

# Kentucky Trial Court Review

The Most Current and Complete Summary of Kentucky Jury Verdicts

July 2012

Published in Louisville, Kentucky Since 1997

16 K.T.C.R. 7

*Fifteen Years of 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.

## Road Construction Negligence

**- A trucker died a horrific and fiery death when he crashed through an unmarked construction zone – witnesses would recall the trucker crawling away from his burning truck and calling for help – his burns were severe and he died six hours later – his estate blamed the road construction firm for failing to properly mark the construction**

*Herd v. Scott's Construction*, 10-55

Plaintiff: Mark A. Cox, *Merritt & Associates*, Oklahoma City, OK and W. Nicholas Wallingford, *Wallingford Law*, Lexington

Defense: Aaron J. Silletto, *Goldberg & Simpson*, Louisville

Verdict: \$3,078,490 for plaintiff all but \$1,000,000 of punitive damages being reduced by 40% comparative fault

Court: **Simpson, J. Crocker**, 4-12-12

Fate Herd, then age 46, was an experienced trucker working in the middle of the night on Labor Day Weekend in 2007. He hauled a regular and dedicated load from Memphis to Bowling Green. That early morning (4:25 a.m.), Herd traveled northbound on I-65 near Franklin. At this time the interstate was in the process of a large reconstruction. Scotty's Contracting and Stone was the general contractor on the project.

Scotty's had knocked off its work for the weekend. As a part of that process, traffic was rerouted via an acceleration/deceleration lane. There would be disputes about how this lane (which moved traffic from the far left lane to a middle lane) was marked. Scotty's would recall that when work finished that Friday, it was marked with orange construction barrels. It would

later be contested if the site was marked.

However it was marked, Herd didn't appreciate the acceleration/deceleration lane. He crashed his big rig into a steel and concrete barrier. The truck burst into flames, its gas tank having ruptured. Herd himself was consumed by the flames, suffering severe burns over 95% of his body. Herd crawled away from the truck, witnesses recalling he was crying for help.

The injuries were grave. Herd was transported to a hospital in Nashville. He died six hours later. Herd was survived

by his wife, Vickie.

In this lawsuit Herd's estate (representing his wife) sued Scotty's and alleged negligence by it in failing to properly mark the road construction. Particularly it cited a failure to provide positive guidance in the form of orange construction barrels that the traffic pattern was changing. Accident experts for the estate were Fred Arndt, Prescott, AZ and Andrew Ramisch, Montgomery Village, MD.

Herd's incurred medicals were \$69,484 and the funeral was \$9,006.

\* \* \* Do you have the 14<sup>th</sup> Edition yet? \* \* \*

Also Available in a PDF Format

Order The KTCR 2011 Year in Review

Another year has passed and around here, that means it's time to ship out the 2011 Year in Review Volume. The 2011 edition, the **fourteenth** in the series (it's hard to believe it's been fourteen years), is the best ever, topping out at *720 pages and chronicling 4,693 verdicts*. This year it is available not just in the print edition, but also separately as a PDF file. [Search the entire document from your computer. No more carpal tunnel claims sifting through the pages.] Both versions, with different utilities, cost the same.

Besides all the jury verdicts, readers have access to fourteen years of encyclopedic data on medical verdicts, car wrecks, slip and fall trials, bad faith and on and on. There is a new report on the largest pain and suffering verdicts from 1998 to the present

If it's important to lawyers that try or settle civil tort cases, it's in The Book.

Don't guess the value of a case or a particular claim.

**Read the Book and know what it's worth.**

*See the backpage to order or call us*

**Order the KTCR 2011 Year in Review**

*Just \$255.00 plus tax (\$270.30 for KY residents)*

*Call us toll-free at 1-866-228-2447 to pay by credit card or simply complete the order form in this issue.*

**Now Available in Print Edition and PDF Format**

**Kentucky Trial Court Review**  
**July 2012**  
**Table of Contents**

**Verdicts**

**Jefferson County**

Auto Negligence - *The plaintiff had a controversial microdiscectomy surgery following a crash – a defense IME (Banarjee) didn't think much of the procedure or the plaintiff's doctor* - \$34,344 p. 7

Real Estate Contract- *The plaintiff alleged a deal to sell a parcel of land was scuttled by the defendant – this led to a foreclosure and the tarnishing of the plaintiff's credit and reputation* - \$680,000 p. 9

**Simpson County**

Road Construction Negligence - *A trucker died a fiery death after crashing in an poorly marked construction zone – punitives of \$1,000,000 were assessed against the road construction firm* - \$3,078,490 p. 1

**Christian County**

Medical Negligence - *Two orthopedists and a physician's assistant were blamed for their post-surgical response as the plaintiff developed a compartment syndrome* - \$1,260,705 p. 3

**Fayette County**

Medical Negligence - *A medical group was blamed for failing to get a timely insurance pre-approval – the insurer partially declined coverage, leading to a second procedure that could have been avoided if the surgery had been fully approved* - Defense p. 4

