The Alabama Jury Verdict Reporter

The Most Current and Complete Summary of Alabama Jury Verdicts

February, 2009 **Statewide Jury Verdict Coverage - Published Monthly** **9 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.

Auto Negligence - A rear-end crash caused a seven year-old boy to suffer a traumatic brain injury that has left him permanently disabled; after winning a punitive damages award that was forty times his compensatory damages award, the boy was granted a new trial on the ground that the compensatory award was inadequate

Putnam, et al. v. Allstate Electric Company, Inc., et al., 06-468
Plaintiff: John E. Warren, III and Vivian Vines Campbell, *Warren & Associates, LLC.*, Jasper; and Garfield W. Ivey, Jr., *Ivey & Ragsdale*, Jasper
Defense: R. Larry Bradford and Shane T. Sears, *Bradford & Sears, P.C.*, Birmingham; and William H. Brooks and Ivan B. Cooper, *Lightfoot Franklin & White, LLC.*, Birmingham, for Allstate Electric; Paul A. Miller, *Lamar Miller Haggard & Christie, P.C.*, Birmingham, for Cheshire
Verdict: $6,255,000 for plaintiffs (comprised of $200,000 compensatory damages, plus $6,055,000 in punitive damages, all apportioned in varying amounts among three plaintiffs)
Circuit: **Walker**, 4-14-08
Judge: Hoyt Elliott

On 8-25-06, Pearl Putnam was driving a 1995 Toyota Corolla on Hwy 69 North in Walker County. Her passengers that day were Alexander and Morgan Akins, both of whom were minors. Morgan, in fact, was only seven years old.

At the same time, William Cheshire was driving behind Putnam in a 1995 Ford F-150 pickup truck that was hauling a trailer. An instant later, Cheshire rear-ended Putnam.

Although all the occupants of the Putnam vehicle were apparently injured, it seems little Morgan's injuries were the most serious. Specifically, he suffered a traumatic brain injury that has left him permanently disabled. The record does not reveal the amount of his medical expenses, nor those of Putnam or Alexander.

The Alabama Jury Verdict Reporter
2008 Year in Review

The 2008 Year in Review is back with its **seventh** edition. At a solid 439 pages, it represents the cumulative and comprehensive study of Alabama jury trials -- only this volume is better because it summarizes a remarkable *seven* years of data. It looks at verdict results in an encyclopedic fashion, including over twenty reports, chronicling all sorts of patterns, trends and categories, all with an eye towards settling civil tort claims.

What's Included?

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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 2008, with complete six-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 reported case from 2002 to 2008, 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 2008? Also included are seven-year totals.

Detailed Reports on the following subjects are also included:

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In this snapshot preview of the 2008 Year in Review, the largest verdicts from 2002 to the present are summarized.

For the complete report see the Million Dollar Verdict Report at page 7 in the 2008 Year in Review.

The 2002-2008 Million Dollar Verdicts at a Glance

The one hundred results are sorted in order from largest to smallest
(2008 results in bold)

County	Case#	Verdict	Description
Macon Plaintiff: Jock Smith and Brian Strength	1065	$1,620,000,000	An insurance agent pocketed premiums -- it was later learned he'd done the same thing before
Fed-Mont Plaintiff: Joe Whatley, Randy Beard and others from out of state	947	$1,281,690,000	A class of cattle ranchers alleged a meat packing company unfairly set prices. [The trial court later set aside this verdict.]
Mobile **Plaintiff: George W. Finkbohner, III, Victor T. Hudson, William W. Watts, and David A. Bagwell**	**2058**	**$192,493,456**	**A chemist claimed a company and its subsidiary stole his idea for turning an unwanted by-product of their manufacturing process into a valuable industrial material.**
Bullock Plaintiff: Greg Allen, Jere Beasley, Lynn Jinks and Walter McGowan	421	$122,000,000	A front-seat passenger in a GM sedan sustained a serious head injury in a head-on offset crash. Plaintiffs criticized weakness in the structure of the car. The jury awarded plaintiff $20,000,000 in compensatory damages, five times that in punitives. This plaintiff is the son of the sitting circuit court clerk in Bullock County.
Mobile **Plaintiff: Robert T. Cunningham, Jr., Toby D. Brown, and Bryan E. Comer**	**2054**	**$108,000,000**	**A landfill operator faced a shut-down of its business, plus massive environmental clean-up costs after it was discovered that a pipe coating company had been dumping hazardous waste in the landfill for over two years.**
Baldwin **Plaintiff: Joseph M. Brown, Jr., David S. Cain, Jr., George W. Finkbohner, III**	**2142**	**$50,000,000**	**A gas-powered water heater malfunctioned and leaked gas into the garage of a newly-built home; when the homeowner tried to light the pilot light, the gas exploded and caused him to suffer extensive burns from which he later died.**
Hale Plaintiff: Robert Prince, Charles Pearson, Gregory Pearson, Andrew Smithart and James Seale	337	$43,800,000	The Chandler family near Moundsville alleged a pipeline company contaminated the area's groundwater with gasoline. Punitives of $37,000,000 were assessed.
Jefferson Plaintiff: Michael Hardman, James Wettermark and Everette Price	109	$34,500,000	A railworker fell from a bridge, becoming a C-5 quadriplegic and losing both his legs. The verdict in this FELA case was subject to a $14,000,000 - $7,000,000 Hi-Lo agreement.
Tuscaloosa Plaintiff: Thomas T. Gallion, III; C. Delaine Mountain; H. Lewis Gillis; and Tyrone C. Means	1311	$30,000,000	A former assistant coach and recruiting coordinator for the University of Alabama's football program claimed his reputation was tarnished and his employment prospects damaged by statements made about him by a football recruiting analyst.

Putnam, Alexander, and Morgan all filed suit on counts for negligence and wantonness against Cheshire and blamed him for crashing into them. If successful, plaintiffs sought both compensatory and punitive damages. Plaintiffs also filed an underinsured motorist claim against State Farm, but the company opted out of the litigation.

Finally, plaintiffs named Cheshire's employer, the Allstate Electric Company, Inc. (an electrical contractor), as a co-defendant based on the allegation that Cheshire was on the job at the time of the crash. Plaintiffs thus targeted Allstate on a theory of vicarious liability.

Plaintiffs identified a number of expert witnesses. They included Dr. William Crunk, Rehabilitation Counseling, Birmingham; Dr. John Ackerson, Psychology, Birmingham; Fred Johnson, Economics, Birmingham; Kathy Smith, Life Care Planning, Hoover; and John Liechty, Accident Reconstruction, Birmingham.

Cheshire and Allstate defended the case and offered their own account of what happened. According to them, Cheshire had been on the job earlier but had left for the day in his personal pickup truck.

After leaving the job site, Cheshire went to a Home Depot to pick up some supplies for a home improvement project he was working on at his own home. He was on his way home when the crash occurred.

Based on that account, defendants insisted that Cheshire was not in fact on the job at the time of the crash. Allstate went further and pointed out that it did not own or insure Cheshire's truck and that Cheshire was not "on call" at the time of the crash.

Allstate did acknowledge that Cheshire was transporting in his trailer some tools and other items that belonged to Allstate. However, that was only because Cheshire had forgotten to lock them up in their storage area before leaving work for the day.

Defendants argued this was far from sufficient grounds for dragging Allstate into the litigation. Defendants also sought to minimize plaintiffs' claimed damages. The identified defense experts included Lee Harris, Life Care Planning, Montgomery; Dr. Joey Parker, Accident Reconstruction, Tuscaloosa; and Dr. Thomas Bell, Neuropsychology, Birmingham.

