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Bass Fishing Negligence - A cameraman filming a professional bass fisherman (during a bass fishing contest) suffered serious multi-level segmented rib fractures when the fisherman crashed into a bridge on Kentucky Lake

Gulley v. Fukae, 1:14-1138

Plaintiff: David V. Oakes, Paducah

Defense: Darryl D. Gresham and

Heather W. Fletcher, *Allen Summers*

Simpson Lillie & Gresham, Memphis

Verdict: \$497,500 for plaintiff

(Bench trial)

Federal: **Jackson**

Judge: Thomas Anderson

Date: 6-13-18

Robert Gulley, age 54, built a life around fishing. He lives in Tupelo, MS with his mother, but his primary interest is fishing. He fishes a lot. When he isn't fishing himself, he works as a cameraman for the professional bass fishing tour known as Operation Bass. He was doing just that on 6-19-11.

Gulley was assigned to the boat of a Japanese professional, Shinichi Fukae. Fukae was piloting a bass fishing boat on Kentucky Lake in Henry County. Fukae was on the

patrol for the perfect fishing hole.

What Fukae didn't appreciate (at least in time) was the really big bridge that crosses the lake.

At just the last moment, Fukae saw the bridge pillar and swerved to avoid it. It was too late. His fishing boat struck the pillar at approximately 50 mph. Fukae suffered minor injuries and was still able to finish the tournament. He caught 15 bass that weighed 45 pounds and finished tenth in the event. That was good for a payday of \$12,000 in prize money.



The Fukae boat (and the bridge pillar) after the collision

Gulley, the cameraman, was not so lucky. The collision left him with multiple rib fractures. These weren't ordinary fractures either. They were described as severely segmented from rib 2 to 10. Gulley was helicoptered from the scene to Vanderbilt.

Gulley underwent a surgery to repair the injury that included placing 5 plates and 28 screws. He remained in the hospital for eight days. There was proof Gulley's injuries were painful. While he continues to fish, he does so in pain. Gulley's medical bills were \$165,558.

Gulley filed this maritime negligence case against Fukae regarding the crash into the bridge. Fukae had initially contested liability but as the case came to trial, he conceded liability. The case was tried as a bench trial before Judge Anderson in January of 2018.

Gulley had asked the court for an award of damages of \$2.72 million. Fukae thought \$200,000 was more fair. While it was true, Fukae explained, that Gulley was injured, he has since resumed his primary life activity of fishing.

Judge Anderson had his opinion six months later. He concluded (without any explanation) that Gulley was entitled to \$497,500 in damages. What is interesting about Gulley's order is that the awarded damages did not include his medical bills. Fukae promptly deposited the awarded sum to the court. There remains to be resolved the interest of an intervening insurer.

Case Documents:
[The Final Order](#)

Medical Negligence - The plaintiff's spleen was lacerated during a bariatric surgery and ultimately the plaintiff underwent a splenectomy – the surgeon called the injury a surgical complication and in any event, the plaintiff suffered no permanent injury

Webb v. Wegner, CT-005020-14

Plaintiff: Randall L. Fishman and Richard S. Townley, *Ballin Ballin & Fishman*, Memphis

Defense: Jerry O. Potter and Tyler B. Davidson, *Harris Shelton Hanover & Walsh*, Memphis

Verdict: Defense verdict on liability

Court: **Shelby**

Judge: Valerie L. Smith

Date: 2-2-18

Christy Webb, then age 45, underwent an elective bariatric surgery on 8-5-13. She was morbidly obese. The laparoscopic gastric bypass was performed by a bariatric surgeon, Dr. Robert Wegner of the St. Francis Surgical Weight Loss Center.

During the surgery, Wegner lacerated Webb's spleen. The injury was not immediately noted. Webb was discharged the day of the surgery. She was back a day later and suffering symptoms related to blood loss.

An open surgery was performed to repair her spleen. Because of significant blood loss, the spleen could not be saved and Webb underwent a splenectomy. Webb had to have a blood transfusion as she lost four liters of blood.

