The Alabama Jury Verdict Reporter

The Most Current and Complete Summary of Alabama Jury Verdicts

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Alabama's Jury Verdict Reporter Since 2001

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.

Defamation - The former Chief Justice of the Alabama Supreme Court believed his campaign for the United States Senate was derailed by allegations of sexual abuse he allegedly committed decades earlier; when one of his accusers sued him for defamation based on his denial of the abuse, the former Chief Justice countersued the accuser for defamation based on her having made the accusations in the first place

Corfman v. Moore, 18-900017
Plaintiff: Melody H. Eagan and Harlan I. Prater, IV, *Lightfoot Franklin & White, LLC.*, Birmingham; and Neil K. Roman, *Covington & Burling, LLP.*, Washington, DC
Defense: Melissa L. Isaak, *The Isaak Law Firm*, Montgomery; and Julian L. McPhillips, Jr., *McPhillips Shinbaum, LLP.*, Montgomery
Verdict: Defense verdict on plaintiff's claims; for plaintiff on defendant's counterclaim
Circuit: **Montgomery**, 2-2-22
Judge: John E. Rochester

In 2017, Roy Moore, the former Chief Justice of the Alabama Supreme Court, was making a run for the United States Senate. Given that Judge Moore is a high profile figure, the campaign attracted national attention.

As the date of the election drew near, Moore seemed to be doing well and was eleven points ahead in the polls. That standing was about to change. On 11-9-17, just a month before the election, *The Washington Post* newspaper published an article that contained salacious allegations against Moore.

Specifically, four different women claimed that Moore had sexually abused them decades before when they were teenagers and he was in his thirties. After the article was published, five other women came forward with similar claims.

One of the women featured in the newspaper article was Leigh Corfman. According to Corfman, she first met Moore in February of 1979 when she was 14 years old and he was a 32 year-old district attorney. The meeting took place at the Etowah County courthouse where Corfman and her mother had come for a hearing relating to which of Corfman's parents would have legal custody of her.

In Corfman's recollection, Moore introduced himself and offered to sit with Corfman outside the courtroom while Corfman's mother went inside and attended the hearing. As Corfman and Moore sat alone together in the hallway, he conversed with her and ultimately asked for her phone number.

Corfman claims that Moore later called her and arranged to pick her up near her mother's house. He then drove her to his home and spent time with her there before returning her to her mother's house. Corfman claims that the second time they had such a meeting, Moore attempted to take matters even farther.

Allegedly, Moore provided Corfman with alcohol during that second meeting and then placed pillows and blankets on the floor. He then removed his own outer clothing as well as Corfman's and began touching her body through her bra and underpants. Finally, Corfman claims Moore guided her hand to touch his penis.

At this point during the encounter Corfman became resistant and asked Moore to take her home. After that, Moore called her one more time, but she refused to meet with him again. Corfman says she immediately told some of her close friends about the incident. Over the subsequent years she also told family members, including her mother, about what had happened.

Aside from those few confidants, Corfman otherwise kept quiet about her two encounters with Moore. She claims she did this initially out of a fear of retaliation and later also out of a desire to protect her children.

Nonetheless, when *The Washington Post* approached her in the fall of 2017 and asked her about the incident, Corfman says she answered truthfully. The record does not explain how *The Washington Post* first learned of the incident or knew to approach Corfman.

The publication of the article created a firestorm of controversy. Moore vehemently denied the allegations against him and accused Corfman and the other women of lying. Moore mounted his defense both via statements issued by his campaign committee and via personal appearances in both local and national media. In all of these communications, Moore and his committee repeatedly called Corfman a liar and claimed that her allegations were politically motivated.

On 11-28-17 Corfman sent Moore an "open letter" in which she asked him to stop denying that he had abused her. Moore essentially ignored her plea. Even after the election was over and Moore had lost, he continued to deny the allegations.

Corfman eventually filed suit against Moore and his campaign committee for defamation. However, it is not clear from the record that the claim against the committee survived to trial. In any event, the case continued against Moore. Corfman's identified experts included Tracy Storer, Photography, Oakland, CA.

Moore defended the case and denied the allegations against him as noted above. He also filed a counterclaim against Corfman and accused her of defamation for having made the allegations against him in the first place.

Among other things, Moore denied ever even having met Corfman. He also claimed he had taken a polygraph exam which showed that he never did the things of which Corfman accused him. The identified defense experts included Clyde Wolfe, Polygraph, Birmingham.