The case was tried in Jasper and resulted in a complex verdict for plaintiffs. Putnam was awarded compensatory and punitive damages of $25,000 each, for a total of $50,000. Alexander was awarded compensatory damages of $25,000, plus another $30,000 in punitive damages, for a total of $55,000.

Finally, Morgan was awarded compensatory damages of $150,000. To that amount was added punitive damages of $6,000,000. His total thus came to $6,150,000. The combined total for all plaintiffs worked out to $6,255,000. The court entered a judgment that reflected the verdict.

Prior to trial, Cheshire made an Offer of Settlement in the single amount of $100,000 to all plaintiffs combined. Following the court's entry of the judgment, Morgan filed a motion for a new trial on the ground that the compensatory damages component of his award was grossly inadequate.

The court granted Morgan's motion for a new trial, and defendants appealed that decision to the Alabama Supreme Court. At the time the AJVR reviewed the record, the appeal was still pending.

Fraud - A subcontractor claimed his general contractor concealed vital information in order to manipulate him into submitting a bid that would not meet the project's specifications; as a result, the subcontractor failed to win a lucrative contract

Robinson v. Sverdrup Technology, Inc., 04-384

Plaintiff: Brian M. Clark, *Wiggins Childs Quinn & Pantazias, P.C.*, Birmingham; and Brian D. Clark, Huntsville

Defense: Marion F. Walker and Susan W. Bullock, *Ford & Harrison, LLP.*, Birmingham

Verdict: $78,000 compensatory for plaintiff on intentional misrepresentation; zero punitives; defense verdict on breach of contract

Circuit: **Madison**, 8-28-07

Judge: Bruce E. Williams

For some thirteen years prior to the fall of 2003, Sverdrup Technology, Inc., a company located in Huntsville, operated under a contract to provide support services for the United States Air Force at the Arnold Engineering Development Center in Tullahoma, TN. During at least part of that time, one of Sverdrup's subcontractors was a company called ADR Technical Services, Inc.

ADR Technical Services, Inc. was a sole proprietorship owned and operated by Ronnie Robinson. The company's role was to provide inventory control support under Sverdrup's general contract. ADR's inventory control process involved the use of a computer database and barcode labels.

In the spring of 2003, Sverdrup's existing contract with the Air Force was about to expire. The Air Force thus prepared to take bids for the new twelve-year contract. Sverdrup certainly intended to put in a bid for the contract, and Robinson wanted to be part of the action.

Robinson informed Sverdrup that he and his company wanted to bid in order to be a subcontractor on the new contract. After some discussion, Robinson and Sverdrup entered into a "Teaming Agreement" in February of 2003 in order to submit a joint bid for the contract.

The process of bidding on such contracts is highly complex and time consuming. Preparation of the written proposal can take months, if not years, and Sverdrup's proposal in this instance ran for thousands of pages compiled in several volumes.

Robinson would later claim that Sverdrup froze him out of the process of preparing the proposal. Instead, according to Robinson, Sverdrup secretly decided to take the inventory control component of its service in-house, thereby eliminating the need for Robinson's participation.

It was Robinson's belief that Sverdrup then took steps to ensure the Air Force would reject Robinson's bid. Specifically, Sverdrup maneuvered the Air Force into specifying a new inventory control system based on statistical sampling rather than the old system Robinson used.

Robinson claims that when he inquired of Sverdrup about submitting his cost figures and work description for the new contract proposal, he was told just to submit extrapolations based

on his old system. In short, Sverdrup never told Robinson that the new inventory system would be different and that his old system would not meet the new specifications.

The Air Force accepted Sverdrup's bid in June of 2003. However, the Air Force rejected Robinson as a subcontractor. Sverdrup informed Robinson of this fact by a letter dated 9-17-03. When Robinson found out what had happened, he filed suit against Sverdrup.

In his complaint, Robinson alleged counts for promissory fraud, intentional misrepresentation, and breach of contract. The essence of his claim was that Sverdrup had concealed crucial facts in order manipulated Robinson into submitting a bid that Sverdrup knew was doomed to be rejected. If successful, Robinson sought both compensatory and punitive damages.

Sverdrup defended the case and denied any wrongdoing. Among other things, the company explained that Robinson never asked whether the specifications called for a new inventory control system. Sverdrup also filed a counterclaim based on Robinson's alleged failure to perform under the old contract.

Specifically, the old contract called for Robinson to conduct a "wall-to-wall" inventory. According to Sverdrup, Robinson failed to do this. By Sverdrup's calculations, Robinson was paid a total of $167,818 between October of 2002 and October of 2003. Inasmuch as Robinson allegedly failed to perform the promised wall-to-wall inventory, Sverdrup wanted its money back.

Sverdrup eventually dismissed its counterclaim. The case was tried thereafter for a week in Huntsville. The jury returned a defense verdict for Sverdrup on the count for breach of contract. On the count for intentional misrepresentation, however, the jury found for Robinson and awarded him compensatory damages of $78,000, plus zero punitives. The verdict form does not mention the count for promissory fraud.

The court entered a judgment for Robinson in the amount of $78,000. Sverdrup filed an appeal. However, the record does not indicate the final disposition, if any, of the appeal.

Auto Negligence - Plaintiff claimed multiple disc bulges and herniations due to a crash that occurred when defendant ran a stop sign; defendant argued plaintiff's injuries were pre-existing

Russell v. Clark, 07-903020
Plaintiff: G. Whit Drake, *Drake Law Firm*, Birmingham
Defense: Jack Bains, *McDaniel Bains & Norris, P.C.*, Birmingham
Verdict: $375,000 for plaintiff
Circuit: **Jefferson**, 1-13-09
Judge: Tom King, Jr.

On 1-28-07, Kenneth Russell, then age 46 and a truck driver for O'Neal Steel, was driving a 2005 Nissan Pathfinder on Trussville Crossings Road in Trussville. At the same time, Jesse Clark, then age 23, was traveling in same area in a 1993 Jeep Wrangler.

As the parties approached one another, Clark ran a stop sign and crashed into the passenger side of Russell's SUV. The parties would later dispute the speed of Clark's jeep at the moment of impact. Clark claimed he was traveling at only 10 m.p.h., while Russell thought it was more like 30 to 40 m.p.h.

In any event, although the crash resulted in only minor damage to Clark's jeep, Russell's SUV sustained approximately $3,000 in damage. Russell had to be removed from his vehicle and was taken to the ER at St. Vincent's Hospital East.

Russell was diagnosed with disc bulges at L1-2, L2-3, L3-4, C3-4, C4-5, C5-6, and C7-T1. He also had disc herniations at C6-7 and L4-5 and an annular tear at L4-5. Russell underwent a series of epidural injections, followed in November of 2007 by discectomies in his lower back.

Unfortunately, Russell reports that none of these treatments provided him with relief. His incurred medical expenses climbed to $101,000. Of that amount, Russell's insurer, Blue Cross/Blue Shield, paid only $32,000. The balance of $69,367 remained unpaid and owing to Russell's surgeon.

Russell filed suit against Clark and blamed him for running the stop sign and causing the crash. In his complaint, Russell alleged counts for both negligence and wantonness. He also claimed lost wages in the amount of $14,800.

Finally, Russell made underinsured motorist claims against his own two insurers, Geico and State Farm. Both insurers opted out of the case. However, the record indicates that Geico advanced $50,000 to Russell.

Clark defended the case and implicated Russell's fault on a theory of contributory negligence. Clark also disputed the severity of the crash and argued that some or all of Russell's claimed injuries were pre-existing.

The case was tried for two days in Birmingham. During the course of the trial, the court granted Clark's motion to dismiss the wantonness claim and to withdraw his contributory negligence defense. The court also granted Russell a judgment as a matter of law on the issue of negligence.

