

# The Tennessee Jury Verdict Reporter

The Most Current and Complete Summary of Tennessee Jury Verdicts

April 2007

Statewide Jury Verdict Coverage

4 TJVR 4

*Unbiased and Independently Researched Jury Verdict Results*

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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.

## The Tennessee Jury Verdict Reporter 2006 Year in Review

This important bound volume, the second in the series, 254 pp., has just been published, and is ready for immediate delivery. It includes detailed analysis of every kind of case in 2006, easily sorted and indexed. Over 20 individual reports are included, including car wrecks, medicals cases, discrimination suits, premises liability, plus breakdowns of loss of consortium and punitive damage claims. There is also an injury index, which places an average multiplier on several types of bodily injury. The Review includes the full text of the reported cases in 2006, easily referenced by region, style, result and attorney. But this is the second edition, so all the reports and analysis cover a two-year period.

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this one of a kind publication.**

### Truck Negligence - An Alabama chiropractor sustained serious injuries when a tractor-trailer jumped a concrete median and landed on her vehicle

*Mick v. Alside Trucking*, 1:05-143  
Plaintiff: D. Leon Ashford, *Hare Wynn Newell & Newton*, Birmingham, AL  
Defense: Samuel R. Anderson and Amanda G. Branam, *Luther Anderson*, Chattanooga and J. Randolph Bibb, Jr., *Waller Lansden Dortch & Davis*, Nashville

Verdict: \$820,889 for Cindy  
\$103,705 for James

Federal: **Chattanooga**  
Judge: William B. Carter  
3-14-07

On 12-29-03, Dr. Cindy Meler-Mick, a Scottsboro, AL chiropractor and her husband, James, were traveling through Chattanooga on I-24. Suddenly a tractor-trailer driven by Herman Gooding for Alside Trucking, lost control on the wet interstate. In a curve his rig jumped the median and landed on top of the Meler-Mick vehicle and destroyed it. Fault for the wreck was no issue.

Cindy, then age 49, was badly hurt in the impact. She sustained a broken ankle

which was surgically repaired, as well as a broken hip and collarbone. Ligaments in her knees were also torn. For a time after the wreck, Cindy recovered and utilized a wheelchair. While back to work as a chiropractor, Cindy does so with limitations regarding adjustments and an expectation that her career will be cut short. James was also hurt in the impact, but much less so than his wife, sustaining only soft-tissue injuries.

In this lawsuit, the Mick plaintiffs sought damages from Alside Trucking. The case, originally filed in the Northern District of Alabama, was venued to Chattanooga where it came to trial. Alside defended the case on damages and diminished the effect of the claimed injury, noting there are chiropractic tools that are low-impact.

Tried on damages, Cindy took a general award of \$820,889. Her husband took \$103,705 more, the combined family verdict totaling \$924,594. A consistent judgment followed.

**Auto Negligence - A woman, fifteen weeks pregnant, was hospitalized a week and underwent an emergency laparotomy after free fluid was identified in her abdomen – while the baby was fine, the woman has continued to complain of chronic back pain**

*Al-Mutory v. Carter*, 03-1529

Plaintiff: Stanley E. Davis, Nashville

Defense: Thomas J. Dement, II, *Leitner Williams Dooley & Napolitan*, Nashville

Verdict: \$120,000 for plaintiff

Court: **Davidson**

Judge: Barbara N. Haynes  
2-28-07

On 6-1-02, Afrah Al-Mutory, then age 19 and fifteen weeks pregnant, was a passenger in a car with her husband on Murfreesboro Road. Suddenly a vehicle driven by Wesley Carter pulled from a private drive and into their path. A moderate collision resulted. Fault was no issue.

Al-Mutory was taken to the ER at Vanderbilt where the concern was for her baby. As free fluid of indeterminate origin was identified in her abdomen, an emergency laparotomy was performed the next day. Fortunately the baby was

okay and was delivered that November.

Al-Mutory stayed in the hospital for a week. Beyond the scare to her unborn baby, she has continued to complain of chronic pain, following with a chiropractor. Her medical bills were \$77,837, with some \$67,000 of that representing her closely monitored stay at Vanderbilt.

Al-Mutory pursued this action against Carter, blaming him for the right of way crash. Fault was no issue. During the course of the litigation, Carter died – his estate continued the defense. In that regard, it diminished the connection between the wreck and the purported abdominal pain. The estate did so, noting that Al-Mutory had visited the hospital two days before the wreck with abdominal pain. She also had a history of pre-existing neck and back pain.

Proof was entered in this case over three days. The verdict was for Al-Mutory and she took a general award of \$120,000. When reviewed by the TJVR, no judgment had been entered.

**Medical Negligence - While the plaintiff consented to have her right ovary removed, she insisted she had not consented to the removal of her left one and alleged medical battery after her surgeon made an intra-operative decision to remove the left rather than the right ovary – the verdict has since been set aside, the trial judge granting JNOV for the defense**

*Pernell v. Martin*, CT-006721-02

Plaintiff: Al H. Thomas and Joshua D.

Thomas, *Thomas & Associates*,  
Memphis

Defense: J. Kimbrough Johnson and Joseph M. Clark, *Thomason Hendrix Harvey Johnson & Mitchell*, Memphis

Verdict: \$175,000 for plaintiff

Court: **Shelby**

Judge: James Russell  
12-14-06

Juwana Pernell, then age 42 and an employee at an elementary school, was complaining of abdominal pain. On 12-10-01, her surgeon, Dr. Rodney Martin, performed a cholecystectomy and oophorectomy. The surgical plan was to remove Pernell's right ovary – this was

indicated on her consent form.

During the procedure, Martin discovered the right ovary was well-adhered by scar tissue. He made a decision to loosen the right ovary. Also determining the left ovary was diseased, Martin removed it.

When Pernell awoke from surgery, she was not pleased to learn her left ovary was gone. Diseased or not, it was her position that the removal was unauthorized. Thus by not removing the right ovary as planned, she was then subject to a later second surgery to remove it. It was also her proof these events created surgical menopause.

In this lawsuit, Pernell sued Martin and alleged medical battery. Her expert, Dr. Richard McLaughlin, Ob-Gyn, Springfield, MO, was critical of Pernell for removing the left ovary without plaintiff's consent – he noted there was no documentation that this was discussed. [McLaughlin conceded both ovaries needed to be removed – however he thought Pernell should have been consulted.]

Martin defended the case as above that he had acted properly and while the consent did not mention the left ovary, it did provide that he could perform medically indicated procedures. Then to this surgery, having freed up the right ovary (it was unexpected to see it adhered to scar tissue), Martin then made a reasonable decision to take the more free and also diseased left ovary. It was his position that in so doing, plaintiff might maintain some ovary function. [As it turned out, the result was the same, the right ovary later having to be removed.] The defense expert was Dr. James Butler, Surgery, Memphis.

As the jury was instructed, Pernell could prevail if the answer was no to either of two interrogatories: (1) Was plaintiff aware the defendant performed the procedure? and/or (2) Did plaintiff authorize it. Curiously, the jury answered no to the first and yes to the second. Then to damages, Pernell took a general award of \$175,000. A consistent judgment followed.

The trial judge subsequently granted the doctor's JNOV motion. Russell ruled that there could be no medical battery

The Tennessee Jury Verdict Reporter  
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