

The Alabama Jury Verdict Reporter

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Statewide Jury Verdict Coverage - Published Monthly

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Products Liability - A Japanese "gray market" tractor imported into the United States rolled over and caused serious injuries to the man who was using it to mow a grassy slope

Nichols v. Yanmar Diesel Engine Co.,
09-900054

Plaintiff: Roger Lucas and Jeffrey C. Rickard, *Marsh Rickard & Bryan, P.C.*, Birmingham; and William H. Atkinson, *Fite Davis Atkinson Guyton & Burt*, Hamilton

Defense: Richard H. Rubenstein, *Wilson Elser Moskowitz Edelman & Dicker, LLP.*, New York, NY; James B. Carlson, *Christian & Small, LLP.*, Birmingham; and Jeffery A. Mobley, *Lowe Mobley Lowe & LeDuke*, Haleyville

Verdict: \$900,000 for plaintiffs

Circuit: **Marion**, 5-3-13

Judge: John H. Bentley

On 5-1-08, the disabled 52-year-old Randy Nichols was mowing a sloped field on a friend's property. He did not walk the field in which the grass had grown knee-high before starting to mow it.

The mower he was using was a Yanmar brand tractor, model 2210BD, equipped with a front end loader and bushhog implements. It had been "purpose-built" by Yanmar in Japan with a narrow-wheel width and a light weight best suited for use in rice paddies in Japan.

Although Nichols's mower had originally been sold to a buyer in Japan in 1979, a Walker County dealer, ARTEC, bought it in 2005 from a Japanese trading company

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Case Style _____

Jurisdiction _____ Case Number _____

Trial Judge _____ Date Verdict _____

Verdict _____

For plaintiff _____ (Name, City, Firm)

For defense _____ (Name, City, Firm)

Fact Summary _____

Injury/Damages _____

Submitted by: _____

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that the only claim to be tried would be that for breach of contract. A Birmingham jury listened to both sides of the dispute before returning a verdict of \$40,000 for the Staubs. The court entered a consistent judgment, and it has since been satisfied.

Auto Negligence - Plaintiff suffered a bulging disc due to a low-impact rear-end crash; the jury found for plaintiff but awarded only her medical expenses

Bettis v. McCall, 11-900176

Plaintiff: John M. Gibbs, *Gibbs & Sellers, P.C.*, Demopolis

Defense: Kyle Morris, *William Kyle Morris, LLC*, Mobile

Verdict: \$10,686 for plaintiff

Circuit: **Dallas**, 2-18-13

Judge: Marvin W. Wiggins

On 11-24-10, Marie Bettis was driving along Marie Foster Street near its intersection with Highland Avenue in Selma. With her was a passenger, Jimmy Lee Rogers. An instant later, Bettis was rear-ended by a vehicle being driven by Robert McCall.

Bettis and Rogers allegedly suffered neck injuries as a result of the collision. Bettis was taken by ambulance to a medical center, after which she visited a chiropractor sporadically for treatment. An MRI

taken around October 2011 showed a bulging disc in Bettis's lower back. She incurred \$10,686 in medical and chiropractic expenses.

Bettis and Rogers filed suit against McCall and blamed him for causing the collision. Their theories included negligence and wantonness. Plaintiffs also named Bettis's underinsured motorist carrier, GEICO Indemnity Company, as a co-defendant.

GEICO opted out of the action. McCall settled for his policy limits of \$25,000, which GEICO agreed to pay to retain its subrogation rights. The remaining issue was whether Bettis's injuries had been proximately caused by the accident.

Defendants claimed Bettis suffered from arthritic changes that predated the accident. They further pointed to the fact that the accident photos showed no damage to the vehicles to support their argument that the low-impact collision was not the cause of Bettis's physical problems.

With respect to Rogers, the record does not show the outcome of his claim. However, that claim does not seem to have survived to trial.

The case was tried in Selma. The jury returned a verdict for Bettis in the amount of \$10,686. The court entered a consistent judgment. Plaintiff moved for a new trial on the ground that Bettis was entitled to more than her medical expenses. At the time the AJVR reviewed the record, the court had not yet ruled on plaintiff's motion.

Excessive Force - The plaintiff suffered paralyzing injuries when a policeman fired seven shots into the man's car – the policeman defended that the plaintiff was preparing to drive over his partner

Morton v. Guntersville Police,
5:10-1658

Plaintiff: Harvey B. Morris, David J. Hodge and Joseph D. Aiello, *Morris King & Hodge*, Huntsville

Defense: Gary K. Grace and J. Mark Debro, *Grace Matthews & Debro*, Huntsville

Verdict: Defense verdict on liability
Federal: **Huntsville**, 5-20-13

Judge: Abdul K. Kallon

Alex Morton, then age 21, was in a vehicle in a parking lot near Lake Guntersville late on the evening of 1-7-10. He may or may not have been manufacturing meth – meth and meth-making products would later be found in his car. Whether he was or not, a Guntersville policeman, Jeremy Kirkwood and his partner noticed the car.

Kirkwood would recall it was a very frigid night and he intended to check on the safety of the vehicle's occupant. Kirkwood had no reason to suspect any criminal activity was afoot.

Morton testified that he saw the police approaching and stopped his vehicle – it had been at a slow roll. He then put his hands up. Just as Morton did so, Kirkwood fired some seven shots into the car.

A bullet struck the unarmed Morton in the spine, fracturing his T-9 vertebra. This has left Morton permanently paralyzed. In this lawsuit he alleged the use of excessive force in firing into his car. He focused that he was stopped when Kirkwood fired and that not only was there no reason to fire, there was no reason even to suspect a crime. The plaintiff also presented a separate state-law battery count.

