

**993 - Auto Negligence - The plaintiff alleged a truck pulling a car-hauling trailer cut her off and she rear-ended it – in the resulting serious crash, the plaintiff suffered multiple open fractures to her femur, knee and ankle, as well as a broken sternum – the defendant countered that he was proceeding safely and slowed in traffic for debris in the road and was suddenly rear-ended by the plaintiff – the jury found for the plaintiff on liability and awarded her \$1,000,000 in non-economic damages**

*Newton v. IB Logistics*, 17-609

Plaintiff: James W. Nobles, Jr., Clinton and Edward Blackmon, Jr. and Bradford J. Blackmon, *Blackmon & Blackmon*, Canton

Defense: Robert S. Mink and G. Martin Street, *Mink & Mink*, Jackson

Verdict: \$2,759,094 for plaintiff

Court: **Hinds**

Judge: Winston Kidd

Date: 9-14-20

Ashley Newton, then age 33 and a home health nurse (she is an LPN) traveled on U.S. 49 near Castle Chapel Road in Yazoo County. She was driving a Nissan Altima. Suddenly a full-size pick-up pulling a car hauler (the hauler was empty) passed her on the left. The pick-up was driven by David Kirk who was working for IB Logistics.

Newton recalled Kirk pulled in front of her and then slowed down. She didn't have time to avoid a collision and she rear-ended the trailer. It was a slightly offset impact and it occurred as Newton was traveling at 60 to 65 mph. Kirk was still moving, his speed being approximately 30 mph.

This was a serious crash. Newton suffered significant injuries which included an open femur and ankle (pilon) fracture – the femur fracture was comminuted as well. She also suffered a broken sternum and her liver was lacerated. Newton's medical bills were approximately \$300,000 and there was proof she will require significant care in the future.

Newton is also disabled from her vocation and is now limited to just sedentary work. Her future lost wages were substantial and quantified at \$682,883 by a team of experts, James Koerber, CPA, Hattiesburg and Elizabeth Martino, Life Care Plan, Metairie. A plaintiff's IME, Dr. Howard Katz, Physical Medicine, Jackson, confirmed the extent of Newton's injuries.

In this lawsuit Newton sought damages from IB Logistics and blamed Kirk for the collision. Her theory was simple enough. Kirk cut her off in traffic and caused the collision. An identified accident reconstruction expert for Newton was Jason Walton, Meridian.

There was an interesting ancillary issue in this litigation that did not ultimately reach the jury. Newton was pregnant at the time of the crash and the fetus spontaneously aborted because of it. Newton originally sought damages for her unborn child. The defense moved for summary judgment that the fetus was not an "unborn quick child" within the meaning of Mississippi law and thus the claim was not cognizable. Newton didn't oppose the motion and the court excluded any proof at trial on the issue.

The defense of the case complicated Newton's theory on liability. Kirk had a completely different view of what happened. He recalled he was traveling safely in the right lane of U.S. 49 at all times.

Kirk then began to slow down for traffic ahead of him that had seen debris in the road. Kirk himself further slowed down when he came upon a garbage can in his lane of travel. It was at this moment (while still moving at 30 mph or so) that he was rear-ended by Newton. From Kirk's perspective, there was never a lane change and he had not cut off Newton. The defense accident expert, Preston Scarber, Homewood, AL, described the location of the vehicles, their speed and the impact itself.

IB Logistics also contested damages and postured that in spite of her injuries, Newton could continue to work in a variety of sedentary jobs. The defense relied on two experts, Bruce Brawner, Vocational, Madison and Gerald Lee, Economist, Clinton.

The jury in this case would resolve the fact disputes on liability and damages. It answered first that Newton was not "guilty" of negligence. The jury further concluded that Kirk was solely at fault. Thus