

The Alabama Jury Verdict Reporter

The Most Current and Complete Summary of Alabama Jury Verdicts

January, 2010

Statewide Jury Verdict Coverage - Published Monthly

10 A.J.V.R. 1

Unbiased and Independently Researched Jury Verdict Results

In This Issue

Jefferson County

Auto Negligence - Defense verdict	p. 2
Premises Liability - Defense verdict	p. 6
Auto Negligence - Defense verdict	p. 7
Conversion - Defense verdict	p. 9
Auto Negligence - \$35,000	p. 10
Auto Negligence - \$8,000	p. 12
Auto Negligence - Defense verdict	p. 15

Mobile County

Medical Negligence - \$20,000,000	p. 1
Auto Negligence - Defense verdict	p. 5
Auto Negligence - Defense verdict	p. 8
Fraud - \$834,973	p. 9

Federal Court - Anniston

Employment Retaliation - \$50,000	p. 2
8 th Amendment - Defense verdict	p. 13

Montgomery County

Termite Inspection Neg. - \$15,000	p. 4
------------------------------------	------

Federal Court - Mobile

Defamation - \$400,000	p. 4
------------------------	------

Winston County

Assault - Defense verdict	p. 5
---------------------------	------

Baldwin County

Auto Negligence - \$113,000	p. 6
Breach of Contract - \$30,000	p. 10

Cleburne County

Utility Negligence - Defense verdict	p. 7
--------------------------------------	------

Etowah County

Conversion - \$8,100	p. 7
Underinsured Mot. - Defense verdict	p. 14

Federal Court - Montgomery

Excessive Force - Defense verdict	p. 8
-----------------------------------	------

Barbour County

Auto Negligence - Defense verdict	p. 9
-----------------------------------	------

Madison County

Auto Negligence - Defense verdict	p. 11
Uninsured Motorist - \$12,500	p. 12

Calhoun County

Medical Negligence - Defense verdict	p. 11
--------------------------------------	-------

Houston County

Auto Negligence - \$30,000	p. 12
----------------------------	-------

Walker County

Auto Negligence - Defense verdict	p. 13
-----------------------------------	-------

Cherokee County

Auto Negligence - Defense verdict	p. 14
-----------------------------------	-------

Civil Jury Verdicts

Complete and timely coverage of civil jury verdicts in Alabama including circuit, presiding judge, parties, case number, attorneys and results.

* * *The Book is Back with its Eighth Edition * * *

The AJVR 2009 Year in Review

This important volume, at nearly 500 pages, has just been published and provides the Alabama litigator a comprehensive study of jury trials in 2009. It includes detailed analysis of every kind of case, easily sorted and indexed for quick reference. The eighth edition in the series, it provides the reader a complete **eight-year** look at Alabama jury verdicts.

*Your opponents read it. Insurers read it.
Can you afford to try or settle cases without it?*

Order the 2009 AJVR Year in Review
Just \$200.00, shipping included

Call us toll-free at 1-866-228-2447 to pay by MC/Visa/Amex

Medical Negligence - A overweight patient with abdominal problems died after aspirating bile during surgery; her estate blamed the anesthesiology team for failing to perform a rapid sequence induction

*Estate of Hall v. Boudreaux, et al.,
07-901577*

Plaintiff: Michael A. Worel, David S.
Cain, Jr., and David G. Wirtes, Jr.,

Cunningham Bounds, LLC., Mobile
Defense: Wesley Pipes and Ginger B.

Bedsole, *Wesley Pipes LLC.*, Mobile
Verdict: \$20,000,000 for plaintiffs

Circuit: **Mobile**, 12-9-09

Judge: Robert H. Smith

On 1-11-06, Paulett Hall, age 32, was admitted to Springhill Memorial Hospital in Mobile. Over the next five days, she suffered from abdominal extension, several abdominal pain, and nausea and vomiting.

Because of these problems, Hall was scheduled for exploratory

gastrointestinal surgery on 1-16-06. Before surgery, she was scheduled to be given a general anesthetic. Dr. Randall Boudreaux, practicing with Coastal Anesthesia, P.C., was the anesthesiologist. He was assisted by Nurse Don Ortego.

Hall had several health problems, including a weight problem. For this reason, she was at high risk for pulmonary aspiration. Nevertheless, Boudreaux and Ortego used a routine induction procedure for the anesthetic. Hall inhaled her own bile into her lungs and choked to death.

Hall's estate filed suit against Boudreaux, Ortego, and Coastal Anesthesia and criticized the methods they used to induce anesthesia in Hall. Specifically, the estate believed the defendants had failed to properly empty Hall's stomach and place a nasogastric tube before induction and had failed to take proper precautions to prevent

aspiration.

The defendants, the estate charged, should have performed a rapid sequence induction, which would have been safer for Hall and appropriate given her high-risk factors. The estate's identified experts included Dr. Ronald Wender, Anesthesiology, West Hollywood, CA.

The defendants denied having committed any breach of the standard of care. Their identified experts included Dr. Dennis Doblal, Anesthesiology, Birmingham, and Dr. Maher Sahawneh, Pulmonology, Mobile.

The court entered a partial judgment as a matter of law in favor of defendants on the estate's claims that defendants had failed to empty Hall's stomach and introduce a nasogastric tube before induction. The estate's remaining claims went to a Mobile jury.

The jury heard the evidence for eight days and deliberated for an hour and twenty minutes before returning a verdict of \$20,000,000 against defendants. The court entered a consistent judgment.

Auto Negligence - A teenager who climbed on the hood of a friend's car while the car was moving fell off and broke his leg

Agee v. Williams, 06-672

Plaintiff: A. Patrick Ray, III, *Goldberg & Associates, P.C.*, Birmingham

Defense: Thomas S. Hiley and Jarrod B. Bazemore, *Spain & Gillon, LLC.*, Birmingham

Verdict: Defense verdict

Circuit: **Jefferson**, 1-26-09

Judge: Dan C. King, III

On the afternoon of 06-05-04, Michael Agee, a 17-year-old Georgia resident, was staying with his grandmother and visiting his 17-year-old friend, Tamara Williams, in Midfield. Tamara had been entrusted with a silver 2001 Toyota Echo owned by Earnest Williams.

Agee was in a playful mood. To express his naturally high spirits, he climbed on the hood of the Toyota while Tamara was driving. Alarmed, Tamara hit the brakes, and Agee started to fall off.

In a futile attempt to prevent Agee from falling, Tamara hit the gas again.

Agee was unable to catch his balance, though. He fell off the car and broke his leg.

The police and fire department arrived on the scene shortly thereafter. The fire department treated Agee and took him via ambulance to UAB Hospital.

Afterwards, Agee decided he wanted to file suit against Tamara and Earnest. He claimed Tamara had acted negligently or wantonly in causing him to fall from the hood of the car, and Earnest had been negligent in entrusting his car to Tamara. He also thought that the Williamses had breached a contract with him.

The Williamses had a different view of the accident. From their perspective, Agee had climbed on the hood of the Toyota in spite of the fact that he knew it was dangerous to sit on the hood of a car while it was in motion. They claimed that Agee had contributed to the accident and assumed the risk.

After a two-day trial, a Bessemer jury returned a defense verdict. The record does not show whether the court entered a consistent judgment.

Employment Retaliation - A food services worker at a hospital asked for a promotion and complaining when she didn't get it, she alleged her employer began a campaign of retaliation

Howell v. Morrison Management, 4:07-186

Plaintiff: Alicia K. Haynes and Kenneth D. Haynes, *Haynes & Haynes*, Birmingham

Defense: Fern H. Singer and Natalie R. Bolling, *Baker Donelson Bearman Caldwell & Berkowitz*, Birmingham

Verdict: \$50,000 for plaintiff

Federal: **Anniston**, 12-17-09

Judge: Robert B. Propst

Annie Howell worked for many years as a dietary manager at the Gadsden Medical Center. The hospital later outsourced its food services to Morrison Management Specialists. Howell, who has a degree from Auburn in dietetic management, continued in a similar role with Morrison Management.

In 2006 the company indicated it would create an Assistant Director position. Howell expressed an interest

in the job. She didn't get it, her boss never providing an explanation – Howell was simply told when she asked about it, "I don't know." Morrison Management did fill the job, hiring a younger white woman. This candidate was also less experienced, Howell having trained her. [Howell is black and at the time of these events, she was 53.]

Howell recalled that she complained about the non-selection (because of her race and age) and thereafter, a pattern of retaliation began. While Howell continues to be employed by the company, she has been subjected to numerous write-ups and performance improvement plans. In this lawsuit, Howell alleged race and age discrimination, as well as retaliation.

