The Tennessee Jury Verdict Reporter

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August 2013 **Statewide Jury Verdict Coverage** **10 TJVR 8**

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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 - A teenager was on a tracheostomy tube after a serious wreck – a month later and transferred to a rehabilitation hospital, the boy sustained a catastrophic brain injury when the breathing tube was removed too soon – this jury awarded the boy $7.5 million in non-economic damages

Wade v. Cane Creek Rehabilitation et al, 4253

Plaintiff: Randall L. Kinnard and Mary Ellen Morris, *Kinnard Clayton & Beveridge*, Nashville and Roy B. Herron, Dresden

Defense: Buckner P. Welleford, Bruce A. McMullen and Jennifer A. Sink, *Baker Donelson Bearman Caldwell & Berkowitz*, Memphis for Cane Creek

Dixie W. Cooper and Chris J. Tardio, *Gideon Cooper & Essary*, Nashville for Lowry

Verdict: $15,261,070 for plaintiff assessed 60% to Lowry and 40% to Cane Creek

Court: **Weakley**

Judge: William B. Acree, Jr.

Date: 7-3-13

Cody Wade, then age 17 and a high school senior in Martin, TN, was involved in a one-car wreck on 6-23-07 when he lost control in a curve on Little Road. There was evidence Wade was drinking – he was ejected from his pick-up truck. His injuries were severe (including a traumatic brain injury, a collapsed lung, a lacerated liver and a broken

collarbone) and he was taken to The Med in Memphis. Wade was ventilator-dependent and a tracheostomy tube was placed.

Nearly a month later in anticipation of his transfer to Cane Creek Rehabilitation Hospital in Martin, TN, the tracheostomy tube was removed. However Wade began to experience labored breathing and an increased heart rate. His surgeon at The Med reinserted the tracheostomy tube. The next day Wade was transferred to Cane Creek Rehabilitation.

On the morning of 8-10-07, Dr. Susan Lowry, a family practitioner in Martin who treats Cane Creek patients, made a decision to remove Wade's tracheostomy tube. During the course of the day, Wade periodically complained of difficulty breathing. His symptoms increased in the overnight hours.

At 4:30 the next morning, Wade awoke in respiratory distress. An ambulance took him to Volunteer Community Hospital twenty minutes later. Wade went into cardiac arrest. While he was resuscitated, Wade suffered a severe and permanent anoxic brain injury.

Wade, now age 23, is permanently ventilator-dependent and confined to either bed or a wheelchair. His life expectancy is estimated at some twenty years. His life care plan was estimated to cost some $6,000,000. This contrasted with his pre-injury status: Wade was a popular high school senior with a bright future.

In this lawsuit Wade alleged negligence by Lowry and Cane Creek Rehabilitation. The estate was first critical of Lowry for prematurely removing the tracheostomy tube in the first place without first seeking an outside consult or without a check-up at The Med. Both Lowry and the hospital too were blamed for failing to appreciate Wade's pale and grayish status as he struggled to breathe without the tracheostomy tube.

The plaintiff also focused that on the evening the tracheostomy tube was removed, Wade complained that it felt like something was caught in his throat. Instead of sending him to an acute facility, Lowry simply prescribed Xanax and told him to breathe deeply. Essentially the theory went, she attributed his complaints to anxiety without considering the possibility of a physiological problem. The combination of these purported errors, the theory went, all led to the catastrophic respiratory event and resulting cardiac arrest.

Wade's experts were Kate Cogan, RN, Boone, NC and Dana Ebeling, Winchester, VA, who discussed the rehab nursing standard of care. The plaintiff also relied on David Callahan, Neurology, Chesterfield, MO, Dr. Douglas Holmes, ENT, Raleigh, NC and Larry Russell, Family Practice, Hendersonville, NC.

Lowry defended that there was no duty to seek a consult before removing the tracheostomy tube. She and the hospital both replied that after it was removed, Wade was properly and carefully monitored. They described Wade's respiratory distress as a sudden and acute event (not a slow-building catastrophe) which was addressed in a timely fashion when it presented in the early morning hours of 8-11-07. The plaintiff countered that evidence of respiratory distress (pulse oximeter readings and Wade's appearance) necessitated intervention by the defendants and a transfer to an acute hospital.

