The Tennessee Jury Verdict Reporter

The Most Current and Complete Summary of Tennessee Jury Verdicts

October, 2004 **Statewide Jury Verdict Coverage** **1 TJVR 1**

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.

Defamation - Two computer programmers (subcontractors for HCA's IT group) alleged HCA defamed them by accusing them of stealing proprietary secrets; while the jury awarded punitives of $25,000,000, the court later set aside that award

Howard et al v. HCA, 02-2715-I
Plaintiff: Thor Y. Urness and Julie M. Burnstein, *Boult Cummings Conner & Berry*, Nashville
Defense: Mark J. Patterson, *Waddey & Patterson*, Nashville
Verdict: $26,500,000 for plaintiffs
County: **Davidson (Chancery)**
Judge: Claudia Bonnyman
4-1-04

HCA operates some 200 hospitals in the U.S. and Europe. In 1999, it developed proprietary software known as PLUS. The software assisted the

company in optimizing staff and reducing labor costs. In 2001, HCA contracted with Zycron Computer and Computer Professionals to provide technical assistance on several projects, including the PLUS program.

Alexander Batsuk, age 39 and a native of the Ukraine, and Ryan Howard, age 33, were assigned by Zycron and Computer Professionals to work in-house at HCA. Into 2002 the pair worked at HCA and by all accounts, both were extremely competent.

In May of 2002, Howard and Batsuk prepared a business plan and began to pitch it to venture capital firms. The plan purported to develop labor productivity software for independent hospitals. By that August, HCA caught wind of the proposal. HCA bigwigs were not happy.

Three weeks after learning about the plan, HCA first asked Howard and Batsuk to stop pitching the plan. They refused. HCA elected to have them fired immediately, security guards escorting them off HCA's Centennial Park offices. HCA executives then fired off e-mails to venture capital firms, among others, that accused Batsuk and Howard of unethical conduct in having stolen their software. The word was also spread by HCA to others within the company, including third-party contractors.

To protect its interests, HCA filed a lawsuit against the programmers, alleging they had misappropriated trade secrets and engaged in unfair competition. Howard and Batsuk defended the case and filed counterclaims for defamation. [While HCA originally sued Batsuk and Howard, we've reversed the order of the parties for purposes of this report, styling it *Batsuk and Howard v. HCA*.]

In developing defamation, plaintiffs noted HCA accused them of unethical conduct and theft (parading them in front of HCA employees) when it had no evidence of this. In fact, before firing the plaintiffs, HCA never even read the business plan. Had they done so, they would have noted the plan did not contemplate using PLUS software, but instead developing a new and unrelated program that used a different platform and different language. The plaintiffs' good reputations in the small and tightly-knit IT community of Nashville purportedly suffered permanent damage because of the allegations. If Batsuk and Howard prevailed on the defamation claims, they could be awarded compensatory and punitive damages.

HCA defended the case and postured it never acted to deliberately harm the plaintiffs. Instead, it acted to protect legitimate business interests, noting the unread business plan mentioned PLUS and plaintiffs' experience with it. Moreover, HCA denied its remarks were even defamatory in the first place. Plaintiffs countered that an accusation of stealing is defamatory by its very nature.

This complex case was tried in chancery court for nine days. The court granted plaintiff's motion for a directed verdict on HCA's unfair competition claim. The jury's verdict was mixed. First it rejected HCA's claim that plaintiffs had misappropriated trade secrets. Conversely, both Howard and Batsuk prevailed on their defamation counts. Each took $750,000 in compensatory damages. The next day a mini-trial was conducted on punitives, Howard and Batsuk each taking $12.5 million. The combined verdict for plaintiffs totaled $26,500,000.

HCA subsequently moved for post-trial relief, making a *Hodges v. SC Toof* challenge to the award of punitives. It argued the company acted reasonably in light of the apparent theft of the PLUS software, it being motivated to legitimately protect its interest, not ill will or malice. Plaintiff countered this characterization, noting HCA made no investigation into the proposed business plan, simply accusing them of theft -- had they simply read the plan, they would have learned it did not involve PLUS. The malicious conduct then ruined plaintiff's otherwise sterling reputation.

The court has since ruled, setting aside the entire award of punitives (a savings of $25,000,000), Bonnyman writing HCA's conduct was not barbaric, uncivilized or dishonest. A provisional judgment, less the punitives, has since been entered for plaintiffs.

Ed. Note - To simplify presenting this report, we have styled this case as *Batsuk and Howard v. HCA*. In fact, it was HCA which initiated this lawsuit as noted above.

Utility Negligence - **In a bizarre accident, a pedestrian in Clinton became caught in a downed phoneline that had been whipped up by a passing car; knocked from her feet and dragged a short distance, the pedestrian suffered a skull fracture and a permanent loss of taste and smell as well as a hearing loss in one ear**

Hughes v. BellSouth Communications, A2-LA-0026
Plaintiff: Dail R. Cantrell, *Dail Cantrell and Associates*, Clinton
Defense: Melinda Meador and Erica Taylor Greene, *Bass Berry & Sims*, Knoxville for BellSouth
Weldon E. Patterson, *Spicer Flynn & Rudstrom*, Knoxville for Tindell's
Robert A. Crawford, *Kramer Rayson Leake Rodgers & Morgan*, Knoxville for Hensley
Larry L. Cash, *Strang Fletcher Carriger Walker Hodge & Smith*, Chattanooga for Clinton Utilities
Verdict: $1,955,965 for plaintiff assessed 60% to Tindell's and 40% to BellSouth; Defense verdict for Hensley and Clinton Utilities
County: **Anderson**
Judge: James B. Scott, Jr.
5-29-04

On 12-26-01, Patricia Hughes, age 69, was involved in a bizarre incident as she walked on Seviers Boulevard in Clinton. [It is the town's main highway.] Nearby other apparently unrelated events were conspiring against Hughes.

The conspiracy started with a phone line installed by BellSouth Communications which hung across the driveway of the local police chief, Rick Scarbrough. The line was between nine and eleven feet off the ground. [The line hung from a pole owned by Clinton Utilities.] Also important to this story,

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Joe Harness, an employee of a contractor, Frank Hensley, was doing work at Scarborough's home.

Against this backdrop, Donald Liles, a driver for Tindell's, was delivering lumber to Scarborough's home. His truck became caught in the line and it was pulled from the pole. Hensley's employee, Harness, assisted Liles in pulling the downed line across busy Seviers Boulevard. These events all transpired as Hughes walked past.

The final player in this drama (the only one not implicated in this litigation) was Ricky Lloyd, who drove innocently on Seviers Boulevard. Suddenly the downed line became caught in the axle of his car. Whipped into the air, it became tangled around Hughes.

She was knocked to the ground and dragged a short distance. The impact left her with a skull fracture and other internal injuries. Persistently she has suffered from a loss of smell and taste, as well a hearing deficit in one ear. Her medical bills totaled $30,965.

In this lawsuit, Hughes targeted four defendants, each implicated on slightly different theories. The first was BellSouth, Hughes' proof being that the line was too low. At just nine feet at its lowest, the line was far below the recognized safety standard of fifteen feet. Clinton Utilities was similarly implicated in its maintenance of the line.

Liles, the driver for Tindell's, was blamed for driving into the low line. Then making matters worse and having hit the line, he should have simply backed up. Instead Liles drove on and pulled the line from its pole. Finally, Hughes blamed Hensley for pulling the line into the street, setting the stage for it to be struck by a passing vehicle.

BellSouth defended the case and noted it had no notice of the line's condition. Squarely it blamed Tindell's for having dislodged the line. Moreover it called this bizarre accident an unforeseeable event. Hughes countered that while a strange occurrence, it was in fact foreseeable that injuries could result from a line that was too low.

Clinton Utilities explained that it had nothing to do with the line. Hensley also responded and developed that his employee merely tried to move the line to a safe location, having nothing to do with its placement or having coming dislodged. Finally, Tindell's defended and blamed BellSouth, arguing negligence by it regarding the too-low line.

This case came to a jury in Clinton. Its verdict was mixed. First it exonerated Hensley and Clinton Utilities. Fault was found with the remaining defendants, the jury assessing it 60% to Tindell's, remainder to BellSouth. Then to damages, Hughes took medicals of $30,965, plus $275,000 for impairment. Past loss of enjoyment of life was $150,000, while for that in the future the award was $850,000. Finally to past and future suffering, Hughes was awarded $550,000 and $150,000, respectively.

Combined the verdict totaled just under two million dollars at $1,955,965. It was assessed in the court's consistent judgment, $1,173,579 to Tindell's and $782,386 to BellSouth. When reviewed by the TJVR and while not yet filed, BellSouth has promised an appeal.

Medical Negligence - Chronic bleeding followed a minor ophthalmological surgery, plaintiff not criticizing the surgical technique, but the failure to diagnose and treat the bleeding

Burnside v. Hamilton, CT-007530-01
Plaintiff: Patricia A. Odell and Linda Kendall Garner, Memphis
Defense: Michael G. McLaren and Vickie Hardy Jones, *Black McLaren Jones & Ryland*, Memphis
Verdict: $100,000 for plaintiff
County: **Shelby**
Judge: Robert L. Childers
6-10-04

In the fall of 1996, Dorothy Burnside, then age 36, was suffering from chronic tearing. Her primary care physician referred her to a ophthalmologist, Dr. Ralph Hamilton. On 11-6-96, she saw Hamilton and he determined she was suffering from a blocked tear duct. A dacryocystorhinostomy "DCR" was scheduled for 11-25-96 at Baptist Rehabilitation Hospital in Germantown, designed to relieve the tear duct.

The DCR lasted five hours but was apparently uneventful. Burnside was released. The next day she returned to see Hamilton and complained of bleeding from her nose. She returned again the next day with continued bleeding -- it was now Friday and Hamilton left in the packing and told Burnside to come back on Monday.

The bleeding was so severe on 11-30 that Burnside reported to the ER. Her nosebleed was stopped and again Burnside was released. On 12-2 Burnside was again suffering from severe bleeding and presented to the ER at 5:50 a.m. Hamilton was called and told her to keep a morning appointment. Burnside did just that and Hamilton told her to go home and remove the packing.

Her bleeding was again severe and this time she called 911. Taken to the hospital, the bleeding was stopped. However Burnside had lost so much blood, she required a transfusion. The bleeding was apparently related to a problem with her pharynx. While having physically recovered, Burnside has subsequently sought psychiatric care with Dr. Valerie Augustus, Memphis, for emotional symptoms.

