

# The Tennessee Jury Verdict Reporter

The Most Current and Complete Summary of Tennessee Jury Verdicts

October 2012

Statewide Jury Verdict Coverage

9 TJVR 10

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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.

**Medical Negligence - Nurses were blamed for a delay in advising the Ob-Gyn that a fetus was in distress – because of that purported error, there was a delay in the performance of an emergency c-section and the infant sustained a hypoxic brain injury - at a first trial in 2007, a defense verdict was returned – retried in 2009, while the plaintiff took \$4.5 million, fault was assessed only 3.75% to the defendant in an apparent quotient verdict – the plaintiff challenged the quotient verdict and after a trip to the Court of Appeals, the case was tried a third time this summer – in this third trial the plaintiff took a much larger award and fault was assessed 40% to the remaining defendant**

*Cullum v. Baptist Women's Pavilion Hospital*, 04-2121

Plaintiff: Joseph P. Bednarz, Sr. and Joseph P. Bednarz, Jr., *Bednarz & Bednarz*, Nashville

Defense: James E. Looper, John E. Hall, Jr. and Jennifer M. Eberle, *Hall Both Smith & Slover*, Nashville

Verdict: \$13,623,000 for plaintiff assessed 60% to the defendant

Court: **Davidson**

Judge: Amanda McClendon

Date: 7-26-12

Patricia Cullum became pregnant in the summer of 1999. She commenced her pre-natal care with an Ob-Gyn, Dr. Susan Mackey. The baby was at term on 5-1-00 and Cullum was admitted to Baptist Women's Pavilion Hospital.

At 1:30 in the afternoon, the infant showed signs of distress, that distress being related to Cullum's uterus having ruptured. The infant's fetal heart rate dropped. Mackey was contacted and commenced an emergency c-section as quickly as she could.

A baby boy, Samuel, was delivered at

1:58. However before that delivery, the boy sustained a compromised blood flow (an ischemic asphyxiation) and suffered a profound and catastrophic brain injury.

In this lawsuit, prosecuted by his parents, the boy alleged negligence by the hospital nurses in that they delayed for some fifteen minutes reporting the diminished fetal heart rate. Plaintiff's expert, Dr. Bruce Bryan, Ob-Gyn, St. Louis, MO, explained that the delay was critical as every minute counted. Had Samuel been born just minutes earlier, his injuries would have been mild. Other experts for the plaintiff were Ebony Parker, RN and a rebuttal expert, Dr. Robert Vannucci, Pediatric Neurology, Mount Gretna, PA.

The plaintiff had also maintained a claim against Mackey. Mackey settled, but her duties remained in issue for purposes of comparative fault.

The hospital nurses defended the case that as soon as the fetal heart tracing was a concern, they promptly notified Mackey. The baby then was delivered and within the so-called thirty minute window from decision to incision. There was also proof that while the uterine rupture was unfortunate, the nurses properly responded. Defense experts were Dr. Frank Boehm, Ob-Gyn, Nashville, Dr. James Carroll, Pediatric Neurology, Augusta, GA and Sheila Chadwick, RN, Knoxville. The defendants were also critical of Mackey's care.

This complex case was resolved at a first jury trial in December of 2007 by a Nashville jury for the nurses. Having so found, the jury did not reach the duties of the non-party Mackey or damages. A defense judgment followed this trial. The presiding judge was Thomas Brothers. See Case No. 1023 in the 2008 TJVR Year in Review.

The plaintiff moved for a new trial and argued the verdict was against the weight of the evidence. In a March 2008 order, Judge Brothers agreed and ordered a new trial. He stepped aside and Judge Hamilton Gayden was assigned to the case.

It was tried again in June of 2009 before Judge Gayden. This time the verdict was mixed. A directed verdict having been entered against the settled Mackey, the jury first considered the duties of the nurses. It found a violation and then to apportionment, fault was assessed 96.25% to Mackey, the remaining 3.25% to the hospital.

Then to damages, the estate took a total of \$4,528,454. That figure included \$3,290,627 for future care – the incurred medicals were \$367,826 – pain and suffering was \$100,000, as was disfigurement and loss of ability to enjoy life. The boy's lost earning capacity was \$270,000. The raw figure of \$4,528,454 was reduced by comparative fault in the court's consistent judgment to just \$164,273.

Plaintiff again moved for a new trial citing a variety of errors including, (1) directing a verdict against Mackey, (2) a juror who contacted her mother about issues in the case during deliberations, the juror's mother being a nurse, and most significantly, (3) that a quotient verdict had been reached. Juror affidavits filed with the motion reveal that apportionment was reached by quotient, the jurors agreeing to be bound. Several jurors expressed shock that apportionment would have any effect at all, it being their belief that the plaintiff would receive the full \$4.5 million verdict.

Judge Gayden denied the motion and concluded there was no quotient result. Why? In his September 2009 order Judge Gayden wrote there was no way to add the numbers used in the purported quotient to reach 3.75%. The plaintiff appealed.

