

The Tennessee Jury Verdict Reporter

The Most Current and Complete Summary of Tennessee Jury Verdicts

June 2009

Statewide Jury Verdict Coverage

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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.

Medical Negligence - An admittedly misread pap smear by a pathology lab resulted in a delayed diagnosis of cervical cancer – because of the delay, the plaintiff alleged her treatment was more invasive and she has a higher risk of recurrence
Zapel v. PCA Southeast, 11650
Plaintiff: Gayle Malone, Jr. and John C. Hayworth, *Walker Tipps & Malone*, Nashville
Defense: Thomas A. Wiseman, III and James Sperring, *Gideon & Wiseman*, Nashville
Verdict: \$5,513,241 for plaintiff
Court: **Maury**
Judge: Jim T. Hamilton
3-5-09

Arnette Zapel, then age 55 and the owner of a medical supply company, made regular annual visits to her Ob-Gyn, Dr. Susan Gray. Each year she had a pap smear performed to check for cervical cancer. Zapel had just such a test done in October of 2003. The pap smear was read by the PCA Southeast pathology lab (by a technician) as normal.

A year later, Zapel again had a pap smear. This time it was again read by PCA Southeast, the result being the same – it was normal. A third pap smear taken in the fall of 2005 was not normal. Zapel was diagnosed with squamous cell cervical cancer that was staged at 2B.

Zapel's treatment was invasive and involved significant chemotherapy. While the tumor went into remission, Zapel was not without side effects. Because of the chemotherapy, her osteoporosis was advanced and she suffered a hip fracture. Zapel also has bowel problems. Most persistently, Zapel has reported emotional symptoms related to the fear of a recurrence.

In this lawsuit, Zapel targeted PCA Southeast and alleged error by it in

misreading the 2003 and 2004 pap smears. That is starting with the 2003 pap smear, there was marked inflammation and an atropic pattern, all of which should have triggered an abnormal reading. Then to 2004, the pap smear was clearly atypical.

With a prompt intervention in either 2003 or 2004, while the cancer was still at a micro-invasive stage, Zapel postured that it could have been treated with just a conization. As importantly, there would have been no need for chemotherapy. A causation expert for Zapel was Dr. Howard Homesley, Ob-Gyn, Greenville, NC.

In this unusual medical case, PCA Southeast admitted fault regarding the 2004 pap smear. However it did contest that there was no error regarding the 2003 read. Thus regardless of the jury's finding on the 2003 pap smear read, the jury was still going to consider damages – the only difference would be whether Zapel's damages started in 2003 or 2004. PCA Southeast also diminished damages, noting the cancer was caught and successfully treated.

While fault was admitted on the 2004 pap smear, as it was not on the one from 2003, the jury first considered that question. It answered for PCA Southeast that it was not negligent in its interpretation. Thus plaintiff's damages would flow only from the admitted 2004 misread.

To those damages and considering a specific verdict form, Zapel took medicals of \$113,241 and \$400,000 for lost earning capacity. Impairment was \$1,000,000. She took \$400,000 for past suffering and \$300,000 more for in the future. Loss of ability to enjoy life was valued at \$1,000,000 in the past and \$600,000 for the future. The jury awarded her another \$700,000 for past fear of complications as well as \$800,000 more for the same

category in the future. Her husband's consortium interest was \$150,000, the verdict totaling \$5,513,241. A consistent judgment was entered – PCA Southeast has since remarked that the award represented an “outrageously large verdict.”

Truck Negligence - A motorcyclist suffered serious injuries when a trucker waved another vehicle into traffic and the motorcyclist's path

Jenkins v. Star Transportation,
03-2578

Plaintiff: A. Thomas Monceret,
Knoxville and Gregory F. Coleman,
Coleman & Edwards, Knoxville
Defense: Leo L. Piovarcy, *Martin Tate*
Morrow & Marston, Memphis
Verdict: \$2,500,000 for plaintiff
assessed 77% to the defendant
Court: **Davidson**
Judge: Joe P. Binkley, Jr.
3-6-09

It was the afternoon of 10-16-02 and Sally Jenkins, age 38 and a laborer with a 10th grade education, was driving in Nashville on Gallatin Pike. She piloted a Harley-Davidson motorcycle. At the same time, Lawrence Keeble had come to the intersection of Gallatin Pike on the inferior Nesbitt Lane. [Nesbitt dead-ends into Gallatin, a stop sign controlling Nesbitt traffic.]

