Kentucky Trial Court Review
The Most Current and Complete Summary of Kentucky Jury Verdicts

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Comprehensive Statewide Jury Verdict Coverage

Civil Jury Verdicts

Complete and timely coverage of civil jury verdicts including circuit, division, presiding judge, parties, case number, attorneys and results.

Medical Negligence - The plaintiff suffered a code and died days later – his estate blamed the code on his hospitalist for having prescribed too much sedative and failing to monitor the plaintiff after he became combative

Pridemore v. McCullough, 15-362
Plaintiff: Jeff W. Adamson and Paul A Casi, III, *Paul A. Casi, II, PSC*, Louisville
Defense: E. Frederick Straub, Jr. and Matthew Eddy, *Whitlow Roberts Houston & Straub*, Paducah
Verdict: Defense verdict on liability
Court: **McCracken**
Judge: Timothy Kaltenbach
Date: 6-24-22

Larry Pridemore, age 64, fell ill and fainted on 5-21-14 at his Trigg County home. He presented to the local ER and an APRN there recommended he be admitted to the hospital. His blood pressure and oxygen were both low. Pridemore preferred Mercy Health Lourdes in Paducah where he regularly treated for renal failure with his nephrologist.

Pridemore made the trip to Paducah and arrived that night at 5:15 p.m. He was diagnosed with pneumonia among other conditions. An internist/hospitalist, Dr. Steven McCullough, examined Pridemore at 10:00 p.m. that evening and a plan to treat pneumonia was instituted.

Over the course of the next day (5-22-14), Pridemore had low oxygen levels. By the evening he had become agitated and pulled out his IV. McCullough was advised and ordered a sedative. Pridemore refused it

Pridemore remained agitated and by 9:00 p.m., McCullough ordered a sedative injection of Ativan. Pridemore pulled his IV out again at 9:25 and it was replaced. Lourdes nurses did not tell McCullough about this.

By 10:05 p.m. Pridemore was still aggressive and McCullough ordered more Ativan. He also ordered that Pridemore be restrained. He was strapped in a supine position that restrained him at the ankle, wrist and chest. Pridemore was not monitored by equipment nor was a sitter utilized.

Pridemore seemed to calm down between 10:30 and 11:00 that night. At 11:10 p.m. his wife (Roxanne) found him unresponsive. A code was called. It lasted 17 minutes. While Pridemore was resuscitated, he had suffered significant brain damage. He died five days later. McCullough did not see Pridemore from the time of his assessment the night before until the code was called.

Pridemore's estate sued McCullough and linked the code and resulting death to a combination of errors by him. That included (1) violating the hospital's restraint policy, (2) not performing a face-to-face assessment on the date of the code, (3) not utilizing 1-to-1 staff to monitor Pridemore and assess him every 15 minutes, (4) overuse of the sedative after Pridemore calmed down and (5) failure to transfer Pridemore to the ICU. These errors set the stage for the over-prescribed sedatives to lead to the fatal code event.

The plaintiff's key liability expert was Dr. David Goldstein, Internist, Sarasota, FL. The estate sought damages in two categories, $5,000,000 each for Pridemore's suffering and his wife's consortium interest. The estate also targeted the hospital. It settled just before trial but the duties of the nurses in monitoring Pridemore remained in issue for purposes of apportionment. The plaintiff had earlier identified two nurse experts, Mary Jane Smith, Pittsburgh, PA and Stephanie Iseri, Campbell, CA, who implicated the hospital nurses.

McCullough defended the case that Pridemore was properly monitored – he noted Pridemore's wife was with him and the nurses were regularly checking in. The defense also denied that the sedative dosage was significant enough to cause an arrest.

Finally as there was no autopsy, it was impossible to determine the cause of the code and Pridemore's death. The issue of causation was especially problematic as his medical condition (diabetes and renal failure) was already fragile. The defense postured Pridemore's death was tragic, but there was no proof of negligence. Defense experts were Dr. John Mattern, Hospitalist, Charlottesville, VA and Glen Farr, PharmD, Knoxville, TN.

This case was tried for five days.

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The jury answered that McCullough had not violated the reasonably competent "internist and hospitalist" standard and thus the jury didn't reach the duties of the settled hospital or damages. A defense judgment was entered and the case is concluded.

