Kentucky Trial Court Review

The Most Current and Complete Summary of Kentucky Jury Verdicts

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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.

Underinsured Motorist - The plaintiff (age 19) suffered assorted injuries (neck and back disc conditions, an involuntary jerking disorder and emotional symptoms including PTSD) in a significant rear-ender and after settling with the tortfeasor for his $100,000 policy limits, she sought another $250,000 in UIM benefits from State Farm – the plaintiff took non-economic damages at trial of $750,000 and blew through both the floor and ceiling of the UIM coverage

Dwyer v. State Farm, 21-1290
Plaintiff: T. Brian Lowder, *Lowder & McGill*, Bowling Green
Defense: Michael K. Bishop, *Michael Bishop & Associates*, Bowling Green
Verdict: $868,145 for plaintiff
Court: **Warren**
Judge: John R. Grise
Date: 5-24-24

It was 11-1-19 and Summer Dwyer, then age 19, was stopped in busy traffic on Campbell Lane in Bowling Green. Dwyer had a history of anxiety and emotional symptoms. Originally from near Morgantown, she was very anxious about driving in Bowling Green. However there was proof that at this time, Dwyer was doing well. She was enrolled at WKU and was working part-time at a bargain outlet store.

At the same time Casey Wethington drove on Campbell Lane. He received a text from his daughter and looked away from the road. When he returned his gaze to traffic, he appreciated Dwyer stopped in front of him. Wethington pumped the brakes to avoid collision. It was too late. Wethington rear-ended Dwyer who was driving a 2016 Ford Fiesta sedan. It was a hard hit and she was knocked forward into the next car. Fault was never disputed.



The Dwyer Ford Fiesta after the collision

The police were called to the scene and Dwyer declined an ambulance. Her mother arrived and she took her to a local hospital to be checked out. Dwyer was only shaken up with apparent whiplash.

Dwyer has since treated for a variety of conditions. They included low-back pain related to an L5-S1 disc injury. There was also proof a congenital T-8 condition was aggravated. Dwyer has also complained of a new involuntary jerking disorder. She underwent a significant battery of tests and was hospitalized for five days in an effort to identify the cause of that condition. It was ultimately linked to the collision.

Dwyer was also an emotional eggshell plaintiff of sorts. While her pre-existing anxiety was well-managed at the time of the wreck, it was linked to setting that off. Her anxiety if much worse now and she has been diagnosed with PTSD. Dwyer's symptoms included headaches and tremors. Her medical bills were $103,145 and lost wages totaled $32,148. Dwyer developed appropriate medical proof at trial from her treating doctors.

Dwyer moved first against

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Verdicts

Jefferson County

FELA - A communications employee for the railroad suffered a cut to his index finger (it injured a tendon and nerves) in an incident moving heavy equipment – the ostensibly minor injury developed into a disabling left extremity CRPS condition and a Louisville jury awarded the plaintiff $10,000,000 in non-economic damages - $14,182,371 p. 2

Auto Negligence - The plaintiff (a long-time elementary school teacher) suffered a complex, comminuted and serious wrist fracture in a right of way collision – a Louisville jury awarded the plaintiff medicals of $123,435, but just $75,000 for her pain and suffering - $219,667 p. 12

Warren County

Underinsured Motorist - The plaintiff (age 19) suffered assorted injuries (neck and back disc conditions, an involuntary jerking disorder and emotional symptoms including PTSD) in a significant rear-ender and after settling with the tortfeasor for his $100,000 policy limits, she sought another $250,000 in UIM benefits from State Farm – the plaintiff took non-economic damages at trial of $750,000 and blew through both the floor and ceiling of the UIM coverage - $868,145 p. 1

Scott County

Premises Liability - While walking into work in Georgetown for a Toyota component manufacturer on a snowy morning, the plaintiff slipped on an untreated path and suffered a cervical disc injury that led to a fusion surgery – the plaintiff blamed Toyota's snow removal contractor for failing to clear the path – the contractor replied that it was an active snow event and its employees were on site working to clear snow - Defense verdict p. 5

Letcher County

Underinsured Motorist - The plaintiff treated for neck and low-back pain (aggravating degenerative conditions) after a minor rear-end crash – there was no injury at the scene and the plaintiff didn't treat for 17 days – a Whitesburg jury in this straight-up UIM case awarded $10,000 in medicals (only a portion of the claimed sums) and a remarkable $290,000 for pain and suffering - $300,000 p. 6

Pulaski County

Medical Negligence - In this very complex infant death case involving a purportedly botched breech delivery, the jury rejected the death claim ($38,000,000 in damages were claimed) but found for the delivering mother on what an initially just an ancillary claim that the Ob-Gyn had left behind two pieces of gauze when performing an episiotomy and awarded the mother $1.5 million in damages - $1,500,000 p. 7

