The Tennessee Jury Verdict Reporter

The Most Current and Complete Summary of Tennessee Jury Verdicts

December 2009 **Statewide Jury Verdict Coverage** **6 TJVR 12**

Independently Researched Jury Verdict Results Since 2004

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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.

Products Liability - In a catastrophic crash that killed three, a rear-seat passenger (a six-year old boy) was left paralyzed from the waist down – in this lawsuit, the boy blamed his injuries on his vehicle's failure to have a child-safe backseat seat belt mechanism

Meals v. Ford Motor Company, CT-000254-03
Plaintiff: J. Houston Gordon, Covington and Keisha Moses, *Glassman Edwards Wade & Wyatt*, Memphis
Defense: Eileen B. Smith, *Waller Lansden Dortch & Davis*, Nashville and Sandra G. Ezell and Michelle B. Scarponi, Richmond, VA and Lawrence C. Mann, Troy, MI, all three of *Bowman & Brooke*
Verdict: $43,800,000 for plaintiff assessed 15% to the defendant
Court: **Shelby**
Judge: Donna M. Fields
11-13-09

There was a tragic car wreck on Covington Pike on 1-18-02 in Raleigh. It began with the conduct of the drunk and drug-intoxicated (cocaine) John Harris. Harris fled from the police in an Oldsmobile Cutlass. His vehicle approached speeds of 80 mph. Traveling on Covington Pike, Harris clipped one car and careened into oncoming traffic.

Approaching from the opposite direction was James Meals. He was driving a 1995 Mercury Grand Marquis. Passengers in the vehicle included Meals's son (also James) and his grandson, Billy, age 6. Billy was in the backseat.

The Grand Marquis did not have a booster seat and instead employed a three-point seat belt system. Billy was belted, but had partially modified his belt. That is, he wore the belt around his waist, but had slipped the strap across his chest behind his back. [It is well-known that children frequently do this.]

To the tragedy, Harris's Cutlass struck the Meals vehicle head-on. It was a horrific crash. Harris died as did the boy's father and grandfather. Billy survived but he was badly hurt, sustaining a paralyzing back injury. He is a permanent paraplegic with no feeling below his navel. He ambulates in a

wheelchair. His medical bills to the time of trial were stipulated to be $552,920.

In this lawsuit, the boy (through his mother) targeted Ford, the manufacturer of the Grand Marquis. The theory developed with multiple components leading to the conclusion the vehicle was unreasonably dangerous.

It was the plaintiff's proof that Ford knew the risk of harm regarding its backseat seat belt system and that children would frequently place the seat belt behind their back – there was an inverse concern as had the seat belt been in front of Meals (because of an improper fit), it would have caused a neck injury.

Thus the theory was that Ford knew of the risk of this sort of enhanced injury (that is it being foreseeable that parents would buckle their children in the 3-point seat belt) and failed to provide any warning that children should be in a booster. The theory continued that Ford could have both warned and installed a safer 5-point integrated child restraint. Plaintiff noted that Ford did use such a restraint in some of its models. Experts for Meals included Michael Griffiths, Biomechanics, Australia and Edward Karnes, Morrison, CO.

Ford defended the case on several fronts. It first focused that there was a single tortfeasor in this tragedy – that was Harris, the drunk and intoxicated motorist who fled the police and crashed into the Meals vehicle. That corresponded to a second notion that regardless of the vehicle's design, this was an overwhelming catastrophic and violent crash, the properly designed and safe Grand Marquis performing as well as it could. To the design questions, Ford replied that (1) Meals was not properly restrained, and (2) the plaintiff and her parents knew it. Thus if fault were found with Ford, the jury could apportion fault to both Harris and Billy's father for failing to see that he was properly restrained. Identified Ford experts included Roger Burnett, Dearborn, MI and Debora Martin, Flat Rock, MI.

This case was tried before a Memphis jury for six weeks. The jury's verdict was mixed. It found against Ford and apportioned fault 15% to the automaker. Fault was also assessed to Harris in the amount of 70%, with the remaining 15% being assigned to the boy's father. Then to damages, Billy (now 14 years old) took a general award of $43,800,000 – that corresponds to an award of $6,570,000 against Ford. The jury made an additional finding that Ford's conduct did not merit punitive damages. A consistent judgment was entered.

Medical Negligence - The plaintiff developed spinal meningitis and other complications after an epidural steroid injection penetrated the dura of her spine

Bunch v. Landman, 06-2495
Plaintiff: Barry E. Weathers, Nashville and Charles Allen, *The Keenon Law Firm*, Atlanta, GA
Defense: Thomas A. Wiseman, III and Brian Cummings, *Gideon & Wiseman*, Nashville
Verdict: $5,200 for plaintiff
Court: **Davidson**
Judge: Hamilton V. Gayden
10-15-09

Jennifer Bunch, then age 38 and a hospice RN, treated for chronic back pain. She underwent a laminectomy at the L5-S1 level in April of 2000. Her symptoms did not improve and she came under the care of a radiologist, Dr. Jeffrey Landman. He attempted to relieve her pain with a 2-15-01 epidural steroid injection.

Almost immediately after the injection, Bunch was in pain. It subsided and after twenty minutes, she was able to leave the office. That night at home she was nauseated and otherwise felt poorly. She went to bed hoping to wake up feeling better.

Bunch instead awoke at 3:30 in the morning with intense pain. She was taken to the ER and when they learned of the injection, she was sent back to Landman's office. Testing revealed that Bunch was suffering from spinal meningitis. She contracted the bacterial disease, Landman's injection penetrating Bunch's dura and the contaminated drug (Depo-Medrol) going directly into her cerebra spinal fluid. Bunch underwent a lengthy recovery and continues to be hobbled by constant and chronic pain.

