The Tennessee Jury Verdict Reporter

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August 2022 **Statewide Jury Verdict Coverage** **19 TJVR 8**

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Auto Negligence/UIM - A head-on collision left the plaintiff with a disabling traumatic brain injury – a Memphis jury awarded the plaintiff $1,000,000 each for economic and non-economic damages – the final judgment was reduced to $1.75 million in accordance with Tennessee's tort reform scheme

Page v. Conley and State Auto, CT-002948-18
Plaintiff: Thomas R. Greer and Norhan "Nora" Taube, *Bailey & Greer*, Memphis
Defense: Melanie M. Stewart, *Heaton & Moore*, Memphis for Conley (tortfeasor)
Richard E. Sorin, *McNabb Bragorgos Burgess & Sorin*, Memphis for State Auto (UIM)
Verdict: $2,000,000 for plaintiff
Court: **Shelby**
Judge: Felicia Corbin-Johnson
Date: 8-5-22

There was a head-on collision on 12-20-17 in Memphis. It occurred on Shelby Drive near Delp Street. The defendant, Joshua Conley, was driving a vehicle he borrowed from a family member. While Conley was not an insured driver, the vehicle did have insurance.

There was proof that Conley was stopped at a red light. He then veered right and nearly struck a pole. He then went sharply to the left across multiple lanes of traffic. An instant later he struck the oncoming David Page in a head-on collision. It was a severe impact and Page's pick-up truck was knocked onto its side.

Page, then age 52, has since treated for a disabling traumatic brain injury. He had previously operated a successful construction company but struggles now with handling his own finances as well as with executive function. The business is still operating successfully, but Page no longer actively participates as he had before. His medical bills were approximately $110,000. His future care was approximately $750,000

Page's lost earning capacity was measured at from $515,000 to $715,000. His experts at trial included an IME, Dr. Richard Katz, Bruce Brawner, economist and Linda Jones, Life Care Plan. A treating neurologist at Semmes Murphey Clinic, Dr. Debashis Biswas, confirmed the injury. Two business associates as well as Page's daughters also testified at trial about how the TBI had affected him. He suffers from depression, memory loss, speech and language deficits as well as soft-tissue neck and back pain.

Page proceeded in this lawsuit against Conley. While he was not insured, the owner of the vehicle had a $25,000 policy with GEICO. Page separately pursued his UIM carrier, State Auto. The UIM limits were $1.5 million. The case was tried against Page alone – he did not appear at trial and the plaintiff played his deposition. Thus "State Auto" was never mentioned at trial and instead

The scene of the crash

the defendant (who wasn't there) ostensibly had two lawyers.

Beyond the claim for compensatory damages, Page also sought to impose punitive damages. He pointed to proof that Conley was intoxicated. While there was no blood test taken, Page inferred intoxication from (1) Conley's own testimony that he regularly used heroin (but denied he had used it that day), (2) evidence Conley's drug dealer lived in the neighborhood, and (3) the fact that after being released from the hospital, Conley deleted text messages that were potentially valuable in proving his intoxication.

The defense of the case minimized the claimed injury. While the defense had hired neuropsychology and neurologist experts to defend the case, they were withdrawn before trial. Regarding Page's claimed damages, the defense pointed out that the construction business was still running without a loss in earnings. Page countered that his partner essentially does all the work and he has no guarantee that arrangement will continue. The defense also denied that Conley was intoxicated. Attorney Sorin (with the $1.5 million UIM policy limit) led the defense with Attorney Stewart playing a lesser role.

This case was tried over a week in Memphis. The jury began deliberating on a Thursday afternoon and after a few hours, it decided to come back the next day. After several more hours on Friday, a verdict was reached.

As fault had been conceded, the jury first considered what damages Page had "proven by a preponderance of the evidence." The jury awarded Page $1,000,000 each for his economic and non-economic damages for a total of $2,000,000.

