

The Tennessee Jury Verdict Reporter

The Most Current and Complete Summary of Tennessee Jury Verdicts

June, 2006

Statewide Jury Verdict Coverage

3 TJVR 6

Unbiased and Independently Researched Jury Verdict Results

In This Issue

Davidson County	
FELA - \$2,905,000	p. 4
Auto Negligence - Defense verdict	p. 6
Uninsured Motorist - \$5,569	p. 9
Auto Negligence - \$40,000	p. 10
Federal Court - Knoxville	
Ski Negligence - Defense verdict	p. 1
Shelby County	
Medical Negligence - Defense verdict	p. 5
Knox County	
Malicious Prosecution - Defense verdict	p. 5
Auto Negligence - Defense verdict	p. 7
Premises Liability - \$12,008	p. 9
Putnam County	
Auto Negligence - Defense verdict	p. 6
Federal Court - Nashville	
Excessive Force - Defense verdict	p. 6
Maury County	
Auto Negligence - \$30,425	p. 7
Federal Court - Memphis	
Age Discrimination - \$265,426	p. 7
Hamblen County	
Auto Negligence - Defense verdict	p. 8
Wilson County	
Premises Liability - Defense verdict	p. 8
Federal Court - Winchester	
Excessive Force - Defense verdict	p. 8
Roane County	
Premises Liability - Defense verdict	p. 9
Auto Negligence - Defense verdict	p. 10
Hawkins County	
Dogbite - Defense verdict	p. 9
Sumner County	
Auto Negligence - Defense verdict	p. 10

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Ski Negligence - A teenage girl lost an eye while skiing when while tumbling on a difficult run, one of her skis struck her in the face – she blamed both the ski resort and a ski school for her accident

Albert v. Ober Gatlinburg et al,
3:02-277

Plaintiff: Richard Baker, Knoxville
Defense: Richard W. Krieg, *Lewis King Krieg & Waldrop*, Knoxville for Ober Gatlinburg

W. Kyle Carpenter and Robert L. Vance,
Woolf McClane Bright Allen & Carpenter, Knoxville for Smoky Mountain Ski School

Verdict: Defense verdict

Federal: **Knoxville**

Judge: Thomas W. Phillips
5-11-06

Jaren Albert, then age 15, was skiing with her parents on the slopes in Gatlinburg in December of 2001. She got ski lessons on 12-26-01 at the Smoky Mountain Snow School. The next day she was ready to hit the runs at the ski resort, Ober Gatlinburg.

Albert spent the next morning skiing with her family. She first tackled Ober Gatlinburg's easier slopes, including Cub Run, then moving to the more advanced Mogul Ridge. Successfully handling this run, Ober Gatlinburg's toughest, she next skied down Castle Run, an intermediate course.

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**The Tennessee Jury Verdict Reporter
2005 Year in Review
Table of Contents**

Using the 2005 Year in Review	p. i		
Definitions & Conventions	p. iii		
<u>Summaries & Totals</u>			
Combined Verdict Summary	p. 1		
The Million Dollar Verdicts	p. 3		
<i>Chances of Million Dollar Verdict</i>		p. 3	
<i>Million Dollar Cases at a Glance</i>		p. 4	
<i>Common Injuries/Torts on the List</i>		p. 6	
<u>The Case Type Reports</u>			
The Auto Negligence Report	p. 7		
<i>The Largest Verdicts</i>	p. 8		
<i>Verdict Ranges</i>	p. 10		
<i>The Median Auto Verdicts</i>	p. 12		
The Premises Liability Report	p. 13		
<i>Premises Liability Verdict Ranges</i>		p. 14	
<i>Verdicts at a Glance</i>		p. 15	
<i>Most Common Retail Defendants</i>		p. 15	
The Medical Negligence Report	p. 16		
<i>2005's Largest Verdicts</i>	p. 17		
<i>Synopsis by Category</i>	p. 18		
<i>Verdicts by Type of Medicine</i>	p. 19		
<i>Medical Verdict Ranges</i>	p. 20		
<i>Medical Negligence Attorneys</i>	p. 21		
General Negligence Verdicts	p. 22		
The Products Liability Report	p. 25		
The Death Cases - 2005	p. 26		
<i>Death Cases at a Glance</i>	p. 27		
Employment Discrimination Verdicts		p. 28	
<i>Aggregate Totals by Case Type</i>		p. 30	
The Civil Rights Report (Non-Employment)		p. 31	
Assault Verdicts	p. 32		
Contract/Commercial Tort Verdicts	p. 33		
Miscellaneous Tort Verdicts	p. 35		
<i>Dogbites, Defamation and more</i>			
			<u>The Damage Reports</u>
			Loss of Consortium Report p. 36
			<i>Loss of Consortium Averages</i> p. 37
			<i>Consortium Verdict Ranges</i> p. 38
			The Punitive Damages Report p. 39
			<i>Punitive Verdict Ranges</i> p. 39
			<i>Punitives by Case Type</i> p. 40
			The Additur/Remittitur Report p. 41
			The 2005 Tennessee Injury Report p. 42
			<i>Using the Injury Multipliers</i> p. 43
			<u>Miscellaneous Topics</u>
			The Effect of Comparative Fault p. 48
			Jury Hostility to the Car Wreck Case p. 49
			<i>A study of cases where plaintiff's claim was rejected either on causation or the jury awarded a sum equal to the incurred medicals</i>
			The Most Prolific Attorneys p. 51
			The Most Prolific Law Firms p. 53
			Jury Questions in 2005 p. 54
			<u>The Index Reports</u>
			Verdicts by County p. 56
			Verdicts by Judge p. 61
			The 2005 Attorney Index p. 70
			<u>The Case Index</u>
			The Case Index Directory
			<i>The Guide to the Case Index</i> p. 95
			The Case Index
			<i>Davidson County</i> p. 97
			<i>Shelby County</i> p. 142
			<i>Hamilton County</i> p. 166
			<i>Knox County</i> p. 176
			<i>West Tennessee</i> p. 299
			<i>North-Middle Tennessee</i> p. 227
			<i>South-Middle Tennessee</i> p. 239
			<i>Northeast Tennessee</i> p. 247
			<i>I-75 Corridor</i> p. 256