Case Documents:
Plaintiff Trial Brief
Plaintiff Expert Disclosure
Defense Trial Brief
Defense Expert Disclosure
Final Judgment

Premises Liability - The plaintiff slipped in an oil spill as she walked in a Steak n Shake parking lot – the spill was caused by a motorist who minutes before had crashed into a curb and damaged her vehicle's oil pan – in this lawsuit the plaintiff blamed the woman who crashed (she settled) as well as Steak n Shake for failing to promptly clean the spill or to warn about it – the jury ultimately exonerated Steak n Shake and then made an empty award of damages against the settled woman whose crash created the spill

Tate v. Steak n Shake, 5:20-265
Plaintiff: Tanner H. Shultz, Shea W. Conley and David G. Noble, *Morgan & Morgan*, Lexington
Defense: Matthew A. Piekarski and Bobby L. Whitmer, *Phillips Parker Orberson & Arnett*, Louisville for Steak n Shake
Martha L. Brown, Brown & Breeding, London for third-party defendant Dietrick
Verdict: Defense verdict on liability for Steak n Shake and thus third-party complaint (Steak n Shake versus Dietrick) made moot
Federal: **Lexington**
Judge: Matthew A. Stinnett
Date: 7-20-22

Mary Tate, a retired kindergarten teacher from Van Wert, OH, traveled with her husband to winter in Florida on 12-27-19. They stopped for the night in Richmond and stayed at a Holiday Inn Express. A little later that evening (at 5:30 p.m.) and at or near sunset, they walked to a nearby Steak n Shake restaurant. Tate was walking in the parking lot with her husband of forty years.

Just a few minutes earlier (how earlier is not exactly clear), Jamia Dietrick of Johnson City, TN and headed to North Dakota (also traveling through Kentucky) had pulled into the Steak n Shake parking lot. Dietrick entered that parking lot via the "exit" lane. Another car was exiting as Dietrick made her turn. Dietrick swerved to avoid that vehicle and struck a curb. The curb damaged the oil pan in her vehicle and oil leaked onto the parking lot.

Dietrick and her husband went inside the Steak n Shake to advise staff of the spill. There was proof a store manager sent an employee to investigate the spill. The employee confirmed it was there. The manager also looked out the window at the area of the spill. Finally there was proof the manager told an employee to finish cleaning off tables before dealing with the oil spill in the parking lot.

There was competing proof about how long this process lasted. It could have been as little as one or two minutes. There was also evidence (from the internal Steak n Shake incident report) that it was as long as thirty minutes. Additionally there were fact disputes as to how dark it was outside.

Against this backdrop Tate walked through the parking lot. She never saw the oil spill. She slipped and fell in it and landed hard. She suffered a broken and dislocated elbow – it was described as a significant "triad" fracture.

The injury was surgically repaired. Thereafter Tate underwent a course of physical therapy while in Florida and then back home in Ohio. She reports ongoing pain and diminished range of motion. Her medical bills were $108,999.

Tate kicked off this litigation with two lawsuits, both filed in Madison Circuit Court. She sued Dietrick and blamed her for driving into the curb and thereby creating the oil spill. Tate separately sued Steak n Shake and blamed it for failing to either clean up the spill by applying an absorbent and/or issue a warning in the parking lot. Tate looked to the proof that Steak n Shake knew of the spill for some 30 minutes, but took no effort to protect customers. Steak n Shake also filed a third-party complaint against Dietrick.

The defendants removed both claims against them to federal court where the cases were consolidated. On the eve of trial Tate entered a settlement with Dietrick who paid Tate her $100,000 policy limits. The agreement provided that Dietrick would continue to defend the case. Tate also agreed to indemnify Dietrick for any sums Dietrick was ordered to pay as a third-party defendant to Steak n Shake.

The case was then organized in an odd and convoluted way because of the indemnity claim. The case was tried to the jury as if it was Tate versus both Steak n Shake and Dietrick, when in fact, Tate sought damages only from Steak n Shake. Tate also actively developed defenses on Dietrick's behalf, and Tate asked the jury not to find Dietrick liable. The matter was further complicated because as presented to the jury, the case mixed both "auto negligence" and "premises liability" theories.

This was even more of a problem because of Judge Stinnett's confused and clumsy instructions. First the

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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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court asked if Dietrick was negligent in operating her vehicle even before considering the duties of Steak n Shake. If Steak n Shake (the only remaining real party in interest) was not at fault in the first place, then what would it matter if Dietrick was to blame?

The confusion continued to damages. As constructed by Judge Stinnett, the jury could exonerate Steak n Shake and still consider an award of damages to Tate. That could create a circumstance where the jury would value Tate's damages, but that valuation would be a meaningless gesture. Why create a set of jury instructions that would permit the jury to do this? The record is not clear.

Steak n Shake defended the case on the merits that the spill had occurred just minutes before Tate fell. It only had the time to take the report from Dietrick and then send an employee outside to assess the hazard. Then moments later (not 30 minutes later), Tate walked through the hazard. Steak n Shake denied fault and instead blamed a combination of, (1) Dietrick for causing the hazard in the first place, and (2) Tate for failing to observe the clearly visible oil spill. Tate had claimed that it was just beyond sunset and the spill was not easily seen.

