The Tennessee Jury Verdict Reporter

The Most Current and Complete Summary of Tennessee Jury Verdicts

December 2019 **Statewide Jury Verdict Coverage** **16 TJVR 12**

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In This Issue

Premises Liability - The plaintiff, working as an exterminator at a movie theater before it opened, slipped on a just mopped floor and sustained a torn rotator cuff – the plaintiff's medical bills were $40,150 (paid by worker's compensation), the jury making a general award of damages to the plaintiff in the sum of $550,000

Church v. Carmike Cinemas, 33359

Plaintiff: Robert Bates, *Robert Bates & Associates*, Kingsport

Defense: C. Christopher Brown, *Leitner Williams Dooley & Napolitan*, Knoxville

Verdict: $550,000 for plaintiff less 40% comparative fault

Court: **Washington**

Judge: James Lauderback

Date: 11-14-19

Mark Church, age 60, worked as an exterminator for Terminex on 7-9-13. He was assigned that morning to spray for bugs at the Carmike movie theater in Johnson City. He arrived before the theater had opened.

That same morning a third-party maintenance firm, Ice Maintenance, had just finished mopping the floors of the theater. Church did not

appreciate this as he walked behind the concession stand. He slipped and fell on the wet floor.

Church sustained a torn rotator cuff in the fall. It was surgically repaired ten days later. Church was released to full duty four months later and assigned a 4% impairment. His medical bills, which were paid by worker's compensation, totaled $40,150.

Church sued Carmike and alleged negligence by it in maintaining the premises. Church was critical of Carmike for bringing in Ice Maintenance without any screening or supervision of their work. In fact while Ice Maintenance had the keys to the place, Carmike management only knew one of the workers, "Miguel" and didn't otherwise communicate or speak with the workers of the maintenance firm.

Carmike brought in Ice Maintenance as a third-party defendant. It was never found nor served and did not participate at trial. Its duties remained in issue for purposes of apportionment. Carmike for its part has since been bought out by AMC Theatres. The defense of the case minimized both its role in the case and Church's own comparative fault.

As the case was tried to the jury, Church asked the jury for an award of damages of $600,000. He also conceded he shared 10% of the fault for the accident.

This case was tried in Jonesborough for two days. The jury returned a mixed verdict on fault. It was assessed 10% to Church (he conceded as much) and 30% more to the non-party maintenance firm. The lion's share of 60% was assigned to Carmike. The jury then made a general award of damages to Church in the sum of $550,000. A judgment consistent with comparative fault was entered against Carmike for $330,000.

Ed. Note - Bates tried this case in his first week after opening a new law firm.

Case Documents:

Final Judgment/Jury Verdict

Ski Resort Negligence - A snowboarder fell on the slopes (to avoid an out-of-control skier) and slid headfirst into an unpadded wooden post that marked the edge of the slope – she suffered serious facial injuries, breaking more than 30 bones in her face – in this lawsuit the plaintiff alleged negligence by the ski resort in failing to provide padding on the post

Chase v. Ober Gatlinburg Ski Resort, 12-63

Plaintiff: Dan C. Stanley and Richard E. Collins, *Stanley & Kurtz*, Knoxville and Darren V. Berg, Knoxville

Defense: Benjamin W. Jones and Mark A. Castleberry, *Lewis Thomason King Krieg & Waldrop*, Knoxville

Verdict: Defense verdict on liability

Court: **Sevier**

Judge: Rex H. Ogle

Date: 6-7-19

Karla Chase, then age 30 and an expert snowboarder, visited the Ober Gatlinburg Ski Resort on 2-4-11. She'd been there many times before. On this day Chase made some 20 trips down the mountain on Ober Gatlinburg's so-called Ober Chute Trail.

Misfortune struck on Chase's last snowboard adventure. As she descended the mountain, she observed an out-of-control skier. To avoid a collision with that skier, Chase fell face forward. She was moving at close to 20 mph.

Chase continued to slide down the mountain towards the boundary. The boundary was marked by 4X4 wooden posts and netting. The posts were square and did not have padding.

Chase slid headfirst into the post. It was a devastating impact, her face striking the post squarely. The impact caused her to break more than 30 bones in her face and suffer a collapsed nose. She also had a long vertical laceration running down the middle of her face that was stitched together.

