

**Truck Negligence - A teen driver was killed and his passenger (the driver's best friend) injured when the teen driver crossed the centerline and struck an oncoming lumber truck – while the plaintiffs (decedent and his friend) conceded some fault by the teen driver, in this so-called comparative fault case, they blamed the trucker for failing to keep a proper look-out and evade the collision**

*Crouch et al v. Cole Lumber*, 11-160

Plaintiff: William F. McGee, Jr.,

Smithland for Crouch estate

Len W. Ogden, Jr., Paducah for

Rogers

Defense: Edwin A. Jones and W.

Lucas McCall, *Boehl Stopher & Graves*,

Paducah

Verdict: Defense verdict on liability

Court: **Livingston**, J. Woodall,

6-21-13

School was just starting in Livingston County in August of 2010. Two teen best friends, Jody Rogers and Austin Crouch (both age 16 and sophomores at the local high school) had spent the night at Crouch's home on 8-26-10. The next morning Crouch drove the pair to school. He did not have a driver's license.

At the same time Billy Mitchell was operating a flatbed truck for Cole Lumber. He proceeded on Hwy 70 just a little east of Smithland. Crouch approached from the opposite direction. In a curve on Hwy 70, Crouch (driving a pick-up truck) crossed the centerline and sideswiped the truck's tractor. Tragically the pick-up then struck the protruding trailer nearly square on the driver's side.

The collision was catastrophic. Crouch was dead at the scene. Rogers was able to crawl from the wreck. He has since treated for chronic knee and shoulder pain. Rogers has also complained of emotional symptoms – he is plagued by bad dreams.

Rogers moved first in the litigation

and settled with Crouch's UIM carrier, Farm Bureau, for \$70,000. His attorney took a third as his fee. Rogers also settled with the estate of his friend.

The only remaining claims for trial represented those of Rogers (as a primary plaintiff and represented by attorney Ogden) and the estate of Crouch (as a cross-claimant represented by attorney McGee) against the trucker. While the plaintiffs conceded fault by Crouch in crossing the centerline, they postured that this was a case of comparative fault.

That is Mitchell too shared some comparative fault in failing to evade the collision. [Rogers, the passenger, had seen nothing as he was on his cellphone at the time of the crash.] If Rogers prevailed he sought medicals of \$24,240 and \$367,500 more for impairment. He now works at a local pizza joint. His pain and suffering was limited in the instructions to \$500,000.

The Crouch estate sought destruction of \$2,623,754 as valued by Gilbert Mathis, Economist, Murray. The jury could also award \$7,376,246 for Crouch's pain and suffering.

On the eve of trial Cole Lumber sought a change of venue. It cited pre-trial publicity in the local community and the popularity of the plaintiffs (particularly the grief associated with Crouch's death). Judge Woodall denied the motion – the matter would be tried in Smithland.

Cole Lumber's defense on the merits was simple. Crouch (an unlicensed driver) crossed the centerline and struck the lumber truck. A defense accident expert, Thomas Rottinghaus, Murray, concluded there was no opportunity for the trucker to avoid the collision.

As this case was tried, the jury asked several questions. Without explanation (or apparent reason), Judge Woodall sealed those

questions.

The case went to the jury on a Friday afternoon. The verdict exonerated the trucker on liability and that ended the deliberations. A week following the trial no judgment had been entered.

**Medical Negligence - A hematologist's purported error in treating a rare blood condition was linked to the plaintiff's untimely death – the defense replied that the plaintiff's condition was already grave and the result would have been the same regardless of the doctor's intervention**

*Marshall v. Liddle*, 10-1210

Plaintiff: Robert L. Elliott, *Elliott*

*Houlihan & Skidmore*, Lexington

Defense: Donald P. Moloney, II and

Andrew DeSimone, *Sturgill Turner*

*Barker & Moloney*, Lexington

Verdict: \$117,000 for plaintiff

Court: **Fayette**, J. Scorsone,

6-6-13

Caroline Marshall, then age 63, was suffering from fever and malaise when she was seen by her family doctor (Wendy Cropper) on 6-12-09. Cropper diagnosed Marshall as being anemic and sent her to the ER at St. Joseph Hospital. There Marshall was evaluated the next day by Dr. Susan Liddle, Hematology.

Liddle considered Marshall's condition and while concerned that she suffered from thrombotic thrombocytopenic purpura (TTP - a rare blood coagulation condition), Liddle didn't think Marshall had the condition. She ordered a transfusion of platelets.

Marshall's condition declined into the next day and she went into a comatose condition. Liddle saw her that day (6-14-09) and made a TTP diagnosis. She then ordered that Marshall be given blood plasma instead of platelets. As that blood plasma was being initiated a few hours later, Marshall went into a code. She could not be resuscitated. Marshall was survived by her