The Court of Appeals reversed in February of 2011. Authored by Richard Dinkins, the court held that the quotient verdict was proven by a preponderance

of the evidence, that evidence constituting the several juror affidavits. The court also reversed the decision to direct a verdict against the non-party Mackey on fault – thus the issue of Mackey's fault (as well as apportionment) would be decided by the jury. Upon its remand to the trial court, the case was assigned to Judge Amanda McClendon.

The third trial started in July of 2012 and following the proof, the jury deliberated two days. The jury concluded that the hospital nurses and Mackey had both violated the standard of care. That fault was then assessed 60% to Mackey and the remainder to the hospital.

Turning to damages the plaintiff took medicals of \$603,000 (reduced by agreement in the judgment to \$270,842) and \$6,000,000 more for future care. Cullum's lost earning capacity was \$1.5 million. The jury valued his disfigurement at \$400,000. He took the same sum for past loss of enjoyment of life – that category in the future was \$2,000,000.

Cullum's past pain and suffering was \$120,000. His future pain and suffering was \$5,000,000. For a final category called "permanent injury" Cullum was awarded \$2,000,000. The damages totaled \$13,623,000, the judgment less comparative fault totaling \$7,974,505.

The jury in this third trial also considered a separate interrogatory that asked how long Cullum would live. The answer was 33 years. The purpose of this interrogatory was not clear – it was not used in the first two trials and the answer "33 years" was not reflected in the judgment.

The hospital has since moved for JNOV relief and/or a new trial. The motion began by describing the result of the three trials as "shockingly divergent". It focused on error by excluding both the live and videotape testimony of a principal defense expert (Dr. Frank Boehm) who had previously testified in the first two trials. The hospital also thought the court expressed bias, citing remarks from the bench that Judge

McClendon was upset for the Cullums and that they deserved a trial that was "finally final." In its 43 page motion, the defense has also alleged the court engaged in improper ex parte communications with the jury – this was learned, the motion explained, from post-trial interviews with juror. Apparently there were several questions (not reduced to writing) during the deliberations. The accumulation of these many errors (and others not referenced herein), the hospital concluded, has led to one conclusion – the trial was unfair and a fourth trial must be conducted. The motion was pending when the record was reviewed.

**Uninsured Motorist - A motorcyclist sustained a serious brain injury when a texting driver (in a small sports car) stopped suddenly in front of him and he was thrown through the air**  
*Black v. American Reliable Insurance*, 11-474

Plaintiff: Patrick A. Cruise, *The Hamilton Firm*, Chattanooga

Defense: Brian Trammell, *Trammell Adkins & Ward*, Knoxville

Verdict: \$3,500,000 for plaintiff less 25% comparative fault

Court: **Hamilton**

Judge: Marie Williams

Date: 9-7-12

It was 4-14-10 and Marcus Black, then age 33, was operating a motorcycle on Hwy 27 near Olgiate Bridge. Suddenly a Jane Doe driver (that was purportedly texting) suddenly pulled in front of Black's lane of traffic and stopped. Black couldn't stop in time. His motorcycle clipped the car in front of him and Black was launched through the air. The apparently oblivious texting driver drove off.

Black landed on the pavement in the next lane. The impact left Black with a serious head injury. He is now confined to a wheelchair, Black's medical bills totaling \$1,000,000. While now totally disabled, Black had worked as an auto mechanic.

In this lawsuit against his UM carrier, American Reliable Insurance, Black sought damages based on the negligence

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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: \_\_\_\_\_  
\_\_\_\_\_

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collision. Fault was no issue.

Bryson was taken to the ER where she was treated for soft-tissue symptoms. She later followed with her family doctor. Her medical bills are not known. In this lawsuit she sought damages from Young, her husband also presenting a derivative consortium claim. Young defended and minimized the claimed injury.

The jury's verdict was for Bryson and she took a general award of \$4,445. The consortium claim was rejected. A consistent judgment was entered and it

has been satisfied.

**Auto Negligence - A soft-tissue verdict in Tazewell was double the incurred medical bills**

*Johnson v. Hash*, 9-CV-345

Plaintiff: Robert M. Estep, *Estep & Estep*, Tazewell

Defense: Brian H. Trammell, *Trammell Adkins & Ward*, Knoxville

Verdict: \$21,000 for plaintiff

Court: **Claiborne**

Judge: John McAfee

Date: 6-21-11

Jerrie Johnson, then age 57, traveled on U.S. 25E near the Cumberland Gap Tunnel on 10-2-08. As she stopped in traffic for a Haz Mat escort, she was rear-ended by Anthony Hash. The collision resulted in minor damage. Hash conceded fault.

Johnson didn't seek care at the scene but has since complained of soft-tissue symptoms. She followed with Dr. Ronald Dubin, Orthopedics, Middlesboro, KY, who prescribed a course of physical therapy. She also treated with a chiropractor. Her medical bills were

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