

The Louisiana Jury Verdict Reporter

The Most Current and Complete Summary of Louisiana Jury Verdicts

February 2011

Statewide Jury Verdict Coverage

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Civil Jury Verdicts

Timely coverage of civil jury verdicts in Louisiana including court, division, presiding judge, parties, case number, attorneys and results.

Auto Negligence - A teenage girl (walking after dark in dark clothing with her back to traffic) was struck and killed by a passing motorist

Houston v. Smith, 66,301

Plaintiff: Joseph F. Gaar, Jr. and Jason M. Welborn, Lafayette

Defense: Edward O. Taulbee, IV, *Taulbee & Associates*, Lafayette

Verdict: \$1,031,582 for plaintiff less 50% comparative fault

Parish: **Iberville**

Judge: Alvin J. Batiste, Jr.

Date: 9-28-10

On the evening of 12-11-07, Shamelda Houston, age 18 and a freshman nursing student at Southern University, walked

with her friend near her home in Maringouin to the levee. She traveled on rural Belmont Lane. The sun had set just minutes before. There were no street lights.

Houston and her friend were both wearing dark clothing. They were also walking with their backs to traffic. This is contrary to state law. At the same time, Jeffrey Smith, approached the girls in his pick-up truck. He never saw them.

Houston was struck hard and knocked into a ditch. [The friend was hit by the sideview mirror and sustained only minor injuries.] Houston's injuries were grave. She was airlifted to a hospital where she was pronounced dead. There were fact disputes regarding whether Houston had conscious pain and suffering.

In this lawsuit, Houston's estate (through her parents) sued Smith and his insurer, Louisiana Farm Bureau. The liability theory alleged that but for Smith's distracted driving (and the other

conditions), he should have seen Houston walking. An accident expert for the estate was Kelley Adamson, College Station, TX.

Smith defended and blamed the crash on Houston, noting, (1) the dark conditions, (2) her dark clothes, and (3) that she was walking with her back to the traffic. Quite simply, if she had been on the left side of the road (facing traffic), there never would have been a crash. A defense accident expert was James Lock, College Station, TX.

This Plaquemine jury found both the defendant and the decedent equally at fault. The jury also made a specific finding that Houston had pre-death suffering. Then to damages, the estate valued her pre-death physical suffering and pre-death mental suffering at \$125,000 each. Her parents also took \$500,000 (each) for their consortium interest. The remainder of the award (\$31,582) represented medical and funeral expenses.

The raw verdict totaled \$1,031,582. A consistent judgment less comparative fault was entered and it has been satisfied.

Traffic Signal Negligence - The plaintiff blamed a red light collision on a traffic signal that showed green in both directions – the state defended that there was no defect, non-functioning signals being set to flash red until repaired

Cotton v. LA Department of Transportation and Development, 151003

Plaintiff: E. James Gaidry, Jr., Houma
 Defense: William S. Culver and Rebecca Urrutia, *Assistant Attorneys General*, New Orleans

Verdict: \$351,973 for Angela
 \$3,204 for Blaine
 \$20,000 for Andy (Loss of consortium only)

Parish: **Terrebonne**
 Judge: Timothy C. Ellender
 Date: 1-13-10

Angela Cotton, then age 47, traveled in Terrebonne Parish on 12-24-06 near

the intersection of Hwy 24 and Hwy 661. Her teenage son (Blaine) was a passenger in the car. At the same time, Kerry Carter approached the same intersection. Both Cotton and Carter would report they had a green light at the same time.

As Cotton proceeded through the intersection, her vehicle was struck by Carter and spun around. An investigating police officer determined that the traffic signal was not operating properly. At every fourth sequence, it would flash green in all directions.

In this lawsuit, Cotton and her son sought damages from the Louisiana Department of Transportation and Development (DOTD) regarding the maintenance of the traffic signal. Plaintiff's traffic safety expert was Peter Parsonson, Engineer, Atlanta, GA. [DOTD would suggest he was an ivory-tower academic with no real world experience.]

In terms of injury, Cotton first treated three days later. While initially treating for an apparent disc bulge, a myelogram several weeks later revealed a facet fracture at C5-6. That April (four months post-crash), Dr. Phillip McAllister, Neurosurgery, Houma, performed a fusion surgery. Cotton has since been disabled from her most recent position as a parking valet.

Her son too was injured. He suffered bruised ribs and other soft-tissue injuries. The third plaintiff was Cotton's husband (Andy) who presented a derivative consortium count.

DOTD defended the case and denied there was any defect with the traffic signal. Alternatively, even if there was, the government denied any notice. DOTD further explained that if the traffic signal had malfunctioned, rather than showing green in every direction, it is instead designed to flash red until it can be repaired.

The jury's verdict was for Cotton that the traffic signal created a vice or harm. It further concluded that DOTD had notice of the defect and had an opportunity to correct it. Having found

against the government on the traffic signal claim, the jury further rejected any apportionment to either Carter or the plaintiff.

Then to damages, Cotton took medicals of \$154,703 plus lost earnings of \$33,770. Disability was valued at \$13,500, Cotton taking \$150,000 more for pain and suffering. Her verdict totaled \$351,973. Her son took medicals of \$1,104 and \$600 more for lost wages. Blaine's suffering was \$1,500, his award totaling \$3,204.

