

The Tennessee Jury Verdict Reporter

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January 2013

Statewide Jury Verdict Coverage

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Truck Negligence - A minor collision between a truck tractor and a cement truck left the plaintiff with a permanent occipital neuralgia condition – the defendant argued that the condition was mostly subjective and the wreck was too minor to have caused a compensable injury

Ray v. Metro Ready Mix Concrete, 07-2928

Plaintiff: Joe Bednarz, Jr., *Bednarz & Bednarz*, Nashville

Defense: Richard C. Mangelsdorf, Jr., *Leitner Williams Dooley & Napolitan*, Nashville

Verdict: \$689,379 for plaintiff

Court: **Davidson**

Judge: Joe Binkley, Jr.

Date: 10-4-12

Thomas Ray operated a Volvo truck tractor on 11-6-05 on Murfreesboro Pike near Fesslers Lane in Nashville. At this location he was rear-ended by Phillip Hay. Hay was operating a cement truck for Metro Ready Mix Concrete. Fault was conceded. In the collision Hay's truck ran up and onto the frame of Ray's truck tractor.

Ray has since treated for an occipital neuralgia condition. It has manifest as chronic neck pain and headaches. There was proof the injury is permanent.

In this lawsuit Ray sought damages from Hay and Metro Ready Mix. He described the collision as a significant

one, noting that the cement truck had ridden up onto the back of his tractor. Beyond simple negligence against Hay, the plaintiff also presented a negligent entrustment claim against Hay's employer. This theory was predicated on proof that Hay had a history of on-the-job accidents. Beyond Ray's primary claim for damages, his wife also presented a consortium count.

Metro Ready Mix first defended the severity of the crash. It described the collision as a minor impact at low speed that was more of a "scrape." Defendant's accident expert, Winthrop Smith, Nashville, believed the impact was insufficient to cause injury – he focused that rather than a hard hit, it was more of a sliding crash as the cement truck rode over the frame of the plaintiff's tractor. Ray rebutted the accident proof from Smith with his own accident expert, Ronald Kirk. Kirk didn't think there was enough evidence present for Smith to reach his conclusions.

The defense also diminished the claimed injury and suggested the diagnosis of occipital neuralgia is a subjective one. Finally to negligent entrustment, Metro Ready Mix minimized Hay's prior accidents suggesting they were isolated incidents related to rough terrain and unique circumstances – it described Hay as an experienced and professional driver.

The jury answered that Hay's negligence proximately caused injury to Ray. It next rejected a negligent entrustment count that asked if the trucking firm knew or should have known Ray was an incompetent driver. [Ed. Note - It was an odd instruction as regardless of whether negligent entrustment was proven or not, Metro Ready Mix was still

vicariously liable for Hay's operation of the truck.]

Turning to damages Ray took medicals of \$44,116 plus \$145,713 in future care. His lost wages were \$63,550. The jury valued his permanent injury at \$25,000.

Loss of enjoyment of life in the past was \$65,000, Ray taking \$40,000 for in the future. His past pain and suffering was valued at \$150,000 – he was awarded \$80,000 for in the future. His wife also took \$50,000 for her past consortium interest plus \$25,000 more for in the future. [The court's instructions provided for ten distinct elements of damage.] The verdict totaled \$689,379. A consistent judgment was entered and it has been satisfied.

Workplace Negligence - A trucker who was picking up a load at an industrial worksite suffered fatal injuries when he became caught in the rear wheels of another tractor-trailer that was backing out of a loading stall

Pennock v. Griffin Industries, 1:11-1071
Plaintiff: Brett J. Beattie and Donald G. Beattie, *Beattie Law Firm*, Des Moines, IA

Defense: Tony R. Dalton and Bradley Aulick, *Wolf McClane Bright Allen & Carpenter*, Knoxville

Verdict: \$750,000 for plaintiff less 45% comparative fault

Federal: **Jackson**

Judge: Edward G. Bryant

Date: 11-19-12

Gary Pennock, then age 54 and a trucker from Illinois, came to Griffin Industries in Obion County. The company recycles animal byproducts into oils and greases. Pennock came with an empty tractor-trailer to have it loaded. The design of Griffin

Industries required truckers to pull into one of five stalls for loading.

Pennock did just that, pulling his truck into a stall for it to be loaded. On this day the workplace at Griffin Industries was busy. All five stalls were in use. As Pennock verified his truck was loaded, a Griffin Industries employee was pulling a truck out of a stall.

This employee (Brandon Richards) struck Pennock with the back wheels of his tractor-trailer as he backed out. Pennock became entangled in the wheels and was dragged for fifty feet. He suffered grave injuries and died several hours later.

In this lawsuit Pennock's estate alleged negligence by Griffin Industries regarding its workplace. The estate cited that the loading area was crowded, loud and poorly lit. There was also proof that Griffin Industries lacked a safety plan. The estate's safety expert was Michael Napier, Truck Safety, Macon, GA.

Griffin Industries defended that its workplace was safe and that reasonable precautions were in place. The defense blamed the accident on Pennock himself for placing himself in the path of the backing truck.

The jury's verdict was mixed on fault. It was assessed 55% to Griffin Industries and the remainder to the estate. Turning to damages this federal jury made a general award to Pennock's estate in the sum of \$750,000. A consistent judgment less comparative fault was entered for the estate in the sum of \$412,500. Griffin Industries has since filed a notice of appeal.

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Trial Judge _____ Date Verdict _____

Verdict _____

For plaintiff _____ (Name, City, Firm)

For defense _____ (Name, City, Firm)

Fact Summary _____

Injury/Damages _____

Submitted by: _____

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The jury's verdict exonerated Howard on liability and McConnell took nothing. A defense judgment was entered. The case is concluded.

Auto Negligence - A soft-tissue plaintiff took an award of medical bills at trial and nothing more

Elguezabal v. Long, 12-15
 Plaintiff: Ira Katzman, Memphis
 Defense: Gerald C. Wigger, *Ortale Kelley Herbert & Crawford*, Nashville
 Verdict: \$2,995 for plaintiff
 Court: **Davidson**
 Judge: Carol Soloman
 Date: 8-6-12

Pepper Elguezabal was involved in

a car wreck on 9-22-10. She was struck by Shelly Long. In this case that began in General Sessions court, the record does not describe where the wreck occurred or how. Fault however was not a jury issue.

Elguezabal has since treated for soft-tissue injuries with a chiropractor. She sought damages from Long in this action. Long defended and minimized the claimed injury.

A Nashville jury first found for

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