Defense experts called by Cane Creek were Kathy Clark, RN, Warm Springs, GA and Nancy Warren, a nursing Ph.D., Martin, TN. Dr. James Farrage, Primary Care in Rehab Hospital, Bowling Green, KY, discussed the standard of care for Lowry.

Lowry also relied on Dr. Gregory Hulka, Pediatric ENT, Durham, NC and Dr. Gaelyn Garrett, ENT, Nashville, TN, both of who discussed causation and the standard of care regarding airway management. Two experts diminished damages, Dr. Richard Katz, Forensic Psychiatry, St. Louis, MO and Dr. Robert Shavelle, California. [Shavelle discussed Wade's life expectancy.]

This case was tried over the course of a month. The jury began to deliberated some five hours. Its verdict was mixed on fault. It was assessed 60% to Lowry and the remainder to Cane Creek Rehabilitation.

Then to damages Wade took medicals of $2,206,767 (as sought by an intervening plaintiff for the State of Tennessee and Blue Cross/Blue Shield) and $3,054,303 for future care. Wade's pain and suffering, permanent impairment and loss of ability to enjoy life were all valued at $2.5 million. The raw verdict totaled $15,261,070 and a judgment consistent with comparative fault has been entered. While defense motions for a new trial are expected, they had not been entered at the time this report was prepared.

Auto Negligence - A rear-ended plaintiff complained of a new herniated disc injury just one level above where he had previously undergone spinal surgery – a Nashville jury awarded medicals of $61,429 and $50,000 more for pain and suffering

Hayes v. Patel et al, 10-2612
Plaintiff: Kerry Knox, *Castelli & Knox*, Murfreesboro and Delain L. Deatherage, Nashville
Defense: Glenda Hawkins Pipkin and Matthew T. Moffitt, *Law Office of Glenda Pipkin*, Nashville for Patel
Lynn Vo Lawyer, *Law Office of Gary Wilkerson*, Nashville for Hayes
Verdict: $111,429 for plaintiff against Patel; Defense verdict for Hayes
Court: **Davidson**
Judge: Joe P. Binkley
Date: 5-7-13

Tony Hayes was a passenger on 8-19-09 in a vehicle driven by his father, Lucian Hayes. They were delivering copies of the *Nashville Scene* newspaper. As they traveled on Spence Lane they were suddenly rear-ended by Nilaben Patel. It was a moderate impact.

Tony treated immediately at the ER for back pain. He followed a week later with Dr. Juris Shibayama, Orthopedics, Smyrna. Shibayama identified that Hayes had suffered a disc herniation at C5-6 – while Hayes had undergone a spine surgery at the level just below C5-6 some 12 years earlier, Shibayama opined the C5-6 injury was new.

Shibayama first sent Hayes for an epidural injection. It provided no relief. In November of 2009 (less than three months after the crash), the doctor performed a surgical repair at C5-6. Hayes incurred medical bills of $61,429. As he was already disabled from the prior disc injury, there was no wage claim.

In this lawsuit Hayes targeted Patel and blamed Patel for the rear-ender. Patel countered that Lucian (the father) had suddenly stopped. In that regard Patel filed a cross-claim against Lucian. Hayes (the son) then amended his complaint to bring in his father (Lucian) as a defendant. The father defended that he was stopped when rear-ended by Patel. Both defendants minimized the claimed injury and cited, (1) the history of a prior disc injury, and (2) that the crash resulted in minor damage.

This case was tried for two days in Nashville. The jury found Patel solely at fault and rejected any apportionment to the plaintiff's father. Then to damages Hayes took $61,429 for medicals and $50,000 more for pain and suffering. The verdict totaled $111,429. A consistent judgment was entered against Patel (also exonerating Hayes) and Patel paid it.