Burnside alleged error in this case not in Hamilton's surgical performance, but instead in failing to diagnose and manage the bleeding condition. That included not communicating and responding to Burnside when she came to the ER after the surgery. Plaintiff's liability expert was Dr. John Sheppard, Ophthalmology, Norfolk, VA. In 2001, this case was originally non-suited by Burnside at the close of proof. Refiled, it progressed again to trial.

Hamilton defended the case and called his evaluation and treatment proper. His expert, Dr. Thomas Gettelfinger, Ophthalmology, Memphis, stated that Burnside's bleeding was an inherent reaction, a complication that could not be predicted or avoided.

This case was tried for four days in June. Burnside prevailed and a Memphis jury awarded her $100,000.

A judgment in that sum followed.

Hamilton has since moved for a new trial and argued that Sheppard's expert proof was inadequate because he was unfamiliar with the standard of care in Memphis. Damages were also called excessive as Burnside only had emotional suffering that lasted a few days, she now having enjoyed a full recovery.

Burnside has opposed the motion and noted that Sheppard has lectured in Memphis. To the damage award, she noted her complications, including having to have blood transfusions. The motion was pending in September when reviewed by the TJVR.

Civil Rights - The longtime recorder for the City of Ridgetop was fired by the mayor and his cronies on the Board of Aldermen; in this lawsuit, the recorder asserted it was because of her political opposition to the mayor

Mitchell v. City of Ridgetop, 3:01-CV-1503
Plaintiff: Richard J. Braun and Patricia E. Crotwell, *Braun & Crotwell*, Nashville
Defense: William N. Bates, *Farrar & Bates*, Nashville and Robert M. Burns, *Howell & Fisher*, Nashville
Verdict: $218,133 for plaintiff (Trebled by the court to $654,399)
Federal: **Nashville**
Judge: Aleta A. Trauger
5-3-04

Evelyn Mitchell served for twenty-five years as the recorder for the City of Ridgetop. For much of that time, she was the city's only full-time employee. During her lengthy tenure, Mitchell served under seven mayors and fifteen Boards of Aldermen. The key events in this case started in 1994 when Darrell Denton was elected as an Alderman and was appointed to be a zoning commissioner.

Mitchell and Denton developed acrimony, Mitchell believing that Denton didn't properly enforce zoning ordinances. In fact, Denton was later reprimanded by the entire board for his conduct while heading zoning.

Denton had his revenge in 1996 when he was elected the Mayor of Ridgetop. [Mitchell opposed his candidacy and after his election, she opposed his tenure, believing he was cavalier in enforcing city ordinances.] At this time, while Denton sought to terminate Mitchell, he lacked the votes. That changed in 2000 when two of his cronies joined the board. As its first order of business, the newly constituted board took up the matter of Mitchell's employment. It voted 3-1 to fire her.

Denton blamed the firing on Mitchell's cold demeanor with city residents, characterizing her as like an iceberg. He further conceded he and Mitchell shared acrimony, but this had not motivated his decision to fire her. Moreover, the three board members who voted to fire her suggested each voted for different reasons. Whatever their reasons, Ridgetop postured the firing was unrelated to Mitchell's political speech. Turning down a dangerous alternative road, even if it was, she still would have been fired for other reasons. In this regard, it was noted it is common that personnel changes when political leaders change.

Mitchell disagreed with this characterization and filed this federal lawsuit. She alleged Ridgetop was motivated to terminate because of her exercise of free speech that opposed the mayor. That the First Amendment violation motivated the mayor, Mitchell noted it was openly discussed in the 2000 campaign.

She further dismissed the notion the three voting aldermen sought to dismiss her for other reasons -- Mitchell asserted the newly elected aldermen were rubber-stamps for Denton. Beyond the federal civil rights count, Mitchell also alleged a PEPFA (Tennessee Public Employee Freedom Act) violation.

Mitchell prevailed at trial, a federal jury in Nashville finding the city terminated her because of the exercise of her First Amendment rights. It further rejected an exculpatory charge that asked if it would have fired Mitchell even in the absence of her speech. Plaintiff also prevailed on the PEPFA count.

Moving to damages, Mitchell took $89,426 in lost wages, plus $28,707 for fringe benefits. She was further awarded $50,000 each for reputation and mental anguish, the raw verdict totaling $218,133. Because of the PEPFA finding, the court trebled the verdict in its judgment to $654,399.

Ridgetop subsequently sought JNOV relief repeating its arguments that the aldermen voted for different reasons unrelated to speech. Mitchell countered the aldermen were cronies that rubber-stamped the mayor's plans. The motion was denied and Ridgetop has appealed. Mitchell cross-appealed the granting of individual summary judgment for the mayor. The court has stayed pending the appeal, Mitchell's petition for attorney fees.

Auto Negligence - Brakes on a one-ton truck failed and the driver crashed into plaintiff, leaving her with a concussion and a fractured pelvis; a jury in Murfreesboro awarded punitives of $500,000 based on the failure to repair the truck

Clarke v. Wholesale Supply Group et al, 44206
Plaintiff: James M. Doran, Jr. and Christopher S. Dunn, *Waller Lansden Dortch & Davis*, Nashville
Defense: Michael P. Mills, *Mills & Cooper*, Nashville for Wholesale Supply Group
John R. Rucker, Jr., *Rucker Gilley & Coleman*, Murfreesboro for Poarch
Verdict: $650,000 for plaintiff
County: **Rutherford**
Judge: J.S. Daniel
3-11-04

On 12-29-99, Krystal Clarke, age 35, drove from her home in McMinnville to Murfreesboro. Piloting an Infiniti sedan, she was on the way to work at her job selling mobile homes. By all accounts, she was quite proficient at her profession.

At the same time, Tony Poarch, a teenager, was driving a one-ton Chevrolet truck for his employer, Wholesale Supply Group of Lewisville. At the intersection of Church Street and Rutherford Boulevard, Poarch came to a light that was changing to red. He hit the brakes.

Nothing happened. Poarch then

pumped them to no avail. He ran the light. In the intersection he struck Clarke's sedan hard. She was spun around and knocked into a third car. The collision was significant.

In it Clarke broke her pelvis in three places. She was also unconscious for several minutes. Thereafter she had to use a walker to ambulate, the use of the walker leading to a cubical tunnel syndrome. While since improved, Clarke has continued to complain of a mild brain injury.

Her neurologist, Dr. Everette Howell, Nashville, identified a cognitive disorder, Clarke also complaining of double vision. These injuries have impaired Clarke's once lucrative sales career. Her medical bills were approximately $36,000. In this lawsuit she sought damages from Poarch and Wholesale Supply.

Beyond simple negligence, Clarke alleged reckless conduct by Wholesale Supply. She developed that in the months before this crash, there were complaints that the truck's brakes were defective. Nothing was done, Wholesale Supply employees referring to the eleven-year old truck as a rolling death trap. Beyond punitives, Clarke's husband, Jerry, sought damages for his consortium interest.

Wholesale Supply and Poarch defended and regarding the wreck, they noted proof that perhaps the brakes had locked instead of failing. Punitives were also contested, the company noting that the truck underwent routine maintenance -- any knowledge of a brake defect was denied. [By the time of trial, Poarch was in jail in Marshall County. By court order, the sheriff brought him to appear at trial.]

This case was tried in Murfreesboro for three days. Clarke prevailed and took $140,000, her husband taking $10,000 more. The jury then went to a second phase for punitives, electing to award plaintiff $500,000 against Wholesale Supply. It did so after just thirty minutes of deliberations. A consistent judgment followed for plaintiffs.

Wholesale Supply filed a *Hodges v. SC Toof* motion opposing the punitives, arguing (1) there was proof from an eyewitness that the brakes locked but didn't fail and (2) it had good maintenance procedures. Clarke opposed and noted Wholesale Supply didn't have *any* documents that reflected a repair. The motion was denied and Wholesale Supply appealed. On appeal the matter was dismissed as settled.

Medical Negligence - A teenager died of a blood clot following an elective knee surgery; the estate's liability theory criticized her orthopedist for not warning her of an elevated risk of clotting because she was taking oral contraceptives

Wilson v. Fly, 02-405
Plaintiff: Oscar C. Carr, III and C. Wesley Fowler, *Glankler Brown*, Memphis
Defense: Marty R. Phillips and Timothy G. Wehner, *Rainey Kizer Reviere & Bell*, Jackson
Verdict: Defense verdict
County: **Madison**
Judge: Roger A. Page
5-27-04

In the spring of 1998, Alicia Wilson, age 16, was treated for an ongoing knee injury. A high school softball player, she was hopeful the elective surgery would help her play pain-free the next season. On 5-19-98, Dr. Randy Fly, Orthopedics, performed an elective procedure known as a refractory lateral subluxation.

During the procedure, Fly made an on-the-fly decision to switch techniques -- believing a subluxation wouldn't work, he attempted a more complex open release and osteotomy of the tibial tubercle. Because of the more extensive procedure, Wilson faced a longer period of immobilization. The surgery was uneventful.

Importantly Wilson was also taking an oral contraceptive, Desogen, designed to treat ovarian cysts. Central to this case, it would be developed that lower extremity blood clots are a well-known risk of Desogen, that risk made even more acute because of (1) the immobilization from this surgery and (2) Wilson's near obesity.

Following the surgery, Wilson continued to take the Desogen. She received no warning of the risk of a blood clot. Nearly a month later on 6-16-98, a pulmonary embolism developed in her leg. It traveled to an artery in her lungs and Wilson died suddenly.

In this lawsuit, her parents, Patricia and Danny, alleged negligence by Fly. [Tragically, Patricia was killed in a car wreck in 2003 before this matter could be tried to a verdict.] The case pressed on, the estate alleging negligence by Fly in failing to (1) order Wilson off Desogen or (2) to warn of the risk. Experts for plaintiff were Dr. Andrew Bush, Orthopedics, Durham, NC, Dr. Kevin Merrigan, Pharmacology, Cordova and Dr. Sherri Flax, Pathology, Memphis. An economist from Memphis, Doug Southard, quantified the estate's vocational loss.

Fly defended the case and denied fault. That included going after plaintiff's experts, noting it was inconsistent that it was error for Fly to not appreciate the Desogen complication when before being retained in this case, plaintiff's experts had never even heard of the drug.