The case was tried in Montgomery. The jury returned a verdict for Moore on Corfman's claim but also found for Corfman on Moore's counterclaim. In its handwritten verdict, the jury wrote, "It is our verdict that neither party recover from the other."

The outcome of the case was thus effectively a wash. At the time the AJVR reviewed the record, no judgment had yet been entered.

Case Documents:

Complaint
Plaintiff Response to Summary Judgment
Defense Summary Judgment Reply
Jury Verdict

Bad Faith - An insurer was blamed for failing to settle the plaintiff's auto negligence case (he was drunk and injured three people) all of which led to a $3.8 million verdict far in excess of the plaintiff's $500,000 policy limits – in this interesting case although an assignment of the claim to the victims of the crash is prohibited by Alabama law, the plaintiff did enter a "fee-sharing agreement" with those victims such that they would agree not to collect on their verdict if the plaintiff pursued the bad faith case – ultimately after a two-week trial the jury found for the plaintiff on bad faith but only awarded nominal damages

Thomas v. Auto-Owners Insurance, 1:16-542
Plaintiff: Keith T. Belt, Jr., Robert P. Bruner, S. Drew Barnett and W. Ryan Myers, *Belt & Bruner*, Birmingham
Defense: Forrest S. Latta and John P. Browning, Mobile and S. Greg Burge, Birmingham, all of *Burr & Forman*
Verdict: $1.00 for plaintiff
(Nominal damages only)
Federal: **Montgomery**, 2-16-22
Judge: R. Austin Huffaker

Timothy Thomas, the plaintiff in this case, was driving drunk on 10-15-13 in a borrowed pick-up truck. There was proof he had consumed a 16-ounce "tall boy" can of beer. He would later admit at trial he might have had more than one. Thomas' BAC was later measured at .06 which while relatively low, contradicted his initial explanation he had just one beer.

As Thomas drove in Geneva County, he ran a stop sign and crashed into a vehicle driven by Randall Heard – Heard's wife was a passenger in the car. The third victim was a teenager, Maryah Annis, who was a passenger with Thomas. The Heards and Annis were all seriously injured and their combined medical

bills were approximately $300,000.

The Heards and Annis sued Thomas in Geneva County. There was $500,000 in insurance coverage available to Thomas pursuant to a policy issued on his vehicle from Auto-Owners. The insurer almost immediately set a $500,000 reserve.

However the case did not settle. It was tried to a Geneva County jury in August of 2015. The three plaintiffs took damages totaling $3.8 million. This far exceeded the $500,000 policy limits. A consistent judgment was entered and the verdict was later affirmed at the Alabama Supreme Court. Auto-Owners paid the underlying victims $1,238,657 representing the $500,000 policy limits plus post-judgment interest. See **Case** No. 4140 for the original verdict report.

Thomas filed this lawsuit against Auto-Owners and alleged it acted in bad faith in failing to settle the underlying claim when there were multiple opportunities to resolve the case for the $500,000 limits. The effect of this bad faith was to expose Thomas to an excess verdict.

There was proof that the insurer knew the claim was worth $500,000 right from the beginning when it set the reserve at that sum. Thereafter at mediation while the insurer had authority to offer $300,000, it only offered a total of $200,000. Then on the eve of the trial the offer rose to just $270,000.

While Auto-Owners indicated it relied on its counsel in the underlying case, Merrill Shirley, Elba, Thomas postured his evaluation of the case was "ridiculously low" and despite that evaluation being low, Auto-Owners still didn't make an offer within the range suggested by Shirley.

The plaintiff's bad faith expert was Tom Burgess, Attorney, Birmingham. If Thomas prevailed at trial he sought compensatory damages for mental distress (or alternatively nominal damages) as well as the imposition of punitive damages. Burgess opined the insurer "clearly advanced" its financial interests over those of Thomas.

Auto-Owners moved for summary judgment and among other things, argued that the plaintiff's case was barred because he was proceeding on a prohibited assignment from the underlying victims of the car crash. Thomas had entered a "fee-sharing agreement" with those victims such that the victims agreed not to pursue collection of the verdict against him if Thomas advanced a bad faith case versus Auto-Owners – the proceeds (if any) from this trial would then be shared between Thomas and the victims. Auto-Owners believed this agreement was a "strawman" designed to circumvent Alabama law which prohibits assignment of a claim. Judge Huffaker denied the motion and ruled that Thomas had not assigned the claim (which is prohibited) but rather assigned only the proceeds which is permitted.

