

The Alabama Jury Verdict Reporter

The Most Current and Complete Summary of Alabama Jury Verdicts

April, 2006

Statewide Jury Verdict Coverage - Published Monthly

6 A.J.V.R. 4

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.

Slander - A start-up coffee company claimed an established competitor tried to drive it out of business by making disparaging remarks to customers about the quality of the start-up's product and service, as well as about the personal character of the start-up's owner
Stewart, et al. v. Hill, et al., 03-3695
Plaintiff: Vincent F. Kilborn, III, David A. McDonald, and W. Perry Hall,
Kilborn Roebuck & McDonald, Mobile
Defense: L. Daniel Mims and Theresa Williamson, *L. Daniel Mims, P.C.*, Mobile
Verdict: \$2,500,002 for plaintiffs
Circuit: **Mobile**, 8-22-05
Judge: James C. Wood

The Leroy Hill Coffee Company, Inc., headquartered at 3278 Halls Mill Road in Mobile, is a firm engaged in the high-stakes game of selling coffee and placing coffee machines in businesses in the Mobile area. The company is solely owned by Leroy Hill. In August of 1977, Paul Stewart went

to work for Hill and remained with the company for some seventeen years. Stewart finally left Hill's employ in October of 1994 and tried his hand at a variety of careers before deciding to get back into the coffee business.

However, instead of going back to work for Hill, Stewart decided to set up shop for himself. On 10-1-97, three years after leaving Hill, Stewart founded a company called Coffee Pro, Inc. and went into direct competition with his old employer. From Hill's point of view, this meant war.

According to Stewart, Hill undertook a campaign of sabotage against Coffee Pro. Hill was assisted in this effort by his sales manager, Greg King, and his salesman, Rick Gates. Together, these three systematically set out to decaffeinate Coffee Pro's business.

Stewart claimed Hill and his representatives began badmouthing both Coffee Pro and Stewart personally to existing and prospective customers. Specifically, they would claim that

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*This is just a partial look at this year's Products Liability Reporter
See the 2005 Year in Review for the full report*

The 2005 Products Liability Report

*This report summarizes the twenty-eight products liability verdicts from 2002 to 2005
2005 results in bold. Cases sorted from highest to smallest verdict.*

<u>County-Case No.</u>	<u>Verdict</u>	<u>Defect</u>	<u>Summary</u>
Bullock-421	\$122,000,000	Automobile	A boy sustained serious head trauma in a head-on collision, blaming his injury on the collapsing passenger compartment. Punitives of \$100,000,000 assessed in Union Springs. <i>(Reversed in December 2003).</i>
Lamar-700	\$12,000,000	Truck Cab	Plaintiff rolled over in a logging truck. Logs intruded the truck cab and killed him. His estate alleged a defect regarding the strength of the cab guard.
Baldwin-733	\$7,000,000	Tire Repair	Fix-A-Flat ignited as plaintiff worked on a tire, the explosion decapitating him.
Jefferson-888	\$4,500,100	Furnace	A factory worker was severely burned and later died after being sprayed with molten metal from an exploding furnace.
Birmingham-560	\$4,168,500	Diet Drug	Four plaintiffs alleged cardiac problems associated with their use of the diet drug, Ephedra.
Marion-1286	\$2,500,000	Scissor Lift	A laborer was crushed to death when a scissor lift fell on him.
Colbert-699	\$960,000	Conveyor Belt	Plaintiff lost his hand in a conveyor belt. The verdict was only \$25,000 above a pro tanto settlement with another defendant.
Blount	\$950,000 Conveyor	Chicken	A line worker in a Tyson Foods factory was injured when her hand became caught in a liver pulling machine.
Tuscaloosa-1306	\$800,000	Air Compressor	Two mine workers received second and third degree burns when an air compressor they plugged in produced an electrical arc.
Baldwin-1320	\$37,187	Toilet	A toilet in a second-floor residential bathroom exploded and flooded the home for several days, causing nearly \$500,000 in damage.
Mont-Fed-951	Zero	Mazda Pick-up	A 12 year-old boy was killed in a rollover crash; his parents and estate blamed the pick-up manufacturer.
Baldwin-1040	Zero	Forklift	A worker suffered a broken leg when a co-worker accidentally backed over him with a forklift; the injured worker criticized the forklift's design and manufacture.