Truck Negligence - Four Eastern European immigrants transiting through Tennessee on I-24 to their Chicago home all suffered injuries when they were rear-ended by a trucker – the most seriously injured plaintiff (who suffered a broken collarbone) was awarded $224,619 in damages

Rabinskaya et al v. Eagle Transport, MCVCCVOD11-284
Plaintiff: Stanley A. Davis, Nashville and Gerald Beckerman, Chicago, IL
Defense: Richard C. Mangelsdorf, Jr., *Leitner Williams Dooley & Napolitan*, Nashville
Verdict: $224,619 for Rabinskaya
$45,383 for Yaroshevich
$35,998 for Ogiela
$42,201 for Yaro
Court: **Montgomery**
Judge: Ross Hicks
Date: 7-11-13

Ted Ogiela, then age 45, was driving through Tennessee with family and friends on 5-15-10. They traveled on I-24 near Clarksville on the way to their Chicago home. Ogiela, a Polish immigrant, was joined by his wife, Julie Yarosh – she is Russian. Also in the car were Sofiya Rabinskaya, age 69 and Yarosh's father, Anatoly Yaroshevich, also age 69.

At the same time, Kristin Slavinski was operating a fuel tanker for Eagle Transport. Ogiela would recall he was proceeding safely at 55 mph. Suddenly the trucker started to pass him on the left – in the process Slavinski (who was estimated to be at 65 mph) rear-ended the Ogiela Acura SUV. It was a moderate offset impact.

All four occupants of the vehicle were injured. Rabinskaya suffered a broken collarbone and a minor rib fracture. The other plaintiffs (Ogiela, Yarosh and Yaroshevich) each suffered soft-tissue injuries. In this lawsuit they sought damages from Eagle Transport. It defended and blamed the crash on Ogiela for having suddenly slammed on the brakes.

The jury's verdict found the trucker solely at fault and rejected any apportionment to Ogiela. Then to damages, the most seriously injured Rabinskaya took medicals of $68,219 plus $6,400 for future care. For each of the following five categories, past suffering, future suffering, permanent impairment, past loss of ability to enjoy life and in the future, she took $30,000. Her verdict totaled $224,619.

Yaroshevich was awarded his medicals of $15,383 plus $10,000 each for past suffering, future suffering and loss of ability to enjoy life. The

verdict for Yaroshevich was $45,383.

Ogiela's medicals were $8,498. He took $15,000 for past suffering and $2,500 each for future suffering and loss of ability to enjoy life. His consortium award was $7,500, the verdict totaling $35,998. His wife (Yarosh) was awarded her medicals of $14,701 and the same sums for non-economic damages that her husband took. Yarosh's award was $42,201. A consistent judgment reflected the verdict for the plaintiffs.

Premises Liability - While a trucker was making a delivery to a Dollar General store, he sustained a shoulder injury when he tripped over a metal shelf – the plaintiff prevailed and took medicals and lost wages, this jury rejecting any award of non-economic damages

Walker v. Dollar General, 12186
Plaintiff: Marshall McClarnon, *Law Office of Donald Zuccarello*, Nashville
Defense: Gary A. Brewer, *Brewer Krause Brooks Chastain & Burrow*, Nashville
Verdict: $66,839 for plaintiff less 49% comparative fault
Court: **Bedford**
Judge: Lee Russell
Date: 1-15-13

Randy Walker, then age 47, worked as a trucker for Werner Enterprises. He made a delivery the day after Christmas in 2009 to a Dollar General store in Shelbyville. As Walker entered a back door to a store room, he tripped over a metal shelf that had fallen into his path. In the resulting fall Walker sustained a shoulder injury.

In this lawsuit Walker sued Dollar General and alleged negligence regarding its maintenance of the premises. He was critical of the rickety shelf that fell into his path. Apparently it was a windy day and as the back door to the store room was open, the wind had acted to blow over the shelf. Dollar General defended and implicated the plaintiff's own look-out.

This case was tried in Shelbyville for two days. The verdict was mixed on fault. It was assessed 51% to Dollar General and the remainder to Walker.

Turning to damages, Walker took medicals of $35,768 plus $31,070 more in lost wages. The jury rejected any award for suffering, future suffering, impairment and loss of enjoyment of life. His wife's consortium claim was rejected too. The raw verdict totaled $66,839. A consistent judgment was entered less comparative fault for $34,088. The case has since been dismissed as settled.