Then to the causation issue, Fly developed that Wilson had other complications for clotting, the fatal event likely occurring regardless of whether the girl was on Desogen or not. Defense experts included Dr. Robert Miller, Orthopedics, Memphis, Dr. Thomas Sisk, Orthopedics, Memphis and Dr. William Green, Pharmacology.

For four days this case was tried to a jury in Jackson. The verdict was for Fly, the Wilson estate taking nothing. A defense judgment followed. Pending is the estate's motion for a new trial -- it has argued, among other things, that it was error to admit PDR references from the 2003 volume, those notations not being relevant to the standard of care in 1998.

Food Server Negligence - Plaintiff's glass of water with his breakfast wasn't just water, it also contained an industrial cleaner; consuming a portion, plaintiff sustained a permanent throat and gastric injury

Maccio v. The Krystal Co., 02-2394
Plaintiff: Henry R. Allison, III, Brentwood
Defense: Richard C. Mangelsdorf, Jr., *Leitner Williams Dooley & Napolitan*, Nashville
Verdict: $100,000 for plaintiff
County: **Davidson**
Judge: Hamilton Gayden
3-10-04

On the morning of 2-21-99, Stephen Maccio, then age 39, went to eat breakfast at the Krystal restaurant on Nolesville Road. With his breakfast, Maccio ordered a cup of water. Taking a drink, he felt a severe burning in his throat. Maccio learned the cup contained not just water, but also an industrial cleaner, Q-25, an alkaline sanitizer.

From the restaurant he was taken to the ER where he was treated for indigestion, laryngeal lesions and reflux. Because of the Q-25 exposure, Maccio has reported ongoing symptoms. His toxicology expert, Dr. Kevin Merrigan, Cordova, linked a permanent injury to the event. Maccio's medicals totaled $24,148.

In this lawsuit Maccio blamed Krystal for permitting the cleaning solution to be mixed with drinking water. Fault at this jury trial was no issue. Krystal did defend damages and relied on an IME expert, Dr. Donna Seger, Toxicology, Nashville. Also the head of the Tennessee Poison Center, Seger diminished the claimed injury.

Tried on damages only, Maccio was awarded $100,000, nearly four times his incurred medicals. The court entered a consistent judgment and it has been satisfied.

Sexual Harassment - A health care director at a nursing home alleged she was fired after ending a consensual romantic relationship with the nursing home's owner

Michael v. Windsor Gardens Assisted Living, 3:02-CV-0321
Plaintiff: Dale J. Montpelier and Katherine A. Young, *Montpelier & Young*, Knoxville
Defense: William R. Seale and Mary Moffat Helms, *Wimberly Lawson Seale Wright & Davies*, Morristown
Verdict: $250,000 for plaintiff
Federal **Knoxville**
Judge: Thomas W. Phillips
7-28-04

In May of 1999, Sherry Michael started working for Windsor Gardens Assisted Living, a nursing home operated by a parent company known as Windsor Gardens Management. Her direct supervisor was Bruce Bartley. Another key player in this case was Richard Cate -- while not an employee of Windsor Gardens, he was a minority owner and was involved in the day-to-day operations of the facility.

Originally hired as a registered nurse, Michael was promoted in January of 2000 to Health Care Director. Beginning in the spring of that year and on two occasions, Michael engaged in a consensual sexual affair with Cate. The romantic encounters occurred at a motel. [While consensual, Michael would later recall she feared losing her job if she did not submit.] Also important to this case, she was then married.

On 7-26-01, Michael finally told Cate she had had enough -- she ended the relationship at an O'Charley's. Thereafter she reported the affair to Bartley. Thirteen days later Michael was out of work. Windsor Gardens cited proof that she had been abusive to patients. [This was despite her having received a large raise just ninety days earlier.]

In this lawsuit, Michael alleged a variety of torts. They included quid pro quo harassment, Cate conditioning employee benefits on sex. This also formed the basis of a claim under the Tennessee Human Rights Act. Michael further incorporated retaliation, asserting the firing was in response to her opposition to a HUD scheme. The lawsuit moved against both Windsor Gardens companies as well as Bartley individually, he having conspired with Cate to retaliate. If prevailing, Michael sought compensatory and punitive damages.

Windsor Gardens defended the case on several grounds. First, Cate flatly denied there was any romance. Moreover, his conduct then, which didn't occur anyway, couldn't be an employment action as he was just a minority owner, not a supervisor. Michael was also criticized for not timely reporting the harassment to Bartley. She countered that while she was designated by the company to receive harassment complaints, the policy gave her no one to complain to.

Then to termination, Windsor Gardens explained harassment and retaliation played no role in the firing. In fact, the decision was made on 7-22-01, four days before Bartley even learned of the affair. While made, it was simply not transmitted to Michael until 8-8-01. Windsor Gardens also sought to introduce proof that, if heard by the jury, might be damaging to Michael's credibility. That included that she had (1) been involved in a prior affair and (2) she lied about it at her first deposition in this case. The court excluded the proof.

Tried over seven days, the jury first resolved a procedural question, finding Windsor Gardens Assisted Living was an integrated enterprise of its parent, Windsor Gardens Management. Then to the liability questions, Michael prevailed on quid pro quo harassment, retaliatory discharge and a violation of the state human rights act. Moving on, fault was assessed 90% to Windsor Gardens, remainder to Bartley.

Reaching compensatory damages, Michael took $30,000 for back pay, plus $170,000 for emotional suffering. On the final question, the jury elected to further award $50,000 in punitives against Windsor Gardens. A consistent judgment followed, the compensatory damages being subject to comparative fault -- the punitives were assessed solely against Windsor Gardens.

[Because of the joint enterprise finding, the judgment was entered against both the subsidiary and the parent. The record is not clear as to why the distinction made a difference, although it may be assumed that the parent had assets, while the subsidiary did not.]

Windsor Gardens has since moved for remittitur, calling the damage award excessive and shocking. In minimizing the emotional loss, it was noted Michael had just a little stress and brief diarrhea. Those symptoms, Windsor Gardens thought, were worth no more than $50,000. The award of punitives was also called a violation of defendant's due process rights. Also pending is plaintiff's motion for attorney fees -- she has sought more than $350,000.

Products Liability - Plaintiff suffered an optical injury in a rear-end car crash, criticizing the inflation of the vehicle's Ford airbag

Hensley v. Ford Motor Company, 95-2564C
Plaintiff: Wm. Landis Turner, *Keaton & Turner*, Hohenwald
Defense: J. Randolph Bibb, Jr. and Christopher J. Oliver, *Baker Donelson Bearman Caldwell & Berkowitz*, Nashville
Verdict: Defense verdict
County: **Hickman**
Judge: Russ Heldman
2-20-04

On 12-24-94, Martha Hensley was a passenger in a 1995 Ford Thunderbird driven by W.C. Thompson. It was equipped with a passenger side airbag. Blinded by the sun, Thompson rear-ended a vehicle in front of him that was stopped to turn. The collision was significant enough that Hensley's airbag deployed.

It exploded so forcefully that Hensley sustained a facial abrasion. More significantly, her optical lens was dislocated and her retina torn. Despite significant medical intervention, Hensley has complained of ongoing vision problems. Her medical bills totaled approximately $25,000.

In this products lawsuit, she alleged the vehicle was unreasonably dangerous, focusing on the explosive airbag. Her airbag expert, Jerry McKnight, Cullman, AL, explained that a two-stage inflation system would have been safer. Had the Thunderbird been so equipped, the impact with her face would have been reduced. [McKnight operates an auto repair shop and has worked in evaluating airbags for several auto makers.]

Ford defended the case and thought McKnight made the complex world of automobile airbags far too simple. Defendant noted he wasn't even an engineer and then to the merits, it explained that in 1995, there was no vehicle being produced with a two-stage inflator. As importantly, not only did the airbag not cause harm to Hensley, complying with federal standards, it in fact may have saved her life. Ford's experts included John Labra, Biodynamics, San Antonio, TX and the in-house Richard Rutin, Engineer, Dearborn, MI.

Tried for three days before a Centerville jury, the verdict was for Ford. A defense judgment followed. Ford has since been awarded discretionary costs of $15,000. Judge Heldman wrote in his order awarding costs that Hensley's case was weak, plaintiff in fact benefitting because of the airbag. Accordingly, he concluded it was never even a close case.

In response, attorney Turner wrote a letter to the judge expressing his resentment about the assessment of the case. The matter has since been concluded, Ford agreeing not to seek the costs, Hensley promising not to appeal.

Medical Negligence - Plaintiff died of an infection secondary to an untreated brown recluse spider bite

Steady v. Wohlwend, 3-147-03
Plaintiff: Arthur F. Knight, III and Lori F. Fleishman, *Becker Brown & Knight*, Knoxville
Defense: Edward G. White, II and B. Chase Kibler, *Hodges Doughty & Carson*, Knoxville
Verdict: Defense verdict
County: **Knox**
Judge: Wheeler A. Rosenbaum
6-24-04

On 9-3-9, Howard Steady, a retired Air Force veteran, was bitten by a brown recluse spider. Four days later he began to report nausea, dizziness and a lesion on his knee. At that time he saw his family doctor, David Wohlwend.

Wohlwend gave Steady Lidocaine for pain and antibiotics to respond to the insect bite. Sending him home, Wohlwend advised Steady to report to the ER if his symptoms became worse.

The next day Steady was found unconscious at home. Taken to the ER, he later died of sepsis secondary to the abscessed spider bite. In this lawsuit, his estate criticized Wohlwend's management of the condition. Particularly, on his presentation on 9-7, Steady exhibited signs of sepsis that required immediate intervention -- instead they went untreated.

Wohlwend defended and called his care compliant with the standard of care. He also raised fact disputes, noting there was no proof it was even a spider bite. He further cited proof that death is extremely rare from a brown recluse bite. The record is silent as to the identification of experts of either party.

The jury in this case deliberated for four hours before returning a verdict for the defendant, the Steady estate taking nothing. A defense judgment followed.

Uninsured Motorist - An asymptomatic C5-6 disc condition was aggravated by a right of way crash

Vodila v. State Farm, 12925
Plaintiff: Richard K. Evans, Kingston
Defense: Jack H. McPherson, Jr., *McPherson Law Office*, Kingston
Verdict: $150,000 for plaintiff
County: **Roane**
Judge: Russell E. Simmons, Jr.
5-27-04

On 8-15-02, Tonya Vodila, age 47, traveled on Sugar Grove Valley Road. An instant later, an uninsured driver, Angela Hensley, lost control on the wet roadway. She crossed the centerline and crashed into Vodila. Fault was no issue.

