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.

Medical Negligence - After a hysterectomy, a woman's tissue sample was diagnosed as containing a benign leiomyoma; three years later it was learned she had actually been suffering from malignant leiomyosarcoma

Estate of Collins v. Lozano, 06-207
Plaintiff: Francois M. Blaudeau and Keith Jackson, *Riley & Jackson, P.C.*, Birmingham
Defense: George E. Knox, Jr. and Jeffrey T. Kelly, *Lanier Ford Shaver & Payne, P.C.*, Huntsville
Verdict: Defense verdict
Circuit: **Jefferson**, 4-15-11
Judge: Elisabeth A. French

On 8-16-02, Christina Collins was admitted to St. Vincent's Hospital to undergo surgery to remove her uterine fibroids and her uterus, cervix, fallopian tubes, and ovaries. Dr. Lewis Fowlkes, of Birmingham Ob/Gyn, P.C., performed the surgery.

Some of Collins's excised tissue was sent the same day to Dr. Richard Lozano, a pathologist, of Cunningham Pathology, LLC. Dr. Lozano reported leiomyoma, a benign condition. A further interpretation also showed a large leiomyoma.

On 7-13-05, Collins sought evaluation from her treating physician regarding the trouble she was having breathing. Nine days later, she was diagnosed with a cancerous tumor in her lungs. It was thought that the tumor had spread from a uterine low grade leiomyosarcoma.

Collins filed suit against Dr. Fowlkes, Birmingham Ob/Gyn, Dr. Lozano, and Cunningham Pathology. She criticized them for failing to identify and diagnose her leiomyosarcoma in 2002. In Collins's mind, the three-year delay in diagnosis had significantly reduced her life expectancy. Collins's husband John filed a derivative claim for loss of consortium. Plaintiffs' identified experts included Dr. Khush Mittal, Pathology, New York City, NY.

Defendants responded and denied having breached the standard of care. All defendants but Dr. Lozano were voluntarily dismissed from the action before trial. Collins died before trial and was replaced in the action by her estate.

A Birmingham jury heard the parties' arguments and reviewed their evidence in a seven-day trial before returning a defense verdict. The court entered a consistent judgment.

Auto Negligence - A rear-end collision on Airport Boulevard left at least two people injured

Thomley v. Perry, 08-900578
Plaintiff: Robert L. Mitchell, *Cunningham Bounds, LLC.*, Mobile
Defense: James W. Killion, *Killion & Associates*., Mobile
Verdict: $2,000 for plaintiffs
Circuit: **Mobile**, 3-22-11
Judge: Sarah Hicks Stewart

On 4-13-06, Charles Thomley, Sr. and Charles Thomley, Jr. were in a vehicle on Airport Boulevard in Mobile. Behind them was driving Octavia Perry. For reasons not disclosed by the record, Perry's vehicle abruptly rear-ended the vehicle occupied by the Thomleys.

The Thomleys were injured in the collision. The record does not identify the nature of their injuries or the amount of their medical expenses.

The Thomleys filed suit against Perry and blamed her for causing the collision. They also named their his UIM/UM carrier, State Farm Mutual Automobile Insurance Company, as a co-defendant.

State Farm opted out of the action. Perry defended and minimized the damages claimed by plaintiffs.

After a one-day trial in Mobile, a jury

awarded Thomley, Sr. $2,000 and Thomley, Jr. zero dollars. The court entered a consistent judgment, and it has since been satisfied.

Fraud - A son obtained his mother's power of attorney, withdrew large amounts of money from her bank account, and took her Social Security benefits

Baggett v. Baggett, 09-2505
Plaintiff: William E. Bright, Birmingham
Defense: Beverly Paschal Poston, Cullman
Verdict: $140,000 for plaintiff
Circuit: **Jefferson**, 7-26-10
Judge: Ed Ramsey

In 2009, Lucille Baggett, a depositor at Wachovia Bank and a recipient of money from the Social Security Administration, filed suit against her son Samuel Baggett. She claimed he had obtained her power of attorney under false pretenses and had then taken $72,931 from her bank account for his personal use. She also claimed he had taken $8,771 of her Social Security benefits and had obtained $32,000 in loans from her. Her theories included fraud, conversion, and unjust enrichment.

Samuel defended the case and denied his mother's claims. According to Samuel, his mother had given him a power of attorney with no fraud on his part.

During the trial in Birmingham, Lucille testified she had never seen the power of attorney and had not signed it. Samuel said she was lying. A jury found in favor of Lucille and awarded her $140,000. The court entered a consistent judgment and denied Samuel's motion for new trial. Thereafter, Samuel filed for Chapter 7 bankruptcy relief. The case was eventually dismissed for failure to prosecute.