Religious Discrimination - A conveyor mechanic at UPS alleged he was terminated after his employer failed to accommodate his newly found religion that recognized a Saturday Sabbath

O'Barr v. UPS, 3:11-177
Plaintiff: Dale J. Montpelier, *Montpelier Law Group*, Knoxville and Katherine A. Young, *Young Law Office*, Knoxville
Defense: Waverly D. Crenshaw, Jr. and John E.B. Gerth, *Waller Lansden Dortch & Davis*, Nashville
Verdict: Defense verdict
Federal: **Knoxville**
Judge: R. Leon Jordan
Date: 6-19-13

John O'Barr worked as a plant engineer mechanic for UPS at its Knoxville, TN hub – he helped maintain the many conveyors at the hub. Starting with UPS in 2000, O'Barr was regarded as a valued employee. Because of his seniority within the Teamsters union, O'Barr had been able to select his own shift. He worked the day shift from 9:00 a.m. to 6:00 p.m.

O'Barr made two important decisions in 2010. First he got married. And important to this case, O'Barr adopted his wife's religion and joined the Church of God. One of its tenets is that it observes a Saturday Sabbath from sundown on Friday to sundown on Saturday. O'Barr's faith made it impossible for him to work during this period.

O'Barr was able to work around his Sabbath through the Fall of 2010. However the trouble started that Fall when UPS reorganized its schedule. It would explain it did so because the Knoxville hub is one of the oldest in its system and maintenance (including required overtime) is critical to keeping the facility operational. Thus the schedule was rebid.

As a part of the seniority scheme adopted by UPS, O'Barr bid for a shift. He received a shift that ran weekly from 4:30 p.m. to 1:30 a.m. On Friday nights O'Barr would have a problem, his shift impinging upon his Sabbath. He sought an accommodation. UPS refused and explained its hands were tied by a combination of, (1) contractual union scheduling requirements, and (2) the operational needs of the Knoxville hub. When O'Barr did not report for a shift on in December of 2010, he was terminated.

O'Barr sued UPS in this federal lawsuit and alleged a variety of counts. All were predicated on his employer's failure to recognize and accommodate his Saturday Sabbath. As the case was tried, he presented both state and federal counts including the failure to accommodate his religion, retaliation for his exercise

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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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of that religion and finally religious discrimination. UPS defended as above that it could not accommodate O'Barr, noting that when it attempted to do so, besides affecting operational integrity, other employees complained.

The jury's verdict was for UPS on the state and federal religious accommodation, retaliation and discrimination counts. Having so found, O'Barr took nothing. A defense judgment was entered for UPS.

Copyright Infringement - A company that creates virtual computer rooms to illustrate decorating options sued a flooring company it alleged had infringed those virtual rooms by using them beyond a prescribed license period

Virtual Studios v. Beaulieu Group, 1:11-359
Plaintiff: Michael A. Anderson and McKinley S. Lundy, Jr., *Patrick Beard Schulman & Jacoway*, Chattanooga
Defense: Peter N. Farley, Ann G. Fort and Stephanie G. Stella, *Sutherland Asbill & Brennan*, Atlanta, GA
Verdict: $1,950,000 for plaintiff
Federal: **Chattanooga**
Judge: Curtis L. Collier
Date: 6-17-13

Virtual Studios is a computer software company that creates so-called virtual rooms. These rooms are used by companies that want to demonstrate decorating, furniture and flooring in a virtual environment. For many years Virtual Studios had sold its virtual rooms to Beaulieu Group – Beaulieu group is a Dalton, Georgia carpet and flooring manufacturer. Beaulieu used the virtual rooms to demonstrate to its customers how its flooring products would look when installed.

The problem started in 2008 when Virtual Studios sought to institute a one-year license agreement for its software. [During the previous ten years Virtual Studios had licensed the virtual rooms to Beaulieu without this specific requirement.] Beaulieu balked at the new restriction and postured it was permitted to the use the virtual room software for all times.

This lawsuit for copyright infringement followed, Virtual Studios alleging Beaulieu's continued use of the virtual rooms was willful. Beaulieu group denied any infringement.

