The Alabama Jury Verdict Reporter

The Most Current and Complete Summary of Alabama Jury Verdicts

March, 2006 | **Statewide Jury Verdict Coverage - Published Monthly** | **6 AJVR 3**

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 Contract - A man made an oral agreement to quarry rock from a certain parcel of land; after the man had operated the quarry successfully for more than two years, the landowner abruptly switched teams and made a deal with a competing quarry operator

Blizard, et al. v. Chandler, et al., 00-259
Plaintiff: Thomas W. Christian and Michael A. Vercher, *Christian & Small*, Birmingham; and J. David Dodd, *Scruggs Dodd Dodd & Bazemore*, Fort Payne
Defense: Jack Livingston, *Jack Livingston, P.C.*, Scottsboro, for Chandler; Michael S. Denniston, *Bradley Arant Rose & White*, Birmingham; and Gerald R. Paulk, *Gerald R. Paulk, P.C.*, Scottsboro, for Vulcan Materials
Verdict: $3,130,000 for plaintiffs
Circuit: **Jackson**, 1-31-06
Judge: Jenifer C. Holt

In late 1995, James Blizard, owner of the Blizard Construction Company, had plans to re-open the old Hoover rock quarry located just off Hwy 33 in Jackson County. The quarry straddled two parcels of land, one owned by Claude Bellomy, and the other owned by Jeffrey Chandler.

During the previous operation of the quarry, the Bellomy parcel had been virtually exhausted of rock reserves and was only workable during dry times of the year. Instead, nearly all the remaining rock reserves were located on the Chandler parcel.

As it happened, however, the quarry was situated in such a way that access to the Chandler parcel was possible only via an access road that went through the Bellomy parcel. Thus, anyone who wanted to work the Chandler parcel would have to contract

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. It looks at verdict results in a way that hasn't ever been done in this state. The Year in Review includes over twenty reports, chronicling all sorts of patterns, trends and categories.

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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 2054, 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 reports is included on the opposite page.

Detailed Reports on the following subjects are also included:

Slip and Fall-Premises Liability Trials, Malicious Prosecution
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Have you seen the book lately?
What's in it?

This represents a snapshot summary of the AJVR 2005 Year in Review report on medical negligence verdicts. See the complete volume for all the reports and the complete breakdown on each case by jurisdiction, type of medicine and even by lawyer.

2002-2005 Combined Results

The totals are from all reported medical verdicts from 2002 through 2005. Thus for all medical trials, a total of 142, plaintiffs won 43 verdicts, or 30.3% percent of the time. In other words, doctors or medical defendants won the remaining 99 or 69.7% of the verdicts.

Statewide totals	**Medical Trials**	**Win-Loss**	**%**	**Aggregate Verdicts**	**Plaintiff's Average**	**Average**
Statewide totals	142	43-99	30.3%	$63,825,318	$1,484,309	$449,474
Statewide Adjusted Total (Less the largest result $14,500,000, Case No. 638)	141	42-99	29.8%	$49,325,318	$1,174,412	$349,824
Jefferson County only	43	14-29	32.6%	$18,775,299	$1,341,092	$436,634
State excluding Jefferson County	99	29-70	29.3%	$45,050,019	$1,553,448	$455,050
Death Verdicts Only	66	9-57	13.6%	$40,825,000	$4,536,111	$618,560
Non-Death Verdicts Only	76	34-42	44.7%	$23,000,318	$676,479	$302,635

Note: There are several interesting observations in looking at the four-year combined numbers. First, in almost every category on the list, the average verdict is near $500,000. Second, consider the disparity between death and non-death medical verdicts. First, death plaintiffs only won 13.6% of their medical cases, while living plaintiffs won nearly half of their cases. Also, while death plaintiffs rarely won, their awards were more than six and a half times higher than the non-death case, $4,536,111 for the plaintiff's average in the death case, $676,479 in the non-death case.