While Bunch's spine was admittedly already fragile, she postured in this lawsuit that the injection error by Landman made it worse. The error then had multiple components as developed by her expert, Dr. Laxmaiah Manchikanti, Anesthesia, Louisville. The expert explained that (1) the informed consent was improper, (2) Landman had not properly stored the Depo-Medrol to prevent contamination, and (3) he erred in penetrating the dura, the doctor failing to use a fluoroscope contrast to identify the anatomy.

A second expert for Bunch, Dr. Allan Morrison, Internist, Annandale, VA, discussed causation regarding the failure to introduce a sterilized drug. In valuing damages, a physiatrist from Florida, Dr. Craig Lichtblau, developed a life care plan. An economist from Murray, KY, Gilbert Mathis, quantified the plan. Bunch's husband also presented a derivative consortium claim.

Landman defended the case first that his informed consent form was proper and consistent with the standard of care. Then to the penetration of the dura, that was called a complication, no contrast being required – Landman also believed he was entitled to assume that the injected drug would not be contaminated. Then in a catch-all defense, regardless of consent or care, whatever he did, it didn't cause injury, Landman linking Bunch's ongoing symptoms to the natural progression of a failed laminectomy surgery syndrome.

The jury's verdict was mixed. While Landman prevailed on the informed consent count, the jury found he had violated the standard of care in treating Bunch. Then to damages, Bunch took a general award of $5,200. The husband's consortium claim was rejected. A consistent judgment was entered.

Landman has since moved for a new trial. He has argued that the plaintiff's proof of causation was inadequate – instead it was more probable that Bunch's complaints were related to the failed laminectomy surgery syndrome. The motion is pending.

Premises Liability - A hair stylist who rented space in a salon slipped and fell on a wet floor in an area where clients' hair is shampooed

Mincey v. Paragon Salon, 31264-C
Plaintiff: Jon C. Peeler, Nashville
Defense: James P. Catalano and Desiree I. Hill, *Leitner Williams Dooley & Napolitan*, Nashville
Verdict: Defense verdict
Court: **Sumner**
Judge: C.L. Rogers
11-17-09

Shelly Mincey worked as a hairstylist. She rented space at the Paragon Salon – Mincey didn't work for the salon but instead maintained her own client base. Mincey operated in this manner for several years.

To the key event in this case on 7-9-07, Mincey slipped and fell in the salon – she did so in the area where clients' hair is shampooed. In the fall, Mincey sustained an ankle injury. While she did not treat for five months (she explained she couldn't afford to do so), Mincey subsequently saw a doctor who recommended surgery. Mincey declined the surgery (she thought it was too expensive) and continued to complain of ankle pain. Her medicals were $5,500 and the cost of a repair surgery was estimated at $27,000.

Mincey sued the salon and alleged negligence regarding its maintenance of the premises – she blamed her fall on the excessive application of oil placed on the floor in cleaning it. The oil is utilized to remove wax which is sometimes spilled in the area during the regular course of business.

The salon defended that there was no competent evidence the fall was related to the application of oil – while it might have been slippery from wax and other hair products (it was near the end of a busy day), the salon cited there was no proof oil had recently been applied. The defense also diminished the claimed injury and cited proof that while Mincey explained she couldn't afford to seek treatment, she still earned nearly $100,000 a year.

The verdict was mixed at trial – fault was assessed equally to the parties. While that ended the deliberations effectively, the jury still continued and made an empty award of $5,500 to Mincey. [That was a sum equal to her medicals.] A defense judgment was entered.

Auto Negligence - The defendant backed out of a private driveway and struck a vehicle containing the teen plaintiff

Hill v. Murchison, 08-25
Plaintiff: David Hardee, *Hardee & Martin*, Jackson
Defense: Christopher S. Marshburn, Memphis
Verdict: $7,500 for plaintiff
Court: **Madison**
Judge: Donald W. Allen
8-13-09

Kiera Hill, then age 15, was a passenger in a car with her older sister, Francesca. On the morning of 3-3-06, they were heading to school. At the same

time, a second teen, Jeffrey Murchison, was also heading to school. Murchison backed from his driveway onto Chester Levee Road. Murchison did so into the path of the Hill vehicle. A moderate collision resulted. Fault was no issue.

Hill suffered a soft-tissue injury in the crash. Her medical bills were $4,762. In this lawsuit, she sought damages from Murchison. He defended and minimized the claimed injury.

This case was deliberated on damages only. Hill took a general award of $7,500. A consistent judgment was entered and Murchison paid it.

Auto Negligence - A rear-end interstate crash left the plaintiff with a disc injury

Smith v. Gibbs, 3-110-08
Plaintiff: Travis J. Ledgerwood and Joseph A. Baker, *Baker Associates*, Sevierville
Defense: Donald D. Howell, *Frantz McConnell & Seymour*, Knoxville
Verdict: $22,000 for plaintiff
Court: **Knox**
Judge: Wheeler A. Rosenbalm
7-29-09

John Smith traveled on I-40 in Knoxville near its intersection with I-640. At that location Smith was rear-ended by a trucker, Charles Gibbs, who was pulling a forty-foot gooseneck trailer. It was a moderate collision. Fault was no issue.

Smith has since treated for a disc injury – he had a surgical repair performed. His medicals are not known. Smith sued Gibbs and sought damages. Gibbs diminished the claimed injury, pointing to evidence of pre-existing conditions.

Tried on damages only, Smith took a general award of $22,000. A judgment in that sum was entered for him and Gibbs has paid it.