Auto Negligence - A collision occurred between two vehicles in Mobile County

McRae v. Hightower, 10-900770
Plaintiff: Jason S. McCormick, *McCormick & Brown, LLC*., Mobile
Defense: James W. Killion, *Killion & Associates., P.C.*, Mobile
Verdict: $7,719 for plaintiff
Circuit: **Mobile**, 4-6-11
Judge: Rick P. Stout

On 7-14-08, Virginia McRae was driving near the intersection of Moffett Road and Western Drive in Mobile County. Suddenly, another vehicle driven by Ginger Hightower collided with McRae's vehicle.

McRae was injured in the collision. The record does not describe the nature of her injuries or the amount of her medical expenses.

McRae filed suit against Hightower and blamed her for causing the collision. Her theories included negligence and wantonness. McRae also named her UIM/UM insurer, State Farm Mutual Automobile Insurance Company, as a co-defendant.

State Farm opted out of the action. Hightower defended and minimized the damages claimed by McRae.

After a two-day trial, a Mobile jury returned a verdict of $7,719. The court entered a consistent judgment.

Premises Liability - A customer at Office Depot was injured when she walked near two boxes of tables that were in a shopping cart and the boxes shifted and struck her forehead and shoulder

Jones v. Office Depot, 09-903872
Plaintiff: Oscar W. Adams, III, *Adams Law, P.C.*, Birmingham
Defense: Rick D. Norris, Jr., Richard T. Littrell, and Richard E. Smith, *Christian & Small, LLP*., Birmingham
Verdict: Defense verdict
Circuit: **Jefferson**, 2-7-11
Judge: Helen Shores Lee

In the afternoon of 10-31-08, Susie Jones had a job interview scheduled. She needed copies of her resume, so she hurried to an Office Depot store in Birmingham to have the job done. As soon as she entered the store, she turned left toward the copy center, which was at the front of the store at the far left side.

To reach the copy center, Jones had to proceed along an area about 10 feet wide near the front of the store. As she walked toward the copy center, she abruptly was hit by a large and heavy object on the left side of her forehead. The object then fell to strike her shoulder.

As it turned out, Jones had been struck by two large boxes containing tables. A store employee had been helping a customer reposition the boxes in the store cart. The cart and boxes together were about two and a half feet long. Jones did not see the boxes before they struck her, although she could see them afterward.

Jones was injured as a result of the falling boxes. The record does not show the nature of her injuries or the amount of her medical expenses.

Jones filed suit against Office Depot and blamed it for dropping boxes of tables on her. Her theories included negligence and wantonness. Office Depot defended and argued that Jones could have seen the boxes if she had been watching more closely where she was going.

A Birmingham jury considered the parties' arguments and returned a defense verdict. Dissatisfied with this outcome, Jones moved for a new trial. The court granted her motion. The case is currently on appeal.

Auto Negligence - A few seconds after a driver made a U-turn late at night, he was rear-ended by a speeding motorcycle ridden by a drunk driver

Estate of Pierce v. Hernandez, 08-901199
Plaintiff: Mark C. Wolfe and Richard G. Alexander, *Boteler Finley & Wolfe*, Mobile
Defense: William D. Montgomery, Jr., *Ball Ball Matthews & Novak, P.C.*, Mobile
Verdict: Defense verdict
Circuit: **Mobile**, 4-13-11
Judge: Sarah H. Stewart

Shortly before midnight on 7-17-07, Levi Hernandez was driving a Ford Fusion east on Airport Boulevard in Mobile on his way to the McDonald's restaurant at the corner of Airport Boulevard and Schillinger Road.

trial on the ground that JRT had failed to present any defense and that the considerable evidence against it was thus uncontroverted and undisputed. According to the estate, the totality of the evidence showed with virtual certainty that Jerry Reed of JRT, or one of his crew, last installed the defective guardrails on Building 10. A verdict in favor of JRT as the agent of BMW, but against BMW, made no sense.

For its part, BMW thought that it should not have to pay any of the judgment to the estate because it was entitled to an offset based on the previous settlements of its co-defendants totaling $5,850,000. It moved to enforce this setoff. At the time the AJVR reviewed the record, the court had not yet ruled on either post-trial motion.

