

The Louisiana Jury Verdict Reporter

The Most Current and Complete Summary of Louisiana Jury Verdicts

July 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.

Medical Malpractice - An ER doctor and a small hospital were blamed for discharging a suspected stroke patient without ruling out his cardiac symptoms – within hours he had suffered a severe and disabling stroke – while a Thibodaux jury exonerated the defendants, the trial judge subsequently granted a JNOV and awarded the plaintiff a sum that exceeded the statutory cap

Wood v. Humphries et al, 107009

Plaintiff: James A. Marchand, Jr., Elisia E. Shofsthal and Frank E. Phillip, II, *Law Office of James Marchand*, Covington
Defense: Barry J. Boudreaux and John D. Schoonenberg, *Henderson Reilly & Boudreaux*, Houma for Humphries
Randall L. Champagne, *Watson Blanche Wilson & Poser*, Baton Rouge for Lady of the Seas Hospital

Verdict: Defense verdict on liability

Parish: **LaFourche**

Judge: Jerome J. Barbera, III

Date: 4-5-11

Dwayne Wood, an offshore worker, presented on 3-30-05 to the Lady of the Sea Hospital in Cut Off in the middle of the night with hypotension and vision problems. He was evaluated by an ER doctor, Shawn Humphries, who immediately suspected a stroke. As Humphries was alarmed by the vision symptoms and suspecting perhaps a detached retina, she contacted Wood's ophthalmologist. As Wood had an appointment later that day with the eye doctor, Humphries made a decision to discharge Wood at 7:00 in the morning. However Humphries did not tell Wood she suspected cardiac involvement.

That morning Wood continued to feel better and elected to skip the appointment with the eye doctor. That evening his wife found him stumbling at home. She took him to the ER at St. Anne in Raceland. He was identified as having suffered a cerebral stroke. The

effect of the stroke has been to leave Wood permanently disabled.

Wood sued both Humphries and the hospital and focused on a single key error: Wood should not have been discharged from the ER until the suspected stroke was ruled out. That required Humphries to perform more testing or make a neurological consult. The hospital nurses too were implicated for failing to intervene and advance up the chain of command. Experts for Wood were Dr. Craig Kennedy, ER, Mounds, OK, Dr. Richard Sobel, ER, Peachtree, GA and Dr. Scott Sondes, Covington. Vocational damages were discussed by an economist, Randolph Rice, Baton Rouge.

The case was submitted to a Medical Review Panel. It concluded there was no error, focusing that Humphries had arranged a follow-up appointment with the ophthalmologist within two hours of his discharge. The panel included Dr. Luis Camero, ER and Dr. Richard McConnell, ER, both of New Orleans.

The opinion of the Medical Review Panel would mirror the defense presented by Humphries. She argued there was no crystal ball and she couldn't foresee that Wood would not keep his appointment. The hospital too explained that it was a small facility with limited resources – its nurses did as well as they could. Both defendants further argued that while the plaintiff's case focused on a national standard of care, there was never competent proof of the local standard.

This case was tried in Thibodaux for five days. The jury then deliberated for a little more than an hour before returning a defense verdict answering first (and only) that Wood had not proven the standard of care – thus the jury then did not reach if the unproven standard of care had been breached. A defense judgment was entered.

The estate moved for a new trial and

argued that even defense experts concluded the textbook standard of care was not to discharge. Judge Barbera granted the motion in a 6-23-11 order, assessing fault 90% to Humphries and the remainder to the hospital. He went on to award Wood damages totaling \$5,730,675 which were further reduced to the \$500,000 statutory cap.

Tailgating Negligence - While sitting in a chair and tailgating before a Saints game on Lafayette Street, the plaintiff suffered serious injuries when an out-of-control driver crashed into him

Mince v. ANPAC, 09-8931

Plaintiff: Tracey Rannals Bryans and Irvin J. Warshauer, *Gainsburgh Benjamin David Meunier & Warshauer*, New Orleans

Defense: Steven B. Witman, Valerie T. Matherne and Jene Liggins, *Law Offices of Steven Witman*, Metairie

Verdict: \$146,259 for plaintiff

Parish: **Orleans**

Judge: Piper Griffin

Date: 4-27-11

Joseph Mince, then age 36, was tailgating on Lafayette Street (near O'Keefe) in New Orleans on 10-6-08 in advance of a Saints football game. [It was a Monday Night Football game against the Vikings – the Vikings would win 30-27.] Mince would never see the game. As he sat in a lawn chair, he was injured by an out-of-control driver, William Henican, who careened into the crowd. Henican struck Mince and another pedestrian, his Volvo only stopping when it struck a fire hydrant.