The entire 2005 Medical Negligence Report is contained in the AJVR 2005 Year in Review

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for the use of both parcels.

Blizard entered into negotiations with both Bellomy and Chandler for the use of the two parcels. In due course, Blizard entered into agreements with both men. Although the agreement with Bellomy was reduced to writing, for some reason the deal with Chandler was not.

In any event, Blizard would later claim his oral agreement with Chandler was for the lease of the Chandler parcel for a period of ten years. The lease period was to run from 1996 to 2006, and Blizard would pay Chandler monthly royalties based on the quantity of rock he would quarry.

Blizard commenced operations at the quarry in early 1996 and continued for more than two years. During that time, Blizard removed approximately thirty-one thousand tons of "shot rock" from the Chandler parcel. Blizard claims he paid monthly royalties to Chandler in accordance with the oral agreement, and Chandler accepted the payments.

Blizard also claimed he frequently discussed his future plans with Chandler. In particular, Blizard informed Chandler he planned to continue quarrying on the parcel until the reserves were exhausted. As part of that plan, Blizard intended to purchase a $45,000 portable rock crusher and place it on the parcel in order to facilitate the processing of the rock.

Blizard followed through on his plans and continued to quarry rock from the Chandler parcel until the autumn of 1998. It was then that matters suddenly took an unexpected turn. On 8-13-98, Blizard was informed that Chandler had made a deal to lease his parcel to a company called Vulcan Materials. Vulcan operated another quarry in Jackson County in direct competition with Blizard, and it seemed Vulcan was now moving in on Blizard's operation.

As a result of Chandler's deal with Vulcan, Blizard could no longer quarry the rock on the Chandler parcel. Accordingly, he had to shut down his operation. However, Blizard was not about to take the situation lying down.

Blizard filed suit against both Chandler and Vulcan on counts for breach of contract, intentional interference with contractual relationship, fraud, and civil conspiracy. He blamed Chandler for breaching their agreement, and he blamed Vulcan for inducing Chandler to do so.

Blizard pointed out that he still had an exclusive contract with Bellomy for the use of his parcel, and the Chandler parcel would be of no use to Vulcan without access via the Bellomy parcel. It seemed to Blizard, then, that Vulcan had no real intention actually to quarry the Chandler parcel. Rather, the deal was simply a ploy to force Blizard, Vulcan's competitor, out of business.

According to Blizard, Vulcan had a reputation in the industry for doing precisely that sort of thing in order to corner the market on quarried rock. As further support for this theory, Blizard noted that to this day, Vulcan has in fact made no effort actually to quarry the Chandler parcel. Blizard's identified expert was Dr. Robert Cook, Geology, Auburn.

Chandler and Vulcan defended the case and denied any wrongdoing. Chandler argued that Blizard did not in fact lease the property from him. Rather, they simply made a deal for Blizard to remove some of the shot rock that was lying on top of the ground. The agreement was purely verbal and was to operate on a day-to-day basis. According to Chandler, Blizard talked about submitting a proposed written lease, but he never did so.

Vulcan also defended and claimed its agreement with Chandler does not exclude Blizard from the Chandler parcel altogether. Rather, the agreement simply says Blizard cannot place a crusher on the property. As for its own plans for the parcel, Vulcan claimed it has the right under the contract to construct a new access road, and the company does plan to quarry rock on the parcel in the future.

Finally, Vulcan argued that the statute of frauds nullifies Blizard's oral agreement with Chandler. Thus, Vulcan could not have interfered with Blizard's contractual relationship with Chandler for the simple reason that no such valid contractual relationship existed.

A jury in Scottsboro heard the case and returned a mixed verdict. First, the jury found for Chandler and Vulcan on the counts for fraud and civil conspiracy. Second, the jury found for Blizard on the counts for breach of contract and intentional interference.

