The Alabama Jury Verdict Reporter

The Most Current and Complete Summary of Alabama Jury Verdicts

February, 2006 **Statewide Jury Verdict Coverage - Published Monthly** **6 A.J.V.R. 2**

Unbiased and Independently Researched Jury Verdict Results

In This Issue

Civil Jury Verdicts

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

Breach of Warranty - A hospital purchased two specialized cooling units as part of a hospital expansion project; the hospital blamed the manufacturer when one of the units broke down

Springhill Memorial Hospital v. York International Corp., 03-1012
Plaintiff: James Lynn Perry, *Daniell Upton & Perry*, Daphne
Defense: Thomas J. Skinner, IV, *Lloyd Gray & Whitehead*, Birmingham
Verdict: $209,356 for plaintiff
Circuit: **Mobile**, 4-5-05
Judge: Herman Young Thomas

Starting in 1996 and continuing for the next several years, the Springhill Memorial Hospital in Mobile carried out an expansion project. As part of the project, the hospital decided to install a pair of "chillers." The record is unclear as to the exact nature of these devices, but they seemed to be specialized air conditioning units of some sort.

In any event, Springhill made a deal with a company called Hospital Building and Equipment for the purchase of two chillers manufactured by the York International Corporation. Hospital Building and Equipment, in turn, hired a company called Batchelor's Mechanical Contractors to install the devices in 1999.

The chillers came with a one-year parts and labor warranty. As part of the deal, however, York International agreed to extend the warranty for an additional five years. This would be significant inasmuch as Springhill would later claim it had numerous problems with the chillers.

In March of 2002, one of the chillers shorted out and tripped the main service breaker to the unit. York began repairs and discovered some small stones had somehow gotten into a critical component, and there were holes or perforations in several tubes.

York repaired these problems, but one week later the compressor failed completely. This time, York took the

The Alabama Jury Verdict Reporter
2005 Year in Review

The 2005 Year in Review is back with its fourth edition. At more than 300 pages, it represents the cumulative and comprehensive study of Alabama jury trials -- only this volume is better because it summarizes *four* years of data and 1386 trial results. It looks at verdict results in an encyclopedic fashion. The Year in Review includes over twenty reports, chronicling all sorts of patterns, trends and categories.

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 2005, with complete four-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 case from 2002 to 2005, sorted and included a brief description of the case type, county, party represented and result. A separate report summarizes the lawyers and law firms that tried the most cases.
The Million Dollar Verdicts	Who made the list in 2005? All 72 results since 2002 are summarized.

The Case Index also includes the full text of the nearly 300 verdict results from 2005.
The Essential Encyclopedia of Alabama Litigation - Can you Afford to Practice Without it?

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A partial look at the 2005 Products Liability Report

This summary reproduces the products verdicts by defect from 2002 to 2005
(For the complete report and the details on all the products verdicts, see the AJVR 2005 Year in Review at page 54)

Products Liability Cases by Product Defect

Products	Cases	Win-Loss%		Aggregate Awards	Plaintiff's Average	Average Verdict
Automobile	7	1-6	14%	$122,000,000	$122,000,000	$17,428,571
Conveyor Belt	3	2-1	66.7%	$1,910,000	$955,000	$636,666
Mine Accident	2	1-1	50.0%	$800,000	$400,000	$400,000
Ladder	2	0-2				
Truck Cab	1	1-0	100%	$12,000,000	$12,000,000	$12,000,000
Tire Repair	1	1-0	100%	$7,000,000	$7,000,000	$7,000,000
Diet Drug	1	1-0	100%	$4,168,500	$4,168,500	$4,168,500
Scissor Lift	1	1-0	100%	$2,500,000	$2,500,000	$2,500,000
Toilet	1	1-0	100%	$37,187	$37,187	$37,187
Jail Lock	1	0-1				
Golf Cart	1	0-1				
Jetski	1	0-1				
Lawnmower	1	0-1				
Forklift	1	0-1				
Platform	1	0-1				
Scaffold	1	0-1				
Fryer	1	0-1				

Note: Of the twenty-seven cases, ten involved vehicles in some way. Besides the seven auto cases, there was one each involving a jetski, a lawnmower and a golf cart. More peripherally, two other cases involved (1) the design of a truck cab and (2) a tire repair product, Fix-A-Flat. Other than automobiles, no other type of product except ladders and conveyor belts was represented more than once on this list. In both ladder cases, a defense verdict was returned. In the three conveyor belt cases, plaintiff prevailed twice and defendant prevailed once. There were also two products liability cases that involved mine accidents.

position that the new problem was not covered under the warranty. Instead, the company claimed the problem was due to faulty installation by Batchelor's. As a result, the problem was never repaired.

Under the circumstances, Springhill had no choice but to rent portable air conditioning equipment to cool the hospital. This, of course, was only a temporary fix. Springhill later spent $148,000 for the purchase and installation of Trane chillers as replacements for the two York units.

Springhill filed suit against York, Hospital Building, and Batchelor's. However, Hospital Builders and Batchelor's filed for dismissals based on the argument that the statute of limitations had run on any claims against them. The court agreed, and they got out of the case. The litigation then proceeded solely against York on claims of breach of warranty, breach of contract, and wantonness.

Springhill accused York of faulty manufacture and repair of the chiller, as well as failing to replace the certain critical components. Springhill's engineering expert was Richard Edwards of Birmingham. According to Edwards, the chiller failed because of manufacturing problems with the unit's tube sheaths.

If successful, Springhill sought recovery of the $148,000 it had to spend on replacement chillers, plus another $61,357 for various testing, repair, and rental expenses. Thus, Springhill sought a total of $209,357.

York defended the case and denied any wrongdoing. The company also filed a counterclaim. According to York, Springhill had rented the chillers, and the hospital still owed York a balance of $56,222 for work and labor relating to the repairs the company had made to the units.

A jury in Mobile heard the case and returned a verdict for Springhill in the amount of $209,356, almost exactly what the hospital had sought. The court's consistent judgment has been satisfied.

Auto Negligence - A couple were injured in a lane incursion crash case; the tortfeasor explained he swerved to avoid a collision with another vehicle

Cole v. Sego, et al., 03-5887
Plaintiff: Kirby D. Farris, *Farris Riley & Pitt*, Birmingham
Defense: Jonathan K. Vickers, *Cleveland & Vickers*, Birmingham, for Sego; Christopher J. Zulanas and Michael J. Douglas, *Friedman Leak Dazzio Zulanas & Bowling*, Birmingham, for West American Insurance Company
Verdict: $12,500 for John against Sego; $12,500 for Lillian against Sego; defense verdict for West American
Circuit: **Jefferson**, 10-19-05
Judge: Robert S. Vance, Jr.

On 3-15-02, John Cole and his wife, Lillian Cole, were traveling near the intersection of 16th Avenue South and 13th Street South in Birmingham. Also traveling in the same area was a vehicle being driven by David Sego.

Sego would later claim that as he was driving along, another vehicle ran a stop sign. In order to avoid a collision with the other vehicle, he swerved into the Coles' lane of traffic. In doing so, however, Sego collided with the Coles.

The record does not reveal the nature of the Coles' injuries. However, the parties later stipulated that John's medical expenses came to $2,368, and Lillian's medical expenses were $4,068. The parties also stipulated that the medical expenses were fair and reasonable.

The Coles filed suit against Sego and another person named Sharon Bryan. The Coles also made an underinsured motorist claim against their own insurer, West American Insurance Company. The Coles alleged that Sego's vehicle had brake problems, and Sego's decision to drive the vehicle with knowledge of the brake problems constituted wantonness. Finally, the Coles each made claims for loss of consortium.

The record is unclear as to Bryan's role in the case or the Coles' precise allegations against her. In any event, Bryan was *pro se* throughout the case and apparently did not actively participate in the litigation. Also, the verdict form does not reference her.

Sego defended the case and denied wantonness. He also pleaded a sudden emergency defense based on his claim that he swerved to avoid a collision with another vehicle, and he explained that his vehicle suffered a mechanical failure at the crucial moment. Presumably, the mechanical failure was a reference to Sego's allegedly faulty brakes.

