The Tennessee Jury Verdict Reporter

The Most Current and Complete Summary of Tennessee Jury Verdicts

September, 2006 **Statewide Jury Verdict Coverage** **3 TJVR 9**

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 - During a hysterectomy, plaintiff's Ob-Gyn transected the her ureter and colon – it took eight surgeries to repair the damage

Salmon v. Caruthers, 5796
Plaintiff: John P. Sheahan, Jr., Memphis
Defense: Michael L. Robb, *Thomason Hendrix Harvey Johnson & Mitchell*, Memphis
Verdict: $500,000 for plaintiff
Court: **Tipton**
Judge: Joe H. Walker
4-6-06

The plaintiff, Mary Salmon, then age 35, complained of persistent abdominal pain – Salmon is a country music singer. She released an album in 2000 under the nom de plume of Mary Selina – the artist has opened for well-known acts including Dolly Parton and Martina McBride.

On 2-14-03, Salmon's Ob-Gyn, Dr. Thomas Caruthers, performed a laparoscopic hysterectomy and oophorectomy. Things did not go well. During the procedure, Caruthers transected her ureter and colon. The damage was not detected for five days – at that time, Salmon's abdomen had swollen.

When the first repair surgery was begun, nearly a gallon of urine was found – there was concern she would not survive. Ultimately Salmon endured a total of eight repair surgeries to correct the damage. She has been left with residual scarring.

In this suit, Salmon alleged the surgery was negligently performed by Caruthers. Her experts were Dr. Steven Speights, Jackson, MS, Urogynecology and Dr. Stephen Gordon, Ob-Gyn, Savannah, GA. In valuing damages, there was proof that while Salmon used to tour the country, her injuries have left her so weakened that she's only able to sing barroom karoake.

Caruthers denied fault and explained the surgical misadventure wasn't negligence, but rather a recognized complication that can and does happen in the best of hands. His identified experts were Dr. Susan Murrman, Ob-Gyn, Memphis and Dr. Guy Voeller, Surgery, Memphis.

A Covington jury heard proof for four days and then deliberated two hours. Its verdict was for Salmon on liability – she was awarded an even $500,000. A judgment in that sum followed.

The defendant has since moved to impose sanctions against plaintiff – the doctor cited remarks in a local newspaper article where plaintiff noted she was offered $25,000 before trial and rejected it. The doctor did not think the publication of that private offer was proper. There was no order on that motion in the court record.

Auto Negligence - Plaintiff complained of persistent soft-tissue pain after a right of way turning crash

Jones v. Snipes, 1-536-03
Plaintiff: Sidney Gilreath, *Gilreath & Associates*, Knoxville and Brett H. Oppenheimer, *Bornstein & Oppenheimer*, Louisville, KY
Defense: J. Michael Haynes, *Hodges Doughty & Carson*, Knoxville
Verdict: $106,958 for plaintiff
Court: **Knox**
Judge: Dale Workman
5-17-06

It was 9-14-02 and Margaret Jones

traveled on Kingston Pike in a late-model Infiniti. Suddenly William Snipes turned left in front of her – he was trying to reach a Shoney's. A moderate crash resulted.

Jones has since treated for persistent soft-tissue symptoms, including care with a pain management specialist. Her medical bills are not known.

In this suit, Jones sought damages from Snipes – her husband, Myrrh, presented a derivative consortium claim. Snipes defended and implicated plaintiff's look-out. That is, traffic on Kingston Pike had stopped to permit his left turn – then as he made a cautious turn, plaintiff zipped by in the turn lane and struck him. Damages were also diminished.

The jury in this case returned a verdict for the plaintiff, awarding her $105,000 – her husband took $1,958 more for his consortium interest. The verdict totaled $106,958. A judgment in that sum followed.

Auto Negligence - Plaintiff sustained soft-tissue injuries in a stop sign crash, a Memphis jury awarding her some twelve times her medicals

Eaheart v. Smith, CT-002079-03
Plaintiff: Thomas E. Hansom, Memphis
Defense: Carol Hayden and Catherine Costict, Memphis
Verdict: $120,000 for plaintiff
Court: **Shelby**
Judge: Robert L. Childers
5-17-06

On 4-15-02, Norita Eaheart, then age 49, was driving her SUV west on Spottswood Avenue in Memphis. At the intersection with Patterson Street, she was broadsided by Sheika Smith. Smith was then westbound on the inferior Patterson, having just pulled from a stop sign.

In the accident, Eaheart sustained a soft tissue injury. She was treated by Dr. Robert C. McEwan, Orthopaedics, and Dr. Larry Cole, Chiropractor, both of Memphis. Her incurred medicals were approximately $9,000.

In the resulting lawsuit, Eaheart sought compensation and alleged that Smith disregarded a stop sign. Her husband also presented a consortium claim. Smith countered that she stopped at the intersection, looked both ways and, seeing no traffic, then proceeded.

At the close of a three-day trial, the jury returned a verdict for plaintiff, awarding her $120,000 – husband's consortium claim was rejected. During the deliberations, the jury asked whether Eaheart had insurance and, if so, had her economic losses been paid – if there was an answer, there was no record of it in the court file. A consistent judgment followed.

The defendant has since moved for a new trial and/or remittitur – the motion is pending.

Auto Negligence - A raw verdict in a rear-end soft-tissue case was seven times the incurred medicals – the result was reached by a quotient method

Smith v. Davis, 04-480
Plaintiff: Mitchell G. Tollison, *Tollison Law Firm*, Jackson
Defense: Russell E. Reviere, *Rainey Kizer Bell & Reviere*, Jackson
Verdict: $35,000 for plaintiff less 15% comparative fault
Court: **Madison**
Judge: Donald H. Allen
3-8-06

There was a rear-end wreck in Jackson on 11-22-03. Byra Davis, since deceased, crashed into Mary Smith on Ridgecrest Road. Fault remained in issue.

Smith has since treated for a soft-tissue injury. Her medical bills totaled $4,702. In this lawsuit, she sought damages from the Davis estate. Davis defended on fault and also minimized the claimed damages.

The verdict was mixed on fault – it was assessed 15% to the plaintiff, the remainder to Davis. Then to damages, the plaintiff took a raw award of $35,000. Less comparative fault, a judgment for $29,750 was entered for Smith.

