

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.

Legal Negligence - The plaintiff hired a lawyer to sue a pilot after a plane crashed into her house; the lawyer did sue, but not until after the statute of limitations had expired, the plaintiff later alleging that beyond the lawyer's negligence in extinguishing the underlying claim, he committed fraud in his representation

Osborne v. Keeney, 06-1717

Plaintiff: Lee Sitlinger, *Sitlinger*

McGliny Theiler & Karem, Louisville

Defense: Matthew G. Breetz and

Andrew G. Beshear, *Stites & Harbison*, Louisville

Verdict: \$5,107,949 for plaintiff

Circuit: **Jefferson**, J. McDonald, 8-27-06

Brenda Osborne, a high school teacher in Pineville, was home alone in Middlesboro on 10-22-02. At the same time, Clifford Quisenberry of Ohio was piloting a small plane, having taken off from the nearby local airport.

Quisenberry lost the use of an engine and then the control of his plane almost immediately, crashing into the roof of Osborne's home.

It was a shock to say the least and Osborne's house was destroyed – Quisenberry and his son, a passenger in the plane, survived but were seriously injured. While Osborne was not struck by the plane, wreckage or resulting fire, she was significantly shaken. That evening she was treated at the local ER for shock and sky-high blood pressure – the local doctor who treated Osborne would later testify that her patient had sustained a physical injury.

Osborne initially hired attorney Gerald Greene, Pineville, in November of 2002 to pursue claims arising from the plane crash, including against her own homeowner's insurer, State Farm. She discharged him in April of 2002 and hired a new lawyer, Steve Keeney of

Louisville.

Keeney had made a name for himself with a true crime bestseller, *Death Benefit* – in the book, Keeney depicts himself as heroic in uncovering what appeared to be an accidental death was in fact a murder-for-profit. The book later became a made-for-TV movie.

Almost immediately after hiring Keeney, State Farm paid on the homeowner's claim – Osborne would contend that Keeney did next to nothing to secure that payment and still took a nearly \$60,000 contingency fee from the insurance proceeds.

Thereafter from her perspective, Keeney did nothing. The statute of limitations passed and no lawsuit was filed against the airplane pilot. Keeney did belatedly filed suit in federal court in London. In hopes of escaping the statute of limitations, Keeney postured that Osborne had been mentally incompetent and unable to pursue the claim. This theory was significantly undermined as there was proof Osborne could handle her affairs and was back to teaching within weeks of the crash. The federal case was dismissed by Judge Danny Reeves in November of 2005.

Osborne then turned the tables on Keeney and sued him for negligence, breach of contract and fraud in his representation. Her liability expert, Stephen Hixson, Attorney, Bowling Green, identified that Keeney's care was not just negligent, it rose to the level of being grossly negligent. The criticisms against Keeney were global, encompassing his initial engagement letter (Osborne said it was a fraud), to his failure to file the lawsuit and then failing to communicate with Osborne after it was dismissed. Osborne was not kind in describing her former lawyer as a "liar, a cheat, a crook and a shyster" who "blew a case worth a million dollars."

If prevailing, Osborne sought damages associated with the underlying airplane claim, including property damage, pain and suffering and punitive damages. The jury could also return legal fees paid to Keeney, as well as award her mental anguish (associated with negligence) and

punitive damages against Keeney. In developing her case against Keeney and over the lawyer's objection, plaintiff was permitted to introduce proof of Keeney's prior bar suspensions.

Keeney defended that he aggressively pursued the case and upon being hired, it was his efforts that persuaded State Farm to cough up the homeowner's coverage – until he got involved, Osborne had not yet received anything. Then to the delay in pursuing Quisenberry, Keeney called it a function of two things, (1) Osborne's expressed desire to go after only State Farm, and (2) the inherent weakness of that claim as Osborne had no physical injury. [Plaintiff countered through her local doctor that she had been harmed by the shock of the crash.]

Keeney's defense continued that despite having little chance to win, Osborne was undeterred and thus he filed suit. While it was filed a bit late, Keeney explained that delay wasn't his fault, it being a function of Osborne's indecision. He also denied any fraud or breach of contract. A defense expert on liability was Linda Hopgood, Lexington. Keeney also diminished damages with a psychiatric IME, Dr. David Shraberg, Lexington, who linked plaintiff's ongoing emotional symptoms to a crushing 1999 divorce, the airplane crash only causing a temporary flare-up. Shraberg's proof tied into a key theme of the defense of the case – that is, Osborne was never hurt in the first place (she was actually very lucky as explained by Keeney) and thus if the underlying case against Quisenberry had no value, as well, any legal negligence by Keeney resulted in no damages.

The proof in this case was introduced in Louisville over several weeks. Then to the jury, the court's first instruction provided an adverse inference in favor of Osborne as a portion of Keeney's file was missing. Then to liability, the jury unanimously concluded that Keeney had violated the standard of care, breached his contract and engaged in fraud.

Moving to damages on the lost value of the airplane case, Osborne took nothing for the damage to her house, but

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