

The Tennessee Jury Verdict Reporter

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Statewide Jury Verdict Coverage

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Medical Negligence - The plaintiff, a man in his late 20s, suffered a stroke, related hypoxic event and permanent brain injury all related to the purported failure to manage a bile leak after a cholecystectomy – the jury found his surgeons at fault (it exonerated a gastroenterologist) and awarded more than \$16 million in damages which included \$6,000,000 for his non-economic damages

Bing v. Nagy et al, 17-1812

Plaintiff: Matthew C. Hardin, *Matt Hardin Law*, Nashville, Patrick Shea Callahan, *Callahan & Binkley*, Cookeville and Jon E. Jones, Cookeville

Defense: James E. Looper, Jr. and Bryant C. Witt, *Hall Booth Smith*, Nashville for Drs. Nagy and Bentley Wendy Longmire and T. William A. Caldwell, *Ortale Kelley*, Nashville for Dr. Gaffney

Verdict: \$16,111,643 for plaintiff assessed 35% each to Drs. Nagy and Bentley; Defense verdict on liability for Dr. Gaffney

Court: **Davidson**

Judge: Joe P. Binkley, Jr.

Date: 7-17-23

Robert "Justin" Bing, then age 27, had just moved to Nashville from rural Titus, AL in April of 2019. He has a degree in communications and had previously worked in a related position for the opera in Birmingham. In fact he'd just completed his first week at a new job in Nashville for a non-profit, Soles4Souls. He was going

to earn \$52,000 which was more than double his prior \$22,000 salary.

After that first week of work on 4-18-16, Bing presented to the ER at Tristar Skyline Hospital with right upper quadrant pain. He was admitted to the hospital and diagnosed with gallbladder disease. That same day a surgeon, Dr. Darrell Hunt, performed a cholecystectomy. It was apparently uneventful and Bing was discharged the next day.

Bing returned to the ER two days later and was feeling poorly. There was a suspected bile leak. Hunt's partner, Dr. Charles Nagy, Surgery, admitted Bing to the hospital. Nagy ordered a CT scan which indicated free fluid in Bing's abdomen which was consistent with a bile leak and biliary peritonitis.

Nagy then consulted with a gastroenterologist, Dr. Kristen Gaffney. She performed an ERCP (cholangio-pancreatography) and a sphincterotomy. The purpose was to relieve pressure on the biliary tree. Gaffney did not repair the source of the bile leak because of Bing's difficult and narrow anatomy. Bing was also prescribed broad spectrum antibiotics to address the risk of infection.

A third surgeon, Dr. David Bentley followed Bing on 4-23 and 4-24. Bing continued to get worse. Bentley discontinued the antibiotics. Bing was worse two days later and Bing was seen by yet a third surgeon, Dr. George Tyson.

Bing was now septic. Tyson

Premises Liability - The plaintiff tripped in a Wal-Mart parking lot on the stub (protruding 2.5 inches above the asphalt) of a sign post that had contained a handicap parking sign and she suffered pelvic and shoulder fractures – the signpost had apparently been cut off as a souvenir by an unknown third-party and Wal-Mart had not repaired it

Givens v. Wal-Mart, 1:21-98

Plaintiff: Ira M. Long, Jr., Weill & Long, Chattanooga

Defense: Gregory W. Callaway, Howell & Fisher, Nashville

Verdict: \$500,000 for plaintiff less 30% comparative fault

Federal: **Chattanooga**

Judge: Charles E. Atchley, Jr.

Date: 8-23-23

Tristine Givens, a retired elementary school teacher, went shopping on the morning of 3-15-20 at a Wal-Mart store in Chattanooga. She proceeded across the parking lot and walked in the space between the aisles of cars.

There was a hidden hazard in the parking lot. At some unknown time a handicap sign had been removed. The signpost appeared to have been cut off. The handicap parking notice part of the sign was long gone. All that remained was a stub of the sign post that protruded 2.5 inches above the asphalt parking surface.

Givens never saw the stub of the signpost and tripped over it. She fell forward. In the resulting fall she broke her pelvis in two places. She also suffered a broken shoulder. Her orthopedic surgeons testified about her injuries and their permanence.

In the weeks after the incident a Wal-Mart adjustor reached out to Givens. The adjustor explained that

“Wal-Mart did not provide a reasonably safe place for you to shop.” The adjustor was also eager for Givens to forward her medical bills.

The case did not resolve in this manner and Givens sued Wal-Mart in Hamilton Circuit Court. Wal-Mart removed the case to federal court on diversity.

Givens’ theory blamed Wal-Mart for negligence in removing the sign and failing to fully extract the stub of the signpost. This led to the difficult

to perceive hazard of the 2.5 inch metal stub that protruded. Alternatively even if Wal-Mart was not responsible for the sign’s removal, it knew or should have known of the trip hazard in the exercise of ordinary care.

While Wal-Mart believed it was negligent in the pre-trial stage as litigation developed, Wal-Mart thought it was not at fault. The heart of the defense was that it actually had nothing to do with the signpost stub



Arrow Pointing to Stub – Ms. Givens in Red Coat



Tripping and Falling

Images of the stub, the scene and the fall itself