The jury separately answered for the defense that Conley was not intoxicated (this would have removed the cap on non-economic damages if the answer was yes) and further that Page was not entitled to punitive damages. The raw verdict totaled $2,000,000. In the court's final judgment the award was reduced to $1.75 million in accordance with Tennessee's $750,000 cap on non-economic damages.

Case Documents:
Amended Complaint
Final Judgment/Jury Instructions

Auto Negligence - Although the defendant (a teenager leaving high school) had rear-ended the plaintiff, the defendant successfully defended that she was driving safely on the wet roads and simply couldn't stop in time

Short v. Johnson, 20444
Plaintiff: Kathryn E. Barnett, Nashville and Adrian M. Mendiondo, Lexington, KY, both of *Morgan & Morgan*
Defense: Jeffrey R. Kohl, Memphis
Verdict: Defense verdict on liability
Court: **Blount**
Judge: David Duggan
Date: 5-12-22

Ronald Short traveled on Big Springs Road on the afternoon of 3-25-19 near William Blount High School. It was raining. At the same time, Breann Johnson, age 17 and a student, was leaving school to go to her part-time job. She pulled in behind Short.

An instant later Short stopped in traffic. Johnson hit the brakes but couldn't stop in time. She rear-ended Short's vehicle. The collision resulted in minor damage.

Short has since treated for a torn labrum (it was surgically repaired) and a two-level cervical disc injury.

His medical bills were approximately $52,000.

In this lawsuit Short sought damages from Johnson. She did not contest fault. As the case went to the jury, if it found Johnson at fault, it would immediately go to damages. Short could be awarded his medicals and non-economic damages in several categories.

Johnson defended on several grounds. The first was that despite rear-ending Short, she had still driven reasonably and responsibly for the circumstances. She wasn't speeding and then when she hit the brakes, she simply "bumped" Short's vehicle.

The defense also contested damages and relied on an IME, Dr. John Reynolds, Orthopedics, Knoxville. The expert minimized the claimed injury and did not believe the shoulder injury was related to this crash.

This case was tried for three days in Maryville. The instructions asked if the defendant was "more likely than not, negligent?" The answer was no and the jury then did not reach damages – the plaintiff's duties were no issue. A defense judgment was entered and the case is closed.

Case Documents:

Jury Verdict

Final Judgment

Age Discrimination - A highly paid executive at Hewlett Packard (age 61) alleged he was forced out because of a combination of his age and his having complained of the discrimination – the company denied any discrimination and pointed to a workforce reduction

Sloat v. Hewlett Packard Enterprises, 3:18-371

Plaintiff: David A. Burkhalter, II and D. Alex Burkhalter, III, *The Burkhalter Law Firm*, Knoxville

Defense: Brad A. Fraser, *Leitner Williams Dooley & Napolitan*, Knoxville and Lauren T. Stuy and Martin T. Wymer, *Baker Hostetler*, Cleveland, OH

Verdict: Defense verdict on liability

Federal: **Chattanooga**

Judge: Curtis L. Collier

Date: 8-12-22

Robert Sloat started working for Hewlett Packard in 2011. He worked as a "director" and was charged with leading the company's sales training programs. Sloat developed his own program and he described it as successful. Sloat was highly paid and earned approximately $250,000 a year.

Hewlett Packard split in 2015 into two new companies, Hewlett Packard and Hewlett Packard Enterprises (HPE). Sloat went with HPE and continued in his same position. At this time the company's then CEO, Meg Whitman, was interviewed on CNBC about the company's future. She said the company would streamline its employment with a "labor pyramid" that featured a base with "lots of young people." The implication to some, (including Sloat, who was approaching age 60) was that older workers were disfavored.

Moving forward to the fall of 2016, Sloat had a new boss, Steven Hagler. Sloat believed Hagler was hostile to him because of his age. Hagler cited Sloat's "old skills" and referred to him as "Uncle Ron," both an insult as his name wasn't Ron but also that he was the old uncle. Sloat also believed Hagler was cold and distant.

