The Louisiana Jury Verdict Reporter

The Most Current and Complete Summary of Louisiana Jury Verdicts

November 2010 **Statewide Jury Verdict Coverage** **1 LaJVR 1**

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Introducing the
Louisiana Jury Verdict Reporter

The nation's most innovative jury verdict publisher has come to Louisiana - for 15 years, we've done original, on-the-ground and in-the-courthouse research on verdict results in Alabama, Tennessee, Kentucky, Indiana and Mississippi. This month we introduce the newest addition to our line-up, The Louisiana Jury Verdict Reporter.

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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.

Civil Rights - Two tourists were arrested for public intoxication on Bourbon Street two nights before Hurricane Katrina struck – they were then swept into the system and jailed for a month (in often horrific conditions without food or water in the wake of the storm) when they should have been released

Waganfeald et al v. Orleans Parish Sheriff, 2:06-5036
Plaintiff: Brett John Prendergrast, New Orleans and John Murray, *Murray & Murray*, Sandusky, OH
Defense: Freeman R. Matthews, *Usry Weeks & Matthews*, New Orleans
Verdict: $659,300 for plaintiffs
Court: **Federal - New Orleans**
Judge: Mary Ann Vial Lemmon
Date: 10-14-10

Robie Waganfeald, age 44 and Paul Kunkel, age 49, were in the midst of a cross-country tour in August of 2005. On the evening of 8-26-05, they rolled into New Orleans having arrived from Houston. They expected to leave the next morning and head north to their home in Toledo, OH.

Particularly, the men knew the dangerous Hurricane Katrina (then a Category 5) was bearing down on the city. It was their hope to get as far north as they could. But while in New Orleans, like many other tourists, they checked into their hotel and headed to Bourbon Street around midnight. Five hours later they were arrested by city police officers and charged with public drunkenness. [The men admitted they were drinking but denied being drunk.]

Waganfeald and Kunkel were taken to the Orleans Parish Jail where they were processed. As the city has no formal jail, the men were turned over to the Orleans Parish Criminal Sheriff who booked them

at the Templeton III facility. A bond of $300 was set for the men. They could have easily made the bond if they were permitted to make a phone call – however the phones weren't working.

The next day there was a voluntary evacuation order in the city. It became mandatory on 8-28-05. Although the two men were entitled to a probable cause hearing and to be presented to a magistrate within 48 hours of their arrest, no such hearing occurred. Katrina struck the next day.

The guards abandoned their posts at the jail. The plaintiffs were stuck in the jail's second floor gymnasium with all sorts of criminals, including violent felons. For three days they went without electricity, food or water. Guards finally returned to the jail and the men were taken to a highway overpass. There they baked in the hot sun (it was 100 degrees) before being shipped to state prison.

Kunkel went to Hunt Correctional where he ate and slept in the prison yard. Because of the poor sanitary conditions, he developed an eye infection. He was finally released on 10-3-05. Waganfeald had been sent to Catchoula Corrections – he was released two days after Kunkel. The grueling experience (being arrested for public drunkenness and assessed a very minor bond) resulted in six weeks in jail under the most horrific and difficult of conditions. Particularly, both men recalled fearing they would die at Templeton in the wake of the storm – abandoned by their jailers, they recalled drinking polluted flood water just to survive.

In this lawsuit, the two men sued Orleans Parish Criminal Sheriff (Marlin Gusman) and two underlings, alleging both false imprisonment and deliberate indifference to their civil rights. The plaintiffs postured that had they been given a hearing or simply released on their own recognizance (the sheriff had this authority) especially in light of the approaching storm, this entire misadventure could have been avoided. If prevailing, the plaintiffs sought an award of compensatory and punitive damages.

The government defended the claim and first noted that the evacuation order excluded the jail. Then to their handling of the case, they postured that the plaintiffs were appropriately processed and then moved to alternative holding locations. To the totality and magnitude of the situation, the Orleans Parish Sheriff explained that some 6,000 inmates were handled under the most difficult of circumstances and not one died or suffered serious injury. As to the plaintiffs particularly, Attorney Freeman told the jury there was no intent to hurt them and that the plaintiff prayer for damages (some $1.3 million) represented greed.

The verdict was mixed at trial. The government prevailed on counts regarding probable cause and the 48 hour rule as well as a second count regarding the conditions of confinement. However the verdict was for both plaintiffs regarding a civil rights violation associated with the denial of telephone rights. Damages were assessed at $100,000 for each plaintiff.

