, including, (1) the aggravation of prior disc conditions, leading to a surgical repair, (2) an ankle sprain, and (3) other soft-tissue injuries. Her medical bills were $43,747 and she sought $30,000 for pain and suffering. Donatos defended and called the hazard open and obvious.

The court's prefatory instruction explained that Donatos had a duty to maintain the premises free from unreasonably dangerous conditions, but that there was no duty to warn of open and obvious hazards. Then to the interrogatory, a deviation was found, the jury also finding fault with plaintiff.

Comparative fault was assigned 60% to Donatos, the remainder to Hardin. Turning to damages, she took her medicals as claimed, plus $30,000 for pain and suffering. The verdict totaled $73,747 less 40% comparative fault. When reviewed by the KTCR, no judgment had been entered.

Ed. Note - This is the first case in Kentucky we've chronicled where counsel did not make an appearance in the record on a pleading. While attorney Riehlmann was admitted pro hac vice, the record is silent as to his location. [The only attorney in the U.S. with a matching name practices in New Orleans, LA.]

False Arrest - While his wife was being arrested on a bench warrant, plaintiff alleged he was falsely arrested and beaten in the process

Lamar v. Hopkinsville Police, 5:02-289
Plaintiff: Ninamary Buba Maginnis, Louisville
Defense: Robert T. Watson and David P. Bowles, *Landrum & Shouse*, Louisville and Stephen E. Underwood, Hopkinsville
Verdict: Defense verdict on liability
Federal: **Paducah**, J. Russell, 10-12-05

On 1-30-02, Kenneth Beymer, a Hopkinsville police officer, went to serve a bench warrant on Mercedes Lamar. Mercedes was charged with theft by deception. Arriving at the Lamar, Mercedes was taken into custody without incident.

As Mercedes was taken outside, Beymer turned his attention to her husband, Carlos – from Beymer's perspective, Carlos was dangerously moving his hands. The officer told Beymer to cease the unruly hand movements.

When Carlos didn't, Beymer had little choice but to effectuate an arrest. He did just that, pulling Carlos from the young child that he was holding and taking him outside in a choke hold. While in the front yard, Carlos alleged he was kicked and beaten repeatedly.

In this lawsuit and focusing on the facts aforesaid, Carlos alleged two theories, (1) false arrest, Beymer lacking probable cause to arrest, and (2) the negligent application of excessive force. If prevailing, Carlos sought compensatory and punitive damages.

Beymer defended that his conduct was proper – to the decision to arrest, he noted plaintiff's perilous hand jive. When he would not cease the gestures, Beymer acted reasonably to make an arrest. That the arrest was rough, Beymer pointed to Carlos having resisted – notably, he rolled over and kicked the officer.

The jury's verdict was for Beymer on

(1) the false arrest claim, and (2) the second negligent excessive force claim. Having so found, Carlos took nothing. A defense judgment followed and Carlos has since appealed.

Ed. Note - This is the very unusual excessive force case where plaintiff alleged a negligence theory.

Underinsured Motorist - A high school student suffered a broken finger in a interstate rear-ender ten years ago – while she is now a physician, the injury (1) ended her college diving career, and (2) has impaired her medical practice

Lorch v. American National Property & Casualty, 03-2409
Plaintiff: Bixler W. Howland, Louisville
Defense: Robert C. Ewald, *Wyatt Tarrant & Combs*, Louisville
Verdict: $660,280 for plaintiff
Circuit: **Jefferson**, J. McDonald-Burkman, 11-30-05

On 12-20-95, Susan Lorch, then age 17 and a high school senior at Ballard, traveled on I-64. She stopped in traffic. An instant later in a moderate crash, she was rear-ended by Elmore Willets. That initial impact knocked Lorch forward into the next vehicle.

In the crash, Lorch sustained a broken third finger. It turned out to be more than just a broken finger, affecting dexterity and leading to a thoracic outlet syndrome. Her injuries were confirmed by Dr. Erdogan Atasoy, Hand Surgery, Louisville and Dr. Michael Moskal, Orthopedics, Louisville. Her medicals were $215,600.

The effect of these injuries has also affected her academic and professional career. After Ballard she attended North Carolina in Chapel Hill and dove for one year on the varsity team. Pain in her hand ended her diving career. Lorch graduated from North Carolina and then went to medical school in Louisville.

