The Alabama Jury Verdict Reporter

The Most Current and Complete Summary of Alabama Jury Verdicts

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Unbiased and Independently Researched Jury Verdict Results

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Civil Jury Verdicts

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

Fraud - A software company sold a pet food company business software that did not function as represented and caused the pet food company many mistakes in invoices and shipping

Sunshine Mills v. Ross Systems,
08-900023
Plaintiff: Daniel G. McDowell, Jr., *McDowell & Beason*, Russellville; and Jere White, Christian King, Stephen J. Rowe, and C. Meade Hartfield, *Lightfoot Franklin & White, LLC*., Birmingham
Defense: Shay N. Click, Joshua T. King, and Richard A. Bearden, *Massey Stotser & Nichols, P.C.*, Birmingham
Verdict: $61,381,343 (comprised of $16,381,343 in compensatory damages and $45,000,000 in punitives)
Circuit: **Franklin**, 12-3-10
Judge: Terry L. Dempsey

In late 2004, Sunshine Mills, Inc., a pet food company with 500 employees, thought it might need to replace its business software. It entered into negotiations with Ross Systems, Inc., a company located in Atlanta, Georgia. Sunshine Mills showed Ross employees what its business was like and explained what it needed.

In January 2005, Ross performed a live demonstration of its Enterprise Resource Planning (ERP) software for Sunshine Mills. Sunshine Mills was impressed and decided to buy the ERP software for a sum reportedly over $1,000,000.

Unfortunately, when Sunshine Mills began to use the software in May 2006, the results were a catastrophe. The software was unstable. Sunshine Mills experienced repeated system lockups and data corruption. Some of the promised features and functions did not appear. According to a published source, the software caused Sunshine Mills to load the wrong products onto

trucks and to send the wrong invoices to customers.

After spending about $1,000,000 trying to make the program work, Sunshine Mills filed suit against Ross and blamed it for delivering a very different software package from the one it had promised. From Sunshine Mills's point of view, Ross had engaged in fraud and unjust enrichment by showing them a software package it had no intention of delivering. Sunshine Mills's identified experts included Dave Borden, Accounting, Montgomery.

Ross defended and insisted that any misstatements it might have made during its January 2005 sales presentation were mere sales talk and puffery, which were not grounds for fraud. Sunshine Mills, it argued, was a sophisticated company negotiating for the software at arm's length.

Ross also suggested that some of the problems Sunshine Mills experienced with the software might be due to its own employees' confusion with the new system. Other problems might have been due to scanner gun malfunctions or connectivity issues. Ross' identified experts included Ralph Summerford, Accounting, Birmingham.

After 11 days of trial, the Russellville jury deliberated for about two days before returning a verdict for $16,381,343 in compensatory damages. Believing that was not enough to compensate Sunshine Mills for its woes, the jury also added another $45,000,000 in punitives. The court entered a consistent judgment.

Auto Negligence - A motorist in wet weather rear-ended another vehicle that was stopped on the freeway

James v. Tucker, 08-900578
Plaintiff: Carl E. Chamblee, Jr., *Chamblee & Malone, LLC.*, Birmingham
Defense: James Alan Potts II, *Gaines Wolter & Kinney, P.C.*, Birmingham
Verdict: Defense verdict
Circuit: **Jefferson**, 9-22-10
Judge: Joseph L. Boohaker

On 12-12-06, Gregory Tucker was driving southbound along I-59 between the 31st Street North exit and the Vanderbilt Road bridge in Birmingham. It was raining, and Tucker was behind a tractor-trailer. In order to avoid the water that was being sprayed onto his windshield, he decided to change into the middle lane of traffic.

When he did so, however, he saw in front of him a vehicle driven by Pamela James. James, who had been roughly even with the cab of the tractor-trailer, was either completely stopped or moving at a very low rate of speed.

Tucker, who was traveling about 45 or 50 mph and on his bluetooth cell phone, immediately hit his brakes. His car slid for several feet and then rear-ended James' vehicle.

James claimed she struck her head on the steering wheel during the collision and suffered injuries to her head and brain. After the accident, she alleged she experienced nausea, headaches, and loss of consciousness. She incurred over $15,000 in medical bills and also claimed $27,000 in lost wages.

James filed suit and blamed Tucker for causing the collision. Her theories included negligence. She also named her UIM/UM carrier, Metropolitan Group Property and Casualty Insurance Company, as a co-defendant.

Tucker defended and argued James was not injured to the extent she had claimed. He pointed to James's ER records, where she did not mention headaches, nausea, or vomiting. Before trial, his settlement offer was $15,000. James' final demand was $65,000.

After a two-day trial and a short deliberation, a Birmingham jury returned a defense verdict for Tucker. The court entered a consistent judgment.

Race Discrimination - A black laborer on a construction crew alleged his foreman made racist remarks and when the laborer complained, he was promptly fired

Lenyard v. Utility Lines Construction, 2:09-197
Plaintiff: Scott A. Gilliland, Vestavia Hills
Defense: J. Tobias Dykes and Tamula R. Yelling, *Constangy Brooks & Smith* Birmingham
Verdict: Defense verdict
Federal: **Birmingham**, 12-6-10
Judge: Abdul K. Kallon

Harrison Lenyard, who is black, was hired on 10-8-07 as a laborer on a construction crew for Utility Lines Construction Services. Almost immediately, Lenyard recalled the foreman on his crew regularly made racial slurs at work. Lenyard made a complaint to Human Resources on 11-16-07. Not quite a month later, Utility Lines fired him.

Lenyard sued his former employer and alleged two counts, (1) race-based discrimination regarding his termination, and (2) retaliation for having complained. That the firing represented discrimination, Lenyard noted that purported reason for his termination was a pretext – the company had cited poor attendance. However, a white counterpart with similar attendance issues was not let go. Regarding the retaliation count, Lenyard focused on the temporal proximity between his complaint (11-16) and his firing (12-10).

Utility Lines defended as noted above that Lenyard was let go because of poor attendance. It also replied to the white counterpart pretext charge, explaining that worker had not been fired only because of an HR snafu. Similarly, there was no retaliation as when Lenyard complained, an investigation was conducted and the foreman reassigned. Thus at the time of the firing, that complaint had long since been resolved.

The jury's verdict was for Utility Lines on both the race and retaliation counts, Lenyard taking nothing. A defense judgment was entered.

