

The Tennessee Jury Verdict Reporter

The Most Current and Complete Summary of Tennessee Jury Verdicts

July 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 - While a radiologist admitted his mistake in diagnosing the plaintiff with fatal cancer (the mistake was not discovered for four days), the doctor denied the plaintiff suffered any harm

Dewald v. Lamballe, 51307

Plaintiff: Wm. Kennerly Burger and

Rodney M. Scott, *Burger Scott &*

McFarlin, Murfreesboro

Defense: J. Eric Miles and Phillip

North, *North Pursell Ramos & Jameson*, Nashville

Verdict: Defense verdict

Court: **Rutherford**

Judge: Robert E. Corlew, III
4-8-09

Amanda Dewald was suffering from chronic pelvic pain – she underwent a pelvic ultrasound on 1-25-04 at Stonecrest Medical Center. The ultrasound was read by a radiologist, Dr. Adrian Lamballe. The prognosis was grim.

Lamballe read the pelvic ultrasound and concluded that Dewald had advanced lung cancer. Dewald, a young mother, was devastated by the diagnosis. She was immediately hospitalized (and stayed there for four days) as she began to notify her family across the country. Dewald would later recall these four days were punctuated by fear, terror and dread.

The good news (in a way) came on the fourth day. Lamballe had not misread the ultrasound he saw, he had instead mixed up Dewald's scan with another patient. She did not have cancer. Lamballe would later concede this snafu

represented a standard of care violation.

In this lawsuit, Dewald sought damages related to that error – she also presented a separate negligent infliction of emotional distress count. Her case was simple, that is, because of Lamballe's error, she suffered for four days believing she would die of lung cancer and leave behind her husband and children.

Lamballe, while admitting a mistake, defended the case that because of it, Dewald had not suffered any injury. An expert on him on this causation defense was Dr. John Thompson, Internist, Nashville.

The jury considered two interrogatories and answered no to both, (1) whether Dewald sustained any pain and suffering, and (2) whether there was any negligent infliction of emotional distress. A defense judgment was entered. The jury had first deliberated one afternoon for 3 ½ hours – it went home for the night and after thirty more minutes the next morning a decision had been reached.

Patent Fraud - Shareholders proceeding both individually and as a class alleged the purchaser of a patent engaged in a civil conspiracy with a company officer to fraudulently transfer a patent

Boynton et al v. Headwaters, 1:02-1111
Plaintiff: Jeffrey A. Greene, Nashville, Greg Oakley, *Small Soaper & Oakley*, Nashville and Robert D. Geringer, Beverly Hills, CA
Defense: Alan L. Sullivan, James D. Gardner and Katherine A. Carreau, *Snell & Wilmer*, Salt Lake City, UT and Leo M. Bearman, Jr., *Baker Donelson Bearman Caldwell & Berkowitz*, Memphis

Verdict: \$21,425,000 for plaintiffs
Federal: **Jackson**
Judge: Jon Phipps McCalla
6-19-09

This complex case began in the late 1980s when a company named Adtech began to attract investors. Its principal was James Davison and the company's claim to fame was its coal agglomeration technology. That technology was patented in the so-called 629 patent.

In 1991 Adtech was dissolved and some years later, Davison started a new firm. In 1998 that new firm sold the 629 patent to a company known as Headwaters Incorporated. When the shareholders learned of the sale (there were nine named plaintiffs, also representing a class of other shareholders), they were not pleased. They pursued litigation against Davison regarding the sale of the patent. He settled.

The theory against Headwaters was that it engaged in a civil conspiracy with Davison to acquire the patent and in the process, cut out the original Adtech investors. The litigation spanned multiple years and included a trip to the Federal Circuit Court of Appeals in Washington. Headwaters defended on several fronts, including, that (1) it was an innocent party to any fraud by Davison, (2) certainly there was no evidence of a conspiracy, and (3) Davison as the sole inventor had a lawful right to sell the patent.

The jury first made a fact finding that

eight of nine named plaintiffs had an ownership interest in Adtech prior to its dissolution. The jury further found for the plaintiffs on fraud and civil conspiracy. To damages, the eight named plaintiffs took a total of \$8.475 million, it being assessed in different sums. Then making an advisory award as to the class, the jury valued damages to the entire shareholder class (including the named-plaintiffs) at \$21,425,000. The jury made a final finding that the defendant had not acted with malice. Several weeks later, no judgment had been entered – there remain numerous issues to be litigated in this case.

Truck Loading Negligence - While loading tornado debris (limbs and other rubbish), the plaintiff sustained tendon and arterial damage to his arm when another worker turned with a chainsaw and struck him in the arm

Ferreira v. Delta Contracting, 07-141
Plaintiff: Glenn K. Vines, *Nahon Saharovich & Trotz*, Memphis
Defense: James P. Catalano, *Leitner Williams Dooley & Napolitan*, Nashville
Verdict: \$210,764 for plaintiff
Court: **Madison**
Judge: Roy Morgan
6-12-09

Following the tornados that struck Jackson in the Spring of 2006, clean-up crews were brought in. On 5-3-06, an employee of Delta Contracting, Juan Santiago, was in the process of trimming limbs that were already loaded onto a truck. The limbs were overhanging the side of the truck. To trim the limbs, Santiago utilized a chainsaw.

Also at the site was Jorge Ferreira, who was then working for another trucking firm. Ferreira walked up behind Santiago. At just that moment, with the chainsaw engaged, Santiago turned around. The chainsaw struck Ferreira in the arm.

That impact left Ferreira with a significant laceration as well as tendon and arterial damage. He has also suffered from a permanent scar. His medicals were \$31,387 and he sought lost wages of \$7,704.

Ferreira sued Delta Contracting and alleged negligence regarding Santiago's use of the chainsaw. Particularly, he noted Santiago had not been trained on the chainsaw – communication was made difficult as well because Santiago only spoke Spanish and no one at the site could effectively communicate with him. Santiago too was blamed for his misuse of the chainsaw.

Delta Contracting and Santiago defended that it did conduct safety meetings. It conceded that while there were no specific chainsaw safety instructions, operating one is simple and chainsaw safety is also simple. There was also proof, that irrespective of any training the company provided, Santiago was experienced with a chainsaw. Then to plaintiff's comparative fault, the defense suggested that (1) even with training, that wouldn't have prevented Ferreira from walking into the zone of danger, and (2) it was the plaintiff who was in the best position to protect himself and thus he was at least 50% or more at fault for the event.

The verdict was mixed on fault after two days of proof in Jackson. It was assessed 90% to Delta and Santiago, the remainder being assigned to Ferreira. Then to damages, the plaintiff took an award of \$210,764. A judgment less comparative fault was entered for him.

Gender Discrimination - A manager of a call center company alleged she was fired because of her gender – she also prevailed at trial on an equal pay claim

Theile v. Faneuil Group, 2:06-112
Plaintiff: Charlton R. DeVault, Jr., Kingsport
Defense: Charles D. Lawson and J. Bartlett Quinn, *Chambliss Bahner & Stophel*, Chattanooga
Verdict: \$162,000 for plaintiff
Federal: **Greenville**
Judge: J. Ronnie Greer
6-11-09

Charlene Theile started working in 1997 for the Faneuil Group. The company operates call centers nationwide. Theile worked her way into a management position at their Johnson City location. In

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