Beyond the broken face, Chase has also since treated for a traumatic brain injury. It was identified as a front lobe cerebral injury that has resulted in depression and other deficits. The emotional injury was confirmed by a neuropsychologist, Malcolm Spica, Knoxville. Dr. Edward Breazeale, Plastic Surgery, Knoxville, repaired and treated Chase's facial injuries. Despite those interventions, Chase continued to have noticeable scarring and disfigurement.

Chase filed this lawsuit against Ober Gatlinburg and alleged negligence by it in failing to provide padding for the wooden post. She was also critical of it for using square wooden posts as opposed to those that were rounded. Her ski resort expert was Jim Isham, Taos, NM.

Ober Gatlinburg defended on several fronts. It first denied that the "ski resort" standard of care required that the posts be padded. The defense ski resort expert was Mark Petrozzi, Gilford, NH. The defense also implicated Chase's comparative fault, noting she traveled at high speed and after falling intentionally, she failed to take steps to slow herself down before striking the pole.

Ober Gatlinburg also contested and diminished the purported brain injury. It relied on a neurospsychiatry

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Tennessee Jury Verdict Reporter

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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expert, Dr. David Shraberg, Lexington, KY.

The jury in this case heard proof for three days. It returned a verdict for Ober Gatlinburg on liability and thus didn't reach Chase's duties, apportionment and damages. [It was a specific verdict form that enumerated several categories of damages.]

As the jury returned to the courtroom to give its verdict, the foreman explained they had a statement to read. Judge Ogle allowed the statement. The foreman explained that while the jury found Ober Gatlinburg "not guilty", he further explained the jury thought the ski industry should look into using padding for posts.

Chase has since moved for a new trial. She cited that the jury's post-verdict statement went to the key issue in the case – the failure to provide padding on a sharply-edged wooden post. The statement from the jury criticizing the failure to use padding, the motion explained, was inconsistent with the verdict exonerating Ober Gatlinburg.

The ski resort responded that the jury's extraneous statements did not invalidate the verdict. The motion was pending at the time of this report. The plaintiff died this fall of other causes on 11-9-19 – her estate continues to prosecute the action.

Auto Negligence - The plaintiff, a passenger in a pick-up truck, suffered assorted injuries when his driver lost control on the interstate and the pick-up rolled over – a Lebanon jury awarded significant damages, but rejected any award for the plaintiff's pain and suffering

Hawks v. Brauss Lawn Service, 16-351
Plaintiff: Daniel L. Clayton, *Kinnard Clayton & Beveridge*, Nashville
Defense: John R. Rucker, Jr., Murfreesboro
Verdict: $255,852 for plaintiff
Court: **Wilson**
Judge: Clara Byrd
Date: 4-25-19

Jeremy Hawks was on the way to work on the morning of 7-27-15 with his employer, Darryl Brauss of Brauss Lawn Service. Brauss was driving a 2006 Toyota Tacoma pick-up truck on I-40 (near mile marker 223) in Wilson County.

Brauss suddenly lost control. The pick-up fish-tailed over four lanes of traffic before flipping over and landing on its roof. Brauss would not contest fault.

Hawks was taken from the scene to a local ER with several injuries. The most obvious one immediately was a large laceration on his head that took 13 staples to close. He has also since treated for a nerve injury in his hip, the pain radiating into his leg. Hawks also reported other soft-tissue symptoms and insomnia.

In this lawsuit Hawks sought damages from Brauss Lawn Service. The defense of the case minimized the claimed injury.

This jury considered damages only. Hawks took his medicals of $51,708 and lost wages of $4,144 as claimed. The jury added $200,000 for permanent injury. However the jury wrote "0" for the plaintiff's past and future suffering (in separate categories), as well as loss of enjoyment of life.

The raw verdict for Hawks totaled $255,852. There was never a final judgment entered in the case. The parties instead entered an order indicating the case was fully compromised and settled. The matter is closed.

