

Jefferson County Jury Verdicts - 1990 to 1993

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Auto Negligence - Drunk driver rear-ends elderly couple; verdict includes \$75,000 for punitive damages

Division: Schroering - (12)

Date: 1-8-91

Style: *Franklin v. Thompson*, 88 CI 2541

Plaintiff: Lee Sitlinger

Defense: Bradley Hume

Verdict: \$108,190 for plaintiffs

Facts: Adolf - Male - Age 69 - Shoulder & Soft-Tissue Neck Injury

Marie - Female - Age 71 - Soft-Tissue

At Newburg and Old Shep, a drunk driver, Richard Thompson, rear-ended an elderly couple, Marie and Adolf Franklin as they sat in traffic. Liability for this wreck was not a jury issue.

Because of the crash, Marie endured soft-tissue symptoms and incurred medical bills of \$1,495. Between the wreck and trial, Marie died of an unrelated gall bladder surgery. Adolf complained of a shoulder injury, plus soft-tissue neck symptoms. Although semi-retired, he also sought impairment damages. His medical bills were \$2,444. Additionally, the Franklins sought punitive damages.

The jury awarded Adolf his medicals as claimed, plus \$15,000 for suffering, but nothing for impairment. The estate of Marie was given her medicals, plus \$5,000 for suffering. Franklin also took \$9,250 for property damage. The jury valued the punitive damage claim at \$75,000. The verdict for the Franklins totaled \$108,190.

Award Summary: *Adolf*

Suffering - \$15,000 (\$75,000 cap)

Impairment - Zero (\$50,000 cap)

Medicals - \$2,444 as claimed

Marie

Suffering - \$5,000 (\$50,000 cap)

Medicals - \$1,495 as claimed

Punitives - \$75,000 (No cap)

Resolution: A consistent judgment for plaintiffs was entered followed by an order of satisfaction.

Auto Negligence - Dump truck rear-ends plaintiff; threshold verdict for defendant

Division: Schroering - (12)

Date: 12-3-91

Style: *Matthews v. Holbert Trucking*, 90 CI 10057

Plaintiff: James McCrorey

Defense: Courtney Guild

Verdict: Threshold verdict for plaintiff

Facts: Plaintiff - Male - Age 52 - Whiplash

Thomas Matthews, age 52, was rear-ended on Preston Highway by a dump truck driven by Kevin Wellman for Holbert Trucking. Liability was no issue, and as a result, Matthews suffered a whiplash injury. The defense contested injury, calling the MVA minor.

To reach damages, plaintiff had to hurdle both threshold issues. The jury found there was no permanent injury and that \$1,000 of medicals had not been incurred; that ended the inquiry and no damages were awarded.

Resolution: Judgment for defendant entered. Plaintiff appealed the threshold verdict and it was affirmed.

Auto Negligence - Multi-car crash results in soft-tissue symptoms to two plaintiffs and a zero verdict

Division: Schroering - (12)

Date: 9-10-91

Style: *Sparks & Napier v. Weakley et al*, 90 CI 1726

Plaintiff: Jim Carpenter & J.D. Raine

Defense: Matthew Troutman for Weakley

Charles Theiler for Giltner

William Orbersen for Martin

Verdict: Zero verdict for both plaintiffs

Facts: Donna - Female - Age 42 - Soft-Tissue

Etta - Female - Age Unknown - Soft-Tissue

On 7-18-88, there was a four car crash on I-64. Donna Sparks, and her passenger Etta Napier, both suffered soft-tissue injuries in this wreck. They sued the other three drivers, Bettie Weakley, Belinda Giltner and Barbara Martin. Although the written record is not clear how the wreck happened, all three defendants denied fault.

The jury first considered fault, and found Sparks and defendant Martin were not to blame. It did find Weakley and Giltner at fault, apportioning 50% to each. The distinction became less important, when the jury valued the suffering of each plaintiff at zero; the

Medical Negligence - Failure to timely diagnose cancer in infant child is alleged

Division: Schroering - (12)

Date: 2-5-90

Style: *Bender v. Schoo*, 88 CI 7367

Plaintiff: Thomas Conway

Defense: Byron Miller

Verdict: Defense verdict on liability

Facts: Plaintiff - Male - Infant - Increased Cancer Risk

Brandon Bender, then two months old, was treated by Dr. Bernard Schoo for a knot on his cheek. For a period of time, Schoo monitored the growth of the spot, until it was ultimately learned it was cancerous. The spot was removed, and Brandon underwent chemotherapy thereafter.

