

The Alabama Jury Verdict Reporter

The Most Current and Complete Summary of Alabama Jury Verdicts

March 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.

* * *The Book is Back with its Fifth Edition * * *

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Medical Negligence - A psychiatric patient, confined to a non-secure ward, committed suicide by jumping from a hospital window – he landed hard on a parking deck below the window in a first non-fatal fall – fatal injuries were sustained in a second jump (80 feet down) from the parking deck to the ground below

Hollon v. Brookwood Medical Center, 04-7574

Plaintiff: Glenda G. Cochran, *Cochran & Associates*, Birmingham

Defense: Thomas A. Kendrick and Holly S. Bell, *Norman Wood Kendrick & Turner*, Birmingham

Verdict: \$12,000,000 for plaintiff

Circuit: **Jefferson**, 2-15-07

Judge: J. Scott Vowell

Vaughn Hollon, age 53, was admitted on 10-31-03 to the Brookwood Medical Center with psychiatric symptoms. Hollon, who lived in Florida and was visiting relatives in Birmingham after losing his job, had been referred to Brookwood because of depression and suicidal tendencies.

As the psychiatric unit was full, Hollon was first placed in a Dual Diagnosis Unit. He was there 38 hours before being transferred to another ward. Within hours of that transfer, Hollon was permitted onto an outside patio (high above the ground) and permitted to smoke.

Hollon scaled a wrought-iron fence and jumped several floors to a parking deck below. Nurses sought to intervene to protect Hollon on the deck. He broke from a nurse's grip and jumped a second time from the parking deck to the ground eighty feet below. That second fall resulted in fatal injuries.

The Hollon estate sued Brookwood and alleged negligence in his treatment and classification. As he was suicidal, that's why he was in the hospital, he should have been in a secure unit. There was proof from the plaintiff that the fence used on the patio represented a standard of care deviation.

Brookwood denied negligence and

noted that while at the hospital, Hollon was depressed and mostly calm – he had no prior psychiatric admissions and denied to staff an intent to commit suicide. Because he was functioning well (after his first 38 hours), it was reasonable to move him to a less secure unit. Quite simply then based on these facts and lack of any apparent suicidal proclivity, Hollon's death was not foreseeable. Finally when Hollon made his jump attempt, staff acted heroically by grabbing him, but he broke free.

Tried for two weeks in Birmingham, the jury's verdict was for the plaintiff on liability. Damages were assessed at \$12,000,000. A judgment in that sum has followed. Brookwood has promised an appeal.

Vacation Home Negligence - The plaintiff and her three children were injured when a deck collapsed at a rented beach home in Gulf Shores

Danielson v. Ward et al, 05-65

Plaintiff: Ray M. Thompson, Mobile
 Defense: John W. Clark, IV, Norman F. Waldrop and Kathleen M. Miller, *Armbrecht Jackson*, Mobile and Thomas M. Galloway, Jr., *Galloway Smith Wettermark & Everest*, Mobile for Ward and Reed Realty

Ronald G. Davenport, *Rushton Stakely Johnston & Garrett*, Montgomery for Shormann and Genesis Science

Verdict: Defense verdict

Circuit: **Baldwin**, 2-9-07

Judge: Robert Wilters

Karen Shormann of Texas rented a vacation home in Gulf Shores from Reed Realty. The home was owned by George Ward. Shormann, who operates a company called Genesis Science, took several of her employees and their families to the home for a retreat in July of 2003. [Genesis Science produces educational products for home-schoolers with a focus on Bible-based science.]

To the key date in this case on 7-22-03, thirteen people had gathered on the deck. They included Shormann, as well as an employee Patricia Danielson and her three minor children. Also on the deck was Kelly Hill and her four children. Suddenly the deck came crashing down.

Kelly Hill was badly hurt in this crash, sustaining a spinal fracture. Along with her children, Hill settled a damage claim against Ward and Reed Realty for \$950,000. That left only one set of

plaintiffs to advance to trial, that being Danielson and her three children. They have treated for assorted injuries, the family incurring medicals of approximately \$5,000. The Danielson plaintiffs alleged a combination of negligence by Ward and Reed Realty in the inspection and maintenance of the deck.

Both Ward and Reed Realty defended the case and denied fault. Ward noted he bought the home in 1981 and used it a few times a year for vacations. While owning the house, it was his proof he made necessary repairs, having no notice the deck had a problem. An expert for Ward, Marc Barter, Engineer, Mobile, provided testimony that the deck defect was latent and thus not discoverable. Reed Realty as well defended that it simply rented the property, having done so since 2001 – its role in that regard was limited to simple maintenance, it having no duty to inspect the deck.

The defendants also filed a third-party claim against Shormann and her company. Shormann for her part, who sustained minor injuries in the collapse, advanced a cross-claim against the defendants.

After five days of proof, the court directed a verdict on the third-party claim of Shormann and her company. The jury then considered plaintiff's primary claim as well as Shormann's injury counterclaim. Both counts were rejected and there was no award of damages.

Products Liability - The plaintiff linked a heart attack to a pain reliever – he blamed the pharma manufacturer for concealing cardiac side effects, the company placing profits over safety

Albright v. Merck, 05-2316

Plaintiff: W. Lewis Garrison, Jr. and Timothy C. Davis, *Heninger Garrison & Davis*, Birmingham

Defense: Robert C. Brock, *Rushton Stakely Johnston & Garrett*, Montgomery, Christy Jones, *Butler Snow O'Mara Stevens & Cannada*, Jackson, MS and Fred M. Haston, III, *Bradley Arant Rose & White*, Birmingham

Verdict: Defense verdict

Circuit: **Jefferson**, 12-16-06

Judge: J. Scott Vowell

Gary Albright, age 57, complained of arthritis symptoms and was prescribed Vioxx – the drug, a nonsteroidal anti-inflammatory pain reliever was manufactured by the pharmaceutical firm, Merck. He started taking Vioxx in 2000 and continued to do so until it was withdrawn because of cardiac risks in 2004. In that interim in March of 2001, Albright sustained a heart attack.

In this lawsuit, he alleged his heart attack was linked to Vioxx. Beyond a products claim, based on implied warranty of merchantability, Albright also alleged fraudulent suppression. It was his theory that Merck knew of the cardiac side effects associated with the drug, but placing profits over safety, it concealed that knowledge. If prevailing, Albright, sought both compensatory and punitive damages.

Merck defended the case and denied concealing side effects of the drug, noting the package inserts cautioned patients with heart disease. As importantly, it cited proof that in any event, Vioxx had nothing to do with plaintiff's heart attack. Merck cited his history of risk factors for a heart attack, including diabetes and high blood pressure. [Plaintiff conceded this history, but countered it was the Vioxx that was the heart attack tipping point.]

Finally to the heart attack, Merck further countered it was minor and didn't affect Albright's lifestyle. In his closing remarks, Attorney Brock strongly defended Merck and told the jury that "one dollar would be too much for compensatory or punitive damages."

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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