Auto-Owners defended on the merits that it had arguable reasons to fail to settle the case. That included relying on its "seasoned" attorney, Shirley, who had evaluated the case's value at less than the policy limits. Shirley explained this was in part because of Thomas' low alcohol level. Moreover who could expect at trial that Thomas (who had previously said he had one beer) would testify to the jury that it might have been more? The defense bad faith expert was Taylor Flowers, Attorney, Dothan.

Thomas countered that he was not a sophisticated person and Auto-Owners kept him in the dark regarding the settlement. Moreover the insurer already knew Thomas was a bad witness. Thus the positions were set as the case moved forward. Thomas believed Auto-Owners failed to settle the case when it knew the case was worth far more than the policy limits. Auto-Owners by contrast thought it fairly evaluated the case and relied reasonably on its local counsel.

This case was tried for two weeks in Montgomery. The jury found for Thomas that Auto-Owners acted in bad faith by failing to settle the claim against him before trial when it could have done so. The instructions then asked if Thomas should be awarded compensatory damages for mental anguish and emotional distress. The jury said "no" and instead awarded Thomas $1.00 in nominal damages. It further rejected the imposition of punitive damages. A consistent judgment was entered for Thomas for $1.00.

Case Documents:
Summary Judgment Order
Jury Verdict
Final Judgment

Auto Negligence - Plaintiff claimed to have suffered soft-tissue injuries in a crash that he claims happened when defendant ran a stop sign; the jury returned a defense verdict

Burnside v. Bailey, 16-904262
Plaintiff: Christopher L. Burrell, *The C Burrell Law Group, LLC.*, Birmingham
Defense: Marie T. Prine, *Varner & Associates*, Birmingham
Verdict: Defense verdict
Circuit: **Jefferson**, 1-6-20
Judge: Marshell Jackson Hatcher

A crash took place on 11-20-14. It happened when Patrick Bailey allegedly ran a stop sign and collided with Barry Burnside. The record provides no further details on how or where the crash happened. Burnside claimed to have suffered soft-tissue injuries in the crash. However, his medical expenses are unknown.

Burnside filed suit against Bailey and blamed him for running the stop sign and thereby causing the crash. Bailey defended the case and minimized Burnside's claimed injuries.

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

Case Documents:
Jury Verdict

Medical Negligence - Six days after plaintiff underwent an open laparotomy with a resection of her sigmoid colon, it was discovered that a laparotomy pad had been left in her abdomen; plaintiff underwent a second surgery to remove the pad, and she blamed her surgeon for having left it in her abdomen in the first place

Goode v. Gross, 17-900003
Plaintiff: Stephen D. Heninger, *Heninger Garrison Davis, LLC.*, Birmingham
Defense: J. Will Axon and Madeleine G. Harpool, *Starnes Davis Florie, LLP.*, Birmingham
Verdict: Defense verdict
Circuit: **Tuscaloosa**, 2-10-22
Judge: M. Bradley Almond

On 8-10-16, Mary Goode was a patient at the DCH Regional Medical Center in Tuscaloosa to undergo a resection of her sigmoid colon. The procedure was to be an open laparotomy performed by Dr. Charles Gross, a general surgeon.

The procedure was completed without apparent complication. However, six days after the procedure it was discovered that a laparotomy pad had been left in Goode's abdomen. She underwent a second surgery on 8-16-16 to remove the pad.

Goode filed suit against Dr. Gross as well as against DCH Regional Medical Center and three nurses (Katherine Patton, Denise Hair, and Zachary Morgan). However, the parties later stipulated to the dismissal of all the defendants except Dr. Gross.

The litigation continued thereafter solely against Dr. Gross. Goode criticized him for not making a proper count of the laparotomy pads and for allowing one of the pads to be left in her abdomen. Dr. Gross defended the case and denied having breached the surgeon standard of care.

The case was tried for four days in Tuscaloosa. The jury returned a verdict for Dr. Gross, and the court entered a defense judgment.

Case Documents:
Jury Verdict
Final Judgment

Auto Negligence - Plaintiff sought recovery for soft-tissue injuries he suffered in a crash in Madison County

Coplen v. Graves, 18-901689
Plaintiff: Jennifer L. McKown, *Blackwell Law Firm*, Huntsville
Defense: Shelley Lewis, *Gaines Gault Hendrix, P.C.*, Huntsville
Verdict: $11,000 for plaintiff
Circuit: **Madison**, 3-9-21
Judge: Claude E. Hundley, III

On 9-8-16, John Coplen was driving near the intersection of Nance Road and Hwy. 72 in Madison County. At the same time, James Graves was driving in the same area. An instant later, the two collided.

