

Kentucky Trial Court Review

The Most Current and Complete Summary of Kentucky Jury Verdicts

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Civil Jury Verdicts

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Products Liability - While

working at a limestone mining site, the plaintiff fell some 20 feet from an elevated bulk conveyor belt – he suffered serious injuries in the fall and died 15 months later – in a lawsuit first filed by him and then revived by his estate after his death, it was alleged the conveyor was unreasonably dangerous because it didn't feature a double walkway or overhead anchorage for tying off

Jones v. Process Machinery, 10-147

Plaintiff: Paul B. Martins and Erin Campbell, *Helmer Martins Rice & Popham*, Cincinnati, OH and Justin Lawrence, *Lawrence & Peters*, Florence

Defense: Peter J. Sewell, Thomas N. Peters and Charles Walker, *Sewell O'Brien & Neal*, Louisville

Verdict: Defense verdict on liability
Court: **Gallatin, J. Frohlich**,
12-10-12

Melvin Jones, age 58, was working on 10-19-09 for Sterling Materials in Verona, KY. The company operates a limestone mine. On this day Jones was walking on an elevated bulk belt conveyor – it features a walkway on one side. The conveyor was manufactured by Process Machinery.

Jones had climbed onto the conveyor to trim a frayed edge that was on the opposite side of the walkway. Jones was not wearing fall protection as mandated by MSHA safety regulations. As Jones worked he lost his balance and fell some 20

feet.

Jones suffered serious injuries and multiple fractures in the fall. He was rendered a ventilator-dependent paraplegic and remained hospitalized until his death 15 months later. The medical bills were \$3,531,000, the instructions limiting his past and future wage loss to \$429,980. Pain and suffering was claimed in the same sum as the medicals.

Jones initially filed this products liability case against Process Machinery. After his death the estate revived the action and continued to prosecute it to trial. It was alleged the conveyor belt was defective because it was not equipped with double walkways nor was there an overhead anchorage for tying off. The estate also alleged there were inadequate warnings given of the danger.

The plaintiff's liability experts were Mark Webster, Conveyor Engineer, Wisconsin and Jack Spadaro, Mine Safety Consulting, West Virginia. Damages were developed by an

economist, William Baldwin, Lexington and Cameron Parker, a nurse.

Process Machinery defended the case and denied fault. Besides describing its conveyor as safe, it implicated the plaintiff's own fault in failing to use fall protection. Alternatively he could have rotated the belt to trim it from the ground – a manlift was also available to him. The jury could apportion fault to either the plaintiff or his non-party employer. The defense experts were Frank Loeffler, Conveyor Engineer, Texas and Gary Buffington, Safety Consultant, California. Process Machinery utilized a replica of the conveyor at trial to demonstrate its theory of the case to the jury.

If the estate prevailed at trial it could be awarded medical bills, past and future lost wages (**Ed. Note** - It was not described as destruction) and pain and suffering.

The jury's key interrogatory asked if Process Machinery violated a duty to not "place the conveyor on the

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Kentucky Trial Court Review
January 2013
Table of Contents

Verdicts

Jefferson County

Auto Negligence - The plaintiff treated for soft-tissue injuries after a disputed stop sign crash - \$10,500 p. 3

FELA - The plaintiff, a long-time rail worker, linked a cumulative trauma knee injury to years of walking on rough ballast on the railyard - Defense p. 10

Gallatin County

Products Liability - While working at a limestone mining site, the plaintiff fell some 20 feet from an elevated bulk conveyor belt – he suffered serious injuries in the fall and died 15 months later – in a lawsuit first filed by him and then revived by his estate after death, it was alleged the conveyor was unreasonably dangerous because it didn't feature a double walkway or overhead anchorage for tying off - Defense p. 1

Jessamine County

Premises Liability - The plaintiff tripped over a cord while getting a haircut and suffered a shoulder fracture – while the jury awarded medical bills, it rejected pain and suffering - \$38,671 p. 4

Auto Negligence - The plaintiff suffered a shoulder injury (it continues to pop out of place) following a right of way passing crash - \$40,659 p. 9

Boyd County

Medical Negligence - An infant sustained a fatal hypoxic birth injury that was linked to a delay in mismanaging a shoulder dystocia complication – the defense postured that the hypoxic event was caused by a congenital heart defect - Defense p. 4

Scott County

School Bus Negligence - A motorcyclist was badly injured when a school bus turned into his path - Defense p. 6

Federal Court - London

Civil Rights - A woman alleged she was roughly arrested and her open wounds gruesomely searched for contraband by a Williamsburg policeman - Defense p. 6

Franklin County

Auto Negligence - The plaintiff (a passenger) was injured in a one-car roll-over crash when her driver (who had been smoking marijuana on the way home from a methadone clinic) lost control on I-64 - \$28,117 p. 7

Insurance Contract - A Frankfort jury decided damages only in a case where the plaintiff's home was damaged by falling rock from a nearby cliff – the court had earlier decided for the plaintiff on a coverage question – the litigation has now turned to questions of bad faith - \$119,913 p. 9

