

The Tennessee Jury Verdict Reporter

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April 2022

Statewide Jury Verdict Coverage

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Medical Negligence - During an ENT procedure to correct a Zenker's diverticulum (a condition of the pharynx), the doctor perforated the plaintiff's esophagus leading to a variety of complications including permanent swallowing deficits – the doctor argued that the injury was a recognized complication of the surgery and the ongoing problems were similar to those the plaintiff had before the surgery

Foster v. Hafner, 3:19-24

Plaintiff: Jon E. Jones, Cookeville and Patrick Shea Callahan, *Callahan & Binkley*, Cookeville

Defense: C.J. Gideon, Jr. and J. Blake Carter, *Gideon Essary Tardio & Carter*, Nashville

Verdict: Defense verdict on liability

Federal: **Knoxville**

Judge: Charles E. Atchley, Jr.

Date: 4-6-22

Marilyn Foster, age 69, had a history of problems with swallowing and with her throat since 2014. She treated with several doctors who determined she suffered from a Zenker's diverticulum condition – it is common in older persons and is characterized by a herniation of the pharynx. The treatment is generally (either endoscopically or by open surgery) to sever the muscle and thereby remove the condition causing the Zenker's diverticulum.

Ultimately Foster came under the care of Dr. Jonathan Hafner, an ENT with East Tennessee Ear, Nose and Throat. He proposed (as others before

him had suggested) an endoscopic repair. Foster agreed. The procedure was performed on 1-12-18 at Methodist Medical Center in Oak Ridge, TN. It seemed uneventful initially.

However the next day a problem developed. Testing revealed there was free air in Foster's chest. Upon further investigation it was determined that in repairing the Zenker's diverticulum, Hafner had also perforated Foster's esophagus with a harmonic scalpel. Hafner called in a partner and they made a surgical repair. Despite that intervention Foster developed an infection at the site of the perforation.

Foster was later transferred to Richmond, VA for a higher level of care. She underwent a complex surgical repair. While the infection resolved and the perforation healed, Foster continues to have difficulty swallowing. The condition is permanent.

Foster sued Hafner and alleged medical error by him in several ways. The first was in injuring her esophagus in the first place, Foster citing that because her Zenker's diverticulum was so small, Hafner (who was not experienced with one so small) should have done an open procedure or referred her to an ENT with more specialized experience.

Foster's theory was also critical of Hafner for not using appropriate prophylactic antibiotics to minimize the infection risk. Then once the injury

was sustained, Foster alleged error in not making a repair quickly enough. The combination of these errors, the theory went, contributed to her permanent injury. Foster's identified experts were Dr. Richard Galos, ENT, Martinsville, VA and Dr. Paul Weinberger, ENT, Shreveport, LA (but satisfying the locality rule, he had treated patients in Georgia).

Hafner defended on several fronts including first noting that three other doctors had already recommended that Foster undergo this procedure. Hafner further explained that he met the standard of care, the perforation being a recognized complication – as importantly Hafner identified the injury the next day and performed a prompt repair. He also claimed that he had prescribed antibiotics in advance of the surgery.

Hafner also discussed damages and argued that Foster's ongoing symptoms are similar to those she had before the surgery. His experts included Dr. Wayne Colin, ENT, Lexington, KY and Dr. Rupali Shah, ENT, Chapel Hill, NC.

This case was tried in Knoxville for five days. The court's instructions asked if Foster had proven by a preponderance of the evidence that Hafner violated the "applicable" standard of care. The jury said "no" and then didn't reach causation or damages. The jury deliberated the case for just 27 minutes. A defense judgment was entered.

