

# The Tennessee Jury Verdict Reporter

The Most Current and Complete Summary of Tennessee Jury Verdicts

June 2007

Statewide Jury Verdict Coverage

4 TJVR 6

*Unbiased and Independently Researched Jury Verdict Results*

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### Notable Out of State Verdicts

## 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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### Civil Jury Verdicts

Timely coverage of civil jury verdicts in Tennessee including court, division, presiding judge, parties, case number, attorneys and results.

**Premises Liability - Walking on a mall floor, the plaintiff slipped in water and fell backwards – striking her head hard, the plaintiff has since complained of a traumatic brain injury**

*Snowden v. Wolfchase Galleria,*  
CT-004378-03

Plaintiff: Ruby R. Wharton and Andre C. Wharton, *The Wharton Firm*, Memphis  
Defense: Robert D. Flynn and Mildred L. Sabbatini, *Spicer Flynn & Rudstrom*, Memphis

Verdict: \$4,000,000 for plaintiff less 49% comparative fault

Court: **Shelby**  
Judge: Robert L. Childers  
4-9-07

On the evening of 8-22-02, Jacqueline Snowden, then age 31, was working at Wolfchase Galleria at the Lerner NY store. The mall had closed and with two other employees (three had to do this job), Snowden walked to make the nightly

deposit. As Snowden proceeded across the mall floor near the food court, her feet suddenly flew out from under her. [The moisture was apparently related to a floor scrubber who had just passed through this area seconds before.] Snowden fell hard and smacked her head against the marble floor. Knocked unconscious, she has since treated for a traumatic brain injury and seizure disorder. Since relocated to San Antonio, TX (her husband is in the military), she has continued to suffer from the seizure disorder. Her life care plan was developed by Carolyn Chambers, Memphis – an economist, David Ciscel, put the numbers to the plan.

Snowden's liability theory criticized the mall's maintenance of the floor regarding the water hazard. Beyond her primary claim, Snowden's husband Vincent presented a derivative consortium count.

Wolfchase (which is operated by Simon Properties) defended on several fronts, posturing that (1) there was no proof how long the water was on the floor, and (2) if it was caused by the floor scrubber, Snowden should have appreciated this hazard as the scrubber passed in front of her just eighteen seconds before her fall, as noted by surveillance. Finally damages were diminished, a San Antonio psychology IME, Haskel Holine, opining that Snowden's complaints were subjective.

This case was tried for eight days, the jury then deliberating for six hours. The verdict was mixed on fault, the jury assessing 51% to Wolfchase, the remainder to Snowden. Then to damages, she took a general award of \$3.75 million, her husband taking \$250,000 more for his consortium interest. The raw verdict totaled \$4,000,000 and a consistent judgment less comparative fault was entered.

Wolfchase has since sought either JNOV relief or remittitur, arguing first that a mistrial should have been declared after Snowden sustained a seizure during voir dire. Trial arguments were also repeated that there was no proof how long the water was on the floor. Finally the damage award was called excessive.

The motion is pending.

**Products Liability - The plaintiff suffered facial fractures, a closed head injury and blindness in a serious right of way crash – in this case, the plaintiff blamed his injuries (he was driving a Miata convertible) on a seat belt that either failed to lock or which spooled out**

*Christie v. Mazda Motor Company*, 3:04-280

Plaintiff: William S. Stone, David W. Boone and Aileen R. Page, *Boone & Stone*, Atlanta, GA

Defense: Tony R. Dalton and Louis C. Woolf, *Woolf McClane Bright Allen & Carpenter*, Knoxville

Verdict: Defense verdict

Federal: **Knoxville**

Judge: Thomas A. Varlan  
4-30-07

Robert Christie, then age 18, was driving his 1995 Mazda Miata on 7-31-02 on Oak Ridge Turnpike and Villanova Road. At that intersection, a vehicle driven by Janet Mason came to a stop sign. She pulled out into the path of the oncoming Christie. While going with the flow of traffic, Christie was speeding – the speed limit was 35 mph and his speed was estimated at between 45 to 60 mph.

Christie saw Mason and hit the brakes, the Miata then skidding 126 feet before impact with Mason's Jeep Cherokee. The crash caused Christie's airbag to deploy. It did him little good as he continued forward and into the windshield.

It was that secondary windshield impact that resulted in serious injuries. Trapped in the Miata, Christie had to be extricated by EMS. He has suffered from multiple complex facial fractures, including of his eye orbits. Most seriously and beyond a closed head injury, Christie is now permanently blind in both eyes.

Christie sued Mazda and alleged the Miata was defective in two ways. As a predicate to that theory, Christie was certain he was belted at the moment of impact. Then to the crash, his seat belt either (1) failed to restrain him, or (2) it spooled out. There was also a criticism

that the airbag was too small, especially in the tiny Miata where Christie's head would already be close to the windshield. Plaintiff's expert was Charles Benedict, Engineer, Tallahassee, FL.

Mazda defended that there was no defect with its vehicle, the restraint system being state of the art. The manufacturer thought the wreck and resulting injuries were a function of several factors, (1) Christie's speed, (2) inattention by the non-party Mason, and most importantly, (3) that Christie *was not* wearing a seat belt. Defense experts were Richard Schlueter, Accident Reconstruction, College Station, TX, Robert Gratzinger, Irvine, CA and William Scott, Biodynamics, San Antonio, TX.

The court's instructions asked if the restraint system in the Mazda was defective. The jury said no and then didn't reach a separate causation instruction or the duties of the plaintiff and the non-party Mason. A defense judgment was entered for Mazda. This case first came to a jury in the fall of 2006 – the matter was mistried.

**Truck Negligence - A trucker, rear-ended by another tractor-trailer driver on the interstate has since undergone shoulder and neck surgeries**

*Johnson v. Banta*, 5016

Plaintiff: Randall L. Kinnard and Lisa W. Rowan, *Kinnard Clayton & Beveridge*, Nashville

Defense: Robert B. Littleton, *Miller & Martin*, Nashville

Verdict: \$511,810 for plaintiff

Court: **Cheatham**

Judge: George Sexton  
12-5-06

It was 3-23-97 and Richard Johnson, a tractor-trailer driver from Oklahoma, proceeded on I-40 in Cheatham County. At that location, Johnson was rear-ended by an independent trucker, Randy Banta. Fault for the wreck was no issue.

Johnson was seen at the local ER and released. Returning home to Oklahoma, he treated conservatively for several months – his doctor in Oklahoma thought he was exaggerating and released him from care.

Johnson didn't treat from August of

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