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

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.

Fraud - The owner of a logging business purchased a log skidder only to find later that it was a one-of-a-kind prototype that didn't work; plaintiff was awarded punitive damages that were roughly ten times his claimed compensatory damages

Chapman v. Bama Logging Equip. Co., et al., 06-118

Plaintiff: David J. Hodge, *Pittman Dutton Kirby & Hellums, P.C.*, Birmingham; M. Vance McCrary, *The Gardner Firm, P.C.,* Mobile; and James Seale, III, *Seale Holmes & Ryan, LLC.*, Greensboro

Defense: John W. Clark, Jr. and Eric D. Bonner, *Clark Hair & Smith, P.C.*, Birmingham, for Bama Logging; James C. Barton, Jr., William D. Jones, III, and Natalie A. Cox, *Johnston Barton Proctor & Rose, LLP.*, Birmingham; and Matthew J. Landreau and Lauren K. Dimitri, *Page Scrantom Sprouse Tucker & Ford, P.C.*, Columbus, GA, for Cummins

Verdict: $16,069,000 for plaintiff

Circuit: **Hale**, 5-13-09

Judge: Jack W. Meigs

Charles Chapman, owner of a logging business, wanted to drag cut logs from the woods to a loading area where they could be loaded onto a log trailer. To do this, he needed to buy a large piece of equipment known as a "log skidder."

On 12-1-05, Chapman visited Bama Logging Equipment Company and bought what he believed was a demo unit made by the Franklin Equipment Company. The new log skidder's price was $137,000. Chapman traded in his old log skidder for $29,000 and paid an additional $110,700 to close the deal.

Unbeknownst to Chapman, the log skidder he had purchased was actually a one-of-a-kind prototype. Franklin had built it using a Tier II engine made by Cummins, Inc. After Cummins had tested its engine in Franklin's prototype, however, the company determined that the prototype skidder's cooling system was below Cummins's requirements for its engine.

Cummins notified Franklin of the problem and recommended that Franklin's design not be put into production without corrections. In 2005, however, Franklin sent the prototype skidder to Bama Logging.

For about three months, Chapman was able to use his skidder. After that time, it started to overheat and cease to function. Under the warranty that Cummins had sold to Franklin, Chapman called Cummins to come repair his engine.

The local Cummins distributor, which did not know the skidder was a prototype, attempted unsuccessfully on multiple occasions to effect repairs. A Franklin representative also tried unsuccessfully to repair the skidder.

Eventually, Chapman decided to file suit against the entities he believed responsible for his ongoing skidder problem. He named Bama Logging Equipment, Franklin Equipment, and Cummins as defendants on counts for breach of contract, breach of express and implied warranties, and fraud.

Franklin initially responded to the suit but filed for bankruptcy protection before trial. Bama Logging defended and minimized damages. Cummins also defended and minimized damages.

In particular, Cummins argued it was not responsible for any fraud because there had been no communication between it and Chapman before Chapman bought the skidder. Cummins had sold the engine to Franklin, not Chapman.

Chapman countered that the presentation of a repair warranty constituted fraud because the engine was not repairable. Moreover, Cummins had never informed him that the engine was not repairable. Rather, the company had simply made unsuccessful warranty repair attempts.

At trial, Chapman argued that he had lost business because of his malfunctioning log skidder. According to him, he could have hauled an additional four loads of logs per day with an average income of $300 per

She filed suit against the Hertzogs and blamed them for the crash.

In her complaint, Fleming alleged counts for negligence, wantonness, and negligent entrustment. The Hertzogs defended the case and minimized the claimed damages.

At the conclusion of a three-day trial in Birmingham, the jury returned a defense verdict. The court followed with a consistent judgment. Prior to trial, defendants made an Offer of Judgment in the amount of $3,000.

Product Liability - A woman was thrown against her seat belt in a car crash and died of internal bleeding; the woman's estate blamed her death on defective seat belt design by the car manufacturer

Simmons v. General Motors Corp., 06-130
Plaintiff: Christopher D. Glover, *Beasley Allen Crow Methvin Portis & Miles*, Montgomery; Matt Abbott and Vann Davis, *Abbott & Davis, LLC.*, Pell City
Defense: Robert R. Baugh, *Sirote & Permutt, P.C.*, Birmingham; and Paul V. Cassisa Jr., *Bernard Cassisa Elliott & Davis*, Oxford, MS
Verdict: Defense verdict
Circuit: **St. Clair**, 2-9-09
Judge: James E. Hill

On the morning of 3-2-05, Helen Simmons was driving her 1987 Blazer along AL 174 near its intersection with Pearl Lake Road in St. Clair County. Another motorist noticed her truck swerve from side to side on the highway, and he thought Simmons was slumped to her right.

