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**Breach of Contract** - A company that provided maintenance services for a second company did not indemnify the second company as promised when a maintenance worker was killed and his estate filed a wrongful death action against the second company.

*Honeywell Int’l v. G.A. West & Co., 11-902167*


Verdict: $3,630,338 for plaintiff

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Circuit: Mobile, 9-17-14

Judge: Sarah H. Stewart

On 2-18-06, Honeywell and its affiliate UOP entered into an access agreement with G.A. West & Co., which agreed to provide maintenance services at UOP’s facility in Mobile. The agreement included provisions that G.A. West would perform its work safely and indemnify UOP from any injury-related costs.

A third provision was that G.A. West would provide certain insurance coverage at a certain minimum level. It was also obliged to provide proof to Honeywell that the proper insurance was in place. Honeywell wanted a comprehensive general liability insurance policy with limits of at least $5,000,000 and...
Honeywell’s subsidiaries and employees named as additional insureds.

G.A. West turned to Commercial & Marine Insurance Brokers to obtain the insurance. In the end, G.A. West took out two policies: a commercial general liability policy with policy limits of $1,000,000 issued by National Trust Insurance Company and an umbrella policy with limits of $5,000,000 issued by FCCI Insurance Group. G.A. West duly provided UOP with a certificate of liability insurance from Commercial & Marine.

On 4-8-09, G.A. West’s employee Clifton Ward was working at the UOP facility in Mobile when he climbed into an energized pinch point between an air-driven piston and a steel beam and was killed. Ward’s decision to climb into that area was in violation of G.A. West’s safety policies and OSHA regulations. Five months later, his estate filed a wrongful death lawsuit against UOP and several UOP employees.

Acting on its access agreement, UOP turned to G.A. West and its insurers and asked them to assume its defense and to indemnify it. G.A. West and the insurers refused, saying they had no duty to defend or indemnify UOP for a death caused solely by UOP’s negligent or wilful misconduct.

It was at this point that UOP discovered that the National Trust insurance policy issued to G.A. West did not include the broad endorsement CG 2010 that would have included UOP as an additional insured. Instead, the National Trust policy had provided coverage under the narrower endorsement CGL 026. A second argument by the insurers was that UOP was not insured under the policies pursuant to CGL 026.

The discovery in the wrongful death case was lengthy, with more than 25 depositions and the production and review of more than 78,000 pages of material. Although mediation was unsuccessful in the wrongful death case, UOP and Honeywell eventually settled for an undisclosed sum that they believed was as good a deal as they could get under the circumstances.

UOP and Honeywell then filed their own action against G.A. West, FCCI, National Trust, and Commercial & Marine and blamed them all for not having defended and indemnified UOP and Honeywell in the underlying wrongful death action. Plaintiffs’ theories included negligent failure to procure insurance, misrepresentation, and breach of contract for failure to work safely, failure to indemnify, and failure to procure insurance.

All defendants except G.A. West were dismissed from the action before trial. G.A. West maintained it had been under no duty to indemnify UOP in the wrongful death action because Ward’s death had been caused by UOP’s own misconduct.

At trial, the court granted G.A. West’s motion for judgment as a matter of law on all of plaintiffs’ claims except one. The sole remaining count was plaintiffs’ claim that G.A. West had breached its contract to indemnify plaintiffs.

That single claim, however, went to the Mobile jury, which returned a verdict for $3,360,338 for plaintiffs. The court entered a consistent judgment. At the time the AJVR reviewed the record, the court had not yet ruled on either G.A. West’s motion for a new trial or plaintiffs’ motion for $688,820 in prejudgment interest.

Auto Negligence - A driver who had been rear-ended on the freeway waited for police to arrive but did not turn on her hazard lights after dark; she was rear-ended again at higher speed

Jackson v. Giordano, 12-903079
Plaintiff: Daniel J. Burnick, Sirote & Permutt, P.C., Birmingham
Defense: Drew McNutt, Gaines Gault Hendrix, P.C., Birmingham
Verdict: Defense verdict
Circuit: Jefferson, 5-7-14
Judge: Edward L. Ramsey

In the early evening of 10-7-10, Faye Jackson left her place of business at 140 Inverness Plaza in a 2006 Lexus 330. She drove down Hwy. 280 West and turned left onto the on-ramp of I-459 South heading west toward Hoover. It had been a clear day and was not totally dark yet.

The ramp was congested, and Jackson crept along while waiting to merge onto the freeway. Around 7:20 pm while Jackson was stopped at the end of the ramp, Karen Malone rear-ended her as Malone merged into the same lane. Malone was driving slowly because of the traffic, and so the impact was not very severe.

Leaving their vehicles at the point of collision on the on-ramp, Jackson and Malone climbed out to exchange insurance information and license numbers. While out of her car, Jackson checked the rear of her vehicle for damage.