Finally the jury assessed the consortium claim of Cotton's husband at \$20,000. A consistent judgment was entered by the court. DOTD has since appealed.

Medical Malpractice - An ER doctor working for a state hospital was blamed for failing to appreciate the plaintiff's symptoms of an impending stroke

Cooper v. Lallie Kemp Hospital, 549754

Plaintiff: Walter Landry Smith, Baton Rouge and Clay Monroe, Greensburg
 Defense: Ashley Miller Scott, *Assistant Attorney General*, Baton Rouge
 Verdict: \$4,512,599 for plaintiff
 Parish: **East Baton Rouge**
 Judge: Kay Bates
 Date: 11-17-10

Shirley Cooper, then age 52, suffered a stroke in May of 2003. She presented to the ER at Lallie Kemp Hospital in Independence (it is state operated) on the morning of 7-23-03. She was again suffering stroke symptoms.

Cooper was evaluated by an ER physician on the hospital staff, Eric Payne. Through the day, Cooper remained at Lallie Kemp. During that time, she began to deteriorate as the stroke intensified. Her speech became slurred and she suffered right-side weakness.

Finally in the evening (and nearly 10 hours after arriving at the hospital), Payne first consulted with a neurologist in nearby Hammond. She was finally transferred to North Oaks Medical Center at nine in the evening. The damage was done.

Premises Liability - A Wal-Mart shopper was injured by shopping buggies (propelled by an unattended motorized cart) that crashed into her

Ellis v. Wal-Mart, 08-14912

Plaintiff: Randolph C. Slone and J. Russell Reed, Slidell

Defense: Roy C. Beard, *McCranie Sistrunk Anzelmo Hardy McDaniel & Welch*, Metairie

Verdict: \$260,000 for plaintiff

Parish: **St. Tammany**

Judge: Peter Garcia

Date: 10-12-10

Betty Ellis, then age 70, shopped at the Wal-Mart in Slidell. As she was looking at plants that were on sale, she was suddenly struck from behind by shopping buggies propelled by a motorized cart designed to retrieve them. The cart was unattended.

Ellis has since treated for a multi-level disc injury. Dr. Louis Provenza, Neurosurgery, suggested Ellis will require a decompression surgery. Ellis continues to report constant back pain.

In this lawsuit, Ellis sought damages from Wal-Mart. The retailer defended fault as well as it could. Wal-Mart also diminished damages with an IME expert, Dr. David Aiken, Orthopedics, Metairie.

After a two-day trial, the jury answered for Ellis that her injuries were caused by the negligence of Wal-Mart. Then to damages, Ellis took medicals of \$10,000 plus \$65,000 for future care. Past physical suffering was \$10,000, while that in the future was \$20,000. Her loss of ability to enjoy life was valued at \$30,000, the jury adding \$35,000 for physical disability. The verdict totaled \$260,000 and a consistent judgment followed.

Medical Malpractice - In a forgotten sponge case, the plaintiff settled with the hospital nurses – a directed verdict was granted for the Ob-Gyn defendant at trial after the plaintiff's expert backed off his criticisms when learning the nurses told the Ob-Gyn the count was correct

Johnson v. Garris, 04-15828

Plaintiff: Andrew Blanchfield, *Keogh Cox & Wilson*, Baton Rouge

Defense: Stewart E. Niles, Jr. and Karen M. Fontana, *Niles Bourque & Fontana*, New Orleans

Verdict: Directed verdict

Parish: **Orleans**

Judge: Lloyd Medley

Date: 10-19-10

Anita Johnson, then age 44, underwent a abdominal hysterectomy on 2-17-03 at Tulane Hospital and Clinic. The laparoscopic surgery was performed by an Ob-Gyn, Dr. Jeffrey Garris. The surgery was uneventful. After it was concluded, Garris inspected the wound site. He was advised by hospital nurses that the sponge count was correct.

Three months later Johnson was back for a second surgery. She had been complaining of abdominal pain. In the second surgery, Garris removed a sponge that had been left behind in the first surgery.

Johnson sued Garris and the hospital alleging negligence in leaving the sponge behind. The claim against the hospital was resolved, it paying its \$100,000 statutory limit. The Patient Compensation fund paid Johnson \$175,000 more.

That left only Johnson's malpractice count against Garris. Her expert, Dr. Al Weidemann, Ob-Gyn, was critical of Garris for doing his inspection before the count was announced to him. A Medical Review Panel (consisting of Dr. George Morris, Dr. Gregory Morris and Dr. Jack Jacob) had exonerated Garris.

The plaintiff's case ran into trouble at trial when there was testimony from the nurses that the count had been announced as correct to Garris. In fact, the count was off and the nurses knew it

– despite this, the nurses failed to tell him about it.

Learning this, expert Weidemann backed off his criticisms. At this juncture, the trial judge sustained the defense motion for a directed verdict. Judge Medley ruled that a reasonable person could only find fault with the nurses. The judgment was memorialized in a written opinion.

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The Louisiana Jury Verdict Reporter is published at 9462 Brownsboro Road, No. 133, Louisville, Kentucky 40241. Phone at 502-339-8794 or 1-866-228-2447. Fax to 502-326-9794. Denise Miller, Publisher, Shannon Ragland, Editor, Sandra Tharp, Editor Emeritus and Aaron Spurling, Assistant Editor.

Annual subscription is \$219.00 per year.

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