Grayson County

Roadway Negligence - A motorist blamed a one-car crash on a rough rural road that was covered with loose gravel - Defense p. 7

Floyd County

Assault - In a domestic dispute, the plaintiff alleged her husband (they were separated) attacked and choked her when she came to the marital home to retrieve personalty - Defense p. 8

Shelby County

Unjust Enrichment - The plaintiff bought his girlfriend a car – when they broke up the boyfriend sued to recover the unpaid balance on the car loan – his girlfriend called the car a gift - \$2,000 p. 8

Madison County

Premises Liability - An apartment dweller fell on a common staircase and broke her ankle – she blamed her fall on the step which had broken edges - Defense p. 9

A Notable Tennessee Verdict

Nashville, Tennessee

Products Liability - In a roll-over crash involving a 1991 Ford Explorer, a girl (age 9) died when she was ejected – her estate blamed her ejection on the failure of her seatbelt – the seatbelt manufacturer countered that the girl was likely not wearing a seatbelt at the time of the crash - Defense p. 10

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market in such condition that it was defective and unreasonably dangerous." The answer was a unanimous no for the defendant and having so found the duties of the plaintiff, his employer, apportionment and damages were not reached. A defense judgment was entered.

Auto Negligence - The defendant pulled from a stop sign on Rudy Lane and into the path of the plaintiff – the crash left the plaintiff with soft-tissue injuries – the defendant implicated the plaintiff’s look-out – the plaintiff prevailed at trial and took \$1,822 for her pain and suffering

Ricketts v. Ables, 10-6513

Plaintiff: Caroline L. Kaufman, *Anderson Vaughn & Allen*, Louisville

Defense: Patrick B. Healy, *Markesberry & Richardson*, Cincinnati, OH

Verdict: \$10,500 for plaintiff less 75% comparative fault

Court: **Jefferson**, J. Cowan, 12-6-12

It was 12-7-09 and Becky Ricketts traveled on Rudy Lane in St. Matthews. At the same time David Ables approached Rudy Lane on Bonner Avenue. At this location Bonner Avenue is inferior to Rudy Lane and is controlled by a stop sign.

An instant later Ables pulled from the stop sign and into the path of Ricketts. A moderate t-bone collision occurred, the airbags deploying in Ricketts’s vehicle.

Ricketts had never seen Ables coming. She theorized that she failed to see him stopped at the stop sign because in fact he wasn’t stopped – he had rolled through the stop sign. Ricketts further suggested that Ables was in a hurry as at the time he was headed to pick up his grandson at the bus stop.

Ables initially defended and denied fault – he contested that he had stopped and looked both ways. Judge Cowan neutered that defense and granted a directed verdict against him on liability. The plaintiff’s duties remained in issue however, Ables implicating Ricketts’s look-out. He focused that Ricketts had never seen him before the impact.

However it happened there was a collision and Ricketts, age 60, has since treated for a soft-tissue injury. Immediately reporting to the ER at Baptist Hospital East, Ricketts complained of a soft-tissue strain and bruised ribs related to the airbag deployment. She then followed with her family doctor and a chiropractor. She continues to report chronic back pain. Her treating chiropractor, Gregory Thomas, Louisville, testified live at trial.

The plaintiff’s incurred medical

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Trial Judge _____ Date Verdict _____

Verdict _____

For plaintiff _____ (Name, City, Firm)

For defense _____ (Name, City, Firm)

Fact Summary _____

Injury/Damages _____

Submitted by: _____

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He died three hours after his birth.

In this lawsuit pursued by his parents (Amber and Derek), negligence was alleged by Frederick and the hospital nurses in managing the shoulder dystocia complication. It was the plaintiff's theory that the defendants failed to properly intervene, the prolonged shoulder dystocia causing Garrett to suffer a hypoxic injury.

The estate's experts included Dr. Ronald Carzoli, Neonatology, Jacksonville, FL, Fred Duboe, Ob-Gyn, Hoffman Estates, IL and Deborah Crews, RN, Neptune Beach, FL. If the plaintiffs prevailed each

parent sought \$2.5 million for their consortium interests. The infant's destruction was valued at \$4,391,993 by an economist, William Baldwin, Lexington.

The defendants postured that their treatment met the standard of care, the delivery being uneventful until the unpredictable shoulder dystocia complication appeared. They postured that in response to the complication, the medical team appropriately managed the dystocia and delivered Garrett. An Ob-Gyn expert, Dr. Stephen DeVoe, Columbus, OH, noted that fetal death because of shoulder dystocia is

so rare as to be virtually non-existent. Other defense experts were Dr. William Roberts, Ob-Gyn, Chattanooga, TN and Denise Hundley, RN, Lexington.

The cause of the infant's hypoxic event was explained by the defendants as being caused by a congenital heart defect. Experts developing this theory were Dr. James Hunta, Pediatric Cardiology, Tampa, FL and Dr. Halit Pinar, Pediatric Pathology, Providence, RI.

The plaintiffs rebutted the cardiac death theory with two experts, James Johns, Pediatric Cardiology, Vanderbilt and Dr. Alyia Husain,

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