Morrison Management defended the case and denied there was any discrimination or retaliation. Particularly, it cited that Howell had already received performance-related write-ups even before she complained. Then to that process, the company explained, the performance improvement plans weren't to punish Howell, but instead a legitimate effort to in fact improve her lagging performance. [Howell remains employed by Morrison Management.]

Because the court elected not to make the jury verdict a public document, it is not exactly clear upon which theory Howell prevailed. The judgment does however indicate that she did prevail and took an award of \$50,000. Howell has since sought injunctive relief and an award of attorney fees.

The Alabama Jury Verdict Reporter 2009 Year in Review

The 2009 Year in Review is back with its **eighth** edition. At nearly 500 pages, it represents the cumulative and comprehensive study of Alabama jury trials -- only this volume is better because it summarizes a remarkable *eight* years of data. It looks at verdict results in an encyclopedic fashion, including over twenty reports, chronicling all sorts of patterns, trends and categories, all with an eye towards settling civil tort claims.

What's Included?

Combined Verdict Summary

Detailed won-loss percentages for every variety of case with average verdict results by category. How often did plaintiffs win car wreck cases? Medical cases? Slip and Falls? It's in the Book.

Auto Negligence Report

Won-loss percentages and average verdicts are presented not only statewide, but also by region. What were the biggest verdicts?

Medical Negligence Report

The AJVR summarized all the medical trials in 2009, with complete eight-year totals. How often did plaintiffs win? How often did they win the death-medical cases versus the non-death? Who were the attorneys that tried the cases?

The Attorney List

A summary of every attorney who tried a reported case from 2002 to 2009, sorted and included a brief description of the case type, county, party represented and result. An exclusive report summarizes the lawyers and law firms that tried the most cases.

The Million Dollar Verdicts

Who made the list in 2009? Also included are eight-year totals.

Detailed Reports on the following subjects are also included:

Slip and Fall-Premises Liability Trials, Malicious Prosecution
Assault, Fraud, Civil Rights, Employment Retaliation, Outrage-Wantonness and the
Death Cases

The Case Index also includes the full text of the nearly 300 verdict results from 2009

The Essential Encyclopedia of Alabama Litigation

How to Order

The 2009 Year in Review volume is on sale for just \$200.00 (shipping included)

To order by MasterCard/Visa/Amex - Call us toll-free at 1-866-228-2447

Return with your check to:

Alabama Jury Verdict Reporter
9462 Brownsboro Road, No. 133
Louisville, KY 40241

_____ Name

_____ Address

_____ *Print version*

_____ *PDF version*

_____ *City, State, Zip*

E-mail required for PDF _____

Termite Inspection Negligence

- A termite inspection company did not inform house buyers of the presence of termites behind the house's dining room wall, even though five other inspectors noticed the presence of termite damage before and afterwards

Bell v. Knox Pest Control, et al., 07-900838

Plaintiff: Bert J. Miano, *Miano Law, P.C.*, Birmingham

Defense: Paul M. James, Jr., *Rushton Stakely Johnston & Garrett, P.A.*, Montgomery, for Knox Pest Control and Hedge; Jeffrey W. Smith, *Ryals Plummer Donaldson Agricola & Smith, P.C.*, Montgomery, for Moon

Verdict: \$15,000 for plaintiffs against Knox and Hedge

Circuit: **Montgomery**, 5-22-09

Judge: Truman M. Hobbs

On 12-10-05, Eric and Jennifer Bell bought the house located at 229 Bowling Green in Montgomery. The seller was Catherine Moon.

Before the Bells bought the house, they hired a home inspector, Dwight Leary of Home Check Consultants, to check over the house and see if it had any problems. Leary warned the Bells of moisture problems at the front of the house, but he did not advise them of moisture problems in the rear. The Bells later claimed Leary told them French drains would take care of the drainage in the rear. Leary's contract with them stated that he did not inspect any underground pipes.

The Bells also had a termite inspection performed by Jeff Hedge, an employee of the Georgia-based company Knox Pest Control. Hedge did not find any evidence of termite damage to the house.

Some time after they purchased the house, the Bells became dissatisfied with its condition. They believed grading problems in the back of the house had caused severe moisture problems there. In turn the moisture problems had led to mold and termites. As they belatedly learned, five other inspectors, both before the purchase of the house and after, had found evidence of a termite infestation along the rear dining room wall.

Believing their house's value was affected by its mold, termite, and

moisture problems, the Bells filed suit against the parties they believed were responsible for not having informed them of the problems. On the list were Hedge and Knox Pest Control, Moon, and Leary and Home Check Consultants. The Bells' theories generally centered on fraud, but they also claimed breach of contract and warranty, negligence, wantonness, and negligent, reckless and intentional misrepresentation.

The defendants responded by denying wrongdoing and minimizing the claimed damages. Leary and Home Check argued the Bells should not have relied on any statement they might have made regarding the adequacy of the house's draining system because their contract stated no inspection of underground pipes was made. The court agreed and granted summary judgment to these defendants on this issue.

The court also agreed with Hedge and Knox Pest Control that these defendants had no duty to disclose to the Bells that the conditions might lead to a termite infestation. It also agreed with these defendants that the Bells were unable to show any evidence of intentional misrepresentation.

The Bells' claims against Leary and Home Check do not seem to have survived to trial, although the record does not show how these issues were resolved. When the date for the trial arrived, the Bells were proceeding only against Moon, as the seller of the house, and against Hedge and Knox Pest Control on theories of reckless and negligent misrepresentation, breach of contract, negligence, and wantonness.

A Montgomery jury returned a verdict of \$15,000 for the Bells as against Hedge and Knox Pest Control. It awarded the Bells nothing as against Moon. The court entered a consistent judgment.

Defamation - After a business deal soured, the defendant defamed the plaintiff to another business acquaintance by stating the plaintiff had a bad reputation

Weller v. Finger, 1:08-240

Plaintiff: P. Russell Myles and Anne L. McClurkin, *McDowell Knight Roedder & Sledge*, Mobile

Defense: C. Robert Gottlieb, Jr., Mobile

Verdict: \$400,000 for plaintiff

Federal: **Mobile**, 12-14-09

Judge: Callie V.S. Granade

Thomas Weller of Atlanta, GA and Van Finger of Fairhope, AL had a course of commercial dealings in 2002 related to a portable tank business. The portable tanks are used by consumers to store personalty. Finger had initially formed Precision IBC to sell the portable tanks – through a series of complex transactions, Weller became his partner in the business. Following even more transactions, Weller took control of the business and Finger was out.

Advancing forward several years, Finger attended a Pack Rat conference (a collection of portable tank professionals) in Phoenix, AZ and met Mark Rainorek of Atlanta, GA. Through this chance meeting, the two realized they had a connection with Weller. Rainorek asked Finger about Weller.

Finger replied with his observations and opinions that included, (1) Weller stole his business, (2) that Rainorek should be careful with Weller, (3) Weller would steal business secrets, and (4) that Weller had a bad reputation in the Mobile community. Upon returning to Atlanta, Rainorek described the conversation to Weller. Weller did not appreciate Finger's remarks.

Weller sent Finger a letter and asked for a retraction. There was none. This defamation lawsuit followed, Weller advancing that the remarks by Finger were defamatory per se. If prevailing, Weller sought compensatory and punitive damages.

Finger defended the case that Rainorek asked for his opinion and he provided it. Thus his remarks were simply that – his opinion, one that was both privileged and truthful. Weller replied that the remarks were far

beyond opinion and damaged his reputation. As the case advanced, Georgia law governed the case – the choice of law question related to the residence of the plaintiff.

While the verdict was secret, the record indicates that Weller prevailed. He took compensatory damages of \$300,000, plus \$100,000 more in punitives. The verdict totaled \$400,000. A consistent judgment was entered.

Auto Negligence - A collision between a car and a motorcycle resulted in injuries to the motorcyclist

Ball v. Hollingshead. 07-538

Plaintiff: Jonathan Sholtis, *Deakle Sholtis & Hamil, LLC.*, Mobile, and William C. Poole, *Hetrick & Poole, LLP.*, Mobile

Defense: James W. Killion, *Killion & Associates*, Mobile

Verdict: Defense verdict

Circuit: **Mobile**, 1-5-09

Judge: Michael A. Youngpeter

On 5-21-06, Russell Ball was riding a 2003 Suzuki motorcycle along Moffett Road in Mobile County. Evelyn Hollingshead was driving a 1988 Ford Crown Victoria in the same area. Suddenly, the two vehicles collided.

Ball was injured in the collision, although the record does not show the nature of the injuries he suffered or the amount of his medical expenses. His motorcycle was also damaged.

Ball filed suit against Hollingshead and blamed her for causing the crash. Hollingshead defended and minimized the damages that Ball was claiming.

A Mobile jury heard the evidence and returned a defense verdict. The court entered a consistent judgment.