Jackson did not remember afterward whether she had left her vehicle running, turned on her hazard lights, or left any exterior or interior lights illuminated. She maintained she had the lights of her vehicle automatically set to come on at dusk, but if her vehicle was not running the lights would have shut off.

After taking photos of the damage
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to both vehicles, Malone moved her vehicle out of the road onto the grassy median on the right side of the interstate and turned on flashing lights mounted on top of her vehicle. Jackson’s vehicle remained in place while the women waited for the police to arrive.

Around 7:40 pm, darkness had fully fallen and traffic had cleared up. Christopher Watson was traveling west on Hwy. 280 in his trailerless semi truck that was 13 feet high. He turned left onto the same I-459 ramp that Jackson and Malone had taken about half an hour before.

Just after merging fully onto I-459 South and just beyond the entrance ramp, Watson was traveling in the second lane from the right shoulder when he saw one car in front of him veer left hard and the other car in front of him veer right. He then saw Jackson’s car parked on the interstate in the second lane from the right shoulder of the road with no lights illuminated.

Watson jerked his truck hard right to avoid hitting Jackson’s car. He was able to drive between it and Malone’s car parked on the grass median.

Behind Watson’s truck, however, Kimberly Giordano was driving another vehicle at a normal speed. Although she was not tailgating Watson, her vision was blocked by Watson’s truck, and so she did not spot Jackson until Watson swerved right.

At that point, Giordano swerved left in an attempt to avoid striking Jackson. She did not succeed. After striking Jackson’s vehicle, Giordano careened into the grassy median and struck Malone’s parked vehicle.

Giordano was taken by ambulance to the ER at UAB hospital. She was released that evening due to minor injuries and soreness that required later chiropractic adjustment.

Jackson was also taken to the same ER and admitted overnight. Subsequently, she began to develop memory difficulty and cognitive deficits. Her medical expenses totaled $26,654, and she estimated her lost wages at $27,000.

Jackson filed suit against Malone and Giordano and blamed them for causing the two accidents. Her theories included negligence and wantonness.

Malone and Jackson later agreed to Malone’s dismissal from the action. Jackson continued to press her claims against Giordano, who defended and argued she had been unable to see Jackson until too late. Although Jackson’s memory loss caused her to be uncertain whether she had turned any lights on to warn approaching vehicles, all witnesses agreed Jackson’s car had been dark at the time Watson and Giordano approached.

After a three-day trial, a Birmingham jury returned a defense verdict. The court entered a consistent judgment.

**Medical Negligence - A patient with a history of kidney problems arrested and died after she visited the hospital with complaints of weakness and an elevated potassium level**


**Plaintiff:** Jonathan W. Gathings and Kimberley P. Byram, Jonathan W. Gathings & Assoc., LLC, Birmingham

**Defense:** Howard B. Warren and J. Lee Roberts, Turnbach Warren Roberts & Lloyd, P.C., Gadsden

**Verdict:** Defense verdict

**Circuit:** Etowah, 7-1-14

**Judge:** David A. Kimberley

During the late afternoon, 59-year-old Theresa Underwood went to Riverview Regional Medical Center with complaints of general weakness. Underwood had a history of renal insufficiency.

Underwood was treated by Dr. Ronald Graham, Emergency Medicine, and Dr. Adam Alterman, Family Medicine. An EKG, a chest x-ray, urinalysis, and lab work was ordered. Test results showed Underwood had an elevated potassium level of 6.0. About an hour and 19 minutes later, Kayexalate was administered. Approximately two hours later, Underwood arrested and died.

Underwood’s estate filed suit against Riverview, Dr. Alterman, and Dr. Graham and criticized the care Underwood had received. In particular, the estate believed the 6.0 potassium level had been a red flag that should have alerted her healthcare providers to the threat to her life. The estate’s identified experts included Nurse Todd Keith, Ocala, FL and Dr. Steven Dronen, Emergency Medicine, Sevierville, TN.

The estate later dismissed Dr. Graham and settled with Dr. Alterman. Riverview defended and argued it had not breached the standard of care. Riverview’s identified experts included Dr. Bryan Balentine, Emergency Medicine, Birmingham, who thought Underwood’s EKG did not show any emergency.

Dr. Charles Sima, Cardiovascular Disease, Rainbow City, opined for the defense that Underwood’s electrolyte abnormalities had probably not contributed to her death. Instead, her death had probably been caused by respiratory arrest that had led to cardiac arrest.

In further support of the defense, Nurse Deborah Curry thought the nursing staff had performed a properly detailed assessment of Underwood and that the Kayexalate had been timely administered. Pharmacist David Martin of Fort Payne also believed the Kayexalate...