Security Negligence - After a father bought a gun safe to protect his medications from his drug-addicted son, the son successfully asked an employee of the establishment from which the safe was purchased to provide him with the safe's combination

Amick v. Academy Sports & Outdoors, 09-1622
Plaintiff: Joseph O. Kulakowski, Mobile
Defense: Katie L. Hammett and J. Burruss Riis, *Hand Arendall, LLC.*, Mobile
Verdict: Defense verdict
Circuit: **Mobile**, 2-3-10
Judge: James C. Wood

On 4-9-08, Larry Amick bought a

Stack-On Security Plus gun safe from Academy Sports and Outdoors for $294. Larry planned to use the safe to protect his medications from his 34-year-old son Brian Doyle Amick, who was addicted to drugs. He also planned to keep other valuable personal property in the safe.

In mid-July of that year, Brian decided he wanted to get into his father's safe. To do so, he contacted Academy and asked for the combination. An unsuspicious employee gave it to him.

Brian broke into his father's house, opened the safe, and took his father's prescription for Lortab and over $10,000 that his father had recently gained from the sale of a motorcycle. In addition, he also took some of his father's checks and his credit cards.

When Larry discovered the theft, he was not only furious at Brian but at Academy as well. Brian went to the Kilby Correctional Facility after police investigations for theft and burglary. Larry filed suit against Academy and blamed it for breaching its specific written agreement with him not to disclose the combination of the safe to anyone but him.

Academy defended and argued that the proper defendant was really the Stack-On Products Company, which had the information relating to Larry's safe combination. It also filed a third-party complaint against Brian for fraud and for indemnification.

A district court first heard the parties' dispute. It entered a judgment of $8,890 in favor of Larry on his complaint against Academy and a judgment in favor of Academy against Brian. Academy appealed to the circuit court, where a Mobile jury heard the parties' arguments and returned a defense verdict. The circuit court entered a consistent judgment.

Auto Negligence - A motorcyclist who was closely following the vehicle in front of him on the freeway collided with its rear, fell off his motorcycle, and was run over by a second motorist

Glaze v. Dorning, 07-901215
Plaintiff: William B. Lloyd and Cameron L. Hogan, *William B. Lloyd & Assocs.*, Birmingham
Defense: T. Brian Hoven and Ralph D. Gaines, III, *Gaines Wolter & Kinney, P.C.*, Birmingham
Verdict: Judgment as a matter of law for defendant
Circuit: **Jefferson**, 6-1-10
Judge: Helen Shores Lee

On 4-5-06, William Glaze was riding a motorcycle on I-59 South near its intersections with Exit 118 and Exit 119 in Jefferson County. Suddenly and without warning, an unidentified vehicle swerved.

Glaze attempted to avoid it, only to collide with the rear of a disabled 1995 Chevrolet Caprice being driven by Mario Jackson. As a result of the collision, Glaze was knocked off his motorcycle. An instant later, he was struck by a vehicle driven by Robert Dorning.

Glaze was badly injured as a result. His left leg was amputated above the knee. The record does not show the amount of his medical expenses. He made a pre-suit demand, however, of $1.25 million.

Glaze filed suit against Dorning and blamed him for not driving safely. His theories included negligence and wantonness. He also named Progressive Specialty Insurance Company, his UM/UIM carrier, as a co-defendant. Glaze later amended his complaint to add Jackson as a third co-defendant and blamed him for creating a dangerous situation by driving a disabled vehicle on the freeway.

Progressive obtained dismissal from the action. The remaining defendants responded and denied liability. They also raised a defense of contributory negligence on the ground that the accident had occurred because Glaze had been following Jackson too closely.

After six days of trial before a Birmingham jury, the court granted judgment as a matter of law for defendants on the basis that Glaze, who admitted he had been following too closely, had been contributorily negligent.

Title Search Negligence - After a condominium developer did not include all the condominium amenities in the legal description of the condominium property, some undescribed property passed to the State for unpaid taxes, and the loss was not discovered by the condominium until after the State sold the property to a third party

Sands Condominium Owners Assoc. v. Bay Title Ins. Co., 08-395
Plaintiff: A. Riley Powell, IV, *The Powell Law Firm, P.C.*, Gulf Shores
Defense: Daniel G. Blackburn, *Blackburn & Conner, P.C.*, Bay Minette
Verdict: $44,000 for plaintiff
Circuit: **Mobile**, 2-11-10
Judge: Joseph S. Johnston

Around 1980, a developer built a multi-unit condominium complex in Baldwin County known as The Sands. At that time, a few amenities such as parking and a pool house were built on property not included in The Sands' legal description. These remained titled in the developer. Among the property not included in The Sands' legal description was a parcel later identified as 66-04-19-1-000-018.002, or simply "parcel 18.002."

Twenty-five years later, The Sands' real estate agent, Kevin Corcoran, asked Bay Title Insurance Company to provide a 20-year lien search on The Sands. Bay Title obliged and found no liens. It did not search for liens on parcel 18.002 because this parcel was not part of the legal description of The Sands.

In early March of 2007, the treasurer for The Sands Condominium Owners Association heard that parcel 18.002 was available for sale from the State because of unpaid taxes. The treasurer did some research and found that his information was correct. Parcel 18.002 had been transferred to the State of Alabama in 1987 because of unpaid property taxes.

In mid-June 2007, Corcoran contacted Bay Title again. Once again Bay Title searched the title for The Sands. On 6-22-07, it issued a Limited Title and Lien Certificate on the property showing no tax liens, lis pendens, liens, encumbrances, or exceptions on The Sands. However,

Bay Title once again neglected to include parcel 18.002 in its search.

Not reassured, The Sands hired a local attorney to search the title and warned him about parcel 18.002. The attorney issued an oral report on 7-25-07 and a written letter on 8-10-07 informing The Sands that it did not own parcel 18.002.

Meanwhile, Madison Avenue Investments was acquiring a tax deed on parcel 18.002. The purchase was made on 7-26-07. Thereafter, The Sands bought parcel 18.002 from Madison Avenue Investments.

The Sands filed suit against Bay Title and its employee, Gary Engeseth, and blamed them for not having found the ownership problem relating to parcel 18.002. The Sands believed Bay Title's error cost it an extra $100,000 in obtaining title to parcel 18.002. Its theories included negligence, wantonness, breach of contract, and breach of warranty.

Bay Title and Engeseth defended and claimed they had done nothing wrong. According to them, they had done searches in 2005 and 2007 for the property described as The Sands.

Since parcel 18.002 was not part of that property, it had naturally not occurred in their report. In addition, defendants argued that if The Sands was entitled to damages at all, it was only entitled to a very limited amount, inasmuch as Bay Title had only issued a preliminary title report and The Sands had not bought a title insurance policy.

