

The Tennessee Jury Verdict Reporter

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Statewide Jury Verdict Coverage

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Medical Negligence - The plaintiff, age 71, died from a bleed complication after a hernia repair surgery – his estate alleged error by his surgeon not in the surgery itself but rather both the pre- and post-operative management of the bleed risk and complication – the surgeon explained that he properly managed the patient and bleeds are a complication of every surgery

King v. Harmon, 16-270

Plaintiff: W. Lewis Jenkins, Jr.,

Jenkins, *Dedmon Hayes Law Group*,

Dyersburg

Defense: Chris J. Tardio and J. Blake

Carter, *Gideon Essary Tardio & Carter*,

Nashville

Verdict: Defense verdict on liability

Court: **Madison**

Judge: Donald Allen

Date: 11-16-23

Charles King, age 71 and the long-time president of a small bank in Medina, presented in the summer of 2015 to Dr. Harvey Harmon for the evaluation of a hernia. Harmon recommended a laparoscopic surgical hernia repair. Before the surgery King was already on dual anti-platelet therapy (Plavix and aspirin) which generates a risk of a surgical bleed. Harmon concluded King was an appropriate candidate in spite of that risk.

The surgery was performed on 6-26-15 and it was uneventful. That afternoon after 5:00 p.m. a recovery nurse indicated to Harmon that King had a small bruise at the incision site.

Harmon believed this was not worrisome (King's vitals were normal) and King was discharged.

That evening when King returned home, his wife called to report King was in pain. Harmon considered that King had not yet taken his pain pill from the hospital and thus his reports of pain were reasonable. Harmon provided an instruction that King should take the pain pill and if the pain become worse to report to the ER.

Soon thereafter King arrested at home. It was related to a bleed complication. King was returned to the hospital but the damage was done. He died a week later on the Fourth of July after a transfer to Vanderbilt hospital. He was survived by (Sarah) his wife of nearly 50 years. Harmon for his part retired from his surgical practice in 2018 after a forty year career.

The King estate sued Harmon and alleged error by him in managing the case in several ways. Interestingly the alleged errors focused on the pre- and post-operative management of King and not the surgery itself.

The first error was in failing to disclose the "heightened" risk of bleeding while on the anti-platelet medications. This was essentially an informed consent claim. Harmon was also criticized for doing the surgery in the first place without securing cardiology pre-clearance.

The second purported error

Uninsured Motorist - The plaintiff treated for soft-tissue symptoms after a moderate rear-ender with an uninsured driver

Everett v. State Farm, 2-593-15

Plaintiff: Billy J. Stokes, *Rocky Hill Mediation Group*, Knoxville

Defense: Toby R. Carpenter, *Trammell Adkins & Ward*, Knoxville

Verdict: \$68,583 for plaintiff

Court: **Knox**

Judge: William T. Ailor

Date: 6-21-23

Laura Everett, in her 50s, was stopped at a red light in Knoxville on 11-22-14 on Hwy 25 near Tillery Road. She was in a Kia sedan. A moment later she was rear-ended by Heather Raider. It was a moderate impact (Everett's airbags deployed) and knocked Everett into the next car in traffic. Raider fled the scene but her car was found nearby.

Everett was shaken at the scene but not transport to the hospital by ER. Instead her husband took her to a local emergency room. She was treated and released for soft-tissue symptoms. Her pain has persisted and caused her to close her then-nascent business operating "Bella Event Center."

In this lawsuit Everett targeted her UM carrier, State Farm, because Raider was an uninsured driver. Her injuries were confirmed by a treating family practice doctor, Amy Rosine. Everett's case was interesting because she damages for the demise of Bella Event Center which she'd essentially just opened – the expectation (but for the injury) was that Everett (an experienced pawn shop operator) would turn a profit.

Raider identified an expert, Jeffrey Heinichen, Knoxville (JD/MBA) who quantified those damages based on expectations that Bella Event Center

would be a success. Everett's husband (Max) also presented a derivative consortium claim. State Farm defended the claimed of its insured and diminished her damages.

This case was tried in Knoxville for two days. The jury first found that Everett was injured in the crash. She then took a general award of \$68,583 – because it was a general verdict form, it is not clear what elements of damages were represented by the verdict. Her husband's consortium claim was rejected. The court entered a consistent final judgment and State Farm has satisfied it.

Case Documents:

[Complaint](#)

[Jury Verdict](#)

[Final Judgment](#)

Medical Negligence - The plaintiff suffered an injury to her common bile duct during a laparoscopic cholecystectomy – she blamed her surgeon for failing to obtain a "critical view of safety" and thereby injuring her – the surgeon replied that he'd complied with the standard of care and that the injury represented a surgical complication

White v. Kim, CT-001521-17

Plaintiff: Louis P. Chiozza, Jr., John W. Leach and Christopher W. Lewis, *Louis Chiozza & Associates*, Memphis

Defense: Kevin Baskette and Patrick S. Quinn, *Lewis Thomason*, Memphis

Verdict: Defense verdict on liability

Court: **Shelby**

Judge: Mary L. Wagner

Date: 9-8-23

Nicole White went to the ER on 12-10-15 at Delta Medical Center with gastric pain. A CT scan suggested she had an inflamed gallbladder. She was admitted to the hospital and the next day, a surgeon, Dr. Elijah Kim,

performed a laparoscopic cholecystectomy. The procedure was apparently uneventful and White was discharged the next day.

White began to feel poorly on 12-13-15 and two days later, she called Kim. He directed her to the ER and performed an exploratory laparotomy. That indicated a common bile duct injury. Kim transferred White to Methodist Hospital where another team of doctors performed a surgical repair. She remained in the hospital for a week.

White sued Kim and alleged he violated the standard of care in injuring her common bile duct – he had clipped it. Her expert, Dr. Jesse Davidson, Surgery, Roanoke, VA, explained that Kim failed to obtain a "critical view of safety" and because of this failure to identify White's structure, he clipped the bile duct.

Kim contested the allegation of negligence and argued he had achieved a critical view of safety. He described the injury as a surgical complication (Kim addressed it promptly) that was related in part to White's unusual anatomy. The defense experts were Drs. Stephen Behrman and Martin Fleming, both Memphis surgeons.

The jury had questions as it deliberated the case. Can you explain the difference between risk of procedure and negligence? It is not clear how Judge Wagner responded to this question.

The jury also asked:

Can we award damages if we don't believe any of the experts?

Judge Wagner answered "No" to this inquiry.

The jury ultimately returned a verdict (it was a four-day trial) and found that Kim had not deviated from the "general surgeon" standard of