The case was tried in Birmingham, and the jury returned a verdict in which the Coles were each awarded damages of $12,500 against Sego. That brought the total award to $25,000. The court entered a judgment for that amount, as well as a defense judgment for West American on the UIM claim. The judgment against Sego has been satisfied. Prior to trial, Sego made an Offer of Judgment in the amount of $10,000.

Employment Retaliation

The manager of a furniture rental store was sacked after he refused to make an attempt to get out of grand jury service

Cunningham v. Aaron Rents, 2:04-386
Plaintiff: David R. Arendall, Stephanie S. Woodard & Allen D. Arnold, *Arendall & Associates*, Birmingham, AL
Defense: Steven M. Stasny, *Ford & Harrison*, Birmingham, AL
Verdict: $430,000 for plaintiff
Federal: **Birmingham**, 12-8-05
Judge: William M. Acker, Jr.

Leslie Cunningham started working in February of 1993 for Aaron Rents – the company rents furniture. By that summer, he was the general manager of his own store. Cunningham was thriving in the position.

That changed when he received a state court jury duty summons in September. Immediately he told his boss about it – the boss replied that Cunningham should make an effort to get out of the service as the fourth quarter is typically busy for Aaron Rents. Cunningham agreed to do what he could.

When Cunningham arrived at jury duty, he could not be excused – he was also selected to serve on a grand jury. His service would stretch three months – he would serve in that time for one week per month. He did so in October and November, his grand jury duty ending on 12-4-03.

The day after Christmas, Aaron Rents fired Cunningham. It cited performance

problems at the store. Cunningham thought this was hogwash. He'd done well and the company's numbers proved it.

He filed this lawsuit alleging retaliation in violation of the Alabama Jury Duty Statute. Quite simply, he argued the company fired him for his service on the grand jury. Cunningham noted that he did well, the company's hostility only beginning when he failed to follow orders and find a way to be excused from jury duty. If prevailing, he sought compensatory and punitive damages.

Aaron Rents defended the case that it's decision to fire was not based solely on his jury duty – instead it focused on performance. The company also counterclaimed for conversion. After the firing, an audit was performed and one computer came up missing. While there was no evidence of it, the company accused Cunningham of stealing – the counterclaim did not advance to trial.

Cunningham prevailed on the retaliation count and took lost wages of $30,000, plus $100,000 more for emotional distress. Punitives were $300,000, the verdict totaling $430,000. He has since sought an award of attorney fees.

Construction Negligence - A woman bought a newly-constructed home, only to discover several years later that it had moisture problems; the woman blamed the problems on a defective insulation system that was installed when the home was built

Cranford v. Dillard Plastering, 00-681
Plaintiff: T. Blake Liveoak, *Collins Liveoak & Boyles*, Birmingham
Defense: John W. "Jay" Clark, Jr. and Bradley J. Smith, *Clark Dolan Morse Oncale & Hair*, Birmingham
Verdict: $145,000 for plaintiff
Circuit: **Shelby**, 11-18-05
Judge: J. Michael Joiner

In September of 1991, Leslie Cranford was interested in purchasing a house located at 109 Weatherly Way in the Old Weatherly subdivision in Shelby County. The house had just recently been built "on spec" by a company called Brookshire Homes, Inc.

It is significant to this case that Brookshire specified the use on the home of an insulation system officially called "Exterior Insulation and Finishing System" (EIFS), manufactured by a company called Dryvit Systems, Inc. Brookshire also hired Troy Dillard, d/b/a Dillard Plastering, to install the system.

The EIFS system featured multiple layers, including a base coat, mesh, insulation board, and a finish coat, all secured to plywood or some other substrate and affixed to the walls. Perhaps because of its appearance, the system is also known unofficially as "synthetic stucco."

Cranford was apparently so taken with the aesthetics of the house that she didn't bother to have a formal inspection done. She would later admit she had no idea the EIFS system was installed in the house, and the presence of the system played no role in her decision to buy the house. In any event, the deal went forward, and Cranford closed on the house on 9-6-91.

Approximately three to five years after buying the house, Cranford noticed several of the window sills in the dining room had deteriorated. She had the sills replaced, but other problems arose. Specifically, Cranford eventually became aware of problems with moisture intrusion, water retention, and wood rot. She came to believe the problems were caused by the EIFS system.

Cranford filed suit for her damages and named Brookshire, Dryvit, and Dillard as defendants. According to Cranford, Dryvit itself had known for years that its EIFS system was defective. That fact was evidenced by several of the company's internal memoranda that explicitly acknowledged the system's many problems. Some of these same memoranda also acknowledged that the system was routinely being installed incorrectly.

Cranford also blamed Brookshire for having specified the use of the defective EIFS system, and she blamed Dillard for installing the system incorrectly. Finally, she blamed all defendants for suppressing the knowledge that the system was defective.

As a result of these acts, Cranford claimed her house was not constructed in accordance with industry standards. This, in turn, has resulted in a reduction in the value of her home, extensive damage to her home, and a need to replace the EIFS system.

During the course of the litigation, Cranford stipulated to the dismissal of Brookshire and Dryvit. Also, Troy Dillard died on 6-13-03. The case then proceeded solely on Cranford's claim against Dillard Plastering. Dillard defended and denied having made any warranties or false representations to Cranford. The company also blamed Cranford's moisture problems on factors other than the EIFS system.

At the conclusion of a four-day trial in Columbiana, the jury found for Cranford and awarded her damages of $145,000. The court's consistent judgment for that amount followed.

Auto Negligence - A pedestrian crossing the street in a crosswalk was hit by a passing motorist

Walker v. Joiner, 03-6042
Plaintiff: Robert L. Gorham, *Gorham & Associates*, Birmingham
Defense: A. Joe Peddy, *Smith Spires & Peddy*, Birmingham
Verdict: Defense verdict
Circuit: **Jefferson**, 11-29-05
Judge: Robert S. Vance, Jr.

It was 8-7-03, and Harold Joiner had just left his part time job at St. Rose Academy and was on his way home. His route took him through the intersection of Bessemer Road and 12th Street in Birmingham.

As Joiner proceeded through the intersection, Gregory Walker, age 47, walked across the street in the crosswalk. He did so in Joiner's path, and an instant later, Joiner ran into him. Walker fell on his left knee and landed hard on his back.

Following the accident, Walker was taken to the ER at UAB where he was kept overnight and discharged the following morning. Remarkably, Walker suffered no broken bones in incident. Despite this, however, his medical expenses climbed to approximately $14,750, and he missed thirty days of work. Walker calculated his lost wages at $1,440.

Walker filed suit against Joiner and blamed him for the collision. Joiner defended the case and minimized damages. The case was tried first in July of 2004, but a mistrial was declared when the jury was unable to reach a verdict.

The case was tried for the second time to a jury in Birmingham. This time, the

verdict was for Joiner, and the court entered a consistent defense judgment.

Government Negligence - When a woman's home was flooded following a torrential rainstorm, she blamed the city for failing to take adequate water drainage and flood control measures

Cox v. City of Prattville, 01-7
Plaintiff: Wendy Brooks Crew and Sybil Corley Howell, *Crew & Associates*, Birmingham
Defense: Alex L. Holtsford, Jr., Rick A. Howard, and S. Mark Dukes, *Nix Holtsford Gilliland Higgins & Hitson*, Montgomery
Verdict: $10,000 for plaintiff
Circuit: **Autauga**, 8-5-05
Judge: John B. Bush

The city of Prattville experienced a veritable deluge on 9-1-00. On that date, the city had approximately eight inches of rain within just a few hours. As a result of the massive rainfall, the city's water drainage system was overloaded, and many homes in the area were flooded.

One of the homes that was flooded belonged to Gwen Cox. As it happened, Cox's home had been flooded before. In fact, her home seemed to flood nearly every time it rained. Cox attributed this problem to the city's inadequate water drainage and flood control measures.

Cox filed suit against the city and pleaded a variety of counts, including negligence, wantonness, nuisance, mental anguish, outrage, and inverse condemnation. In essence, she criticized the city for failing to remove debris from drainage ditches and failing to maintain the ditches properly despite knowing the work needed to be done.

Cox claimed that as a result of the city's laxity in this regard, she has sustained more than $100,000 in damage to her personal property, and her home has been reduced in value. She also noted the city has paid flood damage claims of certain elected officials that were identical to other claims that were not paid.

