

control and struck the oncoming Barbara Smith in a head-on collision.

Smith, age 48, was badly hurt and suffered a broken foot, ribs and tailbone. Smith also has a shoulder impingement syndrome and a closed head injury among other insults. From the scene, she was flown by helicopter to U of L Hospital. Her incurred medical bills were \$72,273 and she sought \$540,000 for impairment from her knitting job at the Fruit of the Loom factory. [Smith now ambulates with a walker.] Her pain and suffering was limited to \$1,000,000.

In this lawsuit, Smith moved first against Hancock Tire. In the months before the crash, it had inspected the M&W Milling truck (and this very tire rim) – it didn't find any problem. In fact the wheel had fallen off because of excessive corrosion. Hancock Tire settled before trial.

Smith also sought damages from Turner and his employer. She cited Turner's driving and the failure of M&W Milling to inspect its grain truck – that failure it argued, represented a violation of motor carrier violations.

Turner defended and cited that the wheel failure was a sudden emergency – that defense was incorporated in the jury instructions. M&W Millings further defended that it reasonably relied on Hancock Tire to maintain its trucks.

The defense also implicated the plaintiff's care in failing to wear a seat belt. It cited that following the crash, she was found in the back seat of her Jeep Cherokee. The seat belt expert was Kenneth Agent, Accident Reconstruction, Lexington. [Smith countered that regardless of where she wound up following this serious roll-over crash from which she had to be extricated, at all times she was belted.] Agent also thought Smith could have avoided the collision but for her inattention. Damages were diminished by a neurosurgery expert, Dr. Robert Sexton, Louisville, opining that Smith's complaints had a somatic component and she could return to work.

As this case was deliberated in Columbia, the jury had two interesting questions: (1) Has her insurance company or the defendant's insurer paid any medical expenses?, and (2) Is she receiving Social Security disability. If the court answered, the answer was not part of the court record.

The jury's verdict was for Turner regarding his driving, the jury also

4691 - Truck Maintenance Negligence - The plaintiff was seriously injured when a grain truck lost control and crashed into her after the front wheel broke off – the plaintiff blamed the crash on the failure of the grain company to inspect its truck – the grain company implicated a since settled tire company that had inspected the wheel months before and reported no defect

Smith v. Turner et al, 08-0083

Plaintiff: Thomas E. Carroll, *Carroll & Turner*, Monticello

Defense: John W. Walters and Melissa M. Thompson, *Golden & Walters*, Lexington

Verdict: Defense verdict on liability

Court: **Adair**, Special Judge McGinnis, 4-30-11

There was a serious car versus grain truck crash on Ky. 80 on 2-5-08. As Coy Turner proceeded in a loaded grain truck for M&W Milling, the left front wheel on the truck simply fell off. Turner lost

exonerated his employer regarding its duty to operate and maintain the truck. A defense judgment was entered.

Smith has moved for a new trial and cited that, (1) the violation of motor carrier regulations was undisputed, the defendant admittedly failing to do inspections, and (2) there was no sudden emergency as the defendant (but for the failure to inspect) should have anticipated the tire failure. The motion was pending when the KTCR reviewed the record.