Abruptly, the truck made a right turn off the highway. It traveled about 245 feet and crashed into a clump of trees while still moving at an approximate speed of 23 to 25 mph. Simmons struck her head on the dashboard near the radio, but she was able to talk with people at the accident scene. The cut on her forehead was not serious.

Her abdominal injuries turned out to be much more serious. Simmons suffered a cracked spleen from direct contact with some object in the truck. She also suffered deceleration injuries in the form of a torn mesentery and a ripped small intestine. The internal bleeding from these injuries led to her death.

Simmons' Estate filed suit against General Motors Corporation, the manufacturer of her Blazer, and blamed it for Simmons' death. According to the estate, General Motors had built the seat belt with a comfort feature that allowed dangerous amounts of slack.

It was the estate's contention that comfort feature constituted defective design. The estate also made claims that General Motors had failed to warn Simmons of the seat belt danger and had breached express and implied warranties.

General Motors defended the case on several fronts. First, the company pointed out the truck and its seat belt had been made in 1987 and were thus 18 years old. During that time, the truck had been driven more than 271,000 miles, so naturally the seat belt showed some wear.

However, General Motors argued, the wear did not affect the seat belt's performance in a crash, merely the ease with which an occupant could set the comfort feature. Moreover, General Motors believed Simmons had been contributorily negligent for not replacing a seat belt that was not functioning properly.

Second, General Motors argued that Simmons had been contributorily negligent because she hadn't been wearing her seat belt properly. According to General Motors, a lap belt should be worn low and snug. Simmons' injuries had been typical of a mispositioned lap belt. General Motors pointed to Simmons's obesity as an explanation for why she might have mispositioned her belt.

The estate disagreed strongly with General Motors's explanations for Simmons's death. According to the estate, the probable cause of Simmons's deceleration injuries was not the lap belt but the shoulder belt.

Instead of a lap belt that had been too high, the estate believed the shoulder belt had been so loose that it rode low enough to cause Simmons' high abdomen injuries. The estate's identified experts included Dr. Donald Reiff, Trauma Surgery, Birmingham, who treated Simmons and offered the opinion that a lax seatbelt was consistent with her injuries.

Shortly before trial, the two parties mutually agreed to dismiss the estate's claims for failure to warn and breach of express and implied warranties. A Pell City jury heard the case and returned a verdict for General Motors. The court entered a consistent defense judgment.

Auto Negligence - A utility worker who had been using a lift bucket to install equipment on a pole completed his work, stepped out of the lowered bucket, and was hit by a passing motorist

Brackett v. Cooley, 06-1936
Plaintiff: John P. Browning and C. William Daniels, *Bowron Latta & Wasden, P.C.*, Mobile
Defense: Mark J. Everest, *Galloway Wettermark Everest Rutens & Gaillard*, LLP., Mobile
Verdict: Defense verdict
Circuit: **Mobile**, 11-8-07
Judge: John R. Lockett

In February of 2005, Angel Cooley was working for the University of South Alabama Medical Center by carrying liens to the Mobile County Courthouse to be recorded and perfected. Under her arrangement with her employer, she drove her own Isuzu Rodeo to the courthouse but expected to be reimbursed for her mileage.

On one particular day, Cooley completed her courthouse run and then headed west down Church Street in Mobile. While Cooley had been filing liens, David Brackett had been working at the corner of Church Street and Clairborne Street.

Brackett was a subcontractor for a fiber optics company, and that day he had been elevated in a bucket truck to install equipment on a pole. When the bucket was lowered, Brackett started to step out of it. He did so just as Cooley drove by, and she ran into him.

The record does not reveal the nature of Brackett's injuries or the amount of his medical expenses. He filed suit against Cooley and blamed her for running into him. Cooley admitted she hit Brackett, but she minimized his claimed damages.

Cooley also argued that since she was working for a state agency at the time she hit Brackett, she was entitled to state agent immunity. Brackett fired back that she had been returning from her assignment of filing liens and thus

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