

The Tennessee Jury Verdict Reporter

The Most Current and Complete Summary of Tennessee Jury Verdicts

July 2007

Statewide Jury Verdict Coverage

4 TJVR 7

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.

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.

See the order form on the back page

Truck Negligence - The plaintiff's vehicle became disabled along the side of the roadway after striking a deer – plaintiff was then struck and killed by a passing trucker

Hanner v. B&B Equipment, 2754

Plaintiff: J.D. Lee, *Law Office of J.D.*

Lee, Knoxville

Defense: William T. Donnell and Tracy Clemmons Smith, *Frost Brown Todd, Louisville, KY* and Todd A. Rose, *Burch Porter & Johnson, Paris*

Verdict: Defense verdict

Court: **Henry**

Judge: Donald E. Parish

4-13-07

Just after dark on 11-4-04, Sandra Hanner was traveling on U.S. 79 near Guthrie in Todd County, Kentucky. [The location was near Clarksville just across the state line.] She drove a 2001 Subaru Forester. Hanner, then age 68 and a retired teacher from the Chicago-area, suddenly struck a deer that darted into the roadway. The Subaru became disabled.

Soon after the car versus deer collision, the timing wasn't entirely clear, Clarence Robertson driving a tractor-trailer for B&B Equipment, approached the scene. He crashed hard into Hanner's vehicle.

Hanner was badly hurt in the crash – she lived approximately an hour after the collision after being airlifted to Vanderbilt. There was proof of conscious pain and suffering. Her surviving son brought this death claim against Robertson and his employer.

Plaintiff's theory alleged negligence by Robertson in failing to keep a proper look-out. The theory noted that at the moment of impact, while Hanner's lights were not on, her brake lights were illuminated. The estate also developed that at the time of the crash, Robertson was violating federal regulations by having his wife in the cab with him. [She was in the sleeper.] Plaintiff's accident expert was Alan Parham, Knoxville.

B&B Equipment defended on several fronts. It first noted that at the moment of impact, (1) Robertson wasn't speeding, (2) plaintiff's lights were not on, and (3) while the brake lights were on her vehicle (hot shock analysis revealed this), it was more likely she applied the brakes just before the impact. Thus to the wreck itself, Robertson simply didn't have time to see Hanner and react.

Regarding the federal violation concerning the passenger, B&B Equipment explained that there was no causal link between the violation and the crash. Robertson explained that his wife had lupus and he felt more at ease when she was with him. Defense experts were Peter Curless, Accident Reconstruction, Lexington and Richard Tyrell, Human Factors, Clemson, South Carolina.

While the case was litigated solely in Henry County, Kentucky law applied to the wreck. [All the parties in the case resided in Henry County.] Importantly that meant that pure comparative fault applied – a 50% or greater finding of fault to the decedent would not have precluded an award of damages. The trial court also issued summary judgment on plaintiff's claim for punitive damages.

The comparative fault issue ultimately did not come into play as the defense prevailed on liability and having so found, comparative fault wasn't reached. A defense judgment has been entered.

Nursing Home Negligence - The estate of an elderly former nursing home resident alleged a pattern of global abuse at a nursing home – punitives of nearly thirty million dollars were assessed, but nearly all of this was set aside by directed verdict

Myers v. NHC McMinnville et al, 2182

Plaintiff: Lisa E. Circeo, Nashville, Kenneth L. Conner, Tallahassee, FL and William P. Murray, III, Leesburg, VA, all of *Wilkes & McHugh*

Defense: John B. Curtis, Jr. and Cherie D. Jewell, *Leitner Williams Dooley & Napolitan*, Chattanooga

Verdict: \$4,102,298 for plaintiff

Court: **Warren**

Judge: Larry B. Stanley, Jr.
2-21-07

Cheatum Myers, age 90, was a resident from March of 2004 until 7-8-05 at a nursing home known as NHC-McMinnville. It was a subsidiary of a parent, National HealthCare Corporation (NHC), that was itself a subsidiary of a global parent, National Health Corporation (NHC-2). A little more than a month after leaving NHC-McMinnville, Myers died.

His estate then pursued this purported nursing home abuse case against all three NHC companies named above. It was alleged that Myers sustained numerous falls, fracturing a hip on one occasion. There was additionally evidence of (1) Stage IV bone deep pressure sores, (2) poor hygiene, (3) untreated pain, (4) urinary tract infections, and (5) in a global sense, Myers was mistreated.

This treatment, the plaintiff alleged, represented not just negligence, but also grossly negligent conduct that warranted the imposition of punitives. In developing the case for punitives, plaintiff suggested that the defendants put profits above patient care, that decision leading to inadequate staffing.