On the contract claim, Blizard was awarded compensatory damages of $130,000 against both defendants, but the jury rejected punitives. On the intentional interference claim, Blizard was awarded damages in the amount of $3,000,000 solely against Vulcan. That award was comprised entirely of punitive damages. That brought the total award for Blizard to $3,130,000. The court followed with a consistent judgment for that amount.

Auto Negligence - A teenager ran a red light and attempted an illegal turn; in doing so, she collided with another vehicle and injured its passenger

Jackson v. Long, 04-1001
Plaintiff: F. Grey Redditt and Clay A. Lanham, *Vickers Riis Murray & Curran*, Mobile
Defense: Daniel J. Gels, *Varner & Associates*, Birmingham
Verdict: $150,000 for plaintiff
Circuit: **Mobile**, 11-16-05
Judge: James C. Wood

It was 4-20-02, and Kristi Jackson, age 18, was riding as a passenger in a vehicle that was owned by Alice Smith and being driven by Gerald Reed. The two were traveling east on Airport Boulevard Service Road in Mobile. At the same time, Kayla Long, age 17, approached from the opposite direction in a vehicle owned by Melanie Pinckey.

When the parties reached the intersection with Downtowner Boulevard, Long ran a red light and attempted to make a left turn. As she did so, she collided with the driver's side of Jackson's vehicle. The impact knocked Jackson's vehicle off the road and onto the curb.

Jackson sustained injuries to her head, neck, back, shoulders, and ankles due to the crash. She later underwent a corrective surgery on her shoulder. The record does not reveal the amount of her medical expenses.

Jackson filed suit against Long and blamed her for running the red light and causing the crash. Jackson also named Pinckey as a defendant on a theory of negligent entrustment. However, the court later granted Pinckey a summary judgment and dismissed her from the case. The litigation proceeded against Long. She defended and minimized damages.

A jury in Mobile heard the case and awarded Jackson damages of $150,000. The court followed with a consistent judgment for that amount, and it has been satisfied.

Race Discrimination - A black fast-food restaurant manager alleged she was let go because of her race – she cited remarks by restaurant bigwigs that it considered it desirable to have a store's racial employment makeup match the neighborhood

Burkette v. Hardee's, 2:02-403
Plaintiff: Gregory O. Wiggins and Kevin W. Jent, *Wiggins Childs Quinn & Pantazis*, Birmingham
Defense: Robert S. Lamar, Jr. and Stephen D. Christie, *Lamar Miller Norris Haggard & Christie*, Birmingham
Verdict: Defense verdict on liability
Federal: **Montgomery**, 1-19-06
Judge: Myron H. Thompson

Linda Burkette, who is black, started working in 1978 for a Hardee's franchise conglomerate in Montgomery. By 2000, she was a general manager, operating the Lower Wetumpka store. She did well in her job. In that year, the franchises were sold to a new owner.

Soon after, Burkette noticed another black manager was fired – Burkette was advised she was next on the list. She also cited proof that the company had a focus on having a store's racial makeup match that of the neighborhood where it was located. Even more insidious, Burkette recalled being told that Hardee's wanted to "whiten up" its workforce.

It was her belief the company did just that when it fired in February of 2001. Thereafter she was immediately replaced by a white manager. Burkette took the position her firing was orchestrated in advance, her replacement being selected even before she was let go.

Hardee's denied race had anything to do with its decision. It noted more facts from February of 2001, beginning with a negative job evaluation – Burkette was so upset by this that she went on a medical leave. Then when released to work, she failed to respond to a call from her manager. Only then was she fired. As noted above, Burkette thought the explanation for the firing was phony, it having been concocted by Hardee's to mask its illegal motive.

The long journey to a jury trial was interrupted – the trial court first granted summary judgment. Burkette appealed. The 11th Circuit reversed in a per curiam opinion, concluding Burkette had proven her prima facie case.