The following February Sloat received a poor evaluation from Hagler as well as a very low bonus. Hagler also asked Sloat when he intended to retire. Hagler was also critical of Sloat's training program.

Sloat confronted Hagler about this and his concerns of age discrimination after another bad evaluation in July. Things did not improve for Sloat and he believed he had been set up for failure. That fall as part of a company-wide workforce reduction, Sloat was selected for termination. He was the oldest person (then age 60) in his department. Sloat believed Hagler had implemented CEO Whitman's vision of a youth-centered labor pyramid and he'd been squeezed out as too old.

HPE had an explanation for the firing. Sloat's performance was substandard and moreover his duties could easily be absorbed elsewhere. Age had nothing at all to do with the decision and in fact, the decision-maker (a bigger boss named Flynn and not Hagler) didn't even know Sloat's age.

This lawsuit followed and Sloat alleged he'd suffered both age discrimination and retaliation for having complained. He cited Hagler's ageist remarks and then his subsequent termination. Sloat also noted that even if it were true that Flynn didn't have an age-related animus or a desire to retaliate, Flynn was just the so-called "cat's paw" that Hagler directed.

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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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If Sloat prevailed at trial he sought lost earnings of approximately $1.5 million. They were quantified by economist, Robert Bohm, Knoxville. The jury could also award Sloat sums for his emotional distress. Finally if the jury found HPE's conduct was willful, it could impose liquidated damages.

HPE defended the case as described above and denied discrimination or retaliation. The trial judge (Collier) was persuaded by HPE's arguments and granted its motion for summary judgment in September of 2020. Sloat appealed. The Sixth Circuit reversed in November of 2021 and concluded the jury could conclude that Hagler

was the real decision-maker.

The case was tried for a week. The jury's verdict was for HPE on both age discrimination and retaliation. The jury then did not reach if HPE's conduct was willful – this would have triggered liquidated damages. A defense judgment was entered for HPE.

Case Documents:
Summary Judgment Order
Sixth Circuit Opinion Reversing Pretrial Order
Jury Verdict

Auto Negligence - The plaintiff complained of soft-tissue injuries and emotional PTSD symptoms after a right-of-way crash

Roberts v. Sizemore, 3-240-19
Plaintiff: James A.H. Bell, Knoxville
Defense: Robert W. Knolton, *Fisher Russell*, Knoxville
Verdict: $25,000 for plaintiff
Court: **Knox**
Judge: Deborah L. Stevens
Date: 6-22-22

Amanda Roberts, then age 43, was a passenger in a vehicle that traveled on Dutch Valley Drive. Suddenly the defendant (Jacob Sizemore) turned into the path of the Roberts vehicle. A moderate collision resulted. Sizemore stipulated his fault.

Roberts went to the ER at Fort Sanders and complained of soft-tissue injuries and a chest bruise. She followed five days later with her primary care physician.

Beyond those physical injuries Roberts has more persistently complained of PTSD from the wreck. This crash triggered a pre-existing condition – when Roberts was a young child she was in an MVA in which her mother was killed. The emotional injury was confirmed by a psychologist, Frances Palin.

In this lawsuit Roberts sought damages from Sizemore. He defended the emotional injury and relied on an IME, Dr. Sidney Alexander, Psychiatry. Alexander believed that Roberts suffered no long-term emotional injury from this crash and that her symptoms were related entirely to her pre-existing fragile emotional condition.

This case was tried for two days on damages. Roberts was awarded $25,000. It is not clear if that was a general award of damages or not as the jury verdict is not a part of the court record. A consistent judgment was entered and it has been satisfied. The record reflects Sizemore tendered a $30,000 offer of judgment before trial – the offer, by its timing, had expired by the time of trial. The case is now concluded.

