

The Alabama Jury Verdict Reporter

The Most Current and Complete Summary of Alabama Jury Verdicts

October, 2006

Statewide Jury Verdict Coverage - Published Monthly

6 A.J.V.R. 10

Unbiased and Independently Researched Jury Verdict Results

In This Issue

Jefferson County	
Medical Negligence - Defense verdict	p. 1
Auto Negligence - \$7,690	p. 5
Auto Negligence - Defense verdict	p. 5
Battery - \$3,000	p. 7
UIM - \$182,500	p. 8
Auto Negligence - Defense verdict	p. 9
Auto Negligence - Defense verdict	p. 11
Federal Court - Huntsville	
Products Liability - Defense verdict	p. 2
Mobile County	
Auto Negligence - Defense verdict	p. 2
Auto Negligence - Defense verdict	p. 6
Auto Negligence - \$13,500	p. 10
Randolph County	
Invasion of Privacy - \$20,000	p. 2
Autauga County	
Medical Negligence - Directed verdict	p. 3
Conecuh County	
Bad Faith - \$60,000	p. 3
Montgomery County	
Medical Negligence - Defense verdict	p. 3
Baldwin County	
Horse Negligence - Defense verdict	p. 4
Federal Court - Dothan	
Employment Retal - Defense verdict	p. 4
Etowah County	
Auto Negligence - Defense verdict	p. 5
Fraud - Defense verdict	p. 6
St. Clair County	
Breach of Contract - Defense verdict	p. 7
Madison County	
Breach of Contract - Defense verdict	p. 8
Crenshaw County	
Premises Liability - Defense verdict	p. 9
Geneva County	
Battery/Contract - \$1.00	p. 9
Calhoun County	
Auto Negligence - Defense verdict	p. 9
Tallapoosa County	
Medical Negligence - Defense verdict	p. 10
Henry County	
Premises Liability - Defense verdict	p. 10

Civil Jury Verdicts

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

Medical Negligence - A dentist underwent a coronary artery by-pass operation; he later criticized his surgeon for by-passing the wrong artery

Wilson v. Knott, et al., 01-6728

Plaintiff: Stephen D. Heninger,
Heninger Burge Vargo & Davis,
Birmingham

Defense: Joseph S. Miller and Michael
A. Florie, *Starnes & Atchison*,
Birmingham

Verdict: Defense verdict

Circuit: **Jefferson**, 3-15-06

Judge: Joseph L. Boohaker

By late 1999, Danny Wilson, a dentist by profession, had a long history of heart problems. Eight years before, in 1991, he had undergone a coronary artery by-pass operation performed by Dr. Hurley Knott, a thoracic surgeon.

That operation was successful, but Wilson continued to have problems. Eventually, his cardiologist, Dr. Jerry Chandler, referred Wilson back to Dr. Knott for evaluation of a possible second by-pass operation. Upon examination, Knott decided Wilson was a good candidate for a by-pass of the left circumflex artery.

The surgery was performed by Dr. Knott on 12-16-99 at the Baptist Medical Center in Montclair. During the procedure, however, Knott had difficulty locating the correct artery. The left circumflex artery is usually visible on the surface of the heart, but Knott was unable to see it.

Knott would later recall that he searched for the artery but could not find it. Eventually, he chose to by-pass a vessel that he thought was a branch of the left circumflex artery. It would later turn out that Knott's identification of the artery was mistaken. In reality, he had actually by-passed the left anterior descending artery.

As a result of this error, Wilson had to suffer a continuation of his cardiac problems that the surgery was intended to correct. It also became necessary for him to undergo further angioplasty and radiation treatments that he would not

otherwise have had to endure. All of this caused him to suffer additional unnecessary pain.

Although the exact amount of Wilson's medical expenses is not listed in the record, it is known that Blue Cross/Blue Shield of Alabama paid \$64,150 of the them. Wilson himself paid another \$22,646 toward his medical expenses out of his own pocket, and the various health care providers wrote off the balance.

In this lawsuit, Wilson targeted Knott and an entity identified as Cardio-Thoracic Surgeons, P.C. Wilson criticized Knott for failing to identify the correct artery and for by-passing the wrong artery. Additionally, Wilson's wife, Renee, presented a derivative claim for her loss of consortium.

Knott defended the case and denied any breach of the standard of care. It was his belief during the surgery that he was by-passing the correct artery. It was only later that he learned he was mistaken. According to him, the left circumflex artery must have been embedded within the heart muscle itself and therefore could not have been by-passed in any event. Thus, the failure to by-pass it cannot be counted an error.

Wilson had several replies to this defense. The first reply came in the form of the opinion of his standard of care expert, Dr. John Galat, Cardio-thoracic Surgery, Ocala, FL. Dr. Galat stated there is no evidence Wilson's left circumflex artery was embedded and therefore incapable of being by-passed.

Dr. Galat went on to state that even if the artery was embedded at one point, the standard of care would have required Knott to trace the artery along its long anatomical course until a point is found at which the by-pass could be performed. Instead, and contrary to Knott's own account, the operative report contains no description of any search for the correct artery nor of any difficulty in finding it or in performing the by-pass.

Wilson's second reply arose out of

the fact that several years after the operation, on 4-10-04, he suffered a heart attack. In the aftermath of that attack, Wilson underwent additional surgery during which his left circumflex artery was found not to be embedded and was then successfully by-passed.

