

The Tennessee Jury Verdict Reporter

The Most Current and Complete Summary of Tennessee Jury Verdicts

April 2010

Statewide Jury Verdict Coverage

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Medical Negligence - Suffering a broken leg in a serious car wreck, the plaintiff was hospitalized – she left the hospital six days later paralyzed from the waist down – in this lawsuit, she sought damages from a variety of defendants, blaming her injury on complications from a spinal catheter that had been placed to relieve pain
Donathan v. Gordon et al, 4:07-18
Plaintiff: Randall L. Kinnard and Daniel L. Clayton, *Kinnard Clayton & Beveridge*, Nashville

Defense: Thomas A. Wiseman and Kimberly G. Silvas, *Gideon & Wiseman*, Nashville for Southern Tennessee Medical Center
Michael A. Geraciotti, *Levine Orr & Geraciotti*, Nashville for White Arthur P. Brock and John B. Bennett, *Spears Moore Rebman & Williams*, Chattanooga for Cumberland Healthcare defendants (Reimers, Gordon, Kleinpeter and CRNAs)

Verdict: \$22,266,261 for plaintiffs assessed 50% to White, 40% to Gordon, 5% to CRNA Will and 5% to Cumberland Health; Defense verdict for Reimers; Directed verdict for Kleinpeter; Defense verdict for Southern Tennessee

Medical Center on liability; For plaintiff against Southern Tennessee Medical Center on agency
Federal: **Chattanooga**
Judge: Harry S. Mattice, Jr.
3-12-10

Bette Donathan, age 62 and of Montana, was involved in a serious car wreck on 4-13-06. She suffered two broken bones in her right lower leg. She was hospitalized at Southern Tennessee Medical Center in Winchester. Her treating orthopedist was Dr. Delores White.

Beyond hospital nurses, Donathan also received internist care (Dr. Elizabeth Reimers) and anesthesia treatment (Dr. Ronald Gordon and Dr. Kyle Kleinpeter) from Cumberland Healthcare. Cumberland Healthcare also provided CRNA care in the person of Faith Nance and Christopher Will.

White performed a surgical repair on Donathan's leg. Anesthesia was provided by Gordon, CRNAs Nance and Will assisting. [There was some suggestion Kleinpeter was also involved – he would deny any participation.] As a part of post-operative pain management, a decision was made to install a spinal catheter.

Two days later, White learned the catheter was placed. Concerned that it was contra-indicated because of a chronic anti-coagulant condition, White ordered that it be removed. Hospital nurses did so promptly.

By the next day, Donathan had weakness and cramps in her legs. White visited Donathan and believed these symptoms were related to the wreck. A day later, the symptoms were much worse – Donathan was now a paraplegic. Rushed to Vanderbilt by helicopter, her injury was linked to an epidural hematoma that formed on her spine at the site of the catheter. Her injury (paralysis from the waist down) is permanent.

In this lawsuit, Donathan targeted several medical defendants – the theme of her case was that she entered the hospital with a broken leg and exited it a paraplegic. Her criticisms began against the anesthesia team, error being alleged in placing the catheter in the first place. Donathan explained that because of an existing blood-thinning condition related to a mechanical heart valve, she was a poor candidate for a catheter. White too was blamed for removing the catheter without consulting with anesthesia. Negligence by the hospital nurses was alleged regarding the monitoring of Donathan's condition.

Beyond the allegations of negligence by hospital nurses, the plaintiff also presented an agency claim – that is, the anesthesia, internist and orthopedic defendants were held out as agents of the hospital. Beyond Donathan's claim for damages, her husband also presented a derivative consortium claim.

Southern Tennessee defended that its nurses provided appropriate care, monitoring Donathan's condition and informing doctors of it – as importantly, the nurses, in removing the catheter and in all respects, followed orders. White for her part denied being involved in the decision to insert the catheter – she tended to blame the nurses and the anesthesia team. The anesthesia defendants took a different tack and countered that there was no error in placing the catheter – the problem was White's unilateral decision (without consulting anesthesia) to have it

removed.

Finally after 22 days of complex proof from multiple experts, the case was concluded. The jury's verdict was mixed. It found fault against White, Gordon, Will and Cumberland Healthcare. That fault was apportioned 50% to White, 40% to Gordon, 5% each to Will and Cumberland Healthcare. Nance, Reimers and Southern Tennessee were exonerated on liability. [Another defendant, Kleinpeter prevailed by directed verdict, there being no evidence he was involved the decision to place the catheter.]

While Southern Tennessee was exonerated on its duties, the jury made an additional finding that Gordon, Will and Cumberland Healthcare were its apparent agents. [The jury said no on agency as to White.] Thus to any award and on agency, Southern Tennessee was implicated to the extent of the 50% liability of those agents.

Liability sorted, the jury went to damages in a specific verdict form. It awarded Donathan medicals of \$149,151 and \$1,267,107 for future care. Her past suffering was \$1.2 million and \$5.4 million for that in the future. Permanent injury was \$5.5 million. Donathan took \$2,000,000 and \$3.75 million, respectively, for past and future loss of ability to enjoy life. Her portion of the verdict totaled \$19,266,261. Donathan's husband took \$3,000,000 more for his consortium interest, the combined verdict totaling \$22,266,261 – it was apportioned consistently with the verdict in the court's judgment.

Employment Retaliation - A black Ford employee who worked at a parts distribution facility alleged he suffered retaliation after complaining of race and age discrimination

Longs v. Ford Motor Company,
2:07-2653

Plaintiff: Venita M. Martin and Andre B. Mathis, *Glankler Brown*, Memphis

Defense: Stanley E. Graham and John Park, *Waller Lansden Dortch & Davis*, Nashville

Verdict: \$1,288,044 for plaintiff

Federal: **Memphis**

Judge: Jon Phipps McCalla
3-19-10

Jeffrey Longs started working in March of 2003 for Ford Motor Company. He was employed as a parts order processor at Ford's parts distribution complex in Memphis. Longs first had trouble in May of 2006 when he sought time off to attend his daughter's graduation. He was denied the leave.

Thereafter in July of 2006, Longs presented an EEOC complaint against Ford that alleged both race and age discrimination. [Longs is black.] As that complaint was investigated, Longs continued in his job.

The next key event occurred in the fall of 2006 when he injured his hand at work. Thereafter he was on medical leave. Ford suspected Longs was faking the injury and instituted surveillance. That surveillance showed Longs cutting his yard.

Believing Longs had abused his medical leave, Ford fired him in November. Through the union (the UAW), Longs challenged the firing. He was reinstated in December.

Then to the summer of 2007, Longs received a right-to-sue letter from the EEOC on 7-20-07. That same day, Longs was fired. Ford cited that he had been absent without leave for two days in the prior week.

This lawsuit followed, Longs alleged he suffered retaliation for having pursued an EEOC complaint for age and race discrimination. The retaliation started with the increased scrutiny after his hand injury – that is, the surveillance showing him cutting his yard was instituted in an effort to fabricate a reason to fire him.