

The Alabama Jury Verdict Reporter

The Most Current and Complete Summary of Alabama Jury Verdicts

February 2007

Statewide Jury Verdict Coverage - Published Monthly

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Unbiased and Independently Researched Jury Verdict Results

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Civil Jury Verdicts

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

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The AJVR 2006 Year in Review

This important volume, at three-hundred pages plus, has just been published and provides the Alabama litigator a comprehensive study of jury trials in 2006. It includes detailed analysis of every kind of case, easily sorted and indexed for quick reference. The fifth edition in the series, it provides the reader a complete five-year look at Alabama litigation.

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Auto Negligence - An electrical engineer of Vietnamese origin, traveling through Alabama, was rear-ended and his SUV rolled over – in that accident, he sustained a permanent and devastating brain injury

Ho v. DeGroat, 03-1443

Plaintiff: Keith Belt, Jr., *Belt Law Firm*, Birmingham

Defense: Michael S. Burroughs, *Burroughs & Guin*, Tuscaloosa

Verdict: \$6,000,000 for plaintiff

Circuit: **Jefferson-Bessemer**, 1-25-07

Judge: Dan King

Vu Ho, then age 49, was traveling on 12-7-02 from Georgia to California on I-20/59. Ho, an electrical engineer who did defense department work, had just finished a job for McDonald Douglas in Georgia and was returning home to San Jose. Ho had an interesting story – born in Vietnam, his father was a CIA staff employee. The family was evacuated to California following the fall of Saigon.

Ho, then in his twenties, earned an

advanced degree and as the eldest of eight children, helped his younger siblings earn their degrees in the U.S. By the time of this incident, Ho was an American success story who was the patriarch of the family.

Back to I-20/59, Ho was traveling in his Ford Explorer when he was rear-ended by John DeGroat at an offset angle. That caused Ho's SUV to rotate – it was struck again by DeGroat and flipped. In the resulting roll-over, the SUV sustained a significant deformation to the roof.

Ho was badly hurt in the wreck, sustaining a brain injury – despite a craniotomy and other intervention, he has been left with a permanent and traumatic brain injury. While Ho appears normal, that perception is altered when he speaks.

Ho, who previously did complex mathematics, is unable even to perform basic multiplication. He now lives either in cheap motels in California or with family members. The proof developed that his life was turned

upside down.

In this lawsuit, Ho sought damages from DeGroat, blaming him for this rear-ender. While Ho had no recollection of the wreck, he developed the nature of the impact through both the investigating police officer and an accident reconstructionist, Ed Robinson, Birmingham. That proof focused on a strike comparison of the vehicles and paint transfer.

DeGroat for his part took an opposite position. That is while traveling on the interstate, Ho suddenly swerved into his path. Relying on this version of events, DeGroat advanced to trial – an Allstate insured, his policy limits were \$50,000.

Plaintiff countered DeGroat's version with the physical evidence, notably the impact points on the vehicles and their final resting place. DeGroat was also impeached with evidence that (1) he didn't have a driver's license, and (2) a suggestion by Ho that his driving might have been affected by pain medications, DeGroat having recently had hip surgery. [DeGroat, who regularly took those medications, denied having done so on the day of the wreck.]

The court having directed a verdict on punitive damages, this Bessemer jury retired to deliberate. It returned in an hour with a verdict awarding Ho \$6,000,000 in compensatory damages. While no judgment had yet been entered, the award far exceeded DeGroat's policy limits.

Workplace Negligence - An electrical contractor, working at a Target distribution center, sustained serious injuries when he fell from a scissor lift – a Target employee had struck the lift with a forklift

Scheurer v. Target, 04-1049

Plaintiff: R. Tucker Yance and Mike

A. Worel, *Cunningham Bounds*

Crowder Brown & Breedlove, Mobile

Defense: Larry J. Seiter and Celia J.

Collins, *Johnstone Adams*, Mobile

Verdict: \$10,250,000 for plaintiff

Circuit: **Mobile**, 2-17-06

Judge: Sarah H. Stewart

Randy Scheurer, then age 46 and a contract electrician from St. Louis, MO, was working on 12-10-03 at a Huntsville distribution center for Target. He was standing on a portable scaffold known as a scissor lift. While Scheurer was working, a Target employee drove into the scissor lift with a "stock picker" forklift.