In this action, he sued for negligence, asserting Schoo should have earlier identified the spot as cancerous, and for damages, cited an increased risk of recurrence. In support, Bender pointed to proof that Schoo admitted the misdiagnosis. Schoo countered that his care was proper, and regardless, the chance of recurrence was slight.

The jury found Schoo not at fault, and awarded Bender no damages. He had sought \$500,000 each for impairment, suffering and future medicals. The record is not clear, but in terms of age, this Brandon Bender would appear to be the current basketball star at Ballard High School.

Resolution: Judgment for defendant entered. Plaintiff appealed the failure to enter a DV as Schoo admitted a misdiagnosis that the spot was benign; the lower appellate court reversed, but the Supreme Court reversed that decision and reinstated the original trial judgment for Schoo.

Medical Negligence - Elderly man's penile prosthesis is damaged by a catheter

Division: Johnstone - (3)

Date: 5-19-92

Style: *Williams v. Jewish Hospital*, 90 CI 2620

Plaintiff: Gary Hillerich

Defense: Alex Rose

Verdict: Defense verdict on liability

Facts: Plaintiff - Male - Age 73 - Catheter Injury

In a 4-3-89 incident, during cardiac surgery at Jewish

Hospital, Gerald Williams, age 73, sustained an injury to his penile prosthesis by the hospital's insertion of a catheter. The court record is clear on the theory of negligence, or the hospital's response.

However it happened, the jury found for the hospital on liability, and awarded Williams nothing. His only element of claimed damage was suffering, capped at \$125,000.

Resolution: Judgment for defendant entered.

Medical Negligence - Man groggy from hemorrhoid surgery slipped and fell in his hospital room

Division: O'Bannon - (5)

Date: 10-2-92

Style: *Vires v. Humana Surburban Hosp.*, 89 CI 5211

Plaintiff: Joseph White

Defense: Todd Thompson

Verdict: Defense verdict on liability

Facts: Plaintiff - Male - Age 51 - Soft-Tissue Injuries Plus A Cut to the Head

It was 10-15-88, and James Vires, age 51, was recovering from a hemorrhoid surgery in his hospital room at Surburban Hospital in Louisville. Still groggy from the effects of medicine, he fell in the bathroom and struck his head on the commode. He suffered a cut just above his eyebrow, as well as assorted soft-tissue injuries. His medical expenses were \$1,157 plus \$100,000 for suffering.

He sued the hospital and claimed the nurses had failed to comply with doctor's orders to keep Vires in bed. The jury instruction asked if Surburban exercised ordinary care. The verdict was for the hospital, and plaintiff took nothing.

Resolution: Judgment for defendant entered.

Dram Shop - Brown & Williamson executive suffers a severely crushed ankle when hit by drunk driver; jury exonerates the bar where he got drunk

Division: Potter - (7)

Date: 5-22-90

Style: *Willingham v. Hi-View Lounge*, 88 CI 2469

Plaintiff: William Garmer & Keith Hunter

Defense: Charles Sandmann

Verdict: Defense verdict on liability

Facts: Plaintiff - Female - Age Unknown - Crush Injury to Ankle & Broken Leg

Glenn Dean was drinking at the Hi-View Lounge on 3-28-87, and later that night he was driving on Poplar Level Road. His BAC was .28. He lost control and crashed head-on into Gwenda Willingham, a Brown and Williamson executive. As a result, she suffered a severe and disabling crush injury to her ankle, plus a broken leg. Complications resulted, leaving her significantly impaired.

While Dean was criminally convicted and sentenced to prison, in this suit, Willingham sued Hi-View under a dram shop theory. She sought her medicals of \$89,000, impairment of \$450,000, plus \$400,000 for suffering. The jury found for Hi-View on liability and awarded her nothing.

Resolution: The court record is not available and the resolution is unknown.

Dram Shop - Passenger with underage drinker is injured in car crash; verdict for plaintiff, but only 5% fault apportioned to liquor store

Division: Eckert - (1)

Date: 9-11-91

Style: *Sutton v. Main Street Liquor*, 88 CI 8787

Plaintiff: Charles Cunningham

Defense: Michael Kelly

Verdict: \$111,681 for plaintiff less 95% comparative fault

Facts: Plaintiff - Male - Age 16 - Broken Leg

Benny Sutton, age 16, was a passenger with an underaged drunk driver, Campbell, who struck a concrete abutment. Sutton sued Main Street Liquors, who he contended was responsible for selling alcohol to Campbell. At trial, Main Street was the only defendant, although plaintiff and Campbell's care was considered for purposes of apportionment.

