

The Tennessee Jury Verdict Reporter

The Most Current and Complete Summary of Tennessee Jury Verdicts

April 2024

Statewide Jury Verdict Coverage

21 TJVR 4

Tennessee's Source for Jury Verdicts Since 2004

In This Issue

Davidson County

Auto Negligence/UM - \$123,586 p. 2

Insurance/Uber Coverage Declaratory

Action - Defense verdict p. 5

Federal Court - Memphis

Truck Negligence - \$4,500,000 p. 1

Insurance Coverage - \$3,647,742 p. 8

Dickson County

Medical Negligence - Defense verdict p. 3

Robertson County

Auto Negligence - \$160,000 p. 7

Hamilton County

Premises Liability - Defense verdict p. 9

Shelby County

Auto Negligence - Defense verdict p. 9

Truck Negligence - While traveling at 144 mph near the Memphis airport, the plaintiff was killed instantly when he crashed into a tractor-trailer that had performed a u-turn in front of him – despite the fact the decedent was traveling very fast, his estate alleged the trucker should have checked his mirrors before beginning the u-turn – a Memphis jury assessed fault 65% to the trucker and awarded the plaintiff (he was 25 and working at Federal Express) \$4.5 million for his loss of future earning capacity

Bishop v. AVR Express, 2:22-2171

Plaintiff: Marc Boutwell and Charles Edwards, *Law Offices of Marc Boutwell*, Lexington, MS and William F. Burns, *Watson Burns*, Germantown

Defense: Stephen W. Vescovo and Patrick S. Quinn, *Lewis Thomason*, Memphis

Verdict: \$4,500,000 for plaintiff less 35% comparative fault

Federal: **Memphis**

Judge: John T. Fowlkes, Jr.

Date: 3-6-24

Jared Bishop, age 25, had just finished a shift at Federal Express on the morning of 8-8-21. It was near 9:00 in the morning and he traveled on Shelby Drive. The road has three lanes in both directions as well as a center turn-lane. Shelby Drive is directly adjacent to the airport in Memphis.

Bishop was driving a bright blue 2015 Dodge Challenger. It had a modified Hellcat engine. Bishop's car was fast and he liked to drive it fast.

He was driving westbound on Shelby Drive. While deadmen tell no tales, the onboard computer on the Challenger would reveal what happened.

Ahead of Bishop on Shelby Drive was Abdihakim Omar who drove a tractor-trailer for AVR Express. Omar was slowing and preparing to make a u-turn. Omar began the u-turn and his tractor-trailer fully blocked the lanes of traffic. Bishop was approaching in the Challenger (as measured by the car's computer) at a remarkable 144 mph. The speed limit in the area was 45 mph.

The 144 mph speed was recorded 4 seconds before impact. Bishop apparently saw the truck blocking the road and hit the brakes. A second later the Challenger was traveling 137 mph. Yet another second passed and it slowed to 128 mph. Finally just a moment before impact, Bishop was traveling at 110 mph. The car then skidded 600 feet before striking the AVR Express truck trailer.

The impact was catastrophic and sheered off the top of the Challenger. Bishop was killed instantly. Even after this initial impact with the trailer, the Challenger skidded another 376 feet. Bishop, who lived in Horn Lake, MS just across the state line, was survived by his father.

The Bishop estate (representing the father) sued AVR Express in Shelby Circuit Court and alleged negligence by the trucker in making the u-turn.

IN THE CIRCUIT COURT FOR DICKSON COUNTY, TENNESSEE

ROBERT THOMAS HAGGERTY,
Plaintiff,
v.
DICKSON EAR, NOSE & THROAT, PLC,
d/b/a ENT SINUS & ALLERGY CLINIC,
and JAMES M. ROTH, M.D.,
Defendants.

Case No. 22CC-2017-CV-141
Jury Demanded
Senior Judge Don R. Ash

FILED March 4 20 24
2:26 PM
Pamela A. Lewis
Circuit Court Clerk/mob

VERDICT FORM

We, the jury, unanimously answer the questions submitted by the Court as follows:

- 1. Did the Defendants fail to obtain the informed consent of Robert Haggerty to the surgery that was performed on January 6, 2017?
Yes ___ No [checked]
2. Is the Defendant James Matthew Roth, M.D., at fault for failing to comply with recognized standards of acceptable professional practice (standard of care) in performing the surgery as he did on Robert Haggerty on January 6, 2017?
Yes ___ No [checked]

(If you answered No to both of these questions, please sign the verdict form.
If you answered Yes or either or both of these questions, please proceed to question #3.)

- 3. What is the total amount of damages, if any, the Plaintiff has proven:
a. Pain and suffering, past \$ ___
b. Pain and suffering, future \$ ___
c. Loss of enjoyment of life, past \$ ___
d. Loss of enjoyment of life, future \$ ___
e. Permanent injury \$ ___

The Haggerty v. Roth verdict form

with a then Dickson ENT, Dr. James Roth. Roth recommended an outpatient in-office procedure with local anesthesia to remove nasal polyps and otherwise correct Haggerty's sinus conditions.

That surgery was then performed on 1-6-17 in Roth's office at Dickson Ear Nose and Throat. It was uneventful. Three days later Haggerty's girlfriend found him at home with an altered mental state, difficult speaking and with left-side weakness. Haggerty was immediately taken to Centennial Hospital in

Nashville. Over the course of the next day testing indicated he'd developed acute bacterial meningitis and a subdural empyema.

Haggerty underwent a surgery to relieve pressure on his brain after the subdural expanded. He was in the hospital for two weeks recovering before being discharged to a rehabilitation hospital. He remained there for another month. Haggerty continues to complain of painful headaches behind his eye, mental fogginess, left side weakness and difficulty using his left hand.

Haggerty alleged error by Roth in this lawsuit in two ways. The first was an informed consent claim. Haggerty argued that instead of an outpatient procedure, Roth should have advised Haggerty that there was a safer image-guided procedure under general anesthesia. Roth was further blamed for his technical performance of the surgery in perforating the skull and introducing the bacteria.

The plaintiff's liability expert was Dr. Douglas Holmes, ENT, Mobile, AL. He also relied on two causation experts, Dr. Beau Ances, Neurology (the injuries) and Dr. Jeffrey Hatcher, Infectious Disease (cause of infection). If Haggerty prevailed he could non-economic damages in five categories, past and future pain and suffering, past and future loss of enjoyment and life as well as permanent injury.

There was an interesting issue that arose in light of the recent Tennessee Supreme Court decision, Crotty v. Flora about Haggerty's past medical expenses of some \$380,000. While the plaintiff's experts indicated that the bills were necessary and correlated to his injuries, they did not testify they were reasonable. Roth moved to exclude them and the motion was granted after voir dire of Dr. Ances and Hatcher at trial. Judge Ash permitted Haggerty to consider if he wanted to non-suit the case but Haggerty elected to proceed seeking his non-economic damages only.

Roth defended on several fronts. First he described his surgical choice as properly performed in the office and it was not necessary to use image guidance, general anesthesia or in an operating room. Roth also cross-examined Expert Holmes that he sometimes performed these surgeries in the same way that Roth had done here. The defense standard of care