A third vehicle on the scene was an unidentified tractor-trailer. It was attempting to turn onto Nesbitt, but because of the sharpness of the turn and the limited width of Nesbitt, it could not do so until Keeble had pulled out. This created a logjam of sorts on the superior Gallatin Pike.

A fourth vehicle, also a tractor-trailer, had a solution. It's driver waved Keeble across in front of his truck – that would permit the other tractor-trailer to turn and the congestion would be solved. While it was certainly clear for Keeble to turn in front of the waving tractor-trailer, there was still one more lane of traffic that the waver did not control. That was the lane in which Jenkins was traveling.

Keeble pulled out in front of Jenkins – all she saw was a blur coming from the side, Keeble striking her motorcycle.

Jenkins suffered serious injuries, including a dislocated knee and a broken hip and wrist. She later underwent a hip replacement surgery. It was the plaintiff's proof that she has also since complained of post-traumatic stress symptoms.

The heart of this jury trial went to both the identity of the waver and his conduct. It was plaintiff's proof that the waver was Marcelo Pinto, a trucker operating a rig for Star Transportation. Pinto for his part explained he was in the vicinity of the wreck scene (at the time of the wreck), but that it wasn't him that had done the waving. Jenkins pointed to proof from witnesses that it was Pinto and a distinctive Star Transportation truck - there was also proof of a bill of lading that put Pinto just down the street moments earlier. Star Transportation had an independent witness who contradicted this notion.

Whether it was Pinto or not, the jury was also asked to consider the fault of Keeble, plaintiff and the unidentified trucker who was attempting the turn. Plaintiff's expert at trial was Todd Hutchinson, Accident Reconstruction, Nashville – Star Transportation relied on John Bentley, Engineer, Perryville, AR, who implicated the fault of Keeble and Jenkins.

The jury's first question asked if tractor-trailer operated at the scene belonged to Star Transportation. The answer was yes, the jury next finding fault with all three motorists, Pinto of Star Transportation, Keeble and the plaintiff. That fault was assessed 77% to Pinto, 20% to the non-party Keeble and just 3% to Jenkins. The jury rejected any fault to the unidentified tractor-trailer.

Then to damages and in a specific verdict form, Jenkins took medicals of \$321,291 plus \$178,709 for future care. Her past suffering was \$500,000 and she took \$200,000 more for in the future. Impairment was \$600,000, the plaintiff taking \$400,000 and \$300,000, respectively, for past and future loss of ability to enjoy life. The raw verdict totaled \$2.5 million – the judgment (less comparative fault) was for \$1.925. Star Transportation has paid it.

While deliberating, the jury had asked (1) for a police report and (2) for testimony from witnesses. Judge Binkley denied both requests. The jury had deliberated for six hours following this week-long trial.

Medical Negligence - The plaintiff (a woman, age 30 and an interior decorator) sustained a permanent brain injury following an endoscopic complication

Freeman v. Goodman, 07-237

Plaintiff: William Bird, *Bird Law Group*, Atlanta, GA and James T. Neal, *Summers & Wyatt*, Chattanooga
Defense: David H. Harrison, *Grant Konvalinka & Harrison*, Chattanooga
Verdict: \$12,000,000 for plaintiff
assessed 51% to the defendant
Court: **Hamilton**
Judge: Jacqueline Bolton
4-30-09

Kristen Freeman, then age 30 and an interior decorator, was complaining of bowel problems. A Chattanooga gastroenterologist, Dr. Michael Goodman, proposed to diagnose the problem with a combination upper endoscopy and colonoscopy. The procedures were performed on 4-27-06 at Erlanger Medical Center on an outpatient basis. During the endoscopy, Goodman perforated a part of Freeman's small intestine just below the stomach.

The injury was not detected and Freeman was discharged from the hospital. By 5:00 that afternoon, Freeman reported nausea and vomiting – she called Goodman's office. Freeman was told nausea was common following this procedure and was given a prescription for an anti-nausea medicine.

Her condition became worse and the next morning, Freeman again called Goodman's office. She was directed to go to Erlanger for x-rays at 11:30 a.m. followed by an office visit at 1:00 p.m. Freeman appeared at 11:30 a.m., but upon arrival she was so weak that she was placed in a wheelchair – then as the x-rays were performed, she had to be physically held up.

Just after the x-rays were performed and while Freeman was still in radiology,