Auto Negligence - The plaintiff broke his collarbone and suffered other soft-tissue injuries in a rear-end crash

Branch v. Matos, MCCC-V-0D-07-308
Plaintiff: Henry S. Queener, Nashville
Defense: R. Kreis White, *White & Rhodes*, Brentwood
Verdict: $18,141 for plaintiff
Court: **Montgomery**
Judge: Ross H. Hicks
11-24-09

Emonie Branch, then age 42, traveled in Clarksville on 4-7-06. Proceeding on Trenton Drive, Branch slowed to make a right turn into a private drive. An instant later he was rear-ended by Sandra Matos – Matos was a teenager driving home from school.

It was a significant impact, so much so that Branch's Chevrolet sedan was totaled. Fault for the wreck was no issue. While Branch did not seek treatment immediately, he presented to the ER that night and then again two days later.

Branch has continued to complain of pain from a broken collarbone and other soft-tissue symptoms. His injuries were quantified by a plaintiff's IME, Dr. David Gaw, Orthopedics, Nashville. The expert confirmed that Branch was hurt but concluded the medical records were inconclusive as to whether the collarbone was broken. Branch for his part was certain of it. Matos defended and looked to Gaw's proof, suggesting the collarbone fracture was questionable.

Tried on damages only in Clarksville, Branch took medicals of $12,141 plus $6,000 more for suffering. The verdict totaled $18,141. A consistent judgment was entered.

Auto Negligence - A former stripper complained of soft-tissue injuries (fibromylagia) after a right of way crash – a Nashville jury awarded her a fraction of her medicals and nothing for non-economic damages

Franklin v. Baltimore, 07-2160
Plaintiff: R. Price Nimmo, *Nimmo Hoehn & Nimmo*, Nashville
Defense: C. Benton Patton, *LeVan Sprader Patton & McCaskill*, Nashville
Verdict: $1,770 for plaintiff less 35% comparative fault
Court: **Davidson**
Judge: Amanda McClendon
10-15-09

Tamara Franklin, then age 27, was involved in a right of way crash late on the evening of 2-21-05. It occurred as Derry Baltimore turned left in front of her into a parking lot. Franklin saw the encroachment and hit the brakes hard – she slid 110 feet on the wet pavement but could not avoid a collision.

Franklin blamed Baltimore for turning into her path. Baltimore countered on liability that the plaintiff was speeding and failed to keep a proper look-out. Franklin replied that she was traveling at the speed limit.

However it happened there was a collision and Franklin was injured. She wasn't treated at the scene but awaking the next day with pain she started a course of care. It continued two days later when a chiropractor called her and offered treatment – Franklin, who believed the call had come from Baltimore's insurer, decided to avail herself of that therapy.

Franklin later followed with Dr. Antoine Able, Physical Medicine, Nashville, who identified fibromylagia and linked it to the crash. Plaintiff's medicals were $18,951. In this lawsuit, Franklin, who had previously worked as a stripper at Nashville hotspots Club Illusions and Chocolate Six, sought money damages from Baltimore.

Baltimore defended the case and looked to proof from an IME, Dr. Thomas O'Brien, Orthopedics, Nashville. The expert identified that Franklin had suffered just a minor and temporary injury. He also discounted the fibromyalgia diagnosis and its link to this

wreck.

The jury's verdict was mixed on fault. It was assessed 65% to the defendant, the remainder to Franklin. Then to damages, she took $1,770 of her medicals, but nothing for suffering, loss of ability to enjoy life or permanent impairment. The court's judgment (less comparative fault) was for Franklin in the sum of $1,150. Franklin has since moved for additur, arguing the verdict was inadequate.

Disability Discrimination - A nurse passed out at work and alleged she was fired because of a perceived disability

Lewis v. Humboldt Manor Nursing Home, 1:07-1054
Plaintiff: Michael L. Weinman and Robert L. Thomas, *Weinman & Associates*, Jackson and Thomas J. Long, *Long Law Firm*, Collierville
Defense: James K. Simms, IV and J. Cole Dowsley, *Cornelius & Collins*, Nashville
Verdict: Defense verdict
Federal: **Jackson**
Judge: J. Daniel Breen
11-10-09

Susan Lewis was a nurse supervisor in the summer of 2005 at the Humboldt Manor Nursing Home. Because of an illness at that time, Lewis had weakness in her lower extremities and briefly ambulated with a cane. She ultimately took a month off of work, returning to her job in October of 2005.

Lewis continued to do well in her position although she sometimes used a wheelchair to navigate the nursing home. To the key event in this case on 3-15-06, Lewis became dizzy and laid down on a floor at the hospital. Several other nurses came to her aide, Lewis apparently having passed out.

A co-worker questioned Lewis's conduct – Lewis didn't like that intrusion and confronted the co-worker. Unquestionably rude words were exchanged between the two. The nursing home began an investigation into the matter and fired Lewis five days later. It concluded that she had used profanity.

Lewis thought this excuse was just a pretext to mask "regarded as" disability discrimination. That is, Humboldt Manor perceived her as disabled (she really wasn't) and used the pretext of the dispute with the co-worker to manufacture trumped up charges that would justify the firing.

Lewis advanced the disability discrimination claim to trial and sought compensatory and punitive damages from her former employer. It defended that there was no discrimination, its decision being based solely on her misconduct at work.

The jury found for Lewis in the multiple part instructions that Humboldt Manor regarded her as disabled, but further concluded for the nursing home that it had not discriminated against her. That ended the deliberations and the plaintiff took nothing. A defense judgment was entered and from it, Lewis took an appeal.