Before trial, Engeseth was dismissed from the action. A Mobile jury listened to the parties' arguments and returned a verdict of $44,000 in favor of The Sands against Bay Title. The court entered a consistent judgment, and it has since been satisfied.

Auto Negligence - When a utility trailer came loose on the road, one motorist struck it, a second motorist stopped to help the first motorist, and a third motorist struck the trailer again and sent it flying into the second motorist, causing him injuries

Hughes v. Gaither, et al., 09-900421
Plaintiff: Steven D. Tipler, *tiplerlarkintrialwawyers*, Birmingham
Defense: Tracy N. Hendrix, *Gault & Hendrix, LLC.*, Birmingham, for the Gaithers; James Randolph Gillum, *Rogers & Associates*., Birmingham, for White and Southern Fastening
Verdict: $20,000 for plaintiff (comprised of $14,000 in compensatory damages and $6,000 in punitives)
Circuit: **Jefferson**, 12-2-10
Judge: Houston L. Brown

In the early morning hours of 5-14-08, Felix and John Gaither were driving along Ala. Hwy. 160 in Nectar. They were towing a utility trailer that Felix had attached to John's vehicle. After about 15 miles, the Gaithers noticed the trailer was loose. They stopped.

A series of unfortunate events then occurred. Michael Merrell, another motorist, drove along and struck the trailer. David Hughes, the next motorist on the scene, stopped to help Merrell. Hughes' good deed went very unrewarded when Jeffrey White, an employee of Southern Fastening Systems, LLC., drove onto the scene and struck the trailer. In turn, the trailer struck Hughes.

Hughes was injured in his lower back, left flank, and kidney area. His medical expenses totaled $10,950, and he also lost wages in the amount of $1,800.

Hughes filed suit against Felix, John, White, and Southern Fastening and blamed them for causing the accident. He asserted the trailer had come loose because Felix had not fastened the trailer properly. He also named GEICO General Insurance Company, his UM/UIM carrier, as a co-defendant.

Defendants responded and minimized the damages claimed by Hughes. GEICO was able to reach a settlement with Hughes and was thereafter dismissed from the action.

A Birmingham jury reviewed the evidence and awarded Hughes $14,000 in damages against the remaining defendants. It also awarded Hughes $6,000 in punitive damages as against Felix. The court entered a consistent judgment.

Premises Liability - Two men suffered from Legionnaires' Disease after using a hotel's hot tub

Estate of Handley, et al., v. Wingate Inns Int'l, et al., 09-900170
Plaintiff: M. Todd Wheeles, *Morris Haynes & Hornsby*, Birmingham
Defense: Thomas M. Little, *Smith Spires & Peddy, P.C.*, Birmingham
Verdict: $4,500,000 for plaintiffs (comprised of $1,500,000 in compensatory damages and $750,000 in punitives for each plaintiff)
Circuit: **Calhoun**, 11-18-10
Judge: Malcolm B. Street, Jr.

On 5-15-08, Rodney Handley and Emanuel Howard were part of a group of employees of the Jefferson County Commission who were staying at the Wingate Inn in Oxford. They had been assigned to go there to help with cleanup on the roads in Heflin, which had recently been hit with two tornadoes.

While staying in the Wingate Inn, Handley and Howard used the hotel's hot tub, which was located in the public area near the swimming pool. On 5-30-08, both Handley and Howard became ill. They were eventually diagnosed with Legionnaires' Disease.

Both men suffered long-term health consequences. Howard complained of permanent damage to his lungs and nerve damages in his legs. His medical expenses totaled $127,009. Handley's medical expenses totaled $231,815. Both men sought and were paid workers' compensation benefits.

The Alabama Department of Public Health immediately looked into the possibility that Handley and Howard might have become ill because of Legionella bacteria in the hot tub. In response to the Department's request that the hotel spa be closed, Wingate Inns immediately hyperclorinated, disinfected, and generally cleaned the spa.

This successfully removed any Legionella bacteria from the hot tub, but it also had the consequence of spoliating any evidence. The hotel provided maintenance records to the Department about the hot tub, but a dispute later arose regarding the accuracy of the maintenance records.

Handley and Howard filed separate suits against Wingate Inns and Manju

Purohit, the manager of their hotel. Plaintiffs blamed defendants for poor maintenance of the hot tub. Their theories included negligence, wantonness, and negligent or wanton hiring, training, or supervision. They argued that Purohit was not informed as to proper spa conditions and she had hired a maintenance man who also had no training on proper spa maintenance.

Defendants responded and minimized the damages claimed by Handley and Howard. They also pointed to the lack of evidence that Legionella bacteria had ever been in the hot tub.

Plaintiffs responded with the expert opinion of James Barbaree, Microbiology, Auburn, who opined that in spite of the lack of Legionella bacteria currently in the hot tub, the bacteria had existed in the past and had caused plaintiffs to become ill.

Handley and Howard's respective lawsuits were consolidated before trial. Handley died of a heart attack, and his estate replaced him as plaintiff. It was unclear whether Handley's heart attack was related to the Legionnaires' Disease.

After less than an hour of deliberation, an Anniston jury returned a verdict of $1,500,000 in compensatory damages for Handley's estate and the same amount for Howard. It also awarded each plaintiff $750,000 in punitives, for a total $4,500,000 verdict.

Thereafter, Jefferson County moved to intervene to exercise its subrogation rights. At the time the AJVR reviewed the record, the court had not yet entered a final judgment, and the disposition of Jefferson County's subrogation claim had not yet been determined.

Auto Negligence - A rear-end collision in the rain left plaintiffs with neck and shoulder injuries

Carrington v. Lewis, 09-900003
Plaintiff: Lance Swanner and Carl Underwood, *The Cochran Firm*, Dothan
Defense: Andrew J. Moak and Chad Vacarella, *Gaines Wolter & Kinney, P.C.*, Birmingham
Verdict: $16,500 (comprised of $11,500 for Janice and $5,000 for Brian)
Circuit: **Jefferson**, 9-2-10
Judge: Eugene R. Verin

On 5-27-08, Brian Carrington was driving in the rain along 22nd Street between its intersections with Carolina Avenue and Arlington in Bessemer. With him in the Mercury Sable was Janice Carrington.

Unexpectedly, they were struck from behind by a vehicle driven by Joe Lewis. The Carringtons were later to describe the impact as "hard" and to claim Lewis struck them twice.