Medical Negligence - A dermatologist was blamed for a 16-month delay in failing to diagnose a rare penile cancer – by the time the cancer was diagnosed, it had already metastasized and led to the plaintiff's death – the doctor defended that he met the standard of care and in any event, the cancer was already fulminant at the time of the purported diagnosis error

Lyle v. McDaniel, 17-62
Plaintiff: William D. Leader and Jessica C. Lim, *Leader Bulso & Nolan*, Nashville
Defense: Dixie Cooper and Kim J. Kinsler, *Gideon Cooper & Essary*, Nashville
Verdict: Defense verdict on liability
Court: **Williamson**
Judge: Joseph A. Woodruff
Date: 4-10-19

Paul Lyle, then age 57, treated in October of 2014 with a dermatologist, Dr. William McDaniel, for several skin conditions. This case would concern an apparent rash on the tip of Lyle's penis. McDaniel initially treated the condition as just that – a rash.

The condition persisted and Lyle saw McDaniel again in February of 2015. At this time McDaniel did a biopsy and identified a squamous cell carcinoma. McDaniel did a shave biopsy of the affected area, but it was obvious the cancer was not taken to the full margin. Three more times in 2015 McDaniel saw Lyle and did several scrapes of the area. They were not biopsied.

Lyle was finally referred to a urologist in February of 2016. He was finally diagnosed with an invasive and rare penile cancer. Lyle underwent a partial penectomy as well as chemotherapy and the removal of his lymph nodes. Despite those interventions, the cancer had already metastasized.

Lyle's condition continued to decline. He died of the cancer on 5-15-17. Lyle was survived by his wife and adult daughter. Before his death he had earned $100,000 a year or so as the operator of his own Brentwood advertising agency.

Lyle filed this lawsuit before his death, his estate continuing to prosecute it after his death. The claim alleged a diagnosis error by McDaniel that resulted in a 16-month delay in treating Lyle's cancer.

But for the delay in treating that lesion, the theory went, the treatable cancer metastasized and led to the fatal event. The plaintiff's experts included Dr. Eva Hurst, Dermatology, Creve Coeur, MO and Dr. Stephen Culp, Urologist. An economist for the estate was Charles Baum, Murfreesboro. Beyond the estate's claim, Lyle's wife and daughter presented derivative consortium claims.

McDaniel denied his care was substandard. He also contested causation and developed proof the cancer was already fulminant at the time of the purported diagnosis error. Namely the culprit was not the lesion on Lyle's penis, but rather an invasive cancer in his urethra – the lesion in fact was secondary to the fatal urethral cancer.

The experts for McDaniel were Dr. Charles Fulk, Dermatology, Dr. Robert Chen, Dermatology, Dr. Paul Hatcher, Urology and Dr. Mahul Amin, Pathology. The estate rebutted Amin's pathology theory regarding the urethral cancer with Dr. Jennifer Gordetsky, Pathology, Birmingham, AL.

This case was tried in Franklin for seven days and the jury deliberated for 2.5 hours. The jury was asked if McDaniel's treatment fell below the Brentwood dermatology standard of care. The answer was no and the jury did not reach damages. A defense judgment closed the case.

Auto/Municipal Negligence - **The defendant ran a stop sign and crashed into the plaintiff – the plaintiff then blamed not only the defendant, but also the City of Memphis as there was proof city worker were in the area and their presence blocked the defendant's view of the stop sign**

Gray v. Anderson et al, CT-000450-16
Plaintiff: Matthew C. Hardin and Matt McFarland, *Matt Hardin Law*, Memphis
Defense: Andrew H. Owens for Anderson
Dennis P. Hawkins, *Assistant City Attorney*, Memphis for the City of Memphis
Verdict: $90,000 for plaintiff against Anderson on Auto Negligence; Defense verdict on municipal negligence
Court: **Shelby**
Judge: Gina C. Higgins
Date: 6-19-19

There was a stop sign crash in Memphis on 2-5-16. The plaintiff, Richard Gray, age 58 and of Michigan, was in a rental car with a friend. A moment later their vehicle was t-boned by Tommy Anderson. Anderson had raun a stop sign.

Anderson had an excuse. He explained he didn't see the sign because City of Memphis workers were in the area and their presence blocked his view of the road.

In this lawsuit Gray targeted two defendants. The first was Anderson and the claim was simple enough. He had run the stop sign. Gray also sought damages from Memphis predicated on negligence by the worker who purportedly blocked Anderson's view.

Gray suffered several injuries in the crash. He later underwent both a disc and knee surgery. His medical bills totaled $73,319. The jury could also award him non-economic damages.