Coplen claimed to have suffered soft-tissue injuries to his head and neck due to the crash. The record does not reveal the amount of his medical expenses.

Coplen filed suit against Graves and blamed him for causing the crash. Additionally, Coplen presented an uninsured/underinsured motorist claim against his own insurer, Allstate Insurance.

It is not clear from the record whether the claim against Allstate survived to trial. In any event, Graves defended the case and minimized Coplen's claimed injuries.

The case was tried for two days in Huntsville. The jury returned a verdict for Coplen and awarded him damages of $11,000. The court entered a judgment for that amount. The court later granted Coplen's motion to tax costs of $1,966. The judgment has been satisfied.

Case Documents:
Jury Verdict

Underinsured Motorist - Man and pregnant partner (she was 35 weeks and delivered her baby early) plaintiffs suffered injuries when rear-ended by a drunk driver – they each settled with the drunk driver for $33,333 and sought damages above that sum at trial – each prevailed at trial and took both compensatory and punitive damages, but oddly, because the verdict is not part of the court record, its not known the breakdown of the award by category

Fell et al v. Allstate, 1:20-209
Plaintiff: C. Randall Caldwell, Jr., *Caldwell Wenzel & Asthana*, Foley
Defense: De Martenson and Stewart W. McCloud, *Huie Fernambucq & Stewart*, Birmingham
Verdict: $123,000 for Robert
$117,500 for Sabrina
Federal: **Mobile**, 2-4-22
Judge: Jeffrey V. Beaverstock

Kyle Maynard was driving drunk in Fairhope, AL. The plaintiffs, Sabrina Hare (35 weeks pregnant) and her partner, Robert Fell, were stopped at a red light. Maynard crashed into the Fell vehicle at high speed. Fault was no issue.

Sabrina was taken by ambulance to

the ER where she was treated and released for apparent soft-tissue symptoms. There was also great concern for the baby. It turned out the baby (Caelen) was delivered premature ten days later. Sabrina has continued to complain of soft-tissue symptoms, headaches and a mild traumatic brain injury. Her medical bills were $54,500.

Robert too was injured in the collision. He complained of a C3-4 disc injury as well as a mild brain injury. His medical bills were $33,538. The treating Dr. Todd Edmiston, Orthopedics, Foley, confirmed both plaintiffs' injuries.

Sabrina and Robert (as well as Caelen) moved first against Maynard. He tendered his $100,000 policy limits, each plaintiff taking $33,333. The plaintiffs then filed this lawsuit and sought UIM coverage from their insurer Allstate. Caelen's claim was resolved before trial, only her parents coming to trial.

In this UIM case (removed by Allstate to federal court on diversity from Baldwin County), Sabrina and Robert sought both compensatory and punitive damages. Any verdict for the plaintiffs would be reduced by their $33,333 settlements with Maynard. Allstate defended and minimized the plaintiffs' claimed injuries.

This case was tried for three days and the jury returned a verdict. In an apparent breakdown of the maintenance of the court record, the verdict itself did not become part of that record and its location is unknown.

However the court's final judgment indicates that Sabrina and Robert both prevailed. Sabrina's verdict was $117,5000, Robert taking $123,000. The award included both compensatory and punitive damages. However because of the "lost" status of the actual verdict, it is not clear what portion of that verdict represented compensatory damages and what portion was punitive damages. The final judgment further reduced the verdicts by $33,333 (representing the underlying settlement), that is, $84,166 for Sabrina and $89,666 for Robert.

Case Documents:
Pretrial Order
Final Judgment

Medical Negligence - A 47 year-old man went to the ER with complaints of chest pain and was sent home with a diagnosis of a pulled muscle; after the man died the following day his estate blamed his death on the ER doctor for failing to diagnose an aortic dissection

Estate of Boatright v. Obiaka, et al., 18-902369
Plaintiff: Thomas E. Dutton and Michael C. Bradley, *Pittman Dutton Hellums Bradley & Mann, P.C.*, Birmingham
Defense: Joseph S. Miller and Tyler J. McIntyre, *Starnes Davis Florie, P.C.*, Birmingham
Verdict: Defense verdict
Circuit: **Jefferson**, 2-18-22
Judge: Brendette Brown Green

On 6-17-17, Randel Boatright, age 47 and a homebuilder/contractor, began experiencing chest pain and coughing. He initially attempted to self-medicate by taking nitroglycerin. That provided Boatright with some relief, but his symptoms returned.

