

The Louisiana Jury Verdict Reporter

The Most Current and Complete Summary of Louisiana Jury Verdicts

March 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 - The plaintiff complained of radiating neck pain after a right of way collision

Gomez v. Baton Rouge Water Works et al, 92,104

Plaintiff: Andre P. Gauthier and Lee J. Amedee, III, *Gauthier & Amedee*, Gonzalez

Defense: Brent E. Kitchen and Richard T. Reed, *Kinchen Walker Bienvenu*

Bargas & Reed, Baton Rouge

Verdict: \$830,458 for plaintiff

Parish: **Ascension (Gonzalez)**

Judge: Jane Triche Milazzo

Date: 11-23-10

Mary Gomez, then age 53, was a passenger in a pick-up truck driven by her husband. As they proceeded on Hwy 621, her husband passed another vehicle. Then at the intersection of Hwy 621 and Rouyea Road, Shayne Stevens of Baton Rouge Water Works pulled from a stop sign. He did so into the path of the oncoming Gomez vehicle. A moderate t-bone collision resulted.

Gomez was taken from the scene of the wreck to the ER at Our Lady of the Lake. She was initially treated for an apparent soft-tissue injury and a seat belt abrasion. The symptoms persisted and began to radiate to her arm. The plaintiff's proof linked that injury to the aggravation of a prior neck surgery at the C5-6 level. Plaintiff's treating neurosurgeon was Dr. Kelly Scrantz.

In this lawsuit, Gomez sought money damages. Stevens and his employer defended that the wreck had resulted only in a minor and temporary strain injury. They linked the plaintiff's ongoing symptoms to her pre-existing

history.

The defense stipulated fault and were not a jury issue. Then to damages, Gomez took medicals of \$32,458 plus \$98,000 for future care. Her physical suffering was \$300,000 and she took \$200,000 more each for mental suffering and loss of ability to enjoy life. The verdict totaled \$830,458. A consistent judgment was entered.

The defense moved for JNOV relief and argued that Scrantz had changed his testimony at trial. Before trial he had talked only of a strain – then at trial, he focused on the C5-6 injury. Baton Rouge Water Works also called the verdict outrageously high. When the LaJVR reviewed the record, the motion was pending.

Premises Liability - While shopping at TJ Maxx for an outfit to wear to her high school reunion, the plaintiff (a lawyer) slipped on a spilled daiquiri and sustained a knee injury

Payton v. TJ Maxx, 2:09-5859

Plaintiff: David D. Bravo, *Palazzo Law Firm*, Gretna

Defense: Paul J. Politz and Gina T.

Cussain, *Taylor Wellons Politz & Duke*, New Orleans

Verdict: \$254,744 for plaintiff

Parish: **Federal - New Orleans**

Judge: Eldon E. Fallon

Date: 2-15-11

Courtney Payton, then age 28 and a lawyer at the Javier Law Firm, shopped on 7-12-08 at the Elwood TJ Maxx store. She was looking for an outfit to wear for her 10-year high school reunion. Earlier that day, someone had placed a daiquiri container (with two drinks) on top of a cardboard box on the retail floor of the TJ Maxx floor. The drinks were there long enough that they seeped through the box and onto the floor. A bright pink puddle formed on the floor.

Martin Mid-Stream defended and blamed the crash on one factor -- Binder's poor decision to attempt to cross in front of the Ocean Prine in a portion of the waterway where there was little margin for error.

The jury returned two verdicts in this case. The first did four things: (1) it found negligence by Martin Mid-Stream, (2) it rejected causation, (3) it apportioned fault 80% to plaintiff, remainder to Martin Mid-Stream and (4) it awarded Binder general damages of \$110,000.

Presented with the verdict, Judge Fallon called it inconsistent, the jury having rejected causation, but still apportioning fault to Martin Mid-Stream and awarding damages. He sent the jury to deliberate again. In the second verdict, they changed their answer on causation from "no" to "yes." Fallon accepted it and a verdict was entered for Binder in the sum of \$22,000.

Martin Mid-Stream has moved for relief arguing the first verdict should have been accepted. The second verdict then suffered the taint of the court's conversation with the foreperson that it was inconsistent. Binder has opposed that the second verdict was a reasonable resolution of a conflict in the verdict. The motion is pending.

Notable Out of State Verdicts

(Involving Louisiana Attorneys)

Medical Malpractice - During a laparoscopic procedure to relieve esophageal problems, the plaintiff's surgeon inadvertently injured his bowel

McClure v. Petro, 08-495

Plaintiff: Salvador I. Bivalacqua, *Galante & Bivalacqua*, New Orleans and Troy A. McFarland, *McFarland & McFarland*, Purvis, MS

Defense: James A. Becker, Jr. and Walter T. Johnson, *Watkins & Eager*, Jackson, MS

Verdict: Defense verdict on liability

Court: **Hinds Circuit Court
Jackson, MS**

Judge: Winston Kidd

Date: 10-18-10

James McClure, then age 69, had a history of difficulty swallowing and keeping food down. His surgeon, Dr. Anthony Petro, performed a laparoscopic procedure (a so-called Heller Myotomy) on McClure's esophagus to relieve those symptoms. The procedure appeared uneventful.

Over the next three days McClure complained of increasing abdominal pain to Petro. McClure was told that it was gas and was provided pain medications. The symptoms only got worse and an exploratory laparotomy was performed on the third day. It revealed a perforation of McClure's bowel – the injury had been sustained inadvertently as Petro inserted an Optiview device. McClure experienced pain and other inconvenience (including a repair surgery) secondary to the bowel injury.

In this lawsuit, McClure sued Petro and alleged his treatment violated the standard of care. Plaintiff's expert was Dr. James Balliro, Surgery, Jackson, WY, who identified error in two ways (1) Petro's technical performance of the procedure, and (2) the delay in diagnosing the injury.

Petro defended the case and argued that (1) the injury was a rare risk that is known and expected, and (2) he properly diagnosed and repaired the injury.

Experts for Petro were Dr. Reginald Martin, Surgery, Jackson and Dr. Guy Voeller, Surgery, Memphis.

The case was tried for six days in Jackson. The verdict was for Petro on liability and McClure took nothing. A defense judgment was entered.

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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.

E-Mail - Info@juryverdicts.net

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