Anderson defended and blamed the City of Memphis for the crash. Memphis for its part implicated Anderson. The matter of Gray's driver's negligence for purposes of comparative fault was not an issue. Both defendants also contested the claimed injuries.

This case was tried for three days. The jury absolved Memphis and found Anderson solely at fault. Then to damages, Gray took medicals of $40,000 and $50,000 more for his pain and suffering. The jury wrote "0" for both loss of enjoyment of life and permanent injury.

The court entered a consistent judgment for $90,000 against Anderson. It has since satisfied. The court's judgment was also for Memphis. The case is concluded.

Auto Negligence - **The plaintiff suffered serious injuries (a complex pelvic and hip fracture) when the defendant ran a red light and broadsided him at nearly 50 mph – the plaintiff took medicals of $83,060 as stipulated but just the relatively modest $118,000 for non-economic damages**

Snyder v. Knowles, 03-28-18
Plaintiff: Sidney W. Gilreath and Carey Bauer, *Gilreath & Associates*, Knoxville
Defense: Kenneth W. Ward, *Trammell Adkins & Ward*, Knoxville
Verdict: $207,836 for plaintiff
Court: **Knox**
Judge: Deborah C. Stevens
Date: 11-14-19

This case involved a serious red light collision. It occurred on 10-1-17 at the intersection of Chapman Highway and Moody Avenue in South Knoxville. The plaintiff, Joseph Snyder, age 28 and working in marketing for a beer company, proceeded through the intersection.

An instant later Snyder's vehicle was broadsided by Logan Knowles. An accident reconstruction expert for Snyder, James Norris, estimated that Knowles was traveling at close to 50 mph just before the impact. The vehicle damage was certainly consistent with that finding. Knowles admitted fault.

Snyder was badly hurt in the crash and would recall a life-changing "out-of-body" experience in the moments after the crash. He recalled floating above the scene and seeing himself pinned in the vehicle as first responders helped him. A moment later he "snapped back" into his body.

Snyder's injuries included a broken ball and socket in his right hip and a pelvic fracture. He also suffered a degloving injury of his thigh where

the skin was forcefully separated from the underlying muscle and fatty tissue. Snyder was transported by ambulance to the UTMC where a surgery was performed.

Snyder remained in the hospital for five days. He then moved in with his parents where he recovered for some four months. It was a grueling recovery, Snyder moving from using a wheelchair to a walker and finally to crutches. He could ambulate after four months. Snyder no longer plays basketball (he fears contact) and once an active runner, he can no longer do so because of pain.

Snyder's treating orthopedist, Dr. Kostas Triantafillou, Knoxville, testified at trial about his patient's injuries and treatment. The medical bills were $83,060. Snyder's lost wages were $6,776. The special damages were stipulated. In this lawsuit Snyder sought damages from Knowles.

Knowles conceded that the crash was severe and Logan's serious injuries deserved compensation. However the defense suggested the plaintiff had attempted to "cook a lawsuit" by inflaming the jury and inflating the damages. Knowles focused that the plaintiff's own treating physician thought he had enjoyed a good recovery. This was evidenced by his participation in a regular bowling league where he averages 170 pins.

As the case was argued to the jury, Snyder suggested $30 a day for his pain and suffering and $20 more for permanent injury and loss of enjoyment of life. Based on the mortality tables, that equaled a little more than $1.4 million. Knowles, through his counsel, suggested to the jury that $250,000 was fair and reasonable.

The jury in this case deliberated an hour. It returned a verdict for Snyder and awarded his medicals and lost wages as stipulated. He took $18,000 for his pain and suffering and $100,000 more for permanent injury. The jury rejected an award for loss of enjoyment of life.

The verdict for Snyder totaled $207,836. At the time of this report no judgment had been entered. The plaintiff had last demanded $575,000. The defense offer (including from a silent UIM carrier) had been for $250,000.

Uninsured Motorist - **The plaintiff complained of a shoulder impingement injury after a rear-end crash – a Nashville jury awarded medical bills and nothing more**

Harbison v. State Farm, 17-2996
Plaintiff: R. Douglas Hanson, II and Natalie Sharp, *Hughes & Coleman*, Nashville
Defense: Gary M. Kellar, *Spicer Rudstrom*, Nashville
Verdict: $3,913 for plaintiff
Court: **Davidson**
Judge: Hamilton Gayden
Date: 10-15-19

There was a rear-end wreck in Nashville on 12-12-16. The plaintiff, Charles Harbison, was slowing for a red light on 51st Street. A moment later he was rear-ended by Artevia Thurman. The crash resulted in moderate damage.