Medical Negligence - An Ob-Gyn was criticized for removing both fallopian tubes (essentially sterilizing the plaintiff) after an ectopic pregnancy was identified

Farnham v. Collinson, 06-108
Plaintiff: Rob P. Starnes, Kingsport
Defense: Edward G. White, II, *Hodges Doughty & Carson*, Knoxville
Verdict: Defense verdict
Court: **Hamblen**
Judge: Kindall Lawson
1-22-09

Misty Farnham, then age 26, had an IUD placed in May of 2005 as a birth control method. She reported to Lakeview Hospital on 5-25-05 with abdominal pain and bleeding. Testing revealed that Farnham had an ectopic pregnancy in her left fallopian tube. An Ob-Gyn, Dr. Kim Collinson, recommended a complete hysterectomy. Farnham signed a consent form and the procedure was performed.

When the fog of the events had cleared and Farnham realized she was sterile, she had misgivings about the surgery. This lawsuit followed, Farnham alleging Collinson committed medical error in obtaining her informed consent. An expert, Dr. Leonard Aamodt, Ob-Gyn, Harrisonburg, VA, explained that the consent needed to be in plain terms – while this consent form said "bilateral" indicating both fallopian tubes, based on Farnham's presentation of pain and shock associated with the loss of her pregnancy, Aamodt believed Farnham lacked the ability to consent to a non-emergent surgery. The error (not fully informing Farnham) then resulted in her sterilization, it being unnecessary for Collinson to remove the right fallopian tube.

Collinson defended that his care was proper and that the consent fully described the procedure – removing both tubes was proper, a repeat ectopic pregnancy being likely. Turning to damages, the doctor developed proof that in vitro fertilization remains an option to Farnham. An expert for the defendant was Dr. Thomas Duncan, Ob-Gyn, Lexington, KY.

This case was resolved by a jury in Morristown. Its verdict was for the doctor and Farnham took nothing. A defense judgment closed the case.

Auto Negligence - In a soft-tissue crash case, the verdict for the plaintiff was less than the incurred medical bills

Jordan v. Thompson, 08-22
Plaintiff: Robert T. Keeton, III, *Keeton Law Offices*, Huntingdon
Defense: William M. Jeter, Memphis
Verdict: $4,620 for plaintiff
Court: **Carroll**
Judge: Donald Parish
5-13-09

It was 5-18-07 and Drew Jordan traveled in rural Carroll County on U.S. 70. He prepared to make a left turn into a private driveway. As Jordan made that turn, a driver behind him, Stephen Thompson, attempted to pass. Thompson broadsided Jordan as Jordan turned. The crash resulted in moderate damage.

Jordan subsequently treated at the ER for soft-tissue symptoms and was released. Knee and back pain have persisted. Jordan incurred medical bills of $6,019. In this lawsuit, he sought damages from Thompson. Thompson blamed the crash on plaintiff's sudden turn – plaintiff for his part implicated Jordan's improper passing.

This jury in Huntingdon found

Thompson 100% at fault. Then to damages, Jordan took $2,000 for property damage and $2,620 more for personal injury. The verdict totaled $4,620.

Jordan moved for a new trial and/or for additur, arguing the verdict was inadequate especially as it was less than his medical specials. The motion was denied in a barebones order.

Malicious Prosecution - Nashville police officers arrested the plaintiff for trespassing as he walked through a housing project carrying a suspicious package (that contained ice cream)

Bassham v. Nashville Police, 05-959
Plaintiff: David E. Danner, Antioch
Defense: John M.L. Brown, Nashville for Fisher
Brock Parks, Nashville for Lopez
Verdict: Defense verdict
Court: **Davidson**
Judge: Thomas Brothers
8-4-09

Antonio Bassham went to visit his sister on 7-22-03. She resided within a public housing development known as the Sam Levy Projects. As Bassham walked through the neighborhood, carrying a package of ice cream with him, he was detained and arrested by Nashville police officers, Wayne Fisher and Leopoldo Lopez.

As he was not a resident of the projects, he was charged with criminal trespass. The matter advanced to a trial – Bassham was acquitted. This lawsuit followed, Bassham alleging malicious prosecution by the officers.

Namely they had only prosecuted them because when first approached, he had the temerity to decline to be searched. [Bassham didn't have contraband, only ice cream in the package he carried, but he simply didn't want to share that information with the police.]

In advancing his claim, Bassham believed that racial profiling (he is black and the officers white) played a role in the decision to arrest him. The court excluded any proof of racial profiling. The government defended the malicious prosecution claim explaining that no trespassing signs were clearly posted and as Bassham was not being escorted per project policy, he was then a criminal trespasser. Bassham had countered that while there were no trespassing signs posted, he had no notice of the escort policy.

The verdict was for the defendants on the malicious prosecution count and Bassham took nothing. A defense judgment was entered. Bassham has since moved for a new trial, citing error in excluding his evidence of racial profiling.

Auto Negligence - The verdict in a right of way turning case was for the defendant

Coffman v. Osborne, 1-563-07
Plaintiff: Brandon K. Fischer, *Cantrell Cantrell & Fischer*, Clinton
Defense: Richard T. Scrugham, Jr., *Frantz McConnell & Seymour*, Knoxville
Verdict: Defense verdict
Court: **Knox**
Judge: Dale C. Workman
7-6-09

Mark Coffman traveled on Champion Highway on 3-7-07. It was just after dark. As Coffman pulled into a private drive, he was struck by the oncoming Johnny Osborne. In this moderate collision, both Coffman and his wife, Paula, sustained soft-tissue injuries.

The Coffmans pursued this lawsuit against Osborne and while Coffman had pulled in front of Osborne, Osborne was blamed for not having his headlights on. Osborne denied this and postured simply that Coffman had turned suddenly into his path.

The jury returned a verdict finding that Osborne was not negligent – that ended the deliberations and a defense judgment was entered. The defense offer of judgment had been $5,000 for Paula and $3,500 for Mark.

