

FOR THE RECORD

Practice Areas:

- ◇ Medical Malpractice
- ◇ Birth Injuries
- ◇ Legal Malpractice
- ◇ Auto Accidents
- ◇ Trucking Accidents
- ◇ Nursing Home Abuse
- ◇ Wrongful Death
- ◇ Premises Liability
- ◇ Workers' Compensation
- ◇ Dangerous Drugs and Devices

\$3.7 MILLION JURY VERDICT

On July 1, 2009, our client, Donriel Borne, was driving an 18-wheeler when traffic came to a stop on I-55 in Memphis, TN, near Crump Boulevard. Donriel stopped his truck but the 18-wheeler behind him was following too closely and rear-ended him. At the time of the wreck, Donriel was 30 years old.

Donriel sought medical attention for back pain following the wreck but continued to work to support his family. He and his family doctor believed that the pain would eventually go away. It never did.

Ultimately, an MRI was performed that revealed a serious injury to his lower back and spine, which required him to stop working. His injuries are permanent and leave him in constant daily pain.

The truck that hit Donriel was owned and operated by Celadon Transportation Services, Inc., a trucking company based in Indiana. Instead of taking responsibility for the wreck and Donriel's injuries, Celadon denied causing the wreck and denied that Donriel was hurt.

At trial, we offered testimony from Donriel's own doctors and physical therapists, who testified about the severity and permanency of his injuries. We also provided testimony from an expert in vocational economics who testified that due to his injuries, Donriel would not be able to obtain gainful employment.

At trial, Celadon accused Donriel of ex-

aggerating and faking his injuries. Celadon relied on hired-gun experts to say that Donriel was not really hurt, and if he was, it was not due to the wreck. Celadon's experts had long histories of testifying for in-



surance companies and corporations defending lawsuits.

Through vigorous cross-examination, we were able to expose these experts for what they really are: mouthpieces for the insurance industry who are willing to say anything in order to prevent an injured person from receiving fair compensation.

Celadon's attempt to smear Donriel's character was offensive, and it backfired at trial. The jury spoke loud and clear in support of Donriel by returning a verdict for \$3,705,000. The verdict allowed for past and future loss of income, as well as for physical pain, mental suffering, permanent injury, and the loss of enjoyment of life.

We attempted to resolve the case without going to trial. However, Celadon refused to offer a reasonable amount. The last official offer before trial was \$25,000.

Thomas Greer tried the case before the Shelby County, Tennessee jury in Circuit Court. **Sadler Bailey** assisted with several key evidentiary depositions which were used at trial.

"The attorneys at Bailey & Greer exhibited true commitment to the client and the case as a whole. They were not just trying to put money in my pockets. Everyone really cares.

I am very pleased with Bailey & Greer, and I would very much recommend them to handle medical malpractice cases in Memphis, Tennessee. I would tell anyone that of all the lawyers I've dealt with, Bailey & Greer genuinely cared the most."

R.F. - Memphis, TN





"If the patient has a high risk of falling, the staff should utilize protocols to guard against the possibility of falls."

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Q. My aunt fell in a nursing home. Is this medical malpractice or just ordinary negligence?



By R. Sadler Bailey

The short answer is, "it depends." Just like any other landowner, nursing homes can be liable under ordinary negligence laws, known as premises liability, for slip and falls. For instance, if someone falls because a janitor mops the floor without putting up warning signs or a maintenance worker fails to block off a construction area, this will probably not constitute medical malpractice. It will instead be ordinary negligence.

However, when the fall occurred as a result of a failure to provide healthcare services, nursing homes will be liable under Tennessee's Health Care Liability Act. Lawsuits brought under this act require extra procedural steps, including pre-suit notice and expert witnesses. Only experienced medical malpractice attorneys should be hired under these circumstances.

When a resident falls in a nursing home, there are many factors that need to be taken into consideration. For instance, what protocols did the facility have in place to guard against falls? Did the facility properly screen the patient for fall risks? Did the facility have enough staff?