Case Documents:

[Pretrial Order](#)

[Jury Verdict](#)

Auto Negligence - The plaintiff complained of a rotator cuff injury after a right-of-way collision – the court did not permit the plaintiff's medicals (\$90,421) to go to the jury and thus the entire \$110,000 award was for non-economic damages – the plaintiff has since moved for additur and sought the medical bills and \$100,000 more in general damages

Holzmer v. Walsh, 19-598

Plaintiff: Edmund J. Schmidt, III, *Law Office of Eddie Schmidt*, Nashville

Defense: Britton J. Allan and Emmie N. Kinnard, *Ortale Kelley Law Firm*, Nashville

Verdict: \$110,000 for plaintiff

Court: **Davidson**

Judge: Joseph Binkley

Date: 3-3-22

Pam Holzmer was a passenger in a vehicle with Patricia Toepfer on 4-11-18. They traveled on Percy Warner Boulevard at its intersection with Harding Pike (Hwy 70). The light turned green and as the Toepfer vehicle pulled into the intersection, they were hit hard by the elderly James Walsh. Walsh had run the light. The collision spun the Toepfer vehicle around. Fault was admitted.

Holzmer, the plaintiff in this case, was taken by ambulance to the ER at St. Thomas West. She was later treated for a labrum injury and rotator cuff tear. Dr. Christian Anderson, Orthopedics, performed a surgical repair.

Beyond that surgical repair, Holzmer underwent a lengthy 18 month course of physical therapy. While she has since regained 75% function of her arm and shoulder, her arm was essentially dead for the first 18 months. Her medical bills were \$90,421.



The Holzmer vehicle post-crash

In this lawsuit Holzmer sought damages from Walsh. Walsh died a few months later from unrelated causes. Interestingly before his death, Walsh, a former assistant DA had also hosted a local television show, "We Believe", that focused on Catholic catechism. The case continued against his estate.

If Holzmer prevailed at trial she sought damages in two categories, pain and suffering and loss of enjoyment of life. She was prepared to claim her medicals of \$90,421 but Judge Binkley (despite testimony from Anderson) concluded there was incompetent medical proof on the subject. Walsh's estate called no witnesses at trial – the defense minimized the claimed injury.

This case was tried for four days. The jury was first asked if Walsh's negligence had caused injury to Holzmer. The answer was yes. She then took \$70,000 for past suffering and \$40,000 more for loss of enjoyment of life. The verdict totaled \$110,000 and a consistent judgment was entered.

Holzmer has since moved for a new trial and/or additur. She cited error by Judge Binkley not allowing her to submit her medical bills to the jury as they were not rebutted by the defense

and her treating doctor said they were reasonable. Holzmer also thought it was error not to direct a verdict on causation in her favor thereby allowing the jury to speculate there were other causes for her pain.

Finally, Holzmer moved for additur. She suggested the court add the \$90,421 in medical bills and \$100,000 more in general damages. Her motion was pending at the time of this report.

Case Documents:

[Jury Verdict](#)

[Judgment](#)

[Plaintiff Motion for a New Trial](#)

Civil Rights - The plaintiff called 911 when her son was unruly – by the time the police showed up, her son was gone, but in the meantime the police discovered there was a warrant (the warrant was in error) for the plaintiff’s arrest – when the plaintiff resisted and tried to explain there was no warrant, she was roughly arrested in her own home and sustained a very serious knee injury, dislocating it and tearing her ACL

Ayers v. McMinn County Sheriff,
1:16-19

Plaintiff: Robert L. Jolley, Jr.,
Knoxville, Peter J. Alliman, *White Carson & Alliman*,
Madisonville and William T. Weiss,
Worthington & Weiss,
Madisonville

Defense: Jonathan S. Taylor and
Caitlin C. Burchette, *Taylor & Knight*,
Knoxville

Verdict: Defense verdict on liability

Federal: **Chattanooga**

Judge: Charles E. Atchley, Jr.

Date: 3-4-22

Kimberly Ayers, then age 43 and of Englewood, TN in McMinn County, was at home and having a conflict

with her unruly adult son. Ayers made a decision to call 911 to have the police assist her in controlling her son.

Two McMinn County sheriff’s deputies, Doug Benton and Jason Lee, arrived to protect and serve. Their first order of business was to make sure the scene was secure and the son was not a threat. As the son had already left the Ayers home, the deputies got down to police business.