Auto Negligence - The defendant (driving in her Mercedes sedan) fell asleep and crossed the centerline, striking the plaintiff (in his pick-up truck) and leaving him with a disc injury

Bruce v. Lancaster, 29347-C
Plaintiff: Bruce N. Oldham, *Oldham & Dunning*, Gallatin
Defense: William L. Moore, Jr., Gallatin
Verdict: $125,000
Court: **Sumner**
Judge: C.L. Rogers
8-19-09

On the morning of 12-6-05, Christopher Bruce, then age 44 and a dozer operator, traveled to work on Hwy 109. He was driving a pick-up truck. Terri Lancaster approached from the opposite direction – she was driving a Mercedes sedan. Lancaster fell asleep and crossed the centerline, crashing into Bruce.

It was a moderate collision, but it was enough to break the rear axle on Bruce's truck. Bruce lost control and careened into a ditch. Lancaster's fault was no issue.

Bruce has since treated for the aggravation of a degenerative L5-S1 disc injury. His neurosurgeon, Dr. Vaughn Allen, Nashville, has recommended a fusion surgery. Importantly in developing the proof, Allen testified that the condition was asymptomatic before the crash.

In this lawsuit, Bruce sought damages from Lancaster. His medical bills were $9,013. Beyond his claim for damages, his wife presented a derivative consortium claim. Lancaster minimized the claimed damages and focused on proof that Bruce had previously treated for low-back pain with a chiropractor.

The jury deliberated damages only and awarded Bruce $110,000. His wife took $15,000 more for her consortium interest. A consistent judgment reflected the $125,000 award. The case was then dismissed as settled.

Auto Negligence - The soft-tissue verdict for the plaintiff was nearly double the incurred medicals

Baird v. Mills, A8-LA-0327
Plaintiff: J. Timothy Bobo, *Ridenour & Ridenour*, Clinton
Defense: Francis A. Cain, *Frantz McConnell & Seymour*, Knoxville
Verdict: $12,598 for plaintiff
Court: **Anderson**
Judge: Donald Elledge
7-14-09

There was a significant rear-end crash on 4-8-08. The tortfeasor, Bryan Mills (traveling in an SUV) crashed into a sedan containing Martin Baird. The impact then pushed Baird's sedan into the next vehicle. Mills's fault was no issue.

Baird, then age 26, was treated at the ER and subsequently followed with his family doctor, Jonathan Dee, Knoxville. Dee identified a soft-tissue neck and shoulder injury – Baird also suffered a scrape to his head. His medicals were just under $7,000.

Baird sought damages from Mills in this lawsuit. Mills defended the case and minimized the claimed injury.

Tried on damages only and considering a specific verdict, Baird took $6,998 of medicals and $1,600 in lost wages. Loss of ability to enjoy life and pain and suffering were both valued at $2,000. The total verdict for Baird was $12,598. A judgment in that sum followed.

Medical Negligence - Following a normal c-section, the plaintiff (a young mother) exhibited signs of a pulmonary embolism – a week after being released from the hospital, the plaintiff died of an embolism – her estate blamed her Ob-Gyn group and hospital nurses for failing to consider this risk

Dismore v. Gynecology & Obstetrics, P.C. et al, CT-2980-03
Plaintiff: Gary K. Smith and Lynn W. Thompson, *Apperson Crump & Maxwell*, Memphis
Defense: Darrell E. Baker, Jr., *Baker & Whitt*, Memphis for Gynecology & Obstetrics, P.C.
William L. Bomar, *Glankler Brown*, Memphis for Methodist Hospital of Germantown
Verdict: $867,273 for plaintiff assessed 70% to Gynecology & Obstetrics and 30% to Methodist Hospital
Court: **Shelby**
Judge: Kay S. Robillo
11-18-09

Carrie Dismore, age 25, had her pre-natal care in 2002 for the birth of her first child with an Ob-Gyn, Dr. Truman King of Gynecology and Obstetrics, P.C. She came to Methodist Hospital of Germantown on 7-3-02 for the delivery of her child. King performed a c-section and a healthy boy, Walter, was delivered successfully.

Dismore remained in the hospital three more days. She was released on 7-6-02. Over the course of the next week, Dismore made several calls to the Ob-Gyn group and complained of troubling symptoms. Dismore never spoke to a doctor and was simply reassured by group nurses.

Dismore was seriously ill on 7-13-02 and was taken to the ER in Tipton. She died at the hospital of a pulmonary embolism. She was survived by her son as well as her husband, Stephen. The estate advanced this lawsuit against the Ob-Gyn group and the hospital nurses.

The crux of the claim was that the defendants failed to diagnose, appreciate and otherwise intervene to obviate the risk of pulmonary embolism. The plaintiff's proof developed that she had exhibited signs of pulmonary embolism, including chest pain, elevated vital signs and swelling in her legs.

Thus the Ob-Gyn group (different doctors saw her in the days after the delivery) and the hospital nurses too were blamed for not appreciating this risk and taking prophylactic measures to prevent embolism. After her release from the hospital, the Ob-Gyn group was additionally implicated regarding its impotent response to Dismore's several phone calls. Experts for the estate were Dr. Sherri Flax, Pathology, Memphis and Dr. Joseph Bruner, Maternal Fetal Medicine, Nashville. An economist for the estate was Michael Brookshire, Dunbar, WV.

The defendants replied that Dismore's presentation indicated a normal post-partum course and there was no reason for heightened alarm. Thus Dismore's condition was properly followed at all times and that condition was not troubling. The defendants also developed proof that the embolism was a sudden event, it not developing until a day or so before Dismore's death. Identified defense experts included Dr. Joseph DeWane, Ob-Gyn, Memphis and Dr. Henry Stamps, Internist, Collierville.

