

Kentucky Trial Court Review

The Most Current and Complete Summary of Kentucky Jury Verdicts

March 2007

Published in Louisville, Kentucky

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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.

Products Liability - A young mother was left a paraplegic after an SUV roll-over crash precipitated by a defective towing dolly

Burke v. U-Haul, 3:03-32

Plaintiff: Peter Perlman, *Perlman Law Offices*, Lexington and Tyler S. Thompson, *Dolt Thompson Shepherd & Kinney*, Louisville

Defense: James A. Murphy, *Murphy Pearson Bradley & Feeney*, San Francisco, CA and Charles S. Cassis, *Frost Brown Todd*, Louisville

Verdict: \$11,590,024 for plaintiffs less 10% comparative fault

Federal: **Louisville**, J. Heyburn, 2-13-07

On 10-29-02, Chris Burke had rented a U-Haul tow-trailer for his family. They were then in the process of a move from Indiana to Florida – Chris is an airline pilot. Traveling with Burke in his 1993 Ford Explorer Sport was his wife, Corry, then age 29 and a native of Indonesia, and their six-month old son, Ryan. As Chris traveled on I-65, the tow component on the trailer began to sway.

That sway caused the SUV to roll-over as it crashed into a guardrail. In the resulting crash, Corry was left a paraplegic. She has no sensation from her ribs down. Ryan was also hurt in the wreck, sustaining a fractured skull – while a serious injury, Ryan, now age 5, has shown no residual effects. His medicals were \$10,739 and he sought pain and suffering.

The injury to his mother was more devastating and she is permanently confined to a wheelchair. Her medicals were \$249,285 and she additionally sought future care, impairment and suffering. In presenting her case, Corry was described as an especially sympathetic plaintiff who has struggled to deal with her disability.

An economist for the plaintiff was

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William Baldwin, Lexington – the life care plan was quantified by Patricia Hicks, Lexington. Chris presented a derivative consortium claim.

In this lawsuit, the Burke family initially targeted Ford. It settled. The case advanced to trial against U-Haul,, the Burkes alleging a defect in the tow component that caused it to be unstable. Particularly, there was an unacceptable weight ratio in the tow dolly which combined with the high center of gravity in the Ford, led to the roll-over event. Experts for the plaintiff on liability were Bob Anderson, Mechanical Engineer, Anthony Sances, Biomechanical

Engineer (seat belt issues), Goleta, CA and Larry Barone, Engineer and former U-Haul employee, Sun City, AZ.

The trial judge excluded proof at trial of similar accident events. Plaintiff had been prepared to introduce evidence of eleven other incidents. Heyburn ruled this represented just a handful of incidents when compared to the thousands of uneventful rentals.

U-Haul defended the case on several fronts. It first denied there was any defect in the tow dolly. The defendant believed the crash was the father's fault – he simply lost control while driving because of excessive steering.

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Another year has passed and the one-of-a-kind text Kentucky litigators have relied upon since 1998 is back with its ninth edition. At more than 500 pages, the KTCR 2006 Year in Review includes the complete verdict summary from every reported case in 2006, statewide from Paducah to Pikeville, Covington to London and all points in between. Beyond the full text of the 300 verdict summaries, the Year in Review has all the reports that make the individual cases useful – even better for this year, all the reports bring together **nine** years of data in an encyclopedic format.

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[Witnesses to the crash countered that the fishtail of the SUV began before Chris tried to steer out of it.]

Corry was also implicated, U-Haul arguing she was not belted, that failure to wear a seat belt contributing to her injuries. [The company theorized she was tending to the baby at the time of the crash.] Corry countered that she was belted. Experts for U-Haul included Tyler Kress, Human Factors, Knoxville, TN, James Schultz, Engineer, California and Peter Broen, Engineer.

This case was tried for two weeks, the nine-person jury then deliberating for two days. The verdict was mixed. It found against U-Haul on both a products and a negligence theory. Continuing, it found no fault by Chris the driver – Corry as the passenger was found to have violated her standard of care.

The fault was then assessed 90% to U-Haul, the remainder to Corry. Turning to damages, Corry took her medicals of \$249,285, plus \$3,830,000 for future care. Impairment was \$1.4 million, the jury adding \$4,000,000 more for suffering. Husband's consortium interest was valued at \$1.6 million. Corry's award totaled \$11,079,285 less 10% comparative fault.

Turning to the claim of little Ryan, he took his medicals as claimed, plus \$500,000 for pain and suffering. Although no judgment had been entered when the record was reviewed, presumably no comparative fault will apply to the award of the boy.

