

The Louisiana Jury Verdict Reporter

The Most Current and Complete Summary of Louisiana Jury Verdicts

May 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 - One man was injured and a second was seriously injured when they crashed into an abandoned commercial vehicle that blocked the Bonne Carre Spillway (I-10) in the middle of the night – the driver of that vehicle had gotten drunk and already crashed, just walking away from the disabled vehicle without leaving flashers or other warnings

Thistlethwaite et al v. Veolia Water Co., 66,596

Plaintiff: Robert E. Kleinpeter and Jay G. McMains, *Kleinpeter & Schwartzberg*, Baton Rouge, C. Michael Alder, Beverly Hills, CA and Robert A. Brenner, Woodland Hills, CA for Thistlethwaite

Blake R. David, *Broussard & David*, Lafayette for Mouton
Defense: Robert E. Kerrigan and Marc J. Yellin, *Deutsch Kerrigan & Stiles*, New Orleans for National Union Fire
Timothy G. Schafer, *Schafer & Schafer*, New Orleans for Lexington Insurance
Verdict: \$16,100,000 for Thistlethwaite
\$13,000,000 for Mouton

Parish: **St. Charles**
Judge: Emile S. Pierre
Date: 2-16-11

Rodney Gonzalez was working on the evening of 1-12-07 for Veolia Water Company. He was assigned a company truck and serviced area petrochemical firms for his employer. While Gonzalez was not on the clock that evening, he was still in the Veolia Water truck and was subject to recall at anytime. Gonzalez spent the evening at Legend's, a bar in Metairie.

Gonzalez drank to excess. That included four beers and four tequila shots. He left the bar at three in the morning and proceeded on the Bonne Carre Spillway (1-10). While traveling at high speed, Gonzalez lost control and crashed the truck. Gonzalez would later

blame the loss of control on a blow-out, but evidence of this would be contested.

Blow-out or drunken error, Gonzalez made an ill-fated decision to simply walk away from the truck. It continued to block portions of the highway. Importantly, the truck was completely unlit.

At the same time, Jonathan Mouton drove through the area two minutes later in a tractor-trailer. A passenger with him was James Thistlethwaite. Mouton saw the Veolia Water truck when it appeared in his headlights. However the lane next to him was blocked and he had no time to evade. A horrific and fiery crash resulted, Mouton and Thistlethwaite escaping the burning tractor.

Thistlethwaite's burns were severe and he died nine days later. He was survived by a daughter. Mouton's physical injuries were relatively minor, but he has continued to complain of post-traumatic stress and other emotional symptoms.

In this lawsuit, Thistlethwaite's estate and Mouton sued Gonzalez, Veolia Water and its excess insurers, National Union Fire and Lexington Insurance. The liability theory was two-part. Gonzalez was implicated for not only driving drunk and crashing, but then leaving his unlit truck in the roadway.

His employer was blamed on a more nuanced theory of negligent entrustment. That is, Gonzalez had a long history of drinking and drug problems, something Veolia Water should have discovered – it was also noted that Gonzalez's poor driving record made him ineligible for a company vehicle under Veolia Water's own policies.

As this case advanced, the plaintiffs settled with Gonzalez and Veolia Water. Despite that settlement, they remained nominal parties in the litigation. While the amount of the settlement was confidential, the limits of the coverage were \$3,000,000. The case was then tried

Historical Louisiana Jury Verdicts

In this section, we include verdict reports from interesting and notable Louisiana civil jury trials from prior years. These reports originally appeared contemporaneously in our sister publication, The Federal Jury Verdict Reporter.

Premises Liability - As a Wal-Mart display of Pepsi products was being stocked, the plaintiff was injured when soda pop product fell from the shelf and struck him

Ramsey v. Delta Beverage Group, 3:05-284

Plaintiff: Marvin Gros and Tonya B. Clark, Donaldsonville

Defense: Virgil A. Lacy, III, *Blue Williams*, Metairie

Verdict: \$65,000 for plaintiff

Court: **Federal - Baton Rouge**

Judge: Christine Noland

Date: 4-19-07

Devin Ramsey was a patron on 9-14-04 at a Wal-Mart in Baton Rouge, LA. At the same time, Roderick Gremillion, an employee of Delta Beverage Group, was restocking a display of Pepsi products. Suddenly the soda pop display shifted and struck Ramsey.

The next June Ramsey underwent a disc repair surgery, having a double-fusion performed. His incurred medicals were \$60,000. Ramsey sued Delta Beverage and alleged negligence regarding the stacking. Delta Beverage defended on fault and also diminished damages, noting a history of pre-existing injury and a subsequent motorcycle accident after the surgery.

The verdict in Baton Rouge was for the plaintiff and he took a general award of \$64,255. His wife took \$755 more for her consortium interest, the verdict totaling \$65,000. Plaintiff has since moved for a new trial arguing the award was inadequate.

Notable Out of State Verdicts

(Involving Louisiana Attorneys)

Medical Malpractice - Laparotomy pads were left behind in the plaintiff during a bowel surgery – because of the error, the plaintiff underwent a second surgery to remove the forgotten pad

James v. Miller et al, 07-345

Plaintiff: David A. Bowling and Susannah C. McKinney, *Wilson Bowling & McKinney*, New Orleans

Defense: John A. Banahan and Jessica B. McNeel, *Bryan Nelson Schroeder Castigiola & Banahan*, Pascagoula, MS for Miller

Kevin M. Melchi and Brett K. Williams, *Wilkinson Williams Kinard Smith & Edwards*, Pascagoula, MS for Singing River Hospital

Verdict: Defense verdict on liability for Miller

\$66,967 for plaintiff against Singing River Hospital (Bench)

Court: **Jackson Circuit Court Pascagoula, MS**

Judge: Dale Harkey

Date: 1-21-10

Elishey James, then age 68, underwent a bowel resection on 12-30-05. It was performed by a surgeon (Dr. David Miller) at the state-operated Singing River Hospital in Pascagoula. The surgery seemed uneventful.

Thereafter James complained of abdominal pain. It was learned that a laparotomy pad (left behind in the surgery) had migrated to the plaintiff's small bowel and created an abscess. James underwent a second surgery in September of 2006 to remove the pad. He also suffered a hernia complication but because of his already compromised abdominal anatomy, a repair of that is too risky. James simply lives with the hernia. His medical bills were \$6,967.

In this lawsuit (joined by his wife who presented a consortium claim), James sued Miller and the hospital regarding the forgotten laparotomy pad. The plaintiff's liability expert, Dr. Michael Townsend, Surgery, New Orleans, LA, was critical of both the surgeon and the

nurses for the pad miscout.

Miller for his part defended that the pad count was reported correctly to him and he reasonably relied upon that count. His expert was Dr. Edward Rigdon, Surgery, Brandon.

The hospital replied as well that while there was a lap pad snafu, any error in that regard was superseded by a clear radiology report a few days later and before James had been released. Had the radiology report been properly read, the pad could have been removed and the complex complications avoided.

As the case advanced to trial, a jury would decide the claim against Miller, while the state actor (the hospital) would have its claim resolved by the court. This jury in Pascagoula exonerated Miller on liability.

The trial judge found against Singing River Hospital and awarded James medicals of \$6,967 (as incurred) plus \$50,000 for non-economic damages. His wife took \$10,000 more for her consortium interest, the verdict totaling \$66,967.

Thereafter James moved for a new trial and alleged that the surgeon could not shift the blame to the nurses. The motion was subsequently withdrawn. The hospital too sought to set aside the judgment as excessive. The motion was denied and the judgment was then satisfied. The case is closed.

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