This case was tried in two phases. The first considered if Virtual Studios had proven infringement. In the first phase the jury's verdict was for the plaintiff. A second phase (with the same jury) started immediately.

Virtual Studios prevailed again and the jury found the infringement was willful. It rejected an affirmative defense by Beaulieu that asked if the infringement was innocent. The jury then awarded statutory damages (as elected by Virtual Studios) of $150,000 for each of 13 infringements. The verdict totaled $1,950,000. More than a month after the trial no judgment had been entered, but Virtual Studios has sought an award of attorney fees.

Auto Negligence - The verdict in a right of way crash case was split on liability and the plaintiff took nothing

James v. Brown, 10-298
Plaintiff: Henry S. Queener, III, Nashville
Defense: Glenda Hawkins Pipkin and Matthew T. Moffitt, *Law Office of Glenda Pipkin*, Nashville
Verdict: Defense verdict
Court: **Williamson**
Judge: Robbie Beal
Date: 1-10-13

There was a disputed right of way crash in College Grove, TN on 9-30-09. It occurred on Horton Highway. The plaintiff, Brenda James, alleged that Jennifer Brown turned right in front of her to reach a parking lot from the left lane – James was passing Brown on the right when Brown made the turn, Brown broadsiding James.

Brown countered that James was passing on the right as she prepared to make a turn. She denied being in the left lane or having otherwise indicated a left turn. However it happened there was a collision and James was injured.

James has since treated for a soft-tissue injury. Her medical bills were $3,766. In this lawsuit she sought damages from Brown. Brown defended on fault as noted above and also diminished the claimed injury.

The jury's verdict in Franklin was split equally on fault and that finding precluded an award of damages to James. A defense judgment followed this two-day trial.

First Amendment - A deputy sheriff was fired soon after writing a letter to the editor of the local paper that was critical of a city council plan for a marina

Segovia v. Montgomery County Sheriff, 3:10-325
Plaintiff: Robert J. Martin, Clarksville
Defense: Daniel M. Nolan and Kathryn W. Olita, *Batson Nolan*, Clarksville
Verdict: $79,382 for plaintiff
Federal: **Nashville**
Judge: Kevin H. Sharp
Date: 7-19-13

Gabriel Segovia worked in February of 2009 as a school resource officer for the Montgomery County Sheriff. He was assigned to Clarksville High School. Segovia, a former member of the local city council, remained keenly interested in municipal affairs. Segovia penned a letter to the editor of Clarksville's newspaper, *The Leaf-Chronicle*. The letter was critical of the city council's plans to fund a new marina.

Two days later Segovia was berated and chastised by his boss , the then-sitting sheriff, Norman Lewis. [Lewis has since died.] A month later

Segovia was out of a job.

Segovia then filed this lawsuit and alleged he was fired in retaliation for the exercise of his First Amendment rights in writing the letter to the editor. If he prevailed at trial the jury could award backpay and humiliation damages.

The sheriff's office defended and denied any retaliation. It first explained the initial meeting with the sheriff was not combative nor designed to silence Segovia. Instead the sheriff was letting the deputy know the need to maintain a cooperative relationship with city government.

Why then was Segovia fired? The sheriff explained he was let go because of a pattern of poor performance and an acute event. That acute event was an allegation that Segovia engaged in inappropriate texting with a high school student and then lied about. Segovia countered this explanation was just a pretext to mask retaliation.

The jury's verdict was for Segovia on the First Amendment retaliation count and he took backpay of $79,382 as stipulated. The jury rejected any award for embarrassment or humiliation. A consistent judgment reflected the verdict.

Auto Negligence - **A motorist failed to yield the right of way while making a left turn, resulting in a collision - the other driver claimed that his resulting injuries prevented him from returning to his job delivering freight**

Collier v. Kopishke, 1514-10
Plaintiff: James E. Blount, IV, *Blount Law Firm*, Collierville
Defense: Robert L. Moore, *Heaton & Moore*, Memphis
Verdict: $25,000 for plaintiff
Court: **Shelby**
Judge: Jerry Stokes
Date: 1-29-13

Mid-afternoon, on 5-15-09 Kim Kopishke of Minnesota, who was driving a vehicle owned by her mother, traveled westbound on Cumming Street. When she approached the intersection at South Pkwy, she stopped at the stop sign. She then made a left turn onto South Pkwy and struck the front driver's side of the vehicle being driven by James Collier, then age 60, who was driving in the course of his employment.