Both of the Carringtons suffered neck and shoulder injuries as a result of the accident. Brian was diagnosed with cervical spondylosis, left shoulder impingement, and AC joint arthrosis with a subacromial spur.

Janice claimed an aggravation of a bulging disc in her upper back. The two visited a physical therapist 17 times. The record does not show the amount of their medical expenses. However, Brian claimed he lost wages in the amount of $1,200 while he was in physical therapy.

The Carringtons filed suit against Lewis and blamed him for causing the collision. Their theories included negligence and wantonness. They also named Liberty Mutual Insurance Company, their UM/UIM carrier, as a co-defendant.

Liberty Mutual opted out of the action. Lewis defended and minimized the damages claimed by plaintiffs.

At the close of the two-day trial in Bessemer, plaintiffs asked for $45,000. The jury awarded them less than half that sum, giving Janice $11,500 and Brian $5,000. The court entered a consistent judgment.

Medical Negligence - A patient on Coumadin tested normally at first for possible thinning of her blood, but her condition worsened at a time when she was not being closely monitored, and she died

Estate of Bryant v. Gillis, 07-900030
Plaintiff: James B. Douglas, Jr., *McNeal & Douglas*, Auburn
Defense: Randal H. Sellers and L. Ben Morris, *Starnes Davis Florie, LLP*., Birmingham
Verdict: Directed verdict for defendant
Circuit: **Colbert**, 10-20-10
Judge: Jacqueline M. Hatcher

On 8-29-05, Dr. Frank Gillis, a family practitioner in Tuscumbia, prescribed 5 or 10 mg of Coumadin to Florine Bryant to treat her atrial fibrillation. Because Coumadin thins the blood and must be monitored very closely, Bryant was told to return in two days to have her INR checked. When she returned, her INR was 1.9, a normal value with regard to the possible thinning of her blood. She was told to return again in a week to have her INR rechecked.

Bryant returned as instructed. However, although other lab tests were performed for her, the INR was not performed. Bryant did not have another INR performed until about two and a half months later.

When Bryant came in on 11-14-05, Dr. Gillis' practice was temporarily being covered by Dr. George Evans, one of his partners. Dr. Evans was also supervising Carroll Davis, a certified registered nurse practitioner, in Dr. Gillis' absence. Bryant complained of bruising and dizziness and was seen by Nurse Davis. An INR was drawn that revealed an INR of 34.2.

Nurse Davis instructed Bryant to hold the Coumadin for four days and recheck on the fifth day. Nurse Davis did not show the critical INR value to the covering physician. Bryant returned the next day with a new complaint of nausea and vomiting. She was also still bleeding from the site where her blood had been drawn the day before. Nurse Davis drew another INR, which this time was 44.8.

When Nurse Davis showed the latest INR value to Dr. Evans, he instructed her to refer Bryant to a hematologist.

An appointment was made with the hematologist the next day, but Bryant was found unresponsive by a friend beforehand. She was taken by ambulance to Shoals ER, where A CAT scan showed a subdural hematoma with a midline shift. She died on 11-17-05.

Bryant's estate filed suit against Dr. Gillis and Nurse Davis and criticized the care they had given Bryant. The estate later amended its complaint to add Dr. Evans as a co-defendant.

Dr. Evans successfully argued he had been added after the expiration of the statute of limitations, and he was dismissed from the action. The estate and Nurse Davis settled before trial. Dr. Gillis continued to defend and deny wrongdoing. His identified experts included Dr. Gerald Machen, Family Medicine, Cullman and Dr. Drake Lavender, Family Medicine, Gordo.

For three days, the estate presented its case to a jury in Tuscumbia. On the third day and at the close of the estate's case in chief, the court granted Dr. Gillis' motion for judgment as a matter of law on the basis of efficient intervening cause.

Auto Negligence - A driver collided head-on with a tractor-trailer and caused the truck driver to become totally disabled vocationally

Hartley v. Ala. Injury & Pain Clinic, 07-900302
Plaintiff: John R. Spencer, *John Ronald Spencer, P.C.*, Mobile
Defense: Vanessa Arnold Shoots, Mobile
Verdict: $1,000,000 for plaintiff
Circuit: **Mobile**, 9-30-10
Judge: John R. Lockett

On 6-9-06 Dana Hartley was driving his 1999 Volvo tractor, to which a trailer was attached, in Greenville near the intersection of Greenville Bypass and Gateway Place. While he was doing so, Willie Jones was driving a vehicle in the opposite direction. Unexpectedly, Jones crossed the center line and collided head-on with Hartley's tractor.

Hartley's tractor was a total loss. Hartley also suffered injuries to his left shoulder and lower back. He had herniated discs at the L2-3, L3-4, and L5-S1 levels.

Although Hartley underwent a decompression laminectomy and diskectomy at the L4-5 level, he continued to suffer headaches, stiffness in his neck, and pain in both hips and down his right leg. He was assigned a 20% permanent impairment to his back. The record does not show the amount of his medical expenses.

Because Hartley's work skills were non-transferable and he could no longer work as a truck driver, he was totally disabled vocationally. Hartley estimated the current value of his lost future earnings at $1,008,428.

Jones was insured by GEICO, which tendered its policy limits to Hartley. However, Hartley believed he still had a right to recovery against other parties.

Hartley filed suit against Jones and blamed him for causing the accident. Hartley also named as a co-defendant Jones's employer, the Alabama Injury and Pain Clinic, Inc. A third defendant was Dr. James Gordon, the CEO of the Clinic. The fourth defendant was Alea London Ltd., which provided UIM coverage to Hartley. Hartley's identified experts included Joseph Law, Jr., Vocational Expert, Mobile.

Dr. Gordon, Jones, and Alea were dismissed from the action, which then proceeded solely against the Clinic. The Clinic defended and minimized the damages claimed by Hartley.

A Mobile jury heard the arguments and returned a verdict of $1,000,000 for Hartley. The court entered a consistent judgment. At the time the AJVR reviewed the record, a motion for new trial had been filed but had not yet been resolved.