Although Cox seems to have been the original plaintiff in this case, a number of other plaintiffs eventually joined in as co-plaintiffs. Additionally, the city claimed at least twenty other people have filed separate lawsuits based on similar allegations, and at least forty more people have made statutory claims that could lead to lawsuits.

In light of the potentially massive liability, the city defended on the technical ground that as a governmental entity, claims against it are statutorily capped at $1000,000 per person up to a maximum of $300,000 per occurrence. The city went on to argue that the torrential rain of 9-1-00 was a single occurrence. Thus, the city should be liable for, at most, only $300,000 to be divided among the successful plaintiffs.

Cox opposed the city's position and argued the statutory cap applies only to cases involving personal injury where there is a third-party tortfeasor who is jointly liable with the city. This case, however, is about property damage rather than personal injury. Thus, the statute does not create any aggregate limit applicable to the present case.

The court agreed with Cox's reasoning and ruled the statutory aggregate cap was not applicable. The city appealed that decision to the Alabama Supreme Court, and the high court affirmed the trial court's decision. The case then proceeded to trial with the city minimizing damages.

A jury in Prattville heard the case over four days and returned a mixed verdict. The jury found for the city on the claims of all defendants except Cox. On her claim the jury awarded her zero damages for her mental anguish and property damage related to the 9-1-00 downpour. However, the jury awarded Cox damages of $10,000 on her claim relating to previous flooding incidents. The court entered a consistent judgment to that effect, and it has been satisfied.

Auto Negligence - In a rear-end crash case, the motion of plaintiff's insurer to opt out was denied because the motion was made too late in the proceedings

Bunkley v. Dunford, et al., 03-3142
Plaintiff: David F. Daniell, *Daniell Upton Perry & Morris*, Daphne
Defense: James W. Killion, *Killion & Associates*, Mobile, for Dunford; Thomas M. Galloway, Jr., *Galloway Smith Wettermark & Everest*, Mobile, for Safeco Insurance
Verdict: $31,078 for Robbie Bunkley; zero damages for John Bunkley
Circuit: **Mobile**, 5-20-05
Judge: Charles Graddick

On 4-25-03, Robbie Bunkley, a small business owner, was driving on Knollwood Drive in Mobile County. Behind her and traveling in the same direction was a vehicle being driven by Brian Dunford. At a certain point along her route, Bunkley stopped in traffic. Dunford failed to follow stop in time, and he rear-ended her.

Bunkley claimed soft tissue injuries to her back and neck. More seriously, she also claimed to have suffered a closed head injury that has caused her to experience lingering cognitive problems. As a result of those problems, Bunkley has been rendered unable to care properly for her disabled husband or to manage her business.

Bunkley filed suit against Dunford and blamed him for crashing into her. Bunkley's husband, John Bunkley, also presented a derivative consortium claim. The Bunkley's later added an underinsured motorist claim against their insurer, Safeco Insurance.

Dunford defended the case and blamed the crash on the alleged negligence of an unknown driver. The record does not specify the precise role Dunford claimed the unknown driver played in the incident.

After having been added as a party defendant on the UIM claim, Safeco participated in the litigation. As the case progressed toward trial, however, Safeco filed a motion to opt out. The court denied the motion as being untimely.

Safeco responded by filing a petition for a writ of mandamus and for an emergency stay of the trial proceedings with the Alabama Supreme Court. The state's high court denied the petition.

Safeco then asked the trial court to reconsider its decision to deny the company permission to opt out. The court denied the request, and the case proceeded with Safeco as a named defendant.

The case was tried in Mobile, and the jury responded to two specific questions as follows: (1) Dunford was negligent, and his negligence was a proximate cause of Bunkley's damages; and (2) the unknown driver was not negligent.

Having found Dunford at fault, the jury moved on to the matter of damages. The result was mixed. First, Robbie was awarded $31,078. Second, although the jury found for John on his consortium claim, he was awarded zero damages. The court's consistent judgment has been satisfied.

Medical Negligence - A baby was born with catastrophic brain damage; the plaintiff's liability theory implicated the Ob-Gyn's prenatal care and a delay in ordering a c-section

Jordan v. Huntsville Ob-Gyn Associates, et al., 02-2918
Plaintiff: S. Shay Samples, *Hare Wynn Newell & Newton*, Birmingham; and Harvey B. Morris, *Morris Conchin Banks & Cooper*, Huntsville
Defense: Daniel F. Beasley and W. Stanley Rodgers, *Lanier Ford Shaver & Payne*, Huntsville
Verdict: Defense verdict
Circuit: **Madison**, 6-23-05
Judge: Loyd H. Little, Jr.

In the waning days of 2001, a pregnant Amanda Jordan, then age 23, was anticipating the impending birth of her new baby. However, something seemed to be going wrong. On Friday, 12-14-01, Jordan began feeling physically ill. At the same time, she noticed a significant decrease in fetal movement.

Jordan's feeling of being ill continued over the weekend, as did the decrease in fetal movement. By Sunday, 12-16-01, she noticed the fetus had stopped moving altogether. Jordan phoned her Ob-Gyn, Dr. Jim Speed, an affiliate of Huntsville Ob-Gyn Associates, and explained the situation. Speed instructed her to go to the labor and delivery unit at Crestwood Hospital for monitoring.

Jordan complied with this instruction and checked herself into Crestwood. She would later claim that the fetal heart monitoring strips showed evidence of fetal distress that was not appropriately acted upon. In any event, Speed ordered a c-section.

That same day, Amanda gave birth to little Kaleb Jordan. Tragically, however, Kaleb suffered perinatal asphyxia and hypoxic ischemic encephalopathy. As a result, he was born with catastrophic and irreversible brain damage. Kaleb's APGARS at birth was 0/0. His incurred medical expenses were $134,838.

Through his parents, Kaleb filed suit against Crestwood Hospital, Huntsville Ob-Gyn Associates, Speed, and Dr. Stephen Tygart. Although Tygart is also an Ob-Gyn in Huntsville, the record does not describe his involvement with this case.

Crestwood filed a motion for summary judgment. Kaleb expressed no opposition, and the court granted the motion. The case continued against Huntsville Ob-Gyn Associates, Speed, and Tygart. Kaleb criticized their prenatal care.

Specifically, defendants failed to implement an adequate fetal surveillance plan, and they failed to instruct Amanda on proper maternal monitoring of fetal activity and movement. The need for close monitoring was particularly acute in the present case because of evidence that Kaleb was suffering from gestational diabetes mellitus.

Finally, Kaleb claimed Speed should have ordered a c-section earlier. If that had been done, his injuries would not have happened. Kaleb's identified Ob-Gyn experts were Dr. Dean Cromartie of Hattiesburg, Mississippi and Dr. Frederick Gonzales of Elmhurst, New York. Also, Dr. Carol Walker provided a life care plan.

Speed, Tygart, and Huntsville Ob-Gyn Associates defended and denied any breach of the standard of care. According to them, even if Speed had ordered the c-section earlier, the outcome would have been the same. Moreover, Tygart claimed he had not even been present during Kaleb's delivery. Defense experts included Dr. Cynthia Brumfield, Ob-Gyn, Birmingham and Dr. Steven Day, Statistics, San Francisco, California.

The case was tried to a jury in Huntsville. The verdict was for Huntsville Ob-Gyn Associates, Speed, and Tygart. The court's consistent defense judgment ended the litigation.

Auto Negligence - A woman stopped suddenly to avoid hitting a piece of tire that was laying in the road; a passenger in the vehicle behind her claimed injury when his vehicle rear-ended the woman

Webb v. Johnson, 03-6289
Plaintiff: Oscar W. Adams, III, *Oscar W. Adams, III, P.C.*, Birmingham
Defense: William A. Mudd, *Sadler & Sullivan*, Birmingham
Verdict: Defense verdict
Circuit: **Jefferson**, 10-25-05
Judge: Helen Shores Lee

In the evening of 9-13-02, Norris Webb, Jr. was riding as a passenger in a vehicle being driven by Ladarrius Cheatam. They were traveling on Lakeshore Parkway near the intersection of Lakeshore Drive and I-65 in Birmingham. Immediately ahead of them was a 1999 Nissan Sentra being driven by Genesha Johnson.