The estate prevailed against both defendants at trial. That fault was then assessed 70% to the Ob-Gyn group, the remainder to the hospital. The jury then made a general award of $867,273 to the estate. It was apportioned consistent with the fault assessment to the defendants in the court's judgment. The judgment has been satisfied.

While the jury deliberated, it asked a question about its prospective award. It queried: By law can we designate for a particular purpose where the money goes like for a trust fund for the child? The judge replied that the award would be divided between father and son.

Auto Negligence - A jury in Somerville awarded the plaintiff nearly $7,000 in medical specials but she took nothing for non-economic damages

Branstetter v. Woods, 5086
Plaintiff: Nicholas J. Owens, Jr., Memphis
Defense: Catherine H. Costict, Memphis
Verdict: $6,974 for plaintiff less 25% comparative fault
Court: **Fayette**
Judge: J. Weber McGraw
8-25-09

Melissa Branstetter, then age 30, traveled on Bobbitt Road in Fayette County. She traveled behind Bobby Woods who was hauling a trailer. On a straight stretch of road, Branstetter began to pass Woods. As she was passing, Woods made a sudden left turn.

Branstetter's vehicle collided with Woods' truck despite her efforts to brake and avoid the impact. Branstetter's head struck the steering wheel and she was taken to the ER where she was treated and released for soft-tissue symptoms. She continued to treat for a year for ongoing pain. Her medical bills were nearly $7,000.

Branstetter sued Woods and sought money damages. She blamed him for suddenly making the turn without signaling. He defended on liability and implicated her for striking his vehicle. Woods also diminished damages citing gaps in Branstetter's care and her failure to follow doctor's orders.

The verdict was mixed on fault. It was assessed 75% to the defendant, the remainder to Branstetter. Then to damages and considering a specific verdict form, she took medicals of $6,974. The jury rejected both pain and suffering and loss of ability to enjoy life. A consistent judgment was entered.

Branstetter subsequently moved for a new trial and/or for additur arguing the verdict was inadequate. She cited the proof was unimpeached that her head hit the steering wheel, that she was in pain for a year and that her doctor confirmed a decreased range of motion. Woods replied that there were gaps in plaintiff's care (12 days after her first ER visit) and that the matter was for the jury to decide. The motion was denied.

As the jury was deliberating, it had a question for the court: Is there a Tennessee law setting the speed when there is no posted sign? Judge McGraw answered that there is such a law, but in this case, there was no evidence of it and thus the jury could not know.

Auto Negligence - The award for pain and suffering in a soft-tissue rear-end case was less than half than the total award

Engles v. Selwyn, 08-3084
Plaintiff: Matthew C. Hardin, *Gullett Sanford Robinson & Martin*, Nashville
Defense: Herbert J. Sievers, III
Verdict: $10,045 for plaintiff
Court: **Davidson**
Judge: Thomas Brothers
9-14-09

Wallace Engles traveled on Mallory Lane in Brentwood on 1-10-08. As Engles slowed to make a right turn, he was rear-ended by Alan Selwyn. The crash resulted in moderate damage. Fault was not disputed.

Engles subsequently treated with Dr. John Klekamp, Orthopedics, Franklin, who identified that the crash aggravated a pre-existing neck condition. Engles's care included a course of physical therapy and a facet injection at the C-3 level.

In this lawsuit, Engles sought damages from Selwyn. The plaintiff's medicals were $7,045, the largest part of that sum being the physical therapy bill. Selwyn defended on damages and argued that plaintiff's present complaints were related to pre-existing conditions.

This jury considered damages only. It awarded Engles his medicals as claimed plus $3,000 more for pain and suffering. Any award for loss of ability to enjoy life was rejected. The verdict totaled $10,045 and a consistent judgment was entered.

Auto Negligence - After a broadside crash, the plaintiff complained of soft-tissue symptoms

Belligio v. Powell, 504000769
Plaintiff: Thomas R. Meeks, *Meeks & Meeks*, Clarksville
Defense: Lynn B. Morton, Clarksville
Verdict: $13,303 for plaintiff
Court: **Montgomery**
Judge: Ross H. Hicks
8-18-09

Pedro Belligio, an electrician, was driving his work truck on 8-27-03 in Clarksville. As he proceeded near Fort Campbell, his truck was broadsided by Bryan Powell. It was a moderate collision. Powell's fault was not a jury issue.

Belligio was seen at the ER and has since treated for soft-tissue symptoms. His medical bills were approximately $9,000. Belligio sued Powell and sought damages. Powell defended and minimized the claimed injury.

Fault was stipulated and the jury considered damages only. Belligio took a general award of $13,303. A consistent judgment had been entered. Before trial, both parties made competing offers of judgment – the plaintiff offered $10,500, while the defendant came in at $3,000 less.

Premises Liability - While walking on a street in Bemis, the plaintiff was injured when a large limb from an oak tree suddenly fell – it struck the plaintiff in the head (the plaintiff was deaf) and it damaged his cochlear implant

Fitzgerald v. Dowbin, 07-407
Plaintiff: Art D. Wells, Jackson
Defense: Christopher S. Marshburn, Memphis
Verdict: Defense verdict
Court: **Madison**
Judge: Roy B. Morgan, Jr.
7-7-09

Christopher Fitzgerald walked to his aunt's home in Bemis, TN on Third Street for Christmas dinner in 2006. As he proceeded on a public sidewalk, he passed a rental home owned by Jimmy Dowbin. Suddenly a large limb from an oak tree on Dowbin's property fell from the sky.