Assault - A county employee claimed she was assaulted by a supervisor who opposed the employee's political support for a candidate for county commissioner

Harper v. Winston County Comm'rs, et al., 01-16

Plaintiff: Russell B. Robertson, *Laird & Robertson, P.C.*, Jasper

Defense: Robbie Alexander Hyde and Christina Harris Jackson, *Webb & Eley, P.C.*, Montgomery, and Hobson

Manasco, Jr., Haleyville, for Winston County; John W. Lowe and Jeffery Allen Mobley, *Lowe Mobley & Lowe*, Haleyville, for Wright

Verdict: Defense verdict

Circuit: **Winston**, 2-24-09

Judge: Talmage Lee Carter

During the 2000 primary election season, Sherry Harper was an employee of Winston County. She supported Roger Hayes in his campaign for Chairman of the Winston County Commission, and she made no secret of her preferences.

Sandra Wright, Winston County's revenue commissioner and Harper's supervisor, supported Hayes' opponent Scotty Cole in the primary election.

On 3-16-00, Wright allegedly told Harper that Hayes couldn't fire Harper if she didn't support him, but Wright could fire her. According to Harper, Wright added that if Harper didn't vote "right," Wright would "get" her.

In late April 2000, Wright held a meeting of revenue department employees to discuss tardiness. According to Wright, it was very important for employees to report to work promptly at 8:00 a.m. so they would be available to assist customers at this time.

On 5-9-00, however, Harper reported to work late. According to Harper, she was only three minutes late.

Nonetheless, a dispute arose between Wright and Harper during which Harper told Wright that she thought Wright was treating her differently from other late employees because of Harper's support of Hayes.

As the conversation began to get heated, Wright asked Harper to accompany her to her office in the back. Harper refused to go. According to Harper, Wright then reached for her and jerked her arm and tried to pull her to

the office.

Wright had a different view of the incident. According to her, her touching of Harper was not offensive or harmful. She was only trying to coax Harper into stepping into her office so they could continue their conversation in private, away from the view of customers and other employees.

Later that day, Harper filed a complaint with the Winston County Commission. She claimed that Wright had repeatedly threatened her with termination because of her political preference and that Wright had grabbed her arm and tried to force her into Wright's office.

The next day, Wright tried to have a private meeting with Harper. Because of Wright's previous threat to "get" Harper and the incident the day before, Harper refused to attend the meeting without a witness. Instead of complying with Harper's request, Wright fired Harper. A post-termination hearing was conducted before a hearing officer appointed by the Winston County Commission on 6-13-00.

Harper decided not to take her termination lying down. She filed suit against Wright and against the Winston County Commission pursuant to 42 U.S.C. § 1983 and blamed them for terminating her in violation of her right to procedural due process. She also claimed her termination was in retaliation for her exercise of her First Amendment right to free speech.

In addition, Harper also accused defendants of breach of contract for their failure to follow the procedures set out in their employee handbook for termination of an employee. Finally, Harper asserted that Wright had committed assault and battery against her and that both defendants were liable for the tort of outrage.

Winston County and Wright defended themselves. Their first step was to have Harper's case transferred to the United States District Court for the Northern District of Alabama on the ground that it presented a federal question. The district court entered summary judgment for Winston County and Wright as to Harper's federal claims for free speech and due process.

With respect to Harper's remaining

claims, however, the district court declined to exercise supplemental jurisdiction. It remanded the case to the Winston Circuit Court, which entered summary judgment in favor of Winston County and Wright.

Harper appealed the trial court's judgment as to her claims for breach of contract and assault and battery. The Alabama Supreme Court affirmed as to Harper's breach of contract claim, but it reversed the circuit court's summary judgment in favor of Wright on Harper's claim for assault and battery.

Once again, the case traveled back to Winston County's circuit court for consideration. This time, a Double Springs jury considered the issues and returned a defense verdict. The court entered a consistent judgment.

Premises Liability - A hotel guest slipped and fell in a puddle of water outside a hotel elevator; he later claimed the resulting pain in his lower back caused a long-term inability to work

Stewart v. Holiday Inn, 06-3650

Plaintiff: William Marsh Acker, III, Birmingham

Defense: A. Joe Peddy and Jennifer W. Pickett, *Smith Spires & Peddy, P.C.*, Birmingham

Verdict: Defense verdict

Circuit: **Jefferson**, 4-21-09

Judge: Joseph L. Boohaker

Shortly after midnight on 7-16-04, David Stewart, a 58-year-old resident of Chicago who worked for an airline, was staying in a Holiday Inn near the airport in Birmingham. As he left the hotel's second-floor elevator, he stepped into a puddle of water. His gym shoes slipped, and he hit the wall.

Stewart later hypothesized that the puddle had been caused by other guests who had been using the outside swimming pool. He also claimed to have had a conversation with an employee afterwards who placed bath towels on the floor to dry up the water and told Stewart that she had told the hotel before about water on the floor.

Stewart had suffered from back pain in the past and had a disc removed a few years before. He later explained that his former back pain had resolved itself before the accident. He began to suffer pain after the accident and was

diagnosed with lumbar disc herniation and nerve root compression at L4-5 and L5-S1.

The medical expenses billed to Stewart totaled \$3,151, though his medical insurance paid all but \$918. Stewart calculated his own medical expenses at a somewhat higher rate, however. He visited doctors in St. Louis, MO and Carbondale, IL and estimated the cost of his gas at \$4,100. He also claimed as a medical expense the \$275 hotel bill he incurred in Carbondale.

As a result of the incident, Stewart was able to obtain SSDI benefits. Nonetheless, he claimed he was unable to work since 9-10-04 and estimated his lost wages at \$95,016 by October 2006.

Stewart filed suit against Holiday Inn and blamed it for permitting its premises to be in an unsafe condition. Holiday Inn, through its parent company Shaner Hotel Group Limited Partnership, defended and minimized the damages claimed by Stewart.

Mediation was attempted but was unsuccessful. A few months later, Stewart's counsel filed a motion with the court for permission to withdraw. He explained Stewart had displayed an unwillingness to negotiate and unrealistic expectations regarding liability and damages during the mediation.

In addition, Stewart's counsel said, he had had a phone conversation with Stewart and his wife a couple of months after the mediation. During the conversation, Stewart's wife had accused the attorney of not acting in Stewart's best interest, being too cordial with the mediator, and "trying to fuck my husband in his ass." Stewart's attorney believed Stewart and his wife had lost confidence in his representation.

The court granted the motion, and Stewart's attorney withdrew. Thereafter, Holiday Inn filed a motion to have the case dismissed because of Stewart's failure to comply with a court order requiring him to comply with Holiday Inn's request for production of documents. This motion was denied.

Stewart obtained new counsel about six months before the two-day trial in Birmingham. The jury returned a defense verdict, and the court entered a

consistent judgment.

Auto Negligence - Two minor passengers were injured when the vehicle in which they were riding overturned

Barrett v. Brewer, 06-802

Plaintiff: Gene Warhurst, Jr., Mobile, and Gordon K. Howell and E. Tatum Turner, *Turner Onderdonk Kimbrough Howell Huggins & Bradley, P.A.*, Chatom

Defense: Thomas M. Galloway, Jr., *Galloway Wettermark Everest Rutens & Gaillard, LLP.*, Mobile

Verdict: \$113,000 for plaintiffs (allocated \$100,000 to Barrett and \$13,000 to Burroughs)

Circuit: **Baldwin**, 3-10-09

Judge: Charles C. Partin

On 10-9-05, Brent Barrett and Angela Burroughs were passengers in a vehicle being driven by Joshua Brewer. Although the record does not state Brewer's age, Burroughs was approximately 14 at the time, and Barrett was a minor. As Brewer drove along Oak Road West in Baldwin County, the vehicle overturned and flipped several times. The record does not reveal the cause of the accident.

Barrett and Burroughs were injured in the accident. Burroughs suffered a cracked collarbone and was left with a six-inch permanent scar on her right leg. The record does not identify the nature of Barrett's injuries or the amount of his medical expenses.

Barrett and Burroughs, through their mothers, filed suit against Brewer and blamed him for causing the accident. They also named State Farm Mutual Automobile Insurance Company as a co-defendant to recover under their underinsured motorists policies.

Brewer defended and minimized the damages claimed by Barrett and Burroughs. State Farm opted out of the litigation.

A Bay Minette jury returned a verdict of \$100,000 for Barrett and \$13,000 for Burroughs. The court entered a consistent judgment.

Utility Negligence - A 14-year-old girl with Downs Syndrome died of smoke inhalation after she was left alone in a house and a propane leak caused a fire shortly before dawn

Estate of Barnwell v. Superior Gas, 04-52

Plaintiff: R. Graham Esdale, Jr.,
Beasley Allen Crow Methvin Portis & Miles, P.C., Montgomery

Defense: Steve P. Brunson and Russel Allan McGill, *Brunson & Associates*, Gadsden

Verdict: Defense verdict

Circuit: **Cleburne**, 3-27-09

Judge: Malcolm B. Street, Jr.