The defense has since moved for a new trial. It argued a quotient verdict was returned, jurors agreeing to be bound by a joint result – the motion was supported by the affidavits of four jurors. The motion is pending.

Auto Negligence - Backing out of her friend's driveway, the defendant lost control, did a donut in the yard and crashed into the pedestrian plaintiff – the verdict for the plaintiff was less than her incurred medicals

Weatherman v. Mason, 5617
Plaintiff: David H. Dunaway, *Dunaway & Associates*, LaFollette
Defense: James Y. Reed, *Irwin & Reed*, Knoxville
Verdict: $6,000 for plaintiff
Court: **Scott**
Judge: John McAfee
12-12-05

On 1-17-00, Vergie Mason was backing out of the driveway of her friend, Judy Weatherman. What happened next was quite unusual. Mason lost control in the driveway. She then proceeded to do a donut in the driveway, striking the pedestrian Weatherman in the process. Apparently she hit the gas pedal instead of the brake. Fault was no issue.

Weatherman, then age 49 and who was knocked down in the impact, has since treated for a soft-tissue injury. Incurring medicals of $6,904, she sought recovery from her friend in this suit. Mason defended and minimized the claimed injury.

While deliberating, the jury asked the court: Why weren't the medicals paid by insurance. Back with a verdict and considering damages only, Weatherman took a general award of $6,000. A judgment in that sum followed.

Plaintiff has since moved for a new trial and/or for additur. She has argued that the award was inadequate, it being less than her uncontested medicals. It was Weatherman's suggestion that the court enter additur of $12,000. The motion is pending.

FMLA - Plaintiff took off time for depression pursuant to the FMLA – he alleged his boss pressured him to return for a scheduled inventory and when he didn't return, a sexual harassment allegation was generated to justify a pretextual hiring
Morris v. Sam's Club, 1:04-1200
Plaintiff: Richard D. Bennett, *Maiden & Bennett*, Collierville
Defense: Brian A. Lapps, Jr. and William T. Fiala, *Waller Lansden Dortch & Davis*, Nashville,
Verdict: Defense verdict
Federal: **Jackson**
Judge: James D. Todd
8-8-06

Neil Morris worked as the produce manager at the Sam's Club warehouse store in Jackson, TN. On 9-8-03, he took an approved FMLA leave to treat for anxiety and depression. A week later, he called his manager, Travis Malone, and told him he needed two more weeks away from the office. Malone told plaintiff that he needed him in at the end of the month for a scheduled inventory.

Morris was still not ready to return on 9-29-03 – in a phone call on that day, Malone strongly advised him to return. The next day, Morris was kept off for two more weeks by his nurse – Malone was clearly not happy when Morris called to report this. Morris made a decision to try to come in the next day.

When he did, the company promptly fired him. It cited that five female co-workers had alleged sexual harassment. From the perspective of Sam's Club, that should have been the end of the matter – a serial harasser was let go.

Plaintiff believed the sexual harassment claims were trumped up (many were out-dated) and that effort represented a pretext to institute FMLA interference and retaliation. It was noted that (1) one complaint was eighteen months old, (2) Malone solicited sexual harassment complaints only after the leave started, and (3) when confronted, plaintiff was given no chance to reply. Sam's Club defended as above that it was sexual harassment, not the FMLA leave, that motivated the firing.

The verdict was for Sam's Club on both the interference and retaliation claims pursuant to the FMLA and plaintiff took nothing.

Uninsured Motorist - The verdict in a UM case was one-third of the incurred medicals *and* less than the med-pay already received by the plaintiff
Hamlett v. State Farm, 33254
Plaintiff: Robert L. Huskey, Manchester
Defense: Gerald L. Ewell, Jr., *Haynes Hull Rieder Ewell & Ridner*, Tullahoma
Verdict: $5,000 for plaintiff
Court: **Coffee**
Judge: John W. Rollins
4-25-06

Barbara Stevens, an uninsured driver, pulled from the Oak Plaza shopping center on 12-20-02 and onto Hwy 55 heading towards Tullahoma. Stevens did so into the path of Roger Hamlett. A moderate collision resulted.

Hamlett, then age 48, has since treated for soft-tissue neck pain. His medical bills were $14,000, a chiropractor, Lana Cook, Manchester, identifying a 5% permanent impairment.

As Stevens was uninsured, Hamlett targeted his UM carrier, State Farm. It defended in the name of Stevens and minimized the claimed injury.

The court having directed a verdict on fault, the jury then awarded Hamlett $5,000 in general damages. A consistent judgment followed. State Farm has since moved for a set-off for the $5,000 Hamlett has already received in med-pay.

Plaintiff too has sought post-trial relief. Moving for a new trial and/or for additur, he first argued the award was inadequate in light of his incurred medicals. He also alleged juror misconduct, citing a conversation at the Lakeside Club between his counsel and a juror – the juror explained the award was low because the jury didn't want to pay for chiropractic care. State Farm has replied that the clubside vignette was hearsay that was no basis for a new trial.

Auto Negligence - In a property damage case, the plaintiff blamed two defendants, including a deputy sheriff, for turning into his path
Bivens v. Proffit et al, V05-357-H
Plaintiff: Charles E. Ridenour, Sweetwater
Defense: Jon Anderson, Knoxville for Proffit
Arthur Knight, III, *Becker Fleishman & Knight*, Knoxville for Loudon County
Verdict: Mixed verdict on fault
Court: **Monroe**
Judge: John Hagler
3-8-06

Carl Bivens traveled on Hwy 411 on 7-7-05. Cecil Proffit approached from the opposite direction. Suddenly a Deputy Sheriff from Loudon County, Jerry Rabern, made a u-turn into Proffit's path. He swerved to avoid the sheriff and crashed nearly head-on into Bivens. In the resulting collision, Bivens' 1992 pick-up was damaged.

In this suit, seeking property damage only, Bivens sought $12,657 for the pick-up and other consequential expenses. He blamed a combination of negligence by Proffit and the sheriff.

Proffit for his part thought the sheriff was solely to blame, having attempted the u-turn into his path. The sheriff countered that the u-turn was safe, Proffit simply over-reacting – importantly, he noted there was no impact between his cruiser and Proffit's vehicle. [Proffit replied that there was no initial collision because he took evasive action.]