The limb struck Fitzgerald in the head. The impact knocked him out and caused his ear to bleed. Beyond these obvious injuries, Fitzgerald also sustained another unique injury. Fitzgerald, deaf from birth, had recently had a cochlear implant installed. The impact from the limb damaged the components of the implant.

In this lawsuit, Fitzgerald sought damages from Dowbin. He developed proof that the tree was in poor shape and that but for Dowbin's failure to maintain his rental property, he would have not been him by the limb. Plaintiff's medicals were $5,325. Before the case could be tried, Fitzgerald died of other causes. His estate advanced the case to trial. Dowbin defended the case that he visited his rental property several times a month and had no notice (or reason to notice) that the oak tree represented a hazard.

The jury's verdict was for Dobwin and the estate took nothing. A defense judgment followed and that ended the matter.

FELA - In a railroad mishap a railworker was struck and killed by a railcar

Melton v. BNSF Railway, CT-005244-06
Plaintiff: Don R. Riddle, *Riddle Law Firm*, Houston, TX, Stephen Hawks, Memphis and Tom R. Letbetter, *Garrett Letbetter & Payne*, Houston, TX
Defense: William C. Spencer, John G. Wheeler and William C. Spencer, Jr., *Mitchell McNutt & Sams*, Tupelo, MS
Verdict: $5,000,000 for plaintiff
Court: **Shelby**
Judge: Kay S. Robillo
10-2-09

Ronald Melton, age 39, worked as a railman for BNSF at its Memphis yard on 7-11-06. On this date he was dispatched to repair a defective railcar. Melton was supposed to evaluate a railcar on a track that wasn't in use. In fact he was sent to a live track.

No one witnessed the accident but as Melton proceeded on a narrow path he was struck by an unattended, unsecured and uncoupled railcar. The impact proved fatal. There were no witnesses to the collision. Melton was survived by his wife. In this FELA lawsuit, his estate sought damages from BNSF.

The liability theory had several parts focusing on error in sending Melton to the wrong track (a live one) and for operating the fateful rail car at too high a speed. If the estate prevailed, it sought damages in two categories, the estate's pecuniary loss and Melton's pain and suffering. BNSF denied fault and placed in question whether Melton had been sent to the wrong track. It also implicated the plaintiff's fault, it being Melton himself who placed himself (even if how he did so is not entirely clear) in harm's way.

The jury's verdict was for the estate on liability, finding BNSF solely at fault. Then to damages, the estate took $1,000,000 for the wife's pecuniary interest and $4,000,000 more for Melton's pain and suffering. The verdict totaled $5,000,000.

BNSF challenged the award on several fronts, including arguing that, (1) Melton shared some fault for the incident, and (2) the award of suffering damages was excessive. The court agreed in part. While affirming as to liability, Judge Robillo ordered remittitur of the suffering award from $4,000,000 to $3,000,000. The estate accepted the remittitur conditioned that it could be challenged on appeal. BNSF did appeal and the matter is pending at the appellate level.

Premises Liability - On a rainy day, the plaintiff walked into a hospital office building and started to dry her feet on a rug in the vestibule – as she stepped onto the rug, it slid out from under and she fell sustaining injuries

Johnson v. Sumner Regional Medical Center, 29964-C
Plaintiff: Bruce N. Oldham, *Oldham & Dunning*, Gallatin and Cynthia Templeton, Gallatin
Defense: Robert L. Trentham, Taylor B. Mayes and James A. Beakes, III, *Miller & Martin*, Nashville
Verdict: Defense verdict
Court: **Sumner**
Judge: C.L. Rogers
7-15-09

It was raining on 5-5-01 as Donna Thompson, then age 53, arrived at the Sumner Medical Plaza. She was going to see her doctor at Sumner Regional Medical Center. The medical center leased space from the medical plaza.

That alignment aside, Thompson stepped into the vestibule and proceeded to a nearby rug. It was her intention to dry her feet on the rug. As she stepped on the rug to do just that, the rug slipped out from under her. Thompson fell to the floor and sustained a broken wrist and leg.

Thompson sued both the medical center and the medical plaza regarding the maintenance of the premises – quite simply, a rug that is placed to dry one's feet should not slide out when it is used for just that purpose. That the defendants knew of the condition, Johnson cited proof that weeks before a friend of hers had warned medical center staff the rug was slippery.

As the litigation advanced, the medical plaza (the landlord) settled its claim with Johnson. That left just the medical center to face a jury. It defended the case and focused on two issues, (1) plaintiff's own contributory negligence, and (2) the duties of its landlord, who per its lease, was responsible for maintaining common areas.

The jury's verdict was for the defendant on liability and having so found, the jury then did not reach the duties of the landlord or the plaintiff. A defense judgment closed the case.

Auto Negligence - The plaintiff complained of neck pain after a rear-end crash – while the plaintiff prevailed, the award of non-economic damages was just one-tenth of the plaintiff's medicals

De La Torre v. Strodel, 07-3686
Plaintiff: Tim L. Bowden, Goodlettsville
Defense: Dennis E. Blevins, Nashville
Verdict: $12,518 for plaintiff less 20% comparative fault
Court: **Davidson**
Judge: Amanda McClendon
7-15-09

Irma De La Torre, then age 34, was on Murfreesboro Road near the Hickory Hollow Mall on 1-25-07. She was stopped preparing to turn onto Bell Road. A moment later De La Torre was rear-ended by Robert Strodel.

It was a moderate collision, De La Torre treating that day at the ER. She has continued to complain of neck pain, a treating orthopedist identifying a muscle spasm. She also followed with a chiropractor.

In this lawsuit, De La Torre sued Strodel and sought damages. Strodel defended on fault that De La Torre had started forward and then suddenly stopped. Only then did he rear-end her vehicle. Strodel also diminished the claimed injury.