That impact knocked Scheurer from the scissor lift and he fell twenty feet to the concrete floor below. He was badly hurt, sustaining significant spinal fractures at T-11 and mid-spine. Additional injuries included a fractured pelvis, scapula, ribs and clavicle, as well as a torn rotator cuff. The combination of these injuries has left him permanently disabled. His wife, Renee, presented a derivative consortium count.

In this lawsuit, Scheurer sued Target and alleged negligence regarding the incident – particularly, the stacking of pallets in the aisle contributed to this wreck. Beyond compensatory damages, plaintiff also sought the imposition of punitives – he pointed to proof the forklift driver had a history of unsafe conduct and in this incident, he passed in a narrow aisle (there were pallets) without sufficient clearance. Target denied fault for the accident.

This case was tried for a week in Mobile, the jury then deliberating an hour. The verdict was for Scheurer – he took \$5,000,000 in compensatory damages and the same sum for punitives. His wife's consortium interest was valued at \$250,000, the verdict totaling \$10,250,000. A judgment in that sum followed and the matter was dismissed with prejudice several months post-trial.

Truck Negligence - The plaintiff, a trucker himself, suffered a neck and back injury when rear-ended by another trucker

Nisbet v. Heartland Express, 1:05-570

Plaintiff: William P. Sawyer and David

E. Allred, *Montgomery*

Defense: Eugene P. Stutts and Thomas

S. Hiley, *Spain & Gillon*, Birmingham

Verdict: \$500,000 for plaintiff

Federal: **Dothan**, 1-31-07

Judge: W. Keith Watkins

It was 3-14-05 and David Nisbet, then age 42, was driving on U.S. 431 in Headland. In a tractor-trailer, Nisbet came to a stop. Behind him on U.S. 431 was another trucker, Jerry George of Heartland Express. George didn't appreciate that Nisbet was stopped and in a significant collision, George rear-ended Nisbet. That initial impact pushed Nisbet into the next stopped vehicle.

Beyond simple negligence, Nisbet

also alleged wantonness. At the time of the wreck, he noted that George was alternately, text messaging on his phone, putting a CD in his disc player, watching the television behind him in his sleeper cab or some combination of all of the above. George for his part wasn't quite sure how it happened – plaintiff theorized that but for wantonness, George should have seen his stopped truck on the clear, flat and dry roadway.

However it happened, there was a significant impact and Nisbet has since treated for a neck and low-back injury. While no surgery has been performed on his spine, there was proof Nisbet may need one in the future. His medicals were \$18,500. Beyond the primary claim, his wife presented a consortium count.

Heartland Express defended the case that it was just a simple crash, wantonness having nothing to do with it. Plaintiff's damages were also diminished.

The verdict was for Nisbet on both negligence and wantonness. He was awarded \$340,000 in compensatory damages, his wife taking \$30,000 for her consortium claim. The jury added \$130,000 more in punitives, the verdict totaling \$500,000. A consistent judgment was entered.

Premises Liability - Plaintiff linked a brain injury and emotional symptoms to a fall in a hotel bathroom

Smith v. Wynfrey Hotel, 03-4899

Plaintiff: Patrick J. Ballard

Defense: Russell Q. Allison and James

A. Stewart, *Carr Allison*, Birmingham

Verdict: Defense verdict

Circuit: **Jefferson**, 9-22-06

Judge: G. William Noble

On 8-5-01, Donna Smith, then age 50, was a guest at the Wynfrey Hotel which is located in the Riverchase Galleria in Birmingham. While in the bathroom of her rented hotel room, Smith reached to flush the toilet. As she did so, her feet flew out from under her. [The floor was wet, her husband having just taken a shower.]

In the resulting fall, the barefoot Smith struck her head on the rim of the tub. She has since treated for a brain injury that has resulted in vertigo, tremors and emotional symptoms. It

The Alabama Jury Verdict Reporter
2006 Year in Review

The 2006 Year in Review is back with its fifth 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 *five* years of data. 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.

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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 2006, with complete five-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 2006, 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? A partial sample of the 2005 report is included on the opposite page.

Detailed Reports on the following subjects are also included:

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