Collier suffered soft tissue strains to his neck and lower back, as well as stenosis at L2-5 and impingement of the right S1 nerve root. He was given a 7% whole body impairment rating. Collier incurred $8,032 in medical bills, all of which were paid by either his employer's insurance or his own private insurance.

In his suit against Kopishke, Collier claimed that his injuries have prevented him from returning to work delivering freight and loading and unloading trailers. He earned $22 per hour.

Kopishke initially denied liability for the collision, stating only that she did not see plaintiff before she turned. However, summary judgment was entered for plaintiff on the issue of liability two weeks before trial. Kopishke then defended by diminishing plaintiff's claimed injuries. She contended that Collier's spine complaints were degenerative in nature.

The trial lasted two days in Memphis. The jury awarded plaintiff $12,500 each for his past pain and suffering and past loss of earning capacity. It gave him nothing for future pain and suffering, permanent impairment, or the loss of his ability to enjoy life. A judgment consistent with the verdict has been entered and satisfied.

Medical Negligence - **The plaintiff's Ob-Gyn was blamed for not performing a rectal exam over the course of many months – it was alleged that because of this failure, the doctor missed a large cancerous tumor in the plaintiff's rectum – despite intervention and treatment, the cancer recurred and the plaintiff died after the suit was filed but before the case was tried**

Penny v. Hamilton,
10-3240
Plaintiff: Randall L. Kinnard, *Kinnard Clayton & Beveridge*, Nashville and Travis Hawkins, *The Hawkins Law Firm*, Franklin
Defense: Bryan Essary and Chris J. Tardio, *Gideon Cooper & Essary*, Nashville
Verdict: Defense verdict
Court: **Davidson**
Judge: Thomas W. Brothers
Date: 4-23-13

Barbara Penny had treated since 2002 with Dr. Kevin Hamilton, an Ob-Gyn with Tennessee Women's Care. Because of a history of childhood sexual abuse, Penny had requested that her examinations be conducted by Hamilton himself and that they be

done under a twilight anesthesia. Penny's treatment with Hamilton from 2002 to 2008 was not eventful.

Penny returned to Hamilton with reports of unexplained vaginal bleeding in the summer of 2008. Hamilton performed a D&C on Penny on 8-5-08. At this time he did not perform a rectal exam. At a follow-up visit three days later and over the course of some eight more visits stretching to January of 2009, no rectal exam was performed. Hamilton had continued to adopt a wait-and-watch approach.

Finally in April of 2009 and after a hysterectomy (again performed by Hamilton in January), a tumor was identified in Penny's rectum that had invaded her vagina. The cancerous tumor was described as being 5 cm in size.

Penny underwent a complex surgical course that included having the tumor removed. She also underwent chemotherapy and had a colostomy bag for a period of time.

In this lawsuit filed by Penny, she alleged error by Hamilton (as a Tennessee Women's Care employee) in failing to diagnose the very low-lying tumor in a timely fashion. Her Ob-Gyn expert, Dr. Kyle Ball, Jackson, MS, was critical of Hamilton for failing to perform the rectal exam during the course of some nine office visits over a ten-month period.

Penny relied on causation proof (linking the diagnosis delay to the growth of the cancer) from Dr. Ralph Silverman, Colo-Rectal Surgery, Nashville and Dr. Bruce Avery, Oncology, Knoxville. Penny's cancer recurred after this suit was filed. She died on 8-27-11. Her estate continued to prosecute the claim.

Tennessee Women's Care defended the case and denied a diagnosis error by Hamilton or that this error contributed to Penny's condition and ultimate demise. Defense experts were Dr. Carl Zimmerman, Ob-Gyn, Nashville, Dr. Timothy Geiger, Colo-Rectal Surgery, Vanderbilt and Dr. Shawn Glisson, Oncology, Louisville.