Harbison has since treated for a shoulder impingement and other soft-tissue symptoms. As Thurman was uninsured, Harbison sought damages from his uninsured motorist carrier, State Farm. His total medical bills were $65,836.

State Farm's defense minimized the claimed injury. It relied on an IME, Dr. Sean Kaminsky, Orthopedics, Nashville. The expert linked Harbison's ongoing symptoms to pre-existing arthritis.

This case was tried for two days. The jury found the tortfeasor was at fault and that fault had proximately caused injury to Harbison.

Then moving to damages, Harbison took medicals of $3,913. The jury left blank the verdict form (essentially equaling zero) for past and future pain and suffering, past and future loss of enjoyment of life and permanent injury. The verdict totaled $3,913 and a consistent judgment was entered.

Harbison has since moved for a new trial and/or additur. He argued in the motion that the verdict was inadequate, the jury awarding some of his medical bills yet making no award for his non-economic damages. This was especially so as even the IME conceded a shoulder strain. The motion is pending.

Case Documents:
The Jury Verdict
Plaintiff's Motion for Additur

Auto Negligence - **The plaintiff complained of soft-tissue symptoms and the aggravation of pre-existing conditions after a minor rear-ender – the plaintiff prevailed and took $15,000, a sum that was slightly less than her incurred medical bills**

Edwards v. Kramer, CT-003456-16
Plaintiff: Shannon Elsea, *Gatti Keltner Bienvenu & Montesi*, Memphis
Defense: Lori D. Parish, *Law Offices of Jeffrey Kohl*, Memphis
Verdict: $15,000 for plaintiff
Court: **Shelby**
Judge: Valerie Smith
Date: 10-2-19

There was a rear-end crash in Memphis on 8-24-15. The plaintiff,

Pamela Edwards, was stopped and preparing to make a right turn. Behind her in traffic was Mariah Kramer. Kramer thought Edwards had begun her turn, and so Kramer let her foot off the brake. Edwards hadn't turned yet and Kramer collided with her vehicle. The crash resulted in minor damage. Fault was no issue.

Edwards has since treated for soft-tissue injuries and the aggravation of pre-existing conditions. An eggshell plaintiff of sorts, she had a prior fusion surgery among other conditions. The treating Dr. Michael Sorenson, Physical Medicine, linked her aggravation injury to this crash. She has continued to report pain and has undergone epidural and facet injections. Her medical bills were $17,259.

In this lawsuit Edwards sought damages from Kramer. The jury could make her a general award of damages. Kramer defended and looked to proof from an IME, Dr. Riley Jones, Orthopedics, Memphis. The expert concluded Edwards suffered just a temporary soft-tissue injury, noting that at the ER while she had neck pain, her range of motion was normal. Jones' key takeaway was that there was no aggravation of Edward's pre-existing conditions.

The jury in this case deliberated and returned a general verdict for Edwards in the sum of $15,000. A consistent judgment was entered and Kramer has paid it.

Premises Liability - As the plaintiff walked into an art studio, he alleged the pressured automatic door (they were not operational in the older building) closed suddenly and "guillotined" his finger which was purportedly later reattached

Murphy v. Ingenuity 101 et al, 16-220
Plaintiff: Pro se
Defense: Kenneth W. Ward and Hannah S. Lowe, *Trammell Adkins & Ward*, Knoxville
Verdict: Defense verdict on liability
Court: **Hamblen**
Judge: Alex E. Pearson
Date: 6-6-19

Michael Murphy was a patron on 6-22-12 at a Morristown, TN art studio known as Ingenuity 101. It is operated as a d/b/a by Rebecca Keck. She rents the studio in a building owned by Richard and Christine Sarta. For purposes of this lawsuit, the defendants (the store, Keck and the Sartas) were jointly represented.

Ingenuity, which is located in an old bank, featured pressure-activated automatic doors. There are two doors (indicated by arrows) which show an entry and exit. However the automatic doors are no longer operational.

As Murphy walked into the store, he alleged the door suddenly closed on his hand and in his words, "guillotined" his finger. He would also later claim the finger was reattached by treating physicians.