As the parties drove along, Johnson noticed a piece of tire situated in her lane. Johnson reacted to this observation by stopping abruptly in the road. Webb would later claim that Johnson did not put on her hazard lights, nor were her brake lights working.

When Johnson stopped in the road, Cheatam was unable to follow suit. An instant later, he rear-ended Johnson. Webb claimed he suffered injuries to his head and neck in the collision. His medical expenses are unknown.

Webb filed suit against Johnson and blamed her for stopping in the road without activating her brake lights or hazard lights. Webb argued that Johnson could have avoided the obstacle in the road by the simple expedient of moving into an adjacent lane. Instead, she chose to stop suddenly, thereby causing Cheatam to rear-end her.

Johnson defended the case and minimized the claimed damages. She also demanded a jury trial, but she neglected to pay the fee for her jury demand. Johnson did eventually pay the fee on 8-19-04, some two-hundred and twenty-six days after she was served with the summons and complaint. Based on those facts, Webb filed a motion to strike Johnson's jury demand. The court

denied the motion.

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

Breach of Contract - An excavator who was hired to build a pond stopped work when his customer failed to pay the agreed upon price; the customer countersued the excavator for failing to complete the project

Beard v. Ritter, 98-519
Plaintiff: G. Thomas Ward, Jr., *Sapp & Ward*, Jasper
Defense: Mark B. Turner, Jasper
Verdict: $8,362 for plaintiff; for plaintiff on defendant's counterclaim
Circuit: **Walker**, 9-20-05
Judge: Jerry K. Selman

In late 1997, Allen Ritter was interested in constructing a pond on some land owned by his mother and stepfather in Carbon Hill. Ritter thought that excavator Robert Beard of Jasper was the right man for the job.

On 10-8-97, Ritter and Beard entered into an oral contract for Beard to construct the pond at a cost of $14,362. Ritter paid $6,000 toward the agreed upon price, and Beard got to work. His efforts, however, would soon come to a screeching halt.

Ritter failed to pay the balance due on the bill, and on 10-18-97, just ten days after having begun the project, Beard stopped work. According to Beard, Ritter agreed to meet with him to resolve the problem of the unpaid bill. However, Ritter never showed up for the scheduled meeting.

Beard filed suit against Ritter and accused him of breaching the contract by failing to pay the full price to which they had agreed. The case was tried in District Court on 7-28-98. The verdict was for Beard, and the court awarded him $8,362 in damages, plus $235 in interest, plus $124 in attorney fees and costs.

Ritter appealed the District Court's ruling and also filed a counter claim against Beard. According to Ritter, it was Beard who breached the contract by failing to construct the pond as agreed. As a result of Beard's work stoppage, Ritter was forced to hire someone else to finish the job.

A jury in Jasper heard the case for two days and returned a verdict for Beard in the amount of $8,362. The jury also found for Beard on Ritter's counterclaim. The court's consistent judgement brought the case to a close.

Auto Negligence - Defendant prevailed in a crash case in which plaintiff claimed soft tissue injuries

Griggs v. Harmon, 03-3784
Plaintiff: Jon E. Lewis, *Robert F. Lewis, P.C.*, Birmingham
Defense: Daniel J. Gels, *Varner & Associates*, Birmingham
Verdict: Defense verdict
Circuit: **Jefferson**, 11-15-05
Judge: Tennant M. Smallwood

On 11-27-02, Annie Griggs was driving east on Vinesville Road in Birmingham. At the same time, Billie Harmon was at the wheel of a 1987 Oldsmobile also headed east on Vinesville Road. Harmon was going to Princeton Hospital to visit someone. Instead, Harmon and Griggs collided.

Griggs claimed soft tissue injuries due to the crash. Her medical expenses are unknown. Griggs's identified medical experts were Dr. George E. Turnley, Emergency Medicine, Birmingham; Dr. Bonnie Armour, Family Practice, Alabaster; and Dr. Jeffrey Wade, Orthopedics, Birmingham.

Griggs filed suit and blamed Harmon for the crash. Harmon defended the case and minimized the claimed injuries. The case was tried for two days in Birmingham. The verdict was for Harmon, and the court entered a consistent defense judgment.

Hospital Negligence - A woman was seriously injured when another woman driving under the influence of methadone collided with her; the injured woman blamed the methadone clinic for allowing the impaired woman on the road

Taylor v. Gadsden Treatment Center, et al., 01-180
Plaintiff: George P. Ford, *Ford Howard & Cornett*, Gadsden; Gary V. Conchin and Joe A. King, Jr., *Morris Conchin Banks & Cooper*, Huntsville
Defense: Philip E. Miles, *Cusimano Keener Roberts Kimberley & Miles*, Gadsden, for Gadsden Treatment Center; Joseph S. Miller and J. Wilson Axon, Jr., *Starnes & Atchison*, Birmingham, for Smith
Verdict: Defense verdict
Circuit: **Etowah**, 10-5-05
Judge: Shaun Malone

In the early morning of 9-8-00, Glenda Ennis visited the Gadsden Treatment Center, a methadone clinic in the city of Gadsden, for treatment of her opiate addiction. At the clinic, Ennis was under the care of Dr. Kenney Smith, the director of the facility. As he had done on numerous previous occasions, Smith provided Ennis with methadone. He then allowed her to leave the clinic at approximately 6:00 a.m.

When Ennis left the clinic, she began the ninety-minute drive to her home. At approximately 7:23 a.m., Ennis was traveling on C.R. 5 in the town of Grant. Also traveling in the same area was a vehicle being driven by Lola Taylor, age 57. Taylor was on her way to deliver food to her Bible study class. She never made it.

As the two women drew near each other, Ennis lost control of her vehicle, crossed the center line, and crashed into Taylor. Among Taylor's numerous injuries were a pelvic fracture, multiple blood clots, and multiple cuts to her face, arms, and legs. Taylor underwent a hip replacement surgery to repair the pelvic fracture, and the blood clots required the placement of a green filter in her heart.

Taylor's medical expenses climbed to $111,601. Of that amount, Blue Cross/Blue Shield paid $45,639, and Taylor herself paid $5,085. The balance was simply written off by the various medical providers.

Taylor filed suit against Smith, the

Gadsden Treatment Center, and head nurse Joyce Bates. Taylor's theory was simple. Defendants should not have allowed Ennis to leave the facility under the influence of methadone since they knew she would be driving home. Additionally, Taylor's husband, Billy Taylor, presented a derivative claim for his loss of consortium.

During the course of the litigation, Taylor settled with Bates and dismissed her from the case. Also, Billy dismissed his consortium claim. The case then proceeded against Smith and the Gadsden Treatment Center.

Smith filed a motion for summary judgment on the ground that he owed no duty to Taylor because no relationship with her existed. The court granted the motion, and Taylor appealed the decision to the Alabama Supreme Court. The state's high court found that Smith was aware that Ennis had repeatedly tested positive for other illicit drugs while receiving methadone.

Based on that fact, it was reasonably foreseeable that Ennis could cause an automobile accident. The court further held that the duty of care owed by the director of a methadone clinic to his patients extends to third-party motorists injured in forseeable accidents resulting from the director's administration of methadone. Thus, the high court reversed the trial court's decision and remanded. See *Taylor v. Smith*, 892 So.2d 887 (Ala. 2004).

The case was tried to a jury in Gadsden. The verdict was for Smith and the clinic, and the court entered a consistent defense judgment.

Auto Negligence - In her haste to get to work, a medical stenographer clipped another vehicle on the interstate while changing lanes

Palachtchouk v. Alexander, 03-2711
Plaintiff: Julie L. Love, Tuscaloosa; and Betty C. Love, Talladega
Defense: Lynn Hare Phillips, *Hare Clement & Duck*, Birmingham
Verdict: Defense verdict
Circuit: **Jefferson**, 11-1-05
Judge: G. William Noble

It was the morning rush hour on 10-17-02, and Summer Palachtchouk was driving south on I-65 in Jefferson County. The interstate has three lanes in each direction in that area, and Palachtchouk was in the center lane. At the same time, Amy Alexander, a diagnostic medical stenographer at UAB, was also traveling south on I-65 in the far right lane.