As a result of this wreck, Sutton suffered broken leg and a dislocated knee. The jury found all at fault, apportioning 5% to Main Street, 60% to the driver Campbell, and 35% to Sutton. He was then awarded \$71,681, his medical bills, plus \$25,000 for suffering. He also took \$10,000 for lost wages, and \$5,000 for impairment. The verdict totaled \$111,681, less 95% comparative fault.

Award Summary: Medicals - \$71,681 as claimed
Suffering - \$25,000 (\$250,000 cap)
Lost Wages - \$10,000 (\$14,000 cap)
Impairment - \$5,000 (\$90,000 cap)

Jury Question: The jury asked in deliberations if they had to award the full amount for an element of damage, or if they could just put in zero.

Resolution: Judgment for plaintiff for \$5,584, reflecting apportionment. An order of satisfaction has been entered.

Dram Shop/Auto Negligence - Drunken plaintiff steps from a car and died when struck by traffic; defendants are the driver of his car(sober) and the bar where he had been

Division: Karem - (2)

Date: 7-3-91

Style: *Grawemeyer v. Gilbert & Fern Creek Tavern*, 89 CI 2286

Plaintiff: John Taylor

Defense: Marvin Coan for Gilbert (Driver)

Michael Darnell for Fern Creek Tavern

Verdict: Defense verdict on liability for Gilbert; DV for Fern Creek Tavern

Facts: Plaintiff - Male - Age 47 - Death

On 3-26-88, Cary Grawemeyer became intoxicated at the Fern Creek Tavern, and later was a passenger in the car of his designated driver, John Gilbert. Grawemeyer exited the car and attempted to cross Bardstown Road. He didn't make it, and a car struck him.

In this case, Gilbert was a defendant, as well as Fern Creek Tavern on a dram shop theory. For purposes of apportionment, the other driver's care was also in issue. The estate sought medicals of \$642, funeral of \$1,002 plus destruction of \$371,274.

The court granted a DV to Fern Creek Tavern, and

General Negligence - Small children suffer PTSD after a neighbor's tree falls into their bedroom

Division: Shobe- (15)

Date: 8-21-91

Style: *Gant v. Vimont*, 88 CI 9474

Plaintiff: Carl Frederick

Defense: Campbell Ewen

Verdict: \$693 for Candace; \$627 for Robert

Facts: Plaintiff - Robert - Age 9 - PTSD

Plaintiff - Candace - Age 6 - PTSD

On 4-6-88 in a thunderstorm, a tree from Louis Vimont's home in Old Louisville fell over. It fell over and into the neighbor's house, crashing into the children's bedroom. Little Robert and Candace Gant avoided injury as the tree just grazed them, but both of them suffered from post-traumatic stress disorder since the event. As Vimont admitted liability, the only jury issue was damages.

First, the panel was asked if the incident had caused injury. The jury said yes, and turned to damages. It awarded each child their medical expenses as claimed, but nothing for suffering.

Award Summary: *Robert*

Medicals - \$627 as claimed

Suffering - Zero (\$25,000 cap)

Candace

Medicals - \$693 as claimed

Suffering - Zero (\$25,000 cap)

Resolution: Judgment for plaintiff entered, then resolved by the parties..

General Negligence - Man cleaning underside of a lawn mower suffers cut injury to his hand

Division: Schneider - (14)

Date: 6-8-90

Style: *Lee v. General Rental Center*, 89 CI 1634

Plaintiff: Kirk Hoskins

Defense: John Martin

Verdict: Defense verdict on liability

Facts: Plaintiff - Male - Age 43 - Cut to Hand

On 7-30-88, Truett Lee had rented a lawnmower from the defendant, and later after using it, he suffered a cut to his hand while cleaning the undercarriage. His medical bills were \$413, and he also sought impairment and suffering.

He sued the General Rental Center for negligence regarding the faulty mower blade. The jury was also asked to consider Lee's fault.

The panel exonerated General Rental Center, and found Lee 100% to blame, awarding no damages.

Resolution: Judgment for defendant entered.