This jury got the case on an afternoon at 3:15. It deliberated until 6:00 that night. The jury returned the next morning and deliberated 75 minutes. The verdict exonerated Hamilton on liability and Penny took nothing. A defense judgment closed the case.

Insurance Contract - **The plaintiff's home burned and he made a claim for insurance coverage – the insurer denied the claim and suggested the plaintiff was involved in setting the fire – the plaintiff denied this and cited that at the time of the fire, he was in jail**

Byrd v. Allstate, 3:10-543
Plaintiff: Andrew N. Hall, *The Hall Law Group*, Wartburg
Defense: S. Morris Hadden, Kingsport and Suzanne S. Cook, Johnson City, both of *Hunter Smith & Davis*
Verdict: Defense verdict
Federal: **Knoxville**
Judge: David Bunning
Date: 7-23-13

Trent Byrd's home in Scott County, TN burned on 6-6-09. It was insured by Allstate. Byrd made a prompt claim for coverage with Allstate. The insurer denied the claim and cited that Byrd was involved in setting the fire and/or directing someone else to do so. It also cited that Byrd had failed to fully cooperate in investigating the claim.

Byrd flatly denied that he was involved in setting the fire. His best proof? He was in jail at the time of the fire. In this state court lawsuit (removed by Allstate to federal court), he sought breach of contract damages. Allstate continued to deny the claim.

The case was tried in Knoxville but tried by a Kentucky trial judge from Covington, Kentucky, David Bunning. The jury rejected Byrd's contract claim and he took nothing.

Auto Negligence - **The defendant lost control in wet weather on I-24 near Murfreesboro and hydroplaned into the plaintiff's vehicle – the defense successfully cited the rainy conditions as a sudden emergency**

Cochran v. Carter, 3:10-865
Plaintiff: David A. McLaughlin, *Morgan & Morgan*, Memphis
Defense: D. Edward Harvey, *Farris Bobango*, Nashville
Verdict: Defense verdict
Federal: **Nashville**
Judge: John S. Bryant
Date: 7-24-13

It was 9-9-09 and Steven Cochran, then age 48 and a Floridian, traveled on I-24 near Murfreesboro. A hard rain was falling. Suddenly another motorist traveling next to Cochran, William Carter, lost control when his vehicle hydroplaned. Carter crashed into Cochran's vehicle, causing Cochran to spin into a retaining wall.

Cochran's vehicle was now facing oncoming traffic. He was struck a second time a moment later by another driver, Kayla Hillstrom. The combination of these collisions left Cochran with wide-ranging soft-tissue pain to his neck, back and hip.

In this lawsuit Cochran blamed both Carter (who slid into him) and Hillstrom (who crashed into him) for his injuries. Hillstrom settled before trial, but her duties remained in issue for purposes of apportionment. Carter defended the case and cited the

sudden emergency of the wet roadway.

The jury's verdict was for Carter on liability and Cochran took nothing. A defense judgment was entered.

Auto Negligence - When a truck hauling a gooseneck trailer made a wide right turn, a collision occurred with a motorist traveling in the right lane - the other motorist sued successfully in General Sessions, but lost on liability when defendant appealed

Brooks v. Kraus, 11-149 and 11-150
Plaintiff: Jay G. Bush, *Waldrop & Hall*, Jackson and Mitchell G. Tollison, *Tollison Law Firm*, Jackson
Defense: Robert L. Gatewood, *Stewart C. Stallings & Associates*, Memphis
Verdict: Defense verdict on liability
Court: **Madison**
Judge: Donald H. Allen
Date: 8-28-12

On 4-30-10 Dale Kraus was traveling eastbound on North Pkwy in Jackson, pulling a 30 foot gooseneck trailer with his pickup truck. As he made a right turn into the entrance of Jackson State Community College, a collision occurred between his trailer and Sylvia Brooks, who was traveling in the right lane. Brooks suffered soft tissue injuries as a result.

Brooks filed two suits in the General Session Court, one for her personal injury, and the other for her property damage. She claimed that Kraus was driving in the left lane, from where he made an illegal right turn in front of her across her lane of travel. She sought recovery of her property damage of $6,454, as well as rental car expenses of $400, and claimed $4,398 in medical expenses.