In advance of arriving at the Ayers home, the police did a warrant search for all known persons present. There was a “failure to appear” warrant for Ayers. It had actually been recalled but it appeared to the police to be valid.

Benton and Lee explained that Ayers was under arrest. She knew the warrant wasn’t valid and tried to plead her case by showing her paperwork. The deputies were unpersuaded and moved to arrest her. Ayers alleged she was roughly tackled from behind and landed on her knee. She was then handcuffed and taken to jail. Ayers would remain jailed for two days until she appeared in court and the warrant error could be resolved.

Ayers has since treated for a complex knee injury. It was dislocated and she sustained an ACL and meniscal tear. Ayers later underwent three repair surgeries including a knee replacement. Her medical bills were approximately \$150,000.

In this lawsuit Ayers sued the two McMinn County deputies and alleged that they engaged in both excessive force (a constitutional violation) as well as state-law battery. If Ayers prevailed at trial she could take an award of general damages.

The police denied they had used excessive force. They suggested that Ayers “flung” herself into a doorway

and fell to the ground. The defendant then never tackled her and the extent of their contact with her at all was just to turn her over and effectuate an arrest. Benton for his part even denied touching Ayers at all.

This case was tried in a federal courtroom in Chattanooga for three days. The jury rejected both the federal excessive force case as well as state law battery and Ayers took nothing. A defense judgment was entered.

Ayers has moved for a new trial and cited that the verdict was against the weight of the evidence. She cited that in light of her very serious knee injury, there was no way the defense version (i.e., a very minor encounter where she was gently lowered to the ground) could have been true. The government replied that the jury sorted out the fact disputes. The plaintiff’s motion is pending.

Case Documents:

[Pretrial Order](#)

[Jury Verdict](#)

[Plaintiff Motion for New Trial](#)

[Defense Response to New Trial Motion](#)

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Dental Negligence - The plaintiff suffered a significant infection complication in his jaw after the removal of a tooth – he blamed his oral surgeon for failing to give antibiotics in advance of the removal – the oral surgeon replied that the infection was rare and resistant to front-line antibiotics used in an oral surgeon's office and the result would have been the same in any event

McMiller v. Gordon-Maloney, 74337

Plaintiff: Cyrus L. Booker, *Booker Legal Group*, Brentwood

Defense: Darrell E. Baker, Jr. and Deborah Whitt, *Baker & Whitt*, Memphis

Verdict: Defense verdict on causation

Court: **Rutherford**

Judge: Darrell Scarlett

Date: 4-2-21

Brian McMiller, age 52, treated on

2-13-17 with an oral surgeon, Dr. Jennifer Gordon-Maloney of Stone Crest Oral Surgery in Smyrna, TN, for the extraction of an infected tooth. The removal was uneventful but following the procedure, McMiller suffered a serious Ludwig's Angina infection. He was hospitalized for eight days and nearly died from the infection. His medical bills were approximately \$140,000.

McMiller sued Gordon-Maloney and alleged error by her in failing to administer pre-operative antibiotics. It was argued that had Gordon-Maloney done this, the infection complication would have been avoided. His expert was Dr. Thomas Sarna, Oral Surgery, Fayetteville, AR. If McMiller prevailed at trial he could take sums in two categories, non-economic and economic damages.

Gordon-Maloney first replied on liability that the standard of care did

not require the use of pre-operative antibiotics. She also defended on causation and argued that even had she used an oral surgery "front line" antibiotic (penicillin, for instance), it would have had no effect on this methicillin-resistant staph infection. The defense experts were Dr. Aaron Miller, Oral Surgery, Chattanooga and Dr. Bryan Simmons, Infectious Disease, Memphis.

This case was tried in Murfreesboro for four days. The jury answered that Gordon-Maloney had "deviated" from the standard of care. However the jury exonerated the doctor by further finding that she was not the "legal cause" of damage to McMiller. That ended the deliberations and the jury didn't reach damages. A defense judgment was entered.