The jury continued and found for the plaintiffs too on a state-law false imprisonment count. Waganfeald's damages were $200,000, the jury awarding Kunkel $259,300 on this count. The combined verdict for the plaintiffs totaled $659,300.

Products Liability - **The plaintiff was applying cement stucco with a specialized pump – the pump came under pressure and a Cam-Lok came loose and struck the plaintiff in the knee, the impact nearly severing his leg**

Roman v. Western Manufacturing, 6:07-1516

Plaintiff: P. Craig Morrow, Jr. and Jeffrey M. Bassett, *Morrow Morrow Ryan & Bassett*, Opelousas

Defense: Kevin P. Landreneau, *Seale & Ross*, Baton Rouge, LA

Verdict: $1,665,000 for plaintiff less 70% comparative fault

Court: **Federal - Lafayette-Opelousas**

Judge: Patrick S. Hanna

Date: 9-30-10

Dorel Roman operates a stucco-application business in Lafayette. On 7-10-07 he was working at a commercial jobsite in Lafayette with a Predator Pump – the device is made and marketed by Western Manufacturing. It allows cement stucco to be distributed via a pump under high pressure.

This particular pump was brand new, Roman having just finished reading the instructions. As he worked with the pump (for the first time), there was a loud boom. A Cam-Lok on the pump came loose and the hose struck Roman in the knee. It was a significant blow, the impact nearly severing his leg at the knee. He underwent a complex repair course, including several surgeries. It was even feared his leg would be amputated at the knee. Roman continues to complain of disabling pain. His medical bills were $168,804.

In this lawsuit, Roman sued Western Manufacturing and alleged the Predator Pump was defective. His experts, Kenneth Riggs, Metallurgy and Kurt Vandervort, Engineer, both of Houston, TX, explained that a pressure relief value (PRV) failed and the resulting high pressure caused the Cam-Lok fitting to fail. The plaintiff developed proof that alternatively, the pump should have had a PRV that activated at lower pressure and safety cables should have been attached so that the hose could not swing freely, this

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St. Landry Parish - House explodes after plaintiff stole natural gas - $15,334,443 verdict among several family members
Federal - Lafayette - Catastrophic injury when hydraulic bucket failed on a Transocean oil rig - $4,091,867
Calcasieu Parish - Wrongful Death - Retarded man died of neglect at an adult care facility - $7,500,000
Livingston Parish - Medical Malpractice - Cardiac Death - Defense verdict
Orleans Parish - Horse Barn incident - Plaintiff hit in head with hay bale - Defense verdict
Rapides Parish - Medical Malpractice - Birth injury - Defense verdict
Ouachita Parish - Legal Malpractice - Suit abandoned - $680,968
Caddo Parish - Medical Malpractice - Missed appendicitis - Defense verdict
Acadia Parish - Dog Attack - Dog attacks motorcyclist - Defense verdict
Lafourche Parish - Wrongful Death - Drunk man struck by a garbage truck - Defense verdict
St. Mary's Parish - Maritime Negligence - Oil rig worker injured in a crane accident - $3,546,634
St. Mary's Parish - Medical Malpractice - Missed lung cancer - $917,998
Terrebonne Parish - Slip and fall at Wal-Mart - Defense verdict

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sort of high pressure event being foreseeable.

Western Manufacturing defended the case and denied there was a defect with the pump. It argued that Roman's misuse of the pump, namely, standing to the side of it (a clearly warned of hazard) was the cause of his injury. An expert for the defense was Robert Gregory, Engineer.

The jury's verdict was mixed. While Western Manufacturing prevailed on the design claim, the verdict was for Roman on the construction and/or composition count. The jury too found fault with Roman. That fault was assessed 70% to him, the remainder to Western Manufacturing.

Then to damages, Roman took an award of $1,665,000. A judgment less comparative fault was entered for him in the sum of $499,500. Roman has since moved to increase the judgment, the jury awarding him only $10,000 of his incurred and stipulated-to medical bills. Western Manufacturing too has sought judgment relief, focusing that Roman's improper use (standing next to the hose) was the sole cause of this accident.

The motions are all pending. The LaJVR learns that before trial Western Manufacturing had offered Roman nothing.