She now practices physical medicine, but does so with impairment. Her vocational loss was quantified by John Tierney, Louisville at $1,336,568. Tierney survived a spirited *Daubert* challenge led by Luca Conte, Louisville, Vocational Expert – Conte thought Tierney's methods and conclusions were flawed.

In this litigation, Lorch first moved against Willets and took his $100,000 policy limits. Above that sum, she sought UIM coverage from her carrier, American National Property and Casualty (ANPAC). The UIM limits were $400,000, Lorch exhausting coverage with any award exceeding $500,000.

ANPAC defended the case on damages only – it relied on an IME, Dr. Frank Wood, Orthopedics, Louisville. The expert identified just a 1% impairment from the broken finger – Wood further concluded that Lorch's ongoing pain related to the thoracic outlet syndrome was not caused by this crash.

Tried on damages only, Lorch took her medicals as claimed, plus $334,680 for impairment. Suffering was an even $100,000. Lorch's verdict totaled $660,280, far exceeding the floor and ceiling of UIM coverage. A judgment for $400,000 was entered on her behalf.

Auto Negligence - While even a defense IME conceded a soft-tissue injury, a Frankfort jury rejected plaintiff's claim on damages

Maupin v. Momenpour, 03-0613
Plaintiff: David Stuart, *Stuart & Mills*, Versailles
Defense: Bridget L. Dunaway and Amanda Lester Hill, *Taylor Keller Dunaway & Tooms*, London
Verdict: Defense verdict on damages
Circuit: **Franklin**, J. Graham, 10-25-05

On the evening of 1-22-02, Joseph Travillion traveled on I-64. Suddenly his pick-up became disabled – it was stopped in the right lane of traffic. Behind Travillion, Tina Maupin, then age 32, came to a stop. She was unable to pass because of traffic.

The third car on the scene was Hooshang Momenpour. He failed to appreciate that Maupin was stopped – Momenpour rear-ended Maupin. A moderate collision resulted. While fault was initially in issue, Travillion being implicated as a third-party defendant, by the time of trial, this case was about damages only.

From the scene of the crash, Maupin as taken to the ER – her husband came and drove her away. Beyond the ER, she has complained of radiating neck pain. Maupin has since had injection treatments with a pain management doctor.

A plaintiff's IME, Dr. James Owens, Lexington, linked her persistent pain to a C5-6 disc injury. Her medicals totaled $12,475 and lost wages were $38,000. Maupin's suffering claim was not capped.

Momenpour defended the case and relied on an IME, Dr. Joseph Zerga, Neurology, Lexington. The expert noted the wreck was apparently minor, Maupin's husband, not an ambulance, taking her to the ER. The doctor also pointed to a sideswipe crash just a few months before as the likely source of her persistent pain. It was conceded by Zerga that Maupin likely had a temporary soft-tissue injury.

Tried on damages only, Maupin took nothing for all three claimed elements of damage. A defense judgment followed and there was no appeal.

Premises Liability - Carrying her chihuahua out of her veterinarian's office, plaintiff tripped over the door threshold and broke her arm

Penick v. Schaaf, 01-0664
Plaintiff: John E. Spainhour, *Givhan & Spainhour*, Shepherdsville
Defense: Eric G. Farris, *Buckman Farris & Rakes*, Shepherdsville
Verdict: Defense verdict on liability
Circuit: **Bullitt**, J. John Potter, 7-25-05

It was 7-21-00 and Loretta Penick, then age 57, took her chihuahua to her veterinarian, Dr. Raymond Schaaf, to have the dog's nails trimmed. That task completed, Penick exited Schaaf's office. In one arm she had a heavy purse – in the other she carried the dog.

Penick tripped over the door threshold and fell forward. She stuck her arm out to break the fall. It took the brunt of her fall and it was broken. The fracture had a non-union complication and Penick later had surgery to place a pin in her arm. Her medicals were $10,669 and she sought lost wages of $904. Pain and suffering was capped at $100,000.

Penick blamed her fall on the dangerous condition of the threshold. Schaaf defended the case and raised fact disputes. Notably, Penick didn't trip over the threshold – instead she hooked her heavy purse on the door handle and then lost her balance.

The court's single liability instruction asked if the door threshold was in an unsafe condition. The jury said no and that ended the deliberations, Penick taking nothing. A defense judgment followed and there was no appeal