Tried on fault only, the jury assessed 40% to the sheriff, the remainder to Proffit. A consistent judgment assessed the damages of $12,657 against each defendant – it has been satisfied.

Medical Negligence - The plaintiff died of a massive infection three days after presenting to the ER – her estate blamed an ER doctor and the hospital for failing to diagnose her condition

Farris v. Hattaway et al, 25050
Plaintiff: Randall L. Kinnard and Daniel Clayton, *Kinnard Clayton & Beveridge*, Nashville
Defense: Thomas A. Wiseman, III and Margaret Moore, *Gideon & Wiseman*, Nashville for Hendersonville Hospital
Michael A. Geracioti, *Levine Orr & Geracioti*, Nashville for Hattaway
Verdict: Defense verdict
Court: **Sumner**
Judge: C.L. Rogers
2-16–06

The plaintiff, Candace Farris, age 32, presented to the ER at Hendersonville Hospital. She was complaining of vomiting, nausea and fever – her leg was also in pain, it being tender to the touch. In the ER, she was seen by Dr. Kevin Hattaway – he performed blood work and other tests. Farris was discharged the same day.

Three days later Farris was taken to the ER at Vanderbilt – she was in shock as the result of necrotizing fascitis – an apparent infection in her legs had spread. Because of the shock, her organs failed and Farris died.

In this suit, her estate alleged Hattaway and the hospital nurses in Hendersonville failed to diagnose an infection at the ER on 1-25-03 – this was despite a litany of warning signs, including plaintiff's vital signs and the tenderness in her leg.

Had the infection been caught, the theory went, intravenous antibiotics and other treatments could have been commenced. With timely intervention on 1-25-03, the estate argued that Farris would likely have survived. Experts for the estate included Dr. David Wharton, ER, Chattanooga and Dr. William Petri, Infectious Disease, Charlottesville, VA.

Hattaway and the hospital both defended and denied fault – a two-part defense, they postured that (1) their evaluation, in light of her presentation, complied with the standard of care, and (2) her unfortunate death was a function of the devastating infection. The record does not identify defense experts.

The verdict was for the defendants on liability, Farris taking nothing. She then moved for a new trial, citing an instruction error. The motion was denied and she has appealed.

Excessive Force - In a stolen car and at the end of a four-day crack binge, the plaintiff was beaten after his arrest – the cop would later tell him it was policy that suspects receive an "ass-whupping" when they run

Tate v. Chattanooga Police, 1:04-379
Plaintiff: John M. Wolfe, Jr. and Amelia C. Roberts, Chattanooga
Defense: W. Gerald Tidwell, Jr., Chattanooga
Verdict: $33,500 for plaintiff
Federal: **Chattanooga**
Judge: Curtis L. Collier
6-14-06 and 7-25-06

On 12-9-03, Christopher Tate was at the end of a four-day crack binge. Along with a friend, he drove from Nashville into Chattanooga in a stolen car. They were hoping to sell it to buy more drugs.

They were intercepted by the Chattanooga Police at four in the morning. After a brief pursuit into a dead-end alley, Tate leapt from the car and took off on foot. He didn't get far, Officer Michael Wenger subduing him.

Tate recalled immediately surrendering, advising the cop repeatedly, "I give up." Wenger wasn't quite finished and took several shots at Tate. For good measure, after Tate was cuffed, he got in a few more blows.

Tate was clearly hurt and perhaps Wenger felt contrite. He explained the attack wasn't personal and revealed the secret police policy – those that run receive a complimentary "ass-whupping." The unfortunate injuries, Wenger further explained, were not so much related to the beating, but rather Tate's weak bones.

Weak or not, several were broken. They included four broken ribs, a broken cheekbone and a collapsed lung, among other abrasions. Hospitalized for five days, Tate's medicals were $26,000.

In this federal lawsuit, Tate alleged excessive force and battery. If prevailing, he sought an award of compensatory and punitive damages. [Tate also presented allegations regarding a pattern of abuse by the Chattanooga police – those claims did not advance to trial.]

Wenger defended the case and raised fact disputes. He denied beating Tate or otherwise remarking on the practice of doing so. It was the defendant's belief that Tate's considerable injuries were all sustained at the end of the pursuit when Wenger tackled him, the full force of his body landing on top of the suspect.

The verdict was mixed, but for Tate. He prevailed on excessive force, the jury further exculpating the police on the question of qualified immunity. Tate however did prevail on battery, the jury awarding him $26,000. Then a month later, there was a second trial on punitives – Tate took $7,500, the verdict totaling $33,500. While deliberating the first verdict, the jury had asked the court: Who pays the damages?

Tate has since moved for a new trial and/or for additur. He has argued that (1) the award was inadequate in light of his medicals, (2) the defendant improperly pled poverty in closing, suggesting he should not be saddled with a lifetime of debt, and (3) qualified immunity should not have been submitted to the jury. [The distinction made a difference as losing on the civil rights claim, the plaintiff is not entitled to an award of attorney fees.]

Auto Negligence - The verdict in a soft-tissue case was one-fifth of the incurred medicals

Ellison v. Chitwood, 6089
Plaintiff: Brandon K. Fisher, *Cantrell Cantrell & Fisher*, Clinton
Defense: Carol A. Beeler, Knoxville
Verdict: $1,000 for plaintiff
Court: **Scott**
Judge: John McAfee
4-4-06

On 6-13-02, Bobbie Ellison, then age 24 and a child protection investigator, was stopped at a red light as a passenger with Betty Lawson. They were rear-ended by Travis Chitwood. The collision resulted in minor damage. Fault was not an issue.

Ellison has since treated for a soft-tissue neck injury. Her medical bills were $5,324. In this suit, she sought money damages from Chitwood. He defended

and minimized the claimed injury.

Tried on damages only, this jury in Clinton elected to make a general award of $1,000 to Ellison. A judgment in that sum followed and Chitwood paid it.