Case Documents:
Complaint
Final Judgment

Auto Negligence - The plaintiff was stopped in traffic on I-240 when she was rear-ended by the defendant – the defendant argued that another vehicle (having missed its exit) stopped suddenly in front of the plaintiff and left him no time to safely come to a stop

King v. Chase, 2:22-2030
Plaintiff: Drayton D. Berkley, Memphis
Defense: W. Christopher Frulla, *Rainey Kizer Reviere & Bell*, Memphis
Verdict: Defense verdict on liability
Federal: **Memphis**
Judge: Jon McCalla
Date: 7-12-22

Kim King traveled on I-240 in Memphis on 11-24-18. She alleged that she came to a stop in traffic. She was stopped for a minute or so. Only then was she rear-ended by William Chase. Her theory was simple enough – Chase was not paying attention and struck her vehicle.

Chase raised fact disputes. He cited there was a John Doe driver in front of King who missed their exit and then stopped suddenly. Then King stopped and just seconds after she did so (not a minute later), Chase rear-ended her. Thus from Chase's perspective he didn't have time to stop and was not to blame at all.

However it happened there was an impact and King treated briefly for soft-tissue symptoms and headaches. Her medical bills (only $814) were not sought. She also did not present an expert, simply proving her pain and suffering from her own testimony.

King sued Chase in state court and sought damages. Her husband (Darren) also presented a derivative consortium claim. Chase removed the case to federal court. He described the fact disputes cited above and sought to apportion fault to the John Doe driver.

This case was heard by a federal jury for two days. It answered that

Chase was not at fault and thus didn't reach the duties of the John Doe or apportionment. King's duties were not in issue. A defense judgment was entered.

King has moved for a new trial. She argued that Chase was certainly at fault and that he even admitted this to the investigating police officer. Chase replied that there were fact disputes as to what he had said and the case was for the jury to decide. The motion was pending at the time of this report.

Case Documents:

Pretrial Order
Summary Judgment Order
Jury Verdict
Plaintiff Motion for a New Trial
Response to New Trial Motion

Auto Negligence/UIM - The plaintiff suffered a ligament tear in two fingers (she was gripping the steering wheel at impact) when she was involved in a right-of-way collision – the court directed the plaintiff's medical bills of $18,260 (she had a successful surgical repair) and the jury added $8,500 more in non-economic damages

Minor v. Sosa and Liberty Mutual, 20-1918
Plaintiff: Joshua Cantrell and Jonathan L. Griffith, *Griffith Law*, Franklin
Defense: J. Bart Pickett, *Law Offices of Julie Peak*, Brentwood for Liberty Mutual (UIM)
Jordan Gibson, *Rainey Kizer Reviere & Bell*, Nashville for tortfeasor
Verdict: $26,760 for plaintiff
Court: **Davidson**
Judge: Thomas W. Brothers
Date: 7-26-22

Elizabeth Minor was on her way to work on 9-14-19 on Nolensville Road. At the same time, Lenin Sosa, a Georgia resident, proceeded from the opposite direction. He turned left in front of Minor and a collision resulted. Minor was gripping the steering wheel as she braced for impact.

The parties waited some 90 minutes for the police to come to fill out a report. The police never came and ultimately Minor and Sosa exchanged insurance information. Minor went on to work at the family jewelry store.

Minor sought treatment a little more than a month later with an orthopedist, Dr Thomas Dovan. He diagnosed a ligament tear in both the thumb and middle finger on her left hand. The injury mechanism had been Minor gripping the steering wheel at impact.

Minor underwent several months of conservative care including buddy-taping her middle finger. The middle finger healed. The pain in Minor's thumb persisted and ultimately on 12-27-19 Dovan performed a surgical repair. Dovan later testified that Minor enjoyed a complete recovery.

In this lawsuit Minor blamed Sosa for the crash. She also sought UIM coverage from her insurer, Liberty Mutual. Minor's medical bills were $18,260 and she additionally sought sums for non-economic damages. Her husband (Jesse) also sought damages for loss of consortium.

Sosa, a Progressive insured, had $25,000 in policy limits. Liberty Mutual had an additional $500,000 in UIM coverage. The case was tried to a jury in the name of Sosa alone and Liberty Mutual was not identified. Minor asked the jury for damages totaling $226,550 which was consistent with her ad damnum. The defense thought a more reasonable award was the medicals and $7,000 more or so in non-economic damages.