Traffic was heavy that morning, and Alexander was due at work. In an effort to get around slow-moving traffic, Alexander temporarily moved into the far left lane. Alexander's exit was coming up at 4th Avenue South, so having gotten around the slow-moving traffic, she quickly tried to get back into the far right lane.

In performing this maneuver, however, Alexander failed to check her blind spot. As a result, she failed to see Palachtchouk in the center lane. An instant later, the two collided in a minor impact. According to Palachtchouk, Alexander did not stop and instead simply continued driving and left the scene.

Palachtchouk followed Alexander and motioned for her to pull over. After about a minute, Alexander did pull off the road at the exit near 32nd Avenue North and 41st Avenue North. Alexander would later explain she was not trying to leave the scene. Rather, it simply took her a moment to merge safely to the right and get off the road.

Palachtchouk claimed soft tissue injuries due to the crash and received chiropractic treatments. Her medical expenses came to approximately $2,070, and she estimated the damage to her vehicle at $397. Palachtchouk's identified medical expert was Dr. K.E. Awad.

Palachtchouk filed suit against Alexander and blamed her for merging without checking her blind spot and thereby causing the crash. Additionally, Palachtchouk's husband, Igor Palachtchouk, presented a derivative consortium claim. He later dismissed his claims prior to trial.

Alexander defended the case and disputed causation. She argued the impact was too minor to have caused Palachtchouk's injuries. As evidence of the minor nature of the impact, Alexander noted that her own vehicle sustained no damage at all.

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

Jones Act - A deckhand on a dredging vessel claimed a shipboard mishap left him with a permanent injury to his finger

Guidry v. Gulf Sand & Gravel, Inc., 04-481
Plaintiff: S. Brent Davis, Daphne
Defense: M. Kathleen Miller and P. Vincent Gaddy, *Armbrecht Jackson*, Mobile
Verdict: Defense verdict
Circuit: **Baldwin**, 12-6-05
Judge: Robert Wilters

Andre Guidry, age 43, worked as a deckhand on a dredging vessel named the Western Star. According to Guidry, the ship was owned by Gulf Sand & Gravel, Inc. and a company called Enco Dredging.

On 4-16-02, the Western Star was operating off the coast of Alabama with Guidry hard at work on deck. Guidry would later allege that the unidentified co-employee who was piloting the vessel that day was intoxicated.

While Guidry went about his work on deck, disaster was stalking him. As Guidry later described it, a line somehow managed to smash a finger on his left hand. The record provides no further details on how the accident happened.

Guidry took some time off work due to his injury. However, his employer, Gulf Sands, made him return to work two days later. Guidry claims that his employer forced him to wear a glove so as to conceal his injury from representatives of the Army Corps of Engineers who, apparently, were onboard.

About a week after the accident, Guidry's finger became infected. The record does not reveal what, if any, treatment he received or the amount of his medical expenses. What it does reveal is that Guidry continues to complain of numbness in his finger.

Guidry also continued to work for Gulf Sands for approximately eleven months before he was eventually fired. Gulf Sands claims the reason Guidry was fired was because he repeatedly came to work late due to his use of crack cocaine.

Guidry filed suit under the Jones Act against both Gulf Sands and Enco. According to Guidry, the Western Star was inherently unseaworthy. He linked his injury both to the ship's unseaworthiness and to his co-employee

piloting the craft while intoxicated.

Guidry blamed Gulf Sands and Enco for failing to provide a seaworthy vessel, failing to keep the vessel in proper repair, and failing to furnish competent co-employees and supervising officers. During the course of the litigation, Enco was dismissed by stipulation. The case then proceeded solely against Gulf Sands.

Gulf Sands defended the case and blamed the incident on Guidry himself. The company also minimized damages and pointed out that Guidry has never been assigned an impairment rating, and no doctor has ever told him he has nerve damage.

Gulf Sands also noted that Guidry continued to work after the accident. In fact, after being fired by Gulf Sands, Guidry went to work as a deckhand for another company. When that position didn't work out, he pursued a variety of other forms of employment. Thus, his ability to work seems not to have been impaired.

The case was tried for two days in Bay Minette. The jury found that Gulf Sands was not negligent. Having so found, the jury never reached the issue of damages. The court entered a consistent defense judgment.

Auto Negligence - An elderly man who was helping his aunt and her boyfriend move to a new home was injured when the aunt's boyfriend drove a car over the man's foot

Bush v. Bright, 04-657
Plaintiff: Nicholas P. Callahan, III, *The Callahan Law Firm*, Birmingham
Defense: Wayne Randall, *Donald Randall & Donald*, Tuscaloosa
Verdict: Defense verdict
Circuit: **Tuscaloosa**, 9-13-05
Judge: W. Scott Donaldson

In the early months of 2003, an elderly Della Hamilton was planning on moving to a new residence in Tuscaloosa. For the past thirty years, Hamilton had been living in an apartment with a man named Thomas Bright. Now, however, the couple had decided to move into a house.

Bright recruited Hamilton's nephew, Solomon Bush, age 60, to assist with the move. Although professional movers were going to move the large pieces of furniture, the plan was for Bush to help transport a load of smaller items in a car.

In the morning of 3-2-03, Bush, *et al.*, loaded up a car with some of Hamilton's and Bright's belongings. As they headed out to follow the moving van, Bright was driving the car, Hamilton was in the passenger seat, and Bush was seated in the rear behind Bright.

Apparently, the route to Hamilton's new home was a bit tricky, and Bush felt a need to provide the movers with directions. Upon reaching the intersection of 12th Avenue and 19th Street, Bush asked Bright to stop so he could get out and talk to the movers.

Bright stopped at the stop sign at the intersection, and Bush immediately opened the door and began to step out of the car. No sooner had he done so, however, than Bright allowed the car to roll forward. As the car moved, it rolled over Bush's left foot.

Bush felt immediate pain, and Bright ended up driving him to the ER. Bush was ultimately diagnosed with a fracture of his left foot and ankle. His medical expenses are unknown. He filed suit against Bright and blamed him for running over Bush's foot. Bright defended the case and pleaded the protections of the guest statute.

The case was initially tried in District Court on 3-23-04 and resulted in a defense verdict for Bright. Bush appealed the case to the Circuit Court where it was tried to a jury in Tuscaloosa. The verdict was again for Bright, and the court entered a consistent defense judgment.

Premises Liability - A woman visited the home of her boyfriend's parents for a weekend party and became trapped on a second floor balcony; the woman was seriously injured when, at her boyfriend's insistence, she climbed over the balcony and fell to the concrete below

Hardin v. Elam, 04-5011
Plaintiff: Stevan Goozee and Lawrence T. King, *Goozee King & Horsley*, Birmingham
Defense: Walter J. Price, III and Anna-Katherine Bowman, *Huie Fernambucq & Stewart*, Birmingham
Verdict: Defense verdict
Circuit: **Jefferson**, 11-17-05
Judge: Joseph L. Boohaker

In September of 2003, Jennifer Hardin had a new boyfriend in the person of Cullen Elam, the assistant director of the Kid Stop Learning Center. Although the two had been dating for only a month, the relationship had progressed to the point that Elam wanted to introduce Hardin to his parents.

On 9-19-03, Hardin accompanied Elam to his family's lakehouse in Marshall County for a party. It was apparently to be a multi-day event attended not only by Elam's parents, but also by a group of Elam's friends.

Hardin and Elam arrived at the lakehouse at approximately 6:30 p.m. They were the first to arrive, and Elam took the opportunity to give Hardin a tour of the house. The tour included an extended stop on the second-floor. While lingering on the second floor, Hardin went out onto the balcony several times to smoke.

The last time Hardin went out onto the balcony, Elam accompanied her. Significantly, they closed the door behind them. When the two attempted to go back into the house, they found the door was locked, and they were trapped on the balcony.

In this awkward situation, the two first thought they would simply wait for their friends to arrive for the party. However, they were able to hear the phone ring inside the house several times. For some reason, Elam became concerned that the unanswered call might have been from his friends who were calling to say they were either lost or not coming after all.

