

# Kentucky Trial Court Review

The Most Current and Complete Summary of Kentucky Jury Verdicts

April 2013

Published in Louisville, Kentucky Since 1997

17 K.T.C.R. 4

*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.

### Medical Negligence - A

**neurosurgeon was blamed for leaving behind cotton packing during a nasal surgery to remove the pituitary gland and discharging the plaintiff without double-checking her nose – the doctor defended that his discharge was proper and it was more likely the cotton packing was not from this surgery**

*Rhodes v. Schwank, 10-1379*

Plaintiff: Brian Schuette, Bowling Green

Defense: David F. Broderick and J. Kyle Robey, *Broderick & Davenport*, Bowling Green

Verdict: Defense verdict on liability

Court: **Warren**, J. Wilson, 2-26-13

Verna Rhodes, then age 45, underwent a nasal surgery in July of 2009. It was a so-called transsphenoidal hypophysectomy. The procedure was to remove her pituitary gland. It was performed at the Medical Center of Bowling Green by a neurosurgeon, Dr. William Schwank. During the surgery Schwank used cotton packing to control bleeding. The surgery itself was uneventful and three days later Rhodes was discharged.

Rhodes was seen by Schwank nearly two weeks later (8-11-09) and then again on 9-8-09. On both occasions Rhodes reported nasal pain. On that second visit Schwank identified and removed some cotton

packing from Rhodes's nose.

Her symptoms persisted and some two months later she was treated by an ENT. It was discovered that cotton packing from the initial surgery remained in her nose. Rhodes underwent a second surgery to remove the remaining packing. She has continued to complain of complications including with her allergies.

In this lawsuit Rhodes blamed Schwank for discharging her on 7-31-09 without having made an inspection to be sure there was no cotton packing left behind. He was also blamed for his delay in identifying the problem following the presentation by Rhodes with pain on both 8-11-09 and 9-8-09. The plaintiff's expert was Dr. Samuel Sprehe, ENT, Amory, MS. If Rhodes prevailed at trial she sought medicals of \$47,220 plus \$157,581 more for future care. Her lost wages were \$5,522. The jury could add \$250,000 each for past and future suffering.

Schwank defended the case that his initial discharge on 7-31-09 was proper. He also defended that on the two key follow-up visits, he made an appropriate referral to an ENT. His neurosurgery expert was Dr. Leon Ravvin, Lexington. The jury could also apportion fault to the non-party Medical Center and the plaintiff herself. A second expert, Dr. Amy Budoff, ENT, Memphis, TN, linked the cotton packing to a surgery after the initial one performed by Schwank.

The jury's verdict was for Schwank that he had not violated the reasonably competent neurosurgery standard by a 10-2 count. That ended the deliberations and the jury then did not reach the duties of the non-party hospital, the plaintiff or damages. A defense judgment was entered.

During the course of the trial, the jury had asked several questions. The content of those questions is unknown, Judge Wilson ordering

**\*\*Order the 2012 KTCR Year in Review\*\***

*Now Shipping*

**The KTCR 2012 Year in Review**

**Fifteenth Edition (The first was 1998)**

**Order the 2012 KTCR Year in Review for \$270.00. The 15<sup>th</sup> edition is here**

*(\$286.20 including sales tax for Ky. Residents)*

See the order form on page 3 or call us toll-free at 1-866-228-2447 to pay by MC/Visa/Amex

**Kentucky Trial Court Review**  
**April 2013**  
**Table of Contents**

**Verdicts**

**Jefferson County**

Tortious Interference - A car dealer sued a finance firm and its lawyer regarding their conduct in attempting to collect a debt - \$840,000 p. 4

Hospital Negligence - A hospital patient developed a large pressure sore – hospital nurses were blamed for failing to turn the patient every two hours - Defense p. 6

Auto Negligence - In a bar parking lot, a girlfriend ran over her boyfriend – the boyfriend suffered a dislocated shoulder - \$34,324 p. 9

Age Discrimination - A convenience store cashier alleged a hostile age-related work environment - Defense p. 10

**Warren County**

Medical Negligence - A neurosurgeon was blamed for leaving behind packing during a pituitary gland removal surgery - Defense p. 1

**Christian County**

Auto Negligence - An elderly defendant ran a red light and crashed into the plaintiff – despite it being a hard hit, the jury rejected the case on causation - Defense p. 3

**Whitley County**

Workplace Negligence - As the plaintiff unloaded a tractor-trailer with a forklift, the driver of the truck drove away - \$125,000 p. 4

**Kenton County**

Medical Negligence - Neurosurgeon blamed for missing a stroke diagnosis - Defense p. 5

Auto Negligence - A ten-year old bicyclist darted into the path of an oncoming vehicle – the crash left the bicyclist with a very serious femur fracture - Defense p. 11

**Laurel County**

Underinsured Motorist - While the tortfeasor rear-ended the plaintiff, a defense verdict on liability was still returned - Defense p. 5

