

Kentucky Trial Court Review

The Most Current and Complete Summary of Kentucky Jury Verdicts

May 2013

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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 girl who was born deaf received cochlear implants at age 4 – soon after the implants leaked and she suffered several electrical shocks – in this lawsuit against the manufacturer of the implants, it was alleged the manufacturer knew of the risk of leakage but delayed making it public because company insiders were poised for a big pay-off after the company was sold – a Louisville jury bought the theory and imposed \$6.25 million in punitive damages

Sadler v. Advanced Bionics, 3:11-450
Plaintiff: Tim Edwards, Edwin E. Wallis and Kevin M. McCormack, *Glassman Edwards Wyatt Tuttle & Cox*, Memphis, TN and Ronald E. Johnson, *Schachter Hendy & Johnson*, Ft. Wright

Defense: Michael O'Donnell, Craig R. May, Sean G. Saxon and Kara Rosenthal, *Wheeler Trigg O'Donnell*, Denver, CO and W. Kennedy Simpson, *Thompson Miller & Simpson*, Louisville

Verdict: \$7,246,235 for plaintiff

Federal: **Louisville**, J. Russell, 4-16-13

Breanna Sadler of Meade County was born deaf in 2002. Nearly four years later on 1-13-06, she received cochlear implants. The implants (a Hi Res 90K model) were manufactured by Advanced Bionics. The company had endured problems with this particularly model dating to 2004 – they were finally recalled in

Correction

In the April 2013 issue in a case styled *Perry v. M&T Financing*, (page 4) an \$840,000 verdict for the plaintiff, we incorrectly identified Clare F. Cox, Donald L. Cox and David W. Hemminger, *Lynch Cox Gilman & Mahan*, Louisville as trial counsel for the defendants. The *Lynch Cox* counsel did not join the case until after the verdict was rendered. We regret the error.

March of 2006. The implants were leaking and allowing body moisture to seep into the electrical parts. This led to both a risk of the failure of the implant and the user being shocked.

The recall occurred not quite two months after Breanna's implants were installed. Her doctor was unaware there was a leakage problem with the implants. Breanna didn't have problems with the implants until December of 2009.

Breanna was suddenly shocked, moisture having leaked into her implants. Her mother would recall the girl convulsed from an aggressive shock and then vomited. Her mother disconnected the device. Not sure what the problem was, her mother reconnected it. Breanna was shocked again. Breanna received a third and final shock when her doctor connected it again. Ultimately the devices were removed and six weeks later a working version made by a competitor was installed.

Breanna, now age 11, remains wary of glasses or even hearing aids because she is fearful of being shocked. Her proof developed that for a time, Sadler lived in a cold, dark

and silent world.

In this lawsuit against Advanced Bionics (prosecuted by her parents), it was alleged the implants were negligently and/or defectively manufactured. As the case was tried to the jury, the plaintiff alleged that (1) the implants were not manufactured in conformity with the packaging supplement, and (2) Advanced Bionics didn't perform validation testing in actual or simulated use conditions. Key experts for Breanna were Tom Green, Metallurgy and Hermeticity, Bethlehem, PA and Harold Pellerite, Medical Device Review, Damascus, MD. She sought medicals of \$236,305 plus \$9,910 for her father's lost wages and travel expenses. Her pain and suffering damages were not capped.

Beyond her claim for compensatory damages, Breanna alleged Advanced Bionics engaged in reckless behavior. It was her proof that going back to 2004, there were reports of leakage problems with the implants. Faced with those complaints, the company continued to make and ship the devices without

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treated for a course of neck and back pain with Dr. Timothy Lee, Chiropractor, Shelbyville – he called her pain a result of the aggravation of acceleration of pre-existing conditions – Pierce had a history of two prior spinal surgeries. When her symptoms did not improve, Pierce sought additional treatment with a Wayne, PA orthopedist, Dr. Keith Girton.

In the Spring of 2012, Girton performed two surgeries (cervical and lumbar) on Pierce. The surgeries were a success, Pierce indicating her symptoms are much improved.

In this lawsuit Pierce sought to recover damages from Price. She incurred medical bills of \$187,595 and lost wages of \$66,167. The jury could award Pierce \$250,000 for pain and suffering.

Price defended the case and minimized the claimed injury. In that regard he leaned on an IME report from Dr. Timir Banarjee, Neurosurgery, Louisville. In a bizarre IME report, Banarjee explained that Girton's surgeries on Pierce were "sinful" because they provided her false hope. The expert linked her symptoms to pre-existing conditions. He conceded that she "might have" sustained some strain, but in spite of that possibility, it was his opinion she has "not been left with any damages."

As the jury deliberated this case, it had questions for the court: "AUTO INSURANCE?? What all did the defendant's auto insurance pay for? Medical? Ambulance? ER visit?" Judge Hickman replied that he was unable to give further instruction on the matter.

The deliberations continued and the jury rejected any award of lost wages or medical bills to Pierce. She did take \$4,000 for her pain and suffering. A consistent judgment reflected the verdict. The case has since been dismissed as settled.

Auto Negligence - In a soft-tissue rear-end case involving chiropractic care, a Madisonville jury awarded a portion of the plaintiff's medicals and nothing more

Parker v. Furgeson, 11-865

Plaintiff: J. Keith Cartwright, *Frymire Evans Peyton Teague & Cartwright*,
Madisonville

Defense: Michael K. Bishop, *Bishop & Associates*, Bowling Green

Verdict: \$1,200 for plaintiff

Court: **Hopkins**, J. Brantley,
3-12-13

Geraldine Parker, then age 56 and a former counselor at the Job Corps, came to an exit ramp on the Pennyriple Parkway. A moment later she was rear-ended by Nelda Furgeson. The collision resulted in moderate damage. Fault was conceded.

Parker has since treated for soft-tissue neck and back pain – she has also reported headaches. Parker didn't report an injury at the scene, but presented to the Trover Clinic the next day. Then a week later she first saw a chiropractor, Dr. Rob McCray, Madisonville.

Her medical bills were \$1,910 and she sought \$50,000 more for pain and suffering. [As Parker was already disabled at the time of crash (she is on dialysis three times a week), she did not present a wage claim.]

In this lawsuit she sought damages from Furgeson – Furgeson died in the interim, the case proceeding against her estate. The estate defended and minimized the claimed injury. It focused that (1) there was no injury at the scene, and (2) Parker's symptoms were more likely related to a second MVA in 2011.

The case was tried in Madisonville in a single day. This jury had questions as it deliberated: When was this lawsuit filed? Was it after the second crash in 2011? Did the plaintiff receive compensation by insurance companies? The court did

not answer.

Returning with a verdict and considering damages only, Parker took \$1,200 of her medicals. Pain and suffering was rejected. Parker sought to have the jury sent back to deliberate again as the result was inconsistent. Judge Brantley declined to do this.

While a judgment has been tendered to the court, some six weeks following the trial, the judgment had not been entered. Presumably it will be for the defendant, reflecting that Parker's medicals were paid by PIP.

Even though there is not yet a judgment, Parker has moved for a new trial. She argued the pain and suffering award was inadequate and noted even the defendant conceded some she was entitled to some award for this category. The motion is pending.

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