Firecracker Negligence - In a strange accident, a teenager threw lit firecrackers at a teen plaintiff – the firecrackers struck a motorcycle, which exploded, injuring the plaintiff's ankle

Osborne v. Sands, 3-566-02
Plaintiff: Brandon Fisher, *Cantrell Cantrell & Fisher*, Clinton
Defense: *Pro se*
Verdict: Defense verdict
Court: **Knox**
Judge: Wheeler Rosenbaum
4-21-06

There was a most unusual accident on 4-17-01. It started as a teenager, Terry Sands, Jr., (hereinafter Junior), had another teen, Bobby Osborne, over at his house. For reasons that aren't clear, Junior threw lit firecrackers toward Osborne.

The firecrackers hit a motorcycle, which according to the record, then exploded. Osborne sustained an ankle injury in the explosion. In this suit, Osborne sued not just, Junior, but also his parents – the ancillary claim alleged negligent supervision.

The case was defended *pro se* – the parents prevailed by directed verdict, Osborne pursuing a negligence count to a jury against Junior only. The claim was rejected, a defense judgment entered and the matter closed.

Auto Negligence - The plaintiff sustained a knee injury in a rear-end crash, the impact knocking her forward into the next car

Beard v. Lytle, 04-1046
Plaintiff: Grace E. Daniell, Chattanooga
Defense: Fred S. Clelland, *Baker Kinsman Holllis Clelland & Winer*, Chattanooga
Verdict: $30,000 for plaintiff
Court: **Hamilton**
Judge: L. Marie Williams
3-16-06

Walita Beard, then age 37, was stopped in traffic in Chattanooga on 9-1-03 on Brainerd Road. An instant later she was rear-ended by Travis Lytle – that initial impact pushed her forward into the next car in traffic. Fault would not be contested.

Beard has since treated for an ACL injury, undergoing a repair surgery. Her medicals were $25,000, lost wages totaling $3,800. She sought to recover damages from Lytle in this suit. He defended on damages that the impact was just a tap and certainly insufficient to cause plaintiff's knee injury.

Lytle having admitted fault, the jury considered damages only. It made a general award of $30,000 to Beard. A judgment in that sum followed and Lytle paid it.

Insurance Contract - Plaintiff sought coverage for his stolen vehicle – the insurer countered that the policy was void, the insured having made numerous misrepresentations

Saldierna v. USAA Insurance, 04-3371
Plaintiff: Brian McDonald, Nashville
Defense: R. Kreis White, Brentwood, *White Scheurman Rhodes & Burson*, Brentwood
Verdict: Defense verdict
Court: **Davidson**
Judge: Walter C. Kurtz
8-17-06

Roberto Saldierna, a USAA insured, was in Texas City, TX on 9-6-02 – his 1999 Chevrolet Tahoe was stolen while he was in a movie theater. [Saldierna, a Tennessee resident, was in Texas visiting family.] He promptly made a report to the local police. The SUV was later found – it was totally destroyed, having been burned.

Saldierna, a USAA insured, filed a claim for the vehicle. The insurer denied the claim. It cited misrepresentations by Saldierna in applying for the policy. That is, he misrepresented that (1) it was not used for business purposes and (2) it was garaged in Tennessee, among other material matters. [Saldierna denied the allegations.]

In this suit, Saldierna sought contract damages for the SUV. Its value was stipulated at $19,850. USAA defended that the suit was filed in bad faith – if prevailing on the counterclaim, it could reduce plaintiff's damages by up to 25%.

The verdict was mixed at trial, but for USAA – the jury rejected the contract claim, finding for USAA that Saldierna had made material misstatements. However despite that finding, the jury rejected that the suit was filed in bad faith. A consistent judgment was entered for USAA. Plaintiff had also pursued a bad faith claim – it was dismissed by directed verdict.

Auto Negligence - Plaintiff was injured in a chain-reaction rear-end crash in Oak Ridge

Velkoff v. Melton, A4LA0746
Plaintiff: M. Christopher Coffey, *Pryor Flynn Priest & Harber*, Knoxville
Defense: Jay R. Slobey, Nashville and Paul E. Drozdowski, Knoxville, both of *Blackburn & McCune*
Verdict: $40,000 for plaintiff
Court: **Anderson**
Judge: Donald R. Elledge
3-28-06

Nancy Velkoff, then age 54, was a passenger in a vehicle driven by Kristin Ortiz. Stopped on Oak Ridge Turnpike, they waited in traffic. An instant later, Eric Melton rear-ended William Martin, who was then pushed into the Velkoff vehicle. Melton's fault was admitted.

Velkoff has since treated for soft-tissue neck and shoulder pain, as well as the aggravation of pre-existing vertigo. Velkoff had been badly hurt in a very serious car crash in March of 2001. Melton's defense of the case focused on linking Velkoff's symptoms to that prior crash and not the instant MVA.

Tried in Clinton on damages only,

Velkoff took a general award of $40,000. A consistent judgment followed.

Negligent Police Pursuit – High speed chase resulted in collision, punitive damages awarded

Waller v. Loudon Police et al, 7205
Plaintiff: J. Timothy Bobo, Jr., *Ridenour & Ridenour,* Clinton
Defense: Arthur F. Knight, III, *Becker Fleishman Brown & Knight,* Knoxville, for City of Loudon
Michael A. Myers, *Dunn MacDonald Coleman & Reynolds,* Knoxville, for State Farm (Uninsured Motorist)
Verdict: $23,300 for plaintiffs assessed 99% to Skipper and 1% to City of Loudon
Court: **Loudon**
Judge: Russell E. Simmons, Jr.
7-12-05

On 11-30-03, Paul Waller, then age 63, and his passenger, Agnes Harness, age 61, were traveling south on Cedar Street in Loudon. At that same time, the Loudon constabulary in the person of Officer Jonathan Yates, was in a high speed pursuit of one Jody Skipper, also south on Cedar Street. Skipper, then age 18, was not insured.

The pursuit ended when Skipper crashed into Waller. It was a moderate collision. Skipper was subsequently charged with assorted offenses, including reckless endangerment and drunk driving. Waller and Harness have both since treated for soft-tissue injuries.

In this suit, the plaintiffs targeted Skipper (he didn't appear), as well as their UM carrier, State Farm. In this unusual case, State Farm elected to defend in its own name.

The plaintiffs also alleged negligence by Yates in the pursuit of Skipper – that is, the officer had Skipper's license plate number and therefore knew his identity. There then was no need to commence a dangerous pursuit. The City denied negligence and blamed this incident solely on Skipper's reckless conduct.

