

The Tennessee Jury Verdict Reporter

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June 2013

Statewide Jury Verdict Coverage

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Civil Jury Verdicts

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Medical Negligence - An emergency room physician had a mammogram and ultrasound when she suspected that she had breast cancer - her radiologist reported normal results - when the woman discovered another lesion a year later, she learned that she did, in fact, have cancer that had metastasized

Bhatnagar v. Memphis Radiological, PC,
1570-08

Plaintiff: Richard Glassman,

Glassman Edwards Wyatt Tuttle & Cox,
Memphis

Defense: Jerry E. Mitchell and
Margaret F. Cooper, *Thomason Hendrix*
Harvey Johnson & Mitchell, Memphis

Verdict: Defense verdict on liability
Court: **Shelby**

Judge: John R. McCarroll, Jr.

Date: 12-5-12

Sneh Bhatnagar, then age 56 and an emergency room physician employed as an independent contractor with the Methodist Healthcare System, saw radiologist Dr. Tommy Fowler at Methodist Breast Center complaining of a mass in her right breast. She had a mammogram and ultrasound on 5-16-06, after which Fowler reported normal results.

Fowler documented on Bhatnagar's chart that he told her to follow up in

damages from Barham. Barham defended the case and minimized the claimed injury.

The case was tried on damages only. Martin took a general award of \$30,000. A consistent judgment was entered. Barham, an Allstate insured, had last offered \$22,500 to resolve the case.

Premises Liability - As the plaintiff walked into a Wal-Mart, an elderly store greeter in a wheelchair backed his wheelchair into her – while the injury was initially believed to be inconsequential, she has since complained of disabling RSD symptoms

Suendren v. Wal-Mart, 3:10-920

Plaintiff: Keith T. Belt, Jr. and Robert P. Bruner, *Belt Law Firm*, Birmingham, AL

Defense: G. Andrew Rowlett, *Howell & Fisher*, Nashville

Verdict: Defense verdict

Federal: **Nashville**

Judge: Kevin H. Sharp

Date: 5-7-13

Melissa Suendren shopped at a Wal-Mart in Lebanon, TN on 10-14-09. At the same time Arthur Norman was working as a store greeter. Because of a prior car wreck, Norman was paralyzed from the waist down. He ambulated with a motorized wheelchair.

As Suendren entered the store, she stopped for a moment to put her young son in a shopping cart. She made a decision to do this very near Norman's greeter podium. An instant later Norman began to back up the wheelchair.

Norman struck Suendren in the foot and ankle as he backed up. Initially the claimed injury was believed to be inconsequential. As

time passed Suendren's symptoms only increased. She has since treated for permanent and disabling RSD symptoms. Appropriate medical proof was developed to confirm this injury.

Suendren initiated this lawsuit against Wal-Mart in Wilson County. It alleged negligence by Norman in backing his wheelchair into her. It was suggested that Norman should have simply rotated his wheelchair 180 degrees to see where he was going.

Wal-Mart removed the case to federal court. It defended and implicated Suendren's own care in stopping so near the greeter podium. [Suendren replied that she could not have expected Norman to back into her.]

Wal-Mart also diminished the claimed damages. It developed expert proof that the RSD was of unknown etiology and could not be linked to this event. Wal-Mart's experts were Dr. Martin Wagner, Neurology, Nashville and Dr. Stephen Bruehl, Anesthesia, Nashville.

The jury's verdict was for Wal-Mart on liability and having so found, Suendren took nothing. A defense judgment was entered.

Auto Negligence - As the plaintiff stopped to make a left turn, she was rear-ended by the defendant – the plaintiff has since complained of radiating neck pain related to the aggravation of a Chiari malformation

Carrigan v. Henry, 58920

Plaintiff: Mary Beth Hagan, *Hagan & Farrar*, Murfreesboro and Robert P.

Gritton, *Gritton & Gritton*, Murfreesboro

Defense: Scott R. High-McAuley, *Cope Hudson Reed & McCreary*, Hendersonville and John R. Rucker, Murfreesboro

Verdict: \$36,180 for plaintiff

Court: **Rutherford**

Judge: Robert E. Corlew, III

Date: 12-21-12

A hard rain was falling in Murfreesboro on 1-31-08. The plaintiff, Melissa Carrigan, then age 41, was a passenger in a sedan that had stopped on Middle Tennessee Boulevard to make a left turn. An instant later that vehicle was rear-ended by Joseph Henry. It was moderate collision. Fault was no issue.

Carrigan was taken to the ER and treated for apparent whiplash. She has since complained of radiating neck pain and reduced grip strength related to the aggravation of a Chiari malformation in her spine. In June of 2010 Carrigan underwent a cervical surgery to remove the lamina from C-1. Her incurred medical bills were approximately \$62,000.

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Tennessee Jury Verdict Reporter

Case Style _____

Jurisdiction _____ Case Number _____

Trial Judge _____ Date Verdict _____

Verdict _____

For plaintiff _____ (Name, City, Firm)

For defense _____ (Name, City, Firm)

Fact Summary _____

Injury/Damages _____

Submitted by: _____

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In this lawsuit Carrigan sought damages from Henry. He defended the case and minimized the claimed injury. In that regard he relied on an IME, Dr. Martin Wagner, Neurology, Nashville, who contested the link between this wreck and the aggravation of Carrigan's pre-existing spinal condition.

There was interesting motion in limine practice regarding Wagner. The plaintiff had sought to examine Wagner about a 2000 letter-to-the-

editor to The Tennessean wherein Wagner railed about the need for tort reform. Wagner for his part explained his wife wrote it and simply signed his name. The court ultimately excluded the letter concluding that even if Wagner wrote it, it wasn't relevant.

A Murfreesboro jury heard proof in this case for four days. Its verdict was for Carrigan and she took a general award of \$36,180. The court's interrogatory was framed as

follows: What damages did the plaintiff sustain that were legally caused by this accident?

A consistent judgment was entered and it has been satisfied. Carrigan had also taken \$100,000 from her UM/UIM carrier, State Farm, the insurer thereby preserving a cross-claim against Henry.

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