Approximately an hour after Boatright's symptoms first appeared, he went to the ER at St. Vincent's East Hospital in Birmingham. At the ER Boatright came under the care of a team of medical providers that included emergency medicine physician Dr. Chigozie Obiaka, an employee of Premier Medical, P.C.

Dr. Obiaka examined Boatright and concluded he had simply pulled a muscle. Based on that diagnosis Dr. Obiaka discharged Boatright with instructions to follow-up in two or three days with his personal physician unless the symptoms grew worse.

Boatright accepted those instructions and went home. The next day he died of an aortic dissection. Boatright's estate blamed his death on his medical team's failure to diagnose the aortic dissection. Had the correct diagnosis been made, Boatright could have been treated in time and his life saved.

More specifically, the estate argued that the standard of care required the medical team to order a CT scan, seek a consultation with a cardiologist, and admit Boatright to the hospital for overnight observation. Defendants did none of those things, and Boatright died due to those breaches of the standard of care.

The estate identified several experts in this case. They included Dr. Gina Blocker, Emergency Medicine, Pearland, TX; Dr. George Thomas, Emergency Medicine, Bowling Green, KY; and Dr. Michael Koumjian, Cardiothoracic Surgery, La Mesa, CA.

The list of the original defendants in this case included Dr. Obiaka, Premier Medical, St. Vincent's East Hospital, Dr. George Turnley, Dr. Brian Flowers, and the Birmingham Heart Clinic. However, there was a shake-out in the parties.

The court granted summary judgment in favor of Dr. Flowers and the Birmingham Heart Clinic. Additionally, the parties stipulated to the dismissal of Dr. Turnley and St. Vincent's East Hospital. The only defendants remaining, then, were Dr. Obiaka and Premier Medical.

Dr. Obiaka and Premier Medical defended the case and denied any breach of the standard of care. In

particular they argued that Boatright's presentation did not call for a CT scan, a cardiology consult, or overnight admission to the hospital.

Defendants argued that their treatment of Boatright was reasonable in all respects. Furthermore, defendants argued that even if Boatright had been admitted to the hospital, he most likely would not have been diagnosed with an aortic dissection before it happened, and in that event his outcome would have been the same. The identified defense experts included Dr. P. Christopher Flanders, Emergency Medicine, Ashville, NC.

The estate responded to the defense by arguing that Boatright had no history of a pulled muscle. Instead, he did have a history of smoking, high cholesterol, an aortic heart murmur, and an abnormal EKG. Furthermore, Boatright's younger brother died of a heart attack during the year prior to Boatright's death. For all these reasons, Boatright was at high risk for cardiac problems, and defendants should have reacted accordingly.

The case was tried for five days in Birmingham. The jury returned a verdict that exonerated Dr. Obiaka and Premier Medical. The court entered a defense judgment.

Auto Negligence - A motorcyclist claimed to have suffered soft-tissue injuries when he was rear-ended while slowing in traffic

Brooks v. Pettey, 18-900429
Plaintiff: Jonathan W. Cooner and Brian Traywick, *Shunnarah Injury Lawyers, P.C.*, Birmingham
Defense: Joshua B. Beard, *Varner & Associates*, Birmingham
Verdict: Defense verdict
Circuit: **Morgan**, 9-1-21
Judge: Jennifer M. Howell

On 9-2-16, Alfred Brooks was operating a 2005 Kawasaki motorcycle as he traveled north on Hwy. 31 in Decatur. Behind Brooks and traveling in the same direction was a 2008 Honda CRV being driven by Robert Pettey, IV.

At a certain point, Brooks slowed for traffic ahead of him. Pettey apparently failed to follow suit, and he rear-ended Brooks's motorcycle. Brooks claimed to have suffered soft-tissue injuries to his head, shoulder, neck, and back due to the crash. His medical expenses are not known.

Brooks filed suit against Pettey and blamed him for failing to stop in time and thereby causing the crash. Pettey defended the case and minimized Brooks's claimed injuries.

The case was tried for three days in Decatur. The jury returned a verdict for Pettey, and the court closed out the case with the entry of a defense judgment.

