

The Tennessee Jury Verdict Reporter

The Most Current and Complete Summary of Tennessee Jury Verdicts

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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.

Swimming Pool Negligence - A drunk plaintiff dove into a shallow apartment complex swimming pool and suffered a catastrophic spinal cord injury -- his lawsuit theory implicated that underwater lights were not on and that the depth was not clearly marked

Luster v. Memphis Landings

Apartments et al, 2:03-2444

Plaintiff: Brian P. Strength, Danese K. Banks and Jock M. Smith, *The Cochran Firm*, Tuskegee, AL

Defense: Robert D. Flynn and Jeffrey S. Glatstein, *Spicer Flynn & Rudstrom*, Memphis and Y. Kevin Williams and Christopher T. Byrd, *Weinberg Wheeler Hudgins Gunn & Dials*, Atlanta, GA

Verdict: \$2,500,000 for plaintiff less 45% comparative fault

Federal: **Memphis**
Judge: Samuel H. Mays, Jr.
6-1-05

It was 4-28-02 and Michael Luster, then age 31 and a press helper, visited friends at the Memphis Landings Apartments. [The apartments are operated by two companies, ML Tennessee Apartments and Equity Residential Properties Management, jointly referred to herein as Memphis Landings.] Luster spent the afternoon watching television and drinking beer. [He was drunk, his BAC later being measured at .20.]

Later that evening, the group of friends headed to the pool at the apartment complex. It was a small pool, with a depth that ranged from three to four feet. This depth was marked on the side of the pool. There were also signs warning swimmers not to dive.

Luster first entered the pool and swam to one end. He exited and started to dry off. At that moment, a friend of his dove into the pool. The dive was safe. Luster threw down his tool and

dove in as well.

His head struck the bottom of the pool and he sustained a catastrophic spinal cord injury. He is paralyzed from the waist down, with only limited use of his hands. He incurred medical bills of \$550,000. His proof also developed economic loss of \$6.6 million. Luster valued his total damages at \$30,000,000.

Luster sued the apartment complex and the management company, alleging negligence regarding the maintenance of the pool. He cited several deviations, including that, (1) the underwater lights were not operating, (2) the depth placards on the deck were worn and difficult to see, and (3) the warnings signs were inadequate. [While there was a warning about diving, it was out of the way and not easily seen.] Luster's aquatic safety expert was Thomas Ebro, Lutz, FL.

Memphis Landings defended the case on several fronts. First and foremost, it blamed this tragedy on Luster's own poor decisions. That included getting drunk and diving into a pool with a depth of three feet. A toxicologist, David Staffords, explained how Luster's judgment was impaired by the alcohol. [This also went to the adequacy of the warnings -- whatever they were, the intoxicated Luster wasn't going to read them.]

There were also fact disputed regarding the time of the accident. While plaintiff argued it was dark, Memphis Landings explained it was still a few minutes before sunset. The distinction was important, the defense explaining the lighting issue was irrelevant as the sun was still up. To the pool itself, an aquatic safety expert, Tom Griffiths, State College, PA,