Wrongful Death - The plaintiff died after being placed in a chokehold following a minor traffic stop

Arthur v. New Orleans Police, 2:07-9488
Plaintiff: Gary W. Bizal, *Pierce & Bizal*, New Orleans and Stephen J. Haedicke, New Orleans
Defense: Franz Zibilich and James B. Mullaly, *Assistant City Attorneys*, New Orleans
Verdict: Defense verdict on liability
Court: **Federal - New Orleans**
Judge: Mary Ann Vial Lemmon
Date: 9-2-10

Gerald Arthur was pulled over in New Orleans for running a stop sign on 12-14-06 at the intersection of Prieur & MLK. The police noticed cocaine in the car and asked Arthur to exit it. As the police (Victor Grant, David Ogozalek and Anthony Villavaso) partially cuffed Arthur, he started to flee.

Arthur was quickly caught and placed in a chokehold. While it was apparent to several observers that Arthur had submitted, the chokehold continued. The police maintained the chokehold even as a crowd gathered and pleaded that Arthur be released. Finally Arthur was let go. His body was limp. EMTs were called to the scene, but Arthur was dead upon their arrival.

In this lawsuit (pursued against the three-named police officers), Arthur's estate alleged the conduct in effectuating his arrest (and choking him to death) constituted excessive force. The police defended that they acted reasonably in bringing the out of control Arthur into compliance. The estate countered with medical proof that the death represented manual strangulation via positional asphyxia.

There was important proof that was excluded at trial. Officer Villavaso was involved in the infamous Danzinger Bridge shooting incident where innocents were allegedly shot in the days after Hurricane Katrina. [Seven officers (including Villavaso) were indicted on federal charges this July.]

The jury's verdict was for the three

policemen on the excessive force count and the estate took nothing. The maintenance of the record is thereafter confused. While a defense judgment was entered (consistent with the verdict), there was an additional order in the record indicating that just following the verdict, there was a secret settlement reached by the parties. Secret settlement or defense judgment or both? The record is unclear.

Medical Malpractice - An elderly hospital patient fell at the hospital and suffered a head injury that proved fatal – her estate alleged negligence by the hospital in failing to have instituted adequate fall protection

Blanchard v. Pendleton Methodist Hospital, 2008-5161
Plaintiff: Clifford E. Cardone and Catherine Hilton, *The Cardone Law Firm*, New Orleans
Defense: David A. Bowling and Suzannah E. McKinney, *Wilson Bowling & McKinney*, New Orleans
Verdict: $523,755 for plaintiff
Parish: **Orleans**
Judge: Kern Reese
Date: 8-24-10

Myrtle Blanchard, age 75, was admitted to Pendleton Methodist Hospital on 12-6-04. She had come to the ER and been diagnosed with a urinary infection and sepsis. At the time of her admission, Blanchard had an unsteady gait.

Two days later Blanchard fell at the hospital. An hour later, Blanchard fell again and this time she struck her head. A craniotomy was performed in an attempt to relieve a subdural hematoma. Despite that intervention, Blanchard died on 12-29-04.

In this lawsuit, her estate alleged negligence by the hospital in failing to institute an appropriate fall restraint plan. The estate suggested that she should have been restrained or otherwise monitored because of her high risk of falling. An expert for the estate was Susan Lofton, RN.

The case was presented to a Medical Review Panel. Its members (William Troxler, Arnold Alper and Kim Faught) exonerated the hospital. The panel's rationale was that after the first fall, nurse's did alert her doctors and no restraint order was issued. That comported with the defense theory that, (1) while Blanchard was lethargic, she did not represent a fall risk, and in any event, (2) no physician had ordered a restraint.

The jury's verdict was for the estate that the defendant was negligent. Then to damages, her three children took $25,000 each for love and affection and loss of society. Myrtle's pain and suffering in two categories, physical and mental, was $100,000 each. Her loss of enjoyment of life was valued at $150,000. The funeral bill was awarded in the sum of $4,755 as well as the medicals. The verdict totaled $523,755. The court's judgment reduced the award to $100,000 pursuant to La. R.S. 1299.41 as the defendant is a qualified health care provider.

Sexual Harassment - The plaintiff complained of same-sex harassment – while the plaintiff prevailed at trial, the judgment has since been set aside, the trial judge ruling that the plaintiff had not proven his harasser was a homosexual

Cherry v. Shaw Coastal et al, 3:08-228
Plaintiff: Jill L. Craft, Baton Rouge
Defense: Leslie W. Ehret and Renee Culetta, *Frilot, LLC*, New Orleans for Shaw Coastal
Gilbert R. Buras, Jr., New Orleans for Reasoner
Verdict: $510,000 for plaintiff
Court: **Federal - Baton Rouge**
Judge: James J. Brady
Date: 7-23-10

John Cherry worked for Shaw Coastal. While at the firm, he alleged a co-worker, Michael Reasoner, engaged in a pattern of same-sex sexual harassment. That included highly charged sexual texts, love poems, touchings and remarks – the heart of these remarks was Reasoner expressing a desire to have sex with Cherry. Cherry also alleged Shaw Coastal did nothing to prevent the harassment.

