The Alabama Jury Verdict Reporter

The Most Current and Complete Summary of Alabama Jury Verdicts

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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.

FELA - When a truck driver drove out in front of a train and was injured, both the truck driver and the train conductor sought recovery from the railroad

Grandison v. Norfolk Southern Railway Co. et al., 06-61

Plaintiff: Jeffrey C. Kirby, Chris Cochran, and Joel F. Alexander III, *Pittman Dutton Kirby & Hellums, P.C.*, Birmingham, for Grandison; Joseph Charles McCorquodale III and Christopher A. Bailey, *McCorquodale & McCorquodale*, Jackson, and J. Jefferson Utsey, *Utsey & Utsey*, Butler, and J. Michael Comer of *Patterson Comer, LLC.*, Northport, and D. Mitchell Henry and J. Bradley Ponder, *Webster Henry Lyons & White, P.C.*, Montgomery, for Rolison Trucking Co., Gail Rolison, and Ronny and Kim Johnson

Defense: Steve A. Tucker and John M. Graham, *Cabaniss Johnston Gardner Dumas & O'Neal, LLP.*, Birmingham, and Ronnie E. Keahey, *Keahey Law Office*, Grove Hill

Verdict: $10,948,250 for various parties in various sums against Norfolk; plaintiffs' verdict on Norfolk's counterclaim; defense verdict for Summers

Circuit: **Clarke**, 4-17-09

Judge: D. P. Scurlock

On 2-14-05, a Norfolk Southern Railway train with four locomotives and seventy-one freight cars set out from Mobile. It would not reach Selma, its intended destination, before suffering a mishap.

The train was staffed by an engineer, John Summers, and a conductor, Dexter Grandison. As the train traveled north toward Jackson, it approached a crossing with Walker Springs Road, also known as C.R. 19. The afternoon weather was clear and dry.

The Walker Springs Road crossing was marked by regulation railroad crossbuck signs on both sides of the crossing. There were also advance railroad warning signs on the approaches to the crossing. The signs were in good condition and plainly visible. There were, however, no active warning signals such as gates, flashing signals, or warning lights. There was also no stop sign.

Although only one mainline track ran through the railroad crossing, there was a side track on the west side of the mainline track. The end of the side track was only one hundred feet from the crossing. Several box cars were parked on the side track.

As the Norfolk train approached the intersection, Ronny Johnson, then aged 34, was driving eastbound along Walker Springs Road in a tractor-trailer logging truck. Ronny was working for the Rolison Trucking Company, and the truck was owned by Gail Rolison. Four other motorists were also present at the intersection as well. As Ronny attempted to drive across the tracks, the train smashed into his truck, snapping the tractor portion from the trailer portion.

In the train, Grandison suffered injuries to his back. He later underwent surgery but continued to experience pain. Ronny also suffered injuries and filed a workers' compensation claim. The record does not reveal the nature or severity of Ronny's injuries, but at trial, Ronny's workers' compensation carrier had a subrogation claim of $40,391.

Grandison was the first to file suit. In a FELA action filed in Clarke County, he claimed that Norfolk, Ronny, and Rolison Trucking were responsible for his injuries. According to Grandison, Norfolk had improperly allowed boxcars to be parked on the side track where they had blocked Ronny's vision of the oncoming train. Grandison also blamed Ronny for having driven into the train's path and Rolison Trucking for being the owner of the truck. He sought $800,000 in damages.

The next to file suit was Norfolk, which sought a federal venue. The federal action was subsequently dismissed.

the Visx laser system itself, but it knew another company that could. A manager for Vision Alliance, Jeffrey Fine, called Mobile Laser Systems, a Georgia company, and asked them to send a Visx laser system and technician to Vision First.

The new Visx machine arrived and was ready for its first use on 9-18-03. Dr. Bearman and his staff converted the optometric measurements for the first eight patients and performed their surgeries successfully.

Kelly was the ninth patient. For her, Dr. Bearman allowed the technician from Mobile Laser Systems to convert Dr. McClintock's optometric measurements and to enter the converted information into the laser system. Unfortunately, the technician input a "plus" symbol instead of a "minus" symbol at one point, and Dr. Bearman did not check the technician's entry. As a result, Kelly's vision was permanently damaged.

Kelly and her husband, Mark Leo, filed suit against all parties they believed responsible for Kelly's injury. This included Drs. McClintock and Bearman, Vision First, Mobile Laser Systems, Vision Alliance, and Jeffrey Fine.

Plaintiffs' identified experts included Dr. Jeffrey Horn, Ophthalmology, Nashville TN. It was Dr. Horn's belief that violated the standard of care by not having verified the technician's entries before beginning the operation and not having investigated the technician's qualifications.