This case was tried for two days on damages only. The court directed the medical bills for Minor as claimed. The jury then deliberated and awarded Minor $5,000 in pain and suffering and $3,000 more for loss of enjoyment of life. The jury added $500 more for disfigurement. Jesse's consortium claim was rejected. The verdict (including the medicals) totaled $26,760.

The court entered a consistent judgment for that amount. Effectively there is no additional recovery for Minor as Progressive (Sosa's insurer) had already tendered its $25,000 limits. Then the verdict while over $25,000, will still not reach the UIM coverage because of MedPay that has already been received.

Case Documents:

Jury Verdict

Medical Negligence - A podiatrist was blamed for performing the wrong procedure which then led to a hypermobility disorder with the plaintiff's big toe and the need for a remedial surgery

Latimer v. Gannon, 14-358
Plaintiff: Euel W. Kinsey, *Thurswell Law*, Detroit, MI and Cary L. Bauer, *Gilreath & Associates*, Knoxville
Defense: John F. Floyd, Jr. and John F. Floyd, Sr., *Wicker Smith*, Nashville
Verdict: Defense verdict on liability
Court: **Williamson**
Judge: Joseph Woodruff
Date: 6-10-22

Cynthia Latimer, then age 57, underwent a so-called "Lapidus" bunionectomy on 10-11-13. It was performed by a podiatrist, Dr. Caroline Gannon. Thereafter Latimer suffered hypermobility in her big toe. That led to a remedial surgery.

In this lawsuit Latimer wasn't critical of Gannon's technical performance of the surgery. Instead the error was that Gannon had told her she was performing a surgery to correct a recurrence of stress fractures.

Latimer complained that because of the unnecessary surgery and ongoing pain, she no longer engages in her regular activities and her vocation of flipping houses. She also incurred medical bills related to the remedial surgery. Her liability expert was Dr. Allen Jacobs, Podiatry, St. Louis, MO.

Gannon replied that Latimer had consented to the Lapidus bunionectomy procedure and there was never a plan to perform surgery for the stress fracture condition. Moreover while Latimer had a complication after the bunionectomy, Gannon described it as a known complication that did not equate to negligence. The defense podiatry expert was Dr. Steven Carter, Covington, GA.

This case was resolved by a Franklin jury. The verdict was for Gannon on liability and Latimer took nothing. A defense judgment was entered.

Uninsured Motorist - The plaintiff complained of a thumb injury after gripping the steering wheel in a right-of-way collision

Mnif v. GEICO, 16-1614
Plaintiff: Thomas J. Hendrickson, III, *Baker Law Group*, Nashville
Defense: Erin Roche and Libbi R. Watson, *Law Office of Libbi Watson*, Brentwood
Verdict: $59,244 for plaintiff
Court: **Davidson**
Judge: Thomas W. Brothers
Date: 6-27-22

Mohammed Mnif, then age 49, traveled on Laurinda Drive in Nashville on 6-16-15. Suddenly a vehicle driven by a "Jane Doe" backed out of a private drive. Jane Doe struck Mnif's vehicle. The Jane Doe initially got out of the car and spoke to Mnif. She then drove away never to be seen again.

Mnif has since treated for soft-tissue symptoms as well as pain in his thumbs that he related to gripping the steering wheel. He later underwent a trigger release surgery. His medical bills were $32,244.

In this UM lawsuit against his insurer (GEICO), Mnif sought damages from the insurer. Mnif proved his damages with testimony from a plaintiff's IME, Dr. David West, Orthopedics. The case was tried as if against Jane Doe with no mention of GEICO.

This case was tried on damages only. Mnif took the medicals as directed ($32,244) and $26,000 more for his pain and suffering. The jury rejected loss of enjoyment of life. The verdict totaled $59,244 and a consistent judgment was entered.

Case Documents:
Jury Verdict

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