The case was tried for three days in Birmingham. The jury came back with a verdict in favor of Knott and Cardio-Thoracic Surgeons. The court's consistent defense judgment brought the case to a close.

Products Liability - The plaintiff was badly burned when his instant-light charcoal suddenly exploded – in this lawsuit, he alleged a res ipsa products theory of sorts, that is, properly calibrated charcoal doesn't explode for no reason

Mason v. Royal Oak et al, 3:04-386

Plaintiff: Frank B. Potts and Debra H.

Coble, *Potts & Young*, Florence and John A. Tinney, Roanoke

Defense: Philip R. Collins, *Huie*

Fernambucq & Stewart, Birmingham

Verdict: Defense verdict

Federal: **Huntsville**, 9-7-06

Judge: C. Lynwood Smith, Jr.

It was 9-12-02 and Larry Mason was preparing to grill steaks in his front yard. On the way to the grill, he dropped his bag of Sam's Choice Quick Start Charcoal. The charcoal was purchased by Mason at a Wal-Mart – it was manufactured for the retailer by Royal Oak Enterprises. [In this suit, they were both defended by attorney Collins as noted above.]

Mason then stacked the charcoal briquettes in a pyramid inside his grill. He then applied a cigarette lighter for some ten seconds to the briquettes. They didn't light. Pausing a moment, he lit the pyramid again. This time it exploded.

Mason sustained severe burns over 20% of his body, including to his hands and chest. Taken to the local ER, he was then air-lifted to Birmingham. There he remained in a burn unit for three weeks. His medical bills totaled \$247,385.

In this lawsuit, he sought damages from two defendants, (1) Wal-Mart, and (2) Royal Oak. The theories were different, but the underlying facts were the same – that is, charcoal does not suddenly explode and it was

definitionally too combustible. The court permitted the case to go forward without an expert. Plaintiff advanced to trial against Royal Oak on a products and negligence theory – against Wal-Mart, he alleged breach of implied warranty of merchantability.

Royal Oak and Wal-Mart defended that the charcoal used a medium petroleum distillate of a low volatility that represented the industry standard. They suggested this accident was a result of (1) plaintiff using too much lighter fluid (he denied this), and (2) his inebriated state. An expert for defendants was Laurel Waters, Engineer, Lilburn, GA.

The verdict was for the defendants on liability on the respective counts, the jury awarding Mason nothing. A defense judgment followed.

Auto Negligence - Defendant prevailed in a case that arose out of a collision on an interstate highway

Jones v. Scarborough, 04-599

Plaintiff: Richard R. Williams, Mobile

Defense: Patrick B. Collins, Daphne

Verdict: Defense verdict

Circuit: **Mobile**, 3-22-06

Judge: Joseph S. Johnston

A crash took place on 3-28-02 in Mobile County. It happened on I-10 near the Dauphin Island Parkway exchange as Amanda Jones and Timothy Scarborough collided with one another.

The record does not reveal the nature of Jones's injuries or the amount of her medical expenses. She filed suit against Scarborough and blamed him for the crash.

Scarborough seems to have been initially a bit difficult to find inasmuch as he had to be served with notice of the lawsuit by publication. In any event, once Scarborough was served he defended the case and denied negligence.

The case was tried for two days in Mobile. The jury returned a verdict for Scarborough, and the court entered a consistent defense judgment.

Invasion of Privacy - A housekeeper at a motel alleged her romantic letters (placed in the motel's out mailbox) were intercepted by a motel employee and then disseminated among staff and revealed to her husband

Fisher v. Best Western et al, 04-23

Plaintiff: Gregory M. Varner, Ashland

Defense: John A. Tinney, Roanoke

Verdict: \$20,000 for plaintiff

Circuit: **Randolph**, 3-3-05

Judge: Thomas F. Young, Jr.

The key events in this case took place at the Best Western Inn in Roanoke. The motel is operated by Jay Milan, Inc – its president and general manager is Pankajkomar Patel. Patel's wife, Kelly Patel, is also a motel employee. The motel maintained an outgoing mail pickup primarily for guests, but employees used it as well.

Omie Fisher was employed as a housekeeper and regularly deposited her mail, bill and utility payments in the outgoing mail. She also deposited her personal correspondence to "Grant." In these romantic letters, she opened her heart and revealed her erotic and romantic desires for him. The letters also described her own marital problems with her husband, Tommy.

Fisher alleged that in the spring of 2003, Kelly Patel intercepted the letters to Grant, opened and then copied them on the motel copier. She further alleged that Kelly shared the copied letters with her friends and other Best Western employees. Finally in the *coup de grace*, it was alleged that Patel put copies of the letters in Tommy's truck.

Fisher sued Kelly Patel and the motel for invasion of privacy. In this suit, she sought compensation for her humiliation, as well as punitive damages. The defendants denied all allegations and maintained that there was no evidence linking Kelly to the purloined correspondence. Furthermore, Kelly explained she hadn't taken the letters, noting she can't read or write English.

Following a two-day trial, the jury found for plaintiff in a mixed verdict. She took \$10,000 in compensatory damages against Kelly, but punitives were rejected against this defendant. The jury conversely rejected compensatory damages against the motel, but did assess it punitives of