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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Products Liability - A tree-trimmer sustained a ruptured spleen when the aerial lift he was using collapsed to the ground with him inside; the lift manufacturer admitted liability and defended on damages

Nall v. Altec Industries, Inc., 01-4231
Plaintiff: Richard H. Holston, *Taylor Martino Kuykendall*, Mobile
Defense: Edward G. Bowron, H. William Wasden, W. Pemble DeLashmet, and Chad C. Marchand, *Bowron Latta & Wasden*, Mobile
Verdict: $3,500,000 for plaintiff
Circuit: **Mobile**, 9-29-05
Judge: Joseph S. Johnston

In May of 2000, Michael Nall, age 25, was working as a tree trimmer for Burford Tree Surgeons, Inc. In order to facilitate Nall's work, his employer provided him with an AT37-G Telescopic/Articulating Aerial Lift manufactured by Altec Industries, Inc. and leased to Nall's employer by the Global Rental Company.

On 5-2-00, Nall was assigned to trim some shrubbery and trees along a power line easement maintained by the Alabama Power Company. Nall climbed into the lift and used it to raise himself into the air toward his target. Suddenly, however, something went terribly wrong.

Without warning, the boom on the lift collapsed and fell to the ground with Nall still inside. He was taken to the hospital immediately following the incident and admitted to the intensive care unit. While there, Nall felt nauseous and began vomiting. He would later claim these symptoms persisted through the time the case was tried.

Nall was ultimately diagnosed with a ruptured spleen, for which he was hospitalized for more than a week. His medical expenses are unknown. However, his employer, Burford Tree Surgeons, paid him worker's compensation benefits in the amount of $74,736.

Nall filed suit against both Altec and Global Rental over the incident. He alleged counts for negligence and wantonness, as well as a count under the Alabama Extended Manufacturers Liability Doctrine. However, the negligence count was the only one that went to the jury. Also, Nall's claim against Global Rental did not advance to trial. The litigation proceeded solely against Altec.

According to Nall, Altec had modified the lift from a non-insulated one to an insulated one. The modification process included installation of a link that should have been attached with both industrial strength glue and eight bolts. Instead, only the glue was used. That oversight allowed the boom to give way under Nall's weight and fall to the ground.

In addition to his ruptured spleen, Nall also claimed various other injuries that he attributed to the accident. Among these were a back injury that he claimed left him permanently impaired and partially disabled.

Nall's identified vocational expert, Leon Tingle of Pascagoula, MS, assigned him a 44% vocational impairment. Also, Burford Tree Surgeons intervened in the case and asserted a worker's compensation subrogation lien.

Altec admitted fault for the incident but disputed the extent of Nall's injuries. In particular, Altec denied that Nall's claimed back injury was related to the incident or that he was permanently disabled.

The case was tried for four days in Mobile solely on the issue of damages. The jury returned a verdict for Nall and awarded him damages of $3,500,000. If the court entered a judgment, it was not in the record at the time the AJVR reviewed it.

Altec filed an appeal and alleged several errors by the court. Among them were the following: (1) denying Altec's motion for a mistrial made in response to repeated references by Nall's counsel to Nall's poverty, (2) admitting Nall's medical summary into evidence, and (3) allowing the testimony of a witness not properly identified according to the trial rules and the court's standing orders. However, the parties later jointly stipulated to the dismissal of the appeal.

Auto Negligence - Plaintiff suffered radiating back pain after a crash – the verdict was nearly double the medicals

Whitson v. Adams, 04-7560
Plaintiff: Marco Gonzalez, *Gonzalez Law Firm,* Alabaster, and John F. Kizer, Jr., Pelham
Defense: Aubrey J. Holloway, *Gaines Wolter & Kinney,* Birmingham
Verdict: $10,000 for plaintiff
Circuit: **Jefferson**, 2-15-06
Judge: Edward L. Ramsey

This accident occurred 11-24-03 on Lakeshore Parkway at Wildwood Way in Homewood. Angela Whitson, then age 35, was rear-ended by Michael Adams. Whitson alleged that at the scene, Adams told her that he was late returning from a lunch break and was "on her" before he knew it.