McMiller moved for a new trial and noted that this was the first post-Covid jury trial in Rutherford County and the jury was rushed to deliberate on Good Friday. This led to the jury's odd compromise result. McMiller also argued that Gordon-Maloney had offered a "false" video that was purportedly shown to McMiller about post-operative care.

Gordon-Maloney replied that the plaintiff could have objected to the video or done cross-examination about it. She believed the plaintiff's argument that it was "false" was shameless. The motion was denied by Judge Scarlett on 9-7-21 and the case is now concluded.

Bail Bond Negligence - Bail bondsmen broke into the plaintiffs home and holding the plaintiffs at gunpoint, they searched the home for a fugitive – not finding a fugitive, they instead found marijuana and called the sheriff which then led to the arrest of one of the home’s occupants – the plaintiffs, husband and wife and their daughter, sued the bail bondsmen and alleged a variety of counts including negligence

White, et al v. Associates Bail Bonding, 1:18-93

Plaintiff: David L. Cooper, Nashville and J. Timothy Street, *Johnson & Street*, Franklin

Defense: M. Andrew Hoover, Pulaski
Verdict: \$30,000 for plaintiffs on negligence; Defense verdict on federal claims

Federal: **Columbia**
(Tried in Nashville)

Judge: William L. Campbell, Jr.
Date: 3-11-22

Harold Robertson, who operates Associates Bail Bonding, came to the home of William and Bernice White (their daughter Tiffany Jones lives with them) in Clifton, TN in Wayne County on 12-20-17. Robertson was joined by an employee, David Butler. They came in search of a fugitive, Keith Staggs, who had jumped his bond. Staggs had been at the White home before but he wasn’t present on 12-20-17. The bail bondsmen left.

A week later Robertson was back at 7:30 in the morning. He was joined by Butler and three bounty hunters. The bounty hunters were armed and wore insignia that indicated they were law enforcement. They were simply bounty hunters.

There would be fact disputes about what happened next. The Whites alleged that the bail bondsmen and

the bounty hunters burst into their home and held them for hours at gunpoint as they searched for Staggs. They didn’t find Staggs but they did find a quantity of marijuana.

The bail bondsmen called the local sheriff to report the marijuana. The police arrived and arrested William. He was held in jail for thirteen days before the charges were ultimately resolved. William, his wife and his daughter, would all describe being terrorized and traumatized by these events.

In this lawsuit the White family sued Associates Bail Bonding (and Robertson and Butler individually) and advanced eight counts to trial that were all related to the intrusion into their home. The counts were, unreasonable search, unlawful seizure, negligence (and gross negligence), trespass, assault, false imprisonment, outrage and conspiracy. The plaintiffs could take both compensatory and punitive damages. They had also sued other defendants including the sheriff but only the claims against Associates Bail Bonding survived to the jury.

Associates Bail Bonding raised fact disputes. It denied the bounty hunters had barged into the home nor had they ever brandished their weapons. They instead portrayed the encounter as a genteel visit among good friends, the plaintiffs inviting them inside and even serving them brownies and other refreshments. The defense also explained that they acted as good citizens in calling the police to report the marijuana – the plaintiffs countered that the police were called because the bounty hunters were angry they didn’t find Staggs.

This case was tried in Nashville although it was originally venued to Columbia. The trial lasted four days.

The jury had questions during deliberations and the court had answers. However both the queries and the replies were inexplicably sealed by the court. The jury’s verdict was mixed. The defendants prevailed on seven of the eight counts.

The plaintiffs only prevailed on the sixth count (negligence but not gross negligence) and each took \$10,000 in compensatory damages for a total of \$30,000. However the negligence count was not one that would trigger punitive damages and the jury then did not consider punitives. A consistent judgment has been entered.