Kraus defended that he was in the right lane and Brooks was behind him. He was making a wide right turn to accommodate his trailer, but the bulk of his vehicle remained in the right lane. It was his contention that Brooks attempted to pass him before he completed his turn.

Following a bench trial on 3-25-11, the General Sessions judge entered judgment for the plaintiff, who was awarded $6,454 for her property damage and $6,900 for her personal injury. Kraus appealed the case, where the it was tried before a Circuit Court jury in August 2012. The jury found for the defense on liability. A judgment consistent with the verdict has been entered.

Auto Negligence - The passenger of a vehicle that was hit from behind claimed injuries all over his body, including his central nervous system - a Memphis jury awarded zero damages

Hines v. Williams, 3379-11
Plaintiff: Martin R. Kriger, *Long Umsted Jones & Kriger*, Memphis
Defense: Stephen Toof Brown and Jason R. Hollingsworth, *Stewart C. Stallings & Associates*, Memphis
Verdict: Defense verdict on damages
Court: **Shelby**
Judge: Jerry Stokes
Date: 12-10-12

This suit involves a rear-end collision that occurred in West Memphis, AR between two Shelby County residents. On 10-7-10, James Hines, then age 52, was riding as a passenger in a vehicle being driven by Rhonda Peete. As they traveled westbound on Southland, they were struck from behind by Jammie Williams. Following the accident, Hines complained of pain in his neck, low back, left shoulder, left hand and left leg.

He filed this suit against Williams, claiming that the wreck caused not only physical injuries, but also injury to his entire central nervous system and emotional systems. He asserted $2,240 in past medicals.

Williams admitted liability for the collision, but contested plaintiff's injuries. She denied that any injury resulted from the accident.

A trial in Memphis ended in a defense verdict, the jury finding for Williams on damages. No judgment was found in the record.

A Notable Mississippi Verdict

First Amendment - A jail official alleged he was fired for speaking to the media about the arrest of a Mississippi State football star who was in the jail – the court directed a verdict for the sheriff finding that the speech (talking to a newspaper and confirming the arrest) was not a matter of great public concern and thus no First Amendment protection was implicated

Hurst v. Lee County Sheriff, 3:12-77
Plaintiff: Jim D. Waide, III and Rachel Pierce Waide, *Waide & Associates*, Tupelo
Defense: William C. Murphee, *Mitchell McNutt & Sams*, Tupelo and Gary L. Carnathan, *Carnathan & McAuley*, Tupelo
Verdict: Directed verdict
Federal: **Oxford**
Judge: Sharion Aycock
Date: 7-23-13

Rodricus Hurst worked as a sergeant for the Lee County Sheriff on New Year's Day in 2012. He was assigned to the jail. The night before there was a fight in Tupelo at the Atlanta Bar and Grill. There were several arrests.

Among those that were taken to jail was Chad Bumphis. Bumphis was a former high school football star at Tupelo and was then on the team at Mississippi State. The next day a reporter for the local paper (*The Northeast Mississippi Daily Journal*) called the jail to learn the details of the arrest.

Hurst spoke to the reporter and advised that Bumphis was under arrest in connection with the bar fight. He also indicated that Bumphis had been injured. The paper ran with the story.

The sheriff (Jim Johnson) was not happy to see Sgt. Hurst quoted in the paper. He promptly fired Hurst and cited he was let go for having violated a no-talking-to-the-media policy. From the perspective of the sheriff, Hurst was let go not because of his speech, but rather because of the policy violation.

Hurst disagreed and this lawsuit followed. He alleged the firing represented First Amendment retaliation, the sheriff firing him for airing the dirty laundry of his beloved Mississippi State football team. Hurst also denied there was any no-press policy or that he knew about it. The sheriff defended as above that Hurst was fired because of the policy violation.

The court directed a verdict for the sheriff. Judge Aycock ruled that Hurst enjoyed no First Amendment protection because the speech in this case (telling a reporter the footballer was in jail) was not a matter of great public concern. Hurst has taken an appeal.

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