

# The Alabama Jury Verdict Reporter

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December, 2013

Statewide Jury Verdict Coverage - Published Monthly

13 A.J.V.R. 12

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### **Conversion - A fundraising venture to sell cookies in a box displaying a sorority crest ended up badly when the wrong crest was put on the box and no profits from the cookie sales made their way back to the fundraising sponsor**

*Robinson v. Montgomery, et al.,*  
11-900125

Plaintiff: Laura L. Clemons, *The Clemons Law Firm, LLC.*, Montgomery  
Defense: Anthony Ifediba, *Ifediba Law Group, LLC.*, Birmingham

Verdict: \$6,000 for plaintiff  
Circuit: **Calhoun**, 8-29-13

Judge: Brian P. Howell

In June 2005, James Montgomery, Sr. was operating a booth at a George Fraser Power Networking Conference in Cleveland, Ohio. As Montgomery was the owner of the company Aliza's Cookies, he was selling cookies at his booth and displaying boxes that he custom-

designed for various organizations.

Montgomery did not bake the cookies himself. Rather, his business model was to order the cookies from a bakery in Charlotte, North Carolina. He usually added 15-20% to the cost of the cookies to cover his expenses and make a profit. Montgomery had been in this business for about 20 years.

While Montgomery was selling cookies at his conference booth, Stacia Robinson approached him. The two began to discuss the possibility that Robinson might work with Montgomery on a fund-raising project for her sorority, Delta Sigma Theta. Specifically, they thought that Montgomery would provide Robinson with cookies in boxes custom-designed with the Delta crest, and Robinson would arrange for them to be sold as a fund-raiser.

In 2007, Robinson sought approval

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negligence, wantonness, and negligent hiring and training. Defendants responded and minimized the damages claimed by Patton.

After a two-day trial, a Birmingham jury returned a verdict of \$100,000 for Patton. The court entered a consistent judgment.

### **Nurse Negligence - A nurse leaving a hospital elevator bumped into a woman who fell and allegedly suffered injuries to her right shoulder and arm**

*Wright v. South Baldwin Regional Med. Cntr.*, 12-900056

Plaintiff: Bryan G. Duhe', Mobile; and Thomas H. Benton, Jr., *McFadden Lyon & Rouse, LLC.*, Mobile

Defense: Norman E. Waldrop, Jr., Richard W. Franklin, and Tamela E. Esham, *Armbrecht Jackson, LLP.*, Mobile

Verdict: Defense verdict

Circuit: **Baldwin**, 9-16-13

Judge: C. Joseph Norton

On 8-29-10, Shirley Wright was visiting South Baldwin Regional Medical Center in Baldwin County. Meanwhile, Nurse Gaynor Robinson was riding an elevator in the same building. While Wright was

standing in the area near the elevator, the elevator doors opened and Robinson exited hastily. When she did so, she collided with Wright.

Wright fell and alleged she struck her head and injured her right shoulder and arm in the fall. South Baldwin evaluated and treated her. It later billed her \$6,275 for the evaluation and treatment. Wright paid \$4,699.

Wright later sought treatment from other medical providers. Her medical bills totalled \$36,123. Of this amount, Wright actually paid \$23,877.

Wright filed suit against Robinson and South Baldwin and blamed Robinson for causing her to fall. Her theories included negligence and wantonness.

Defendants responded and argued Wright had not actually been injured in the collision. They also took the

position that their bill to Wright for \$6,275 for evaluation and treatment had been appropriate.

A Bay Minette jury listened to the parties' arguments and returned a defense verdict. The court entered a consistent judgment.

**Auto Negligence - A driver struck a child pedestrian in Jefferson County**

*Hagler v. White*, 13-900162

Plaintiff: David Lee Graves and Brandon T. Bishop, *Shunnarah Injury Lawyers*, Birmingham

Defense: Melissa B. Croxton, *Law Office of Melissa Croxton*, Birmingham

Verdict: Defense verdict

Circuit: **Jefferson**, 9-17-13

Judge: Elisabeth A. French

On 9-30-11, Lanette Hagler, a minor, was walking along Pike Road in Jefferson County. Meanwhile, Adrienne White was driving in the same area. An instant later, White struck Hagler.

Hagler suffered injuries to her head, chest, neck, and back as a result of the collision. Her medical expenses totaled \$3,681.

Hagler filed suit against White and blamed her for causing the accident. Her theories included negligence and wantonness. White defended and minimized the damages claimed by Hagler.

Before trial, White made an offer of judgment of \$5,000. Hagler did not accept.

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

**Age Discrimination - On the day a pharmacist turned 65, he received a termination letter – his pharmacy replaced him with a much younger worker – the jury found for the plaintiff and concluded the discrimination was willful, the court doubling the \$400,000 verdict in the judgment**

*Harris v. CVS Pharmacy*, 1:11-732

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

Defense: Christopher W. Deering, Samantha K. Smith and J. Richard Carrigan, *Ogletree Deakins Nash Smoak & Stewart*, Birmingham, AL

Verdict: \$400,000 for plaintiff

Federal: **Anniston**

Judge: Virginia Emerson Hopkins

Date: 11-8-13

Roger Harris is a pharmacist and was recruited from K-Mart in 2004 to join the CVS Pharmacy team. A year later he became a manager. Harris remained in that position until 8-17-09. CVS terminated him that day. It was a memorable day for Harris as it was his 65<sup>th</sup> birthday.

CVS promptly replaced Harris with a much younger worker. Harris believed the firing represented age discrimination. There was proof a new boss in 2005 (not the one that recruited him to CVS) was immediately hostile and made age-related marks.

When Harris didn't get the message, the theory went, CVS increased its efforts to manufacture phony discipline. Those efforts culminated in the firing, it occurring ironically on his birthday, Harris being escorted off the property.

The age discrimination theory just described was advanced to trial by Harris. In valuing his damages, Harris explained that it had been his intention to work for many more years. If the jury found the discrimination was willful, he could

take liquidated damages equal to his compensatory award.

CVS defended and denied any discrimination. It explained that Harris was let go because of poor performance. It cited several customer complaints about Harris – despite efforts to coach and improve his performance, the complaints continued and led to the termination decision.

This case was tried in Anniston for two weeks. The jury answered separately for Harris that he was terminated because of his age and that he should be awarded damages. His damages were assessed at \$400,000. The jury made an additional finding that the discrimination was willful. The court subsequently doubled the plaintiff's damages to \$800,000 in its judgment. As this jury deliberated the case, it had several questions for the court: Judge Hopkins sealed those questions.

**Auto Negligence - A vehicle rear-ended a driver waiting to turn right from a shopping center and left her with injuries to her neck, upper back and left shoulder**

*Marx v. Chamblee*, 12-900168

Plaintiff: David "Ty" Brown and Jane Mauzy, *Marsh Rickard & Bryan, P.C.*, Birmingham

Defense: Travis Keith and Daniel Newton, *Gaines Gault & Hendrix*, Birmingham

Verdict: \$61,750 for plaintiff

Circuit: **Jefferson**, 11-6-13

Judge: Tom King, Jr.

On 4-28-10, Terri Marx was waiting to turn right from a shopping center on U.S. Hwy. 31 at the intersection of Kentucky Avenue and Canyon Road in Vestavia Hills when she was rear-ended by Charles Chamblee.

Marx suffered injuries to her neck, upper back, and left shoulder. She

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