The jury thus deliberated only the issue of damages. The verdict came back for Russell in the amount of $375,000. The court entered a judgment for that amount, plus costs.

Medical Negligence - A woman and her son criticized their pediatrician for failing to make a timely diagnosis of macrocephaly and hydrocephaly; plaintiffs claimed the delay in making the diagnosis allowed the boy's condition to worsen

Spurlin, et al. v. Calametti, et al., 02-840
Plaintiff: Stephen D. Heninger, *Heninger Garrison & Davis, LLC.*, Birmingham
Defense: Norman E. Waldrop, Jr. and Rodney R. Cate, *Armbrecht Jackson, LLP.*, Mobile
Verdict: Defense verdict
Circuit: **Mobile**, 8-28-07
Judge: Braxton L. Kittrell, Jr.

On 6-17-94, Kimberly Hatchett gave birth to her son, William Spurlin, in Mobile. Little William was born premature at only thirty-one weeks. Shortly after his birth, William came under the care of Dr. Karen Calametti, an employee of the Children's Medical Group.

Dr. Calametti continued to provide care for William over the next several years. Hatchett claims that despite frequent visits during that time, Dr. Calametti did not measure the circumference of William's head.

Finally, during a visit on 3-11-00, William's head was measured and found to have a circumference of sixty-one centimeters. Shortly thereafter, William was referred for a CT brain scan.

Based on the measurement of William's head and the result of the CT scan, Dr. Calametti gave him a diagnosis on 3-24-00 of macrocephaly and dilation of his entire ventricular system. She also referred him to a neurosurgeon, Dr. W. Brent Faircloth, for a neurological evaluation.

Four days later, on 3-28-00, Dr. Faircloth diagnosed William with hydrocephalus. Hatchett claims that after providing the diagnosis, Dr. Faircloth failed to undertake appropriate treatments, make any further evaluations, or provide any further follow-up care for William.

Although it appears William did ultimately receive treatment for his condition, he continues to suffer from complications. They include an abnormally large skull size, loss of balance, headaches, nausea, vomiting, fatigue, pain, reduced ability to function, and brain damage.

Hatchett filed suit, both on her own behalf and on William's behalf, against Drs. Calametti and Faircloth, as well as against the Children's Medical Group and Dr. Faircloth's employer, the Coastal Neurological Institute. She later amended her complaint to add to other doctors as defendants, but she later voluntarily dismissed.

The court eventually granted Dr. Faircloth and Coastal Neurological a summary judgment and dismissed them from the case. The litigation then proceeded solely on the claims against Dr. Calametti and the Children's Medical Group.

According to plaintiffs, defendants should have been aware that William's head was abnormally large and that he was exhibiting signs of macrocephaly and hydrocephaly. In particular, Dr. Calametti should have routinely measured the circumference of William's head.

Plaintiffs argued that if such procedures had been followed, William's condition would have been diagnosed and treated early on. The failure to make a timely diagnosis and give appropriate treatment allowed his condition to worsen. Plaintiffs' identified experts included a pediatrician, Dr. Andrew White.

Dr. Calametti and the Children's Medical Group defended the case and denied having breached the standard of care. The identified defense experts included Dr. Alfred Shearer, Pediatrics, Mobile; Dr. Susan Ashbee, Pediatrics, Bayou LaBatre, AL; and Dr. Eugene Quindlen, Neurosurgery, Mobile.

The case was tried in Mobile. The jury returned a verdict for Dr. Calametti and the Children's Medical Group. The court followed with a consistent defense judgment.

Auto Negligence - A man riding as a passenger in a friend's van was injured when the van's brakes went out on a mountain road and vehicle crashed into a tree; the man blamed the crash on his friend for speeding on the dangerously curvy mountain road

Matthews v. Anderson, 07-410
Plaintiff: Bennett H. Webb, Talladega
Defense: Christopher J. Zulanas and David T. Gordon, *Friedman Leak Dazzio Zulanas & Bowling, P.C.*, Birmingham
Verdict: Defense verdict
Circuit: **Calhoun**, 10-28-08
Judge: Brian P. Howell

In the morning of 8-14-05, John Matthews, then age 46, met his friend, Robert Anderson, at a Stuckey's restaurant in Calhoun County. As the friends sat there chatting, they decided to drive together up to Cheaha Mountain to search for a "watering hole" that they and their families could use for recreation.

The two men climbed into Anderson's 1989 Chevrolet G20 van with Anderson behind the wheel. They headed out toward their destination and soon found themselves on Cheaha Road. Before they could continue onward, however, they first had to stop at a Sheriff's checkpoint to have Anderson's van inspected.

The van passed the inspection, and the duo resumed their journey. It would later be Matthews's recollection that Anderson began taking the treacherous mountain curves at an uncomfortably high speed. The speed limit in the area was only 10 to 15 m.p.h., yet Anderson would later admit he exceeded that speed limit by 20 to 25 m.p.h.

Matthews claims that he became so frightened that he repeatedly yelled for Anderson to slow down. It was no use. As the two men came down a hill on Lake Chinabee Road, Anderson's brakes gave out. In the next instant, he collided with a tree.

The force of the crash knocked Matthews unconscious, and he suffered an injury to his neck for which he later underwent chiropractic treatments. He also later claimed that he lost his job due to his injuries. He calculated his medical expenses at $31,691.

Matthews filed suit against Anderson and alleged counts for both negligence and wantonness. Specifically, Matthews blamed Anderson for driving recklessly on the dangerous mountain road and thereby causing the crash. According to Matthews, Anderson lost his brakes at the crucial moment due to his having to apply them so often as a result of his speeding down the mountain.

In addition to his other damages, Matthews sought recovery of his lost wages in the amount of $11,956, plus court costs of $321. He also claimed pain and suffering that he valued at $250,000, and he sought another $250,000 in punitive damages. Finally, Matthews claimed his injuries caused him to lose the consortium of his wife. He placed a price tag of $250,000 on his consortium interest.

Anderson defended the case and sought the protections of the "guest passenger statute." He also noted that he had never had any problems with his brakes. In fact, Anderson had replaced the brakes on his van just six weeks before the incident. He also noted that his van passed the Sheriff's inspection shortly before the incident. Thus, he had no reason to expect his brakes would fail.

A jury in Anniston heard the case and returned a defense verdict for Anderson. The court entered a judgment that reflected the verdict, and Matthews filed a motion for a new trial. The court denied the motion.

Disability Discrimination - After a hotel manager told his boss he had been diagnosed with leukemia, he was promptly fired

Mendiola v. JT Hotels, 2:07-469
Plaintiff: David A. Bryant, *The Bryant Law Firm*, Spring, TX
Defense: Kyle T. Smith and David R. Mellon, *Sirote & Permutt*, Birmingham
Verdict: Defense verdict
Federal: **Montgomery**, 1-14-09
Judge: Mark E. Fuller

Mario Mendiola started working on 4-27-05 as the general manager of the Quality Inn and Suites Conference Center in Montgomery – he had been recruited from San Antonio, TX to take the job. JT Hotels operates the hotel. On 12-7-05, Mendiola advised the principal owner of JT Hotels, John Tampa, that he had a tentative diagnosis of leukemia.

Five days later, Mendiola was out of work. Making it worse, as the job provided him a hotel room, he was now homeless two weeks before Christmas. Mendiola later got a more complete diagnosis and received a good prognosis, his cancer being in remission.

In this lawsuit, Mendiola alleged that JT Hotels perceived him as disabled and fired him because of it. If prevailing, Mendiola could be awarded compensatory and punitive damages.