On 1-6-03, Misty Barnwell was a 14-year-old with Downs Syndrome living with her father, Byron Barnwell. At some time in the early morning while Misty was asleep in bed, a fire started in the house. Byron was not at home at the time. When the fire was finally extinguished, Misty was found dead of smoke inhalation in what had been the kitchen.

An investigation of the fire resulted in more questions than answers. It was soon determined that the fire had started due to leaks in the propane line at the shut off valve in the Barnwells' living room. It was also determined that Byron had installed the propane appliances, interior piping, and shut off valves himself, even though he had no training or experience in doing so.

What was less clear was whether the leak had occurred on the downstream side of the shut off valve, which had last been connected by a Superior Gas employee, or on the upstream side of the shut off valve, where Byron had been the last person to make the upstream flare nut connection. Byron believed the leak had been on the downstream side and was the responsibility of Superior Gas. Superior Gas believed the leak had been on the upstream side and was Byron's responsibility.

To complicate the issues, Byron bulldozed his property during the investigation. In doing so, he destroyed all of the gas piping, appliances, and the shut off valve.

Byron filed suit against Superior Gas and blamed it for causing his daughter's death by allowing the propane leak to occur. His identified experts included

John Frost, Safety Engineering, Huntsville.

Superior Gas defended and suggested Byron was himself to blame for the fire after he had installed propane appliances and piping without any expertise. It also noted discrepancies and debatable points in Byron's account of events.

For example, Superior Gas noted that no smoke detector was found after the fire, although Byron claimed he had a smoke detector mounted between the kitchen and living room. Byron claimed he had left Misty alone that morning because he had gone to buy milk at a convenience store at 5 am and expected to be back within 15 minutes. Superior Gas asserted Byron had a history of leaving Misty home alone.

Finally, Superior Gas believed substantial evidence showed the fire had started long before 5 am. The identified experts of Superior Gas included Jean McDowell, Fire Safety, Kingwood, TX.

Before trial, Superior Gas made an offer of judgment of \$35,000. Byron failed to take the offer.

A Heflin jury heard the evidence and returned a defense verdict. Prior to trial, Superior Gas made an Offer of Judgment in the amount of \$35,000.

Auto Negligence - A passenger in a car leaving a church claimed to have suffered an aggravation of her low back problems due to a rear-end collision

Bivins v. McCann, 07-4256

Plaintiff: Izas Bahakel, Birmingham

Defense: Patrick G. Montgomery and Brandon Bishop, *Gaines Wolter & Kinney, P.C.*, Birmingham

Verdict: Defense verdict

Circuit: **Jefferson**, 2-11-09

Judge: G. William Noble

On 3-19-06, Ashtin Bivins was driving his mother, the 42-year-old Jacqueline Bivins, from church in Birmingham. The pair drove along U.S. 280 East and stopped for a red light at the intersection of that road with Summit Boulevard. Suddenly, their car jolted forward as it was struck by Melanie McCann from the rear.

Ashtin was not injured in the collision. Jacqueline did not go immediately to the hospital. However,

she later complained of a burning in her neck that persisted with a tingling in both legs from her lower back to her toes. She missed work and lost \$3,684 in wages, and she incurred \$8,135 in medical expenses.

Despite the suggestive timing of the onset of her pain, Jacqueline's MRI showed only degenerative changes to her back. She also had suffered from previous back problems in the same area and had been treated for back problems as late as six months before the accident. Her doctor, however, believed that the accident might have aggravated Jacqueline's pre-existing symptoms.

Jacqueline filed suit against Melanie and Claude McCann and blamed Melanie for causing the crash and Claude for having carelessly entrusted his vehicle to Melanie. Her husband, Sherwin Bivins, made a derivative claim for loss of consortium.

Although Sherwin owned the vehicle that his son Ashtin had been driving on the day of the accident, Sherwin did not make any claim for property damages, as he had already been compensated for the damage to his vehicle by the time the lawsuit was filed.

Claude was dismissed from the action before trial. Melanie admitted liability for the accident, but she believed the impact had been minimal and had not caused Jacqueline's back problems.

A Birmingham jury agreed with Melanie and returned a defense verdict. The court entered a consistent judgment.

Conversion - A family that had entered a lease sale contract on a house not only lost the house after it was condemned but also found themselves being sued by the seller for having stolen and damaged property on and around the house

Henry v. Babin, 08-3, 08-5

Plaintiff: *Pro se*

Defense: *Pro se*

Verdict: \$8,100 for plaintiff

Circuit: **Etowah**, 1-27-09

Judge: David A. Kimberley

On 6-3-05, Gary Henry, as the executor of the estate of Vida Colvin, entered into a lease sale contract with Gerard "Jerry" Babin, a 38-year-old

welder, and his wife Lisa Babin to buy a house located at 1607 Tuscaloosa Avenue in Gadsden for \$40,000. The house belonged to the Colvin estate.

The Babins lived in the house for over a year and spent their time and money improving it. However, their relationship with Henry during that time was rocky. Henry used a lot adjacent to the Babins' house as a storage area for old vehicles. The Babins believed rats and snakes lived in the lot, and they were unhappy at what they perceived as a junkyard.

To complicate matters further, Henry allowed some of his old vehicles to stand in the yard that the Babins had started to perceive as their own. The Babins were unable to convince Henry to move the vehicles, and so they pushed them onto Henry's lot on the advice of Gadsden city authorities. Unfortunately, when they did so, one of the vehicles struck a 1969 van that Henry had parked on blocks. The van received a dent.

The record does not fully explain all the wrangling between Henry and the Babins, but it appears that at one point Henry began eviction proceedings, and a preapproved loan for \$50,000 that the Babins were seeking fell through.

On 11-7-06, the city of Gadsden notified the Babins that the house had been condemned and they would be required to vacate immediately. It had been determined that the house was structurally unsound, the plumbing and wiring were unsafe, the roof was bad, there was evidence of previous fire damage, illegal roof support was in place, and the house was moldy.

The Babins placed a lien on the house for the value of the labor and materials they had invested in it. They moved to a different location. However, their problems did not stop there.

Henry filed two small-claims lawsuits against the Babins shortly after the condemnation. In the first, he claimed that the Babins had stolen some property from the house. In the second, he sought to recover \$3,000 for the dent in his 1969 van.

The Babins defended and denied any theft. They believed Henry had systematically mistreated them, lied to them, and violated the law during their

occupancy.

As for the dented van, the Babins admitted having made the dent when they pushed Henry's junked vehicles on his lot, but they insisted they had had no choice after Henry had refused to move the vehicles himself. They had offered to fix the dent or give Henry \$500, but he had refused both offers.

The district court awarded Henry \$1,000. The Babins appealed to the circuit court. Both parties remained *pro se*.

A Gadsden jury listened to the evidence and awarded Henry \$6,500 for the theft and \$1,600 for the dented van. The court entered a consistent judgment. The record provides no indication as to whether it was satisfied.

Excessive Force - The plaintiff was roughly arrested after a pretextual stop

Mahone v. Montgomery Police, 2:09-118

Plaintiff: Jay Lewis and E. Peyton Faulk, *Lewis Bush & Faulk*, Montgomery

Defense: Stacy L. Reed, *Assistant City Attorney*, Montgomery

Verdict: Defense verdict

Federal: **Montgomery**, 12-7-09

Judge: Wm. Keith Watkins

David Mahone was driving in Montgomery on 1-28-08. He noticed several police cars behind him. A moment later near Atlanta Highway and Federal Drive, he was pulled over by a Montgomery police officer, Dee Bogan. Bogan (in a famously pretextual stop), explained that Mahone had failed to signal a lane change.

Despite being compliant, Mahone was roughly dragged from his car. Bogan commenced a search of the car and found a BB gun. Bogan then started to call for a K-9 unit. Only then did Bogan learn (after running Mahone's license) that Mahone was a city employee and not a so-called bad guy. The handcuffs were taken off and Mahone was free to go.

From this police encounter, Mahone later complained of an injury. Mahone sued the police and criticized both the stop and the rough arrest. The trial court (incredibly) found that the stop was lawful and granted summary judgment on that count. Mahone

advanced only the excessive force claim. The police defended that only a minimum of force was used, also denying that Mahone had suffered any injury.

The jury's verdict was for the defendant (apparently) although the verdict itself was a court secret. A consistent judgment was entered.