Breach of Contract - When asked orally for an employee's medical records in connection with a workers' compensation case, a doctor provided the records, which included a note that the employee had asked for a back-dated work-release slip; the employee was subsequently terminated for dishonesty and blamed the doctor for having lied about the back-dated slip

Hollander v. Nichols, et al., 03-428
Plaintiff: Michael L. Weathers, Florence
Defense: Nicholas B. Roth and James G. Adams, *Eyster Key Tubb Roth Middleton & Adams, LLP.*, Decatur
Verdict: $1 for plaintiff
Circuit: **Lauderdale**, 3-17-10
Judge: Mike T. Jones

On 8-27-99, Louis Hollander, Jr., was employed by Coca-Cola at its facility in Florence to deliver soft-drink vending machines and coolers. On that day, he and another worker were moving a fully-loaded soft-drink vending machine into an elementary school. During the move the machine, which weighed between 700 and 1,000 pounds, fell on Hollander. His legs were pinned between 5 to 10 minutes.

Holland reported the incident to his supervisor, who reported it in turn to Coca-Cola's third-party accident claims administrator. The next day, Hollander started to drive a forklift to load machines onto a truck for delivery. The machine fell off the forklift.

On 8-30-99, Hollander visited Dr. Glen Sockwell complaining of stress and shortness of breath. The next day, Dr. Sockwell gave Hollander a work-release slip excusing him from work until September 12. Dr. Sockwell's notes did not indicate Hollander complained about an injury to his legs.

On 9-1-99, Hollander visited the North Alabama Bone and Joint Clinic, a group of physicians approved by Coca-Cola to treat employees' work-related injuries, and saw Dr. Lee Nichols. Hollander complained of pain in his right knee and left ankle as a result of his being pinned by the soft-drink machine at the elementary school. Dr. Nichols, however, did not think it necessary to excuse Hollander from work because of the injury to his legs.

Dr. Nichols' office notes show that he saw Hollander again on 9-8-99. However, Dr. Nichols later stated that his notes were incorrect and he merely had a telephone conversation with Hollander on that date.

According to Dr. Nichols, Hollander asked him to write a work release or excuse from work from 8-27-99. Hollander's reason was that Coca-Cola had refused to accept Dr. Sockwell's work-release slip because he was not a company doctor.

As part of the regular claims procedure, Dr. Nichols' office faxed Hollander's medical record notes of 9-1-99 and 9-8-99 to Coca-Cola's offices. Coca-Cola observed in the notes that

Hollander had asked Dr. Nichols to backdate a work-release slip.

According to Coca-Cola, this was dishonest behavior. As part of Hollander's job was carrying large amounts of cash for use in the vending machines, it believed it was justified in firing him.

Hollander returned to work on 9-13-99, but Coca-Cola terminated him the next day for attempting to have Dr. Nichols backdate a work-release slip. This sat poorly with Hollander, who insisted Dr. Nichols was not telling the truth. According to Hollander, he had not asked Dr. Nichols to backdate a work-release slip.

Hollander filed suit against Coca-Cola and alleged it had discharged him in retaliation for his attempt to obtain workers' compensation benefits. He won at a jury trial, but the Alabama Supreme Court reversed and held that Coca-Cola was entitled to a judgment as a matter of law.

Hollander's retaliatory-discharge action spawned a second action when Dr. Nichols, who had testified in deposition, was not paid by Hollander for his time. Dr. Nichols filed a small-claims action against Hollander. The record does not show the outcome of this lawsuit.

The third action arising out of this incident was by Hollander against North Alabama Bone and Joint Clinic and Dr. Nichols. In this action, Hollander claimed that defendants had breached an implied contract of confidentiality in producing his medical records for Coca-Cola.

Hollander also claimed Dr. Nichols had defamed him in telling Coca-Cola that he had asked for a backdated work-release slip. Finally, Hollander asserted Dr. Nichols had committed abuse of process by filing the small-claims action against him to recover for unpaid deposition fees.

The Clinic and Dr. Nichols raised several defenses. First, they argued that § 25-5-77 of the Alabama Workers' Compensation Act authorized the release of Hollander's medical records and exempted them from liability. Second, they argued that Hollander's claims were barred by judicial estoppel on the basis of statements Hollander made in his retaliatory discharge action.

Third, defendants claimed Hollander's defamation claims were time-barred. According to them, the allegedly defamatory statement had been made on 9-13-99, approximately four years before Hollander filed his action. Finally, Dr. Nichols insisted he had acted reasonably in filing his small-claims action and had not threatened to have his "lawyer get" Hollander for failing to pay his deposition fees.

Defendants' motion for summary judgment was granted by the trial court. On appeal, the Alabama Supreme Court affirmed as to the dismissal of the defamation and the abuse of process claims, but it reversed and remanded as to the breach of contract claim.

The Supreme Court observed that § 25-5-77 of the Workers' Compensation Act applied only when a physician received a written request from the employee or employer. All parties agreed that no one had requested records in writing from Dr. Nichols.

On remand, the court held a two-day trial in Florence on the breach of contract claim. At the end of the trial, the jury returned a verdict in Hollander's favor in the amount of $1. The court entered a consistent judgment and denied Hollander's motion for a new trial.

Underinsured Motorist - A car hydroplaned, crossed the median, and collided with another vehicle

May v. Allstate Ins. Co., 08-1297
Plaintiff: Robert L. Gorham, *Gorham & Associates, LLC.*, Birmingham
Defense: Mark C. Peterson, *Wade S. Anderson & Associates*, Birmingham
Verdict: $108,203 for plaintiff
Circuit: **Jefferson**, 2-4-10
Judge: Robert S. Vance

On 4-19-06, Andrew Crowson, a minor, was driving a car owned by Robert Crowson along Ala. Hwy. 160 near its intersection with U.S. 31. Unexpectedly, his car hydroplaned, crossed the median into oncoming traffic, and struck a vehicle occupied by Jayda May.

May was injured in the collision. The record does not describe the nature of her injuries or the amount of her medical expenses.

May filed suit against Andrew and blamed him for causing the accident. Her theories included negligence and wantonness. She also named as a co-defendant Robert on a theory that he had negligently entrusted the car to Andrew. The third co-defendant in the action was Allstate Insurance Company, May's UIM carrier, on a theory of breach of contract.

Both Crowsons were dismissed from the action before trial. Allstate defended and minimized the damages alleged by May.

A Birmingham jury returned a verdict for May in the amount of $108,203. The court made the appropriate reductions based on the Crowsons' insurance limits and entered a judgment of $8,203 against Allstate. The judgment has since been satisfied.