In this lawsuit, Cherry sought damages from his employer regarding this course of conduct. He also presented a battery count against Reasoner individually. Reasoner for his part denied it all – he was so vehement in his denial, that his denial turned into a defamation counterclaim.

Shaw Coastal for its part defended the case that it wasn't one of sexual harassment. Instead it simply represented a personal dispute between two co-workers. The company also argued it did everything it could to prevent a hostile environment from existing at in the workplace.

Cherry prevailed on the same-sex sexual harassment claim against his employer. He took damages of $500,000 against Shaw Coastal. He also prevailed on battery against Reasoner individually and took another $10,000. This jury additionally rejected Reasoner's defamation counterclaim.

The trial judge has since set aside the verdict against Shaw Coastal only explaining that Cherry's proof was deficient in an important way – he had failed to prove that Reasoner was a homosexual. While the conduct was sex tinged (i.e., Reasoner's "I want cock" texts), Brady explained that was just a juvenile remark. A consistent judgment was entered reflecting the post-trial decision.

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Products Liability - An infant died from liver complications related to an overdose of Infant's Tylenol – her estate argued there were inadequate warnings of this risk – an Opelousas jury first exonerated the defendant on liability, but inexplicably, it still assessed fault 15% to the defendant – the court sent the jury to deliberate again and this time, it did find fault and that fault percentage had jumped to 23%

Hutto v. McNeil-PPC, 04-96
Plaintiff: Cle Simon and Barry L. Domingue, *Simon Law Offices*, Lafayette
Defense: Kathleen A. Manning, *McGlinchey Stafford*, New Orleans and Robert W. Sparks, Debra D. O'Gorman, Patrick G. Broderick and Michael F. Pianell, *Dechert*, LLP, New York, NY
Verdict: $5,033,802 for plaintiff assessed 23% to the defendant
Parish: **St. Landry**
Judge: Donald W. Hebert
Date: 6-25-10

Brianna Hutto, then seven months old, was brought to the ER at Opelousas General Hospital on 1-3-03 by her mother. The girl had a high fever. She was treated and released without being formally admitted. Upon discharge, her mother (Christine) was given instructions to administer a one-teaspoon dosage of Infant's Tylenol to Brianna.

Brianna's mother and her grandmother (Theresa Hoyt) provided the Infant's Tylenol as directed by the hospital. The girl's condition became worse and she was returned to the hospital. It was learned she had suffered an acetaminophen overdose related to the Children's Tylenol. The effect of that overdose was to severely damage her liver.

Brianna was taken to Children's Hospital in New Orleans and then to Omaha, NE for a potential liver transplant. While awaiting that transplant, Brianna died on 1-8-03. In this lawsuit, her parents, Christine and Eric, sued McNeil-PPC, the manufacturer of the Infant's Tylenol.

The plaintiff's theory was that the labeling was inadequate. Namely, it failed to warn users that Infant's Tylenol is very concentrated and there is a significant risk of overdose to very young children. The plaintiff also cited confusion in the labeling and administration of Infant's Tylenol versus an ancillary product, Children's Tylenol. A key expert for the estate was Bonnie Desselle, Toxicology. The estate had also sued the hospital regarding its dosage instructions.

On the first day of trial, the plaintiff entered a secret "Mary Carter" settlement with the hospital. Thus while the hospital continued to participate at trial, the only true remaining defendant was McNeil-PPC. The hospital was represented by Donald W. Washington, *Jones Walker*, Lafayette.

To the merits, McNeil-PPC defended that the case represented a perfect storm of mistakes by the hospital and the plaintiff's mother in Brianna suffering an overdose. Fault then could be apportioned to the hospital, the mother and the grandmother. The defense also challenged the plaintiff's proposed warning label, arguing that the FDA will not permit age/weight labeling for users under two years of age. A toxicologist for McNeil-PPC was Barry Rumack.

The proof concluded on a Friday night (after ten days of trial) and the jury began to deliberate late in the evening. A first verdict was returned at one in the morning. It exonerated the defendant on both the labeling and design defect counts. Inconsistently however, the jury further apportioned fault 15% to the McNeil-PPC.