A moderate collision, Vodila was taken to the ER in Oak Ridge. She has since treated for radiating pain secondary to an aggravated C5-6 disc injury. While a pre-existing condition, it was asymptomatic before this wreck. Vodila's medicals totaled $10,613.

Vodila sought damages in this lawsuit from her UM carrier, State Farm. It defended and minimized the claimed damages.

Vodila prevailed at trial, a Kingston jury awarding him $150,000. A judgment in that sum was entered by the court. Pending is State Farm's motion for a new trial that called the award excessive.

Auto Negligence - The verdict in a right of way car crash case was less than the incurred medicals

Gaddis v. Griffin, 02 CV 190
Plaintiff: J. Russell Pryor, Greeneville and Mark D. Edmonds, Jonesborough
Defense: R. Kreis White, Brentwood
Verdict: $6,077 for plaintiff
County: **Greene**
Judge: Kindall T. Lawson
3-31-04

On 3-28-01, there was a right of way crash on Andrew Johnson Highway. It occurred when Samantha Griffin turned left in front of the plaintiff, James Gaddis. The collision resulted in minor damage.

Gaddis has since treated for a wrist injury, secondary to his hand being stuck in the steering wheel at impact. He also sustained an aggravation of a pre-existing disc injury. His orthopedist, Dr. Walter Chapman, Greeneville, confirmed the injuries, also noting that Gaddis has since recovered, returning to his pre-injury status. Plaintiff's medicals were $6,369.

In this lawsuit he sought damages from Griffin. She defended and noted that Gaddis had treated for years for pre-existing back pain. Gaddis conceded as much, arguing this wreck caused a temporary aggravation.

Deliberating the case thirty-five minutes in Greeneville, Gaddis took a general award of $6,077. A judgment in that sum was entered by the court.

Gaddis subsequently moved for additur, calling the award inadequate in light of the medicals of $6,369 and his treating doctor's unrebutted proof of injury. Griffin replied the award was reasonable in light of pre-existing conditions that stretched for years, Gaddis seeking treatment just three weeks before this crash. Interestingly, he compared jury verdicts to sausage, that is, they are best served when not seen being made -- apparently Griffin was analogizing that the verdict was reasonable in light of the totality of the proof. The motion is set for a hearing in October.

Employment Retaliation - A street construction supervisor was allegedly fired for opposing race discrimination in the ranks

Dunavan v. City of Jackson, 1:02-1298
Plaintiff: Justin S. Gilbert, *The Gilbert Firm*, Jackson
Defense: John D. Burleson and Dale Conder, Jr., *Rainey Kizer Reviere & Bell*, Jackson
Verdict: Defense verdict
Federal: **Jackson**
Judge: James D. Todd
2-25-04

Craig Dunavan started working for the City of Jackson in 1997 on a street construction crew. In 2000, he was promoted to supervisor. The key events in this case occurred in December of 2001.

Dunavan's street crew was all-white with just one exception: Robert Parham was black. Other members of the crew resented Parham, including Raymond, David and two Rickys who opposed Parham's presence on the crew.

They didn't object so much to his work habits as they did his race. That included referring to Parham as "nigger" and complaining when they had to share a ride with him. When Dunavan was not quick to respond to their demands for racial segregation, they suggested he was unconcerned with white civil rights. Dunavan stuck to his guns and opposed his crew, refusing to get rid of Parham.

The crew took matters into its own hands. On 12-26-01, they made allegations that they were scared of Dunavan as he was dangerous, violent and threatening. Dunavan was suspended the next day. [He would later recall his racist crew apologized -- they didn't want Dunavan suspended, they just wanted to get rid of Parham.]

Dunavan still wouldn't budge and this time he faced a second attack from this crew. On 1-11-02, they told city bigwigs that Dunavan and Parham had solicited a prostitute in a city truck. Eleven days later Dunavan was fired, that decision being affirmed a week later at a hearing.

Dunavan thought the whole scheme was a sham, Jackson illegally firing him for having opposed racial discrimination. Implicit to his case was the notion that the allegations made by his crew were both unsubstantiated and false. If prevailing at trial, Dunavan sought back pay, front pay and mental anguish.

Jackson defended the case and denied race had anything to do with its firing decision. Instead, Dunavan was fired solely because of the allegation regarding the prostitute. It also questioned Dunavan's credibility, wondering why his crew had never been written up for their racial hijinks.

While the jury verdict was mixed, it was for the government. The panel first found that while Dunavan opposed what he reasonably believed to be discriminatory conduct, it further answered "no" that this opposition was a motivating factor in the decision to

fire. Having so found, damages were not reached. A defense judgment followed and there was no appeal.

Construction Negligence - A drywall hanger on a residential construction job suffered a back injury when a deck collapsed
Hall v. Target Construction, 3-751-01
Plaintiff: David A. Stuart, Clinton
Defense: Beecher A. Bartlett, Jr., *Kramer Rayson Leake Rodgers & Morgan*, Knoxville
Verdict: Defense verdict
County: **Knox**
Judge: Wheeler A. Rosenbaum
9-12-03

On 12-22-00, Lawrence Hall, a drywall hanger, was working on a residential construction job on Summer Crest Way. The general contractor on the project was Target Construction of Knoxville. To complete his work, Hall climbed a ladder that was set against a deck.

The deck had been built by Target Construction. As Hall ascended the ladder, the deck collapsed, causing him to fall. In the fall he sustained a back injury that was later surgically repaired. His medicals of $17,554 were paid by his employer.

In this lawsuit, Hall sought damages from Target Construction, implicating the negligent construction of the deck. His wife, Tracy, also presented a derivative consortium claim. Target Construction defended and denied fault.

The jury verdict in this case was for Target Construction, Hall taking nothing. A defense judgment followed and there was no appeal.

Auto Negligence - While the case of a banker who was rear-ended was tried on damages only, a Memphis jury elected to award the plaintiff nothing for every claimed element of damages
Gurno v. Estey, CT-002304-02
Plaintiff: John E. Dunlap, Memphis and Joseph A. Crabtree, Jr., *The Crawford Law Office*, Germantown
Defense: Reid R. Phillips, *The Hardison Law Firm*, Memphis
Verdict: Defense verdict
County: **Shelby**
Judge: James F. Russell
5-26-04

It was 9-6-01 and Annette Gurno, age 32 and an MBA-educated banker with First Tennessee, was stopped in traffic on Poplar Avenue at Humes. An instant later she was involved in a chain reaction rear-ender. The defendant in this case, Vern Estey, struck Tunia Wilson, who hit Maynard Thompson, who was then pushed into Gurno.

Initially Gurno was treated for soft-tissue symptoms and a bruised thumb. Over time a mass developed in her thumb and it was surgically removed by Dr. Robert Cole, Orthopedics, Memphis. While Cole couldn't say for sure what caused the mass, he still linked it to a medical certainty to bleeding from the bruise. The hand surgery left Gurno with a scar on her finger. Her medicals were $11,423.

In this lawsuit, she sought damages from Estey, blaming him for setting off this chain reaction crash. He defended and minimized the claimed damages. His IME expert, Dr. Bruce Webber, Pathology, Memphis, linked the thumb mass to tissue growth, not trauma. Estey also cited regarding the thumb that in 1998, plaintiff had sustained a ligament rupture.

Tried for three days on damages, the jury elected to award Gurno nothing for medicals, suffering or loss of enjoyment of life. A defense judgment was entered by the court.

FELA - A barge worker slipped on a greasy deck and sustained a disc injury; while prevailing at trial, the jury assessed 75% of the fault to him
Ballard v. Serodino, 02-C-843
Plaintiff: B. Stewart Jenkins and Michael M. Raulston, Chattanooga
Defense: Robert W. Sauser, *Baker Donelson Bearman & Caldwell*, Chattanooga
Verdict: $150,000 for plaintiff less 75% comparative fault
County: **Hamilton**
Judge: Samuel H. Payne
8-3-04

On the evening of 11-24-01, Matthew Ballard was working as the second mate on the S-2007, a barge operated by Serodino. He was hooking barges together as the barge traveled on the Tennessee River.

Walking out on the barge, Ballard remembered it was dark and poorly lit. Beyond the beam of his flashlight, it was mostly dark. Suddenly Ballard slipped and fell on a greasy spot on the deck. He dropped to his buttocks. While finishing his shift and not seeking care until the next day, Ballard has since treated for an L5-S1 disc herniation as identified by Dr. Scott Hedges, Orthopedics, Chattanooga.

In this FELA lawsuit, Ballard sought damages from his employer, citing (1) the greasy spot from an apparent spill and (2) inadequate lighting. His safety expert was a human factors engineer, Tyler Kress, Knoxville.

Serodino defended the case and raised fact disputes. First it noted the lighting was adequate, another worker on the ship being able to see Ballard from a distance. Plaintiff's own fault was also implicated, Serodino calling the spill open and obvious. [Ballard countered that because of other discoloration on the deck, the greasy spill blended in.]

The jury's verdict was mixed on fault. It assessed 25% to Serodino, the remaining lion's share of 75% to plaintiff. [As this was a FELA action, Tennessee's 50-50 comparative fault rule did not preclude plaintiff's case.] Then to damages, Ballard took $150,000. After an adjustment for comparative fault, a judgment was

entered for him in the sum of $37,500.

Ballard has since moved for a new trial, arguing the comparative fault finding was against the evidence, especially as he had no duty to clean the deck. Serodino has opposed the motion and noted that there was adequate proof Ballard was not careful, nothing impeding his view of the deck. The motion was pending when reviewed by the TJVR.

Premises Liability - Plaintiff slipped at the gym on a wet concrete floor near the pool

Morrison v. YMCA of Knoxville, 3-211-02
Plaintiff: John D. Agee, *Cooley Cooley & Agee*, Kingston
Defense: Samuel W. Rutherford, *Stokes & Rutherford*, Knoxville
Verdict: Defense verdict
County: **Knox**
Judge: Wheeler A. Rosenbaum
1-21-04

On 3-3-98, James Morrison had a swim lesson at the YMCA of Knoxville. Morrison never made it. Dressing in the men's locker room, he exited to the pool area and prepared to descend a set of concrete steps. They were wet and Morrison slipped.

He bounced down several steps on his back. Morrison has since treated for assorted soft-tissue injuries. His incurred medicals are not known. In this lawsuit, he sought damages from the YMCA, blaming its negligent maintenance of the floor. The YMCA defended and called the condition open and obvious.