U-Haul has since sought JNOV relief and to stay execution of the judgment. The motion has cited numerous grounds for relief, but has focused its criticism on plaintiff's expert Barone, noting he'd done no testing and didn't have experience with this particular tow dolly. The motions are pending.

Medical Negligence - A surgeon was blamed for draining a pleural effusion too quickly, leading to a sudden and fatal re-expansion pulmonary edema

House v. Halpin et al, 04-0623

Plaintiff: Richard Hay, *Law Office of Richard Hay*, Somerset, Laurence R. Dry, Knoxville and Gary N. Hudson, *Stansbury Zoellers & Hudson*, London
 Defense: Richard P. Schiller, *Schiller Osbourn Barnes & Maloney*, Louisville
 Verdict: Defense verdict on liability
 Circuit: **Laurel**, J. Messer, 2-23-07

Jonathan House, age 42, underwent an open heart surgery on 7-17-03 to repair

an Ebstein's anomaly (a heart defect) at Marymount Hospital in London. The surgery was uneventful. Eight days post-surgery, House called the surgery group, Surgical Associates of Lexington (it then had an office in London). Chest pain was reported. The nurse told him the symptoms were likely related to incisional pain. House called three days later to report similar symptoms – he was again dismissed.

House called the next day (now twelve days post-surgery) and was told to go to the ER. There he was first seen by an ER doctor, Morris Moss, who referred him on to a surgeon, Dr. Dermot Halpin of Surgical Associates. [A partner of Halpin had performed the Ebstein's anomaly procedure.]

Halpin identified a pleural effusion (a collection of fluid on the lung). He began to drain the effusion. As Halpin did so, House went into cardiac arrest. Halpin believed he had no choice but to finish draining the effusion and he did so. House did not recover and was dead within minutes.

House's estate filed a lawsuit and targeted several defendants, settling with both the hospital and Moss. The hospital was blamed for failing to run certain tests quickly enough. Moss was implicated as well in failing to order a blood-thinner test in a timely fashion. [While negligence was not alleged regarding the initial surgery, the effusion was linked by the plaintiff to a Coumadin overdose – while the nature of the effusion is not known with certainty, it was described as bloody.]

The case advanced to trial against both Halpin and his surgical group, the estate pursuing separate claims against both. The theory against Halpin alleged negligence by him in draining the effusion too quickly – his lung began a sudden re-expansion after the pressure of the effusion was removed, leading to a fatal pulmonary edema. The claim regarding Surgical Associates concerned the handling of the two first two phone calls, the estate arguing that House should have been sent to the ER after the first call and certainly after the second. [In terms of timing, those calls were made respectively, eight and eleven days post-surgery. There was no negligence alleged on the third call, the twelfth day, the nurse sending House to the ER.]

Experts for the estate were Dr. Abe DeAnda, Cardiothoracic Surgery, New York, NY, Dr. Peter Tudor, Pulmonology, St. Louis, MO. Damages

were developed by a Lexington economist, William Baldwin. At death, House worked in robotics for a car-parts manufacturer. His destruction was capped at \$1.6 million.

The estate also sought \$100,000 for five days of pain and suffering by House, representing from the first phone call to death. His wife's consortium interest for the same period was \$250,000. The final element of damages was the consortium claim of his daughter, Jasmin, then age 14 – it was capped at \$4,000,000.

The Surgical Group defended the phone call claim and argued to the first call, that it was reasonable to explain to House that his pain was incisional. Then to the second call, the group denied there was one. As noted above, on the third call, House was sent to the ER.

Halpin also defended that his care in responding to the effusion was proper. That is, he did the only thing he could do which was drain it. Plaintiff's death then was linked not to re-expansion after the effusion was drained, but to underlying congestive heart failure, a condition which already existed and which was exacerbated by the existence of the effusion. Defense experts were Dr. Allen Lansing, Surgery, Louisville and Dr. Richard Light, Pulmonology, Nashville, TN.

The jury's verdict on liability was for Halpin and his surgical group, the estate taking nothing. A defense judgment has been entered.

Defamation - A marketing employee for a minor-league baseball team (the Lexington Legends) was defamed in a team chatroom by a fan – the fan suggested the employee had engaged in improper conduct with players and that she wanted to sleep with the team's owner

Hansing v. Mullins, 03-2786

Plaintiff: James M. Morris, *Morris & Morris*, Lexington

Defense: Thomas F. Towles, Georgetown

Verdict: \$30,000 for plaintiff

Circuit: **Fayette**, J. Ishmael, 2-21-07

Chelsea Hansing worked in the summer of 2002 as the Director of Client Services for the minor league baseball club, the Lexington Legends. The team had developed a real following in the community. To serve that following, the team maintained a chatroom on its website.

There was one fan, Patricia Mullins, who lived and breathed Legend baseball.