

# Kentucky Trial Court Review

The Most Current and Complete Summary of Kentucky Jury Verdicts

July 2023

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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.

**Auto Negligence/UIM - The plaintiff (a passenger) was injured in a parking lot crash (at the corner of the building) and she sued and settled with the other driver – thus at trial she sought damages from her UIM carrier (for the other driver) and she also presented an independent claim against her mother**

*Overbey v. Cole et al*, 18-90233

Plaintiff: Blake Nolan and Joseph Rugg, Lexington and Jarrod Bentley, Prestonsburg all of *Morgan & Morgan*  
Defense: John J. Ellis, *Dehner & Ellis*, Morehead for Cole

Robert B. Cetrulo, *Cetrulo Mowery & Hicks*, Edgewood for State Farm (UIM)

Verdict: \$61,555 for plaintiff assessed 50% to defendant Cole and remainder to since-settled tortfeasor – net verdict against Cole of \$25,777 and \$777 against State Farm on UIM

Court: **Rowan**

Judge: David Barber

Date: 5-31-23

Glenissa Overbey, then age 51 and a clerk at a state park, was a passenger in a vehicle with her mother, Sharron Cole. They were in Morehead at the New Towne Square Shopping Center on 3-12-17. At the same time Billy Garvin was pulling from a Buffalo Wild Wings in the

shopping center between the movie theater.

A moment later there was a t-bone crash as the Garvin and Cole vehicles collided. It occurred at the corner of two buildings. The parking lot was not marked and there were stop signs. Essentially neither driver expressly had the right of way.

However it happened Overbey has since treated for shoulder pain. An MRI showed a full thickness tear of her rotator cuff. Four months later in June of 2017, she underwent a surgical repair. Her medical bills were \$47,340 and the claimed lost wages were \$4,215. She also sought damages for pain and suffering.

Overbey moved first against Garvin. He tendered his \$25,000 policy limits. She also sued her mother and blamed her for the crash. The other defendant at trial was State Farm, her UIM carrier. Thus she could take damages against her mother directly and then against

State Farm to extend it exceeded a \$25,000 floor.

Initially mother moved for summary judgment. Why? Daughter had testified her mother did nothing wrong and the court ruled this was a judicial admission. State Farm contested this finding and cited that Garvin's testimony implicated the mother's duties. The court reversed itself on summary judgment.

Then to the merits of the case Cole (the mother) denied fault and blamed Garvin. State Farm similarly (in the shoes of Garvin) thought Cole was to blame. The plaintiff continued to testify that her mother did nothing wrong.

The defense of the case also contested damages. An IME, Dr. Arthur Lee, Orthopedics, Cincinnati, OH, thought the mechanism of injury (a rotator cuff tear in a parking lot collision) was "extraordinarily unusual."

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# Kentucky Trial Court Review

July 2023

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#### Franklin County

*Employment Retaliation* - A teacher at the Kentucky School for the Deaf alleged her teaching contract was not renewed in retaliation for speaking up about lack of ASL-competent mental health staff at the school – the plaintiff dodged a bullet on the morning of trial, the defense filing a *Fratzke* motion on unliquidated damages and despite their not being timely CR 8.01(2) answers, the court allowed the plaintiff to amend her answers after the trial began - \$240,000 p. 4

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### \* \* \*The KTCR Blog\*\*\*

We launched our blog last fall and it stays current on litigation news for Kentucky lawyers. We have regular updates on verdicts, motions and opinions. It's good stuff that you won't read about anywhere else.

The verdict form from the big case . . . yesterday.

We probably published it there.

[The KTCR Blog](#)

#### Campbell County

*Defamation* - A small-town police officer (Bellevue) alleged he was defamed by a letter sent from another nearby small police force (Dayton) that accused him of unprofessional and cancerous behavior - Defense p. 8

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*Medical Negligence* - The plaintiff's decedent, a man (28), reported to the ER from work with back pain and was treated with pain medicine – he was discharged within 45 minutes and upon returning to work, he collapsed – taken back to the hospital he did not recover from a code and died – his estate blamed an ER doctor and hospital nurses for negligence in treating him - Defense p. 9

#### Whitley County

*Nursing Home Negligence* - The plaintiff alleged global neglect by a nursing home and sought \$60,000,000 in damages – a defense verdict was returned but the trial court ordered a new trial after interrogating a juror who felt pressured in the jury room - Defense p. 10

Medical Harrodsburg. Sadek evaluated Flannery and noted Flannery reported pain that was an "8" and that he had vomited once. Sadek prescribed Zofran for the nausea and Toradol for the pain. A Haggin Memorial nurse administered the medications. There was proof that Flannery was laughing and joking in the ER. Sadek discharged him at 1:49 a.m. Flannery had been there less than 45 minutes.