At the close of the two day trial, the court directed a verdict in favor of the City of Loudon and in favor of plaintiffs on their claims against Skipper. Then to fault, the jury assessed 99% to Skipper, the remainder to Yates. [This fault finding is especially curious in light of the directed verdict.]

In any event, the jury next considered damages. Waller took $1,600, Harness taking $1,500 more. The jury further awarded each plaintiff $10,000 in punitive damages. A consistent judgment less comparative fault was entered and State Farm paid it.

Auto Negligence - The plaintiff sustained a broken collarbone in a red light crash

Mullinax v. Claiborne, 02-1405
Plaintiff: Gary N. Fritts, Dayton
Defense: Daniel J. Ripper, *Luther Anderson*, Chattanooga
Verdict: $5,794 for plaintiff
Court: **Hamilton**
Judge: W. Neil Thomas, III
2-16-06

There was a red light crash in Chattanooga on 8-9-01. Martin Claiborne ran a red light and collided with a vehicle driven by George Mullinax. Fault was no issue.

Mullinax, then age 55, sustained a broken collarbone, among other soft-tissue injuries. Claiborne defended and minimized the claimed injury.

While fault was no issue, the jury did first consider if Claiborne's negligence caused injury to Mullinax. It answered yes and then to damages, it awarded the plaintiff $5,794. A judgment in that sum followed.

Uninsured Motorist - An inventor sustained an injury in a head-on collision

March v. St. Paul Insurance, 01-797
Plaintiff: Craig R. Allen and John M. Hull, *Leitner Williams Dooley & Napolitan,* Chattanooga
Defense: Michael R. Campbell, *Campbell & Campbell,* Chattanooga
Verdict: $159,538 for plaintiffs
Court: **Hamilton**
Judge: Jacqueline E. Schulten
9-30-05

Wayne March, then age 62, was traveling east on Bonny Oaks Drive in Hamilton County on 5-2-00. Coming toward him was a vehicle operated by Marcus Campbell. Campbell crossed the center line and a head-on collision resulted. March claimed injury but the extent was not revealed in the court file.

As Campbell was uninsured, March sued to recover his damages from his UM carrier, St. Paul. His wife, Rhoda, joined the suit presenting a loss of consortium claim.

March was an inventor and the holder of certain patents, including one for Q-Band (www.qband.com). At the time of the accident, March was negotiating for a major retail roll-out of Q-Band. He claimed that due to this accident, he was unable to consummate these negotiations. St. Paul defended that the invention damages were speculative.

The jury found for plaintiffs. Wayne March took his medical expenses of $15,500, past lost income of $76,000, past pain and suffering of $39,000, future pain and suffering of $500, and lost enjoyment of life valued at $12,000. The jury considered but rejected awards for future lost income, permanent impairment and the loss of future enjoyment of life. Rhoda was awarded $8,900 on her consortium claim and $2,638 toward the rental of a replacement vehicle. A judgment reflecting the verdict and totaling $159,539 was entered in favor of plaintiffs.

Post-trial maneuvering commenced. Ultimately, Wayne and Rhoda settled with St. Paul for $157,500 and an order of satisfaction was entered resolving this case.

Premises Liability - Renters blamed their landlord after a rotted tree fell into their home

Clabough v. Helfenburger, 1-468-03
Plaintiff: John R. Rosson, Jr., Knoxville
Defense: Lisa J. Hall, *Hodges Doughty & Carson,* Knoxville
Verdict: Defense verdict
Court: **Knox**
Judge: Dale C. Workman
4-19-06

In August, 2002, Tony and Parthenia Clabough and their children were tenants residing in a home on Ramona Street. The dwelling was owned by Doug and Sharon Helfenburger. During a storm on 8-2-02, a large oak tree fell through the roof of the house. The Claboughs were home at the time and the family members

received abrasions and other minor injuries.

The Claboughs filed suit against their landlords. They alleged that the Helfenburgers knew that the tree was rotten and presented a dangerous condition. For expert tree testimony, plaintiffs relied on Jim Cortese, arborist, Knoxville. Cortese opined that the oak was clearly a problem tree that should have been detected and removed.

The landlords defended by noting that, before the storm, Tony Clabough was overheard telling Doug Helfenburger that the tree was rotten and needed to be removed. In other words, the plaintiff was at least as aware of the condition as the landlords and likely more so. Plaintiffs acknowledged that conversation but countered that in it, Doug also agreed to take care of the tree.

Following a two-day trial, the case was submitted to a Knoxville jury. During deliberations the jury asked whether there could be negligence if both parties were aware of the problem with the tree. They also wanted to know if the date of that awareness mattered.

The court directed them to apply the instructions to the facts as they determined them to be. The jury then found that the landlords were negligent but that the negligence had not caused the damages. Apportionment and damages were then not reached. A consistent judgment dismissing the action followed.

Auto Negligence - Entering an interstate ramp, the plaintiff was pinned against the rail by a tractor-trailer – the trucker blamed the plaintiff for an improper pass

Roshaan v. Moon, 10497
Plaintiff: Geoffrey Coston, Franklin
Defense: Angus Gillis, III, *Schulman Leroy & Bennett*, Nashville
Verdict: Defense verdict
Court: **Davidson**
Judge: Hamilton Gayden
6-28-06

On 5-20-05, Henna Roshaan was southbound on Old Hickory Boulevard. She was behind a tractor-trailer truck operated by Terry Moon. Moon was employed by Total Logistics Control, Inc. According to Roshaan, the truck proceeded straight in the lane and she began to veer right onto the ramp to I-24. As Roshaan was alongside the truck, it also began to veer right, pinning her vehicle against the guard rail.

As a result of this collision, Roshaan sustained a soft-tissue injury. She was transported by ambulance to Southern Hills Medical Center. Her medicals were $1,464.

In the resulting litigation, Roshaan sought damages for her injuries. Moon defended on liability and also sought to minimize her damages. Moon contended that he signaled and was merely making the wide right turn required by his vehicle – the crash resulted because of the plaintiff's improper pass.

Following two days of testimony, a Nashville jury found for the trucker on liability and awarded Roshaan nothing. A consistent judgment ended the suit.