Auto Negligence - A serious head-on collision left the plaintiff with a crush injury to his foot - \$191,727 p. 11

**Clark County**

Medical Negligence - An ER doctor was blamed for failing to perform a complete examination and make a proper referral in a case involving a rare pseudo tumor condition - Defense p. 8

**Boyle County**

Insurance Agent Negligence - A local insurance agent was implicated for his referral of a supposedly inferior roofer after the plaintiff's roof was damaged in a storm - \$19,462 p. 9

**Nelson County**

Breach of Contract - In an odd case, a boyfriend sought to collect on note his girlfriend had assigned to him that was purportedly owed by the girlfriend's ex-husband - Defense p. 9

**Campbell County**

Breach of Fiduciary Duty - A granddaughter was blamed for pilfering her grandfather's estate - Defense p. 10

**Notable Indiana Verdict**

*Evansville, Indiana*

Medical Negligence - A nine-year old girl suffered a serious thyroid injury after being given a 100 times dose of radioactive tracing liquid - \$2,000,000 p. 12

**The Book is Now Shipping**  
*Order the 15th Edition*

The KTCR 2012 Year in Review is now shipping.

Order the 2012 Year in Review for \$270.00

**Call to Place your MasterCard/Visa/Amex Order - 1-866-228-2447 or send in this form with a check**

Return with your check to:

The Kentucky Trial Court Review  
 9462 Brownsboro Road, No. 133  
 Louisville, Kentucky 40241

\_\_\_\_\_ Name

\_\_\_\_\_ Firm Name

\_\_\_ \$270.00 for the KTCR 2012 Year in Review

*(Available in either a print or PDF version)*

*(\$286.20 including Ky. Sales tax)*

\_\_\_ Print version

\_\_\_\_\_ Address

\_\_\_ PDF version

E-Mail required \_\_\_\_\_

\_\_\_\_\_ City, State, Zip

them a state secret.

**Auto Negligence - An elderly defendant ran a red light and crashed hard into the plaintiff's car – the vehicle was totaled - the plaintiff then followed at the ER and then with a course of chiropractic care – a Hopkinsville jury rejected the case on damages**

*Brown v. Foster, 11-1411*

Plaintiff: James E. Bruce, Jr., Hopkinsville

Defense: Jeffrey A. Taylor, Landrum & Shouse, Lexington

Verdict: Defense verdict on causation

Court: **Christian, J. Self,**  
 1-31-13

Guy Brown was involved in a red light crash in early 2011 in Hopkinsville. At the intersection of 9<sup>th</sup> Street and Campbell Street, his vehicle was struck by the elderly Dorothy Foster. Foster (who was on

the way to church) had run the light. It was a significant impact, Brown's vehicle being totaled. Fault was no issue.

Brown was treated that day at the ER (he drove himself) for soft-tissue neck and back pain. Some ten days later he started treating with a local chiropractor, Dr. Joseph Pound. His care included a course of some 45 adjustments. Pound later testified that Brown had sustained a significant and chronic soft-tissue injury. The plaintiff's medical bills were \$14,000. In this lawsuit Brown blamed Foster for the crash. If he prevailed at trial, he sought his medicals, future care and pain and suffering.

Foster defended the case and argued no compensable injury had been sustained. She noted that Brown declined an ambulance ride (presenting himself to the ER) and then he delayed starting chiropractic

care for ten days. The defense also cited proof that Brown had a sporadic history of low-back pain that pre-dated the crash.

This jury did not reach damages, first answering for Foster that the wreck was not a substantial factor in causing injury to Brown. That ended the deliberations and the plaintiff took nothing. A defense judgment has been entered – the plaintiff subsequently moved for a new trial. The motion was denied.

The Kentucky Trial Court Review  
9462 Brownsboro Road, No. 133  
Louisville, Kentucky 40241  
502-339-8794 or 1-866-228-2447  
Online at Juryverdicts.net

From Paducah to Pikeville, Covington to London  
Comprehensive and Timely Kentucky Jury Verdict Coverage

## Ordering is Easy

The Kentucky Trial Court Review  
The Most Current and Complete Summary of Kentucky Jury Verdicts  
**Call to Place your MasterCard/Visa Order - 1-866-228-2447**

*The 2012 Year in Review is now shipping*  
**Simply select print or PDF version and complete this order form**  
*Call us at 1-866-228-2447 to pay by MasterCard/Visa*

Return with your check to:  
The Kentucky Trial Court Review  
At the above address

\_\_\_ \$299.00 for a one year subscription to the  
Kentucky Trial Court Review  
(\$316.94 including 6% sales tax for KY residents)

\_\_\_ \$270.00 to order the  
2012 KTCR year in Review (15<sup>th</sup> edition)  
(\$286.20 including 6% sales tax for KY residents)

\_\_\_ **Print Version**

\_\_\_ **PDF Version**

Your E-Mail

\_\_\_\_\_  
Name

\_\_\_\_\_  
Firm Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, Zip