Case Documents:

[Pretrial Order](#)
[Jury Verdict](#)

Auto Negligence - In a strange case of fact disputes and perhaps road rage, the plaintiff, a pedestrian, was struck by the defendant and sustained a broken ankle

Johnson v. Claybrooks, 6945

Plaintiff: Derek O. Fairchild, *Nahon Saharovich & Trotz*, Memphis

Defense: Andrew H. Owens, *Owens Law Firm*, Memphis

Verdict: \$178,463 for plaintiff less 40% comparative fault

Court: **Lauderdale**

Judge: Blake Neill

Date: 2-24-22

There was a strange incident on the evening of 12-13-15 in Halls, TN. Jason Claybrooks believed that Loranzo Johnson had broken out the windshield of his truck. Claybrooks then gave chase in his pick-up truck to identify the perpetrator. There is more back story to these events including that Claybrooks and Johnson have known each other since childhood and there was a love triangle of sorts with a woman, but ultimately those details,

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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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sordid and otherwise are not relevant to this case.

Claybrooks' chase ended on Cheshier Street in Halls in front of Johnson's home. Johnson got out of another vehicle and was walking

home. An instant later Johnson (a pedestrian) was struck by Claybrooks who was driving a 2006 Chevrolet Silverado.

The impact left Johnson with an ankle fracture. It was surgically

repaired. His medical bills were \$97,877.

Johnson had a different version of events than Claybrooks. He recalled driving past Claybrooks' home. Claybrooks came outside and began

yelling and then banging on the hood of the car in which Johnson was a passenger. Claybrooks then gave chase and drove recklessly. Johnson was struck by the out of control Claybrooks minutes later when he got out of his vehicle in front of his home.

In this lawsuit Johnson sought damages from Claybrooks regarding this odd road rage. Claybrooks countered that the incident occurred when Johnson intentionally walked in front of his vehicle. However it might have happened, the investigating police officer testified at trial and tended to support Johnson's version of events that painted Claybrooks as the tortfeasor.

A Ripley jury resolved this case and it was mixed on fault. That fault was assessed 60% to the defendant and the remainder to Johnson. Johnson then took a general award of \$178,463. The final judgment was for Johnson less comparative fault in the sum of \$107,077.

Employment Retaliation - A utility employee in Memphis alleged he was denied a promotion opportunity because he complained of race discrimination

Henderson v. Memphis Light, Gas & Water, 2:20-2800

Plaintiff: Linda Kendall Garner, Memphis

Defense: Thomas L. Henderson and Amanda M. Garland, *Ogletree Deakins*, Memphis

Verdict: Defense verdict on liability

Federal: **Memphis**

Judge: Sheryl H. Lipman

Date: 3-23-22

Ryan Henderson, who is black, worked as a drafter for Memphis Light, Gas & Water (MLGW) at relevant times in this case. In 2016 he

applied for a position as a "service representative." This was a promotion. Henderson was not hired and believed MLGW passed over him for less qualified white employees.

Thereafter Henderson applied for the position again. This time he alleged he was denied training and testing that would have qualified him for the promotion. Thus while he was passed over the first time because of his race, in the second instance the failure to promote was a function of retaliation for his protected activity of having complained of retaliation. There was proof Henderson boss was frustrated by Henderson's race discrimination complaint.

In this lawsuit Henderson presented both discrimination and retaliation counts. The discrimination claim was dismissed as time-barred, plaintiff not filing an EEOC complaint within 300 days. The retaliation claim survived and advanced to trial. MLGW denied retaliation or even that Henderson had sustained an adverse action.

This case was tried for three days. Henderson was required to prove all of the following, (1) he engaged in protected activity, (2) MLGW knew of the activity, (3) he suffered an adverse action, and (4) there was a causal connection between the protected activity and the adverse action. This was framed in a single jury instruction. The jury answered "no" for MLGW and Henderson took nothing. A defense judgment was entered.

Case Documents:

[Summary Judgment Order](#)

[Pretrial Order](#)

[Jury Verdict](#)

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