Auto Negligence - Plaintiff claimed to have suffered injuries to his back and knee due to a motor vehicle accident that occurred while he was on the job

Hiltz v. Prowell, 07-1002

Plaintiff: J. Gullatte Hunter, III, Mobile
Defense: John P. Browning, *Burr & Forman, LLP.*, Mobile

Verdict: Defense verdict

Circuit: **Mobile**, 1-6-09

Judge: Sarah Hicks Stewart

On 5-12-05, Matthew Hiltz, an employee of Bugmaster Exterminator, Inc., was driving for job-related reasons on Azalea Road in Mobile. Near the intersection of Airport Boulevard and Michael Boulevard another driver, Shante Prowell, unexpectedly collided with Hiltz.

Hiltz suffered injuries to his left knee and lower back. He was unable to work for a time. The record does not disclose the amount of his medical expenses.

Hiltz filed a workers' compensation claim with Bugmaster and a separate lawsuit against Prowell for causing the collision. Bugmaster intervened in Hiltz's lawsuit against Prowell on a subrogation theory. Prowell defended and questioned whether Hiltz had the injuries he claimed.

Before trial, Bugmaster withdrew from Hiltz's lawsuit against Prowell pursuant to the terms of their settlement in the workers' compensation case.

A Mobile jury returned a verdict in Prowell's favor. The court has since entered a consistent judgment.

Conversion - A man who dropped his clothes off at a cleaner's for storage claimed the cleaner employees had improperly taken and worn his clothes during the storage period

Wills v. Valley Cleaners, 08-2289

Plaintiff: *Pro se*

Defense: J. Richard Hynds, Birmingham

Verdict: Defense verdict

Circuit: **Jefferson**, 8-4-09

Judge: Nicole Gordon Still

Stanley Wills was an unhappy man. He had placed his clothes in Valley Cleaners for storage. When he returned to pick them up, they seemed to have more wear on them than when he had dropped them off. Wills suspected the employees of wearing his clothes.

He filed a small claims case against Valley Cleaners. It did not turn out well for Wills, as the district court handed down a defense verdict.

Undeterred, Wills appealed to the circuit court and requested a jury trial. He hoped a jury would understand his situation better than the district court judge had.

Once again, Wills was disappointed. The jury listened to his story but handed down a verdict in favor of Valley Cleaners. The court entered a consistent judgment.

Auto Negligence - When a student driving to school on a foggy morning hit a bakery truck that was blocking his lane, both parties blamed the other for causing the accident

Clark v. Phillips, et al., 08-79

Plaintiff: L. Shane Seaborn, Myron C. Penn, and J. William Partin, *Penn & Seaborn, LLC.*, Clayton, on Clark's claim, and Ronald J. Gault, *Gault & Hendrix*, Birmingham, on the defense to the defendants' counterclaim

Defense: Edward C. Hixon and Jason J. Baird, *Slaten & O'Connor, P.C.*, Montgomery

Verdict: Defense verdict on plaintiff's claim; plaintiff's verdict on defendants' counterclaim

Circuit: **Barbour**, 8-24-09

Judge: Burt Smithart

On the early morning of 12-13-07, Carl Phillips, the owner of Baylies Distribution, drove a bread delivery truck out of a grocery store parking lot

onto Eufala Avenue in Eufala. Eufala Avenue was a divided highway with two lanes of travel in each direction. A narrow median separated the northbound lanes from the southbound.

Phillips wanted to head northbound, which was to his left. He looked to his left, saw no traffic coming, and pulled out to the median. Because there was traffic approaching from the right, he had to wait in the median for traffic to clear. The back end of Phillips' truck remained protruding into the southbound lanes.

On that foggy morning, James Clark was driving to school in the inside southbound lane of Eufala Avenue. To his right, another vehicle was also traveling south. Clark abruptly noticed the bakery truck looming out of the fog. He slammed on his brakes but was unable to keep from sliding into the rear wheel of the truck.

Clark was injured in the collision. Although the record does not describe the nature or extent of his injuries, his medical expenses totaled \$4,100.

Clark filed suit against Phillips and Baylies Distribution and blamed them for causing the crash by blocking his lane. Phillips and Baylies defended and denied wrongdoing. They also filed a counterclaim against Clark for having caused the collision by failing to notice the truck in his lane. Phillips alleged he was owed damages for lost income and the annoyance and aggravation of the incident.

A Eufala jury took one day to decide that it would award neither party anything. It returned a defense verdict on Clark's claim and a plaintiff's verdict on the defendants' counterclaim. The record does not show whether the court entered a judgment.

Fraud - A phone company that requested carrier access records from another phone company was given the correct records, but also extra records that cost \$435,000 before the situation was discovered

Micro-Comm v. BellSouth

Telecommunications, 07-901615

Plaintiff: Steven L. Nicholas and Bryan E. Comer, *Cunningham Bounds, LLC.*, Mobile

Defense: Robert E. Clute Jr. and Ben H. Harris, Jr., *Johnstone Adams Bailey Gordon & Harris, LLC.*, Mobile, and Jeffrey E. Holmes, *Johnston Barton Proctor & Rose, LLP.*, Birmingham

Verdict: \$834,973 for plaintiff

(comprised of \$667,978 in compensatory damages and \$166,994 in punitive damages)

Circuit: **Mobile**, 8-27-09

Judge: Charles A. Graddick

Micro-Comm, a telecommunications exchange carrier providing services in several southeastern states, acted as a reseller of BellSouth

Telecommunications products and services. Thus, in May 2001 Micro-Comm asked BellSouth to sell to it BellSouth's carrier access records. The records would allow Micro-Comm to bill other carriers for calls.

In accordance with instructions from BellSouth's employee Edward Russell, Micro-Comm sent two requests to BellSouth, one for "ADUF" records and one for "ODUF" records. Micro-Comm believed this would provide it with everything it needed.

Micro-Comm was correct in that the two sets of records included everything it had asked for. What Micro-Comm did not know was that the ODUF records were not carrier access records and were not useful to Micro-Comm.

BellSouth billed Micro-Comm for both sets of records. The bill for the ADUF charges was clear. The ODUF charges were not identified clearly in the billing. Micro-Comm never accessed the ODUF records.

In January 2006, Micro-Comm discovered the ODUF charges in an audit. By this point, the ODUF charges amounted to approximately \$435,000. When Micro-Comm confronted BellSouth about the ODUF charges, BellSouth pointed to the original request made by Micro-Comm for

ODUF records. BellSouth denied Micro-Comm was due any reimbursement.

Micro-Comm, less than content with this response, filed suit against BellSouth and Russell and blamed BellSouth for improperly billing it for unwanted ODUF records. Micro-Comm's theories included breach of contract, fraud, payment by mistake, and unjust enrichment. Its identified experts included W. Allen Carroll Jr., Accounting, Mobile.

BellSouth defended and argued Micro-Comm had been perfectly able to discover well before 2006 that it was being billed for ODUF records. Thus, its claims for fraud and unjust enrichment fell outside the two-year statute of limitations. Its identified experts included Bernard Shell, Cost Analysis, Atlanta, GA. Micro-Comm dismissed its claims against Russell before trial.

A Mobile jury returned a verdict for Micro-Comm in the amount of \$667,978 for compensatory damages and \$166,994 for punitive damages. The court entered a consistent judgment of \$834,973.

Later, the court set aside the judgment in response to BellSouth's motion for judgment as a matter of law or for a new trial. The record does not show, however, whether the court intended to grant a new trial or a judgment as a matter of law. Immediately thereafter, the parties jointly requested and obtained a dismissal of the action on undisclosed terms.

Auto Negligence - At an intersection, one vehicle ran a red light and collided with a second vehicle, which in turn spun out of control and into a third car

Jones v. Hamilton, et al., 07-4336

Plaintiff: Adedapo T. Agboola and Darryl Bender, *Bender & Agboola, LLC.*, Birmingham

Defense: Laura Sidwell Maki, Wade S. Anderson & Associates, Birmingham, for Gamble; Celeste Patton Armstrong, Varner & Associates, Birmingham, for Hamilton

Verdict: \$35,000 for plaintiff against Hamilton only

Circuit: **Jefferson**, 2-4-09

Judge: Robert S. Vance

On the afternoon of 12-13-05, Clarence Jones was driving his 1996 Oldsmobile Cutlass Supreme near the intersection of First Avenue North and 22nd Street in Birmingham. He stopped for a red light. When the light turned green for him, he started forward into the intersection.

Just then David Hamilton, for whom the light had just turned red, rushed through the intersection. Hamilton did not strike Jones' car, but he did strike a vehicle driven by Yvonne Gamble. Gamble's vehicle spun and knocked into Jones' car.

Jones suffered injuries to his head, neck, back, arm, and shoulder and was forced to wear a neck brace temporarily. He also suffered a permanent scar on his left leg. His medical costs totaled \$8,042, and he paid \$2,100 in order to have his car repaired.