Murphy's treating physician, Dr. Douglas Calhoun, Orthopedics, Knoxville, identified a fracture in the finger and a nail deformity and assigned a 9% impairment. The incurred medical bills were $3,559.

In this lawsuit Murphy alleged the door was in a defective condition and closed upon him. He advanced the case to trial as a pro se litigant. The Sartas as owners of the building denied ever having any problems with the doors or even having the need to perform repairs.

Keck also remembered the events. Namely, Murphy walked in the entry door, stopped suddenly, and turned around to exit. As he exited again via the entry door, the door closed on his hand. She denied fault.

The jury in this case deliberated for fifteen minutes. It returned a verdict exonerating both sets of defendants and Murphy took nothing. A consistent judgment was entered. Murphy made a motion for a new trial. It was denied and the case is concluded.

Uninsured Motorist - A right of way collision left the plaintiff with chronic neck pain – a Kingston jury awarded the plaintiff medicals of $34,615 and $10,000 for non-economic damages

Fox v. Safeco, 16-33
Plaintiff: Brad C. Burnette, *Fox Willis Burnette*, Clinton
Defense: Chad Hogue, *Law Offices of Julie Peak*, Brentwood
Verdict: $66,548 for plaintiff
Court: **Roane**
Judge: Michael S. Pemberton
Date: 5-14-19

Jessica Fox was injured in a right-of-way collision on 3-12-15. She traveled on U.S. 70 near Swan Pond Road when Joy Patterson turned left in front of her. It was a moderate impact and Fox's airbag deployed.

Fox has since treated for burning neck pain. It was later linked to a cord impingement at the C4-5 level. Fox has since been treated with epidural injections by Dr. David Hauge, Neurosurgery, Knoxville.

Despite that intervention, Fox has

been identified as suffering from chronic neck pain. In this lawsuit she first moved against Patterson and took her $25,000 limits. Fox further sought UM coverage from her insurer, Safeco. Thus as the case went to trial, Safeco (which defended in the name of Patterson) would be entitled to a $25,000 credit.

This case was tried for two days on damages only. Fox took medicals of $34,615 and $5,100 more for future care. Her lost wages were $11,834. The jury rejected those in the future.

Then moving to non-economic damages, Fox was awarded $10,000 for past suffering – that in the future was rejected. Similarly the award for past permanent injury was $5,000 – that in the future was rejected. The jury also wrote "0" for Fox's loss of enjoyment of life.

The verdict for Fox totaled $66,548. The court's final judgment was for the plaintiff in the sum of $41,548, representing the raw verdict less the underlying limits of the tortfeasor.

Medical Negligence - A radiologist was blamed for error in failing to diagnose testicular torsion – the error was linked to the plaintiff (age 19) ultimately losing one of his testicles

Smith v. Pope, 72274
Plaintiff: Jon E. Jones, Cookeville and Patrick S. Callahan, *Callahan & Binkley*, Cookeville
Defense: James E. Looper, Jr. and Charles E. Moody, *Hall Booth Smith*, Nashville
Verdict: Defense verdict on liability
Court: **Rutherford**
Judge: Howard W. Wilson
Date: 3-29-19

Michael Smith, then age 19, presented to the ER at St. Thomas Hospital in Murfreesboro on 9-17-15. He reported testicular pain and scrotal swelling. Smith was evaluated by an ER doctor who ordered an ultrasound of Smith's testicles.

The ultrasound was read by a technician at the hospital who saw nothing amiss. A radiologist, Dr. Stan Pope, signed off on that read. What Pope didn't tell the ER doctor was that there was diminished blood flow to the right testicle.

The ER doctor didn't have this information and diagnosed Smith with epididymitis – that is essentially just swelling. In fact the ultrasound was inconsistent with epididymitis. Smith was discharged.

Smith was back to the hospital four days later with more significant testicular pain. It was identified that he had testicular torsion. The testicle was no longer viable and it was removed.

In this lawsuit Smith sued Pope and alleged error by him in misreading the ultrasound and failing to properly report the results to the ER doctor. The theory continued that had Pope done this, the ER doctor would have ordered a urology consult and a timely diagnosis would have been made. The plaintiff's radiology standard of care expert was Dr. Deborah Baumgarten, Atlanta, GA.