As the prospect of being trapped on the balcony overnight began to seem more real, Elam grew increasingly uneasy. Despite his unease, he rejected Hardin's suggestion that he simply break a window to regain entry to the house. Apparently, Elam's parents were in the process of remodeling the house, and Elam did not want to cause any damage lest he incur his parents' wrath.

Instead, Elam insisted Hardin climb over the balcony and lower herself down to the ground below. He explained that he himself could not perform this tricky maneuver because his knees had been damaged by past surgeries. Besides, Elam reasoned that Hardin was lighter than him, so it would be easier for her to climb down.

Hardin was a bit unsure about the wisdom of Elam's plan. However, she noted that the ground on either side of

the balcony was covered with grass. She thought, then, that perhaps she could try to climb down the side of the balcony, and the grass would cushion her landing in the event she should fall.

Elam explained the grass was newly installed, and he couldn't risk damaging it. Thus, he insisted Hardin try to lower herself to the concrete directly below the center of the balcony. When he assured her he would hold onto the railing to stabilize it, Hardin agreed to Elam's plan.

Hardin climbed over the railing and began her descent. According to her, the railing began to wobble almost immediately. She cried out for help, but instead of helping, Elam let go of the railing. Hardin fell to the concrete below and landed hard. Despite the seriousness of the situation, she claims she heard Elam laughing at her predicament.

Hardin told Elam she was hurt, but he nonetheless insisted she go into the house, up the stairs, and unlock the balcony door so he could get out. With difficulty, she complied. It was only later that Elam told her the construction of the railing was not yet complete, and it had not been secured.

Hardin was in considerable pain, and she told Elam she wanted medical attention. Instead, Elam insisted they wait for their friends to arrive. Much later, Elam drove Hardin to the ER in Jackson County where she was x-rayed and initially diagnosed with a sprain. She was released from the hospital, and Elam drove her back to the house. He then allegedly locked her in the guest room so he could continue to party with his friends.

The following morning, the hospital called and said the x-rays revealed massive injuries to Hardin's lower extremities. Accordingly, she needed to return to the hospital immediately. Elam, however, refused to take her and insisted they wait for his parents to arrive. When his parents did arrive many hours later, Elam insisted that he and Hardin stay for brunch before going to the hospital.

Some four hours later, Elam drove Hardin back to the Jackson Hospital to pick up the x-rays, then he drove her to Brookwood Hospital in Birmingham. Hardin was admitted to Brookwood and stayed for several days. For his part, Elam simply left her there and returned to the party at his parents' house.

Hardin was ultimately diagnosed with multiple fractures of both of her heels, for which she endured no fewer than five corrective surgeries. During these procedures, Hardin's vascular system became infected with methicillin-resistant staphylococcus aureous, and she contracted a gangrenous infection. As a result, she has been left permanently disfigured. Her medical expenses are unknown.

Hardin filed suit against Elam and his father and blamed them for allowing the hazardous balcony railing to exist, pressuring Hardin into attempting the risky escape maneuver, and then not properly attending to her medical needs once it became clear she was injured. The Elams defended the case and argued they could not have breached any duty to Hardin for the simple reason that they owed her none.

Moreover, the Elams pleaded assumption of risk and implicated Hardin's own fault. In particular, they noted that Hardin had taken out her contact lenses prior to climbing over the balcony, so she could not see what she was doing. In any event, it was her own choice to climb over the balcony, and so it is she who must accept the consequences.

During the course of the litigation, the court granted Elam's father a summary judgment and dismissed him from the case. A jury in Birmingham heard the evidence against Elam in a four-day trial. The verdict was for Elam, and the court entered a consistent defense judgment.

Auto Negligence - Plaintiff and defendant each blamed the other for a car crash

Griffin v. Williams, 03-968
Plaintiff: Todd S. Strohmeyer, *Maloney Strohmeyer*, Mobile
Defense: W. Beatty Pearson, Spanish Fort
Verdict: Defense verdict
Circuit: **Mobile**, 11-8-05
Judge: Joseph S. Johnston

On 10-1-01, Tracy Griffin was driving on Old Pascagoula Road near the intersection with McDonald Road in Mobile County. An instant later she collided with a vehicle being driven by Robert Williams.

The record does not reveal the nature of Griffin's injuries or the amount of her medical expenses. She filed suit against Williams and blamed him for the crash. She alleged counts of negligence and wantonness. Also, Griffin's husband, Nicholas Griffin, presented a derivative claim for loss of consortium.

Williams defended the case and implicated Griffin's fault. He also filed a counterclaim that was subsequently settled and dismissed by stipulation. The case then proceeded solely on Griffin's claim.

During the course of the litigation, Griffin's insurer, State Farm Insurance, filed a motion to intervene based on the belief that Williams might have been either uninsured or underinsured. The court granted State Farm's motion, but the insurer later opted out.

A jury in Mobile heard the case and returned a verdict for Williams. If the court entered a defense judgment, it was not in the record at the time the AJVR reviewed it. During deliberations, the jury asked the court, "Can we compensate the Defendant?" The court's reply, if any, is not reflected in the record.

Restaurant Negligence - A woman claimed a cup of tea she drank in a restaurant contained metal fragments that lacerated her esophagus and left her with permanent injuries

Childress v. Krystal Corporation, 02-2530
Plaintiff: Stephen D. Heninger, *Heninger Burge Vargo & Davis*, Birmingham
Defense: Ruth Ann Hall, *Spurrier Rice & Hall*, Huntsville
Verdict: Defense verdict
Circuit: **Madison**, 8-17-05
Judge: James P. Smith

It was 6-29-02, and Connie Childress, age 51, was a customer at the Krystal store located at 1024 North Memorial Parkway in Huntsville. Childress's daughter who was with her that day bought Childress a cup of iced tea. Childress drank the tea but soon realized something was wrong.

According to Childress, the tea contained metal fragments that she ingested along with the tea. As a result, Childress suffered a tear in her esophagus, as well as inflammation,

infection, and injury to her vocal chords. The experience has caused Childress's voice to change, and she continues to complain of difficulty swallowing.

Childress filed suit against the Krystal Corporation and blamed it for serving metal fragments with its tea. As support for this theory, Childress cited the testimony of two of Krystal's own employees, Bessie Humphrey and Janette Turner.

The two employees stated that their had been some construction work being done at the restaurant that included cutting metal shelves or doors. Childress theorized that metal shavings from the construction work must have somehow fallen into either the tea cups or the tea maker.

Childress's medical expert was Dr. Suresh Karne, Internal Medicine, Huntsville. Childress characterized Dr. Karne's expert opinion as being that the laceration of Childress's esophagus was due to her ingestion of metal fragments. Childress's husband, Robert Childress, also presented a derivative claim for loss of consortium.

Krystal defended the case and flatly denied there were any foreign objects in the tea. The store noted that the construction work had been done some five days prior to the incident with Childress. During that time, several gallons of tea had been made and emptied. Yet, in all that time, Krystal never received any complaints from any other customers.

Moreover, Krystal explained that its tea cups are always stored with the open end down precisely so as to prevent debris from falling inside. Also, as part of the process of preparing tea, employees always wash out the tea container.

Thus, rather than being due to ingestion of metal fragments, Krystal suggested that Childress's complaints could be due to severe gastro-esophageal reflux disease. The store also suggested that Childress's hoarseness could be due to the fact that she was a heavy smoker.

Krystal also disputed Childress's characterization of Dr. Karne's opinion. According to Krystal, what Dr. Karne actually said was that he simply had no explanation for Childress's complaints other than swallowing metal fragments. That, it seemed to Krystal, was a far cry from positively identifying metal fragments as the culprit.

The case was tried for three days in Huntsville. At the end of that time, the jury returned a verdict for Krystal, and the court entered a consistent defense judgment. Post-trial, Childress filed a motion for a new trial on the ground that the verdict was against the weight of the evidence. The court denied the motion.

Assault - A woman claimed that while waiting with her two young children in a doctor's waiting area, she was sexually assaulted by another patient

Laster v. Holley, 03-412
Plaintiff: Jimmy Jacobs, Montgomery
Defense: E. Hamilton Wilson, Jr., *Ball Ball Matthews & Novak*, Montgomery
Verdict: Defense verdict
Circuit: **Elmore**, 10-25-05
Judge: Ben A. Fuller

It was 9-10-02, and Cathy Laster, age 39, needed to get immunization shots for her children. Laster brought her two children, three year-old Ciera and one year-old Jaheim, to the office of Dr. Jimmy Durden in Tallassee. Durden's office was located in the Community Medical Arts Center, a doctor's building not far from Community Hospital.

