

# The Tennessee Jury Verdict Reporter

The Most Current and Complete Summary of Tennessee Jury Verdicts

March, 2006

Statewide Jury Verdict Coverage

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*Unbiased and Independently Researched Jury Verdict Results*

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## The Tennessee Jury Verdict Reporter 2005 Year in Review

This important bound volume, 273 pp., has just been published, and is ready for immediate delivery. It includes detailed analysis of every kind of case in 2005, easily sorted and indexed. Over 20 individual reports are included, including car wrecks, medicals cases, discrimination suits, premises liability, plus breakdowns of loss of consortium and punitive damage claims. There is also an injury index, which places an average multiplier on several types of bodily injury. The Review includes the full text of the 426 reported cases in 2005, easily referenced by region, style, result and attorney.

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this one of a kind publication.**

### Civil Jury Verdicts

Timely coverage of civil jury verdicts in Tennessee including court, division, presiding judge, parties, case number, attorneys and results.

**Medical Negligence - Plaintiff, a National guard sergeant, presented to the ER with signs of a heart attack including radiating pain in his arm and wrist – triaged by a paramedic and seen only by a nurse, he was diagnosed with a wrist sprain – hours later he collapsed and died at home of a heart attack**

*Barkes v. River Park Hospital, 946*

Plaintiff: David Randolph Smith and Edmund J. Schmidt, III, Nashville  
Defense: Bryan Essary, *Gideon & Wiseman*, Nashville  
Verdict: \$7,206,907 for plaintiff  
County: **Warren**  
Judge: Larry B. Stanley  
1-26-06

Jewell Barkes, age 48 and a platoon sergeant in the Tennessee National Guard, spent 7-26-00 clearing brush with a chainsaw. When he finished his work, Barkes complained of shoulder and wrist pain. He felt generally bad and went to the ER at River Park Hospital.

Upon arrival he was triaged by a

paramedic, Jeffrey Jolly. Jolly ultimately passed Barkes on to a nurse, Sherry Kinkade. She concluded he had a wrist sprain and discharged him with instructions to take Motrin.

Barkes went home and continued to feel badly – while he and his wife picked up a pizza on the way home, he couldn't eat. He simply sat in his chair. Some ninety minutes after being released, his wife heard a crash. Barkes had collapsed in the bathroom. 911 was called but despite efforts to resuscitate him, Barkes died of a heart attack.

His estate alleged negligence by a variety of defendants including the hospital, Jolly, Kinkade, a staff doctor, Rosa Stone and the hospital's medical director. All defendants except Jolly were independent contractors that worked for a hospital staffing company. That company not only went bankrupt, so too did its captive insurer. The claims against those defendants were discharged.

That left the estate with just two targets, (1) the hospital regarding the ER administration, and (2) the hospital vicariously as the employer of Jolly. Plaintiff's theory focused on the failure of the hospital to follow its own policy – that policy was that every ER patient should be seen by a doctor.

Had that happened in this case, it was argued, the signs of the heart attack would have been identified. A plaintiff's expert, Dr. Morton Kern, Cardiology, St. Louis, MO (he literally wrote the textbook on cardiac catheterization), argued that any doctor would have made the diagnosis in light of the patient's (1) high pulse, (2) being overweight, (3) having high cholesterol, (4) family history of cardiac problems, and (5) pain in his arm.

Other experts for the Barkes estate were Dr. Alan Markowitz, Hospital Administration, Atlanta, GA and Dr. Roy Keys, ER, Ashland, KY. Pecuniary loss was quantified by Robert Pulsinelli, Economist, Bowling Green, KY. At the time of his death, Barkes left a wife and four minor children – a fifth child was then 22.

River Park defended the case on several fronts: (1) when Barkes arrived

at the ER, he did not have a presentation that indicated a cardiac problem, and (2) even if a doctor had seen him, the diagnosis and ultimate result would have been the same. [Plaintiff countered this theory, pointing out that had a doctor gathered the facts of Barkes's condition, the proper diagnosis would certainly have been made.] Defense experts were Dr. Kevin Bonner, ER, Nashville, Jennifer Ezell, RN, Nashville and James Spivey, RN, Nashville. The hospital also pointed to apportionment to the non-party Stone, Kinkade and Weeks.