Products Liability - The driver of an off-road vehicle suffered severe injuries when the vehicle tipped over during a turn; the driver blamed the manufacturer for an unsafe design

McMahon v. Yamaha Motor Co., 08-360
Plaintiff: Rachael Raymon Gilmer, Kimberly R. Lambert, and Troy A. Rafferty, *Levin Papantonio Thomas Mitchell Echsner & Proctor, P.A.*, Pensacola, FL; and J. Cole Portis and Christopher D. Glover, *Beasley Allen Crow Methvin Portis & Miles, P.C.*, Montgomery
Defense: De Martenson and David L. Brown, Jr., *Huie Fernambucq & Stewart, LLP*., Birmingham; and Robert C. Ward, Jr., *Rushton Stakely Johnston & Garrett, P.A.*, Montgomery
Verdict: Defense verdict
Circuit: **Montgomery**, 10-22-10
Judge: Tracy S. McCooey

There were no eyewitnesses and the accident victim, Jacklyn McMahon, had no clear memory of the incident afterward. However, everyone agreed McMahon was injured on 7-26-07 as she attempted to park the 2007 Yamaha Rhino she was driving. McMahon was not wearing a helmet or a seat belt, and she was wearing sandals instead of the recommended boots.

At first, McMahon recalled the accident had occurred when she was making a hard right-hand turn from a gravel road in order to park the Rhino in a barn alongside the road. She slowed as she prepared for the turn and

then pressed on the gas as she came out of the turn. The Rhino tipped over, and McMahon suffered injuries to her left leg and arms.

Much later, McMahon's memories returned in more detail. For the first time, she remembered a pole had been on the property. She had turned and missed the shed, done a U-turn, and come back and turned a second time so she could get the Rhino into the barn. In other words, she had performed a doughnut-circle maneuver. She also believed that she had accelerated into the second turn.

Regardless of how the accident occurred, McMahon's left legs and arms were injured in the collision. She claimed about $374,000 in medical expenses.

McMahon filed suit against Yamaha Motor Corporation, USA, Yamaha Motor Co., Ltd., and the dealer Montgomery Yamaha-Honda and blamed them for manufacturing and selling a defective product. According to McMahon, the Rhino had overturned because it was defective in its stability, handling, and crashworthiness.

McMahon's theories included common-law negligence and wantonness, breach of warranty, and violations of the Alabama Extended Manufacturers Liability Doctrine (AEMLD). Her husband Donald filed a derivative claim for loss of consortium.

To support her position, McMahon retained several experts. They included Ron Carr, Accident Reconstruction, San Diego, CA; Michael Burleson, Engineering, Tyler, TX; Randall Nelson, ATV Driving, Huntington Beach, CA; Michael Kleinberger, Biomechanics, Clarksville, MD; and Louis D'Aulerio, Engineering, Penns Park, PA. It was Burleson's opinion that the Rhino would have been safer and would not have tipped over if it had had a 52-inch wheel base.

Montgomery Yamaha was dismissed from the action by joint motion. The Yamaha defendants responded and asserted the Rhino was designed to be a very safe vehicle.

They also pointed to warnings posted on the dashboard instructing users to wear helmets and protective gear while driving the Rhino and to wear their seat belts. They further argued that if McMahon had followed these warnings, she would not have been injured. The Yamaha defendants' identified experts included Kevin Breen, Accident Reconstruction, Fort Myers, FL.

At the three-week trial in Montgomery, the court granted the Yamaha defendants' claims for judgment as a matter of law with respect to plaintiffs' common-law negligence and wantonness claims. The jury considered the remaining AEMLD claims and returned a defense verdict. The court entered a consistent judgment. Plaintiffs moved for a new trial, but the outcome of their motion had not yet been decided when the AJVR reviewed the record.

Uninsured Motorist - A motorcyclist sought uninsured motorist benefits after an unidentified driver pulled in front of him and caused him to wreck his motorcycle

Kendrick v. State Farm Mut. Auto. Ins. Co., 07-901843
Plaintiff: Huel M. Carter and Nathan B. Carter, *Carter Law Firm*, Fultondale
Defense: Ralph D. Gaines, III, Daniel S. Wolter, and Patrick Montgomery, *Gaines Wolter & Kinney, P.C.*, Birmingham
Verdict: Defense verdict
Circuit: **Jefferson**, 2-9-10
Judge: Ed Ramsey

On 4-24-06, Joel Kendrick was riding his motorcycle down the road when an unknown motorist's car pulled out in front of him. Kendrick was unable to avoid wrecking his bike. The record does not provide further details about the accident.

Kendrick suffered injuries in his neck, back, shoulders, and legs. He underwent back surgery and epidural blocks. The record does not identify the amount of his medical expenses.

Since Kendrick did not know the name of the other driver, he filed suit against State Farm Mutual Automobile Insurance Company to recover under his uninsured motorist policy. His theories included breach of contract, bad faith, and fraud. State Farm defended and minimized the damages claimed by Kendrick in his encounter with the alleged "phantom motorist."

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

Breach of Contract - An employee who had signed a non-compete agreement left his employer after six years, started working for one of his employer's former customers, and began a competing business of his own

J. H. Wright & Assocs. v. Routon, 08-900228
Plaintiff: James G. Adams, Jr., *Eyster Key Tubb Roth Middleton & Adams, LLP.*, Decatur
Defense: Jon R. Sedlak, Decatur
Verdict: $140,000 for plaintiffs
Circuit: **Morgan**, 3-15-10
Judge: Steven E. Haddock

J. H. Wright and Associates, Inc., is an industrial and municipal equipment distributor specializing in fluid handling systems. It maintains a repair facility in Cullman.

In 2001, James Routon was employed there as North Alabama Operations Manager, and on 2-6-01 Routon signed a confidentiality and non-compete agreement. The agreement bound him from competing with J. H. Wright anywhere within the continental United States.

In September 2007, Routon resigned from J. H. Wright and began working at a similar job for the OCI Chemical facility in Decatur. OCI had formerly had a contract with J. H. Wright, but it canceled its contract at this time.

Routon and his wife also began Rocon Mechanical, LLC., and leased a building in Hartselle. Rocon Mechanical competed with J. H. Wright with respect to the pump sales and repair business.

J. H. Wright was unhappy about this turn of events. It filed suit against Routon and Rocon Mechanical and blamed Routon for breaching the 2001 non-compete agreement. It also claimed Routon was in breach of the Alabama Trade Secrets Act and had committed interference with business relations.

Routon and Rocon Mechanical defended and denied any breach of the non-compete agreement, which they insisted was void anyway due to a failure of consideration. Defendants

also asserted the Alabama Trade Secrets Act had no application to the facts, and they further denied any interference with business relations. Finally, Rocon Mechanical claimed it was not a proper party to the proceedings.

