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December 2010 **Statewide Jury Verdict Coverage** **7 TJVR 12**

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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 - A toddler was born with a congenital bladder and penis defect – a complex repair surgery was performed in the days after his birth – it did not go well and the boy's parents blamed his urologist for the technical performance of the procedure

Gaw v. Vanderbilt Medical Center, 05-3671
Plaintiff: Todd A. Rose, Paris and Les Jones, Memphis, both of *Burch Porter & Jones*
Defense: Steven E. Anderson and Sara F. Reynolds, *Walker Bryant Tipps & Malone*, Nashville
Verdict: $1,300,000 for plaintiff
Court: **Davidson**
Judge: Hamilton V. Gayden, Jr.
10-1-10

Michael Gaw was born by c-section on 12-5-02 to Beth and Howard Gaw in Cookeville. Gaw suffered a congenital birth defect known as bladder exstrophy. It is a rare condition where the bladder is partially outside the body. Gaw was transferred to Vanderbilt University Hospital for a surgical repair.

Just a few days after his birth, Dr. John Pope, Pediatric Urology, performed a complex surgical repair. Besides closing the bladder, Pope redirected a malformed tube in Gaw's penis that carries urine from the bladder out of the body. Despite the intervention (surgery is always required for this condition), Gaw has continued to suffer from bladder dysfunction, impaired ejaculation, incontinence and disfigurement.

Gaw sued Vanderbilt (as Pope's employer, he being dismissed volitionally) and alleged negligence by Pope in several regards. They were, (1) inadequate informed consent, (2) his subpar technical performance of the procedure, and (3) having attempted the procedure by himself with his relative inexperience. The plaintiff's expert, Dr. John Gearhart, Pediatric Urology, Baltimore, MD, explained that because of the difficulty of

this surgery, Gaw should have had more senior pediatric urologists on hand. The plaintiff additionally criticized Pope for his post-surgical care in failing to intervene when there was evidence Gaw's penis was discolored.

Vanderbilt defended the case that the congenital defect was severe. It noted that even in the best of hands and with optimal intervention, this condition frequently results in devastating consequences. So too it was for Gaw who will have a lifetime of complications despite Pope's appropriate surgical intervention.

The jury's verdict was for the plaintiff on liability. Gaw took $150,000 for past suffering and $350,000 for that in the future. His award for permanent impairment/disfigurement was $800,000. There was no award for loss of ability to enjoy life. The verdict totaled $1.3 million. A consistent judgment was entered.

The jury had several questions in trial. They included: What is the letter of the law of the father not being married to the mother? Is Vanderbilt backing Pope 100% or just financially, meaning will he be punished administratively? Why did this case drag out so long?

Pending is Vanderbilt's motion for JNOV relief. It has repeated trial arguments, including that Gearhart should have been excluded by the locality rule.

Copyright Infringement - **Heirs of the author of the famous gospel song, "I'll Fly Away" alleged the author (Albert Brumley) was the statutory author (and didn't write it as a work for hire) – the distinction was important as if Brumley was the statutory author, the heirs could terminate an assignment of the song's rights and in the process defeat the interests of another heir who controlled rights to the song**

Brumley et al v. Brumley & Sons, 3:08-1193
Plaintiff: Jason L. Turner and Jennifer S. Ghanem, *Lassiter Tidwell Davis Keller & Hogan*, Nashville
Defense: Barry L. Slotnick, New York, NY and Julie P. Samuels, Chicago, IL both of *Loeb & Loeb*
Verdict: For plaintiff
Federal: **Nashville**
Judge: Aleta A. Trauger
11-17-10

Alfred Brumley composed the now-famous gospel song, *I'll Fly Away* in 1929. He later sold the song to the Hartford Music Company which first copyrighted the song in 1932. Thereafter in the 1940's, Brumley reacquired rights to the song and assigned them to a new corporation, A.B. Brumley & Sons.

The corporation appropriately registered the song in 1959 to preserve its rights. Thereafter Brumley sold his interest in the corporation to one of his sons, Robert. Brumley then died in 1977. The corporation (owned by Robert) has henceforth controlled rights to *I'll Fly Away*.

Other Brumley heirs, representing children and descendants, made an attempt in 2008 to terminate the assignment of the song's rights consistent with the Copyright Act of 1976. This termination was predicated on the notion that Brumley was the song's statutory author. If he did enjoy that status in 1932, the termination of the assignment to the corporation would stand and rights to the song would return to his heirs.

Thus as this case came to trial, the heirs alleged the corporation had infringed the copyright by failing to terminate the assignment. The corporation defended the case and argued Brumley had composed the song as a "work for hire" for the Hartford Music Company and thus was not the statutory author.

The defense cited proof from a 1990 book on the song that indicated Brumley had drawn a small salary from Hartford. The plaintiffs countered this notion and cited that on the corporation's website, it even described Brumley as the sole author of the song.

A federal jury in Nashville resolved this case for the plaintiff that Brumley was the song's statutory author. That was the only question presented. The court has since asked the parties to consider settling the matter, the remaining questions requiring a bench trial.

Auto Negligence - **The defendant pulled from a Sam's Club and performed a u-turn into the path of the plaintiff – a Memphis jury found both drivers equally at fault**

Johnson v. Jeffries, CT-005638-08
Plaintiff: John B. Bartels, Memphis
Defense: Randall N. Songstand, Memphis
Verdict: Defense verdict
Court: **Shelby**
Judge: Robert L. Childers
9-9-10

Samuel Johnson, then age 21, traveled on Getwell Road on 9-5-08. At the same time, Getra Jeffries, pulled from a Sam's Club parking lot. As she did so, Jeffries did a sudden u-turn (she had missed the store) into Johnson's path. [It was raining hard and visibility was limited.] A moderate collision resulted.

Johnson has since treated for several injuries, (1) a concussion, (2) a fracture of his hand, and (3) a ligament tear in his knee. His medical bills were approximately $25,000.

In this lawsuit, Johnson sued Jeffries and alleged negligence by her in turning into his path. Jeffries defended and implicated Johnson for failing to keep a proper look-out.

This case was resolved on comparative fault. The jury assessed fault 50% to each driver and that ended the deliberations. A defense judgment was entered.

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