**Warren County**

Outrage/Employment - *In a retrial of \$1.768 million verdict from 2001 (reversed on appeal), the employer prevailed the second time a little more than ten years later* - Defense p. 5

**McCracken County**

Dram Shop - *Two plaintiffs were badly injured when a drunk driver crashed into them – while the plaintiffs prevailed at trial against the drunk, a bar that had purportedly served the drunk was exonerated at trial* - \$952,114 and \$412,147 p. 6

**Floyd County**

Premises Liability - *The plaintiff slipped on a wet floor and sustained a meniscal injury* - \$50,000 p. 6

Auto Negligence - *The plaintiff's suffering award in a soft-tissue injury case was less than half of the awarded medical bills* - \$34,900 p. 10

**Boyd County**

Medical Negligence - *A diabetic patient linked the amputation of his right leg to an ER doctor having placed an intravenous line in his femoral artery instead of his femoral vein* - Defense p. 7

**Hardin County**

Wood Splitting Negligence - *While assisting his grandfather with a hydraulic wood-splitter, the plaintiff suffered a crush injury to his hand* - Defense p. 7

**Barren County**

Medical Negligence - *The plaintiff blamed her surgeon for failing to timely diagnose that he had clipped her hepatic duct during a laparoscopic cholecystectomy* - Defense p. 8

**Nelson County**

Medical Negligence - *A primary care physician of a nursing home resident was blamed for decline and subsequent death of an elderly patient* - Defense p. 8

**A Notable Out of State Verdict**

**Cookeville, TN - State Court**

Fraternity Negligence - *A freshman at Tennessee Tech sustained a paralyzing injury in a slip and slide event sponsored by Fiji social fraternity* - \$8,000,000 p. 10

**Have you tried a case lately? We are traveling all over the Commonwealth and communicating with court personnel, but if we know about a verdict, we'll get on it right away**  
**Let us know about it at the**  
 Kentucky Trial Court Review

Case Style \_\_\_\_\_

Jurisdiction \_\_\_\_\_ Case Number \_\_\_\_\_

Trial Judge \_\_\_\_\_ Date Verdict \_\_\_\_\_

Verdict \_\_\_\_\_

For plaintiff \_\_\_\_\_ (Name, City, Firm)

For defense \_\_\_\_\_ (Name, City, Firm)

Fact Summary \_\_\_\_\_

\_\_\_\_\_

Injury/Damages \_\_\_\_\_

Submitted by: \_\_\_\_\_

\_\_\_\_\_

**Return to the Kentucky Trial Court Review or use any other format to reach us with verdict news**

Email to: [info@juryverdicts.net](mailto:info@juryverdicts.net)

**Real Estate Contract - The seller of a parcel of distressed land alleged the deal was scuttled by the buyer's misconduct – this led to a foreclosure of the property which damaged the plaintiff's reputation and credit – a Louisville jury found for the plaintiff, awarding substantial damages for injury to her reputation and business – Judge Stevens later set aside the award, finding there was inadequate proof of damages**

*Jeter v. Sterling Development*, 09-8095  
 Plaintiff: David B. Mour and Zachary L. Taylor, *Borowitz & Goldsmith*, Louisville  
 Defense: Matthew F. Coogle, *Ackerson & Yann*, Louisville  
 Verdict: \$680,000 for plaintiff  
 Court: **Jefferson**, J. Stevens,

2-23-12

Barbara Jeter, who operated Harvest Homebuilders, owned a distressed parcel of property in Oldham County. It represented 67.6 acres of unimproved land. Foreclosure by a local bank was looming. Jeter's problems were solved when Carl Baker of Sterling Development signed an option deal to purchase the parcel in September of 2007. The deal provided that Sterling Development work diligently to seek R-2 zoning for the parcel. The sale would never go through.

After the deal with Sterling Development fell through, the bank foreclosed. A deficiency was entered against Jeter. The effect of the foreclosure, Jeter alleged, ruined her successful business. Because of the

deficiency (caused by Sterling Development's failure to close the deal), Jeter lost her credit line and her business failed.

In this lawsuit Jeter alleged two counts against Sterling Development, (1) breach of contract in failing to proceed diligently to complete the sale, and (2) tortious interference with a contract. The tort claim focused on proof that after striking the deal with Jeter, Baker began to secretly negotiate with the bank in an effort to buy the property more cheaply. Essentially he wanted to buy the land, Jeter argued, but undercut the original deal which sent it into foreclosure. If Jeter prevailed she sought \$188,000 associated with the deal that didn't go through. She also claimed \$350,000 for damage to her reputation and \$500,000 for her diminished commercial viability.

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 2011 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

\_\_\_\_\_  
Name

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

\_\_\_ \$275.00 for a one year subscription to the  
Kentucky Trial Court Review  
(\$291.50 including 6% sales tax for KY residents)

\_\_\_ \$255.00 to order the  
2011 KTCR year in Review (14<sup>th</sup> edition)  
(\$270.30 including 6% sales tax for KY residents)

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

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

\_\_\_\_\_  
Address

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

Your E-Mail