Apparently, the various doctors who have offices in the Medical Arts Center operate their practices independently, but they share a common waiting area. It seems the doctors also share a common support staff provided by the Medical Arts Center.

While Laster and her children sat in the waiting area, another patient walked in. It was Charles Holley, age 68 and the husband of the Medical Arts Center's office manager, Jo Ann Holley. Charles had previously had open heart surgery and had come to the office for a follow-up appointment with Dr. Dumitt, one of the other doctors in the building.

Charles was evidently well known in the office. When he entered he greeted two of the employees and engaged them in small talk for a short time. He then went to the waiting area and began talking with another patient. Laster was in a position to overhear these conversations, and she would later characterize them as being of a sexually suggestive nature.

Eventually, Charles's attention turned to Laster and her children. He began talking playfully with the older child and, according to Laster, said he would like to "take" the child's mother. Laster claims that while Charles was speaking, he rubbed his arm into and over her breast.

Laster felt uncomfortable with the situation, and she got up and moved herself and her children to another seat further away. She claims that as she did so, Charles reached out and pinched her on her nipple.

After the incident ended, Laster told one of the office employees what had happened, and she asked who was that strange man. According to Laster, the office employee replied, "That was just Charles. He does things like that." The employee allegedly also told Laster she "shouldn't worry about it."

Laster, however, did worry about it. On the mistaken belief that Community Hospital owned the building, Laster went to the hospital's office to lodge a complaint. The hospital staff explained it had no connection with the Medical Arts Center, so Laster returned and complained to Yvette Wisner, the Medical Arts assistant manager.

Wisner allegedly brushed off Laster's complaint with the glib statement that Charles simply would not do the sort of thing Laster claimed. Laster went to the Tallassee Police the following day and made out a report. According to her, the police dispatcher told her Charles had a reputation for bothering women. However, it is not known whether the police ever followed up on Laster's report.

Laster filed suit against Charles, Durden, Community Hospital, and the Medical Arts Center. However, she later stipulated to the dismissal of Community Hospital. Also, Durden and the Medical Arts Center were dismissed on summary judgment on the ground that Laster had failed to state claims against them.

The case then proceeded on Laster's claims against Charles for assault, battery, invasion of privacy, and intentional infliction of emotional distress. The court later granted Charles a partial summary judgment on the emotional distress claim, and the case went forward on the remaining claims. By way of bolstering her case, Laster claims she later learned that Charles had

sexually harassed two other women.

As it happened, Charles was insured by Alfa Insurance. During the course of the litigation, Alfa intervened and sought a declaratory judgment to determine coverage. The court found there was no coverage, and Alfa was granted a summary judgment.

With the various procedural complications finally out of the way, Charles defended the case and denied having behaved inappropriately toward Laster. He was supported in this by the testimony of Stacey Gray, an employee of the Medical Arts Center and a witness to the events of which Laster complained. According to Gray, Charles never touched Laster, nor has Gray ever known Charles to behave inappropriately.

The case was resolved by a jury in Wetumpka in favor of Charles. The court followed with a consistent defense judgment, and the case was brought to a close.

Medical Negligence - A teenager died following a bout of viral meningoencephalitis; the teenager's estate blamed her death on the medical team's failure to treat her increased intracranial pressure

Estate of Plomp v. McLeod, et al., 99-503
Plaintiff: Floyd C. Enfinger, Jr., Montrose
Defense: A. Danner Frazer, Jr. and Ross A. Frazer, *Frazer Greene Upchurch & Baker*, Mobile, for McLeod; Norman E. Waldrop, Jr. and Rodney R. Cate, *Armbrecht Jackson*, Mobile, for Graves
Verdict: Defense verdict
Circuit: **Baldwin**, 11-16-05
Judge: James H. Reid

On 6-5-98, young Alanna Plomp, age 18, went into seizures. She was admitted to Thomas Hospital in Baldwin County and came under the care of Dr. Nancy McLeod, a specialist in both neurology and internal medicine.

McLeod diagnosed Plomp with cerebral edema brought on by viral meningoencephalitis. From among the range of possible treatments for this condition, McLeod chose to employ a regimen of antiviral and antibacterial medications.

McLeod continued this treatment regimen for the next several days. During this time, McLeod also ordered spinal taps, the results of which showed increased pressure in Plomp's cerebrospinal fluid. Despite this result, McLeod did not alter her treatment plan.

On the afternoon of 6-12-98, McLeod went off duty for the weekend. One of her colleagues, Dr. George Graves, then took over the care of all of McLeod's patients, including Plomp. Significantly, it appears Graves made no alteration in McLeod's treatment plan.

Also, in a conversation with Plomp's parents, Graves allegedly downplayed the seriousness of Plomp's condition. According to her parents, Graves said Plomp was a healthy girl who simply had some seizures. He went on to assure them that their daughter would be okay. It would soon turn out that assurance was tragically misplaced.

On the morning of 6-14-98, Graves ordered an EEG to be performed on Plomp. While the test was being performed, Plomp went into respiratory arrest. As a result of this episode, she was pronounced brain dead, and she died shortly thereafter.

Plomp's estate filed suit against both McLeod and Graves. According to the estate, there were other, more appropriate, treatment options available that McLeod and Graves could have, and should have, employed.

Among other things, they could have used osmotic agents or steroids, and they should have monitored Plomp's increased CSF pressure intracranially. Finally, they could have transferred Plomp to another facility that was better equipped to provide proper treatment. The estate claimed neither McLeod nor Graves ever discussed these treatment options with Plomp's parents.

The estate's identified experts included Dr. Gordon Kirschberg, Neurology, Birmingham; and Dr. Horace Norrell, Neurosurgery, Sarasota, Florida. It was Dr. Norrell's opinion that Plomp likely died of elevated intracranial pressure and that her condition could have been successfully treated by some of the other treatment options. Dr. Kirschberg agreed that the treatment Plomp received deviated from the standard of care, and she likely would not have died had she received proper care.

McLeod and Graves defended the case and denied any deviation from the standard of care. McLeod's experts were Dr. Jane Boggs, Neurology, Mobile; Dr. Patricia Coyle, Neurology, Stony Brook, New York; and Dr. Larry Davis, Infectious Disease, Albuquerque, New Mexico. Drs. Boggs and Coyle agreed McLeod's treatment was appropriate and that the cause of Plomp's death was viral meningoencephalitis.

Graves identified his own experts: Dr. Melvin Greer, Neurology, Gainesville, Florida; Dr. Jerome Murphy, Neurology, Kansas City, Missouri; Dr. Richard Whitley, Infectious Disease, Birmingham; and Dr. W. Brent Faircloth, Neurosurgery, Mobile. According to Faircloth, a pressure monitor would not have been appropriate in Plomp's case, and there was no reason to transfer her to another facility. Faircloth also agreed with Boggs and Coyle that Plomp likely died of the infectious process rather than from intracranial pressure.

The case was tried for eight days in Bay Minette. The jury returned a verdict for McLeod and Graves. The court's consistent defense judgment brought the case to a close.

Premises Liability - While taking a snack break during a hospital visit to a sick relative, two women sat at a table in the hospital courtyard; the women claimed extensive injuries when the table flipped over and landed on top of them

Collins, et al. v. Jackson Hospital & Clinic, 01-255
Plaintiff: Michael J. Crow, *Beasley Allen Crow Methvin Portis & Miles*, Montgomery
Defense: Ben C. Wilson and William S. Haynes, *Rushton Stakely Johnston & Garrett*, Montgomery
Verdict: Defense verdict
Circuit: **Montgomery**, 1-13-06
Judge: Eugene W. Reese

On 4-21-99, Deborah Collins, age 36 and a computer analyst for the Bane Group, was visiting her grandfather at the Jackson Hospital and Clinic in Montgomery County. Collins was accompanied that day by her aunt, Linda Holcombe, age 50. Collins's grandfather (and Holcombe's father) was in the hospital recovering from surgery.