This preview provides an at-a-glance look at the
AJVR 2005 Year in Review *Products Liability Report*.

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Stewart routinely cheated customers by shorting on packages of coffee in the boxes delivered to customers. In support of these claims, Hill's team gave customers a list of people who would verify that Coffee Pro's service was bad and that the company always shorted customers.

Hill's team also allegedly told customers that Coffee Pro's coffee machines were not of good quality and that Coffee Pro would not replace the machines when damaged. In addition, Hill's team attempted to cast doubt on the quality of Coffee Pro's management and on Stewart's personal character. They would tell customers that Coffee Pro was not run properly and likely would not be in business for long, and they would make scandalous allegations concerning Stewart's personal life.

As part of this targeted campaign to drive Coffee Pro out of business, Hill offered bonuses to his employees for taking Coffee Pro's customers. Stewart would later claim these efforts went so far as actually trying to bribe customers away from Coffee Pro. One customer, for example, was offered \$5,000 if it would switch to Hill.

The cutthroat style of this competition eventually got to be too much for Stewart. He and Coffee Pro filed suit against Hill personally, the Leroy Hill Coffee Company, sales manager King, and salesman Gates. Plaintiffs alleged counts for slander and intentional interference with business relationships. Plaintiffs' identified expert was Jeffrey Sport, CPA, Mobile.

Defendants denied wrongdoing and insisted any statements they might have made about Stewart and Coffee Pro were in fact true. They claimed that Stewart had a habit of shorting customers even back in the days when he worked for Hill, though this was done without Hill's knowledge. According to Hill, Stewart even admits this.

Defendants also attempted to minimize Stewart's claimed damages. On this point they relied upon their own accounting expert, Michael Reibling. Based on his analysis of the evidence, Reibling calculated Stewart's damages from Hill's activities as amounting to only \$14,656 up through 2004. In short, Coffee Pro was a minor player in the coffee business and was never really a serious competitor for Hill.

A jury in Mobile heard the case and returned a complex verdict for plaintiffs. Against all defendants, Coffee Pro was

awarded \$600,000 in past compensatory damages, another \$600,000 for future compensatory damages, plus punitive damages of \$1,200,000. That brought the award for Coffee Pro to \$2,400,000.

On Stewart's claim against Leroy Hill Coffee Company, he was awarded only \$1.00 each for past and future compensatory damages. However, the jury also awarded Stewart punitive damages of \$100,000. Thus, the combined award for both plaintiffs came to a total of \$2,500,002, and the court entered a consistent judgment.

Post-trial, Coffee Pro filed a motion for additur to increase the punitive damages award to a 3-1 ratio instead of a 1-1 ratio. The motion was denied. Plaintiffs also filed a motion to tax costs of \$39,985. The court's ruling on that motion was not part of the record.

Defendants also engaged in some post-trial motion practice in the form of a motion for remittitur. However, that motion was denied by operation of law when the court did not rule. Finally, defendants have filed an appeal of the verdict. The appeal was still pending at the time the AJVR reviewed the record in mid-February.

Industrial Negligence - An employee at a chemical plant was badly burned and later suffered a stroke when boiling chemicals exploded onto him – he had placed his arm into a vat of chemicals believing incorrectly their temperature was just 97 degrees

Proctor v. Fluor Enterprises, 5:02-3185

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

Defense: James Rebarchak and
Kirkland F. Reid, *Miller Hamilton
Snider & Odom*, Mobile

Verdict: \$2,419,351 for plaintiff

Federal: **Huntsville**, 2-22-06

Judge: Virginia Emerson Hopkins

Robert Proctor was working in the spinning department on 1-30-02 at the Solutia plant in Morgan County – Solutia is a chemical company. On this day, Charles Lawrence, an instrument technician for Fluor Enterprises, was trouble-shooting a pressure problem in a liquid circulation loop. Proctor and Lawrence worked together on the problem.