Jones filed suit against Hamilton and Gamble and blamed them both for the sequence of events that led to his injuries and property damage. He believed Hamilton had been trying to hurry to make the light, and he thought Gamble had not been doing everything she could to avoid an accident. In their defense, both Hamilton and Gamble minimized the damages claimed by Jones.

A Birmingham jury agreed with Jones that Hamilton was at fault, but it thought Gamble was not to blame. It returned a verdict of \$35,000 against Hamilton only. The court entered a consistent judgment.

Breach of Contract - A general contractor did not want to split his profits with the man who informed him of the construction project and offered general assistance during the work, despite an alleged agreement between the two

Lee v. Bailey Constr. & Development, et al., 07-900744

Plaintiff: Allen E. Graham and A. Grady Williams, IV, *Lyons Pipes & Cook, P.C.*, Mobile

Defense: Shelley Howton Milam and Adam M. Milam, *Milam & Milam, LLC.*, Fairhope

Verdict: \$30,000 for plaintiff

Circuit: **Baldwin**, 3-5-09

Judge: James H. Reid

In March or April 2006, Brent Lee learned that Colonial Properties Services, Inc. was going to renovate the Colonial Traditions clubhouse on the Old Woodland's golf course on Highway 59 in Gulf Shores. Lee, who did not have a general contractor's license, could not do the work himself. He decided to act as the broker for someone who was licensed as a general contractor.

Lee was able to find such a person in Jeffery Bailey, a resident of Baton Rouge, Louisiana, who managed Bailey Construction and Development, LLC. Lee and Bailey met at the clubhouse location and reviewed drawings and specifications that Colonial Properties had provided to Lee.

On the evening of 5-23-06, Lee and Bailey met at Randy's Restaurant and Bar in Fairhope. Later, Lee claimed they agreed during the dinner meeting that if Bailey received the contract from Colonial Properties, the two would split the profit on the project. According to Lee, they shook hands on this deal.

Bailey's subsequent recollection of the meeting was somewhat different. He did not recall coming to any agreement with Lee about profit-sharing. Instead, he claimed the meeting was to discuss specific numbers about the project, which was still partly in the design phase.

However the conversation went at Randy's Restaurant that May evening, Bailey was subsequently given the contract with Colonial Properties. The terms were for the costs of building plus 14 percent. The project suffered

overruns and cost Colonial Properties over \$900,000, with Bailey and his company taking a profit of about \$126,000. During the construction, Lee was on-site, supervising the subcontractors and making sure the process was flowing smoothly.

In March 2007, after the clubhouse project was complete, Colonial Properties realized it had a second construction project that Bailey and his company could perform. This was the Hardscape project located within the Colonial Traditions development. The initial contract price was for \$975,460, but numerous change orders caused this price to rise. In the end, Bailey took a profit of approximately \$256,134 on this project.

Lee, however, had still not seen any money for his efforts. He presented Bailey with an invoice for his commission. Bailey expressed doubt that he owed Lee anything and refused to pay.

Lee filed suit against Bailey and Bailey Construction and claimed they had treated him fraudulently and deceitfully. According to Lee, he was owed at least \$63,000. His initial complaint identified theories of breach of contract, misrepresentation, fraud, wantonness, and violation of the Alabama Deceptive Trade Practices Act.

Lee soon dismissed the latter claim and proceeded under theories of breach of an alleged oral agreement and promissory fraud. Bailey defended and denied having reached any agreement with Lee.

During the three-day trial, Lee provided evidence of breach of implied contract, unjust enrichment, and work and labor done. In the end, a Bay Minette jury returned a verdict in favor of Lee for \$30,000 in compensatory damages and \$0 in punitive damages. The court entered a consistent judgment.

Lee's courtroom saga was not over, however. First, he filed an amended complaint so as to conform his pleadings to the evidence presented at trial. Second, his initial efforts to collect on his judgment proved to be in vain. Bailey refused to comply with post-judgment discovery, despite a court order that he do so. Finally, the

court issued a warrant for Bailey's arrest. Further information about Lee's predicament was not in the record at the time the AJVR reviewed it.

Auto Negligence - A passenger was injured in a Huntsville collision of two motor vehicles

Cooper v. Fields, 07-642

Plaintiff: John P. Burbach and Travis Jackson, *Sirote & Permutt, P.C.*, Huntsville

Defense: Ellen M. Melson, *Spurrier Rice & Hall, P.C.*, Huntsville

Verdict: Defense verdict

Circuit: **Madison**, 1-28-09

Judge: James P. Smith

On 4-24-05, Stanley Fields was driving at the intersection of Holmes Avenue with Jordan Lane or Greenacres Lane in Huntsville. Abruptly, he collided with a vehicle driven by Douglas Mucha. Riding as a passenger with Mucha was John Cooper.

Cooper was injured in the collision. The record does not reveal the nature of his injuries or the amount of his medical expenses.

Cooper filed suit against Fields and blamed him for causing the collision. As co-defendants, Cooper named Tennessee Farmers Mutual Insurance Company as the UM/UIM carrier of Mucha and State Farm Mutual Automobile Insurance Company as his own UM/UIM carrier.

The three defendants responded by minimizing the damages claimed by Cooper. Tennessee Farmers and State Farm both opted out of the action before trial.

A three-day trial in Huntsville resulted in a jury verdict for Fields. The court entered a consistent judgment.

Medical Negligence - A woman's small bowel was perforated during laparoscopic surgery to repair a hernia

Robinson v. Black, 03-383

Plaintiff: Jeffrey C. Kirby, *Pittman*

Dutton Kirby & Hellums, P.C., Birmingham

Defense: Robert E. Cooper, *Christian & Small, LLP.*, Birmingham, and Jerry Oglesby, *Sides Oglesby Held & Dick*, Anniston

Verdict: Defense verdict

Circuit: **Calhoun**, 4-24-09

Judge: R. Joel Laird

On 4-17-01, Barbara Ann Robinson, a 56-year-old disabled mother of four, went to Northeast Alabama Regional Medical Center for treatment of her incarcerated hernia. Dr. Clifford Black performed laparoscopic surgery to repair Robinson's ventral hernia, and Robinson was discharged the next day.

A few days later, Robinson came to the ER of the Regional Medical Center and complained of pain in her abdomen. When she was examined, she was found to have low blood pressure, acute kidney failure, and anemia. She was admitted to the Regional Medical Center, where Dr. Black undertook her care.

After five days of being given IV fluids and packed cells, Robinson's condition improved. She was transferred to a regular medical floor and was put under the care of Dr. Abayomi Sanusi.

On the sixth day, however, Robinson's condition deteriorated. She was transferred first to the ICU and then, on her family's request, to the Carraway Medical Center. On 8-10-01 she died of sepsis and acute kidney failure.

Robinson's estate filed suit against Dr. Black and the Regional Medical Center. Later, it added Dr. Sanusi as a co-defendant. The estate criticized these individuals for their treatment of Robinson. According to the estate, Dr. Black had perforated Robinson's small bowel during surgery.

Not only had Dr. Black caused the initial problem, the estate added, but he and Dr. Sanusi had been careless in failing to diagnose Robinson's condition when she came to the ER and was subsequently hospitalized. The estate's

identified experts included Dr. David Shapiro, Surgery, Tampa, who opined that Dr. Black should have recognized the leak when Robinson came to the ER with a large amount of air in her abdomen.

Drs. Black and Sanusi and the Regional Medical Center defended and denied wrongdoing. The estate stipulated to the dismissal with prejudice of Dr. Sanusi and the Regional Medical Center, and the case proceeded against Dr. Black alone.

After a five-day trial, an Anniston jury returned a verdict in favor of Dr. Black. The court entered a consistent defense judgment.

Auto Negligence - A collision between two motor vehicles resulted in injuries to a passenger

Simpson v. Aguilar, 07-901831

Plaintiff: Kevin L. Berry and James E. Mitchell, Jr., *Berry & Mitchell, LLC.*, Birmingham

Defense: Laura Sidwell Maki, *Wade S. Anderson & Associates*, Birmingham

Verdict: \$8,000 for plaintiff

Circuit: **Jefferson**, 1-7-09

Judge: Allwin E. Horn III

On 9-2-05, Galan Aguilar, a resident of Georgia, was driving a motor vehicle on Crestwood Boulevard near its intersection with 16th Street South in Jefferson County. At the same time, Carolyn Simpson was a passenger in another motor vehicle. An instant later, Aguilar's vehicle collided with the one in which Simpson was riding.

Simpson was injured in the collision. The record does not reveal the nature of her injuries or the amount of her medical expenses. The record is also silent as the injuries, if any, suffered by the driver of the vehicle in which Simpson was riding.