Tate made a motion in limine to exclude any proof of her settlement with Dietrick as irrelevant. Steak n Shake wanted to explore that issue because it believed Dietrick might be biased by her indemnification agreement, calling it close to a *Mary Carter* settlement scheme. Judge Stinnett sustained the plaintiff's motion and excluded proof of the settlement.

There was interesting practice

during the voir dire. There was a single black juror left in the final group of 17 jurors being interviewed. Steak n Shake struck the juror. Tate made a *Batson* challenge to that strike. Steak n Shake explained the strike by noting the juror was a teacher and Tate too was a retired teacher. The court concluded that as the juror was the only teacher on the venire panel (or even working in education at all), the plaintiff had failed to carry her "burden of persuasion" and the motion was denied.

The jury had a question as it deliberated the case:
For the second interrogatory, we would like clarification is it the area of the oil spill that was unsafe and not the entire premises?
The court told the jury to read the instructions and give the words their ordinary meaning. The instructions had phrased it generally as the "store premises."

The jury deliberations lasted 2.5 hours. The court's first instruction asked if Dietrick was negligent in operating her vehicle. The answer was yes.

The jury then went to the duties of Steak n Shake which were described over several interrogatories. The first asked if the premises were in a reasonably safe condition. The answer was for Tate that they were not. If the jury had answered "no" the deliberations would have been over. [This was the interrogatory that was the subject of the jury question about the "entire premises."]

The jury then answered for Tate that Steak n Shake knew of the spill or should have known of it in the exercise of ordinary care in sufficient time to clean it up. This instruction was confusing because it was phrased as a double-negative, i.e., the jury had to answer "no" that Steak n Shake "neither" knew or didn't know. If the jury had found for Steak n Shake on this charge, the deliberations would have concluded.

The jury having found that Steak n Shake knew of the spill or should have known of it, the court next asked the jury if Steak n Shake had "actual knowledge" of the spill **and** had sufficient time to remove it or issue a warning. The jury answered that Steak n Shake did not. This was still not the end of the jury's inquiry.

Judge Stinnett's instructions then sent the jury to consider apportionment among all three parties. That fault was assessed 60% to Dietrick, 40% to Tate and none to Steak n Shake.

The final instruction was prefaced "having found for Mary Tate, you shall now" award her damages. Tate took her medicals as claimed plus $200,000 for her past suffering. Her future suffering was $100,000. The raw verdict (an empty one) totaled $408,999 less 60% comparative fault ($245,399).

There was never a judgment in this case and presumably it would have been for Steak n Shake as it fully prevailed and the $245,399 verdict would be not recoverable against that defendant. However two weeks post-trial the court entered an order indicating all claims had been settled. In that order the court left open the room to entertain post-trial motions should the settlement not be effectuated. The terms of the settlement are not revealed in the court record.

Case Documents:
Plaintiff Trial Memorandum
Defense (Steak n Shake) Trial Memorandum
Jury Instructions/Jury Verdict

Auto Negligence/UIM - The defendant rear-ended the plaintiff but successfully cited a sudden emergency from the glare of the sun

Herron v. Auto-Owners Insurance et al, 19-177
Plaintiff: Nathan D. Williams, Campbellsville and Patrick I. Markey, Louisville, both of *Bahe Cook Cantley & Nefzger*
Defense: Charles A. Walker, *Sewell & Neal*, Louisville for Auto-Owners Insurance
John C. Miller and John B. Jessie, *Bertram Cox & Miller*, Campbellsville for tortfeasor
Verdict: Defense verdict on liability
Court: **Taylor**
Judge: Kaelin Reed
Date: 7-26-22

This case involved a rear-ender in Columbia that occurred on 5-2-17. The plaintiff, Maurita Herron, was stopped in traffic. Behind her in traffic was Martha Lacy. A moment later Lacy rear-ended Herron. It was a moderate impact.

The crash caused Herron's shoulder to be jammed onto the steering wheel. Herron suffered a broken humerus in the arm of her dominant hand. Thereafter she treated for several months with a course of physical therapy. She continues to report pain. Herron's medical bills were $12,297.

Herron moved first against Lacy (a Farm Bureau insured) who pre-suit tendered her $25,000 limits. Herron's UIM carrier, Auto-Owners Insurance, *Coots*-advanced those limits. This litigation then followed against both Lacy and Auto-Owners. Lacy continued to participate pursuant to the duty to defend. However the primary defendant was Auto-Owners.

If Herron prevailed at trial she sought her medicals. The jury could also award her $150,000 each for past and future pain and suffering. Her

injuries were confirmed by Dr. Mark Barrett, Physical Medicine, Louisville.