JT Hotels defended and cited a fact dispute. Namely, when Mendiola advised Tampa of his illness, Mendiola also said that he would have to return to Texas for treatment and would be unable to serve as general manager. Thus from the perspective of the employer, Mendiola essentially resigned. Tampa then had no choice but to replace him. JT Hotels denied any discrimination.

Thus there were two divergent views of the facts – plaintiff postured he told his boss he had a troubling diagnosis and was promptly fired. Employer by contrast replied that a distraught Mendiola simply resigned his position.

The jury found for JT Hotels on the "perceived as" discrimination count and Mendiola took nothing. As the instructions were constructed, the seminal moment was a finding for the employer that Mendiola had not been fired. A defense judgment was entered.

Fraud - Members of a homeowner's association sued the developer of their subdivision because the developer failed to keep promises of building a boat ramp and a pond for the subdivision

Langford, et al v. S&C Properties, LLC., et al., 07-192
Plaintiff: Regina B. Edwards and Brandon C. Stone, *Regina B. Edwards, P.C.*, Wetumpka
Defense: Donald R. Harrison, Dadeville
Verdict: $999,999 for plaintiffs (comprising $585,000 punitive damages and $414,999 compensatory damages allocated to various plaintiffs on various counts)
Circuit: **Elmore**, 8-6-08
Judge: Ben A. Fuller

On 7-20-07, a company called Walker Properties, LLC., along with another company called S&C Properties, LLC., acquired a large parcel of land on the southern bank of the Alabama River in Elmore County. The two companies promptly subdivided the land and created the River Forest subdivision, as well as the River Forest Homeowner's Association.

Walker and S&C retained ownership of two of the lots in the subdivision and then began selling the remaining lots to prospective homeowners. Among the buyers were James Langford, Ronnie Carter, and Donna Bozeman. All the buyers became members of the homeowner's association. As owners of two of the lots, Walker and S&C were also members of the association.

The covenants the parties entered as part of the sale of the lots created certain duties owed by Walker and S&C. Among other things, the two companies were to furnish a boat ramp and give it to the association within two years.

Also within that time frame, Walker and S&C were to build a "nice" pond with a fountain across the street, and they were to build the subdivision road and give it to the county for maintenance. None of these things were done.

Langford, Carter, Bozeman, and the association filed suit against Walker and S&C. Plaintiffs contended they repeatedly asked defendants to build the ramp and the pond. Defendants gave assurances they would do so, but their efforts fell far short.

In early 2007, defendants made some improvements to an existing boat ramp in the area. However, it was not in the subdivision as promised, and it had been cut deeply into the bank with dirt walls thirteen feet high that were subject to erosion.

If defendants were to give the ramp to the association, enormous expenditures would be required by the association to improve and maintain it. As for the "nice" pond across the street, plaintiffs claim it is more of a mud hole or a swamp than a pond. As such, it is an eyesore, it smells bad, and it is a dangerous breeding ground for mosquitoes and snakes.

Plaintiffs also say the promised subdivision road has not been built or given to the county for maintenance. Also, Walker and S&C have not paid their association membership dues, and they have persistently refused to mow the lawns on their two lots.

In their complaint, plaintiffs alleged a variety of legal theories. They included breach of contract, private nuisance, fraudulent misrepresentation, and promissory fraud. Plaintiffs also filed an amended complaint in which Carter and Bozeman made more specific allegations.

According to them, they each purchased two lots based on a map defendants had shown them that featured the boat ramp in the subdivision and the pond across the street. Plaintiffs claim defendants later recorded a plat map that did not have those features, but they neglected to inform Carter and Bozeman of the changes.

Walker and S&C defended the case and generally denied any wrongdoing. They also made certain allegations of their own. According to them, they had been working through the approval process for the next phase of the subdivision in 2007 and early 2008.

However, defendants claim Langford and Bozeman exercised political influence to cause the planning commission to refuse approval. Based on that allegation, defendants filed a counterclaim against Langford and Bozeman.

The case was tried for two days in Wetumpka. The jury returned a

complex verdict that awarded specific sums to each plaintiff on each count of the complaint and the amended complaint. The jury also found for Langford and Bozeman on defendants' counterclaim.

The combined total of plaintiffs' compensatory damages came to $414,999. To that amount was added another $585,000 in punitive damages. All of these amounts were allocated to the various plaintiffs in varying amounts on the numerous counts. The court entered a judgment that reflected the verdict.

Post-trial, defendants engaged new legal counsel in the person of Robert A. Huffaker of the Montgomery firm of Rushton, Stakely, Johnston, & Garrett, P.A. With Huffaker's assistance, defendants filed a motion for a new trial.

The motion was based partly on the ground that the award was excessive, and partly on the ground that it was unclear whether the jury intended the awards to accumulate. For example, Carter was awarded $23,750 on the breach of contract claim under the complaint, but the jury also awarded him $23,750 on the breach of contract claim under the *amended* complaint.

Defendants argued it was unclear whether the jury meant for these to be separate awards that would combine for a total of $47,500, or whether the jury instead meant them merely as a redundant double reference to a single $23,750 award. Defendants insisted a new trial would be necessary to clarify the issue. At the time the AJVR reviewed the record, the motion was still pending.

Auto Negligence - A woman claimed a rear-end crash caused her to suffer a neck injury and persistent headaches; defendant admitted fault and defended on damages

Crittenden v. Veazey, 07-3614
Plaintiff: Joseph Douglas Rogers, Birmingham
Defense: Ronald J. Gault, *Gault & Hendrix, LLC.*, Birmingham
Verdict: Defense verdict
Circuit: **Jefferson**, 1-13-09
Judge: J. Scott Vowell

On 10-22-05, Terri Crittenden was traveling on Montgomery Highway in Hoover. Behind her was a vehicle being driven by Martha Veazey. Christine Moss was riding with Veazey as a passenger.

At a point between the intersections with Arnold Road and I-459, Veazey briefly took her eyes off the road. When she looked back, she saw that traffic ahead of her had stopped. Veazey applied her brakes but was unable to stop in time. In the next instant, she rear-ended Crittenden.

Crittenden would later claim Veazey had run into her "full throttle." Crittenden also claimed the impact was so violent that it felt like an earthquake and caused her to be jolted forward and then backward in her seat.

As a result of the crash, Crittenden claimed injuries to her neck, and she also complained of headaches. Her medical expenses came to approximately $38,000. She filed suit against Veazey and blamed her for causing the crash.

Also, Moss filed a separate action against Veazey that was later consolidated with Crittenden's lawsuit. Moss's husband, Jimmy Moss, presented a derivative claim for his loss of consortium. Veazey admitted liability but disputed the extent and causation of Crittenden's claimed injuries.

For one thing, Veazey noted that photographs of Crittenden's vehicle taken shortly after the crash showed no visible damage. Also, Veazey was involved in a second MVA nine months later when she backed into a car in a parking lot.

The repair estimate for Crittenden's vehicle included damage from both accidents, yet it only came to $750. Thus, according to Veazey, the crash was simply too minor to have caused Crittenden any real injury.

Furthermore, Veazey pointed out that Crittenden had a prior accident in 2000. As a result of that accident she made complaints of injury identical to those she made following the present accident.

The case was tried in Birmingham. The jury returned a verdict for Veazey against Crittenden. Interestingly, the verdict form makes no mention of Moss's claim. In any event, the court entered a consistent defense judgment.

Lender Negligence - A couple claimed the lender they used on the construction of their home disbursed funds to the builder for work that was not done or was substandard

Wade v. Kredit Care, Inc., 08-395
Plaintiff: Richard H. Holston and Gregory E. Vaughan, *Holston Vaughan Andress, LLC.*, Mobile
Defense: *Pro se*
Verdict: $401,500 for plaintiff (comprised of $76,500 compensatory damages, plus $325,000 punitive damages)
Circuit: **Baldwin**, 12-3-08
Judge: James H. Reid

In October of 2006, Raymond and Trina Wade hired a company called D&G Vision Homes, LLC. to build a home on land they owned at 6918 Brewster Street in Moss Point, MS. The Wades selected a Daphne, AL company called Kredit Care, Inc. to serve as the lender for the project.

