The Tennessee Jury Verdict Reporter

The Most Current and Complete Summary of Tennessee Jury Verdicts

May 2007 **Statewide Jury Verdict Coverage** **4 TJVR 5**

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.

Negligent Security - A college student was attacked in a college dorm and was struck in the face – in this lawsuit, he blamed college officials for failing to protect him as the day before the attack, he had warned security officials about aggressor

Madden v. Fisk University, 05-1384
Plaintiff: Phillip L. Davidson, Nashville
Defense: Richard E. Spicer, *Spicer Flynn & Rudstrom*, Nashville
Verdict: $11,250 for plaintiff assessed 19% to the defendant
Court: **Davidson**
Judge: Amanda McClendon
2-28-07

Marcus Madden, then age 23 and a Chicago native, was a graduate student at Fisk University on 3-25-05. On this date, he attended an off-campus party. While there, he was attacked by a fellow student, Seaeed Steele. Steele and a friend videotaped the attack – this process is known, in some apparently disturbed circles, as a smackdown.

Madden survived the smackdown without being seriously hurt, his pride being more injured. Still he was shaken by the attack and promptly reported it to school officials that weekend. Particularly, he cautioned them about Steele's violence.

Working quickly that weekend, Fisk officials warned Steele to stay away from the dorms where Madden lived. First thing Monday morning, Steele was back at it. He entered Madden's dorm and attacked again. Madden was struck in the face and sustained a black eye. [While only sustaining a black eye, the original complaint in the matter alleged his eye socket was broken – Madden disavowed the eye socket story in his deposition.]

Whether it was broken or not, Madden was hurt. Beyond the black eye, Madden briefly complained of temporary blurred vision. He has since had a near complete physical recovery. Madden continues to report nightmares.

Madden then began this lawsuit against Fisk alleging it provided negligent security to him. It was his proof that the school was warned of the first Steele attack – despite that warning, it did absolutely nothing to protect him.

Fisk defended the case and noted it did do its best on this holiday (Easter) weekend. That is, Steele was told to stay away, the attack then happening just a day later. Then to the attack, Fisk thought it represented mutual combat, Madden sharing some of the blame.

The verdict was mixed at trial. In odd numbers, that fault was assessed 34.91% to the plaintiff, 46% to the attacker and the remaining 19.09% to Fisk. Then to damages, Madden took a general award of $11,250. It was assessed $2,147 in the judgment against Fisk. While deliberating the jury had asked the court: May we have a copy of the complaint? McClendon said no.

Ed. Note - The jury's fault finding is unusual, representing classic indicia of a quotient verdict – that is, the jury added together their estimates of fault and divided by twelve. While this solution is not uncommon for jury panels, it is especially interesting in this case as Judge McClendon's stock instructions included a charge explaining the prohibition against a quotient verdict.

Medical Negligence - Plaintiff linked a colon injury to using the wrong size balloon during a colonoscopy

Parham v. Dragutsky, CT-001362-04
Plaintiff: Louis P. Chiozza, Jr., *Chiozza & Associates*, Memphis
Defense: Jill M. Steinberg and Angie C. Davis, *Baker Donelson Bearman Caldwell & Berkowitz*, Memphis
Verdict: Defense verdict
Court: **Shelby**
Judge: D'Army Bailey
9-28-06

Faye Parham, then age 62, underwent a colonoscopy on 6-27-01. The procedure, performed by a gastroenterologist, Dr. Michael Dragutsky, was designed to relieve a stricture in Parham's colon. During the colonoscopy, Dragutsky inflated a balloon in Parham's colon. The balloon perforated Parham's ileum.

That led to several complications, including a surgical repair and resulting colostomy. The colostomy was then later reversed. All told, Parham incurred medicals of $125,000 secondary to this misadventure.

Parham then pursued the tort claim against Dragutsky, alleging error by him in the colonoscopy. Her expert, Dr. Sreenivasa Jonnalagadda, Gastroenterology, St. Louis, MO, noted several errors, (1) using the wrong size balloon, (2) plaintiff's increased risk because of Crohn's disease, and (3) then dilating the balloon too much.

Dragutsky defended the case that it was reasonable to use the balloon, it being a less invasive way of addressing the stricture. While the result was poor, the doctor explained it was a complication. A defense expert was Dr. Sarkis Chobanian, Gastroenterology, Knoxville.

The jury's verdict on liability was for the doctor and Parham took nothing. A defense judgment followed and there was no appeal.

Invasion of Privacy - An ENT doctor was concerned his office manager was romantically involved with a business consultant – the doctor climbed into the ceiling and placed a surreptitious recording device – later discovering apparent sexual activity by the consultant on tape (the tape is now broken), the doctor advised the consultant's employer and the consultant was fired

Reid v. Jernigan et al, A4LA0406
Plaintiff: Dale J. Montpelier and Katherine A. Young , *Montpelier & Young*, Knoxville
Defense: Wayne A. Kline, *Hodges Doughty & Carson*, Knoxville for Jernigan
Frank Q. Vettori, *O'Neil Parker & Williamson*, Knoxville for East Tennessee ENT Specialists
Verdict: Defense verdict
Court: **Anderson**
Judge: James B. Scott
10-16-06

Patrick Reid started working in 1999 for FIS Associates – the company provides business and tax consulting to medical practices. Reid, who has a Masters degree in Tax, was assigned to East Tennessee ENT Specialists (ETENT) in early 2001. One of the four shareholders at ETENT was Dr. John Jernigan – Reid also regularly interacted with Donna Cook, the medical group's longtime office manager.

A part-time sleuth of sorts, Jernigan was concerned that there might be something fishy going on in Cook's office. The doctor purchased a micro-recording device. Then back at the office, he climbed into the ceiling to place the device. The trap was set.

Several days later in May of 2001, Jernigan retrieved the tape. On it he could clearly hear the sounds of graphic sexual activity involving Cook and Reid. Jernigan immediately set up a meeting with Reid's boss – at the meeting, held at the Chop House, Jernigan explained what he'd heard on the tape.

Reid was sacked the next day. When Reid protested that he'd done nothing wrong, FIS bigwigs thought they ought to give the tape a listen. [They had fired Reid on Jernigan's word.] Jernigan would

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