Whitson sustained a soft-tissue back injury and complained of headaches. An MRI showed midline disk herniation in the cervical spine with compression on the right. Her treatment included physical therapy and traction – the medicals were $5,186.

In this suit, Whitson sought damages. Adams challenged liability for the accident and questioned the causation and extent of Whitson's injuries – she focused that the plaintiff had a prior history of cervical radiculopathy.

The jury found for Whitson and she took general damages of $10,000. A consistent judgment followed and it has been satisfied.

Wantonness - A motorcyclist collided with a plumbing company's pickup truck at an intersection; the motorcyclist claimed the truck ran a stop sign, but the plumbing company blamed the crash on the motorcyclist's excessive speed and on the poor placement of the stop sign

Smith v. Jimmy Day Plumbing & Heating, Inc., 04-425
Plaintiff: Frank H. Hawthorne, Jr., *Hawthorne & Myers*, Montgomery
Defense: Christopher J. Zulanas and Michael J. Douglas, *Friedman Leak Dazzio Zulanas & Bowling*, Birmingham
Verdict: $1,500,000 for plaintiff
Circuit: **Montgomery**, 3-17-06
Judge: Tracy S. McCooey

On 4-18-03, Brian Smith was finishing up some work he had done on a 2001 Kawasaki Ninja motorcycle owned by one of his customers. After installing a new set of exchange pipes on the bike, Smith decided to take it out for a test drive to check for any residual rattling.

Smith's route took him onto C.R. 75 in the Town of Hanover in Coosa County. As he traveled along that road, Smith approached a construction site for a new elementary and middle school. Unbeknownst to Smith, Alan Nelson, an employee of Jimmy Day Plumbing & Heating, was working as a plumber's helper at the site.

The construction site featured a driveway that intersects with C.R. 75. It would be significant for this case that the driveway is controlled by a stop sign. Just as Smith arrived on the scene, Nelson emerged from the driveway in a Chevrolet C20 pickup truck owned by his employer. There would be fact disputes about what happened next.

According to Smith, Nelson ran the stop sign and pulled onto C.R. 75 directly in his path. Nelson, however, claims he stopped at the stop sign for approximately ten seconds and looked both ways before proceeding.

In any event, as soon as Nelson entered the intersection, he and Smith saw each other. Nelson would later claim he tried to get out of Smith's way but was unsuccessful. Smith slammed on his rear brake in an effort to stop. When that move proved unsuccessful, Smith veered to the left to try to avoid

Nelson. Finally, Smith simply laid down the bike and slid into the side of Nelson's truck.

Smith was badly hurt, sustaining a dislocated knee and wrist – his treatment included having a rod placed in one leg to reconnect bones. The incurred medical expenses exceeded $200,000. He filed suit against both Nelson and Jimmy Day Plumbing & Heating and blamed them for the crash.

Smith also targeted a company called Central Contracting, Inc., one of the entities involved in constructing the road. However, Smith later settled with Central Contracting for $125,000 and dismissed it from the case. The litigation then proceeded against Nelson and Jimmy Day.

Smith blamed Nelson for running the stop sign and thereby causing the crash; he blamed Jimmy Day for negligent or wanton hiring, supervision, and entrustment. Additionally, Smith alleged counts for simple negligence and wantonness against both defendants.

During the course of the litigation, Nelson died of unrelated causes. Also, the court granted a summary judgment to Jimmy Day on the counts for negligent or wanton hiring, supervision, and entrustment. The remaining claims were against Jimmy Day for negligence and wantonness.

Jimmy Day defended the case on two fronts. First, it argued that Smith contributed to the crash by traveling at an excessive speed. The identified accident reconstructionist for the defense was Pam Stirling of Millbrook. Jimmy Day also had the assistance of an electrical engineer, Richard Shealy, who prepared a computer animation of the accident based on Stirling's analysis.

Smith rebutted this evidence with the opinion of his own accident reconstructionist in the person of Donnie Kimbro of Montgomery. According to Kimbro, Smith was not speeding, and the crash occurred simply because Nelson failed to yield the right-of-way.