The construction contract called for the total price of $108,800 to be paid in three installments. The first payment was to be made upon completion of the slab, the second payment upon completion of the black in, and the third payment upon completion of the project.

The contract was signed on 10-27-06, and a copy was presented to Kredit Care for disbursement of the funds in accordance with the specified schedule of payments. For reasons that the record does not explain, however, Kredit Care did not adhere to the payment schedule specified in the contract.

According to the Wades, Kredit Care disbursed funds to D&G Vision Homes for work that had not yet been done or had not been properly completed. This was significant inasmuch as the Wades claimed D&G's work was so unsatisfactory that it caused the City of Point Moss to deny the structure a certificate of occupancy.

The Wades filed suit against both D&G Vision Homes and Kredit Care, Inc. However, plaintiffs eventually reached a settlement with D&G, the terms of which are unknown, and dismissed the builder from the case.

The litigation continued solely against Kredit Care. The Wades explained that they relied on Kredit

Care to disburse the funds according to the contractual schedule as a means of ensuring that the construction was properly done before the builder could be paid.

Plaintiffs argued that by deviating from that schedule, Kredit Care removed their only safeguard. As a result, plaintiffs had to pay interest on the construction loan in the amount of approximately $12,000, they incurred various other expenses, and they endured mental anguish.

In their complaint, plaintiffs alleged counts for negligence, wantonness, breach of contract, and misrepresentation. If successful, plaintiffs sought both compensatory and punitive damages.

Interestingly, and despite the court's repeated urging to the contrary, the owner of Kredit Care, Zachary Gatlin, Sr., chose to represent the company *pro se* throughout the proceedings. Perhaps for that reason, the record does not describe Kredit Care's defenses.

The case was tried for two days in Bay Minette. The jury returned a verdict for the Wades and awarded them compensatory damages of $76,500. To that amount was added another $325,000 in punitive damages. That brought the combined total to $401,500. The court entered a judgment for that amount, plus costs of $539.

Post-trial, the Wades filed a motion to alter or amend the judgment so as to pierce the corporate veil and make Gatlin individually liable. The Wades argued that such a move would be justified because Gatlin had consistently treated Kredit Care as his alter ego.

For its part, Kredit Care, Inc. filed for Chapter 11 bankruptcy on 1-5-09 and thereby fell under the protection of the automatic stay of proceedings. Shortly thereafter, the Wades filed a motion to lift the stay on the ground that Gatlin was in the process of closing Kredit Care's bank accounts, removing signs from the premises, and generally attempting to drain assets and abandon the corporate entity.

In light of that development, the Wades sought immediate execution of the judgment. At the time the AJVR reviewed the record, the court had not yet ruled on the post-trial motions.

Auto Negligence - A man who was driving with a BAC more than five times the legal limit crashed his pickup truck into a ditch; as the man stood in the road following the crash, another driver ran into him

Simbeck v. Eck, 06-284
Plaintiff: John S. Odem, Florence
Defense: Preston S. Trousdale, *Jones & Trousdale, P.C.*, Florence
Verdict: Defense verdict
Circuit: **Lauderdale**, 12-11-08
Judge: Ned Michael Suttle

John Simbeck, an employee of a saw mill, had a lengthy history of alcohol abuse. Among other things, he was known to drink vodka nearly every day, and he had suffered several episodes of delirium tremens.

In the evening of 6-18-06, Simbeck, then age 45, had been drinking once again. That, however, did not prevent him from climbing behind the wheel of his Dodge Dakota pickup truck and begin driving through the rural roads of Lauderdale County.

It was raining that night as Simbeck proceeded south on C.R. 47 in the dark without either his lights or his windshield wipers activated. At a point just north of the Happy Hollow Bridge, there was a substantial curve in the road.

As Simbeck approached the curve, he crossed over the centerline and drove into a ditch on the other side of the road. Although the front of his truck was stuck in the ditch, the rear of the vehicle protruded onto the road and blocked most of the northbound lane.

Shortly after the crash, two other motorists stopped to lend assistance. They were Timothy Grigsby and Michael Danley. They found Simbeck slumped unconscious over his steering wheel.

Grigsby was first on the scene. By the time Danley arrived Simbeck was out of his truck and standing in the road with blood on his face due to a cut near his eye. According to the eyewitnesses, Simbeck was also shaking uncontrollably, possibly due to another attack of delirium tremens.

Danley said he would call 911 for help, but Simbeck asked him not to do so. Instead, Simbeck insisted all he needed was a little help pulling his truck out of the ditch, and then he'd be on his way.

As the two men stood there talking, Richard Eck was driving north on C.R. 47 and approaching the scene of the accident. There would later be some dispute about Eck's speed. He claims he was driving at or just below the posted speed limit of 45 m.p.h. Simbeck, however, claims the speed limit was actually 30 m.p.h. and that Eck was driving 65 to 70 m.p.h.

In any event, as Eck drew nearer to the scene, the darkness of the night, combined with the rain and the glare from Grigsby's headlights, prevented him from seeing Simbeck's truck in the road. In the next instant, Eck crashed into Simbeck's truck at full speed without ever applying his brakes. The impact pushed the truck into Simbeck and Danley who were standing next to it, and both men were injured.

Simbeck was transported to the ER at Eliza Coffee Memorial Hospital where he was diagnosed with a closed head injury (specifically, a subdural hematoma) and two fractured ribs on his left side. A blood test also revealed his blood alcohol content to be .404. That put him at more than five times the legal limit.

Based on the result of the blood test, Simbeck was charged with driving under the influence. The record does not reveal the disposition of the criminal case. He also subsequently underwent surgery to relieve his subdural hematoma.

Although the surgery was a success, there are indications that Simbeck is no longer able to live an independent life. Instead, was eventually discharged from the hospital to a nursing home. His medical expenses are unknown.

Simbeck filed suit against Eck and blamed him for speeding along the curved road in the dark and during the rain. According to Simbeck, Eck's excessive speed made it impossible for him to stop in time to avoid the crash. If Eck had not been speeding, this tragedy would never have occurred.

In his complaint, Simbeck alleged counts for both negligence and wantonness. If successful he sought compensatory damages as well as punitive damages. In an amended complaint, his wife, Donna Simbeck, joined the case as a co-plaintiff and presented a derivative claim for her loss

of consortium.

Eck defended the case and denied the allegation that he was speeding. He also blamed the incident on Simbeck for driving drunk and crashing his truck in the first place.

The case was tried for two days to a jury in Florence and resulted in a defense verdict for Eck. The court followed with a consistent judgment.

Prior to trial, Eck had made an offer of judgment in the amount of $17.68. Post trial, Eck filed a motion for costs of $626 based on Simbeck's refusal of the offer. The court granted the motion.

Medical Negligence - A police officer responding to a domestic dispute was shot in the face with a shotgun; the officer survived the blast but claims to have suffered brain damage due to his medical team's failure to detect and remove shotgun pellets that had occluded his carotid artery

McMenamin v. Brown, et al., 05-604
Plaintiff: Davis B. Whittelsey, *Whittelsey Whittelsey & Poole, P.C.*, Opelika; and Douglas B. Lumpkin, *Lumpkin & Haskins, P.A.*, Sarasota, FL
Defense: Michael K. Wright, George E. Newton, II, and Robert P. MacKenzie, *Starnes & Atchison, LLP.*, Birmingham; and Joshua J. Jackson, *Samford & Denson*, Opelika, for Brown and Surgical Clinic; Jack B. Hinson, Jr., *Gidiere Hinton Herndon & Christman*, Montgomery, for Monley
Verdict: Defense verdict
Circuit: **Lee**, 4-30-08
Judge: Jacob A. Walker, III

Sometime after midnight on 9-19-03, Michael McMenamin, age 45 and an officer with the Opelika Police Department, was responding to a call involving a domestic dispute. The details of the dispute are unknown, but the situation was apparently volatile, and it quickly turned violent.