Webb sued Wegner and alleged error by him in injuring her spleen and then failing to timely recognize the injury. Her expert, Dr. Mark Perna, Surgery, Columbia, MO, criticized Wegner for failing to make an early identification of the bleeding event, that delay making the repair

more complex. Beyond Webb's primary claim for damages, her husband (Steve) presented a derivative consortium count.

Wegner called the spleen injury a complication of the surgery and insisted that Webb was closely monitored. He converted to an open procedure within 24 hours, there being no unnecessary delay. Wegner also explained that in any event, Webb suffered no long term harm in losing her spleen. Defense experts were Dr. Jay Suggs, Bariatric Surgery, Decatur, AL and Dr. Guy Voeller, Surgery, Memphis.

This case was tried for four days in Memphis. The court's instructions asked if Wegner acted with "less than" the bariatric surgery standard. The jury said "no" and Webb took nothing. A defense judgment closed the case.

Disability Discrimination - Two days after the plaintiff (a funeral home director) sought leave for an ear surgery, he was fired

Everson v. SCS TN Funeral Services, 3:15-1478

Plaintiff: Heather M. Collins, Anne Hunter and Paige M. Lyle, *Collins & Hunter*, Brentwood

Defense: Charles K. Grant and Megan M. Sutton, *Baker Donelson Bearman Caldwell & Berkowitz*, Nashville

Verdict: Defense verdict on liability

Federal: **Nashville**

Judge: William L. Campbell, Jr.

Date: 6-29-18

Ommer Everson worked for many years for SCS Tennessee Funeral Services as a funeral director. SCS operates funeral homes throughout Tennessee. At relevant times in this case, Everson was the funeral director

at the Forest Lawn Funeral Home in the Nashville area.

Everson was diagnosed with Meniere's Disease in 2000. It became symptomatic in 2010 and he took off time for a surgery. In January of 2015, Everson sought and was granted three days off for another ear procedure.

However two days after being granted the leave, Everson was fired. SCS cited that he had mishandled a corpse. Namely the body was left overnight at a funeral home and was not embalmed or refrigerated. From the perspective of SCS, the firing was all about the error in handling the body.

Everson thought the excuse was a pretext to mask disability discrimination. Regarding the allegations of the misconduct, Everson diminished his role and noted that the body snafu occurred at another funeral home where Everson was not a supervisor. The error with the body was caused by another employee.

Thus Everson postured that he sought time off to treat his condition and was fired on a pretext just two days later. As the case went to the jury, Everson presented several counts, (1) he was fired because of his disability, (2) the failure to reasonably accommodate him, and (3) retaliation for requesting an ADA accommodation. If Everson prevailed at trial, he could be awarded compensatory and punitive damages. SCS flatly denied discrimination or retaliation.

This case was tried for four days in Nashville. The jury rejected Everson's three counts and SCS fully prevailed. A defense judgment was entered by the court.

Case Documents:

[The Summary Judgment Order](#)
[The Jury Verdict](#)

Auto Negligence - A Metro school administrator was involved in a right of way crash as she made a left turn into a Starbucks – she was struck by the defendant (proceeding straight from the opposite direction) who was in a turn lane – the jury resolved the case and found both drivers 50% at fault

Battle v. Butler, 17-537

Plaintiff: A. Allen Smith, *Ponce & Associates*, Goodlettsville

Defense: R. Kreis White, *White & Rhodes*, Brentwood

Verdict: Defense verdict on comparative fault

Court: **Davidson**

Judge: Thomas W. Brothers

Date: 6-19-18

Adriene Battle, who has a doctorate in education and works as an administrator for Metro Schools, was on her way to work on 4-6-16. Early that morning she first headed to Starbucks for coffee. She made a left turn into the Starbucks on Murfreesboro Pike from a center turn lane.

Traffic was heavy that morning and two vehicles in oncoming traffic came to a stop. There was a gap for Battle to make her turn. Making the turn even more enticing, one of the drivers "waved" Battle to make the left turn. Battle did just that.

At the same time, Ryan Butler was in a third lane facing Battle. It was a right turn lane. As Battle made her left turn (after being waved on by other drivers), she was struck by Butler. Butler was proceeding straight in the right turn lane. It was a moderate impact.

Battle did not report an injury at the