

# The Tennessee Jury Verdict Reporter

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December 2018

Statewide Jury Verdict Coverage

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*Jackson, Mississippi*

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**Auto Negligence - The plaintiff, who was not injured at the scene, later complained of neck pain – despite a long history of similar pre-existing conditions, the jury awarded the plaintiff non-economic damages that were three times his medical bills**

*Glessner v. Gatti*, 16-1116

Plaintiff: Jonathan L. Griffith and

Chris Coyne, *GriffithLaw*, Franklin

Defense: Mark Raines, Nashville and

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Timothy A. Glut, Nashville

Verdict: \$102,276 for plaintiff

Court: **Sumner**

Judge: Joe H. Thompson

Date: 11-8-18

Mark Glessner, then age 63, was driving a BMW sedan in Hendersonville on 10-13-15. Suddenly the defendant, Marissa Gatti, turned left in front of him and there was a collision. It was a moderate crash. Gatti conceded her fault.

Glessner refused medical care at the scene and explained he was "fine." He began to report neck pain

soon thereafter and presented at a walk-in clinic three days later.

Glessner then saw a chiropractor, Dr. Derek Myers, and treated with him several times over the next year.

Glessner's neck pain persisted and he later saw Dr. Clarke Holmes, Orthopedics, Nashville, who ordered epidural injections and referred Glessner for a course of physical therapy. Glessner was also prescribed Celebrex to control his pain. There was proof that Glessner was not a surgical candidate.

Glessner was an eggshell plaintiff of sorts. He complained of similar neck

pain after a serious 2005 car crash. Glessner later suffered a work-related injury in 2009, the case settling in 2013. He had treated for neck pain as recently as 18 months before this crash and was already taking Celebrex.

Against this backdrop Glessner sued Gatti and sought damages. That included his medical bills of \$27,276 as well as several categories for non-economic damages.

Gatti's defense minimized the claimed injury and noted there was none claimed at the scene. She also focused on (1) Glessner's significant pre-existing history, and (2) the fact Glessner was already taking Celebrex for pain at the time of this collision.

This case was tried on damages for two days. Glessner took his medicals of \$27,276, \$9,300 of that sum representing chiropractic care. The jury then added \$25,000 each for past suffering, loss of enjoyment of life and permanent injury. The jury rejected an award for future suffering or future loss of enjoyment of life. The verdict totaled \$102,276, the non-economic damages being nearly three times the medical bills. A consistent judgment.

#### Case Documents:

[The Jury Verdict](#)

### **Workplace Negligence/Toxic Tort - Hundreds of worker at the site of an environmental cleanup after a coal ash spill alleged the contractor was negligent in operating the cleanup and exposed them to toxic chemicals – the first phase, concerning liability and general causation was tried for two weeks, a Knoxville jury finding for the plaintiffs**

*Adkisson et al v. Jacobs Engineering Group*, 3:13-505

Plaintiff: Gary A. Davis, *Davis & Whitlock*, Asheville, NC, Jeff Friedman, *Friedman Dazzio Zulanas & Bowling*, Birmingham, AL, Keith D. Stewart and John B. Dupree, *Stewart Dupree*, Knoxville and J. Tyler Roper, Knoxville

Defense: James F. Sanders, J. Isaac Sanders and Marie T. Scott, *Neal & Harwell*, Nashville

Verdict: For plaintiffs on negligence and causation

Federal: **Knoxville**

Judge: Thomas A. Varlan

Date: 11-7-18

Early in the morning on 12-22-08, a retention pond failed at a huge coal ash retention pond facility operated by the TVA at its Kingston, TN coal-fired plant. The plant burns almost 14,000 tons of coal per day to create power. This leaves behind enormous amounts of toxic coal fly ash sludge. The sludge contains all sorts of hazardous chemicals and metals including chromium, arsenic, lead, nickel and others. It is nasty stuff.

The failure of the pond led to a massive spill of more than five million cubic yards of toxic sludge. The sludge smothered some 300 acres of land in the Swan Pond community near the plant.

A spill of this magnitude would

require an equally large cleanup operation. The EPA contracted with Jacobs Engineering Group in early 2009 to begin the cleanup process. The cleanup would last five years (it cost one billion dollars) and involve hundreds of workers. As a part of the cleanup, Jacobs Engineering was paid \$64,000,000.

The workers at the cleanup of the spill for Jacobs Engineering performed a variety of functions. They operated heavy equipment including bulldozers while others drove dump trucks. The workers directed traffic and cleaned coal ash from vehicles that left the site. Others got even closer to the coal ash as they shoveled and raked it up. Some of the workers simply directed traffic and were exposed to the mess in this way.

The workers for the most part did not have any concerns that the coal ash was dangerous. There was evidence this was not true. The coal ash was reduced to fine particulates and the workers were ingesting the toxic chemicals as mentioned above.

It wasn't long until the workers began to get sick. They suffered a variety of illnesses including hypertension, coronary artery disease, lung cancer, leukemia, skin cancer, asthma and others. More than 30 workers have since died from exposure-related illnesses and more than 250 have been sickened.

A class of the plaintiffs (70 in all) filed a lawsuit against Jacobs Engineering and advanced two counts to trial. The first was that Jacobs Engineering failed to adhere to the terms of the safety plan for the clean up at the Kingston site. The second count alleged negligence by Jacobs Engineering.

In fleshing out what that meant, the plaintiffs developed proof Jacobs