During the incident, McMenamin took a shotgun blast to the right side of his face. He survived the blast and was taken to the ER at the East Alabama Medical Center (EAMC) in Opelika for treatment. At the ER, McMenamin first came under the care of Dr. Joseph Monley, Emergency Medicine who ordered a CT scan without contrast.

The film was read by a radiologist, Dr. Barbara Tomek. She and Dr. Monley noted the injury to the right side of McMenamin's face and that the damage extended to the left side of his neck. After some discussion with a surgical colleague, Dr. Monley sought a consultation with Dr. Robert Brown, a general and plastic surgeon.

Dr. Brown operated on McMenamin that same day and removed numerous shotgun pellets, as well as fragments of wood and bone. Although, sadly, McMenamin lost his right eye, he did survive the surgery.

Following the operation, McMenamin was moved to an EAMC bed for nursing care and observation. On 9-21-03, he became combative and would not stay in bed. The staff administered a large dose of Ativan for sedation and also arranged for a follow-up CT scan to determine the cause of McMenamin's altered mental condition.

This time around, the CT scan was done with contrast. It showed one or more shotgun pellets still lodged in McMenamin's neck near his left carotid artery. The presence of the pellet or pellets caused an occlusion of the artery and resulted in either a decreased or a complete lack of blood flow to the left side of his brain.

McMenamin was airlifted to UAB where he remained until 10-3-03. While at UAB, he underwent a second surgery to remove the remaining pellets. McMenamin eventually recovered enough to return to work with the Opelika Police Department where he now holds the rank of captain. However, he complains of persistent cognitive deficits that he blames on the delay in removing the pellets from his neck.

McMenamin filed suit against a number of his medical care providers, including Dr. Monley, Dr. Tomek, Dr. Brown, and Dr. Brown's employer (an entity identified only as "Surgical Clinic"). In addition, McMenamin's wife, Michael McMenamin, presented a derivative claim for her loss of consortium.

According to plaintiffs, Dr. Monley should have ordered the first CT scan to be done with contrast, and he should have ordered a digital subtraction angiogram (DSA). If he had done so, the pellets near McMenamin's carotid artery would have been noticed and removed during the first surgery. Also, Dr. Brown should have removed all the pellets during the first surgery. If these things had been done, McMenamin would not have suffered irreversible brain damage.

Plaintiffs' identified vocational rehabilitation expert was Lynn Carpenter of Opelika, and their neuropsychology expert was Dr. William McIntosh of Decatur, GA. Plaintiffs also identified a veritable army of other medical experts.

They included Dr. John Aucar, Surgery, Tyler, TX; Dr. Frederick Carlton, Jr., Emergency Medicine, Jackson, MS; Dr. Joel Cure, Radiology, Birmingham; Dr. Loring Rue, Surgery, Birmingham; Dr. Salvatore Sclafani, Radiology, Brooklyn, NY; and Dr. Peter Selz, Otolaryngology, Denison, TX.

Defendants all denied any wrongdoing in the matter. They explained that McMenamin presented at the ER with no signs or symptoms of a vascular injury. Based on his presentation, defendants ordered the appropriate tests, consulted with the appropriate experts, and rendered appropriate care.

The case was tried for two weeks in Opelika. The jury returned a verdict for defendants, and the court entered a defense judgment. Plaintiffs have filed a motion for a new trial. At the time the AJVR reviewed the record, the court's ruling on the motion was unknown.

Underinsured Motorist - Did a car wreck lead to the plaintiff's disc injury? A federal jury said no and awarded the plaintiff nothing

Rounsavall v. Progressive Insurance, 2:07-784
Plaintiff: Leah M. Fuller, *Farris Riley & Pitt*, Birmingham
Defense: Alex L. Holtsford, Jr. and S. Mark Dukes, *Nix Holtsford Gilliland Higgins & Hitson*, Montgomery
Verdict: Defense verdict
Federal: **Montgomery**, 1-16-09
Judge: Mark E. Fuller

Peggy Rounsavall was a passenger in a vehicle that was involved in a car wreck on 3-29-02. The wreck occurred on Pelham Parkway in Shelby County. Her vehicle was struck by Cian Campion. Fault was no issue.

Rounsavall has since treated for a multi-level disc injury. She has had two cervical fusions performed and it was her proof that a third will be needed. Rounsavall's medical proof linked the injury to this MVA. Her medicals were approximately $36,000.

Rounsavall first moved against Campion and took the tortfeasors's $100,000 limits. Above that sum, she sought UIM benefits in this lawsuit from her carrier, Progressive. The insurer removed the case to federal court and focused its defense on causation. Progressive argued that Rounsavall's spinal condition was degenerative in nature.

As the verdict form was constructed, the jury had two choices, (1) find for Rounsavall and award damages, or (2) find for Progressive generally. The answer was for Progressive and Rounsavall took nothing. A defense judgment was entered.

Auto Negligence - A woman claimed a neck injury that she attributed to a chain-reaction, rear-end crash

Dawkins v. Marks, 07-900600
Plaintiff: Leah M. Fuller, *Farris Riley & Pitt, LLP.*, Birmingham
Defense: Ralph D. Gaines, III and Shelley D. Lewis, *Gaines Wolter & Kinney, P.C.*, Birmingham
Verdict: Defense verdict
Circuit: **Jefferson**, 7-8-08
Judge: Robert S. Vance

On 4-20-05, Jo Anne Dawkins, then age 54, was traveling on the Elton Stephen Expressway in Jefferson County. At the same time, Willis Marks was traveling in the area behind Dawkins and with another vehicle between them.

At a point near the intersections with 2nd Avenue North and Fifth Avenue North, Marks rear-ended the vehicle in front of him. The impact caused that vehicle, in turn, to collide with the rear of Dawkins's vehicle.

Dawkins would later claim a neck injury that she attributed to the crash. Although the record does not reveal the amount of her medical expenses, it is known that those expenses were paid by her health insurer, Blue Cross/Blue Shield, at a reduced amount.

In this lawsuit, Dawkins blamed Marks for setting in motion the chain of events that led to Dawkins being rear-ended. Marks defended the case and minimized Dawkins's claimed injuries.

A jury in Birmingham heard the case and returned a verdict in favor of Marks. The court followed with a consistent defense judgment.

Fraud - A couple entered into a deal with their longtime CPA for the purchase of a low-income housing development; the couple later backed out of the deal when they concluded their CPA had misrepresented a number of crucial financial details

Gamble v. Vickers, 07-113
Plaintiff: William E. Bright, Jr., Birmingham
Defense: Gerald R. Paulk, *Paulk Law Firm, P.C.*, Scottsboro
Verdict: $60,000 for plaintiffs
Circuit: **Jackson**, 12-11-08
Judge: Jenifer C. Holt

For some twenty-five years, Michael Vickers had been the CPA tax preparer for David and Betty Gamble. Over the course of those years, Vickers had also set up several business entities for the Gambles and had served as the operational manager for at least two limited liability companies he created for them.

As it happened, Vickers was also the owner of a company called Valley View Apartments, Ltd., which owned a piece of property called Valley View Apartments located in Spring City, TN. Valley View Apartments was a low-income housing development mortgaged to the USDA Department of Rural Development.

