

# The Alabama Jury Verdict Reporter

The Most Current and Complete Summary of Alabama Jury Verdicts

April, 2013

Statewide Jury Verdict Coverage - Published Monthly

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## Civil Jury Verdicts

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**Fraud - A real estate company that handled a trust account containing marketing monies for a real estate developer did not hand over the remaining marketing monies after the development ended**

*Waterford, LLC. v. RE/MAX*

*Advantage, 11-900211*

Plaintiff: Tom McKnight and Sam

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Sessions, *Wallace Jordan Ratliff & Brandt, LLC.*, Birmingham  
Defense: David M. Wilson and Jud C. Stanford, *Wilson & Berryhill, P.C.*, Birmingham

Verdict: \$235,256 for plaintiff (comprised of \$108,556 in compensatory damages and \$127,000 in punitives)

Circuit: **Jefferson**, 2-4-13

Judge: Houston L. Brown

Around December of 1999, Waterford, LLC., was formed as a residential real estate developer that sought to develop a 776-home residential community in Calera. Waterford gave the exclusive listing rights for the development to the real estate brokerage RE/MAX Advantage.

Part of the agreement between

Waterford and RE/MAX was that RE/MAX would manage a marketing fund to promote the development. The marketing fund would receive money from each closing at the development.

Initially, the parties agreed to a half-percent distribution from each closing. This turned out to be insufficient to cover the marketing expenses, however, so the parties renegotiated and agreed to a variable percentage depending on the size of the home. Most deposits were between one and two percent of the closing value, and the average marketing deposit was approximately \$1,900.

RE/MAX administered the marketing fund by depositing the money in its bank account and

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**Underinsured Motorist - A wrong-way drunk driver (who was reaching for drugs and watching television on an illegal in-dash screen) crashed into the plaintiff's vehicle, flipping it end over end – the crash left the plaintiff with a permanent herniated disc injury – settling with the drunk driver for his \$100,000 limits, the plaintiff sought UIM coverage above that sum from his carrier**

*Boring v. Westfield Insurance*, 5:09-918  
 Plaintiff: Ralph W. Hornsby, Jr. and S.A. "Bud" Watson, *Hornsby Watson Hornsby & Blackwell*, Huntsville  
 Defense: Michael A. Montgomery, *Butler Pappas Weihmuller Katz Craig*, Mobile  
 Verdict: \$334,355 for plaintiff  
 Federal: **Huntsville**, 11-28-12  
 Judge: Virginia E. Hopkins  
 On the evening of 5-26-07, Joshua

Thomas engaged in dangerous driving. He was drunk and under the influence of drugs. Thomas was further distracted by an illegal in-dash television that he was watching. Finally Thomas proceeded the wrong-way on a four-lane divided highway.

Larry Boring of Duck River, TN proceeded from the opposite direction. Thomas crashed hard into the Boring vehicle. It caused that vehicle to flip end over end. Boring has since treated for a severely herniated disc in his neck.

While his neurosurgeon, Dr. Joel Ragland, Knoxville, TN, has recommended a repair surgery, it is contraindicated because of a prior infection condition. Some seven years earlier, Boring was bitten by a brown recluse spider and developed a necrotizing infection. Until that infection is fully resolved, Boring

cannot have a repair surgery for fear of introducing the infection to his spine.

Boring moved first against Thomas and took his \$100,000 policy limits. In this lawsuit against his own carrier (Westfield Insurance), Boring sought UIM coverage above that sum. Thus as the case came to trial, the only issue was Boring's damages. Westfield Insurance defended and minimized the claimed injury.

The court's instructions advised the jury to determine the amount of damages that Boring was entitled to recover because of the actions of Thomas – the charge continued that by agreement, the court would deduct \$100,000 from any award.

The jury awarded the medicals of \$9,355 plus \$75,000 for future care. Lost future earnings were rejected. Boring's pain and suffering was \$150,000, the jury adding \$100,000

more for a category called "permanent injury". The raw verdict totaled \$334,355. A consistent judgment less the underlying \$100,000 limits was entered for Boring.

As the jury had deliberated the case, it had a question for Judge Hopkins: Can we specify any award for the future surgery only be paid in the event the plaintiff has the surgery? Judge Hopkins answered simply: No.