Simpson filed suit against Aguilar and blamed him for causing the collision. Aguilar defended and minimized the damages claimed by Simpson.

A Birmingham jury heard the evidence and returned a verdict of \$8,000 for Aguilar. The court entered a consistent judgment, and it has since been satisfied.

Uninsured Motorist - A junk car being hauled by an uninsured pickup truck came free from its chain, rolled into oncoming traffic, and struck and injured a passing motorcyclist

Jennings v. Farmers Ins. Exchange, 08-901051

Plaintiff: W. Barton Warren and Derek Simpson, *Warren & Simpson, P.C.*, Huntsville

Defense: Ronald L. Gault, *Gault & Hendrix, LLC.*, Birmingham

Verdict: \$12,500 for plaintiff

Circuit: **Madison**, 11-17-09

Judge: Bruce E. Williams

On 3-21-08, Mitchell Jennings was riding a 2004 Honda Gold Wing motorcycle north on Winchester Road in Madison County. Jennings insured his motorcycle with Farmers Insurance Exchange and had at least two other policies with Farmers as well.

At the same time that Jennings was riding his motorcycle northward, James Louthan was driving a pickup truck south on the same road. The pickup truck was hauling a junk car by a chain.

As the motorcycle and truck approached one another, a wheel suddenly came off the junk car. In turn, this caused the chain attaching the junk car to the pickup truck to snap. The junk car began to roll free.

It skidded into the northbound lane of Winchester Road at just the wrong moment for Jennings. A collision occurred in which Jennings was injured. He went to an emergency room, where he was diagnosed with bruises and neck strain and released.

About three weeks later, Jennings had a follow-up visit with his family doctor. He did not undergo further treatment. However, his medical expenses totaled \$9,783, of which his health insurer paid \$2,072. Jennings also claimed to suffer ongoing back pain after the accident and believed the accident had aggravated his pre-existing low back problem.

As it turned out, Louthan was uninsured. Jennings therefore filed suit against his own insurer, Farmers, and sought to recover for his injuries under his own UM policy. Farmers admitted that Louthan was uninsured and had been negligent, and it agreed that Jennings' post-accident treatment had been reasonable and necessary. The

remaining issue was the value of Jennings' claim.

At the two-day trial, Jennings requested compensatory and punitive damages totaling \$80,000. A Huntsville jury thought that was excessive and awarded only \$12,500. The court entered a consistent judgment, and it has since been satisfied.

Auto Negligence - A plaintiff claimed to have suffered injuries to her back and neck due to a rear-end collision; at trial plaintiff did not call any doctor to testify her medical treatment was necessary to treat injuries arising out of the collision

Gainey v. Skerlick, 07-484

Plaintiff: Jeffrey C. Kirby, *Pittman Dutton Kirby & Hellums, P.C.*, Birmingham, and Samuel L. Adams, Dothan

Defense: Joel W. Ramsey, *Ramsey Baxley & McDougale*, Dothan

Verdict: \$30,000 for plaintiff

Circuit: **Houston**, 1-29-09

Judge: Henry D. "Butch" Binford

On 9-23-05, Jacqueline Skerlick rear-ended Sandra Gainey at the intersection of West Newton Street and North Oates Street in Dothan. The record does not provide any further detail about the collision. Gainey did not complain of injuries at the time.

About a week and a half later, Gainey visited a chiropractor. By the end of the year, she had incurred \$2,317 in chiropractic bills. At the start of 2006, she saw a different chiropractor and incurred another \$2,414 in bills. Over the next three years, she visited five additional medical providers and complained of headaches and back pain.

Gainey eventually filed suit against Skerlick and blamed her for causing the collision that had left Gainey with lasting pain. Skerlick did not dispute that she had rear-ended Gainey, but she questioned whether Gainey's health problems had been caused by the accident.

At the trial in Dothan, the court entered a directed verdict on liability in Gainey's favor. The only issue remaining for the jury was the amount of Gainey's damages.

Gainey, however, did not call any of

the seven medical providers that she had subpoenaed to testify. Instead, she limited herself to testifying personally about her headaches and other pains. She also submitted her chiropractic bills into evidence.

The jury found in Gainey's favor and awarded her \$30,000 in damages. Skerlick immediately challenged the court's consistent judgment and requested a new trial. In Skerlick's opinion, the court had erred by allowing the evidence of Gainey's medical expenses to go to the jury when no expert witness had testified that Gainey's treatment was necessary for injuries arising out of the accident or that her chiropractic expenses had been reasonable.

The court rejected Skerlick's argument. Skerlick sought appellate review. At the time the AJVR went to press, the appellate court had not reached a decision.

8th Amendment - For days a jail inmate suffered from a skull fracture and a serious brain injury – the contract doctor (and his assistant) could find nothing wrong with him – transferred to state prison, the incoherent prisoner was immediately taken to a hospital where an emergency brain surgery was performed

Colville v. DiValentin et al, 1:05-1979

Plaintiff: David Gespass, *Gespass & Johnson*, Birmingham

Defense: E. Martin Bloom, Jr. and Chris L. Albright, *Ellis & Bloom*, Birmingham

Verdict: Defense verdict

Federal: **Anniston**, 10-29-09

Judge: Karon O. Bowdre

Andrew Colville was an inmate on 12-4-04 at the Cleburne County Jail. He was awaiting a transfer to a state penitentiary in Montgomery. This day Colville fought with another inmate. To break it up, jailers tased Colville. Following the shock, Colville fell against the wall and struck his head.

Suffering from an apparent head injury, his jailers called for a doctor. It came first in the person of a so-called nurse, Pam Caldwell. Caldwell, who all thought of as a nurse, was actually a medical assistant – while lacking a high school degree, Caldwell did take a two-

day medical course.

She was sent to the jail by her employer, a physician, Dr. Louis DiValentin, who had a contract to provide medical services to inmates. She evaluated Colville on four separate days, 12-4, 12-5, 12-7 and 12-8. DiValentin himself saw Colville on 12-7. The medical team could find nothing wrong with Colville – this was despite evidence that he was becoming incoherent, dizzy, wobbly on his feet and was otherwise showing evidence of a serious brain injury.

Colville was transferred on 12-10 to state prison. His condition was so bad (he now had no control over his bowels) that jailers had to put blankets in the back of their cruiser. Upon arriving at state prison, he was immediately taken to the hospital. A skull fracture was detected and he underwent an emergency brain surgery to evacuate a bleed in his brain. Despite that intervention, Colville, who had worked in construction, continues to suffer from vertigo, hearing loss and seizures. It has also affected the relationship with his wife, Karen, who presented her own consortium claim.

Colville sued DiValentin and Caldwell, alleging deliberate indifference to his serious medical condition. Beyond failing to intervene when it was readily apparent that he was badly injured, DiValentin was also criticized for relying upon Caldwell as a surrogate, Colville believing she was clearly not competent to provide medical care. Had he been referred to a hospital and a neurosurgeon, Colville posited he would not have suffered a permanent injury.

DiValentin and Caldwell defended that their care was reasonable based on Colville's presentation. The defense developed proof that the acute brain injury did not develop until 12-10 – that is, Colville was suffering from a long slow bleed and that during the period the defendants evaluated him, he appeared lucid. The serious condition only became apparent when he arrived at state prison.

The jury's verdict was for both defendants on the single deliberate indifference count and Colville took nothing. A defense judgment was entered.

Auto Negligence - A couple in their sixties claimed they suffered neck and back injuries in a four-car collision

Sullins v. Seago, 07-215

Plaintiff: R. Wyatt Howell, *Green & Howell*, Hamilton

Defense: Tracy N. Hendrix, *Gault & Hendrix*, Birmingham

Verdict: Defense verdict

Circuit: **Walker**, 11-20-09

Judge: Jerry K. Selman

On 3-23-06, Donald Sullins, age 60, and Linda Sullins, age 62, were in a vehicle on S.R. 118 near the intersection of Walston Bridge Road and 20th Avenue in Walker County. Their UM/UIM carrier was Alfa Insurance Company.

Judy Seago, a resident of Cullman County, was also driving on the same road that day. She failed to stop before rear-ending another vehicle. The vehicle she struck in turn rear-ended the Sullinses' vehicle, which was pushed into a fourth vehicle.

The Sullinses both claimed injuries to their necks and backs in the accident. A week after the accident, they began to treat for their injuries and made multiple chiropractor visits for several months. The record does not reveal the amount of their chiropractor bills.

The Sullinses eventually filed suit against Seago in Madison County, where they lived, and blamed Seago for causing the collision. As a co-defendant they named Alfa. The action was later transferred to Walker County.

Alfa opted out of the action. Seago defended and argued the impact from the accident had been minor and had not caused the injuries of which the Sullinses complained. Seago noted both plaintiffs had treated with the chiropractor on the same days and expressed similar complaints. They both had an extensive history of prior neck and back pain and had visited a chiropractor on multiple occasions during the year before the accident.