Case Documents:
Final Judgment

Auto Negligence - Plaintiff claimed to have suffered a disc herniation and a vaginal prolapse injury in a car crash; defendant denied that plaintiff's claimed injuries were caused by the crash

Rockwell v. Armstrong, 18-900066
Plaintiff: F. Inge Johnstone, *Johnstone Carroll, LLC.*, Birmingham
Defense: J. Michael Bowling and Joseph L. Kerr, Jr., *Friedman Dazzio Zulanas & Bowling, P.C.*, Birmingham
Verdict: Defense verdict
Circuit: **Talladega**, 12-13-19
Judge: William E. Hollingsworth, IV

On 3-4-16, Ginny Rockwell was driving south on U.S. 280 in Childersburg on her way to a physical therapy session. At the same time, Maggie Armstrong was in the parking lot of a Dollar General store on one side of U.S. 280.

Armstrong wanted to cross U.S. 280 to get to a Kentucky Fried Chicken restaurant on the opposite side of the road. When Armstrong pulled from the Dollar General parking lot, she collided with the side of Rockwell's vehicle.

Rockwell claimed to have suffered a disc herniation and a vaginal prolapse injury that she attributed to the crash. The record does not reveal the amount of her medical expenses.

Rockwell filed suit against Armstrong and blamed her for causing the crash. Armstrong defended the case and disputed the issue of causation. According to Armstrong, Rockwell's back pain was pre-existing as evidenced by the fact that Rockwell was on her way to a physical therapy session at the time of the crash.

Moreover, Armstrong argued that Rockwell's medical providers merely opined that it was "possible" that the prolapse injury could have been caused by the crash. This, according to Armstrong, was insufficient to establish causation.

The case was tried for two days in Talladega. The jury returned a verdict for Armstrong, and the court entered a defense judgment. Rockwell filed a motion for a new trial on the ground that the verdict was against the weight of the evidence. At the time the AJVR reviewed the record, it contained no indication of the court's ruling on the motion.

False Claims Act - An employee and a board member at the Birmingham-Jefferson County Transit Authority both alleged the municipal bus agency had improperly expended federal transportation funds by providing those funds to a favored vendor without following bidding guidelines – the employee additionally presented her own retaliation count, alleging she was fired for raising bidding concerns
Culpepper et al v. BJCTA et al, 2:18-567
Plaintiff: Larry A. Golson, Jr., Allison D. Hawthorne and Leon Hampton, Jr., *Beasley Allen*, Montgomery and Samuel Fisher and Sidney M. Jackson, *Wiggins Childs*, Birmingham
Defense: Michael K.K. Choy, Robert H. Rutherford and Ellen T. Matthews, *Burr & Forman*, Birmingham for BJCTA defendants
Anil A. Mujumbar, *Dagney Johnson Legal Group*, Birmingham for Strada defendants

Verdict: $360,000 for plaintiffs on False Claims Act count (Verdict trebled in final judgment); Defense verdict on Culpepper's retaliation claim
Federal: **Birmingham**, 3-1-22
Judge: Corey L. Maze

This case at its core involved the spending of federal funds by the Birmingham Jefferson County Transit Authority (BJCTA) – it's the municipal bus agency that serves Birmingham and larger Jefferson County. BJCTA applied for a federal grant in June of 2015 to modernize its intercity routes. The grant was awarded for $20,000,000 that October.

There was proof that BJCTA relied on an engineering firm, Strada and its CEO, Edmund Watters, in developing on which projects to spend the federal grant. At this time Starr Culpepper worked as a contract compliance officer. Tameka Wren was the chairperson of the BJCTA board.

Culpepper and Wren believed that the BJCTA violated the Brooks Act (it relates to the technical process of competitive bidding in spending federal funds) by favoring Strada without submitting projects to competitive bids. Thus BJCTA overpaid for projects that would have cost less had they been competitively bid.

That Brooks Act violation formed the basis of the False Claims Act lawsuit that was filed under seal in April of 2018. Culpepper and Wren were the so-called relators who advanced the case on behalf of the federal government. The government itself ultimately elected not to pursue the case. However it did order the City of Birmingham (but not the BJCTA) to repay funds where there was not competitive procurement.

Beyond the False Claims Act portion of the case, Culpepper presented her own separate employment retaliation claim. She alleged that she was terminated because of her exposure of the Brooks Act concerns. Her damages were substantial (she estimated her lost wages at $2.698 million) as at the time of the firing, she was still in law school and it was expected that after her graduation, she'd join BJCTA as its general counsel. The lost wages and benefits were the only element of damages that went to the jury. [Culpepper ultimately did graduate and passed the bar in September of 2019.]

