

2741 - Road Construction Negligence When a driver and his passengers died after their car went off the road onto a shoulder with a steep drop-off and the driver lost control, the decedents' estates blamed the company that had resurfaced the road five years earlier

Estate of Balch v. Hosea O. Weaver & Sons, 09-900034

Plaintiff: Thomas P. Willingham, *Alvis & Willingham, LLP.*, Birmingham; Wyman O. Gilmore, Jr. and Edwin Lamberth, *Gilmore Law Firm*, Grove Hill; and John A. Barney, Franklin, TN

Defense: Edward G. Bowron and John P. Browning, *Burr & Forman, LLP.*, Mobile

Verdict: \$7,500,000 for plaintiffs

(comprised of \$2,500,000 for each plaintiff)

Circuit: **Clarke**, 9-27-10

Judge: D. P. Scurlock

In 1999, the Alabama Department of Transportation (ALDOT) contracted with Hosea O. Weaver and Sons, Inc., to resurface and traffic-stripe an eight-mile section of U.S. 84 in Clarke County. In turn, Weaver subcontracted with Gulf Coast Traffic Engineers, Inc., to perform the striping.

ALDOT's plans specified the road was to have a 24-foot wide asphalt surface with a 2.5% cross slope. Gulf Coast and Weaver completed their work in early 2002, and ALDOT reviewed and accepted it.

Five years later, in the afternoon of 10-18-07, Danny Balch was driving a car eastbound along the section of U.S. 84 that Weaver and Gulf Coast had worked upon several years before. Two passengers, Bernard and Annie Balch, were riding with Danny.

As Danny drove between C.R. 3 and Robinson Ridge Road near mile post 28.3, he drove slightly onto the shoulder. As he did so, his right tire went over the drop-off at the edge of the road.

Danny attempted to get his car back onto U.S. 84. When he did so, however, he was unable to keep his car in the eastbound lane. It crossed the centerline to strike a westbound tractor-trailer head-on. All three Balches perished in the collision.

The estates of the three decedents filed suit against Weaver and Gulf Coast and blamed them for having built a bad road. Plaintiffs noted that the relevant portion of U.S. 84, when measured after the accident, was less than the contracted-for 24 feet, and it had variations in the cross slope.

Plaintiffs' identified experts included Rowland Lamb, Civil Engineering, Tallahassee, FL. It was Lamb's opinion that the edge of the road in 2007 was unchanged from 2002 when Weaver finished its resurfacing job.

Gulf Coast and Weaver defended the case and protested that ALDOT had reviewed and accepted their work in 2002 and ALDOT was responsible for all further road maintenance. Weaver insisted its road work had been properly performed in 2002, and if the road was no longer the agreed-upon 24 feet wide, that was not Weaver's fault. Weaver suggested the asphalt had deteriorated over time and that its sole responsibility was to perform the construction work according to ALDOT's specifications, which it had done.

Weaver also suggested that Danny himself was partly to blame for the accident, since he had gone off the road. Thus, contributory negligence ought to bar plaintiffs from any recovery. Gulf Coast argued that plaintiffs had not made any real argument as to how the road striping had contributed to the accident.

Shortly before trial, Gulf Coast settled with each plaintiff for \$166,666. A jury heard plaintiffs' arguments against Weaver and returned a verdict of \$2,500,000 per plaintiff for a total of \$7,500,000. The court set off the settlement with Gulf Coast and entered a judgment of \$2,333,333 for each plaintiff. At the time the AJVR reviewed the record, Weaver's motions for *remittitur* and for a new trial were still pending.