The verdict in this case was for the YMCA, Morrison taking nothing. A defense judgment was entered by the court and there was no appeal.

Negligent Security - Exiting a bar, plaintiff was attacked by bouncers

Smith v. Nashville Sound, 20220
Plaintiff: Paul J. Sherwood, Johnson City and Richard L. Burnette, Knoxville
Defense: Jeffrey P. Miles and Richard W. Pectol, *Richard Pectol & Associates*, Johnson City
Verdict: $18,007 for plaintiff less 30% comparative fault
County: **Washington (Johnson City Law Court)**
Judge: Thomas J. Seeley, Jr.
11-19-03

On 1-10-99, Douglas Smith, an oysterman from the Chesapeake Bay area, visited relatives in Johnson City. With a cousin he came to a bar known as Nashville Sound. Things were apparently uneventful until he prepared to leave.

Walking out the door, Smith remembered a bar bouncer, Steve Bingham, suddenly attacked him. Other bouncers joined in. Smith suffered cuts to his face that required stitches. He has since complained of headaches, TMJ and dizziness.

In this lawsuit, he sought damages from not just Bingham, but also his employer. Nashville Sound defended and raised fact disputes. Namely, Smith was drunk and belligerent, fighting with other patrons and even displaying a knife. Bingham and other bouncers acted reasonably to remove him from the club, denying there was an attack. Alternatively, even if there was an attack, (which there wasn't), Nashville Sound explained that Bingham acted outside the scope of his employment. [While not represented in this action, for purposes of this trial, the bar acted as if it were defending Bingham. This was done to avoid the prejudice from having had a default been taken against him.]

While the jury concluded the actions of the defendants injured plaintiff, it was mixed on fault. It assessed 30% each to Bingham, the bar and plaintiff, unknown employees of the bar taking the remaining 10%. Further finding Bingham's conduct was within the scope of his employment, the panel moved to damages.

It awarded Smith medicals of $2,007 plus lost wages of $1,000. Past suffering was $10,000, while that in the future was half. The verdict totaled $18,007 and was assessed consistent with the comparative fault finding. The judgment has since been satisfied.

Auto Negligence - Plaintiff suffered an optical injury when while driving his lawnmower, he was hit by an out-of-control vehicle

Jones v. Epperson, 01-185
Plaintiff: Lewis L. Cobb, *Spragins Barnett Cobb & Butler*, Jackson
Defense: John D. Stevens, *Rainey Kizer Reviere & Bell*, Jackson
Verdict: Defense verdict
County: **Madison**
Judge: Donald H. Allen
2-25-04

On 6-21-00, Winfred Jones, age 64 and just retired, was mowing his yard in Jackson. He was using a riding mower. At the same time Deone Epperson was driving by on the adjacent U.S. 45W in a 1994 Ford. Three months before he had bought the vehicle from Hawk's Used Cars. Importantly, the car had no history of problems.

An instant later Epperson heard a loud noise. Before he knew it, his vehicle went out of control. It careened off an embankment and into the lawnmower. Jones was thrown clear forty feet and landed face down. Epperson's vehicle continued on through the front yard.

In the collision Jones sustained an optical injury. It has manifested as floaters and flashes of light. He also suffered a rotator cuff tear and a knee injury. His medicals totaled $7,714. In developing damages it is learned that before this wreck, Jones was an avid golfer and skier with perfect vision, just beginning his retirement. He is now limited.

The liability theory in this case was simple. Jones blamed Epperson for losing control. Epperson had a defense -- he explained his tire suddenly flew off causing him to careen off the roadway. Significant to the defense, Epperson had no reason to suspect the wheel would fly off.

In response Jones amended his

complaint to name Hawk's Used Cars. It defended and cited the car was sold "As Is." The used car dealer prevailed by summary judgment. The matter pressed on against Epperson. Regarding the wheel defect, Jones postured it flew off after Epperson lost control when his vehicle struck the embankment.

Tried for two days in Jackson, the verdict was for Epperson, Jones taking nothing. A defense judgment was entered. Jones has moved for a new trial arguing there was no competent proof of a mechanical defect. When reviewed by the TJVR in September, the motion was pending.

Uninsured Motorist - Plaintiff sustained a disc injury when struck by a hit-and-run driver; a Memphis jury awarded plaintiff her medicals and nothing more

Noble v. GEICO, CT-004466-01
Plaintiff: Henry C. Shelton, III and Amy Holliman Brown, *Armstrong Allen*, Memphis
Defense: Melanie M. Stewart, *Stewart & Wilkinson*, Memphis
Verdict: $78,870 for plaintiff
County: **Shelby**
Judge: John R. McCarroll, Jr.
4-6-04

There was a strange rear-end crash in Memphis on 8-13-00. It occurred on Winchester Road near Mendenhall. Plaintiff, Kinta Noble, age 43, was a passenger in a vehicle with her husband, John. Suddenly a phantom driver backed into the Nobles. He then pulled forward and backed into them a second time.

As mysteriously as he appeared, the phantom fled the scene. He would never be identified. While Noble immediately felt a tear in her back, she did not treat until a week later. Radiating pain persisted and ultimately a spinal fusion surgery was performed at L5-S1. Noble incurred medicals of $78,870. Beyond the primary claim, her husband sought damages for his consortium interest.

Noble sought damages from her UM carrier, GEICO. It defended the case on causation and noted that following the wreck, Noble seemed to be doing well. Then three months later, she suffered a slip and fall on ice. Only after that fall did an MRI reveal a disc injury, GEICO posturing it was the fall, not the crash that was the key causal factor.

This case was tried to a Memphis jury for two days. Noble prevailed and took an award of $78,870. Her husband's consortium interest was rejected. A judgment was entered for her less a $5,000 pre-payment. Plaintiff has since moved for additur, noting the award included nothing for suffering. The motion was denied.

Auto Negligence - While a TV sportscaster who was rear-ended was awarded medicals of $30,000, having suffered a disc injury and a rotator cuff tear, a Nashville jury rejected pain and suffering

Wrigley v. Ellis et al, 03-0799
Plaintiff: Stanley A. Davis, Nashville
Defense: Herbert J. Sievers, III, *Law Office of Dennis Blevins*, Nashville for Ellis
Christian Garston, *Spicer Flynn & Rudstrom*, Nashville for Petty
Verdict: $48,000 for plaintiff assessed against Ellis only; defense verdict for Petty
County: **Davidson**
Judge: Barbara A. Haynes
5-12-04

It was 3-29-02 and Steve Wrigley, then age 41 and a TV sportscaster at Channel 4 in Nashville, traveled on Old Hickory Road in a Nissan sedan. One car back was Angela Ellis. She recalled that the middle car, driven by Misty Petty, came to a sudden stop.

Ellis rear-ended her, that impact knocking Petty into Wrigley. Petty raised fact disputes and countered that when hit by Ellis, she was at a stop. Wrigley wasn't sure how it happened and blamed both, remembering there were two distinct collisions.

Wrigley did not immediately seek care, waiting three days to see his family doctor. Following a course of physical therapy, he has complained of both a rotator cuff tear and a herniated disc. Treating with Dr. Paul Buechel, Neurology, Nashville, Wrigley developed proof he will need surgeries on both his neck and shoulder. While the incurred medicals were $4,654, plaintiff claimed $27,000 for treatment in the future.

Petty defended as noted above and pointed out she was stopped. Ellis countered that Petty had come to an abrupt stop. While the jury could apportion fault between the defendants, Wrigley's duties were not in issue. Globally damages were defended by Ellis and Petty, each noting the treatment delay.

Fault was resolved solely against Ellis, the jury exonerating Petty. Moving to damages, Wrigley took $3,000 for past medicals, plus $27,000 for future care. [The $27,000 was identical to the cost estimate of two repair surgeries.] Impairment was $18,000, while for past and future suffering, there was no award. The verdict totaled $48,000.

Ellis sought a new trial and/or remittitur. She argued the verdict was excessive, noting Wrigley waited three days to treat. The motion was denied.

Sexual Harassment - A third-shift deputy jailer alleged he was sexually harassed by his female supervisor, the offending events taking place over the course of one night

Love v. Shelby County Sheriff, 2:02-2478
Plaintiff: Kathleen L. Caldwell, *Law Offices of Kathleen Caldwell*, Memphis
Defense: M. Dell Stiner, *Assistant County Attorney*, Memphis
Verdict: $331,455 for plaintiff
Federal: **Memphis**
Judge: Jon Phipps McCalla
5-26-04

Michael Love, age 38, started working in 1994 as a deputy jailer for the Shelby County Sheriff. He remains in that role. The gravamen of this case arose from a shift he worked in the overnight hours of 6-6-01 and 6-7-01. Love alleged that his female supervisor, Shari Nichols, eighteen years his senior, subjected him to sexual harassment.

That included sexually explicit remarks and gestures. Specifically, Nichols made a remark and grabbed her crotch. Later in the shift, Nichols approached Love and sprayed his buttocks with an anti-fungal liquid. Making matters worse, Nichols also started to open Love's shirt, making a sexual advance.

Love, a married minister, wanted none of it. He complained of the harassment and was transferred to a different shift. Later he was forced to work under Nichols again. From this set of facts, focusing on the single overnight shift, Love pursued a federal lawsuit asserting a sexually charged environment prevailed at the jail.

The sheriff defended the case and countered that Nichols' conduct was a single and isolated incident, one for which she was disciplined. It further noted that when reported by Love, a prompt investigation followed. Damages were also diminished, the government focusing that the harassment in this case didn't stretch for years or months, but instead just a single shift that stretched over two days.

The court's instructions asked if a hostile sexual environment existed. The jury said yes and to damages, Love took $3,330 for lost wages. A category called compensatory damages was valued at $328,125, the award totaling $331,455. A consistent judgment followed this three-day trial.

The sheriff has sought JNOV and remittitur relief, calling the award shocking in light of the absence of any medicals. It was suggested by the government that this was a classic "runaway jury." Moreover, the conduct on one shift was insufficient to maintain the claim. Love has countered that he was profoundly affected by these events. Defendant's motion is pending as is plaintiff's for attorney fees of some $33,000.