Vision Alliance and Jeffrey Fine were at fault, according to plaintiffs, for not having provided Vision First with a competent technician. Kelly sought compensation for her past and future medical expenses, lost income, and mental anguish. Mark claimed emotional distress and time and money spent helping Kelly.

Defendants reacted to this lawsuit in very different ways. Mobile Laser failed to respond at all, and the court eventually entered a default judgment against it. Vision Alliance and Jeffrey Fine argued that Mobile Laser was an independent contractor.

Accordingly, Vision Alliance and Fine did not believe they were responsible for its technician's error. The court agreed and granted summary judgment to these defendants. Dr. McClintock also was dropped from the list of defendants.

By the time the case went to trial in Birmingham, only two issues remained: 1) the amount of damages the defaulted Mobile Laser owed to plaintiffs, and 2) whether Dr. Bearman breached the standard of care by not having checked the technician's entry before performing surgery on Kelly.

The jury returned a verdict for Dr. Bearman and Vision First. It also awarded Kelly $550,000 in damages and $50,000 to Mark against Mobile Laser. The court entered a consistent judgment. The record does not reveal whether any attempt was made to collect the judgment.

Auto Negligence - A husband and wife suffered soft-tissue injuries in a rear-end crash; although plaintiffs prevailed at trial, they unsuccessfully sought either a new trial or *additur* based in part on allegations of juror misconduct

Gormandy v. Gaines, 05-3352
Plaintiff: Gary L. Armstrong, *Gary L. Armstrong, P.C.*, Spanish Fort
Defense: Celeste Patton Armstrong, *Varner & Associates*, Birmingham
Verdict: $4,515 for plaintiffs (allocated $4,081 to John; $434 to Cathy)
Circuit: **Mobile**, 5-8-08
Judge: John R. Lockett

On 12-10-04, John Gormandy was riding as a passenger in a vehicle being driven by his wife, Cathy Gormandy. The two were traveling near the intersection of Shelton Beach Road Extension and I-65 in Mobile County. Behind them was a vehicle being driven by Floyd Gaines.

The Gormandys stopped for a red light. According to the Gormandys, Gaines attempted to follow suit, but he applied his accelerator instead of his brake. As a result, Gaines rear-ended the Gormandys.

Both of the Gormandys claimed soft-tissue back injuries that they attributed to the crash. The record does not reveal the amount of their respective medical expenses. In addition, Cathy presented a claim for her loss of consortium.

The Gormandys filed suit against Gaines and blamed him for crashing into them. As it happened, the Gormandys had been scheduled to go on a cruise vacation the very day after the crash. Thus, in addition to their other damages, the Gormandys claim that their pain due to their crash-related injuries ruined their cruise.

Gaines himself died of unrelated causes on 6-22-07. The litigation proceeded against his estate. Defendant admitted liability and minimized the claimed injuries.

A jury in Mobile heard the case and returned a verdict for the Gormandys. John was awarded damages of $4,081, and Cathy was awarded $434. That brought the combined award to a total of $4,515. The court's judgment for that amount has been satisfied.

Post-trial, the Gormandys filed a motion for a new trial or for *additur* based among other things on allegations of juror misconduct. Specifically, one of the prospective jurors, Ricky Richardson, claimed during voir dire that he did not know John Gormandy.

The Gormandys claim that Richardson's denial on that point was a lie. In reality, Richardson's brother had worked for John some three years prior to the trial. During that time, John discovered that Richardson's brother was gathering information on John's business in order to start his own competing business.

John fired the brother who then joined with Richardson to start a business called U.S. Machine Services in competition with John. It is John's belief that due to this past history, Richardson harbors an extreme dislike for John, yet Richardson denied even knowing him.

Without knowing of the bad blood between John and Richardson, plaintiffs' counsel peremptorily struck Richardson from the jury pool. Before his departure, however, Richardson was seen to have several "whispering" conversations with another prospective juror who in fact later became the jury foreman.

It is not known what was said during these "whispering" conversations. However, the Gormandys are convinced the conversations included negative statements about John. Thus, according to the Gormandys, the jury was tainted, and either a new trial or *additur* would be an appropriate remedy. The court denied the motion.

Auto Negligence - Plaintiff's soft-tissue injuries arising out of an intersection crash were valued at $25,000 in Blount County

Jones v. Morgan, 06-174
Plaintiff: Susan B. White, Oneonta
Defense: Ralph D. Gaines, III and Shelley Lewis, *Gaines Wolter & Kinney*, Birmingham
Verdict: $25,000 for plaintiff
Circuit: **Blount**, 1-28-09
Judge: Steven D. King

On 7-4-04, L.G. Jones, then age 68, was driving a 1999 Lincoln Town Car on AL 79 in Blount County. At the intersection with U.S. 278, Jones attempted to make a left turn. In doing so, he collided with a vehicle being driven by Samuel Morgan.