Auto Negligence – Although the defendant conceded fault, plaintiff's alleged excessive speed in a school zone scuttled her damage claim

Moore v. Westbrook, 03-175
Plaintiff: Darren E. Reidenour, *Retainer & Ridenour,* Clinton
Defense: Brian H. Trammell, *Kennerly Montgomery & Finley,* Knoxville
Verdict: Defense verdict
Court: **Anderson**
Judge: James B. Scott, Jr.
6-30-05

About noon on 2-27-03, Terika Moore operated her 1991 Toyota west on Providence Road near Oak Ridge High School. Helen Westbrook was operating her 1995 Honda in the same direction. The exact chain of events was not revealed in the record, but an accident occurred.

Moore claimed an injury and filed suit against Westbrook. Defendant conceded fault but argued that Moore was also at fault for speeding through the 15 MPH school zone.

Following a two day trial the jury first considered fault. They found Moore 90% at fault and Westbrook 10% – that should have ended the deliberations, the defendant prevailing on comparative fault. Adding insult to injury, the jury went on to write "zero" in the verdict form for all claimed elements of damage. A defense judgment ended this case.

Auto Negligence/UM - Plaintiff stopped to avoid a John Doe that pulled into her path – she was then rear-ended by the defendant, sustaining a soft-tissue injury in the crash

Carnes v. Kaiser et al, 2:03-122
Plaintiff: John T. Milburn Rogers, *Rogers Laughlin Nunnally Hood & Crum*, Greeneville
Defense: Dallas T. Reynolds, III, *Dunn MacDonald Coleman & Reynolds*, Knoxville for Kaiser
James Y. Reed, *Irwin & Reed*, Knoxville for State Farm
Verdict: $65,000 for plaintiff assessed 75% to Kaiser and 25% to John Doe
Federal: **Greeneville**
Judge: Ronnie Greer
7-27-06

Bridgett Carnes traveled on 4-19-02 on Kingston Pike in Knoxville. Suddenly a John Doe driver pulled into the roadway. Carnes brought her vehicle to a sudden stop and avoided a collision.

Out of the frying pan and into the fire, she was then rear-ended by Andrew Kaiser who was unable to stop – at the time, Kaiser was making a cell phone call. It was a moderate collision.

Carnes has since treated for a soft-tissue injury – it was not developed in the court record. In this suit, she targeted not just Kaiser, but also her UM carrier, State Farm, implicating the John Doe for setting off this chain of events. Her husband, Donnie, presented a derivative consortium claim.

Kaiser defended the case that but for the John Doe having pulled in front of Carnes, there would have been no crash – Carnes countered that if she could stop, so too could Kaiser. State Farm, standing in for the John Doe, blamed the inattentive Kaiser.

The verdict was mixed on fault – the jury assessed 75% to Kaiser, the remainder to the John Doe. Then to damages, Carnes took medicals of $10,000, plus $50,000 more for non-economic categories. Her husband's consortium interest was valued at $5,000. The raw verdict totaled $65,000 and was

assessed consistent with comparative fault.

Auto Negligence - A teen plaintiff suffered broken ribs, an injured spleen and a collapsed lung in a significant broadside crash – her suffering was valued in Nashville at $15,000

Sykes v. Baskin, CT-002860-04
Plaintiff: Nader Baydoun and Stephen C. Knight, *Baydoun & Knight,* Nashville
Defense: Ernest C. Tubbs, Jr., Nashville
Verdict: $31,282 for plaintiff
Court: **Davidson**
Judge: Walter C. Kurtz
6-20-06

Katherine Sykes, then age 16, and Megan Durham often rode to high school together. At 7:00 in the morning of 10-10-03, they were traveling to school south on Knobview Drive - Megan was driving. At the same time, Timothy Baskin was westbound on Lumar Lane. According to Megan and Katherine, instead of stopping for the stop sign, Baskin sped-up and broadsided their vehicle. This impact pushed the girls off the roadway and into a tree.

Katherine was knocked out at the scene, first waking up in the ambulance on the way to the hospital. She suffered a lacerated spleen, a collapsed lung and four fractured ribs. Her medical expenses were stipulated to be $16,282.

Katherine filed suit against Baskin. Baskin admitted liability and sought to minimize damages. The record indicates he made an offer of judgment in the amount of $30,000.

After hearing the evidence, the jury awarded the medicals as stipulated, plus $15,000 for pain and suffering. The verdict totaled $31,282 – Baskin has since satisfied the court's consistent judgment. [Also pending is a separate claim by Megan against Baskin.]

Medical Negligence - The plaintiff developed a ureturovaginal fistula and was incontinent for a month following a hysterectomy

Zwarton v. Barnes, 9026
Plaintiff: R. Steven Waldron, *Waldron & Fann*, Murfreesboro
Defense: Michael M. Casterllarin, *Moody Whitfield & Castellarin*, Nashville
Verdict: Defense verdict
Court: **Bedford**
Judge: Lee Russell
4-27-06

Dana Zwarton, then age 43, underwent a hysterectomy on 7-2-01 at Bedford County Medical Center – it was performed by long-time Shelbyville Ob-Gyn, Dr. Donald Barnes. Following the procedure, Zwarton developed a ureturovaginal fistula. The condition led to incontinence.

Zwarton suffered from the problem for a month – it was repaired in a second surgery by Dr. Michael Tepedino, Urology, Tullahoma. Plaintiff has since fully recovered.

In this suit, she blamed the fistula complication on error by Barton – particularly, had he visually identified the ureter during and after the surgery, he would have noted the injury. It could then have been immediately repaired. Plaintiff's expert was Dr. Michael Ross, Ob-Gyn, McLean, VA.

Barnes defended the case on two fronts. First, he questioned when the fistula developed, posturing it may have been a post-surgical complication. Alternatively, Barnes replied that whenever the fistula developed, it was just that, a surgical complication and it was promptly repaired when identified.

The jury in this case deliberated for ninety minutes – it exonerated the doctor, Zwarton taking nothing. A defense judgment followed.

Premises Liability - The plaintiff was injured while shopping at a department store when she slipped on sales catalogs that had fallen onto the floor

McLemore v. J. C. Penney, 4247
Plaintiff: Dwight G. McQuirter, Memphis
Defense: Glen L. Krause, *Brewer Krause & Brooks*, Nashville
Verdict: Defense verdict
Court: **Williamson**
Judge: Timothy Lee Easter
8-26-05

On 4-29-03, the retired Juanita McLemore, then 62 years old, was shopping in the Cool Springs Mall in Franklin. She entered the J. C. Penney store. After making a purchase at a customer service island, she turned to walk away when she slipped on a sales catalogue. It had apparently fallen to the floor from a larger stack of catalogues that was located at the cash register.