Flannery returned to work. A little after 2:00 in the morning, Flannery passed out. He was returned to Haggin Memorial by ambulance and arrived at 2:37 a.m. A code was called and hospital staff (including Sadek) provided life support and performed CPR. Flannery could not be resuscitated and was pronounced dead at 3:39 a.m. His exact cause of death is unknown but was believed to be cardiac in nature.

Flannery's estate (represented by his mother) sued Sadek, the hospital and Island Memorial. The plaintiff's expert, Dr. Larry Russell, Family Medicine, Hendersonville, NC, was critical of the management of Flannery's care.

Russell indicated that Flannery needed labs and x-rays and then monitoring while the tests were evaluated. Had that been done, the theory went, Flannery would have still been at the hospital when he collapsed – this would have provided him a better opportunity at survival. Thus the combination of an inadequate and incomplete work-up by Sadek and the nurses had led to Flannery's death.

The plaintiff was also critical of the code and alleged nurses falsified documents related to the code. This led to an additional spoliation instruction. The plaintiffs also alleged the conducts of the defendants rose to the level of gross negligence – the jury could assessed

\$5,000,000 in punitive damages.

The compensatory damages represented Flannery's medicals of \$4,242 and \$9,515 for his funeral. The decedent's pain and suffering was limited to \$3,000,000. A vocational expert, Ralph Crystal, Lexington, quantified Flannery's destruction at \$1.244 million.

The estate had also presented a negligent credentialing claim against Island Medical. However that claim was bifurcated at trial and thus while Island Medical was at trial, its participation was limited.

Sadek and the hospital defended the case that they properly evaluated Flannery in the ER. His symptoms provided no reason to suspect a cardiac origin. Dr. Joseph Stapczynski, ER, Phoenix, AZ, believed it was a "straightforward" appearance of back pain and Flannery was normal and alert in the ER. Thus at all times Flannery was timely assessed and treated.

The defense also discussed causation. While the cause of Flannery's death is not certain, the defense thought it was likely cardiac in origin. An expert, Dr. Lynne Wagoner, Charleston, SC, noted Flannery had a very enlarged heart and the condition was most probably genetic in nature. In sum Flannery had passed from a sudden and unpredictable cardiac event.

The hospital also denied it had falsified records related to the code or acted improperly in any way. Its experts were Dr. Thomas Andrew, Pathology and Patricia Howard, RN.

This case was tried over five days. The jury exonerated the hospital (reasonably prudent hospital standard) and Sadek (ER standard) and then did not reach other questions including apportionment or compensatory and punitive damages. A defense judgment was entered – the verdict also

extinguished the negligently credentialing claim. The plaintiff has since moved for permission to contact jurors for purposes of professional development.

**Case Documents:**

[Plaintiff Trial Brief](#)

[Defense \(Sadek\) Trial Brief](#)

[Defense \(Hospital\) Trial Brief](#)

[Sadek Expert Disclosure](#)

[Plaintiff Expert Disclosure](#)

[Final Judgment](#)

**Nursing Home Negligence - The plaintiff alleged global neglect by a nursing home and sought \$60,000,000 in damages – a defense verdict was returned but the trial court ordered a new trial after interrogating a juror who felt pressured in the jury room**

*Morgan v. Hillcrest Nursing Home*, 09-72

Plaintiff: Stephen M. Garcia and Matthew M. Coman, *Garcia & Artigliere*, Louisville

Defense: Mark E. Hammond and A Pete Pullen, *O'Bryan Brown & Toner*, Louisville and Wesley R. Tipton, *Tipton & Tipton*, Corbin

Verdict: Defense verdict on liability

Court: **Whitley**

Judge: Dan Ballou

Date: 1-13-23

Bessie Morgan, age 76, was a resident from June of 2006 until September of 2007 (some 15 months) at the Hillcrest Nursing Home in Corbin. Morgan suffered from advanced dementia and required extensive supervision. She transferred to a different facility in September and died three months later on 11-21-07.

In this lawsuit Morgan's estate alleged a global pattern of negligence and neglect at Hillcrest. She had 13 falls, 10 pressure sores and a series of infections. They were blamed on under-staffing and generally a facility-wide failure. The estate's