Vickers was interested in selling Valley View Apartments, and he entered into discussions with the Gambles about the possibility of their buying the property. According to the Gambles, Vickers made a number of crucial representations about the property.

For one thing, Vickers allegedly claimed he had an appraisal that put the value of the property at $2,000,000. He also allegedly assured the Gambles that financing for the purchase would be available through the USDA and that certain tax credits would offset the purchase price and any taxes owed.

More specifically, Vickers allegedly explained that the tax credits would accrue at 9% per year over ten years, so the Gambles would ultimately receive a 90% tax credit on the purchase price. Vickers also claimed the deal would not require any financial outlay from the Gambles once the ownership of the property was transferred to them.

The purchase price for the property was set at $2,200,000. That figure included a $500,000 earnest money deposit that the Gambles were required to put up on the understanding the funds would be placed in escrow until the deal could be finalized.

On 1-12-06, the parties entered into a contract that memorialized the agreement. The Gambles then borrowed the $500,000 for the earnest money deposit and placed the funds in escrow at the Horizon Bank. At that point, however, the deal began to fall apart.

According to the Gambles, Vickers immediately withdrew the earnest money deposit from the bank and converted it to his own use. Also, the USDA notified the Gambles that the property could in fact be appraised for no more than $1,470,000.

The USDA also informed the Gambles the agency would not provide financing and that no tax credits of the sort Vickers described would be available to them. In addition, the USDA explained that the Gambles would have to place over three hundred thousand dollars into a reserve account for repairs and maintenance on the property.

It also turned out that prior to the sale of the property to the Gambles, Vickers had dissolved Valley View Apartments, Ltd. and transferred ownership of the property to a different holding company called SCVV, LLC. This was significant inasmuch as the existing mortgage required USDA approval for any transfer of ownership.

Unfortunately, Vickers had apparently neglected to secure the USDA's consent to the transfer to SCVV, LLC. That failure came back to haunt him when the USDA notified Vickers that the agency was foreclosing on the property. The Gambles claim that Vickers knew the property was in foreclosure before he sold it to them. Yet, the Gambles learned of the foreclosure only when they were

notified of it by letter from the USDA dated 5-3-06.

Due to all of these problems, the Gambles informed Vickers that they wanted out of the deal, and they demanded the return of their earnest money deposit. Although the record is unclear as to the timing, it appears that Vickers did in fact ultimately return the $500,000 deposit. That, however, would not be the end of the matter.

The Gambles filed suit against Vickers and alleged a variety of counts. They included false and fraudulent misrepresentation, unjust enrichment, breach of fiduciary duty, breach of contract, and work and labor done.

Among other things, the Gambles argued that the past dealings between the parties created a fiduciary duty on the part of Vickers. His conduct in this matter breached that duty. If successful in the litigation, the Gambles sought damages that included the interest they paid on the borrowed $500,000.

Vickers defended the case and denied any wrongdoing. According to him, the parties entered into an arm's length business deal in which the Gambles were responsible for securing their own financing. Furthermore, Vickers claimed that inasmuch as he did in fact refund the Gambles' non-refundable earnest money deposit, they were not entitled to any additional damages.

The case was tried in Scottsboro, and the jury returned a verdict for the Gambles in the amount of $60,000. The court entered a judgment for that amount, plus costs.

During deliberations, the jury asked the court several peculiar questions. They included the following: (1) "Can we please receive clarification about legality of LLC?" (2) "Can we also have the actual terminology where we are told what specifically we are proving and disproving along with each point that must be reasonably proven?" and (3) "Can we have these things? Copy of the charge. Markers. Highlighters." The record does not reveal the court's responses to the questions.

Auto Negligence - Plaintiff prevailed in a case that arose out of a chain-reaction crash on a rural road

Laister v. Dobynes, 06-45
Plaintiff: Davis L. Middlemas, *Davis L. Middlemas, Attorney-at-Law, LLC.*, Birmingham
Defense: Roger W. Varner, *Varner & Associates*, Birmingham
Verdict: $5,000 for plaintiff
Circuit: **Dallas**, 12-9-08
Judge: Marvin W. Wiggins

On 2-9-04, Deborah Laister, then age 36, was traveling on AL 22 in Dallas County. At the same time, King Dobynes was also traveling in the same area.

At a point near the intersections with Deep Woods Drive and C.R. 81, Dobynes collided with another vehicle. The impact caused that other vehicle to collide with Laister. The record does not reveal the nature of Laister's injuries or the amount of her medical expenses.

Laister filed suit against Dobynes and blamed him for causing the other vehicle to crash into her. Dobynes defended and minimized Laister's claimed damages.

The case was tried in Selma. The jury returned a verdict for Laister and awarded her damages of $5,000. The court entered a judgment for that amount, and it has been satisfied.

Construction Negligence - The owner of an office building claimed the construction company hired to renovate the building did substandard work; the construction company counterclaimed for the unpaid balance due under the contract

Haber Properties v. Danny Clements Builders, Inc., 05-1270
Plaintiff: R. Brooke Lawson, III, *Capell & Howard, P.C.*, Montgomery
Defense: David E. Allred and D. Craig Allred, *David E. Allred, P.C.*, Montgomery
Verdict: $15,053 for plaintiff; $8,226 for defendant on counterclaim
Circuit: **Montgomery**, 10-31-07
Judge: Truman M. Hobbs, Jr.

In 2004, a company called Haber Properties was the owner of an office building located at 2743 West Gunter Park Drive in Montgomery. In September of 2004, Haber Properties hired Danny Clements Builders, Inc. to renovate and remodel the building.

Among other things, the contract called for Danny Clements Builders to install three hundred linear feet of sheetrock, as well as a number of interior doors and hardware. The contract also specified that the work was to be completed no later than early October of that year.

Haber Properties made certain cash deposits to Danny Clements Builders in advance to get the project going. Unfortunately, matters soon took a turn for the worse. According to Haber Properties, Danny Clements Builders failed to perform its duties under the contract in a workmanlike manner.

Haber Properties claimed there were a number of deficiencies in the labor and materials used. For one thing, the sheetrock was not properly installed and had numerous imperfections. For another thing, the doors that Danny Clements Builders installed were the wrong size and did not match the other doors in the building.

Haber Properties also claimed that Danny Clements Builders failed to complete all the punch list items and failed to complete the project in a timely manner. As a result of all this, Haber Properties incurred additional expenses correcting the problems.

In this lawsuit, Haber Properties criticized Danny Clements Builders for its allegedly shoddy workmanship. In its complaint, Haber Properties alleged counts for both negligence and breach of contract. If successful, plaintiff sought compensation for its property damage, lost rent, and diminished value of the building.

Danny Clements Builders defended the case and denied its work was substandard. On the contrary, in fact, defendant insisted it completed all the work, yet Haber Properties refused to pay the entire amount owed under the contract. Based on that argument, Danny Clements Builders filed a counterclaim and demanded $11,971 as payment of the balance due.

The case was tried in Montgomery and resulted in a verdict that allowed both sides to claim victory. First, the jury found for Haber Properties and awarded the company damages of $15,053. Second, the jury also found

for Danny Clements Builders on the counterclaim and awarded damages of $8,226. The court entered a judgment that reflected the verdict.

Auto Negligence - Plaintiff claimed cervical and lumbar strains due to a crash in Tuscaloosa

Bergman v. Biter, 06-756
Plaintiff: Harry M. Renfroe, Jr., Huntsville
Defense: Jeffrey C. Smith, *Rosen Harwood, P.A.*, Tuscaloosa
Verdict: Defense verdict
Circuit: **Tuscaloosa**, 8-26-08
Judge: Robert W. Barr

On 11-25-05, John Bergman was traveling on 12th Avenue between 6th Street and its intersection with University Boulevard in Tuscaloosa. Also traveling in the same area was a vehicle being driven by Molly Biter. An instant later, the two collided.