McLemore injured her knee in the incident– ultimately she underwent arthroscopic repair surgery on her knee. Despite the repair, she has continued to complain of pain and limited mobility. Her medical expenses totaled $10,829.

In her suit, McLemore blamed the fall on the negligently stacked catalogues which were permitted to fall to the floor. J. C. Penney defended that it lacked notice the catalogue was on the floor – moreover, if it was a hazard, the condition of the floor was open and obvious to the plaintiff.

After a two-day trial, this jury returned a verdict on liability for J. C. Penney. A defense judgment ended this litigation.

Verdicts Revisited

Verdicts Revisited is an occasional feature, summarizing appellate review of previously reported verdict results. The summaries include the reference to the verdict report in its respective Year in Review volume.

Construction Negligence - In a construction site accident (a fall through a hole), the raw verdict of $780,000 was reversed because the trial court excluded apportionment to the general contractor

Troup v. Fischer Steel
Appeal from Shelby County
Trial Judge: D'Army Bailey
TJVR Cite: Case No. 138, 2005 YIR
Date of Trial: 2-2-05
Appeal Decided: 8-10-06
Stephen C. Barton and Kevin Baskette, Memphis for Fischer Steel (Appellant)
David G. Mills, Cordova for Troup (Appellee)

The plaintiff, age 25, was working on a warehouse construction project for his employer, Jolly Roofing – another contractor on the project was Fischer Steel. Plaintiff fell through an unmarked hole in the roof, sustaining multiple fractures, including to his wrist, ankle and spine.

Plaintiff sued Fischer Steel and alleged negligence – at trial, plaintiff took an award of $780,000 less 30% comparative fault assessed to him. Fischer Steel appealed and challenged among other things, the trial court's exclusion of apportionment to the general contractor – Judge Bailey ruled that as the employer was immune because of worker's compensation, the jury could not consider its fault for purposes of apportionment.

Holding: Judge Kirby writing

Joined by Crawford and Farmer, Kirby announced the question was one of first impression – the court held, (Slip Opinion at page 10) that by permitting fault to the general contractor, "a tighter fit" would be achieved between liability and fault. The matter was remanded for a new trial, the court not considering other assignments of error raised on appeal.

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Notable Out of State Verdicts

Products Liability - Plaintiff died in a serious crash – her estate blamed her death on a defectively designed seat belt that lacerated her liver

Sasser v. Ford Motor, 98-54.80
Plaintiff: Jere L. Beasley, Richard D. Morrison and Dana G. Taunton, *Beasley Allen Crow Methvin Portis & Miles,* Montgomery, and Mike Jones, *Jones & Coots,* Luverne
Defense: Harlan I. Prather, IV, and S. Andrew Kelley, *Lightfoot Franklin & White,* Birmingham, and Roswell Page, III, *Battle & Boothe,* Richmond, VA, John A. Nichols, Luverne and William R. King, Luverne
Verdict: Defense verdict
Circuit: **Crenshaw**, 8-2-05
Judge: H. Edward McFerrin

On 7-3-98, LeAnna Stubbs, age 27, was driving a 1992 Ford Escort on CR 50. At the intersection of CR 83, she was involved in an accident with a 1993 Oldsmobile 88 operated by the elderly Mary Shultz. Shultz failed to yield the right-of-way and was at fault for the impact.

It was a violent and high speed collision – both drivers were transported by ambulance to Stabler Hospital in Greenville. On 7-5-98, Stubbs died from injuries sustained in the accident, specifically a lacerated liver. Survived by a daughter, she had worked as a physical therapist.

Her estate first settled claims against Shultz and an insurer. This products liability suit against Ford Motor Company alleged that the Escort was defectively designed. The vehicle was equipped with a passive shoulder restraint and a supplemental two-point lap belt. The Estate contended that Ford should have installed a three-point restraint system which would have minimized the injury to Stubbs.

Ford countered that the Escort, as built, met or exceeded all federal safety requirements and that the seat belt system in the Stubbs' Escort performed as designed, i.e., that Stubbs did not die from the seatbelt, but rather from the massive traumatic forces involved in the accident. Ford also introduced evidence that plaintiff's speed played a role in the crash. The record does not identify expert witnesses for either party.

After a week-long trial, the jury found for Ford on liability and the estate took nothing. A consistent judgment followed.

Ed. Note - This report first appeared in the September 2006 issue of the Alabama Jury Verdict Reporter – Crenshaw County, Alabama is located in Southcentral part of the state.

Medical Negligence - A high school footballer was taken to the ER with a dislocated knee – a permanent vascular injury to his leg was blamed on a combination of delays by an orthopedist and a vascular surgeon – the jury awarded an even $1,000,000, finding both doctors equally at fault

Elliott v. Cheng et al, 99-0069
Plaintiff: Tyler S. Thompson and Liz J. Shepherd, *Dolt Thompson Shepherd & Kinney*, Louisville
Defense: Craig L. Johnson, *Whonsetler & Johnson*, Louisville for Cheng
James P. Grohmann, *O'Bryan Brown & Toner*, Louisville for Yates
Jason B. Bell, *Kerrick Stivers & Coyle*, Elizabethtown for Hardin County Hospital
Robert T. Watson and Chris J. Gadansky, *Landrum & Shouse*, Louisville for Hardin County Ambulance
Verdict: $1,000,000 for plaintiff assessed 50% each to Cheng and Yates; Defense verdict for Hardin Memorial Hospital and Hardin County Ambulance
Circuit: **Hardin**, J. Coleman, 5-18-06

Jermaine Elliott, then age 16, was at an afternoon football practice for North Hardin High School on 9-2-97. He dislocated his knee and was taken to the ER at Hardin County Memorial Hospital. Arriving a little after six in the afternoon, he was seen in the ER by an orthopedist, Dr. Rolando Cheng who performed a closed reduction.

Cheng suspected the injury had a vascular component – he called in a consult with Dr. Neil Yates, Vascular Surgery. A decision was made that Elliott needed a surgical repair for a popliteal artery injury.