Jones sustained injuries to his wrist, shoulder, and back due to the crash. He underwent a course of chiropractic treatments, as well as a series of steroid injections spaced at three month intervals over the subsequent eight months.

Jones's medical expenses exceeded $24,000. Except for co-pays and deductibles, all of Jones's medical expenses were paid by Medicare and Blue Cross/Blue Shield.

Jones filed suit against Morgan and blamed him for causing the crash. In addition, Jones also made an uninsured/underinsured motorist claim against Alfa Insurance.

Alfa Insurance opted out of the case, and the litigation continued against Morgan. He defended and minimized the claimed damages.

The case was tried in Oneonta. The jury returned a verdict for Jones and awarded him damages of $25,000, all of which was for pain and suffering. The jury awarded zero for Jones's medical expenses. The court's consistent judgment, plus costs of $451, has been satisfied.

Construction Contract - The owner of a strip mall sued its general contractor for damages associated with purportedly subpar construction – the owner lost at trial, the jury awarding the contractor damages on its collection counterclaim

Mobile Alabama Associates v. Hoeppner Construction Company, 1:07-432
Plaintiff: David A. Hamby, Jr. and John M. Teague, *Richardson Spear Spear & Hamby*, Mobile
Defense: L. Hunter Compton and Jason B. Nimmer, *Alford Clausen & McDonald*, Mobile
Verdict: Defense verdict on plaintiff's defective construction claim; $270,500 for defendant on its counterclaim for unpaid sums on the contract
Federal: **Mobile**, 3-13-09
Judge: Callie V.S. Granade

This case concerned the construction of a retail strip mall in Semmes, AL known as the Klein Retail Center. The owner of the strip mall, Mobile Alabama Associates (MAA) alleged the general contractor on the project, Hoeppner Construction, had done defective work. While MAA had paid Hoeppner Construction some $2.2 million, it later withheld payment because of purported poor performance.

The defects in the construction as alleged by MAA were wide-ranging. In this lawsuit, it sued Hoeppner Construction and sought the $850,158 it spent to finish the job plus another $300,000 to correct waterproofing errors. As the case went to a jury, the plaintiff alleged breach of contract and implied warranty, as well as negligence, fraud and wantonness. Hoeppner Construction defended that it fully performed under the contract – it presented a counterclaim for unpaid sums on the original $2.425 million dollar contract.

The verdict was mixed at trial. While MAA lost on the defective construction counts, Hoeppner Construction prevailed on its counterclaim. It was awarded damages of $270,500. The defendant has since sought attorney fees. There remains pending litigation regarding this transaction in state court.

Auto Negligence - A retired couple crashed into the rear of a trailer being hauled by a carport installer who had stopped abruptly in the road because he had missed a turn; plaintiffs focused their litigation efforts on the carport manufacturer after it turned out one of the owners of the installation company was an illegal alien who was later deported to Mexico

Hill, et al. v. T-N-T Carport, Inc., et al., 05-1295
Plaintiff: Robert Potter, *Mann Cowan & Potter, P.C.*, Birmingham
Defense: William K. Bradford, *William K. Bradford, LLC.*, Birmingham, for T-N-T Carport; Ralph D. Gaines, III, *Gaines Wolter & Kinney, P.C.*, Birmingham, for Ernesto Camacho and Chacalapa Installations
Verdict: Defense verdict for T-N-T Carport, Inc.
Circuit: **Etowah**, 9-12-08
Judge: William H. Rhea, III

In June of 2005, Fernando Rivero and Laura Ramirez were the owners and operators of a company called Chacalapa Installations. Through their company, Fernando and Laura were hired by T-N-T Carport, Inc., a North Carolina company that manufactures carports, to install T-N-T's carports throughout the eastern and southeastern United States.

On 6-16-05, Fernando and Laura dispatched their employee, Ernesto Camacho, to install one of T-N-T's carports at a location in Gadsden. In order to transport himself and his materials to the job site, Camacho was driving a 1995 Ford F-250 pickup truck that was hauling a trailer. Both the truck and the trailer were owned by Fernando and Laura.

Camacho completed the installation in Gadsden and then headed out to another job site in Rainbow City. As he traveled on East Grand Avenue, he was in front of a vehicle being driven by James Hill. Hill's wife, Marthine Hill, a retired nurse's aide, was riding with him as a passenger.

Camacho intended to make a turn onto Christopher Street. However, he missed his turn and decided to backtrack. He did so by stopping to make a right turn onto Baptist Health Center Drive. From Hill's perspective, Camacho's stop was abrupt and unexpected. Hill was unable