As the False Claims Act case was relatively simple regarding the bidding process, it was made more complex as it was tried. The relators presented their claims against not just BJCTA but also Strada, Watters and Barbara Murdock, the executive director at BJCTA. The damages would be measured as the difference between the funds expended to Strada without proper bidding and what was the actual benefit to the government from those services.

In reverse order BJCTA first denied it had retaliated against Culpepper. It had postured she was let go because she'd misued a company credit card. Culpepper denied this and argued the credit card excuse was a pretext to mask retaliation.

The defendants also denied a Brooks Act violation as at all times Strada was the most qualified vendor. The relators replied that on projects BJCTA was required to negotiate with the three vendors on the "highly qualified" list and could not simply contract with Strada.

The defense also argued that even if there was a technical violation, it was not intentional and at best it just represented a mistake. The relators countered that as they'd raised complaints about the bidding, BJCTA could not now claim it didn't know of the concerns.

The verdict was mixed but generally for the relators. The jury found that BJCTA submitted a false claim for payment to the federal government AND that it had knowingly misrepresented the claim. However it answered "no" as to the individual claims against Murdock, Watters and Strada. It also rejected a separate conspiracy claim (against all defendants) that asked if they had come to an agreement to violate the False Claims Act.

The damages then were measured as the difference between the amount paid to Strada on the improperly procured projects and the actual benefit received. The jury answered

that the amount paid was $1,438,167 and the benefit was only $1,078,467. The difference then (and the damages) were $360,000. They were trebled (as required by statute) in the final judgment to $1.08 million. The statute also indicates that the relator (Culpepper and Wren) are entitled to 25% of that award. Finally the jury rejected Culpepper's employment retaliation claim.

Case Documents:
Complaint
Summary Judgment Order
Jury Verdict
Final Judgment

A Notable Mississippi Verdict

Auto Negligence - The plaintiff linked a moderate brain injury to a rear-end crash – a jury in Purvis awarded the odd number of $247,629 in non-economic damages all for a total of $400,000

Harris v. Ratcliff et al, 17-91
Plaintiff: Daniel Waide, *Johnson Ratliff & Waide*, Hattiesburg, MS
Defense: Donna M. Meehan, *Cosmich Simmons & Brown*, Jackson, MS
Verdict: $400,000 for plaintiff
Court: **Purvis, Mississippi Lamar Circuit Court**
Judge: Claiborne McDonald, IV
Date: 2-24-22

It was 7-30-15 and Lauren Harris, then age 30 and both a receptionist and steakhouse waitress, was stopped in rush hour traffic on Hwy 98 in Hattiesburg. Behind her in traffic was Deborah Ratcliff who was working as a pharmaceutical sales representative for Arbor Pharmaceuticals – she'd been working that day in Brookhaven and was returning home to Hattiesburg.

Harris slowed in traffic for another accident. Ratcliff didn't appreciate the traffic was slowing down. Ratcliff rear-ended Harris. It was a hard hit and knocked Harris' vehicle into the next car. The Harris vehicle was totaled. Fault was not disputed. Harris declined care at the scene – a friend who was in the area gave her a ride home.

Harris went to work the next day and she appeared to be in a fog of sorts – her boss urged her to seek treatment. She promptly reported to the ER. She has since treated for a cervical disc injury, a concussion and more persistently for a moderate traumatic brain injury.

Harris reports cognitive dysfunction, memory loss, mood change and PTSD. She has also undergone a course of pain management care. Harris presented appropriate proof of her injuries from her medical providers.

In this lawsuit Harris sought damages from Ratcliff and Ratcliff's employer. That included medical bills, lost wages, future lost wages and non-economic damages. Her damages were quantified by two experts, Lacy Sapp, Vocational, Metairie and George Carter, Economist, Hattiesburg.

The defense minimized the claimed injury and noted there was no injury at the scene. It was suggested that Harris (at worst) suffered a temporary soft-tissue strain and has fully recovered.

The defense also looked to proof from an IME, Dr. James Irby, Neuropsychology. Irby believed that Harris had not sustained a "major" brain jury – he thought it was initially moderate and now called it very mild and resolving. Irby also indicated the claimed brain injury had a somatic element to it.

This case first came to trial in June of 2021. A mistrial was declared after there was confusion about the an exhibit that reflected diffusion tension imaging of Harris' brain.