Bergman claimed soft-tissue cervical and lumbar strains due to the crash. He underwent chiropractic treatments at the hands of Dr. Daryl Brown, DC., Northport. The record does not reveal the amount of Bergman's medical expenses.

Bergman filed suit against Biter and blamed her for the crash. In addition to his other damages, Bergman noted that the repair estimates for his vehicle ran between $3,167 and $3,870. Biter defended the case and minimized Bergman's claimed damages.

The case was tried in Tuscaloosa. The jury returned a verdict for Biter, and the court followed with a consistent defense judgment.

Defamation - A man claimed his reputation was damaged after a female co-worker made a complaint against him for sexual harassment

Washington v. Burden, 08-32.51
Plaintiff: *Pro se*
Defense: *Pro se*
Verdict: Defense verdict on plaintiff's claim; for plaintiff on defendant's counterclaim
Circuit: **Mobile**, 4-8-08
Judge: James C. Wood

In 2005, Norma Burden, then age 45 and a member of the International Longshoreman's Union, was working on the docks in Mobile for a company called CSA Equipment Company, LLC. One of her co-workers was a man named Otis Washington.

Burden apparently felt herself to be the target of repeated acts of sexual harassment by her various co-workers. That alleged harassment took many forms, ranging from crude remarks all the way to physical groping.

The record identifies three different men that Burden claimed were the perpetrators of the harassment, and Washington was one of them. Her specific allegations against him consisted in two crude remarks she claims he made to her.

First, Burden claims that on at least one occasion Washington told her she had "the million dollar fuck." Second, Burden claims that Washington later commented that any woman could be had for twenty dollars.

The record is unclear as to exactly when Washington allegedly made these remarks, but it appears to be in either March or April of 2005. In any event, Burden complained to the union about these and other incidents involving other co-workers.

The union advised Burden to make a complaint to CSA Equipment. She did so, and the company launched an investigation. Unfortunately, the record in this case is quite meager, and it does not reveal the outcome of that investigation.

Washington was apparently displeased with finding himself the target of Burden's complaints. He filed suit against her in small claims court on a claim for slander and won a verdict of $2,500. Burden then appealed the case to the Circuit Court and counterclaimed for sexual harassment.

The case went to trial in Mobile with the parties each representing themselves. The jury returned a defense verdict for Burden on Washington's claim but also returned a verdict for Washington on Burden's claim. The litigation thus ended in a tie. If the court entered a judgment, it was not part of the record at the time the AJVR reviewed it.

Underinsured Motorist - Plaintiff was injured in a chain-reaction, rear-end crash; after settling for the tortfeasor's policy limits, plaintiff sought further compensation from her own insurer

McElroy v. State Farm Insurance, 07-236
Plaintiff: Frank S. Buck, *Frank S. Buck, P.C.*, Birmingham
Defense: Ralph D. Gaines, III and Travis G. McKay, Jr., *Gaines Wolter & Kinney, P.C.*, Birmingham
Verdict: $50,000 for plaintiff
Circuit: **Jefferson**, 9-16-08
Judge: J. Scott Vowell

In the early evening of 2-2-05, Jeannine McElroy was driving a 1994 Toyota Corolla on Montgomery Highway in Hoover. Behind her was a vehicle being driven by Cameron Chapman, and behind Chapman was Ashley Savage in a 2002 Mitsubishi Lancer.

Savage was on her way home from her job at Bill Byrd Kia. At a point between Patton Chapel Road and Bailey Drive, traffic abruptly stopped in front of Savage. She applied her brakes, but the she slid on the wet road and rear-ended Chapman. The impact caused Chapman, in turn, to collide with the rear of McElroy's car.

The record does not reveal the nature of McElroy's injuries or the amount of her medical expenses. She filed suit against Savage and blamed her for setting off the chain-reaction crash that led to McElroy being rear-ended.

In her complaint, McElroy alleged counts for both negligence and wantonness. McElroy's insurer, the State Farm Mutual Automobile Insurance Company, intervened in the case to protect its interests in the event of an underinsured motorist claim.

Savage was insured by Allstate under a policy that carried liability limits of $25,000. Allstate later tendered its policy limits, and Savage was thus dismissed from the case. The litigation proceeded thereafter on the UIM claim against State Farm. The insurer defended and minimized McElroy's claimed injuries.

The case was tried in Birmingham. The jury returned a verdict for McElroy and awarded her damages of $50,000. However, McElroy's policy limits with

State Farm amounted only to $20,000. The court thus entered a reduced judgment for that amount, plus costs of $1,956. The judgment has since been satisfied.

Breach of Warranty - A man purchased a new pickup truck and then stopped making the monthly payments because he considered the truck unfit for its intended purpose; when the credit company repossessed the truck and sued for the balance due, the man countersued

Crager v. Ford Motor Credit Company, 05-141
Plaintiff: Edward P. Turner, Jr., Chatom
Defense: Donnie C. Hughes, *MacDowell & Associates, Ltd., Inc.*, Birmingham
Verdict: $11,974 for plaintiff on breach of warranty; zero on conversion
Circuit: **Washington**, 8-20-08
Judge: James T. Baxter

On 1-12-01, Jessie Crager, then age 48 and doing business under the name of J&E Logging Company, was in the market to buy a truck for his business. Crager went to the Hearn Ford dealership in Chatom and struck a deal.

After weighing his options, Crager decided to buy a new 2001 Ford F-150 pickup truck priced at $34,741. It was also part of the deal that he would be given a credit of $16,644 for the trade-in of his old vehicle. The monthly payments on the new truck would be $897.

Crager claims that upon taking delivery of the truck, he found it was unfit for its intended use. He took the truck back to Hearn Ford for repairs, but he claims Hearn Ford failed to fix the problems.

Eventually, Crager had enough, and he apparently stopped making the monthly payments. The Ford Motor Credit Company then repossessed the truck and filed suit against Crager in District Court for the deficiency. In the end, Ford won a judgment of $11,084.

Crager appealed that decision to the Circuit Court and also filed a counterclaim for breach of warranty and conversion. The claim for conversion was grounded in Crager's insistence that he had made some improvements of his own to the truck.

Specifically, Crager claims he had installed a fuel tank and an electric pump on the truck that were still there when Ford carried out the repossession. Thus, according to Crager, Ford converted those items to its own use. He estimated the value of the allegedly converted items at more than $1,500.

The court eventually granted Ford Motor Credit a summary judgment on the deficiency and awarded the company damages of $11,974. That figure was comprised of $8,904 for the deficiency itself, plus $2,069 in interest and costs, plus $1,000 in attorney fees.

The litigation continued thereafter on Crager's counterclaim for breach of warranty and conversion. If successful, he claimed entitlement to a set-off against the judgment the court had entered for Ford.

At the conclusion of a three-day trial in Chatom, the jury returned a verdict for Crager and awarded him $11,974 on the breach of warranty claim. At the same time, the jury awarded him zero on the conversion claim.

The court entered a judgment for Crager in the full amount awarded by the jury and granted him a set-off against the judgment for Ford. Inasmuch as the two amounts were identical, they canceled each other out, and each party ended up with zero.

Post-trial, Ford Motor Credit filed a motion to vacate the judgment. As grounds for the motion, Ford argued that Crager's breach of warranty claim had no basis in law because he had never produced a written warranty. At the time the AJVR reviewed the record, the court's ruling on the motion was unknown.

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