The court considered the verdict inconsistent and asked the jury to deliberate again. Two hours later (it was now three in the morning), a second verdict was returned. This time the jury found for the plaintiff on the labeling claim – the defendant prevailed on design defect.

Then to comparative fault, it was assessed 23% to McNeil-PPC (the percentage had jumped from the first verdict). The remaining fault was assigned 70% to the hospital, 5% to the grandmother and 2% to Brianna's mother.

Turning to damages, the parents took $1,000,000 each for pain and suffering and loss of love and affection. This portion of the verdict totaled $4,000,000. Brianna's mental pain and suffering and physical pain and suffering were both $500,000. The medicals were $31,303 and the funeral bill totaled $2,499. The combined verdict for the estate totaled $5,033,802. It was assessed consistently less comparative fault (23%) to McNeil-PPC in the sum of $1,157,774 in the court's judgment.

Post-trial, McNeil-PPC has moved in several directions. It has sought to unmask the Mary Carter settlement, it suggesting a sham had been created. It has also challenged the verdict, the defendant arguing the court should have accepted the first verdict which exonerated it. McNeil-PPC suggested that the final middle-of-the-night verdict was apparently a combination of juror confusion and fatigue. It also thought it was inappropriate not to continue the trial when the lead counsel for the defense (Robert Sparks) was hospitalized in trial.

The plaintiff too has sought JNOV relief arguing the apportionment of fault to mother and grandmother was contrary to the evidence. All post-trial motions were pending in late October.

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Medical Malpractice - A psychologist involuntarily committed a woman (her son had just been killed in a tragic accident and her husband announced an intention to divorce her at the funeral) who had expressed suicidal thoughts – however the psychologist committed the woman (she was held for nine days) without a face-to-face examination as required by law, he instead conducting a telephonic evaluation

Schilling v. Aurich, 96-3899
Plaintiff: Rick A. Caballero, Baton Rouge
Defense: James J. Hautot, Jr., *Judice & Adley*, Lafayette
Verdict: $65,000 for plaintiff
Parish: **Lafayette**
Judge: Edward B. Rubin
Date: 8-20-10

Lynn Schilling, then age 42, was having marital discord with her then husband, Herbert. He is a well-known businessman and beer distributor. . She saw a psychologist, Dr. Lynn Aurich, on 8-1-95 and 8-9-95 to consult on these matters.

It got worse for Schilling on 8-12-95 when her teenage son was killed when he fell from a moving vehicle. This grief was complicated at the funeral when Herbert announced that the marriage was over and placed his wedding ring in their son's casket.

Hours after the funeral, Aurich was alerted that Schilling was suicidal. He conducted a telephonic examination of Schilling. Following that evaluation, he made a decision to place her on an emergency hold, a so-called PEC. She was confined for nine days at the Charter Cypress Behavior Hospital. Schilling would deny she was ever suicidal.

Thereafter she pursued this lawsuit against Aurich. She alleged he violated the standard of care by failing to conduct an in-person exam as required by law before committing her. A Medical Review Panel agreed with Schilling that the law required an actual exam. A psychologist expert for Schilling was John Simoneaux, Pineville. In valuing damages, Schilling cited that beyond the confinement, she has since had to deal with a perception that she is crazy.

Aurich defended that the standard of care did not require a face-to-face meeting, his telephone conversation being adequate. Then in light of Schilling's suicidal expressions (she denied them), his commitment was proper. Experts for Aurich were Phillip Kleespies, Psychology, Cambridge, MA and Mark Warner, Psychology, Lafayette. The defense also minimized damages, questioning the so-called reputation injury, Schilling having been convicted of Social Security fraud in 1990 related to receiving improper benefits. [This conviction was the subject of a motion in limine, but there was no ruling in the record on this issue.]

This Lafayette jury found for Schilling that Aurich had violated the standard of care. She then took $50,000 for mental anguish and another $15,000 for loss of ability to enjoy life. The verdict totaled $65,000. A consistent judgment was entered.