General Negligence - Baserunning mishap in softball game results in a broken wrist

Division: Ewing- (16)

Date: 1-9-90

Style: *Shipley v. Church*, 88 CI 4429

Plaintiff: Stephen Pence

Defense: James Dilbeck

Verdict: \$3,322 for plaintiff

Facts: Plaintiff - Female - Age 32 - Broken Wrist

Jo Shipley, age 32, was playing in a co-ed softball game when Douglas Church, a baserunner, collided with her as she played first base. As a result, she suffered a broken wrist, and in this action, sued Church for negligence in running into her. Church countered that the collision was unavoidable and denied fault.

The jury found Church solely to blame under a negligence theory and awarded Shipley \$3,322, which included \$2,500 for pain and suffering.

Award Summary: Medicals - \$650 as claimed

Suffering - \$2,500 (\$50,000 cap)

Impairment - Zero (\$35,000 cap)

Products Liability - Tire blow-out causes wreck and death of man, age 24

Division Knopf - (8)

Date: 4-24-91

Style: *Flesch v. Huber Tire & Ryder Truck*, 89 CI 9540

Plaintiff: Ronald Hillerich & Thomas Conway

Defense: William Bowman for Huber Tire

James Hickey for Ryder Truck

Verdict: \$1,096,448 for plaintiff

Facts: Plaintiff - Male - Age 24 - Death

On I-65 on 6-13-89, Kenneth Flesch, was driving a Ryder van. Suddenly, a tire blew out, and the van rolled over. In the crash, Flesch was killed. His estate sued Huber Tire, who retread the tire, and Ryder, who rented the truck.

The jury found Huber's retread defective, and also a violation by Ryder in renting the truck. It was apportioned 70% to Huber, 30% to Ryder. Flesch's estate took \$43,948, his medicals, \$2,500 for the funeral, plus \$50,000 for suffering. Impairment was valued at an even \$1,000,000. The verdict totaled \$1,096,448 and is assessed 70% to Huber Tire, 30% to Ryder Truck.

Award Summary: Medicals - \$43,948 as claimed
Funeral - \$2,500 as claimed
Suffering - \$50,000 (\$200,000 cap)
Impairment - \$1,000,000
(\$1.9 million cap)

Resolution: Judgment for plaintiff entered. Ryder appealed and the verdict was affirmed.

Products Liability - Negligently designed foot insert leads to ulcer and debilitating injury for diabetic

Division Higgins - (13)

Date: 10-26-90

Style: *Meyers v. Commonwealth Prosthetics*,
89 CI 901638

Plaintiff: Theodore Amshoff

Defense: Susan Phillips

Verdict: Defense verdict on liability

Facts: Plaintiff - Female - Age 59 - Foot Ulcer

Peggy Meyers, a longstanding diabetic, had rigid inserts prepared at the direction of her doctor for foot pain. The defendant, Commonwealth Prosthetics provided and fitted the inserts for Meyers. Thereafter, she developed an ulcer which was slow to heal. It later

resulted in multiple surgeries, and by trial, she was confined to a wheelchair. She sued Commonwealth for negligence, and sought her medicals of \$34,243, plus \$1.2 million for suffering.

The defense denied negligence, and instead pointed to the ulcer as the cause of the cancer, not the inserts. The jury found for the defense on liability, awarding plaintiff nothing.

Resolution: Unknown as the court record is missing.

Products Liability - Tire failure causes dump truck to overturn killing plaintiff, age 31

Division: Schneider - (14)

Date: 3-6-91

Style: *Popp v. Goodyear Tire & Goodyear Great Britain*, 88 CI 1418

Plaintiff: Nicholas Baker

Defense: Robert Breetz for Goodyear Tire

John Ballantine for Goodyear Great Britain

Verdict: Directed verdict for Goodyear Tire; Defense verdict on liability for Goodyear Great Britain

Facts: Plaintiff - Male - Age 31 - Death

On 8-14-97, Barry Popp was driving a dump truck when a tire blew out. He lost control and his truck overturned. He was comatose a month before death.

In this action, the estate sued Goodyear Tire, the seller, and Goodyear Great Britain, the tire manufacturer. On DV, the seller was dismissed at trial. The jury instruction as to the manufacturer asked if the tire was in a defective condition such that it was unreasonably dangerous.

The jury answered in favor of the defendant, didn't reach Popp's care as it pertained to failing to wear a seatbelt, and awarded the estate nothing.

Resolution: Judgment for defendant entered. Plaintiff appealed and it was affirmed.