The police defended and presented a sharply clashing view of what happened. The policeman testified that he only fired his weapon after Morton accelerated towards his partner who was in front of the vehicle. The defense noted this theory of a fleeing Morton was a reasonable one, Morton later being found in possession of meth. Morton replied as described above that he was stopped and in the process of submitting to the police when he was shot.

The jury's verdict was for the government on both excessive force and assault counts, Morton taking nothing. A defense judgment was entered.

Medical Negligence - While hospitalized, a patient with blood pressure problems took central nervous system depressants and died of respiratory and kidney problems shortly thereafter

Estate of Jackson v. Harvey, 07-901580

Plaintiff: Stephen D. Heninger, *Heninger Garrison Davis, LLC*, Birmingham

Defense: Larry W. Harper and William T. Mills, II, *Porterfield Harper Mills & Motlow, P.A.*, Birmingham

Verdict: Defense verdict

Circuit: **Jefferson**, 3-1-13

Judge: Michael G. Graffeo

On 8-20-05, Pamela Jackson was admitted to Brookwood Medical Center as a patient. While there, her nurse was Anna Newell, and she received treatment from Dr. D. Shawn Harvey, Psychiatry, and Dr. Emmanuel Odi, Internal Medicine. Multiple medications were prescribed and given to Jackson, including the central nervous system depressants Neurontin, Haldol, and Zyprexa. Jackson was also taking medications for her blood pressure.

On 8-22-05 and 8-23-05, Jackson's blood pressure changed significantly.

A Notable Kentucky Verdict (*Involving Alabama Lawyers*)

Products Liability - The driver was killed and two passengers (all college students) were seriously injured when a Mercury Mountaineer rolled over on I-64 near Frankfort – the plaintiffs blamed the crash on the SUV's lack of stability control – Ford defended and cited excessive speed and driver error

Hinkle et al v. Ford, 3:11-24

Plaintiff: Donald K. Slavik and William D. Shapiro, *Robinson Calcagrie Robinson Shapiro Davis*, Newport Beach, CA and Kevin F. Hoskins, *Dressman Benzinger LaVelle*, Crestview Hills, KY

Defense: D. Alan Thomas and Paul F. Malek, *Huie Fernambucq & Stewart*, Birmingham, AL and R. Thad Keal, *Turner Keal & Dallas*, Prospect, KY and Stephanie A. Douglas, *Bush Seyferth & Paige*, Troy, MI

Verdict: Defense verdict on liability
Federal: **Lexington, Kentucky**

Judge: J. Reeves, 5-22-13

Kiara Hinkle, age 22, was driving a friend's 2004 Mercury Mountaineer SUV on 4-11-10. The vehicle carried four passengers including Jason Turner, age 19, and Natya Safford, age 23. All were college students at UK. They were traveling to a church function in Louisville.

As Hinkle proceeded near mile marker 58 in Frankfort, another vehicle veered into her path. Hinkle attempted to evade. In the process of doing so, she lost control of the SUV. It first yawed and then rolled some six times. Hinkle, an architecture major, was dead at the scene.

Turner suffered serious injuries to his hand and wrist. Safford's arm was badly injured. The other two passengers suffered only minor injuries and were not a part of this litigation.

In this lawsuit the Hinkle estate

and Turner and Safford individually sued Ford and alleged the SUV was defective. They were critical of it for lacking either electronic stability control or roll stability control. The plaintiffs developed that if the Mountaineer had the stability control, it wouldn't have yawed and rolled.

A key expert for the plaintiffs was Murat Okcuglu, a former Ford Engineer, who opined that the addition of stability control was a simple engineering question. Why then wasn't it added? Okcuglu suggested that Ford appreciated the roll-over risk, but delayed the implementation of stability control to increase profits. This argument had buttressed a claim for punitive damages – however the trial court granted summary judgment for Ford on this question. An accident reconstructionist for the plaintiffs was Michael McCormack.

If Hinkle's estate prevailed, it sought her funeral bill of \$6,827 and \$6,310,148 more for destruction. [Her destruction was quantified by Stan Smith, Economist.] Turner's medicals were \$231,961 and he additionally sought pain and suffering. Similarly Safford claimed medicals of \$31,338 and her pain and suffering.

Ford defended the case and blamed the crash on driver error by Hinkle. It noted that the SUV's computer indicated that Hinkle was traveling at 90 mph just before the crash. Then when she overcorrected on the highway, the passenger side roll-over event commenced.

Ford also responded to the stability control claim and argued its SUV was safe and met the then state-of-the-art design. Notably the manufacturer explained, even if this vehicle had been equipped with stability control, the result would have been the same. Its experts were Todd Hoover, Accident

Reconstruction, Donald Tandy, Engineer, Robert Pascarella, Auto Design and Catherine Corrigan, Biomechanics.

The case was tried for two weeks, the jury deliberating 2 ½ hours on a Wednesday afternoon. The court's instructions required the plaintiffs to prove all of the following in separate sub-categories of the liability interrogatory, (1) the vehicle was defective and not in a reasonably safe condition, (2) it existed at that time of manufacture, (3) this condition created such a risk of accidental injury that no prudent manufacturer would put it on the market, (4) at the time of manufacture, the design did not conform to the state-of-the-art, (5) the plaintiffs proved a safer alternative design, and (6) the condition was a substantial factor in causing damage.

The jury answered no to all six of the separate sub-categories and that ended the deliberations. A "no" to any of the six sub-categories would have been fatal to the claim. Having so ruled the jury did not reach the duties of Hinkle, apportionment or damages. A consistent judgment was entered by the court.

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