Auto Negligence - A right of way collision left plaintiff with a severe facial laceration and a broken ankle

Shipley v. Kennedy et al, V00-1012 and V01-108
Plaintiff: James F. Logan, Jr. and Barrett T. Painter, *Logan Thompson Miller Bilbo & Thompson*, Cleveland for Shipley as plaintiff
David F. Harrod, *Carter & Harrod*, Athens for Shipley as defendant
Defense: Beecher A. Bartlett, Jr., *Kramer Rayson Leake Rodgers & Morgan*, Knoxville for Kennedy as defendant
Gary M. Prince, *O'Neil Parker & Williamson*, Knoxville for Kennedy as plaintiff
Libba Bond, *London & Amburn*, Knoxville for Favorite Market
Verdict: $300,000 for Shipley less 10% comparative fault; defense verdict on counterclaim of Kennedy
County: **Bradley**
Judge: John B. Hagler, Jr.
5-26-04

There was a serious car crash in Cleveland on 8-4-00. It occurred as Tammy Shipley, then age 21, went out to get lunch, taking a break from her job at the Favorite Market. An instant later she was struck by Gerald Kennedy at the intersection of 25th Street and Vista Drive. It was Shipley's allegation that Kennedy pulled from a median into her path. He countered that but for her excessive speed, there would have been no collision.

However it happened, there was a wreck and both Kennedy and Shipley were hurt. Each filed their own negligence lawsuit and thus at trial, both had two attorneys, one representing them as plaintiff and one as defendant.

Adding more chairs to counsel table, Kennedy also sued Shipley's employer, the Favorite Market, arguing Shipley was in the scope of her employment. The grocery defended and postured Shipley was on a personal errand. Kennedy countered that Shipley was also buying lunch for a co-worker.

Back to the crash, Shipley was badly hurt. Beyond cracked ribs, she sustained a significant facial laceration, a surgeon repairing it in a five-hour surgery. Scarring has persisted. She also had a broken ankle, described as a talar fracture -- she endured multiple repair surgeries. In the months following the crash, she was limited in her mobility, that making it difficult for her to take care of her then four-month old child. Shipley's medicals were $30,106. While Kennedy presented a counterclaim for damages, the record is silent as to his injuries or treatment.

The jury's verdict was mixed on fault. It assessed 90% to Kennedy, the remainder to Shipley. That finding had two implications, (1) Kennedy took nothing because his comparative fault exceeded 49% and (2) because his claim was exhausted, the jury did not go on to reach agency questions regarding Shipley's employer, Favorite Market.

Turning to damages, Shipley took a general award of $300,000, equaling $270,000 after a reduction for comparative fault. However the judgment reduced that sum another $200,000 corresponding to plaintiff's last ad damnum prayer.

Premises Liability - Plaintiff fell on a wet floor adjacent to a Shoneys' salad bar

Owens v. Shoneys, 03-3407
Plaintiff: Larry R. McElvaney, *Arena & McElvaney*, Nashville
Defense: George H. Cate, III, *Neal & Harwell*, Nashville
Verdict: $10,787 for plaintiff less 5% comparative fault
County: **Davidson**
Judge: Hamilton Gayden
7-20-04

It was 10-5-00 and Delilah Owens, age 33 and a hairstylist, ate at the Shoney's on Murphy Road. She approached the self-serve salad bar. Suddenly Owens slipped and fell on peach juice that had been spilled.

Owns has since treated for radiating pain that she called unbearable. Dr. Thomas O'Brien, Nashville, later performed a fusion repair surgery. Plaintiff's medicals were $41,260. Her proof indicates her symptoms are ongoing.

In this lawsuit, Owens criticized the maintenance of the salad bar by

Shoney's. It defended and implicated comparative fault. Damages were also defended, Shoney's noting Owens had a history of prior injury events, suggesting that at most, only a minor soft-tissue strain was sustained. Credibility was also in issue, Shoney's pointing out plaintiff's prior convictions on fraud and theft.

Fault was mixed following this two-day trial and five hours of deliberations. The panel found against Shoney's, finding it 95% at fault; the remainder was apportioned to Owens. Then to damages she took medicals of $7,397, plus lost wages of $2,300. Past suffering was valued at $600, while future suffering, impairment and loss of enjoyment of life were all rejected. The raw verdict totaled $10,797 or $10,257 less comparative fault as memorialized in the judgment.

Owens has since moved for additur calling the award inadequate in light of the fusion surgery and the incurred medicals. Shoney's opposed the motion and suggested there were credibility problems with plaintiff's case, namely her prior convictions and that the proof was consistent with just a minor soft-tissue injury, plaintiff having a history of a prior 1996 fall. The motion is pending.

Auto Negligence - Suffering from a sternum fracture was valued in Lebanon at $7,500

Schott v. Jones, 12225
Plaintiff: John J. Griffin, Jr., *Kay Griffin Enkema & Brothers*, Nashville
Defense: Owen R. Lipscomb, *Watkins McGugin McNeilly & Rowan*, Nashville
Verdict: $16,268 for plaintiff
County: **Wilson**
Judge: Clara Willis Byrd
6-4-04

It was 6-3-01 and Charles Schott, age 62 and a retired teacher, traveled on Saundersville Ferry Road. The roadway was wet. Sarah Jones approached from the opposite direction. In a curve Jones lost control on the roadway and struck Schott nearly head-on.

A significant impact, Schott was taken to the ER where he was treated for a sternum fracture. That injury was sustained, Schott colliding with the steering wheel. He has since complained of knee pain, Dr. Robert Landsberg, Orthopedics, Hendersonville, opining a repair surgery is needed. Cardiac complications were also alleged, Schott seeking medical bills of $7,898.

Jones defended on fault and explained the wreck was unavoidable, blaming the slippery roadway. Moreover had Schott not been traveling so fast, he would have been able to evade Jones' out-of-control vehicle. Damages were also diminished.

The verdict on fault was for Schott, the jury then awarding medicals of $7,898. Lost wages were $869, while there was no award for future care or impairment. The jury went on to value past suffering at $7,500, rejecting that in the future. The verdict totaled $16,268 and the court's consistent judgment has since been satisfied.

Medical Negligence - An orthopedist performed an open carpal tunnel release when just a surgical release was called for; the orthopedist settled, but the case came to trial against the CRNA who was purportedly complicit in the error

Jones v. Roberson, CT-000847-01
Plaintiff: Dixie White Ishee, *The Cochran Firm*, Memphis
Defense: Michael L. Robb and Elizabeth T. Collins, *Thomason Hendrix Harvey Johnson & Mitchell*, Memphis
Verdict: Defense verdict
County: **Shelby**
Judge: Karen R. Williams
2-12-04

In the summer of 1999, Roy Jones, then age 39, was treated for pain in his thumb and middle finger by Dr. David Sisk, Orthopedics. Sisk identified a trigger finger and suggested a surgical release. It was performed on 3-21-00 at Baptist Rehabilitation Germantown. Sonny Roberson, CRNA, provided anesthesia.

The procedure was uneventful except in one regard. Sisk didn't perform a surgical release. Instead he executed a significantly different operation, an open carpal tunnel release. The mix-up was noted almost immediately and Sisk performed the correct procedure the next day.

Jones would remember that Sisk promptly admitted the mistake, explaining (1) it was his first and (2) it could have been worse had Sisk erroneously performed a knee reconstruction. Jones didn't think it was that funny.

Because of the unnecessary procedure, he has complained of diminished use of his fingers. He also has scarring. In this lawsuit, he sought damages from Sisk and Roberson, the error occurring because the medical chart was not consulted.

Plaintiff's orthopedic expert was Dr. Carl Hiller, New Bern, NC. Sisk elected to fold his cards and settled the case before trial. The theory against Roberson was nuanced, Jones developing that while just the CRNA, a duty still existed to communicate. The CRNA expert, Richard Haas, Augusta, GA, blamed the complication on a communication breakdown.

Roberson defended this mix-up case and explained that it was his job to provide anesthesia. Implicitly and just as important, it was Sisk's job to operate and if Sisk performed the wrong surgery, that was not error by the CRNA. The defense expert was Keith Fulton, Southhaven, MS.

This case was tried in Memphis for four days. The jury found that Roberson had not violated the CRNA standard of care and awarded Jones nothing. A defense judgment followed. While deliberating, the jury had asked, is the defendant Sisk or Roberson?

Premises Liability - A grocery shopper was struck by an employee pushing a stocking cart

Brown v. Food Lion, 22537-C
Plaintiff: John R. Phillips, Jr., *Phillips & Ingram*, Gallatin
Defense: Lisa Ramsay Cole and Leslie Curry-Johnson, *Lewis King Krieg & Waldrop*, Nashville
Verdict: Defense verdict
County: **Sumner**
Judge: C.L. Rogers
3-23-04

On 4-22-01, Sarah Brown shopped at the Food Lion grocery. At the same time an employee was restocking shelves. Suddenly a cart the employee was pushing struck Rogers in the back.

She has since treated for soft-tissue symptoms with a chiropractor, Dan Jackson, Gallatin. Brown incurred medicals of $2,306. In this lawsuit she sought damages from the grocery. It defended and denied fault -- comparative fault was not implicated by Food Lion.

A Gallatin jury resolved this case for Food Lion, returning a defense verdict. A defense judgment was entered by the court.

Brown moved for a new trial and argued Food Lions only defended the case by explaining it didn't know how she was hit by the cart. She called that inadequate, just as it would be to the defense of an out-of-control Food Lion truck. Food Lion countered that the event was an apparent accident occurring without fault. Judge Rogers granted the motion and having recused himself, the matter has since been assigned to Chancellor Gray.

Medical Negligence - A cardiologist performed a bypass graft on the wrong vein, the error purportedly leading to significant complications

Christian v. Cai, 2-29-01
Plaintiff: Linda G. Welch, *Linda Welch & Associates*, Knoxville
Defense: Edward G. White, II and B. Chase Kibler, *Hodges Doughty & Carson*, Knoxville
Verdict: Defense verdict
County: **Knox**
Judge: Harold Wimberly, Jr.
3-11-04

On 1-28-00, the relatively young Melissa Christian, then age 35, was treated for coronary artery disease by a cardiologist, Dr. Tung Cai. On that date at Baptist Hospital of East Tennessee he attempted a bypass graft. It was his intention to graft the otitis median branch.

During the procedure Cai actually grafted a different branch, the posteriorolateral branch. Realizing the problem, Cai attempted a repair the same day, but it failed because Christian developed mitral regurgitation or heart valve insufficiency. Thereafter Christian suffered other complications including ARDS, remaining in the hospital for several weeks. Since being released, she has complained of chest pain and emotional symptoms.