Before the trial to the Decatur jury, J. H. Wright withdrew its Alabama Trade Secrets Act claim. The jury returned a verdict for J. H. Wright against Routon for $140,000.

The court entered a consistent judgment and enjoined Routon from competing with J. H. Wright for 13 months in northern Alabama. It dismissed the action as to Rocon Mechanical.

In order to collect on its judgment, J. H. Wright moved for garnishment. However, Routon filed for Chapter 11 bankruptcy relief. At the time the AJVR reviewed the file, there was no indication as to the status of Routon's Chapter 11 filings.

Truck Negligence - A trucker rear-ended the plaintiff on I-20 on the way to Birmingham – the trucker blamed the crash on a sudden emergency created by another driver

Mims v. Dumas Motor Freight, 2:08-1880
Plaintiff: Robert L. Beeman, II, Helena
Defense: K. Donald Simms and James M. Strong, *Whitaker mudd Sims Luke & Wells*, Birmingham
Verdict: Defense verdict
Federal: **Birmingham**, 12-13-10
Judge: Abdul K. Kallon

Eric Mims, then age 32 and a mortgage lender/athletic trainer, traveled on 1-20 to Birmingham on 9-7-06. Near the St. Clair-Jefferson County line, he was rear-ended by a tractor-trailer driven by Wesley Milholland for Dumas Motor Freight.

Mims has since treated for neck and shoulder pain that have limited his vocational activities – this was particularly true as to his training. His medical bills were $5,759.

In this lawsuit (removed by Dumas Motor Freight to federal court), Mims sought damages from its driver. The trucking defendant replied and blamed the crash on a sudden emergency created by a non-party driver.

The jury answered for Dumas Motor Freight that its driver's negligence was not the legal cause of injury to plaintiff. That ended the deliberations and Mims took nothing. A defense judgment was entered. As the jury had deliberated, it asked the court: Was there a police report? Can we see it? The court said no.

Underinsured Motorist - An SUV struck a bicyclist and left him with brain damage

Small v. Howard, 08-902746
Plaintiff: Gregory S. Ritchey, *Ritchey Simpson Glick & Burford, PLLC*., Birmingham
Defense: J. Lenn Ryals, *Ryals Plummer Donaldson Agricola & Smith, P.C.*, Montgomery
Verdict: $150,000 for plaintiff
Circuit: **Jefferson**, 2-24-10
Judge: J. Scott Vowell

On 6-21-07, Patrick Small and Mark Froehlich were riding their road bikes along 21st Avenue South near the intersection with 20th Place South and the on-ramp to Hwy. 280 and 31 in Birmingham.

At the same time, Frances Howard was driving a black Suburban SUV along 20th Place South. She stopped at the stop sign and then pulled into the intersection to get onto the on-ramp. As she did so, a passenger in her car alerted her to the presence of bicyclers.

Howard slowed, but an instant later she felt an impact on the back right quarter panel of her SUV. Both Small and Froehlich had been unable to avoid the collision when she pulled directly in front of them. The right of way had belonged to Small and Froehlich.

Both men were injured in the collision. Small's physical injuries healed well, but after the incident people around him noticed behavioral changes.

Previously, Small had operated and managed a distributor of industrial and safety supplies and a distributorship for specialty valve equipment. Froehlich described the former Small as being cooperative, thoughtful, articulate, and responsive to questions.

After the accident, however, Small suffered headaches, loss of memory, loss of train of thought, blackouts, and difficulty with technical information. He became uncooperative, easily agitated, erratic, impulsive, rude, and sometimes childish. He was diagnosed with a traumatic brain injury and possible complex partial seizures.

The cost of Smith's medical expenses was approximately $40,000, and he also suffered about $10,000 in property damage. He paid an additional $16,617 for insurance payments.

However, Smith believed he was no longer able to hold his previous positions, and he estimated his lost income in past and future as exceeding $6,000,000. He also estimated his lost fringe benefits as being approximately half a million dollars. His identified experts included Shael Wolfson, Economics, New Orleans, LA.

Small filed suit against Howard and blamed her for not spotting him and running into his bicycle. His theories included negligence and wantonness. Small also filed a claim against his UIM carrier, Safeco Insurance Company of America, for UIM benefits.

Over time, Small amended to add four other insurers: Transcontinental Insurance Company, Continental Casualty Company, Maryland Casualty Company, and Illinois National Insurance Company. The record does not show the relationship of these insurers to Small. However, as Small's suit progressed, Safeco settled for $40,000. Continental and Transcontinental settled for $35,000. Maryland and Illinois National opted out of the action.

Howard initially defended and minimized the damages claimed by Small. She admitted the collision had been her fault, but she also insisted that Small should have seen her large, black SUV and avoided it. Before trial, she settled for $110,000.

The trial in Birmingham nonetheless proceeded as if against Howard. The jury awarded Small $150,000. The court entered a consistent judgment but allowed a setoff on the basis of the previously paid settlements. Thus, the remaining defendants, Maryland and Illinois National, were not required to pay any award.

Auto Negligence - A collision occurred between two vehicles in a store's parking lot

Brooks v. Williams, 08-277
Plaintiff: Russell B. Robertson, *Laird & Robertson, P.C.*, Jasper
Defense: Michael L. Haggard, *Smith Tyra Thomas & Haggard, LLC*., Alabaster
Verdict: Defense verdict
Circuit: **Walker**, 2-25-10
Judge: H. Douglas Farris, Jr.

On 2-12-08, Jerry Williams was driving through the parking lot of the Five Point Zippy Mart in Jasper. Unexpectedly, he struck a vehicle that was being driven by Judy Brooks. William Brooks was a passenger with Judy in the car.

William and Judy were injured in the collision. The record does not describe their injuries or the amount of their medical expenses. Damage to their vehicle, however, totaled $7,471.

The Brookses filed suit against Williams and blamed him for causing the collision. Their theories included negligence and wantonness. Williams defended and minimized the damages claimed by the Brookses.

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

Breach of Contract - After a man's death, his estate sought to recover on a loan he had made to two individuals who claimed they had reached an oral agreement with the man to forgive the remainder of the loan

Estate of Brown v. Green, 08-171
Plaintiff: Joel Lee Williams, Troy
Defense: Richard F. Calhoun, Troy
Verdict: Defense verdict
Circuit: **Pike**, 2-26-10
Judge: Jeffery W. Kelley

On 12-9-99, Samuel and Sam C. Green borrowed $100,000 from Willie Joe Brown, Sr., and agreed in writing to pay back the sum in installments of $400 every month. The Greens made some payments before Brown died on 7-26-08, but they did not repay the entire sum.