Federal Court - London

Air Traffic Controller Negligence - A private pilot (also an attorney) crashed his Piper PA-32 airplane killing him and his three passengers – their estates sued the FAA and alleged the pilot was negligently provided instructions by a flight controller – the FAA blamed the crash on pilot error – this FTCA case was tried as a bench trial and the trial court sided with the FAA and entered a defense verdict - Defense p. 9

Fayette County

Medical Negligence - An elderly woman was admitted to a rehabilitation hospital after falling and breaking her arm – it was alleged she suffered an overdose of Oxycodone (prescribed for pain) which led to a brain injury and her ultimate death that was related to an ordering error by an APRN – the APRN replied that the order met the standard of care and there were multi-factorial causes for the plaintiff's decline that were unrelated to her pain medications - Defense p. 11

Jessamine County

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Notable Out of State Verdict

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damages, Dermody was awarded $50,000 for her past suffering. That in the future was $25,000. Her husband's consortium interest was rejected. The verdict totaled $219,667 and of that sum, $75,000 represented pain and suffering. A consistent judgment less PIP has been tendered to Judge Clay but at this time one has not been entered.

Case Documents:
Complaint
Plaintiff Trial Memorandum
Defense Trial Memorandum

Fraudulent Conveyance - A general contractor on a school construction project had a dispute with an electrical subcontractor and took a judgment against that subcontractor – in this lawsuit the general alleged the sub fraudulently transferred a farm to his sister to frustrate the judgment

Vector Corporation v. Barris, 13-641
Plaintiff: Gerald L. Stovall and A. Courtney Guild, Jr., *The Stovall Firm*, Louisville
Defense: Richard A. Getty and Danielle Harlan, *The Getty Law Group*, Lexington and Taft McKinstry, *Fowler Bell*, Lexington
Verdict: Defense verdict on liability
Court: **Jessamine**
Judge: Hunter Daugherty
Date: 4-3-24

This 2024 jury trial in Nicholasville began with a 2006 school construction project in Grant County. The general contractor on the project was Vector Corporation. A subcontractor on the project was SKC contracting. That company was then operated by Argo Clagett. Vector and Clagett had a falling out on the project and litigation ensued in Grant County.

While that litigation was ongoing (that lawsuit is numbered 06-420 in Grant County), Clagett went to his sister (Mary Barris) and told her he'd fallen on hard times. He was struggling to make his car payments. Clagett asked Barris for help. The help came in the form of her paying off a $70,000 mortgage on his Jessamine County farm on Hunters Ferry Road. Clagett had bought it in 1976 for $72,000. In return for paying off the mortgage and after hiring a law firm to run a title search and prepare documents, Barris took free and clear title to the property.

Thereafter Vector Corporation took a judgment against Clagett in Grant County. It made efforts to collect on that judgment including garnishing Clagett's accounts. They were not successful. There was no blood in Clagett's turnip.

Vector subsequently discovered the transfer of the Jessamine County farm to Barris. In 2013 it filed this lawsuit and alleged the transfer represented a KRS 387.010 fraudulent conveyance. Vector looked to some five badges of fraud in support of its case.

The badges were, (1) the transfer was to his sister, a family member, (2) the transfer was just four months after Vector made a claim against Clagett, (3) the sale left Clagett with no property to satisfy the judgment, (4) Clagett was allowed to still occupy the farm his sister now owned, and (5) the sale was just one-fifth the true value of the farm. Vector sought to set aside the transfer and enforce a judgment lien on the property.

Vector's proof burden first asked if Clagett sold the farm to "delay, hinder or defraud" Vector by clear and convincing evidence. If the jury answered yes to this question, the burden would shift to Barris to prove that she was a "purchaser without knowledge." Her purchaser without knowledge proof burden was just preponderance of the evidence. Thus if the jury found the conveyance was fraudulent and Barris was not a purchaser without knowledge, it could go on to impose punitive damages. The case was tried against both Barris and Clagett although at trial Clagett was a pro se defendant.

Barris denied the transfer was fraudulent. She described herself as a loving sister who simply assisted her brother who had fallen on hard times. Barris denied knowledge of the lawsuit in Grant County or even the school construction project at all. Vector countered that Barris hadn't really helped her brother at all. If he was on hard times, she didn't give him a nickel, but instead simply paid off his mortgage and took title to his farm.

The case was tried for three days in Nicholasville and some 18 years after the initial underlying dispute. The jury rejected the first "fraudulent conveyance" count and thus didn't reach the affirmative defense or damages. A final judgment was entered for the defense and it reflected that the deed should not be set aside and moreover that the verdict was res judicata on any claims against Barris.

Vector has since moved for JNOV and new trial relief. It argued that the badges of fraud had not been rebutted by the defense. It also argued the defendant improperly injected proof about the underlying Grant County litigation that was irrelevant to the questions presented. The motion was pending at the time of this report.

Case Documents:
Defense Summary Judgment Motion
Plaintiff Summary Judgment Response
Jury Verdict
Final Judgment
Plaintiff JNOV Motion