Subrogation - After a vehicle clipped the corner of a building and damaged it, the vehicle owner and the building owner's insurer disputed how much of the damage had been preexisting

Auto-Owners Ins. Co., et al. v. Marshall Durbin Food Corp., 10-900148
Plaintiff: Michael Gillion, *Michael Gillion P.C.*, Mobile
Defense: Lynn B. Randall, *Law Offices of Earl H. Lawson, Jr.*, Birmingham
Verdict: $7,165 for plaintiffs
Circuit: **Jefferson**, 3-30-11
Judge: Elisabeth A. French

On 12-4-08, a vehicle owned by the Marshall Durbin Food Corporation clipped the corner of a building owned by Marilyn Maddox. Repairs totaled $14,017. Maddox's insurer, Auto-Owners Insurance Company, paid $13,517, and Maddox herself paid a $500 deductible.

Auto-Owners and Maddox filed suit against Marshall Durbin and sought to recover the $14,017 they had spent on repairs. Their theories included negligence and wantonness.

Marshall Durbin did not dispute that its vehicle had hit the building and damaged it. However, Marshall Durbin argued that plaintiffs had exaggerated the extent of the damage and the reasonable cost of repair. In particular, Marshall Durbin claimed that damage to the south wall of Maddox's building was preexisting.

At the end of a two-day trial in Birmingham, the court granted judgment as a matter of law to Marshall Durbin on plaintiffs' wantonness claim and judgment as a matter of law to plaintiffs as to liability. The jury returned a verdict of $7,165, and the court entered a consistent judgment.

Defamation - A newspaper story quoted a newly elected mayor as saying that he bought into the black corruption in his city in order to get elected

Ray v. Robinson, 09-900048
Plaintiff: William E. Rutledge and Gregory F. Yaghmai, *Rutledge & Yaghmai*, Birmingham
Defense: W. Taylor Stewart and Donald W. Stewart, *Donald W. Stewart, P.C.*, Anniston
Verdict: Defense verdict
Circuit: **Calhoun**, 4-21-11
Judge: Brian P. Howell

On 8-27-08, Megan Nichols, a reporter for *The Anniston Star*, interviewed Gene Robinson, who had recently won the mayoral election for Anniston. In the story that Nichols wrote, she quoted Robinson as saying he won the election because "I bought into the black corruption in Anniston. And it worked."

Specifically, the story quoted Robinson as saying that he had been approached by certain people in 2004 and again in 2008 regarding their ability to deliver the black vote for a price. The story also quoted Robinson as saying he had not accepted their help in 2004. However, the story went on to state, in 2008 Robinson had paid Curtis Ray $1,700 and Williams Hutchings $950 to pass out marked sample ballots and assist people to the polls.

Ray, an African American, was not pleased by what he perceived as a statement by the new mayor that Ray was part of Anniston's "black corruption." He filed suit against Robinson and claimed Robinson's statements were untrue and defamatory.

According to Ray, he had simply provided some meals, made some sample ballots, and given prospective voters a ride to the polls. He claimed this was ordinary and perfectly legal election assistance and not "corruption" of any sort. Ray's complaint included theories of slander *per se*, outrage, and emotional distress. He sought $250,000 in damages.

Robinson, for his part, responded by saying Nichols had misquoted his conversation and taken his statements out of their proper context. Robinson denied he had said Ray was corrupt. Instead, Robinson had identified other people's practices in previous elections as corrupt.

Robinson admitted he had told Nichols that Ray had performed some campaign work for hire on Robinson's behalf, but he characterized his description of Ray's work as "honorable." Moreover, Robinson insisted that his statements were true regarding Ray as having done some campaign work for him.

Ray was unconvinced by Robinson's protests. He pointed to a full-page political advertisement that Robinson had printed in *The Anniston Star* in October of 2008 in which Robinson stated, "Please forgive me for the remarks I made the morning after the election. I spoke in the excitement of the moment. Everyone that knows me knows my heart, and how I truly feel about the people. This is my formal apology to everyone who may have been offended. May God forgive. I will work hard for all of Anniston full time, for four full years." Ray believed Robinson must have been apologizing about the "black corruption" statement.

The court dismissed Ray's claim of outrage before trial but allowed his slander claim to reach an Anniston jury, which returned a defense verdict. Subsequently, Ray filed a motion for new trial on the basis that the court had erred in not allowing into evidence Nichols's deposition testimony to the effect that she had accurately reported Robinson's words.

Ray also believed a new trial was justified on the theory that two of the mayor's friends, Rex Smith and Troy Shaneyfelt, had attended the trial and allegedly talked and laughed with jurors during breaks. Ray also claimed that Smith and Shaneyfelt had cheered the jury's verdict by shouting "Good job" and "Way to go."

Robinson denied that Smith and Shaneyfelt had talked to the jurors or

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