It was a significant impact and thrown thirty feet, Mince was knocked unconscious and badly hurt. He awoke in the hospital with broken ribs, a bruised lung and kidneys, an L-4 transverse fracture and an L5-S1 disc injury among other soft-tissue injuries. Mince's incurred medicals were \$15,259 and his proof (via neurosurgeon Dr. Rand Voorhies, New Orleans) developed he will require future care of \$101,480.

In this lawsuit, Mince moved first against Henican and his insurer, USAA – those defendants settled. This lawsuit

proceeded against Mince's underinsured motorist carrier, ANPAC Louisiana. As the case was presented, there was no set-off or discussion of the underlying limits. ANPAC defended this case as well as it could.

This jury considered damages only. Mince took his medicals as claimed plus \$1,000 for loss of enjoyment of life. His past suffering was \$130,000. However the jury rejected future suffering and future medicals. The verdict totaled \$146,259 and there was no set-off as noted above for sums already received.

ANPAC has moved for JNOV relief and argued the pain and suffering award was excessive – the insurer thought \$25,000 to \$35,000 was more fair. Mince too has challenged the jury's failure to award future medicals. The motions were pending when the record was reviewed by the LaJVR.

Medical Malpractice - The plaintiff developed sepsis and debilitating anemia after her bowel was injured during a laparoscopic hysterectomy

LeBouef v. O'Donnell et al, 08-3946

Plaintiff: Randall E. Hart, *Broussard & Hart*, Lake Charles

Defense: Richard B. Cappel, *Raggio Cappel Chozen & Bernard*, Lake Charles for O'Donnell

J. Gregory Bergstedt, *The Bergstedt Law Firm*, Lake Charles for Chua

Verdict: \$3,314,801 for plaintiff

assessed against O'Donnell only; Defense verdict on liability for Chua

Parish: **Calcasieu**

Judge: Clayton Davis

Date: 9-15-10

Beverly LeBouef, then age 55, underwent a laparoscopically assisted vaginal hysterectomy on 7-18-03. It was performed by an Ob-Gyn, Dr. Rachel Chua. During the surgery, Chua perforated LeBouef's bowel. Chua was unaware of the injury, but noted following the surgery that LeBouef was deteriorating.

Chua consulted two days later with a surgeon, Dr. Joseph O'Donnell and he then performed an exploratory laparotomy. He suspected a bowel

perforation, but could not find it. Finally to another hospital four days later, a bowel contrast was done. It revealed the injury and the bowel was repaired. However because of sepsis and necrosis, LeBouef lost 44 centimeters of her bowel. Her recovery was stormy and complex, LeBouef having since developed a debilitating anemia.

In this lawsuit, LeBouef sued Chua and O'Donnell regarding this misadventure. The plaintiff's theory focused not on the original injury, but instead the response to it. Chua was criticized for not promptly identifying the bowel injury in the initial surgery. O'Donnell too was blamed for missing it in the surgery two days later which was designed to discover it. But for these errors, the plaintiff developed her condition was made more complex. Experts for LeBouef were Dr. Stephen Cruikshank, Ob-Gyn, Maineville, OH and Dr. Karl LeBlanc, Surgery, New Orleans.

A Medical Review Panel consisting of Dr. Eduardo Herrera, Dr. John Colligan and Dr. Thomas Rossowski could find no error. This comported with the defense theory that besides appropriately treating LeBouef, the bowel injury did not occur in the initial surgery. That is upon its discovery several days post-surgery, the bowel perforation was described as fresh and unrelated to Chua's surgery – thus when Chua and O'Donnell failed to appreciate the injury, it was because it hadn't happened yet.

The jury's verdict was mixed on fault. Chua was exonerated, but a deviation was found by O'Donnell. Then to damages, LeBouef took medicals of \$506,710 plus \$275,056 for future care. Her lost wages were \$33,034. The jury added \$700,000 for physical suffering and \$750,000 more for the mental variety. A category called scarring and disability was \$300,000, the final category, loss of enjoyment of life being valued at \$750,000. The combined verdict totaled \$3,314,801.

A consistent judgment exonerated Chua and limited LeBouef's recovery against O'Donnell to \$500,000. That represented his \$100,000 limits and \$400,000 more against the Patient's Compensation Fund. LeBouef subsequently petitioned the court to declare the Malpractice Act unconstitutional. However she

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