The defense contested fault in this case. Lacy explained that she rear-ended the plaintiff only after the sun's glare reflected off Herron's vehicle and temporarily blinded her. Thus the defense presented a "sudden emergency" defense.

As the case was tried the jury knew that Auto-Owners was a defendant. However the jury didn't know that this was a UIM case. For Herron to prevail at trial she had to exceed a $35,000 floor. That represented Lacy's $25,000 limits and $10,000 more in PIP.

This case was tried for two days and the jury deliberated an hour. The jury had two questions:
Was the plaintiff's car fixed and does that matter?
Who is responsible for her pain and suffering payment?
If the court answered those questions, those answers are not a part of the court record.

The jury first found that Lacy was not negligent pursuant to the "sudden emergency" instruction. That should have been the end of the deliberations.

The court's instructions were clumsy and directed the jury to move to damages even though the case was resolved on liability. The jury awarded Herron's medicals as claimed and $7,000 more for pain and suffering for a total of $19,297. While the liability finding had resolved the matter, the empty award of damages was also less than the $35,000 floor of UIM coverage. A defense judgment closed the case.

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Nursing Home Negligence -

The plaintiff, who was rehabbing from a hip replacement surgery, broke his hip when he fell during a dynamic standing activity as he batted a balloon – the fall was linked both to personal injury and a downward spiral that led to death – the negligence as alleged was that the plaintiff was not a good candidate for the aggressive activity, the nursing home being motivated by Medicare reimbursement rates to overwork the plaintiff

Holbrook v. Valhalla Post Acute, 20-1763
Plaintiff: Chadwick N. Gardner and John C. Grey, II, *Gardner Law*, Prospect and John C. Robinson and Benjamin Salyers, *Robinson Salyers*, Shelbyville
Defense: Scott A. Davidson and Rod D. Payne, *Boehl Stopher & Graves*, Louisville
Verdict: $2,760,000 for plaintiff
Court: **Jefferson**
Judge: Mitch Perry
Date: 6-2-22

Ralph Holbrook, age 82, was married for 40 years to his wife, Dianne, and they lived on a 25 acre farm between Taylorsville and Shelbyville. Holbrook underwent a knee replacement surgery on 2-27-19 at Audubon Hospital. It was a success.

Holbrook was transferred to Valhalla Post Acute, a nursing home, for a period of rehabilitation. He began a course of physical therapy and other treatments at Valhalla Post Acute. On his 11th day of rehabilitation and at the end of a lengthy therapy session, Holbrook engaged in a balloon batting exercise designed to increase agility.

It was a simple enough therapy. Holbrook and a therapist would "bat" a balloon back and forth. There was proof Holbrook was given an instruction to not let the balloon hit the ground. [This was in dispute.] As the balloon was batted to him, Holbrook leaned forward to knock it back. He fell in that process and broke his hip.

Holbrook underwent a second surgery but thereafter his condition dramatically diminished. He would not eat properly and a feeding tube was placed. Holbrook was discharged home a few weeks later but he had a loss of mobility and required ongoing care. The downward spiral continued until his death a little more than two years later in May of 2021.

Holbrook's estate sued Valhalla Post Acute and alleged negligence regarding the physical therapy session. The balloon batting exercise was described as unsuitable for Holbrook as his gait and balance were problematic. Moreover he was not provided appropriate fall protection.

The case had two unique nuances. First the estate presented both "personal injury" and "wrongful death" counts. That is the purported negligence caused either Holbrook's injury or his death or both. This went to the issue of damages including both his suffering and the post-death consortium interest of his wife. The claimed damages included the estate's medicals, pain and suffering and consortium.

The second nuance concerned punitive damages. The estate alleged Valhalla Post Acute had a financial motive to engage in overly aggressive therapy sessions to reap profits from an "ultra-high" Medicare reimbursement. There was no limit in the instructions on the punitive damages, if awarded.

The estate's key expert was Dr. Rajeev Kumar, Geriatrics, Warrenville, IL. It also relied on Leah Klusch, Operation Long Term Care

Facility, Alliance, OH and Chad Thompson, Physical Therapy, Georgetown.

Valhalla Post Acute replied that Holbrook was properly assessed at all times and his course of physical therapy was appropriate. Moving to the time of the fall, Holbrook had advanced from "contact" activities to where he was able to "stand" within arms reach of assistance. The dynamic standing activity (the balloon toss) was described as appropriate. The defense also denied Holbrook was told that the balloon should not hit the ground or that there were any signs he was fatigued during the exercise.