A Jasper jury considered the evidence over two days and returned a defense verdict. The court entered a consistent judgment.

Underinsured Motorist - A motorist who complained only of chest pain following an accident was not able to recover for the low back pain he later asserted had also arisen immediately after the accident

McMahon v. Hlomatchi, et al.,

07-900324

Plaintiff: Stewart Burns, *Burns Burns & Garner*, Gadsden

Defense: Clifton S. Price, II, *Kracke & Thompson, LLP.*, Birmingham, for Hlomatchi; H. Edgar Howard, *Ford Howard & Cornett, P.C.*, Gadsden, for State Farm

Verdict: Defense verdict

Circuit: **Etowah**, 9-29-09

Judge: William Allen Millican

Shortly before noon on 3-14-06, George McMahon, a 75-year-old man who needed a scooter, walker, or cane to move about, was driving west on the ramp leading from Meighan Boulevard to Albert Rains Boulevard in Gadsden. Driving along Albert Rains Boulevard was Komi Hlomatchi, an Arizona resident.

An instant later, Hlomatchi's vehicle struck the right front corner of McMahon's 1996 Ford Ranger. Fortunately, McMahon was wearing his seatbelt. His airbag deployed successfully.

McMahon complained of chest pain and was taken to the ER of Gadsden Regional Medical Center. He was released after a few hours, but he returned later that afternoon complaining of new chest pain. He was admitted for observation and kept in the hospital for two days before being released. His medical bills on this occasion totaled \$2,790.

Later, McMahon, who was a sufferer from back pain, was to say he had immediately suffered an increase in his back pain after the accident. His hospital records on the day of the accident do not reflect this complaint. However, McMahon began to treat with a chiropractor in May 2006.

All attempts to alleviate or manage McMahon's constant pain failed, and he underwent low back surgery to fuse his vertebrae at St. Vincent's Birmingham hospital in February 2007. At this time, he was hospitalized for three days and incurred \$39,347 in hospital bills, plus \$13,803 for the surgery.

Two days after McMahon's release from St. Vincent's, he was hospitalized for four additional days at Gadsden Regional Medical Center. This time the cause was an infection that doctors believed he had picked up during his hospital stay at St. Vincent's. McMahon incurred an additional \$6,900 in medical bills.

McMahon filed suit against Hlomatchi and blamed him for causing the accident and increasing his back pain to the point that surgery had been his only option. McMahon's wife, Kathy, filed a derivative claim for loss of consortium. They named as a co-defendant State Farm Mutual Automobile Insurance Company as their UIM/UM provider.

Hlomatchi and State Farm defended and minimized the damages claimed by the plaintiffs. The record, however, is unclear as to whether State Farm's UM policy or its UIM policy was implicated by the accident. State Farm strongly disputed whether McMahon's back pain had been caused by the accident.

After a flurry of briefs, the court entered partial summary judgment for McMahon against Hlomatchi only, determining that McMahon's claimed medical expenses were reasonable and had been caused by the accident. It reserved a ruling as to whether State Farm was also affected.

A Gadsden jury returned a verdict for Hlomatchi. The court entered a consistent judgment and found that since Hlomatchi was not liable for any damages, neither was State Farm.

Auto Negligence - A teenaged driver who feared an 18-wheeler truck was about to rear-end her instead rear-ended the car in front of her, which had slowed for a yield sign

Terrell v. Bowers, 06-46

Plaintiff: Rodney L. Stallings, *Coggin & Stallings, LLC.*, Centre

Defense: Mark D. Hess and Reginald L. Jeter, *Haskell Slaughter Young & Rediker, LLC.*, Birmingham

Verdict: Defense verdict

Circuit: **Cherokee**, 2-24-09

Judge: Randall L. Cole

On 4-9-04, the Terrell family – Michael, Tarsha, Dillon, and Miklayla – were traveling in Tarsha's 1997 Lexus from their home in Georgia to visit

family in Mississippi. As they drove along Chestnut Bypass toward its intersection with U.S. 411 in Centre, they slowed to a near-complete stop at a yield sign.

Although the Terrells were nearly stopped, the 1994 Honda Accord behind them continued forward and rear-ended them. The Terrells were bruised in the collision and suffered whiplash-type injuries.

According to the Terrells, the 17-year-old driver of the Honda, Whitney Bowers, got out and approached them after the accident. She apologized, asked if they were all right, and said she had deliberately accelerated because she thought an 18-wheeler truck was about to rear-end her.

Whitney's account of the incident was slightly different. According to her, she had been distracted by an 18-wheeler behind her that appeared not to be stopping. She did not immediately notice that the Terrells were coming to a quick stop. When she did, she attempted to avoid a collision by steering to her right. Despite her best efforts, the left front of her bumper tapped the right rear corner of the Terrells' vehicle.

Regardless of how the accident had happened, the Terrells went to the ER of Cherokee Baptist Hospital. Later, some of them received physical therapy and chiropractic treatment. The record does not disclose which of the Terrells received this treatment or the amount of the Terrells' medical expenses.

The Terrells filed suit against Whitney and blamed her for deliberately running into them. They named as co-defendant Whitney's father, Ronald Bowers, and blamed him for allowing Whitney to drive the car when she had held her driver's license for less than a year.

Ronald and Whitney defended and minimized the damages claimed by the Terrells. Ronald also insisted that he had not been careless in entrusting the car to Whitney because she had never had a traffic citation and had never been involved in any accident.

In addition, Ronald and Whitney noted that the number of collisions suffered by the Terrells was unusual. Michael or Tarsha had filed a lawsuit for a separate injury accident on 3-11-

04. In addition to this, the Terrells claimed to have been rear-ended in Alabama on 4-9-04. In 2002, they had been the victims of two car accidents in Georgia and had received a total of \$24,500.

Before trial, the court granted summary judgment to Ronald on the claim that he had negligently entrusted the car to Whitney. At trial, the Terrells withdrew Dillon's claim at the close of their case. A Centre jury returned a defense verdict. Thereafter, the court entered a consistent judgment.

Auto Negligence - Two vehicles collided head-on at a parking lot exit

Tinker v. South, 06-936

Plaintiff: Chuck Hunter, Birmingham

Defense: Roger W. Varner, *Varner & Associates*, Birmingham

Verdict: Defense verdict

Circuit: **Jefferson**, 1-6-09

Judge: Joseph L. Boohaker

On 7-14-05, Patrick Tinker was waiting for traffic to clear so that he could exit a parking lot in Birmingham. A driver variously described by the record as Jerod South or Fred South turned his vehicle sharply into the parking lot. Both vehicles collided head-on.

Tinker's vehicle was badly mashed in the collision. He also suffered injuries to his neck, chest, and back. He underwent medical treatment for his injuries with two chiropractors and incurred medical bills of \$2,659.

Tinker filed suit against South and blamed him for causing the accident. South defended and minimized the damages that Tinker claimed to have suffered.

A Birmingham jury returned a defense verdict after a one-day trial. The court entered a consistent judgment.

The Alabama Jury Verdict Reporter is published at 9462 Brownsboro Road, No. 133 Louisville, Kentucky 40241; Denise Miller, Editor; Sandra Tharp, Editor Emeritus, Shannon Ragland, Associate Editor and Aaron Spurling, Assistant Editor.

Phone at 1-866-228-2447 and fax to 502-326-9794.

Annual subscriptions are \$249.00 per year.

E-Mail - info@juryverdicts.net

See the *Alabama Jury Verdict Reporter* online at Juryverdicts.net

Reproduction in any form, including office copy machines, or publication in newsletters or reporters, in whole or in part, is forbidden and prohibited by law, except where advance written permission is granted.

Copyright © 2010

All Rights Reserved, The Alabama Jury Verdict Reporter

The Alabama Jury Verdict Reporter
9462 Brownsboro Road, No. 133
Louisville, Kentucky 40241
1-866-228-2447
Online at Juryverdicts.net

From Huntsville to Mobile, Tuscaloosa to Talladega
Comprehensive and Timely Alabama Jury Verdict Coverage

Ordering is Easy

The Alabama Jury Verdict Reporter
The Most Current and Complete Summary of Alabama Jury Verdicts
Call to Place your MasterCard/Visa/Amex Order - 1-866-228-2447

The 2009 Year in Review has just been published
If it's important to attorneys who try or settle cases, it's in the Book

Name

Firm Name

Address

City, State Zip

Return with your check to:

The Alabama Jury Verdict Reporter
At the above address

_____ \$249.00 for a one-year subscription to the
Alabama Jury Verdict Reporter

_____ \$200.00 to order the 2009 AJVR Year in Review
(The eighth in the series and new this January)