Instruments indicated the temperature in a vat was at 97 degrees – believing there was a clog, Proctor stuck his arm directly into the vat. In fact the vat

contained sixty gallons of boiling chemicals. They flashed on contact and Proctor was badly burned by the exposure. He also later sustained a stroke, his medical proof linking it to the burn.

In this diversity lawsuit, Proctor sought damages from Fluor, predicated on the negligence of its employee, Lawrence. Proctor's theory blamed Lawrence for not appreciating that there was an instrument malfunction or to check for it – had Lawrence done so, he would identified the correct temperature reading was not 97 degrees. Proctor relied on Lawrence and his expertise before putting his arm into the vat. A liability expert for Proctor was Marvin McKinley, Tuscaloosa.

Fluor defended the case on several fronts. It first argued that the trouble-shooting was a team effort. As importantly, Lawrence never told Proctor to (1) to attempt to unclog it or that there was a clog, or (2) to put his arm into the vat. Fluor also diminished damages, particularly regarding the stroke – while without question Proctor sustained a burn injury, it denied there was a causation link between this incident and the stroke.

The jury's verdict was for Proctor on liability – it also rejected contributory fault. Then to damages, he took medicals of \$54,000, plus lost wages of \$174,919. Impairment was \$172,432, suffering totaling \$1,000,000. In this unusual case, the jury also made a specific finding the incident caused Proctor's stroke symptoms. It awarded him another \$18,000 in medicals and another \$1,000,000 in suffering, all related to the stroke. The verdict totaled \$2,419,351. Pending is Fluor's motion for a new for a judgment as a matter of law. It has argued there was no evidence of negligence by Lawrence.

Auto Negligence - A restaurant deliveryman collided with another vehicle and injured the vehicle's passenger

Amison v. Matthews, 04-4339

Plaintiff: William D. Davis, III, *Davis & Associates*, Birmingham

Defense: J. Brooks Leach, *Wade S.
Anderson & Associates*, Birmingham

Verdict: \$2,300 for plaintiff

Circuit: **Jefferson**, 2-15-06

Judge: Robert S. Vance, Jr.

On 4-23-03, Andrew Matthews, age 39 and a delivery driver for a restaurant

called "Wing Zone," was leaving a CVS Pharmacy and headed to a Burger King in the Town of Homewood. As Matthews exited the CVS parking lot, he crossed stopped traffic to go south on Greensprings Highway near the intersection with Valley Avenue.

Matthews was in the process of moving into the center lane when he collided with a vehicle being driven by Stacy Bowen. Bowen's passenger that day was Tulia Amison. The record indicates Amison suffered injuries to her sternum, back, neck, head, and tongue. Her medical expenses are unknown.

Bowen and Amison filed suit against Matthews and blamed him for the crash. Also, Amison's husband, James Amison, presented a derivative consortium claim that he later dismissed. Bowen subsequently settled with Matthews and dismissed her claim.

Finally, Amison was covered under an insurance policy Bowen had with Safeway Insurance. Accordingly, Amison made an underinsured motorist claim against Safeway, but that claim too was later dismissed. The only claim that advanced to trial was Amison's claim against Matthews. He defended and minimized the claimed damages.

A jury in Birmingham resolved the case in favor of Amison and awarded her damages of \$2,300. Prior to trial, Matthews made an Offer of Judgment of \$7,500. Based on Amison's rejection of that offer, Matthews filed a post-trial motion for costs of \$423. The court granted the motion and deducted the \$423 in costs from the verdict amount. Thus, the final judgment came to \$1,876.

Aircraft Repair Negligence - Plaintiff's airplane was destroyed in an explosion during a minor repair job

Tropical Aviation, Inc. v. Dothan Jet Center, Inc., et al., 03-30

Plaintiff: Rufus R. Smith, Jr., Mobile

Defense: Michael Gillion, Mobile

Verdict: \$342,000 for plaintiff

Circuit: **Houston**, 9-28-05

Judge: Denny L. Holloway

Tropical Aviation, Inc., a company based in St. Petersburg, Florida, was the owner of an Aerostar airplane. In the summer of 2001, the airplane developed a problem that caused the altitude alert to stop working. Clearly, repairs were needed.