Valhalla Post Acute also contested there was an insidious profit motive underlying the case. Instead the level of therapy was standard and Holbrook required high intensity physical therapy over a short time to rehab from his surgery. Moreover of the 758 minutes of therapy Holbrook received, Valhalla Post Acute only billed 720 of them. If profits were the only motive, why had it given away 38 free minutes of therapy?

Valhalla Post Acute also contested causation. It argued that Holbrook's death was not caused by a so-called spiral and noted he had a long history of medical conditions including three prior heart surgeries. In fact he recovered from his hip surgeries and simply died of natural causes.

The defense experts included Brian Plasky, Physical Therapy, Dublin, OH, William Thompson, Physical Therapy, Birmingham, AL, Dr. Timothy Kriss, Neurosurgery, Lexington (Kriss thought Holbrook fell because of an undiagnosed neuropathy condition that was unrelated to his hip), Dr. Dennis O'Neill, Geriatrics, Yorktown, VA and Melissa Thomas, an APRN who specializes in Geriatrics.

This case was tried over two weeks and lasted eight days. The plaintiff withdrew its Resident's Rights claim at the close of the proof. The jury found for the estate first on negligence and rejected apportionment to Holbrook.

The verdict was mixed on causation. It was for the estate that the negligence was a substantial factor in causing injury to Holbrook – however the jury rejected the death claim. This was significant because the wife's consortium interest (and Holbrook's suffering too) would be limited from the date of the incident until his death two years later. There would be no so-called *Ohio County Hospital* post-death consortium interest.

Then turning to those damages the estate was awarded medical bills of $360,000. Holbrook's pain and suffering was $500,000. His wife took $1.2 million more for her consortium interest. Finally the jury imposed $700,000 more in punitive damages. The verdict totaled $2.76 million and a consistent judgment was entered. The judgment also indicated that a corporate negligence case against Providence Group was dismissed but that "vicarious liability" and "collection" issues were reserved.

The plaintiff has since moved to schedule depositions of Providence Group bigwigs. Valhalla Post Acute resisted those efforts. Judge Perry denied a motion to block that discovery. Valhalla Post Acute also sought a writ at the Court of Appeals on the same issue. The writ was denied. The depositions are scheduled.

Valhalla Post Acute has also filed a motion for a new trial and to alter the final judgment. It argued that as the plaintiff never pled corporate negligence and vicarious liability was not tried to the jury, it was improper to reserve that issue in the judgment. The defense also challenged the consortium award as excessive and disproportionate, it being 2.4 times the plaintiff's own pain and suffering. The motion looked to KTCR data that noted it was the largest non-death consortium award reported. The motion was pending at the time of this report.

Case Documents:
Defense Trial Memorandum
Plaintiff Trial Memorandum
Defense Motion for a New Trial

Premises Liability - As the plaintiff walked the streets of Murray on a beautiful summer morning, she stepped off the sidewalk and into the grass to avoid a lawnmower – a moment later she tripped over an unsecured water meter lid and tore ligaments in her ankle that later led to Complex Regional Pain Syndrome

Hood v. City of Murray, 19-270
Plaintiff: David Troutman, *Edwards & Kautz*, Paducah
Defense: Kristen N. Worak, *Keuler Kelly Hutchins Blankenship & Sigler*, Paducah
Verdict: Defense verdict on liability
Court: **Calloway**
Judge: Timothy A. Langford (Special Judge)
Date: 8-10-22

Sue Hood went for a walk on the beautiful summer morning of 9-5-18 with her adult daughter in Murray. They were walking on Olive Street. Hood was going to cross the street to avoid a lawnmower. She stepped from the sidewalk into a grassy area between the sidewalk and the street.

An instant later Hood stepped on an unsecured City of Murray water meter lid. It flipped up. This caused Hood to trip and fall. In that fall Hood tore ligaments in her ankle. Hood was transported to the ER and later developed Complex Regional Pain Syndrome. Her medical bills

were $26,642 and she sought $7,950 more for future care. As the case was tried and while there was no cap on pain and suffering, Hood asked the jury for a total of $3.5 million in damages.

Hood sued the City of Murray and alleged negligence by it regarding the maintenance and condition of the water meter lid. The theory was that the meter (of the older clay variety) was cracked and in poor condition anyway. Then when the meter was read 21 days earlier (the meter is read every 30 days), a single "hex bolt" was not secured.

Thus the unsecured water meter lid (partially covered by grass) was a secret hazard – Hood then tripped over it. A safety expert for the plaintiff, William Gulya, Raritan, NJ, explained that these lids (absent failing to be secured) do not just pop up on their own. Hood's case was buttressed by pictures (taken by the daughter) of Hood still on the ground at the scene that depicted the area of the fall and the condition of the water meter lid.