The jury's verdict was for the estate, finding River Park solely at fault – it rejected apportionment to any of the non-parties or to Jolly as its agent. Then to damages, the estate took the funeral bill of \$8,909, plus \$197,998 for pecuniary loss. The consortium interest of decedent's wife and children was valued jointly at \$7,000,000. The verdict totaled \$7,206,907. A week post-trial, no judgment had been entered. [The award of damages exactly mirrored the amounts that were argued to the jury in summation.]

According to a published report, a hospital spokesman has since remarked that the verdict was puzzling as the jury found all the care rendered was appropriate, yet it still returned a verdict on liability. He called this conclusion "an obvious contradiction." The spokesman apparently was unaware that plaintiff's theory was two-fold, implicating both the care of the paramedic and the hospital administration in failing to have Barkes be seen by an ER doctor. Whether the jury's verdict in implicating the hospital's failure to follow its be-seen-by-a-doctor policy was correct or not, that this conclusion was reached was obvious to everyone except the spokesman.

### **Employment Retaliation - Was a Pringles chip-maker fired because he alleged race discrimination or instead was it because he falsified quality control reports?**

*Long v. Proctor & Gamble*, 1:03-1097

Plaintiff: Venita M. Martin, Larry H.

Montgomery and Marc L. Schatten, *Glankler Brown*, Memphis

Defense: R. Lawrence Ashe, Jr.,

Cynthia G. Burnside and Carmen A.

Butler, *Ashe Rafuse & Hill*, Atlanta, GA

Verdict: \$2,529,000 for plaintiff

Federal: **Jackson**

Judge: James D. Todd

1-31-06

Dan Long started working in 1999 for Proctor & Gamble at its plant in Jackson, TN – the facility makes, among other things, Pringles potato chips. His job was as a quality control technician.

In February of 2001, Long alleged race discrimination at Proctor & Gamble in an EEOC complaint. A year later on 1-21-02, he was out of work. Proctor & Gamble explained that on 1-20-02, he had falsified a quality control check. This malfeasance, the company explained, was the only reason that motivated the firing.

As time passed, Proctor & Gamble discovered other reasons for which it would have fired Long. He had worked since 1988 for a predecessor to Proctor & Gamble – he was fired from that spot in 1995 because of a sexual harassment charge. Then when Long reapplied, he explained his previous separation was related to a plant closing – this was not true. Had Proctor & Gamble known this (it didn't until after it canned Long), it would have fired him anyway.

This investigation was relevant to this civil lawsuit. In it, Long alleged the firing represented retaliation for his EEOC complaint. It was his proof that in the year after the complaint, he came under increased scrutiny and excessive monitoring. [He denied that he had falsified the report.] The plaintiff also postured that the discipline of firing was disproportionate to the offense. If Long prevailed, he sought both compensatory and punitive damages.

Proctor & Gamble defended as above.

*Introducing the*  
**The TJVR 2005 Year in Review**

**Available in a PDF Format (Adobe)**

The 2005 Year in Review has just been published and at 273 pp. bound, it is our most ambitious project yet in Tennessee. It includes comprehensive analysis of the 426 jury verdicts we reported in our 2005 issues. They are sorted in a way that has never been done before in this state. The Review includes more than twenty reports on all sorts of patterns, trends and categories.

The Book is available either in print or in a PDF (Adobe) format. [The PDF version is fully searchable with Adobe.] Each version of the 2005 Book sells for \$150.00.

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*Have you seen the TJVR 2005 Year in Review?  
Here's a partial look at one of the reports.*

**The 2005 Million Dollar Verdicts at a Glance**  
(Awards are not adjusted for comparative fault)

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

**For the full report, see the 2005 TJVR Year in Review**