

The Tennessee Jury Verdict Reporter

The Most Current and Complete Summary of Tennessee Jury Verdicts

January 2007

Statewide Jury Verdict Coverage

4 TJVR 1

Unbiased and Independently Researched Jury Verdict Results

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The Tennessee Jury Verdict Reporter 2006 Year in Review

This important bound volume, the second in the series, 254 pp., has just been published, and is ready for immediate delivery. It includes detailed analysis of every kind of case in 2006, easily sorted and indexed. Over 20 individual reports are included, including car wrecks, medicals cases, discrimination suits, premises liability, plus breakdowns of loss of consortium and punitive damage claims. There is also an injury index, which places an average multiplier on several types of bodily injury. The Review includes the full text of the reported cases in 2006, easily referenced by region, style, result and attorney. But this is the second edition, so all the reports and analysis cover a two-year period.

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Civil Jury Verdicts

Timely coverage of civil jury verdicts in Tennessee including court, division, presiding judge, parties, case number, attorneys and results.

& Fisher, Nashville
Verdict: \$101,000 for plaintiff
Court: **Davidson**
Judge: Walter C. Kurtz
10-23-06

Truck Negligence - Although there was no injury reported at the scene, the plaintiff linked a disc injury to a rear-end interstate crash involving a tractor-trailer

Chambers v. Land O' Frost, Inc.,
04-1804

Plaintiff: Mathew R. Zenner, *Blackburn & McCune*, Nashville

Defense: William B. Jakes, III, *Howell*

Martin Chambers, age 51 and a resident of Florida, was traveling through Nashville on 10-17-01. He proceeded on I-65 near Rivergate Parkway. Traffic on the interstate slowed for construction work. Chambers too came to a stop. Behind him on I-65, Gary Garner, driving a tractor-trailer for Land O'Frost, didn't stop in time. He rear-ended Chambers. It was a moderate impact.

Chambers did not immediately seek treatment, waiting until two days later when he had returned to Florida. He has since complained of carpal tunnel and a C5-6 disc injury. It was his proof that because of this injury, he was unable to work and ultimately lost his job. Chambers pursued this case against Land O'Frost, blaming Garner for the rear-ender. His wife, Joan, presented a derivative consortium claim.

Land O'Frost didn't defend on fault. It did contest damages, noting that (1) there was no immediate injury reported, and (2) no surgery was performed.

Fault having been admitted, the jury considered damages only. Chambers took medicals of \$30,000, plus \$20,000 each for suffering and lost wages. Impairment was \$26,000, his wife taking \$5,000 more for her consortium interest. The verdict totaled \$101,000. A judgment for the plaintiffs has been entered.

Rail Negligence - An worker that was scrapping old locomotives suffered fatal injuries when a fuel tank on a locomotive was cut and residual diesel fuel exploded

Garcia v. Norfolk Southern, 02-1949

Plaintiff: Michael S. Raulson, Chattanooga and J. Flint Liddon, *McNamee & Liddon*, Birmingham, AL
 Defense: Craig R. Allen and Bruce D. Gill, *Leitner Williams Dooley & Napolitan*, Chattanooga

Verdict: Directed verdict

Court: **Hamilton**

Judge: Jeff Hollingsworth
 11-15-06

This case involved a tragic incident that occurred as Lydia Garcia, age 32, was working for Progress Rail – it is a large recycling company that purchases scrap locomotives and boxcars from railroads. On this day, Garcia and other employees were dismantling a Norfolk Southern locomotive. The original plan had been to cut up the entire locomotive except for the fuel tank which would be shipped whole.

Contrary to the original plan, an on-the-spot decision was made to dismantle the entire locomotive, including the fuel tank. This was accomplished by cutting

into the fuel tank with a an acetylene torch. As Garcia did this, residual fuel in the tank exploded. She suffered third-degree burns on 80% of her body. The injuries were grave and she succumbed to them two weeks later.

This litigation followed, her estate alleging negligence by Norfolk Southern in turning over the fuel tank to Progress Rail without cleaning it out or alternatively, for having failed to warn of this danger. An expert for the plaintiffs, Tyler Kress, Knoxville, opined that because of the dangerousness of the condition, Norfolk Southern's duty was non-delegable pursuant to OSHA regulations.

In valuing damages, plaintiff's medicals were \$225,000. An economist, Bruce Hutchinson, valued her vocational loss at \$810,000. Besides her husband, Garcia was also survived by three young sons.

Norfolk Southern defended and denied negligence, explaining there was no duty to clean the tank as it was sold "as-is-where-is." The railroad also developed proof that it neither supervised nor controlled the cutting operation and thus was not "management" within the meaning of the OSHA regulations cited by Kress.

At the close of the plaintiff's proof, the court directed a verdict for Norfolk Southern. Judge Hollingsworth cited that the locomotive was sold on an "as-is-where-is" basis and that it was not foreseeable that Progress Rail would cut the fuel tank instead of shipping it whole. Plaintiffs have appealed.

Medical Negligence - During a laparoscopic appendectomy, a boy's iliac artery was purportedly injured, leading to assorted complications and both a physical and emotional injury

Anderson v. Bard, 31469

Plaintiff: Robert J. Shockey, Nashville

Defense: Jay M. Chamness and C.

Bennett Harrison, Jr, *Cornelius & Collins*, Nashville

Verdict: \$960,000 for plaintiffs

Court: **Coffee**

Judge: L. Craig Johnson
 10-5-06

Tyler Anderson, then age 10,

underwent an emergency laparotomy on 2-22-01 at Harton Regional Hospital in Tullahoma. It was performed by a surgeon, Dr. Ralph Bard. In the procedure, Bard confirmed the boy was suffering from appendicitis. Bard successfully removed Tyler's appendix.

Post-surgery, Tyler became hypotensive and his parents were alarmed. They requested a transfer and he was taken to Chattanooga where he was evaluated by a pediatric surgeon, Michael Carr. Carr discovered that Tyler's iliac artery had been lacerated. It took several surgeries to repair the damage.

Beyond the vascular injury, Tyler has also linked emotional symptoms to this surgical misadventure. There was proof he has a learning disability, ADD, dyslexia and self-esteem problems. They sometimes manifest as frequent rages – the boy as well engaged in self-destructive behavior at times, described quite dangerously in the record, as running in front of moving vehicles.

Tyler, suing through his mother, linked both this physical and emotional injury to negligence by Bard. Particularly, during the appendectomy, Bard lacerated the iliac artery, most likely with a trocar. It wasn't just negligence, Tyler thought, to cause the initial injury, but also to fail to identify it in a timely fashion. Plaintiff's liability expert, Brent Miedema, Columbia, MO, identified a standard of care deviation. The plaintiff also argued gross negligence, seeking the imposition of punitive damages.

Bard defended and raised fact disputes. Namely, there was no initial injury to the iliac artery, Bard noting the arterial injury was not discovered in Chattanooga until after Tyler had undergone other procedures. It was also his proof that in the initial laparotomy, there was no unusual blood loss or other reason to suspect an iliac insult. In sum, Bard postured he properly performed the emergency appendectomy, looked carefully for blood loss and not seeing any, the incision was closed. Defense experts are not indicated in the record.

This case was tried for nine days in Manchester. The jury found Bard at fault and then to damage, the plaintiff took his medicals of \$200,000, plus \$760,000 in

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