The City of Murray denied having any notice of the condition of the water meter lid. The City noted that the lid could have been struck by a homeowner or a lawnmower in the 21 days between the last inspection and Hood's fall. Hood countered that the meter lid was clearly in poor and dilapidated condition and this didn't occur in just 21 days – thus the meter lid should have been replaced or secured.

This case was tried for three days in Murray. The court's instructions asked if the utility had failed to exercise ordinary care to secure its water meter lid. The jury's verdict was for the city by an 11-1 count and Hood took nothing. A consistent defense judgment was entered.

Case Documents:
Complaint
Defense Summary Judgment Motion
Plaintiff Summary Judgment Response
Jury Verdict

Auto Negligence - The plaintiff complained of a mild TBI after a minor rear-end crash – a Louisville jury awarded a portion of the medical bills (equal to the ER bill) but nothing for pain and suffering
Mickens v. Coleman, 18-3317
Plaintiff: Rob W. Astorino, Jr., *Stein Whatley Attorneys*, Louisville
Defense: Daniel S. Gumm and Eric S. Rice, *Rice Gumm*, Louisville
Verdict: $7,911 for plaintiff
Court: **Jefferson**
Judge: Susan Gibson
Date: 8-10-22

Wayne Mickens, then age 44, traveled in Louisville on Klondike Lane on 5-1-17. A moment later he was rear-ended by Paula Coleman. Her brakes had been slipping for several weeks and this contributed to the collision. Coleman conceded fault.

Mickens has since treated for a mild traumatic brain injury as well as soft-tissue shoulder, neck and back pain. The TBI was confirmed by Dr. David Changaris, Neurology, Louisville. Mickens incurred medical bills of $24,005.

In this lawsuit Mickens sought damages from Coleman. That included his medical bills and $100,000 for past suffering and $200,000 more for in the future. Mickens also sought to impose punitive damages against Coleman which was predicated on her driving around knowing she had bad brakes. This claim was withdrawn at the close of the proof and did not go to the jury.

Coleman defended the case on damages and relied on an IME, Dr. Joseph Zerga, Neurology, Lexington. Zerga contested there was any TBI at all and noted that Mickens saw his PCP the day after the wreck and said nothing about a head injury and simply refilled his blood pressure medications.

The case was tried on damages only. Mickens took $7,911 of his medicals but nothing for either past or future pain and suffering. The raw verdict then totaled $7,911. Presumably as the verdict did not exceed the $10,000 PIP threshold, a defense judgment will be entered for Coleman.

Case Documents:
Plaintiff Trial Memorandum

Dogbite - As the plaintiff walked in her neighborhood she was bitten on the leg by an unleashed dog – she took a default against the dog's owner and then sought at trial to impose damages against the homeowner where the dog frequently resided – that defendant (the primary defendant at trial) denied the dog belonged to her – the jury found the homeowner was not at fault and imposed damages only against the absent dog owner
Warren v. Carter, 19-684
Plaintiff: Carolyn C. Ely, *Isaacs & Isaacs*, Louisville
Defense: Anthony R. Johnson, *Goldberg & Simpson*, Prospect
Verdict: Defense verdict on liability for Carter; $2,259 for plaintiff against defaulted and pro se defendant
Court: **Bullitt**
Judge: Rodney Burress
Date: 8-10-22

Misty Warren was walking with her dog in her neighborhood in Mt. Washington. Suddenly an unleashed dog (Melo the pitbull) ran from a home at 226 Oakrun Drive. It attacked Warren and bit her several times on the leg.

Warren was able to walk home. She called an ambulance but didn't go to the hospital. Warren went to an

urgent care clinic. Her four bite wounds were treated there and ultimately healed. A plastic surgeon, Dr. John Derr, identified ongoing scarring and indicated Warren needs a scar revision surgery.

Warren first targeted Whitney Campbell who without question was Melo's owner. Warren took a default against Campbell who then was an "empty chair" defendant at trial.

The primary defendant was Tiffany Carter. She owned the residence at 226 Oakrun and is the sister of Campbell's boyfriend. There was proof that Melo sometimes resided at 226 Oakrun. It was Warren's theory that Campbell was responsible for the dog by permitting it to stay at her home and thus Warren sought to impose strict liability.

Warren's claimed damages were her medicals of $1,269 plus $50,000 more for future care. Her lost wages were $990. The jury could also award her damages for pain and suffering.

Carter's defense was simple enough. She denied that she was an owner of the dog and thus she had no responsibility for it. Warren countered that she'd seen Melo at 226 Oakrun several times. For her part Carter testified in her deposition that she couldn't remember if the dog was living at her home or not.

A jury in Shepherdsville found the defaulted Campbell solely at fault. It rejected the theory that Carter was an owner of the dog. The jury then went to damages against the empty chair Campbell.