Back to trial, a first jury could not reach a verdict in August of 2005. Tried again, the verdict was for Hardee's that Burkette's race was not a substantial and motivating factor in the decision to fire. That ended the deliberations and Burkette took nothing.

She has since moved for a new trial. She argued it was unfair to excuse the jury panel's only black juror (for personal reasons) and then not similarly exclude a white juror. Judge Thompson denied the motion, noting the black juror was a doctor whose practice would have been significantly inconvenienced by a trial delay. Then to the decision denying the motion, the court wrote that the juror was dismissed because of happenstance, race not having anything to do with it. When the record was reviewed, the time for a second appeal had not yet run.

Premises Liability - A man claimed multiple injuries, including arthritis, due to a fall he suffered on a staircase at his apartment complex; the man blamed the incident on a broken handrail

Seymour v. Quail Pointe Apartments, 03-2035
Plaintiff: Ronald W. Smith, *Ables Baxter Parker & Hall*, Huntsville
Defense: Nickolas J. Steles, *Ashe Tanner & Wright*, Tuscumbia
Verdict: $25,000 for plaintiff
Circuit: **Madison**, 11-30-05
Judge: Loyd H. Little, Jr.

In 2003, Stephen Seymour, age 36, was a resident of the Quail Pointe Apartments in Huntsville. On 1-7-03, Seymour was using a staircase on the premises when the handrail broke.

Seymour fell and sustained injuries to his head, neck, back, legs, and shoulder. He also claimed severe arthritis in his right knee and left foot that he attributed to the incident. His medical expenses are unknown.

Seymour filed suit against Quail Pointe and blamed it for not fixing the handrail and not warning him of the danger. In his *pro se* complaint, Seymour demanded compensation in the amount of $2,000,000 in general damages and another $2,000,000 in specials.

Seymour also named AIG Insurance as a defendant. However, AIG later filed a motion to dismiss on the ground that Seymour's complaint made no specific allegations against the company. The court granted the motion, and the case proceeded with Quail Pointe defending and minimizing damages.

During the course of the litigation, Seymour acquired legal representation. The case was then tried to a jury in Huntsville and resulted in a verdict for Seymour. The jury awarded him damages of $25,000. The court's consistent judgment for that amount has been satisfied.

Auto Negligence - A man claimed injury in a car wreck only a week after having been released to return to work due to an earlier worker's compensation injury

Smith v. Patel, 02-1616
Plaintiff: Keith W. Veigas, Jr., *Patton & Veigas*, Birmingham
Defense: J. Mark Hart, Khristi Doss Driver, and Reginald L. Jeter, *Haskell Slaughter Young & Rediker*, Birmingham
Verdict: $67,500 for plaintiffs
Circuit: **Jefferson**, 1-13-06
Judge: Joseph L. Boohaker

The early months of 2000 were difficult ones for Billie Smith. Among other things, Smith suffered a worker's compensation injury to his back that caused him to be off work for a time. By the middle of March, however, he had been released to return to work and was seeking new employment.

On 3-14-00, just a week after having been released to return to work from his back injury, Smith was on his way to accept a new job. As he drove on the roads of Jefferson County, a vehicle being driven by Vimalaben Patel also traveled in the same area. An instant later, they collided.

The record is unspecific as to Smith's injuries, and his medical expenses are unknown. Patel would later claim that no doctors were able to find any permanent injuries due to the crash. Instead, the most any doctor would say was that the crash "could have" aggravated Smith's back condition.

In any event, Smith filed suit against Patel and blamed her for the crash. Smith's wife, Tanya, also presented a derivative consortium claim. Finally, Smith made an underinsured motorist claim against State Farm Insurance. However, State Farm opted out of the litigation. Patel defended the case and disputed the nature, extent, and causation of Smith's claimed injuries.

As an interesting aside, Patel happened to be a native of Gujarat, the westernmost state of India. Her native language was Gujarati, and it seems her English was at least a bit weak. Accordingly, Patel periodically required