The case was tried again a second time eight months later. The jury considered damages only. Harris took medicals of $47,497 plus $954 for property damage. Her lost wages were $16,416. These damages were directed by the court and already filled in on the verdict form.

The jury continued to a section of so-called "additional" damages. Harris took $87,502 more in medical bills but nothing for past or future lost wages. Her past non-economic damages were $147,629. Those in the future were $100,000, the verdict totaling $400,000. The odd past non-economic damages of $147,629 were apparently a function of the jury seeking to reach the round number of $400,000 in total damages.

A Notable Tennessee Verdict

Premises Liability - The plaintiff suffered a Lis Franc foot fracture when she fell in an uncovered plumbing access hole in the front yard of her rental home – she blamed her landlord for the hazard and countered an "open and obvious" defense by arguing that the hole was covered by overgrown grass and weeds – a Franklin jury awarded the plaintiff $1.38 million in damages which were reduced to $750,000 by a combination of the plaintiff's ad damnum clause and Tennessee's non-economic damage tort scheme

Hollander v. Morel, 18-245
Plaintiff: Patrick D. Witherington, *Witherington Law*, Nashville
Defense: Parks T. Chastain and Cory R. Miller, *Brewer Krause Brooks & Chastain*, Nashville
Verdict: $1,380,128 for plaintiff less 25% comparative fault
Court: **Franklin, Tennessee Williamson County**
Judge: James G. Martin, III
Date: 6-4-21

Beverly Hollander, then age 56, leased a home in May of 2017 in Thompson's Station from McNairy and Erin Morel. The property featured a 34 inch deep and 12 inch wide hole near a flower bed. The manmade hole was designed to reach a shut-off for an underground plumbing pipe. The hole was not covered or marked in any way. There was proof Hollander had an awareness that the hole existed.

Hollander was working in the flower bed (preparing for a party) on 5-20-17. She stepped in the hole and suffered a Lis Franc fracture to her foot. This led to a surgical repair with the installation of hardware. There was proof Hollander may require a future repair surgery.

In this lawsuit Hollander sought damages from the Morels. While she admitted she knew about the hole in a general sense, she was not aware of its danger. Particularly on the day that Hollander tripped, the hole was covered with grass and weeds. If Hollander prevailed at trial, she sought economic damages (her medicals and future medicals) as well as non-economic damages in six categories, past and future suffering, permanent injury, disfigurement and past and future loss of enjoyment of life.

The defense of the case was simple enough. The Morels believed the condition of the hole (whatever it was, uncovered or obscured by grass and weeds) wasn't the key issue – instead the condition of the hole was open and obvious, Hollander conceding she knew it was there. Hollander replied that while she had a general awareness of the hole, she'd forgotten about it and at the time of her fall, the hazard was obscured.

This case was tried for three days in Franklin. The jury's verdict was mixed on fault. The jury assessed the fault 75% to the Morels and the remaining 25% to Hollander. She was awarded her medicals of $62,908 and $32,220 more for future care.

The jury moved to non-economic damages. Hollander took $300,000 for past suffering and $240,000 more for in the future. Permanent injury was also $240,000. The jury added $5,000 for disfigurement. Hollander took $250,000 each (in separate categories) for past and future loss of enjoyment of life. The award of non-economic damages totaled $1.285 million and the raw verdict (totaling all damages) was $1,380,128.

The court's final judgment for Hollander totaled $750,000. This is because the verdict blew through both her own $750,000 ad damnum clause and the state's damage-limiting tort scheme. But for either limitation (ad damnum or tort scheme), the judgment would have been for $1,035,096.

The Morels moved for a new trial and/or remittitur and argued the verdict was excessive. They noted it was 14 times the medical bills. The motion also repeated that the open and obvious nature of the hole was a complete bar to recover.

The motion also argued the raw verdict must be reduced to $750,000 (the ad damnum limit) and then the have the comparative fault applied. If the final judgment didn't so reduce the verdict to $562,500 ($750,000 less 25% fault), then the jury's fault finding would essentially be meaningless. Hollander replied there was no precedent to suggest the verdict must be reduced to $750,000 and then have comparative fault applied.

Judge Martin denied the motion. The Morels took an appeal and moved to stay execution of the judgment because they were well-insured by State Farm beyond the policy limits. The Morels subsequently withdrew the appeal and the final judgment has been satisfied. The case is closed.

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