Common Nursing Home Failures

Nursing home failures can result in serious injury or even death. Failures can include:

- Failure to properly assess a patient's risk of falling;
- Bed rail malfunction;
- Failure to supervise at-risk patients walking in the facility;
- Improper training of staff;

- Medication errors or administrations that are incorrect or too soon or far in time as to cause patients to fall;
- Wet or otherwise hazardous floors;
- Improper positioning of the resident on a table, chair, or floor;
- Damaged or defective walking aids such as walkers, canes, or other devices; and
- Improper transfer methods by staff.



Steps to Prevent Nursing Home Falls

If the patient has a high risk of falling, the staff should utilize protocols to guard against the possibility of falls. Facilities should implement certain programs or protocols for high risk patients, including:

- Bathroom checks – high-risk patients should be checked more frequently;
- Bed positioning – high-risk patients should be kept in lower beds;
- Bed rails – bed rails should be used to make it more difficult if not impossible to get out of bed without assistance;
- Bed alarms – these are alarms that will alert the staff should someone attempt to get out of bed or remove a bed rail; and
- Increasing staffing needs – having an adequate number of staff members is required when there are more patients who need increased supervision and help.

TENNESSEE'S DOG BITE LAW



By Thomas Greer

Nationally, there are an estimated 4.7 million dog bites that occur *each year*. Of these bites, almost 800,000 require medical

attention and treatment. Sadly, 82% of all dog bites treated in emergency rooms are to children under the age of 15.

Historically, the vast number of states enacted a "first-bite" rule. Essentially, this means that a dog was permitted "one free bite" on a person without imposing liability on the owner. Tennessee was one such state.

But in 2006, the vicious attack on a 60-year-old librarian became the impetus for legislative change. Named after the victim, the Diana Acklen Act provides for civil liability for injury caused by dogs and has two main components.

Tennessee's Strict Liability Law for Dog Bites

The law states that "[t]he owner of a dog has a duty to keep that dog under reasonable control at all times, and to keep that dog from running at large. A person who breaches that duty is subject to civil liability for any damages suffered by a person who is injured by the dog while in a public place or lawfully in or on the private property of another."

Essentially, this section creates civil liability for the owner of a dog who attacks a victim if the animal was not under "reasonable control" or was "running at

large." If the above conditions are met, the owner is responsible regardless of whether the dog has shown any dangerous propensities or whether the dog's owner knew or should have known of the dog's dangerous propensities.

Tennessee's Dog Bite Liability Exceptions

While the law appears to be straightforward, there are exceptions to the rule. Some of these exceptions from civil liability include injuries sustained:

- By military or police dogs while in the scope of official duties;
- By trespassers on private property;
- While the dog was protecting the owner or another innocent party;
- When the dog is securely confined in a crate or other enclosure; and
- Where the victim has otherwise provoked the dog.

Owners with Knowledge of a Dangerous Animal

The most contested exception has been coined the "residential exception." This provision says that if the dog is properly under reasonable control and not running at large, but rather confined to a residence, farm, or noncommercial property when the victim is attacked, the owner is *not* strictly liable for the damages caused by the dog. The victim will have to prove that the dog owner had knowledge of the dog's dangerous propensities to cause harm to the victim.



Employee Spotlight



Isaac U. Kimes attended the Cecil C. Humphreys School of

Law at The University of Memphis, where he was on the editorial board of the *University of Memphis Law Review*. Isaac graduated in the top one-third of his class in 2012.

During law school, he served as the law clerk for the Honorable Kay S. Robilio, Shelby County Circuit Court, Division 5.

After graduating in 2012, Isaac joined a national plaintiffs' law firm that focused on nursing home litigation. Isaac joined Bailey & Greer PLLC in June 2013.

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*The greatest compliment we
can receive is the referral of a
friend or family member*

FIRM INFORMATION

At Bailey & Greer, we take only a limited number of serious injury, wrongful death, and professional malpractice cases. While some law firms work to settle, we work to get the best possible result for you. We have the experience, expertise and financial resources to carry each and every case to trial. We have been involved in numerous multi-million dollar verdicts and settlements, including birth injury, medical malpractice, auto accident, product liability, and premises liability cases.

When you choose us as your attorneys, you will always be able to speak to a lawyer and you will always be treated as a person, not just a case. In addition to our attorneys, we are also proud of our courteous, knowledgeable office team, which includes a full-time nurse.

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