Pope defended on several fronts. The first was that at the 9-17-15 ER visit, Smith did not yet have testicular torsion – it developed after the first ER visit and Smith's return four days later. Pope also implicated the plaintiff's own comparative fault in failing to return sooner to the ER as his symptoms worsened. The defense expert was Dr. David Owens, Radiology, Atlanta, GA.

This case was heard by a Murfreesboro jury for four days. The jury's verdict is not a part of the record. However the judgment indicates it was for Pope on liability and Smith took nothing.

Smith moved for a new trial and alleged the verdict was contrary to the evidence. The motion was denied and the case is closed.

Auto Negligence - The plaintiff complained of a soft-tissue cervical dystonia condition after a multi-car rear-end crash

McCrary v. Jackson et al, CT-000643-16
Plaintiff: Quinton E. Thompson, Ryan Skertich and Peter B. Gee, Jr., *Morgan & Morgan*, Memphis
Defense: James B. "Trey" McClain, III, *Law Office of Paul Burson*, Memphis for Jackson
Dawn Davis Carson and Dylan J. Gillespie, *Hickman Goza & Spragins*, Memphis for Weaver
Verdict: $63,333 for plaintiff assessed 50% to each defendant
Court: **Shelby**
Judge: Jerry Stokes
Date: 6-26-19

Wendy McCrary traveled on Walnut Grove Road on 8-11-15. She was preparing to make a turn into a driveway. Behind her in traffic was Eddie Jackson. Jackson rear-ended her. A moment later in a second crash, Kevin Weaver hit Jackson who struck McCrary again. This second impact caused the McCrary vehicle to spin out.

McCrary, who works at St. Jude Hospital, has treated for soft-tissue symptoms and the aggravation of a pre-existing cervical dystonia. This condition is characterized by involuntary contraction of neck muscles.

In this lawsuit McCrary sought damages from Jackson and Weaver.

Beyond her primary claim, her husband (Ray) presented a derivative consortium count. The defendants did two things at trial: (1) they blamed one another for the crash, and (2) they diminished the claimed injury.

This case was tried for three days. The jury's verdict was mixed. It assessed fault equally to the defendants. McCrary took medicals of $8,395 and lost wages of $29,938.

The jury continued and awarded McCrary $10,000 for loss of enjoyment of life and $15,000 for pain and suffering. Her husband's consortium interest was rejected. The raw verdict totaled $63,333. A judgment consistent with comparative fault was assessed against the defendants. There was a silent UIM in this case, Safeco, who did not participate at trial, nor was it mentioned in the judgment.

Auto Negligence - The plaintiff complained of a compression fracture after a right-of-way collision

Cottingin v. Carey, 1-19-18
Plaintiff: Thomas S. Scott, Jr. and Christopher T. Cain, *Scott & Cain*, Knoxville
Defense: Dallas T. Reynolds, III, *Dunn MacDonald & Reynolds*, Knoxville
Verdict: $25,856 for plaintiff
Court: **Knox**
Judge: Kristi Davis
Date: 8-5-19

There was a right-of-way crash on 1-19-17 in Knoxville. The defendant, David Carey, attempted to reach an I-640 entrance ramp from Washington Pike. He turned left in front of the oncoming Robin Cottingin. A moderate collision resulted.

Cottingin, then age 61, has since treated for an L-1 compression fracture and other soft-tissue injuries. Her injuries were confirmed by a treating orthopedist, Dr. Patrick Bolt, Knoxville.

In this lawsuit she sought damages from Carey. Beyond her primary claim, Cottingin's husband presented a derivative consortium claim. Carey's defense conceded a soft-tissue injury, but contested the claimed compression fracture.

The court directed a verdict for the plaintiff on liability and the jury considered damages only. Cottingin took medicals of $17,226 and lost wages of $630. The plaintiff was awarded $5,000 for pain and suffering and $3,000 more for loss of enjoyment of life. The jury rejected her claim for permanent injury as well as the husband's consortium interest.

The jury's verdict totaled $25,861. A consistent judgment was entered by the court.

Cottingin moved for a new trial and argued the verdict was inadequate in light of her injuries. Judge Davis granted the motion and imposed additur $675 of additur. This was apparently an attempt to award Cottingin the entire sum of her medicals, the $17,226 awarded by the jury being $675 less than the incurred amount. The additur was accepted and the judgment has been satisfied.

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