

Kentucky Trial Court Review

The Most Current and Complete Summary of Kentucky Jury Verdicts

January 2024

Published in Louisville, Kentucky Since 1997

28 K.T.C.R. 1

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.

Phlebotomy Negligence - The plaintiff was having his blood drawn (he had a history of fainting during blood draws) when he was left alone in a lab by his phlebotomist who went to get him a drink of water – while the plaintiff was alone he fainted in the phlebotomy chair (no one saw it) and he suffered a T8-9 compression fracture

Ball v. Labcorp, 3:22-184

Plaintiff: Brennan J. Soergel and James “Bo” Bolus, *Bolus Law Offices*, Louisville

Defense: David Domene and Gregory S. Smithkier, *Blackburn*

Domene & Burchett, Louisville

Verdict: \$88,227 for plaintiff

Federal: **Louisville**

Judge: Rebecca Grady Jennings

Date: 12-15-23

David Ball, then age 50, who had a history of vascular disease, was referred by his PCP for a blood draw. It was conducted on 2-25-21 at Labcorp (it had a blood draw room at the office of Ball’s PCP) by its phlebotomists, Keiyuana Venson and Shannon Gonzalez. Ball was sitting in a phlebotomy chair which featured a padded arm bar to secure the patient.

There was proof that Ball had a history of fainting when having his blood drawn and he told Venson this. The blood was drawn and Ball became light-headed. Venson went to



An image of the phlebotomy chair involved in the incident

get Ball a glass of water and left Ball unattended. Gonzalez was working with another patient in the same room – her back was to Ball.

A moment later (no one saw it happen) Ball fainted and slumped down in his chair. He did not fall out of the chair. In the slumping event Ball sustained a T8-9 compression fracture. Ball for his part didn’t remember what happened.

In this lawsuit Ball sued Labcorp (filed in Jefferson Circuit Court and removed on diversity to federal court by Labcorp), he alleged negligence by the phlebotomists in leaving him alone after the blood draw. He argued it violated the Labcorp’s own policies to leave a patient alone in this circumstance.

related to the compression fracture although he sought no treatment in the last two years before the case came to trial.

Labcorp denied it had violated the standard of care and noted that Ball was placed in a padded phlebotomy chair with the safety arm down to prevent a fall. It also noted that Ball didn’t actually fall out of the chair, but rather he “slumped” down in it.

How then to explain the injury? Labcorp’s expert, Dr. Henry Tutt, Orthopedics, Lexington, identified that Ball had a bone density disorder that made his susceptible to a fracture even in a low-energy event. Moreover Tutt thought that despite the fracture, Ball was now well-healed. Tutt additionally went to the

Ball relied on Dr. Michael Moskal, Orthopedics, Sellersburg, IN, who both confirmed the injury and the discussed the phlebotomy standard of care. Ball’s medical bills were \$11,227 and \$150,000 more for future care. His pain and suffering was limited in the instructions to \$1,000,000. Ball has continued to complain of low-back pain

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Fleming County

Medical Negligence - While the ancillary pending issues were complex and voluminous (spoliation, conspiracy and bad faith regarding hospital document), the underlying med mal that was tried to a jury was simple enough: Did the plaintiff's PCP and radiologist err in missing a breast cancer diagnosis and did a nine-month treatment affect the plaintiff's outcome? - \$7,568,452 p. 3

Barren County

Highway Construction Negligence - In a strangely organized case, the trial judge conducted a bench trial to determine the damages of four plaintiffs (one injured and three badly hurt in a road construction incident – ultimately at trial the transportation cabinet (it had an indemnity agreement with the road contractor) and elected not to participate at trial, the judge then awarding substantial damages against an ostensibly empty chair defendant after a three-hour trial – the road contractor (it wasn't allowed to participate at trial) has challenged that this bench verdict cannot be fairly assessed against it - \$22,583,728 (Bench) p. 5

Warren County

Premises Liability - The plaintiff slipped on a wet floor at McDonald's (it was being mopped) and suffered a comminuted knee fracture – McDonald's defended that there were several yellow safety cones in place and that the premises were reasonably safe - Defense p. 8

Union County

Farm Negligence - A farm laborer suffered a fungal infection (blastomycosis) after an exposure to dust while cleaning a grain bin – in this lawsuit he blamed his farm employer for failing to provide him a safe place to work – the farm replied that respirators were available (the plaintiff elected not to use one) and that in any event, it was unlikely the fungal infection was related to the farm event - Defense p. 9

Fayette County

Breach of Contract - A case about a \$23,670 driveway dragged on for 15 years (including a trip to the Court of Appeals) as the paving company sought to collect not just the original contract sum as well as attorney fees and pre-judgment that are approaching \$1,000,000 - Defense p. 10

Shelby County

Auto Negligence - The plaintiff was on I-64 when he crashed into a vehicle in front of him which had crashed moments before – the plaintiff blamed that first crash (which led to the second one) on inattentive driving by the defendant - Defense p. 10