### **Auto Negligence - Two vehicles collided at an intersection controlled by a traffic light**

*Draime v. Giesbrecht*, 11-901763

Plaintiff: Karlos F. Finley and Mark C. Wolfe, *Boteler Finley & Wolfe*, Mobile

Defense: Mark R. Ulmer, *Ulmer Hillman & Ballard*, Mobile

Verdict: Defense verdict

Circuit: **Mobile**, 11-28-12

Judge: James C. Wood

In the late afternoon of 8-15-09, Cynthia Draime was in a vehicle traveling near the intersection of Ala. Hwy. 45 and Ala. Hwy. 158 in Prichard. The intersection was controlled by a traffic signal. As Draime entered the intersection, a second vehicle driven by Kandis Giesbrecht also entered the intersection. An instant later, Giesbrecht collided with the passenger side of the vehicle occupied by Draime.

Draime suffered unspecified injuries as a result of the collision. Her medical and chiropractic bills totaled \$9,742.

Draime filed suit against Giesbrecht and blamed Giesbrecht for causing the collision by running the red light. Giesbrecht defended and minimized the damages claimed by Draime.

A Mobile jury heard the parties' arguments before returning a

defense verdict. The court entered a consistent judgment.

### **Medical Negligence - A woman suffered a stroke that required half a month's hospitalization on the morning after she was discharged from a hospital ER where she had arrived with hypertension and the symptoms of a mini-stroke**

*Thompson v. Phan*, 10-904402

Plaintiff: Valerie Rucker Russell, *Cochran Cherry Givens & Smith, P.C.*, Tuskegee

Defense: Richard E. Crum, *Shealy Crum & Pike, P.C.*, Dothan

Verdict: Defense verdict

Circuit: **Jefferson**, 12-3-12

Judge: Edward Ramsey

On the morning of 2-1-09, the 61-year-old Gloria Thompson was experiencing a headache, weakness, nausea, slurred speech, dizziness, lightheadedness, left-side weakness, and unsteady gait. She also had a history of hypertension.

Concerned, she decided to visit the ER of Princeton Baptist Medical Center. There she was treated by Dr. Joseph Phan, Emergency Medicine, who ordered a CT scan that showed a gradual loss in blood flow to the brain resulting in tissue death. He gave her Clonidine 0.2 mg and discharged her with a prescription for Norvasc.

Thompson left Princeton Baptist about three hours after she had arrived. Her blood pressure at the time of arrival had been 221/107. When she left it was 136/82.

The next day, Thompson returned to Princeton Baptist with a blood pressure of 170/94. She was also complaining of slurred speech, weakness, headache, numbness of the left side with facial drooping, and an inability to move the left side of her body. An MRI showed she had suffered a non-hemorrhage stroke.

Thompson was admitted to Princeton Baptist about four hours later. She stayed there until 2-10-09, when she was transferred to Cooper Green Mercy Hospital. She remained at Cooper Green until she was discharged on 2-20-09. She also underwent physical therapy.

During her hospitalization, Thompson accumulated medical expenses paid by Medicaid and Medicare. As a result, Medicaid had a lien for \$22,413 and Medicare a lien for \$6,165, for a total of \$28,578.

Thompson filed suit against Princeton Baptist and Dr. Phan and criticized Dr. Phan's decision to discharge her on 2-1-09. According to Thompson, she had showed the classic symptoms of a mini-stroke or a Transient Ischemic Attack (TIA) at that time, and if she had been treated appropriately she might not have suffered her more serious stroke the next day.

In her claims, Thompson was supported by her expert witnesses. She identified them as Dr. Michael Blaivas, Emergency Medicine, Atlanta, GA and Dr. Daniel Menkes, Neurology, Farmington, CT. According to Dr. Blaivas, the aggressive treatment Thompson had received to lower her blood pressure on 2-1-09 might actually have worsened her evolving stroke. According to Dr. Menkes, Princeton Baptist should have admitted her on 2-1-09 in order to monitor her condition.

Princeton Baptist was granted summary judgment and dismissed from the action. Dr. Phan defended and denied having breached the standard of care. His identified experts included Drs. Michael Catenacci and Gregory Ledbetter, Emergency Medicine, Birmingham; Dr. Ben Lucy III, Neurology, Tuscaloosa; and Dr. Patrick Ryan, Neurosurgery, Montgomery. Dr. Phan's experts opined Dr. Phan had

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