In this lawsuit, Christian blamed Cai for grafting the wrong vein, that error setting off her complications. Plaintiff's liability expert was Dr. John Lucke, Cardiology, Asheville, NC. Cai defended and countered that while operating on the wrong vessel, that did not represent negligence. Damages were also diminished, Cai noting (1) Christian is well-recovered and (2) any complications sustained were related to her underlying heart condition, not this surgery. An expert for Cai was Dr. Brett Grishkin, Cardiology, Knoxville.

This complex case was tried for four days. The jury's verdict was for Cai, Christian taking nothing. The court entered a defense judgment and there was no appeal.

Negligent Supervision - The babysitter was sleeping as a five-year old boy drove his bicycle into a tree, sustaining a skull fracture in the collision

Hixson v. Calfee, 01 CV 71
Plaintiff: Danny M. Hryhorchuk, Morristown
Defense: John T. Johnson, Jr., *Kramer Rayson Leake Rodgers & Morgan*, Knoxville
Verdict: Defense verdict
County: **Hamblen**
Judge: John K. Wilson
2-10-04

On 4-15-00, Crystal Hixson, dropped off her son, Trey, then age 5, with a pair of babysitters, Tina Davis and Geraldine Calfee. Thereafter Trey was riding his bicycle. He rode into a tree and sustained a skull fracture and a chipped tooth. While seriously hurt, the boy has mostly recovered, incurring medical bills of $30,453.

Trey and his mother filed this lawsuit against Dean and Calfee, alleging negligent supervision. The action against Dean was non-suited when she filed bankruptcy. It continued against Calfee, plaintiffs alleging negligence in that while she was supposed to be babysitting, she was instead asleep in bed.

Calfee didn't dispute that little Trey was not well-supervised. However she denied that it was her duty to watch the boy, countering that Dean was the babysitter. Plaintiff replied that Calfee and Dean had jointly agreed to supervise the boy.

The verdict was for Calfee, the panel finding that her conduct was not negligent -- having so found, it did not reach the duties of Dean or damages. A defense judgment followed and there was no appeal.

Products Liability - A worker at a chemical plant sustained severe burns when unloading liquid phosphorus

Urban v. Astaris et al, 3:02-789
Plaintiff: William H. Farmer and Jason D. Holleman, *Farmer & Luna*, Nashville
Defense: Steven E. Anderson and Kathryn Hays Sasser, *Walker Bryant Tipps & Malone*, Nashville
Verdict: Defense verdict
Federal: **Nashville**
Judge: Todd J. Campbell
6-16-04

On 8-16-01, Dana Urban, age 44, was working at the Rhodia chemical plant in Nashville. That day he was unloading a tanker car that contained hot liquid phosphorus. It was under significant pressure. Several weeks earlier, the tanker car had been loaded in Pocatello, Idaho by Astaris. [Astaris is a subsidiary of a company known as FMC.] The last player in this drama was GE, which owned the tanker car.

Urban noticed the car was leaking when he opened a valve. A small fire ignited when the phosphorus hit the air. Urban put it out and closed the valve. Intending to repair the valve, Urban checked a pressure gauge in the car. It showed there was no pressure.

Urban proceeded to remove bolts to repair the valve. Suddenly the phosphorus sprayed onto Urban, leaving him with severe third-degree burns on 15% of his body, including his face. Additionally he sustained an inhalation injury and was left blind. Unquestionably, Urban was left permanently disabled. His medical bills were $563,273.

In this lawsuit he targeted Astaris, its parent and GE, alleging negligent maintenance and loading of the car. Particularly, Astaris was criticized as at the time, the plant was closing and workers were being laid off. Because of the downsizing, untrained employees were loading the phosphorus without taking precautions.

The claim as to GE was nuanced as federal regulations imposed maintenance duties upon it. Experts for Urban were Phani Raj, Mechanical Engineer, Lexington, MA and Mark Abramowitz, Transportation Safety, Nashville. Plaintiff also developed proof that diminished comparative fault, noting he acted properly to reduce the pressure before attempting to repair the valve -- because of the gauge defect, a hidden danger awaited him.

GE defended the case and noted as an absent owner, it had nothing to do with the maintenance of the car or loading of the phosphorus. Regarding Astaris, the valve defect theory was refuted by an engineer from Omaha, NE, John Makinson. Defendants further introduced proof that (1) the phosphorus leaked not because of the valve, but instead because of Rhodia's own standpipe and (2) Urban failed to follow safety standards.

For three days this products case was tried to a federal jury in Nashville. The verdict was for all three defendants, Urban taking nothing. A defense judgment was entered by the court.

Premises Liability - An elderly plaintiff slipped and broke her hip on a dislodged stepping stone

Milburn v. Old Country Store, 01-462
Plaintiff: W. Chris Harrison, *The Harrison Law Firm*, Memphis
Defense: Robert O. Binkley, Jr., *Rainey Kizer Reviere & Bell*, Jackson
Verdict: Defense verdict
County: **Madison**
Judge: Roger A. Page
6-2-04

On 6-5-99, Norma Milburn, then age 82, visited the Old Country Store located inside the Casey Jones Village. Traveling with her daughter, they parked in front of the store. To enter, Milburn began to traverse a pathway of stepping stones.

Placing her foot on a stepping stone, it shifted. Apparently it was already partially dislodged. The shift caused Milburn to fall. In that fall she suffered a displaced fracture of her hip. Milburn later introduced proof that she was active before this fall -- because of the hip injury, she entered a downward health spiral.

She sued the Old Country Store, her liability theory being founded in the condition of the stepping stone. As the litigation progressed, Milburn died in 2003 of other causes. Her estate pressed the matter to trial.

The Old Country Store defended and denied fault. It also diminished damages, noting that Milburn had a myriad of health problems that existed before this fall.

The verdict was for the Old Country Store and there was no award of damages. A consistent defense judgment was entered.

Medical Negligence - During a breast reconstruction following a mastectomy, it was alleged that a plastic surgeon forgot four feet of gauze, the foreign object leading to infection and a subsequent surgical repair

McGrapth v. Nein, 00-2493
Plaintiff: Renard A. Hirsch, Sr. and Robert L. Smith, *Smith Hirsch Blackshear & Harris*, Nashville
Defense: Dixie W. Cooper and Lisa D. York, *Gideon & Wiseman*, Nashville
Verdict: Defense verdict
County: **Davidson**
Judge: Thomas W. Brothers
3-12-04

Vanessa McGrapth, then age 43, suffered from breast cancer in 1999. On 2-1-99, she underwent a bilateral mastectomy -- two days later a breast reconstruction was performed by a plastic surgeon, Dr. Alexander Nein. That included placing a breast tissue expander.

A month later the tissue expander had led to an infection. On 3-25-99, Nein performed surgery to remove the expander. It left McGrapth with an open wound. Gauze was packed into the wound. However because it was open, McGrapth continued to have her dressings changed.

Over the summer of 1999, McGrapth suffered from chronic drainage and pain in her breast. Five months later on 8-30-99, a repair surgery was undertaken to identify the problem. In it four feet of gauze were removed from her breast, it apparently having been left behind. Because it had become ingrown, it was necessary to remove breast tissue.

McGrapth alleged negligence in this lawsuit by Nein in leaving the gauze behind during the second 3-25-99 surgery. Her expert, Dr. Nicholas

Economides, Plastic Surgery, Germantown, called it error to leave the gauze behind, linking that mistake to McGrapth's slow-healing wound. Economides also argued Nein should have diagnosed the problem sooner. During the course of this litigation, McGrapth died of cancer. Her estate continued to pursue the lawsuit, her husband, Jeffrey, also presenting a consortium claim.

Nein defended the case and raised a fact dispute. While he conceded gauze was left in the wound, he denied it was gauze from his surgery. Nein explained the gauze removed in August came from a later dressing change -- as importantly, it couldn't have come from the surgery as it wasn't surgical gauze. A defense expert was Dr. Bruce Shack, Plastic Surgery, Nashville.

The jury's verdict concluded Nein had not violated the standard of care and the McGrapth estate took nothing. A defense judgment followed.

The estate has since moved for a new trial suggesting it would have been impossible for home health nurses to have packed four feet of gauze, the only competent liability proof coming from Economides. Nein has opposed the motion noting that the gauze he used was different as it had been soaked in antibiotic. The motion was pending in late September.

Auto Negligence - A jury in Camden awarded plaintiff medical bills, but nothing for pain and suffering

Troutt v. Salyers, 3CCV-808
Plaintiff: Terry J. Leonard, Camden
Defense: Steven C. Girsky, *Batson Nolan Brice Williamson & Girsky*, Clarksville
Verdict: $3,375 for plaintiff
County: **Benton**
Judge: Julian P. Guinn
4-7-04

On 2-1-03, William Troutt, then age 15, was a passenger in a vehicle driven by his friend, Matthew Salyers, age 19. Salyers was drinking but apparently not intoxicated. Salyers lost control of his car, left the roadway, hit a fence and a utility pole, finally overturning.

Troutt sustained a knee injury in the crash. The record does not delineate the incurred treatment or medicals. Salyers defended on fault and damages.

The jury found Salyers solely at fault and then to damages, Troutt's mother took $3,375 for the boy's medicals. His claims for suffering and inability to enjoy life were rejected. A judgment for $3,375 was entered.

Troutt moved for post-trial relief and called the award inadequate, particularly Troutt taking nothing for suffering. Salyers countered that since the wreck, Troutt has actively engaged in swimming, horseback riding and four-wheeling. The motion was denied and the judgment has been satisfied.

Auto Negligence - While plaintiff was rear-ended by some combination of two defendants, a defense verdict was still returned

Hall v. Cameron et al, 02-C-215
Plaintiff: George Lane Foster, *Blackburn & McCune*, Chattanooga
Defense: Samuel R. Anderson, *Luther Anderson*, Chattanooga for Cameron
Randall Jones, Pro se
Verdict: Defense verdict
County: **Hamilton**
Judge: L. Marie Williams
1-21-04

On 1-21-01, Victoria Hall, age 45, was stopped on Shallowford Road. An instant later she was rear-ended by Nathaniel Cameron. Hall remembered a second impact, Randall Jones hitting Cameron, knocking him into her again. Photographs indicate the collision was very minor.

Taken to the ER, she has since treated for chronic whiplash. Her medical bills were approximately $7,500. In this lawsuit she sought damages from both Cameron and Jones.

Cameron defended and conceded he had hit Hall. However he explained that he was stopped when Jones struck him, that impact knocking him forward. Jones, appearing pro se, also defended and explained that the light turned green and traffic started forward. Damages were also diminished by the defendants.