As Albert descended Castle Run, she lost control. Going end over end, her ski struck her in the head – she was knocked out. More seriously, she was hit in the left eye. Hamilton has since lost the eye.

Albert, having reached majority by the time of trial, sued Ober Gatlinburg and Smoky Mountain Ski School regarding her accident. Regarding the slopes, she blamed Ober Gatlinburg for representing they were safe for skiers – in fact, they were icy and dangerous. Then to the ski lesson, Albert implicated that it was inadequate.

Ober Gatlinburg and the ski school defended that Albert was an inexperienced skier who simply made a bad decision to tackle Castle Run – while the injury was unfortunate, the defendants argued it wasn't the result of negligence. That the event was just an accident, it was noted that Albert had already tackled the tougher Mogul Ridge. Comparative fault was also implicated, including not just Albert's care, but also that of her father in not restricting her to more gentle slopes.

A federal jury in Knoxville heard proof for four days. The jury exonerated the defendants, then making a meaningless finding – it assessed fault 70% to the plaintiff, the remainder to her father. A consistent judgment followed for the ski defendants.

FELA - While moving a disabled train car, the plaintiff (a locomotive engineer) was thrown from the train and suffered a disabling disc injury – he then sued his employer and alleged negligence regarding the decision to move the disabled car five miles back to a station instead of dropping it at a nearby spur

Blackburn v. CSX Transportation, 03-1016

Plaintiff: Christopher B. Hall, Edward Cook and Andrew Lampros, *Cook Hall & Lampros*, Atlanta, GA

Defense: Christopher W. Cardwell and Mary Taylor Gallagher, *Gullett Sanford Robinson & Martin*, Nashville

Verdict: \$2,905,000 for plaintiff

County: **Davidson**

Judge: Barbara Haynes
3-16-06

Early on the morning of 11-11-01, Andrew Blackburn, then age 30 and a locomotive conductor for CSX, was moving a train from Bostic, NC to Erwin, TN. As the train progressed near Marion, NC, a car (the 21st in line) tripped a defect detector.

A call went into CSX management – a decision was made to back the train up to the CSX station in Marion. It would be a five-mile journey. The other alternative would have been to drop the car at a spur that was just one mile away.

To accomplish this maneuver, Blackburn stood on the outside of the train – he was keeping watch as the eyes for the train's engineer. It was slow work, the train stopping at each crossing.

Suddenly the train stopped as it approached another crossing – slack in the train was building and it ricocheted through the cars. The force of the slack knocked Blackburn off the train.

He has since treated for serious injuries, but most significantly for injuries to his rotator cuff and at multiple levels of his low-back. Despite a fusion surgery, Blackburn has since been vocationally disabled. An economist, John Andrews, valued Blackburn's vocational loss at \$2.014 million. [His vocational expert was Michael Shinnick, Blacksburg, VA.]

In this FELA lawsuit, Blackburn alleged negligence by CSX in making the decision to back the train for five

miles. The career-ending injury could have been avoided had the car been dropped at the nearby spur. A liability expert for plaintiff was Paul Byrnes, Bingham, IL. [Byrnes is also an attorney.]

CSX raised multiple defenses. It first cited that this sort of slack event is exceptionally rare and thus had nothing to do with negligence. Then to the purported slack on the day in question, CSX postured it was insufficient to have knocked Blackburn from the train.

A train expert for CSX, Foster Peterson, Tucker, GA, was also critical of Blackburn for hanging off the train. Blackburn countered in this train, with just a two-man crew, there was no other way to accomplish this work. The court directed a verdict on liability on contributory negligence and this issue became a moot point before the jury.

CSX also defended damages. It suggested that while Blackburn was injured when thrown, he was not permanently disabled – even if he had a low-back injury, there were a multitude of sedentary jobs which Blackburn could perform if he was so inclined.

Blackburn prevailed on liability against CSX after a six-day trial. Then to damages, Blackburn took a general award of \$2,900,000 – writing on the verdict form, the jury indicated the following breakdown, (1) \$405,000 for lost wages, (2) \$1.5 million for future lost wages and (3) \$1,000,000 for suffering. A consistent judgment followed.

CSX has since moved for a new trial citing a variety of errors – arguing the damages were excessive, it has sought a suggested remittitur to \$500,000. The motion is pending.