Brown's estate filed suit against the Greens and demanded repayment in accordance with the terms of the parties' contract. The Greens defended and said that they had reached an oral agreement with Brown before his death that did not require them to make further payments. Brown's estate responded by arguing that any modification of the written contract should have been in writing to be valid.

A Troy jury agreed with the Greens' position and returned a defense verdict. The court followed with a consistent judgment.

Auto Negligence - A motor vehicle collision occurred when one driver cut across another lane of traffic while turning right

Callaghan v. Isbell, 09-900573
Plaintiff: Samuel P. McClurkin, IV and Andrew T. Citrin, Daphne
Defense: James W. Killion, *Killion Potts, P.C.*, Mobile
Verdict: Defense verdict
Circuit: **Baldwin**, 3-5-10
Judge: James H. Reid

On 4-23-07, Donna Isbell attempted to turn right onto private property by cutting across another lane of traffic. In so doing she struck Karen Callaghan, a waitress, who believed she had the right of way.

Callaghan's foot was injured in the collision. She incurred at least $5,359 in medical expenses and believed she was unable to continue working as a waitress because her foot would become stiff and achy if she walked for long periods of time.

Callaghan filed suit against Isbell and blamed her for causing the collision. Her theories included negligence and wantonness. Isbell defended and argued Callaghan was able to continue working at a sedentary job.

After a one-day trial, a Bay Minette jury returned a defense verdict. The court entered a consistent judgment.

Underinsured Motorist - A motorist sought recovery from his UIM carrier after a motor vehicle accident in Anniston

Rowe v. Safeco Ins. Co., 08-900176
Plaintiff: Kenneth D. Haynes, *Haynes & Haynes, P.C.*, Birmingham
Defense: A. Joe Peddy and Jonathan L. Brogdon, *Smith Spires & Peddy, P.C.*, Birmingham
Verdict: $135,000 for plaintiff
Circuit: **Etowah**, 2-25-10
Judge: William H. Rhea

On 5-30-07, two vehicles driven by Wayne Rowe and Robert Nolen collided on Quintard Avenue between its intersections with 19th Street and 20th Street in Anniston. Rowe blamed Nolen for causing the accident. The record does not identify the nature of Rowe's injuries or the amount of his medical expenses.

Nolen's insurer paid Rowe a sum of money in settlement. Believing his damages exceeded the sum provided, Rowe proceeded to file suit against his UIM carrier, Safeco Insurance Company of Illinois. Safeco defended and minimized the damages claimed by Rowe.

After a three-day trial in Gadsden, a jury returned a verdict in the amount of $135,000 for Rowe. The court entered a judgment for Rowe and taxed costs to Safeco, but it also determined that Safeco was entitled to a setoff of $145,000.

Rowe requested costs in the amount of $2,237 for filing fees, subpoenas, copies of medical records, and deposition fees. The court found a lesser figure appropriate and allowed Rowe $748 for filing fees and subpoenas.

Auto Negligence - One vehicle ran a stop sign at a crossroads and badly injured a passenger in another vehicle

Perry v. Wilson, 08-901234
Plaintiff: J. Barton Warren, *Warren & Simpson, P.C.*, Huntsville
Defense: Benjamin F. Rice, *Spurrier Rice & Forbes, LLP*., Huntsville
Verdict: $275,000 for plaintiff
Circuit: **Madison**, 3-17-10
Judge: Dennis E. O'Dell

On 10-4-07, Nancy Perry was riding

in a 2003 Chevrolet Impala being driven westward by her co-worker, Pam Quick, along Clinton Avenue in Huntsville. At the same time, Marquiz Wilson was traveling north on Triana Boulevard. A stop sign controlled northbound traffic on Triana Boulevard. Unfortunately, Wilson ran the stop sign and struck the Impala.

Perry was injured in the collision. The record does not show the nature of her injuries or the amount of her medical expenses. However, Quick's insurer paid Perry $40,000 to compensate her for the damages she suffered.

Perry's damages, however, exceeded that amount, and she filed suit against Wilson and blamed him for running the stop sign. She also named USAA Casualty Insurance Company, her UIM carrier, as a co-defendant.

USAA opted out of the action. Wilson defended and minimized the damages claimed by Perry.

A Huntsville jury reviewed the facts and arguments and returned a verdict of $275,000 in favor of Perry. The court entered a consistent judgment. USAA then reentered the action to dispute the setoff amount.

While both parties agreed that $50,000 would come to Perry from Wilson's insurer, USAA argued it was also entitled to a setoff of $40,000 due to the payment from Quick's insurer. At the time the AJVR reviewed the record, it did not contain a resolution to this dispute.

Auto Negligence - A driver who was changing from one lane to another rear-ended a vehicle that stopped abruptly in front of her

Mueller v. Cunningham, 05-129
Plaintiff: Lawrence B. Clark and Kevin R. Garrison, *Baker Donelson Bearman Caldwell & Berkowitz, P.C.*, Birmingham
Defense: Patrick R. Norris, *McDaniel Bains & Norris, P.C.*, Birmingham
Verdict: Defense verdict
Circuit: **Walker**, 2-25-10
Judge: Hoyt Elliott

On 4-4-03, Janice Mueller was driving a 1989 Ford Escort on Hwy. 118 between the intersections with 20th Avenue and Walston Bridge Road in Jasper. The road was dry, and driving conditions were good. Behind Mueller, Patricia Cunningham was driving a 1997 Pontiac Grand Am.

Cunningham decided to change from the right lane to the left lane. She checked traffic ahead of her in the right lane and decided she was following at a safe distance. However, as she started to make the lane change, Mueller came to a complete stop in front of a red light. Cunningham was unable to complete her lane change or to avoid a rear-end collision with Mueller.

Mueller later claimed she was injured in the collision. The record does not describe the nature of her injuries or the amount of her medical expenses.

Mueller filed suit against Cunningham and blamed her for not following at a safe distance. Her theories included negligence and wantonness. She later amended her complaint to add a count against her UM/UIM insurer, Alfa Mutual Insurance Company.

Cunningham and Alfa defended and denied wrongdoing. They also disputed Mueller's injuries, arguing that Mueller had multiple preexisting conditions and there was conflicting evidence as to whether the accident had aggravated them.

A Jasper jury heard the parties' arguments and returned a verdict in Cunningham's favor. The court entered a consistent judgment. Mueller has since appealed.

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