As these theories went to the jury, the estate presented three separate counts against each defendant, (1) negligence, (2) malpractice and (3) wrongful death. Key experts for the plaintiff were James Sexson, MD, Nursing Home Care, Marietta, GA and Ellen Lewis, RN, Lilburn, GA.

The NHC defendants countered that

their care and treatment were proper, its McMinnville nursing home being properly staffed. Its nursing home expert was James Powers, Nashville.

This case was tried for several weeks and the jury then deliberated over a course of two days. The plaintiff prevailed against all three defendants on negligence and malpractice counts. The death claims were rejected. Then to damages, the estate took separate amounts on each count.

It was \$820,459 on negligence and \$3,281,839 for malpractice. At this juncture, the court entertained directed verdict motions on the matter of punitive damages. It granted (sort of, the record not being clear) directed verdicts for the two corporate entities. Despite that finding and explaining it was to preserve the record should there be a reversal, punitives still went to the jury in a second mini-trial.

Returning with a verdict on punitives, they were assessed \$163,402 to the local entity, \$1,000,000 to NHC and \$28,635,000 to the global parent, NHC-2. While the punitives totaled nearly \$30,000,000, the court immediately vacated all the punitives except those against NHC-McMinnville. Three months post-trial, a judgment was finally entered for plaintiff, assessing the compensatory award plus \$163,402 in punitives. While the parties quarreled over the entry of the judgment, no post-judgment motions had been filed when the record was reviewed by the TJVR.

Medical Negligence - While originally linking a post-knee replacement broken leg to error by a physical therapist, the plaintiff learned years into the litigation that a radiologist had misread an x-ray that showed a fracture was sustained in the replacement and that had it been detected, she wouldn't have begun physical therapy in the first place

Fluri v. Blue, 1-297-01

Plaintiff: Luis C. Bustamante, *Woolf McClane Bright Allen & Carpenter*, Knoxville

Defense: Andrew R. Tillman and Joshua R. Walker, *Paine Tarwater Bickers & Tillman*, Knoxville

Verdict: Defense verdict

Court: **Knox**

Judge: Dale C. Workman
4-30-07

Janet Fluri underwent a knee replacement surgery on 12-19-00 at Forst Sanders Regional Medical Center. The procedure, performed by Dr. Howard Brown, was not eventful. Following the replacement, a radiologist, Dr. Melinda Blue, reviewed a post-surgical x-ray. She read it as normal. [This read would be the key event in the case.]

Ten days after the surgery, a physical therapist was helping Fluri from her bed when she suffered a fractured femur. This lawsuit began, Fluri alleging negligence by the therapist in permitting her to put too much weight on the leg too soon.

It was this theory that dominated the case for two years. Only when raised as a defense by the hospital did Fluri began to suspect something else was afoot. Namely, the hospital suggested the real problem was back with the original x-ray read by Blue – it revealed a fracture in her femur, one that likely occurred during the replacement.

Fluri then moved to amend her complaint to name Blue as a defendant, citing the error in misreading the x-ray. Had it been read properly, the theory went, physical therapy wouldn't have been commenced so quickly and the small fracture could have healed on its own. Plaintiff's expert was Dr. Leon Lenchik, Radiology, Winston-Salem, NC.

*A partial look at the 2006 Year in Review Employment Report
Verdicts sorted by largest to smallest (2006 results in bold)*

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The 2005-2006 Employment Discrimination/Harassment Report

<u>County</u>	<u>Case#</u>	<u>Verdict</u>	<u>Description</u>
Jackson	594	\$2,529,000	Was a Pringles chip-maker fired because he alleged race discrimination or instead was it because he falsified quality control reports?
Knoxville	558	\$368,821	The branch manager of a home medical equipment company alleged he was not rehired after a reduction-in-force because of his prior complaints of age discrimination.
Memphis	147	\$331,355	A third-shift deputy jailer alleged a single incidence of sexual harassment by a co-worker.
Knoxville	559	\$339,258	Plaintiff was fired for sleeping on the job – she denied this, explaining she suffered from unexplained black-outs and at the time of the firing, she was still in the process of being diagnosed – the firing then from plaintiff's perspective represented FMLA interference.
Nashville	456	\$325,000	A black Clarksville police officer alleged a pattern of racial hostility permeated the police department.
Nashville	93	\$300,000	A successful female stockbroker alleged she was propositioned and harassed by her boss.
Memphis	505	\$265,426	A hospital administrator alleged he was twice passed over for promotion because of his age.
Knoxville	223	\$250,000	A director at a nursing home alleged she was fired after she ended a consensual sexual relationship with her boss.
Nashville	80	\$218,133	The longtime recorder for the City of Ridgetop was fired because of political opposition to the newly elected Mayor.