The jury awarded the past special damages as claimed (past medicals and lost wages) but nothing for future care. The jury also rejected an award of pain and suffering. The raw verdict of $2,259 was assessed against the empty chair Campbell, the primary defendant (Carter) being exonerated. At the time of this report no judgment had been entered.

Case Documents:
Complaint

Medical Battery - A plastic surgeon was blamed for placing breast implants in a less desirable position under the muscle rather than over it as proposed – this led to a revision surgery – the plaintiff advanced battery and fraud theories regarding the surgery, but did not allege negligence

Cram v. Corbett, 19-1481
Plaintiff: Joseph D. Buckles, *Buckles Law Office*, Lexington
Defense: Clay A. Edwards and Morgan N. Blind, *O'Bryan Brown & Toner*, Louisville
Verdict: Defense verdict on liability
Court: **Jefferson**
Judge: Audra Eckerle
Date: 3-10-22

Chrissy Cram, in her early 40s, consulted in early 2018 with a plastic surgeon, Dr. Lee Corbett. Her old saline breast implants needed to be replaced especially as one was deflated. Cram wanted larger breasts and brought pictures to Corbett of representative exemplars of the result she desired. Cram also wanted her implants to be placed at the subglandular level (over the muscle) as opposed to submuscular (under the muscle) – this is because subglandular placement is associated with faster recovery and better outcomes.

The implants were placed in a 2-2-18 surgery. Corbett represented at all times that the implants were placed as planned as subglandular. Almost right away Cram was not pleased with her result.

Cram consulted with a second plastic surgeon, Dr. Stephen Schantz of Lexington. Cram underwent a second revision surgery on 4-9-18 that was performed by Schantz. During that surgery Schantz discovered the Corbett implants were at the submuscular level. Schantz placed the implants subglandularly.

Thereafter Cram filed this lawsuit against Corbett and advanced two theories, (1) fraud, and (2) battery. The heart of the case was that Corbett represented he would implant subglandularly but then placed the implants at the submuscular level – making it worse Corbett then lied about it. The best evidence of this was that Schantz discovered the location of the implants at the submuscular level during his revision surgery.

This led Cram to have the pain and discomfort of the second repair surgery. Her medical bills from the Schantz repair were $5,050. She also sought $100,000 in pain and suffering. If Cram prevailed on either fraud or battery, the jury could also assess $250,000 in punitive damages.

Cram's case was interesting and unique as she never pled or alleged negligence by Corbett. Instead she advanced only fraud and battery counts. That was important because those theories did not require expert proof. In fact the treating Schantz was clear in his testimony that he had no criticism of Corbett and in fact after the Corbett surgery, the result was good and Cram's breasts looked beautiful.

Corbett defended the case that he had properly placed the implants above the muscle as planned. How then were they below the muscle when Schantz performed the revision? Corbett explained "implant migration" can occur and is a risk of surgery particularly in the case of a breast implant revision. From his perspective the surgery was properly performed and even Schantz conceded the result was good. His liability expert was Dr. Stephen Schuster, Plastic Surgery, Boca Raton, FL.

This case was tried for three days. The jury rejected both the fraud and battery counts and thus did not reach either compensatory or punitive damages. A defense judgment was entered and the case is closed.

Case Documents:
Complaint
Defense Expert Disclosure
Final Judgment

Medical Negligence - A midwife was blamed for missing signs of tachysystole (too frequent contractions) and by the time she intervened to contact the delivering family physician it was too late and the baby had sustained a brain injury – the midwife defended that she properly managed the labor and she blamed the injury on a fetal placental bleed (not an oxygenation event) from one to three days earlier

Irwin v. Atwood, 18-171
Plaintiff: Richard Hay and Sarah Hay Knight, *Hay & Knight*, Somerset
Defense: Clayton L. Robinson and Jonathan D. Weber, *Robinson & Havens*, Lexington
Verdict: Defense verdict on liability
Court: **Lincoln**
Judge: John Prather
Date: 5-9-22

Chelsey Irwin came to Ephraim McDowell Fort Logan Hospital in Stanford on the morning of 12-7-17. She was 39 weeks pregnant and the labor was to be induced. She was admitted that morning by a midwife, Jamie Atwood, an employee of Baker Miller and Sims Family Medicine. Irwin was connected to fetal heart monitoring.

There was proof that by 1:30 in the afternoon, Irwin's contractions were too frequent. This is known as tachysystole and can be indicative of a decrease in oxygenation. Atwood arrived at the hospital at 3:00 and evaluated Irwin. There was no change in the plan.

Irwin returned to the hospital at 5:44 p.m. and consulted with Dr. Christopher Sims. This was the first time he was involved. He immediately ordered medications to control the tachysystole. He then arrived at the hospital and ordered an emergency c-section. The baby (a boy named Cole) was in distress at birth and was promptly transferred to UK Hospital.