While plaintiff's care was no issue, this Chattanooga jury concluded there was no deviation by either defendant. Having so found, there was no award of damages. A defense judgment followed.

Hall moved for a new trial and called the verdict inconsistent, essentially permitting the defendants to walk away scot-free from a rear-ender. The motion was denied and Hall appealed. Thereafter the appeal was dropped.

Medical Negligence - Plaintiff alleged her treating chiropractor positioned her weight on plaintiff's knee as she adjusted her spine, the force on the knee leading to an arthroscopic repair surgery and a knee replacement

Heaton v. Gammon, 50100585
Plaintiff: Mark A. Rassas, *Rassas North & Crozier*, Clarksville
Defense: John F. Floyd and Michael W. McInteer, *Todd & Floyd*, Nashville
Verdict: Defense verdict
County: **Montgomery**
Judge: Ross Hicks
2-12-04

On 4-17-01, Debra Heaton, then age 52, first visited a chiropractor, Dr. Karin Gammon. It was uneventful. Heaton returned six days later for a second visit. As Gammon adjusted Heaton's spine, specifically a side posterior procedure, Heaton recalled that Gammon placed her weight directly on Heaton's knee. Immediately she felt pain.

Two weeks later Heaton underwent an arthroscopic repair surgery on her knee for a meniscal tear. Her orthopedist, Dr. William DeVries, Clarksville, later performed a knee replacement in January of 2003. However he made no causal link between the knee condition and Gammon's adjustment.

Heaton did however and filed this lawsuit against Gammon. Her liability theory was simple -- during the adjustment she was injured by the application of weight to her knee. While Heaton didn't have a liability expert, she attempted to backdoor her proof through Gammon. That is, she gained a concession from Gammon that if the events occurred as Heaton alleged, then there was a deviation from the standard of care.

That went to the heart of the case. Gammon denied everything. Her expert was Dr. Lee Selby, Chiropractor, Nashville. Damages were also

diminished, Gammon noting that Heaton had a history of problems, including a 1986 knee repair surgery.

This unusual chiropractic negligence case was resolved by a Clarksville jury. The verdict was for Gammon and Heaton took nothing. A defense judgment followed and there was no appeal.

Auto Negligence - A radiating L5-S1 disc injury followed a right of way crash

Weston v. Craven, 13327
Plaintiff: Mike P. Lynch, *Lynch Lynch & Lynch*, Winchester
Defense: Stewart C. Stallings, *Walker Law Office*, Brentwood
Verdict: $100,000 for plaintiffs
County: **Franklin**
Judge: J. Curtis Smith
1-14-04

It was 8-10-01 and Theresa Weston, age 47, traveled on US 41-A in Deckard. Slowing to make a turn, she was struck by Margaret Craven who was also turning. The collision resulted in minor damage. Fault was no issue.

Weston has since treated for radiating back pain. Her orthopedist, Dr. Keith Brown, Winchester, identified an L5-S1 disc injury, further opining that a repair surgery was needed. Weston has also complained of a bilateral carpal tunnel injury, Brown also linking it to the trauma of this wreck. Her medicals totaled $6,346. Beyond her primary claim, Weston's husband, John, presented a derivative consortium claim.

Craven defended on damages and relied on an IME, Dr. Gray Stahlman, Orthopedics, Nashville. The expert explained that an IME has no bias whatsoever and then to his opinions, (1) he concurred in the carpal tunnel diagnosis, and (2) he disagreed regarding the disc injury, finding it wasn't trauma, but instead a degenerative wear-and-tear condition.

Weston prevailed at trial, the jury awarding her $4,000 each for past suffering, future suffering, impairment as well as for past and future loss of enjoyment of life. Her medicals were $6,346, while lost wages totaled $780. Her largest element of damages was future medicals, the jury valuing her expected repair surgeries at $60,000. Weston's husband took another $10,000 for his consortium interest, the verdict totaling $100,000. [It also included property damage of $2,900.] A consistent judgment less a $2,500 pre-payment followed and Craven has satisfied it.

Truck Negligence - Four travelers from Alabama were rear-ended on the interstate in Indiana by a Tennessee trucker; tried to two juries, the awards for plaintiffs were twice remitted by different jury judges

Carter et al v. First Express et al, 02-351
Plaintiff: Edward P. Rowan and W. Bradford Kittrell, *Kittrell & Rowan*, Mobile, AL and Samuel D. Payne, *Evans Jones & Reynolds*, Nashville
Defense: George B. McGugin, *Watkins McGugin McNeilly & Rowan*, Nashville
Raymond G. Prince, *Prince & Hellinger*, Nashville for Jones
Verdict: $243,589 for plaintiffs ($50,612 for Van, $48,950 for Robert, $47,002 for Marion and $97,024 for Carmanita
County: **Davidson**
Judge: Hamilton Gayden
3-24-04

There was a significant rear-end crash on I-65 near Columbus, IN on 7-13-00. Early that morning, Robert Evans drove from Milwaukee to Mobile, AL. Passengers in his sedan were Van Carter, Robert Marion and Carmanita Evans. All were in their twenties. An instant later, Dwayne Jones, a trucker for First Express, fell asleep and rear-ended the plaintiffs. Apparently he had just finished a big breakfast. Fault was no issue.

From the scene all four plaintiffs were taken to the ER for assorted soft-tissue injuries. All were released. As their car was destroyed, they had but one way to make it back to Alabama. They took a long and uncomfortable seventeen hour trip on a bus.

All have since treated for soft-tissue injuries, including with a chiropractor. Marion also suffered a broken bone in his little finger. Carmanita seemed to suffer the most, losing her job because she couldn't work and then being evicted from her home.

The four plaintiffs from Alabama sought damages from this Indiana crash in a Tennessee trial court. Jones and First Express defended the case and minimized the claimed injuries.

This case first came to trial in May of 2003. All four plaintiffs prevailed, Robert Evans, Marion, Carmanita and Carter taking respectively, $38,950, $37,002, $62,024 and $40,926. Interestingly, all four took $15,000 each for pain and suffering. The first case was tried before Judge Carol Soloman.

Defendants moved for remittitur and called the verdicts excessive, particularly as most of plaintiffs' care was chiropractic. Soloman granted the motion and remitted the awards, again respectively, to $7,150, $4,502, $21,524 and $9,926. Plaintiffs declined and the matter progressed to trial again, this time before Judge Gayden.

The proof at the second trial was similar to the first. This time the plaintiffs did even better. Robert Evans took $48,950, including medicals of $3,950 and suffering of $45,000. Marion was awarded $47,002, representing medicals of $2,002, plus $45,000 in suffering. Carter's medicals were $50,612, representing medicals of $5,612, the rest being suffering. Finally Carmanita's award was $97,024 -- that included medicals of $8,024 and lost wages of $9,000, plus $80,000 for suffering.

Defendants again moved to remit the award. The case was then remitted for the second time, this time by Gayden. He knocked the awards as noted below:
Robert Evans - $48,950 to $29,370
Marion - $47,002 to $28,201
Carter - $50,612 to $30,367
Carmanita - $97,024 to $58,214
That represented an award of the specials, plus $25,000 suffering for the three men, $50,000 for Carmanita. Plaintiffs accepted the remittitur and the case has concluded.

Nursing Home Negligence - An elderly woman allegedly died because of improper nutrition and other substandard nursing home care

Ingram v. Wood Presbyterian Home, V99289P
Plaintiff: Loren E. Plemmons, *Plemmons & Waterhouse*, Lenoir City
Defense: Richard W. Krieg and Summer H. Stevens, *Lewis King Krieg & Waldrop*, Knoxville
Verdict: Defense verdict
County: **Monroe**
Judge: Lawrence H. Puckett
2-20-04

On Christmas in 1997, Jewell Ingram, age 81, sustained a stroke. Thereafter she was placed by her family in a nursing home, Sweetwater Valley Convalescence. The first key event in this case occurred on 5-11-99. While being moved, Ingram fell and suffered broken ribs.

On 9-7-99, she moved to another nursing home, Wood Presbyterian Home. She would only remain there sixty-seven days. On 9-26-99, while being moved from a chair, an orderly picked up Ingram in a bear-hug maneuver. She screamed in pain, the hug aggravating her fragile ribs.

Thereafter she filed a personal injury lawsuit against both Sweetwater Valley Convalescence and Wood Presbyterian. Soon after the litigation was initiated, Ingram took a turn for the worse. On 11-12-99, she left Wood Presbyterian and was transferred to Baptist Healthcare in Louden. She died a month later. At that time, her estate filed amended complaints to allege wrongful death.

In this consolidated action, the estate alleged Ingram's death was caused by substandard nursing home care. That began with the fall at Sweetwater Valley Convalescence which resulted in the broken ribs, that event setting off a downward spiral. Sweetwater Valley Convalescence settled before trial.

The matter progressed against Wood Presbyterian, estate alleging a combination of malnutrition and neglect led to Ingram's death, particularly as when she arrived, she was already weakened by the earlier rib fracture. A physician expert, Dr. Harry Strothers, Atlanta, GA, linked the death to malnutrition which then led to cardiac failure. In that regard, he noted that despite already being thin, Ingram continued to lose weight. Also identified for the estate was a nurse expert, Judith Britt, Littleton, NC. [As it was a death case, the estate was required to prove Wood Presbyterian's conduct resulted in Ingram's death, not just that she was injured.]

Wood Presbyterian defended the case and explained that it properly cared for Ingram. Her death was linked to underlying conditions, notably cardiac cachexia, a condition that is marked by physical wasting. That wasting, secondary to the heart disease, then explained why Ingram was losing weight. An expert for Wood Presbyterian was Dr. Thomas Evans, Internist, Sweetwater. Wood Presbyterian also sought to apportion fault to the settling nursing home and a non-party, Ingram's attending, Dr. James Ness.

Tried over two weeks, the verdict in Madisonville was for the nursing home, the jury finding it was not responsible for Ingram's death. A defense judgment was entered by the court.

The estate moved for a new trial and cited error in that the jury was only instructed on the death claim and not the underlying personal injury count. In that regard, it noted the case was filed before Ingram's death. Wood Presbyterian opposed the motion and argued (1) any error was waived because of the failure to object, (2) there was no error, the verdict form mimicking the death statute and (3) the case was tried as a death case because of plaintiff's own decision not to revive the personal injury case after death, plaintiff instead amending to add wrongful death. Plaintiff's motion was denied and the estate has since appealed.

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