As the jury deliberated the case, it had a question for the court: Do the questions of fault regarding liability pertain to the injuries. The court answered that they pertained to fault.

The jury sorted it out and returned a mixed verdict on fault. It was assessed 80% to the defendant, the remainder to De La Torre. Then to damages and considering a specific verdict form, she took medicals of $11,218 and lost wages of $300. Her loss of ability to enjoy life was $500 – she took the same sum for pain and suffering. Her husband's consortium claim was rejected. The raw verdict totaled $12,518. A consistent judgment less comparative fault was entered for De La Torre.

The plaintiff made a motion for additur and argued the award of non-economic damages was grossly inadequate. Strodel replied the matter was for the jury to decide. The motion was denied.

Assault - The plaintiff was assaulted at home and suffered facial injuries

Iles v. Lawson, 1-536-05
Plaintiff: Patrick T. Phillips, Knoxville
Defense: Benjamin T. Barnett, Knoxville
Verdict: $18,000 for plaintiff
Court: **Knox**
Judge: Dale Workman
8-7-09

Dean Iles was assaulted at his home on 10-7-04 by Christopher Lawson. It occurred as Iles arrived at home and exited his vehicle. Lawson knocked him down and struck Iles. Iles suffered a nose injury and later had a surgery performed.

Iles sued Lawson and sought damages in this assault lawsuit. The record is not entirely clear what the relationship was between the parties or why there had been an altercation. However or why it occurred, Lawson did later plead to a misdemeanor assault charge. But at this civil trial while conceding there was a fracas, he postured he acted in self-defense, Iles having made a threatening gesture towards him.

Iles prevailed at trial and took a verdict of $18,000. A judgment was entered for him in that sum.

Premises Liability - While helping his friend move a weight bench, the plaintiff tripped and fell

Hall v. Zimmerman, 07-4615
Plaintiff: Lisa June Cox, Jackson
Defense: Wesley A. Clayton, *Waldrop & Hall*, Jackson
Verdict: Defense verdict
Court: **Chester**
Judge: Roger A. Page
3-31-09

Rick Hall assisted his friend, Ronald Zimmerman, on 11-4-06 in moving a weight bench at Zimmerman's home. [The bench belonged to Zimmerman's father-in-law.] As Hall assisted Zimmerman, he tripped and fell over what the record describes as improperly stored and maintained items.

Hall sustained injuries in the fall and in this lawsuit, he sought damages from Zimmerman. His wife also presented a derivative consortium claim. Zimmerman defended and blamed the fall on Hall's own inattention.

This case was resolved by a Henderson jury. The verdict was for Zimmerman and Hall took nothing. A defense judgment was entered.

A Notable Out of State Verdict

Invasion of Privacy - After a woman underwent plastic surgery following a significant loss in weight, unknown to her (and contrary to her instructions) her plastic surgery group permitted pictures of her body (her face was not shown) to be published in a local magazine profiling the medical group

Doe v. Body Aesthetic et al, 4:08-197
Plaintiff: Richard Witzel and Christopher Kanzler, *Witzel Kanzler Dimmitt Kenny & Kanzler*, St. Louis, MO
Defense: David P. Bub and Paul Schulte, *Brown & James*, St. Louis, MO
Verdict: $100,000 for plaintiff
Federal: **Missouri Eastern - St. Louis**
Judge: Terry I. Adelman
Date: 11-16-09

Jane Doe (she was not named in the record) lost a significant amount of weight. To remove excessive skin from the 140 pound drop in weight, she underwent plastic surgery in October of 2004. It was performed by doctors at a St. Louis medical group, Body Aesthetics. Her doctors included Leroy Young, Robert Centeno and C.B. Boswell.

At the time the surgery was performed, Doe's doctors took extensive before and after nude pictures of Doe for clinical purposes. At the time the pictures were taken, Doe was adamant that they not be used for any purpose, including educational seminars or publicity.

In 2006 a local St. Louis magazine, the *Riverfront Times*, prepared an article about the medical group entitled *The Sultan of Skin*. The medical group provided the magazine with pictures of its work, including of Doe. An article was

published that April featuring Doe.

Doe was then living in Georgia and likely would have never learned the article was even published. However she was not pleased with the work the defendants performed and she pursued a malpractice claim against the group. While that claim settled, in the course of discovery, Doe learned that the pictures had been disseminated. She was not pleased.

In this separate lawsuit for invasion of privacy and breach of fiduciary duty regarding the release and publication of the pictures, Doe sought an award of compensatory and punitive damages. Body Aesthetics defended that it regretted the release of the information (it was a mistake), but this release had not harmed Doe. It noted she hadn't sought counseling, the article did not identify her and the inadvertent disclosure certainly didn't merit an award of punitive damages.

The verdict was mixed at trial. Doe lost on the invasion of privacy claim, but prevailed on breach of fiduciary duty. She was awarded compensatory damages of $100,000 – the jury rejected any award of punitives. A consistent judgment was entered for the anonymous plaintiff. A juror remarked after trial that the jury made its award to give Doe enough money to pay her lawyers and her travel expenses from Georgia.

Ed. Note - This report first appeared in the December 2009 issue of the Federal Jury Verdict Reporter.

The Tennessee Jury Verdict Reporter is published at 9462 Brownsboro Road, No. 133, Louisville, Kentucky 40241. Phone at 502-339-8794 or 1-866-228-2447. Fax to 502-326-9794. Denise Miller, Publisher, Shannon Ragland, Editor, Sandra Tharp, Editor Emeritus and Aaron Spurling, Assistant Editor.

Annual subscription is $189.00 per year.
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