Cole, now age 4, has since suffered from cerebral palsy as well as intellectual and behavioral disabilities. There was evidence linking those conditions to the tachysystole event on the afternoon of the boy's birth.

In this lawsuit filed by Chelsey on behalf of her son, negligence was alleged by Midwife Atwood in failing to appreciate the tachysystole crisis and intervene more quickly to perform a c-section. That this needed to occur, the plaintiff looked to evidence the fetal strips were not reassuring. Despite that data Atwood still delayed in contacting Sims.

A key expert, Dr. Bruce Cohen, Maternal Fetal Medicine, Brookline, MA, believed Cole was in danger from 1:00 p.m. forward as evidenced by the fetal strips. The plaintiff also relied on Theonia Boyd, Pathology, Houston, TX, Carolyn Gegor, Professor of Midwifery, Columbia, MO, Thomas Sullivan, Neuropsychology, Fairfield, OH and Marcus Hermansen, Neonatology, Nashua NH.

If the plaintiff prevailed on liability the damages were significant. Cole's medicals were $426,175 and he sought $4,198,240 for future care. His impairment was $1,375,585. The jury could award him $5,000,000 more for his pain and suffering. Interestingly although the plaintiff settled with the hospital nurses, their duties were not in issue at trial for purposes of apportionment. The plaintiff made no allegation of negligence against Dr. Sims.

Atwood defended that she met the standard of care and that the fetal tracing was reassuring for the majority of the labor. When there became concerns, she promptly contacted Sims who took over the care leading to the c-section.

Atwood also had a theory on causation. Her proof indicated Cole had suffered a uterine injury related to a placental bleed one to three days before the delivery – thus it was a vascular injury as opposed to an hypoxic one. Atwood's experts also theorized that Cole's condition is more akin to autism which is genetic.

The identified defense experts were Dr. Carolyn Salafia, Placental Pathology, New Rochelle, NY, Dr. Susan Palasis, Pediatric Neuroradiology, Chicago, IL, Dr. Harry Farb, Ob-Gyn, Minnetonka, MN and Dr. Michael Duchovny, Pediatric Neurology, Miami, FL.

This case was tried in Stanford for two weeks. The jury was asked if Atwood violated the "reasonably prudent midwife" standard. The jury answered "no" and the plaintiff took nothing. A defense judgment was entered and the case is closed.

Case Documents:
Plaintiff Trial Memorandum
Defense Trial Memorandum
Defense Expert Disclosure
Final Judgment

Medical Negligence - A surgeon was blamed for mismanaging a hernia condition for several years, the error purportedly leading to chronic pain

Walker v. Samuel, 15-3710
Plaintiff: Bixler W. Howland, Louisville
Defense: Scott P. Whonsetler and James P. Triona, *Whonsetler Law*, Louisville
Verdict: Defense verdict on liability
Court: **Jefferson**
Judge: Annie O'Connell
Date: 7-15-22

Marsha Walker, now age 49, had a history of a recurrent ventral hernia that dated to 2008. The defendant in this case, Dr. Steven Samuel, a surgeon, performed four repair surgeries on Walker from March of 2009 to June of 2014. In those surgeries he repeatedly placed new mesh to control the hernia.

After the fourth surgery on 6-20-14, Walker complained of new pain and an infection. She lost faith with Walker and began to treat with a second surgeon, Dr. Richard Pokorny. Pokorny performed a surgery that August, a so-called component separation surgery.

While the hernia was finally repaired, Walker was left with chronic stomach pain and a course of pain management treatment. She was once active and enjoyed going to the lake and waterskiing. The several surgeries with Walker had also left her with scarring.

In this lawsuit Walker alleged error by Samuel in his repeated hernia repairs. Her expert, Dr. David Faber, Surgery, Hardinsburg, argued that Samuel should have removed the old mesh, stopped adding new mesh and moved sooner to a component separation surgery as Pokorny had done. It was argued this would have avoided Walker's complex course of care. Walker's only claimed element of damages were pain and suffering – the instructions limited them to $2,000,000.

Samuel defended the case that he met the standard of care in treating a ventral hernia. Moreover his surgical choices were reasonable. His expert was Dr. Jeffrey Sharpe, Surgery, Louisville. Walker countered that Samuel should have earlier suspected in 2009 why the hernia repairs were failing.

This case was heard by a Louisville jury for four days and it then deliberated for three hours. The jury returned a verdict for Samuel by a 10-2 count on liability and Walker took nothing. A defense judgment as entered.

Case Documents:
Summary Judgment Order
Defense Trial Memorandum
Plaintiff Trial Memorandum

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