Jimmy Day's second line of defense consisted in pointing the finger of blame at Coosa County. According to defendant, Coosa County had placed the stop sign at the intersection too far back from the road. As a result of this inappropriate sign placement, trees and bushes at the location of the sign blocked the view of traffic for both directions.

Based on that argument, Jimmy Day filed a third-party complaint against Coosa County. However, the record is unclear as to the final disposition of that claim.

The case was tried to a jury in Montgomery. The verdict came back for Smith, and he was awarded damages of $1,500,000. The court applied a set-off due to the settlement with Central Contracting and entered a reduced judgment for $1,375,000.

Prior to trial, Jimmy Day made an Offer of Judgment in the amount of $300,000. Post-trial, Jimmy Day filed a barebones motion to alter, amend, or vacate, or for a new trial, or for remittitur. At the time the AJVR reviewed the record, the motion was still pending.

Premises Liability - **The plaintiff fell in a restaurant and sustained a back injury – the restaurant defended that the plaintiff had been drinking, having already consumed one of its elixirs known ominously as an *Alabama Slammer***

Smith v. Lonestar Steakhouse & Saloon, 04-848
Plaintiff: C. S. Chiepalich and John R. Spencer, Mobile
Defense: H. William Wasden, Jeffrey U. Beaverstock and Chad C. Marchand, *Bowron Latta & Wasden,* Mobile
Verdict: $175,500 for plaintiff
Circuit: **Mobile**, 3-23-06
Judge: Charles A. Craddick

On 5-3-03, Alan Smith, then age 23, was dining at the Lonestar Steakhouse and Saloon located on Airport Boulevard in Mobile. After being seated in a booth with his wife, he ordered appetizers and an beverage described on the menu as an "Alabama Slammer." He then excused himself and headed for the bathroom – Smith fell on a slick tile floor.

Smith filed suit against the restaurant alleging the condition of the floor created a dangerous condition. It was noted that the hallway between the kitchen and the restrooms was dimly lit and that it was slick near the kitchen entrance. In his deposition, he testified that the floor was "not dry - like it had just been mopped," and that this made it "like an ice slick. Smith has since complained of persistent low-back pain. His orthopedist, Dr. Joseph B. Ray, Mobile, testified that Smith had a 25% impairment rating based on a "provocative MRI."

Lodestar defended, asserting that the floor condition was open and obvious, that it had no actual or constructive notice and that Smith's complaints were not caused by the fall at the restaurant. [It noted on the night of this fall, he also fell a second time while at home.] There was also proof that despite the purportedly painful injury that Smith continued to play golf, hunt, fish and drive boats and all-terrain vehicles. Additionally it was the testimony of the store manager that on the night off the fall, the plaintiff repeatedly denied any injury.

A jury found for the plaintiff and he took past medical expenses of $25,000. His suffering was $100,000, the jury adding $50,000 more for impairment. Not yet finished, plaintiff took $500 more in punitives. The verdict totaled $175,500.

Auto Negligence - **Disputed right-of-way crash led to property damage judgment for plaintiff**

Williams v. Whigham, 04-585
Plaintiff: David N. Cutchen, *Forstman & Cutchen,* Birmingham
Defense: David R. Wells, *Miller Hamilton Snider & Odom,* Birmingham
Verdict: $4,500 for plaintiff
Circuit: **Jefferson**, 3-8-06
Judge: Allwin E. Horn, III

On 8-1-03, Lawrence Williams, then age 60, stopped his 1994 Ford F150 at the rear parking lot exit of the CVS Pharmacy on Tuscaloosa Avenue. Williams intended to cross both lanes of Tuscaloosa and continue on Sixth Street SW. He noted Mark Whigham's vehicle stopped on Sixth with the left turn signal flashing. Williams contended that he waited and waited for Whigham to turn.

Finally, seeing no movement, Williams pulled out. At the same instant, Whigham began his left turn and impacted the front left quarter-panel of the truck. Whigham countered that he had the right-of-way and that Williams admitted seeing his turn signal.

In this action, Williams appealed