As it happened, the owners of Tropical Aviation had connections with a company called Dothan Jet Center, Inc.,

a wholly owned subsidiary of Airweld, Inc., located in Dothan. Accordingly, arrangements were made to have Dothan Jet Center perform the repairs.

On 6-9-01, the plane was delivered to Dothan Jet's facilities. The avionics technician assigned to do the repair job was Jim Smith. Smith climbed into the plane's cabin and examined the wiring. In doing so, he noticed a bad crimp on a crucial butt splice.

The record contains two different accounts of exactly what Smith did next. According to one account, he was simply checking the wire with a meter when the wire suddenly arced. However, another version of events has him using a cigarette lighter to ignite a butane torch he apparently planned to use to solder the wire.

In any event, there is no dispute that in the next instant Smith saw a flash of orange and then suddenly found himself on the ground outside. He realized immediately there had been an explosion, and he had been blown out of the side of the plane. Within seconds, flames engulfed the plane and destroyed it.

Tropical Aviation estimated the fair market value of the plane at the time of the accident at \$390,000. The company's insurer, the Greenwich Insurance Company, paid \$267,000. Tropical Aviation filed suit and sought further compensation from Dothan Jet Center, Airweld, and Smith. However, Smith later disappeared from the case. The litigation proceeded against Dothan Jet and Airweld.

If successful, Tropical Aviation sought the balance of the fair market value of the plane, lost profits, loss of use of the plane, and punitive damages. In the meantime, Greenwich Insurance sold the remains of the plane for salvage to a company called Aerostar World.

Dothan Jet defended the case on several fronts. First, it claimed spoliation of evidence in view of the fact that the most crucial item of evidence in the case (i.e., the plane itself) had been dismantled and sold for parts by Aerostar World. Thus, Dothan Jet was deprived of any opportunity to have the plane examined by experts to determine the cause of the explosion.

In addition, Dothan Jet argued that Tropical Aviation had been fully compensated by Greenwich Insurance for the value of the plane, and there was no proof the explosion occurred due to anything either Smith or Dothan Jet

might have done.

Dothan Jet attempted to bolster its case with the opinion of its fire investigation expert, R. Harold Deese. However, the court later excluded Deese's testimony for reasons the record does not explain. That decision by the court would form part of the basis for some post-trial motion practice.

Finally, Dothan Jet filed a third-party complaint against Aerostar World. It seems Aerostar World had previously done some work on the plane's fuel system, and Dothan Jet thought that might explain the explosion.

The theory was that Aerostar World's work on the fuel system might have been faulty in some way and thereby allowed fumes to leak into the cabin, thus setting the stage for the conflagration. However, that theory didn't seem to go very far inasmuch as the court subsequently granted Aerostar World a summary judgment and dismissed it from the case.

A jury in Dothan heard the evidence and returned a verdict for Tropical Aviation in the amount of \$340,000. The court followed with a consistent judgment. Post-trial, Tropical Aviation filed a motion to tax costs of \$1,362. The court granted the motion.

Also, Dothan Jet and Airweld filed a motion for a new trial. Among the reasons cited were the court's refusal to allow fire investigator Deese to testify and allowing the case to continue despite the spoliation of the crucial evidence of the plane. The court denied the motion, and defendants filed an appeal. At the time the AJVR reviewed the record, the appeal was still pending.

Auto Negligence - A motorcyclist suffered a broken leg when a Domino's Pizza employee ran into him while making a turn

Filligim v. Domino's Pizza, et al., 03-3580

Plaintiff: Michael A. Wing, Mobile

Defense: Mark R. Ulmer, *Ulmer*

Hillman & Ballard, Mobile

Verdict: \$13,700 for plaintiff

Circuit: **Mobile**, 3-8-06

Judge: Sarah Hicks Stewart

On 9-21-02, Clayton Filligim, age 39 and an employee of the Red Cook Construction Company, was on a motorcycle traveling north on Saraland Boulevard in Mobile County. At the same time, a vehicle being driven by Chester Wester was approaching from