The Elliott family was adamant that the work on Jermaine's knee be done in Louisville by Dr. Raymond Shea. A transfer was arranged and Elliott left in an ambulance (operated by Hardin County Ambulance) some three hours after arriving at the ER. It was not an emergency run.

During the trip to Louisville, Elliott sustained an ischemic compartment syndrome in his leg. By the time he arrived in Louisville, the damage was done – the boy had sustained a serious vascular injury to his lower leg.

Elliott lost sensation in his foot and he also has compromised circulation. Because of the loss of significant muscle and nerve function, Elliott cannot handle extended walking or standing. There is also an increased risk of diabetes and amputation.

Plaintiff's medicals were $183,499 and he sought $90,600 for future care. A third category, called increased risk of complications, was capped at $250,000. Impairment was limited to $1,128,858 as quantified by John Tierney, Vocational Expert, Louisville. The suffering prayer was $4.875 million.

Elliott targeted four defendants in this case, Cheng, Yates, the hospital and the ambulance service, blaming each for his injury. The theory, while slightly nuanced to each defendant, focused on the decision to transfer him to Louisville and then the delay in accomplishing that task.

It was Elliott's proof that his serious injury required an immediate surgical repair because of compromised blood flow. The defendants failed to appreciate that urgency and because of that, (1) he was not discouraged from going to Louisville, (2) once that decision was made, there was a delay of three hours, and then (3) to the ambulance ride, it was not treated as an emergency.

This combination of errors, as alleged by Elliott, all contributed to his permanent injury. Experts for plaintiff included Dr. David Spain, Vascular Surgery, Stanford, CA, Dr. Preston Flanigan, Vascular Surgery, Orange, CA and Dr. Thomas Gutkowski, Orthopedics, Princeton. [In pursuing this case, while it advanced to the jury against all four defendants, plaintiff's proof focused on the defense doctors.]

The case against the hospital had an immunity twist – that is, a state entity, it was immune to the extent of its insurance coverage. In this case, its insurer was insolvent and thus it remained on the hook to the extent of those worthless limits. It still fully participated through to verdict.

The hospital then defended that its nurses acted properly – to any purported problems with the transfer, it cited this was a decision made by the doctors. The ambulance service similarly defended that it merely transported Elliott to the ER – no one communicated that there was an emergency.

Cheng and Yates defended their care that Elliott was properly evaluated – then to the transfer, the doctors obliged his request to be treated in Louisville. This went to the heart of the case – there was no emergency and Elliott was stable.

It was only during the ambulance ride that the condition of Elliott's knee worsened. Thus the boy's injury was unfortunate, but unrelated to negligence. Yates relied on Dr. Donald Akers, Vascular Surgery, Tulane – an expert for Cheng was Dr. Christopher Kaeding, Orthopedics, Columbus, OH.

The defendants were also critical of expert Spain – besides being plaintiff's expert, he was also the doctor who first treated him upon arrival in Louisville. He also found himself as a defendant in a lawsuit in Jefferson Circuit Court. That claim was dismissed without prejudice, (it could be refiled depending on the success of the case in Hardin County) Spain then agreeing to serve as a liability expert for Elliott.

The verdict was mixed on fault. The jury exonerated the hospital and the ambulance service – it did find a deviation by both doctors, then assessing fault 50% to each. [It was a 9-3 verdict for the plaintiff, the jury deliberating until almost 11:00 in the evening on a Thursday night.]

Moving to damages, Elliott took $91,749 of his medicals, plus $90,600 for future care. Impairment was $322,895, Elliott being awarded $91,749 (the same sum as past medicals) for increased risk of complications. Finally suffering was valued at $403,005. That all equaled $1,000,000 – it was assessed consistent with comparative fault in the court's judgment.

Ed. Note - This report first appeared in the July 2006 issue of the Kentucky Trial Court Review. Hardin County is located on I-65 one hour south of Louisville.

Race/National Origin Discrimination - **A local postmaster, a stickler for details, so alienated members of her local logging community that they began to threaten and harass her – in this suit, the postmaster blamed the USPS for permitting a customer-created hostile environment to exist**

Caption: *Galdamez v. USPS*, 3:00-1768
Oregon - Portland
Judge Paul Papak
May 26, 2006

Plaintiff: Thomas F. Spaulding, **Spaulding Cox & Schaeffer**, Portland, OR and Craig B. Gordon, Portland, OR

Defense: Ronald K. Silver, **Assistant U.S. Attorney**, Portland, OR

Verdict: $250,000 for plaintiff

Summary: Arlene Galdamez, who is of Honduran descent, started working in 1983 for the USPS – a U.S. citizen, she still speaks with an accent. In 1993, plaintiff was appointed as the postmaster in Williamina, OR – it is a logging community. Plaintiff took to the job with gusto and began to enforce all sorts of regulations that had been previously ignored.

A bureaucrat's bureaucrat, she wouldn't deliver mail to boxes that were out of compliance. She was also strict at the local post office, restricting access behind the counter to non-employees. While in her eyes, this was all part of running a tidy operation, it led to resentment in the community. It culminated in a 1997 town hall meeting where city residents gathered to complain about plaintiff. Plaintiff considered attending, but elected not to after being advised she'd be tarred and feathered if she did so. Following the meeting, plaintiff was given a warning letter.

This lawsuit followed, plaintiff alleging she was exposed to a hostile environment because of her race and national origin. A unique theory, she sought to impose employer liability because of the conduct of customers. That conduct included threats and having her car vandalized.

The case was first tried in March of 2003 – only the warning letter issue went to the jury, the trial judge rejecting the employer-liability instruction. A defense judgment was returned. Plaintiff appealed and the 9th Circuit reversed. See *Galdamez v. Potter*, 415 F.3d 1015 (9th Cir. 2005). The matter returned to Portland for a jury trial.

Plaintiff prevailed on the customer-based hostile environment count, this jury awarding her $250,000 in compensatory damages. As there was no vocational component, the entire award represented emotional harm.

Ed. Note - This report first appeared in the September 2006 issue of the Labor & Employment Verdict Reporter. It is noteworthy because of the jury's assessment of fault in a discrimination case based not on the conduct of the employer, but the customers.

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