Sometime between 2:00 p.m. and 3:00 p.m., Collins and Holcombe decided to

get a bite to eat. They went downstairs and purchased some chips and drinks from vending machines. When they looked around for a place to sit, however, they noticed some sort of meeting was being held in the cafeteria.

With nowhere else to go, the two women made their way to a patio area outside in the courtyard. That area, too, was crowded, and there was only one unoccupied table. It would be significant for this case that the table was of metal construction with bench-type seats physically connected to it.

Collins and Holcombe put down their purses and food on the table and then proceeded to sit down. Unbeknownst to them, the table was apparently not secured to the concrete floor. When they sat down, the table flipped up, over, and onto them, knocking the two women to the floor in the process. Fortunately, another hospital visitor came to their aid and helped them get up.

After Collins and Holcombe rose and put themselves back together, they returned to the ICU to check on their ailing relative. Holcombe went to the ER the following morning complaining of pain that she attributed to the incident with the table.

Holcombe claimed a range of injuries, including a left shoulder impingement, torn cartilage, a disc injury, severe headaches, and injuries to her neck and left elbow. She later had surgery on her left shoulder and elbow, and she complains of lingering pain and severe weakness in her left shoulder and arm. Holcombe's medical expenses came to $33,160.

Collins also claimed injuries to her neck, back, and shoulder. Her incurred medical expenses totaled $17,493. The women's respective health insurers paid $18,093 of Holcombe's medical expenses and $8,300 of Collins's.

Collins and Holcombe filed suit against the Jackson Hospital and Clinic and blamed it for failing to secure the tables to the floor and failing to warn the women of the hazard. Their husbands, Sean Collins and Gerald Holcombe, also presented derivative claims for loss of consortium.

Plaintiffs' identified medical experts included Dr. Ronaldo DeJesus, Internal Medicine, Wetumpka; Dr. John Hackman, Neurological Surgery, Montgomery; and Dr. Tai Chung, Orthopedic Surgery, Montgomery. Jackson Hospital defended the case and disputed causation. The record does not identify defense experts.

The case was tried in Montgomery. The jury returned a verdict for Jackson Hospital, and the court entered a consistent defense judgment.

Daycare Negligence - A man picked up his young son from a daycare center's van that was stopped at a stop light; when the boy ran into the street and was hit by a car, the daycare center was blamed for allowing the boy to leave the van in the middle of traffic

Mason v. Stork's Nest Child Development Center, 03-2986
Plaintiff: Charles H. Jones, Jr., Mobile
Defense: D. Scott Wright and James V. Stowe, III, *Wright Green, P.C.*, Mobile
Verdict: Defense verdict
Circuit: **Mobile**, 5-24-05
Judge: Charles A. Graddick

On the morning of 8-23-01, Monica Dixon dropped off her two children, Zantwane and Iona Mason, at the Stork's Nest Preparatory Development Center, a daycare operation in Mobile. The plan was for the children's father, Sherron Mason, to pick them up later that afternoon.

Apparently, Zantwane's daily scheduled included attendance at a school that was separate from the Stork's Nest. Sometime between 3:00 p.m. and 4:30 p.m., Sherron arrived at the Stork's Nest to collect the children. However, Zantwane had not yet returned from school. Accordingly, Sherron decided to take Iona home and then phone his wife to pick up Zantwane later.

Sherron walked with Iona to the bus stop on Government Street at the intersection with Dauphin Island Parkway. As they sat waiting for the bus to arrive, the Stork's Nest van carrying little six year-old Zantwane came down the street. The driver of the van noticed Sherron sitting at the bus stop and honked the horn to get his attention.

Sherron responded to the signal by approaching the van that was now stopped at a traffic light. As he did so, someone inside the van opened the door to let out Zantwane. Sherron tried to take Zantwane's hand, but the boy scurried away and ran ahead toward the bus stop where Iona sat waiting.

As it happened, the point at which the van had stopped and Zantwane had gotten out was separated from the bus stop by two lanes of traffic. In his excitement to reach Iona, Zantwane ran across the lanes of traffic without watching for approaching vehicles.

At just that moment, a vehicle being driven by Clarissa Sims was passing through the area. Sims was in the course of her employment with Brand Scaffold Builders, Inc. From her point of view, it appeared that Zantwane darted out in front of her from between two cars that were also stopped at the light.

Sims slammed on her brakes but was unable to stop in time. She ran into Zantwane and knocked him some three or four feet away. The record does not indicate the nature of his injuries or the amount of his medical expenses.

Through his mother as his next friend, Zantwane filed suit against the Stork's Nest, Sims, and Scaffold Builders. However, Sims and Scaffold Builders were later dismissed on summary judgment. The case then proceeded against the Stork's Nest on claims of negligence and wantonness.

Zantwane blamed the daycare center for its driver's decision to allow him to exit the van in the middle of traffic. The Stork's Nest defended the case and argued that once Zantwane left the van, he was under his father's control. If Sherron was unable to restrain his son from darting into traffic, that could hardly be the Stork's Nest's fault.

A jury in Mobile heard the case and returned a verdict for the Stork's Nest. The court followed with a consistent defense judgment.

Medical Negligence - While undergoing back surgery, a woman sustained a vascular injury that caused massive blood loss and led ultimately to her death

Estate of Tarrance v. Stallworth, et al., 99-3656
Plaintiff: Stephen D. Heninger, *Heninger Burge Vargo & Davis*, Birmingham
Defense: Michael A. Florie, Joseph S. Miller, and Alicia M. Harrison, *Starnes & Atchison*, Birmingham, for Stallworth and Surgeon's Group; Thomas H. Keene, *Rushton Stakely Johnston & Garrett*, Montgomery, for Woodall
Verdict: Defense verdict
Circuit: **Jefferson**, 10-24-05
Judge: Joseph L. Boohaker

In June of 1999, Paulette Tarrance was scheduled to undergo surgery on her lower back. The surgery was to be performed by Dr. William Woodall with assistance from Dr. David Stallworth. Stallworth was an employee of Surgeon's Group in Birmingham.

The surgery was performed on 6-3-99 at Baptist Montclair Hospital in Birmingham. It would be Stallworth's responsibility to protect Tarrance's vascular system. During the procedure, however, something went wrong. Somehow, Tarrance sustained an injury to her vena cava, one of the "great vessels" that carries de-oxygenated blood from the body to the heart.

Although Stallworth repaired the injury, Tarrance experienced a massive blood loss. That, in turn, led to further complications. Tarrance became comatose and was transferred to the ICU where she was placed on 24-hour dialysis. Despite the efforts of the medical team, Tarrance suffered brain damage and was put on a ventilator. Also, one of her legs had to be amputated.

Tragically, Tarrance died of her injuries slightly less than two months later on 7-28-99. Before her death, she filed suit against Stallworth and Surgeon's Group. Following her death, Tarrance's estate amended its complaint to add Baptist Montclair and Woodall as defendants.

The estate criticized defendants for allowing Tarrance's vena cava to be injured during the surgery and for failing to repair the injury adequately. The estate's two surgical experts were Dr. Guy Danielson and Dr. Alan Koslow. It was Danielson's opinion that the standard of care required retraction of the vessels during the surgery. Stallworth neglected to do that, and he also did not repair the damage in a timely manner.

During the course of the litigation, Woodall was granted a summary judgment. However, the court later granted the estate's motion to set aside that ruling, and Woodall remained in the case. He asserted that vascular injury is a known and recognized complication of the procedure he performed on Tarrance.

Stallworth also defended the case and denied any breach of the standard of care. In particular, he specifically recalled discussing with Tarrance prior to the surgery the possibility of vascular injury. Moreover, when the injury did occur, he repaired it.

Just one week before trial, Baptist Montclair was dismissed by stipulation. The case was then tried to a jury in Birmingham for six days. The verdict came back for Stallworth, Woodall, and Surgeon's Group. The court's consistent defense judgment brought the case to a close.

Post-trial, the estate filed a motion for a new trial. The motion alleged violations of certain orders in limine and improper closing argument by Stallworth's attorney. Also, the estate argued the verdict was against the weight of the evidence. The court's ruling on the motion was not in the record at the time the AJVR reviewed it.

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