Medical Malpractice - The plaintiff died in the hospital after a routine hemorrhoid surgery – his estate blamed his death and a lost chance of survival on a nurse for failing to properly monitor him

Skinner v. Christus St. Francis Cabrini Hospital, 220689
Plaintiff: Scott H. Fruge, *deGravelles Palmintier Holthaus & Fruge*, Baton Rouge
Defense: David R. Sobel and Jeremy C. Cedars, *Provosty Sadler deLaunay Fiorenza & Sobel*, Alexandria
Verdict: $250,000 for plaintiff
Parish: **Rapides**
Judge: Mary L. Doggett
Date: 3-26-10

Robert Skinner, then age 47, underwent a hemorrhoidectomy on 8-17-00 at Christus St. Francis Cabrini Hospital. It was uneventful but a decision was made to keep Skinner overnight. A hospital nurse, Stephen Ford, would monitor Skinner through the night.

Ford did so through the night and Skinner was apparently doing well. Ford went off his shift at 7:00 that morning. Less than an hour later, Skinner was found unresponsive in his bed. A code was called, but he did not recover. His death was described as acute cardio-pulmonary failure secondary to the administration of several drugs.

Skinner's estate (representing his widow and two children), sued the hospital and alleged error in two key ways, (1) Ford failed to properly monitor and record Skinner's vital signs, and (2) Skinner was given the wrong dosage of Remeron and Celexa. The combination of these errors (coupled with Skinner's co-morbidities of obesity and sleep apnea) led to his death.

It was the plaintiff's theory that Ford had not monitored Skinner at all and had just faked recording vital signs. [Ford didn't even do the charting until later in the day.] That the vitals were faked, the plaintiff cited proof that when discovered, Skinner's body temperature was just 94 degrees. The theory was that he had been dead for some three hours before discovery – had Ford monitored him through the night, he would have noticed his diminishing symptoms, the decedent having lost his chance of survival. Plaintiff's experts on liability were Dr. Ernest Lykissa, Toxicology, Deer Park, TX and Carol Starns, Nursing, Birmingham, AL.

A Medical Review Panel consisting of Terrill Hicks, Philip Cole and Dennis Nave had concluded there was no error. For his part, Ford defended that he had properly monitored Skinner.

As the jury deliberated the case, it had a series of questions for Judge Doggett: What are general damages? Do we have to put a price tag on his life or is it a general number that we can give? Judge Doggett replied that damages were the value of the lost chance of survival.

Back with a verdict, it was for the plaintiff on liability that the hospital had breached the standard of care. The estate then took $250,000 in general damages for the lost chance of survival. A consistent judgment was entered and the hospital has since appealed.

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Underinsured Motorist - A rear-end crash left the plaintiff with a debilitating back injury – the court later sanctioned the insurer's lawyers $2,500 for "an accumulation of things"

Wilson v. American Home Assurance, 5:08-1464
Plaintiff: John S. Odom, Jr., *Jones Odom & Politz*, Shreveport
Defense: Albert D. Giraud, Metairie and J. Michael Nash, Shreveport, both of *Ungarino & Eckert*
Verdict: $561,822 for plaintiff
Court: **Federal - Shreveport**
Judge: S. Maurice Hicks
Date: 3-24-10

Sheila Wilson, then age 38, traveled on Huckaby Drive in Shreveport on 5-21-08. At this location she was rear-ended by Roy Gardner. It was a moderate collision. Fault would not be in issue.

Wilson developed proof that the crash resulted in a debilitating spinal injury – she has undergone three repair surgeries. Since the wreck, the plaintiff (an insurance appraiser) has not worked.

Wilson first moved against Gardner and took his $10,000 policy limits. Above that sum she sought UIM coverage from her carrier, American Home Assurance Company. The UIM carrier had $2,000,000 limits.

American Home Assurance removed the case from Caddo Parish. Its defense focused on minimizing the claimed injury and suggesting that Wilson could return to work.

This case was tried for three days. Wilson prevailed and took her medicals of $107,315 plus $,7200 for future care. Lost wages were $77,307 and she sought $120,000 for those in the future. Her suffering was $200,000, the jury adding $50,000 more for loss of ability to enjoy life. The verdict totaled $561,822. The court's judgment was for Wilson in the sum of $101,822 reflecting an unconditional $460,000 pre-payment by the insurer.

The court also entered an order just as the trial ended, sanctioning American Home Assurance's lawyers for a violation of an apparently nebulous standard, described in Judge Hicks's order as "an accumulation of things." The penalty was $2,500. Apparently the accumulated things included among others, agreeing to mediate and then cancelling it unilaterally, cross-examining witnesses with excluded records and an economic expert discussed after-tax earnings despite being told not to. [It was the testimony from the economist that triggered the sanction.]

The defense lawyers have since retained Frank X. Neuner, Jr., Melissa L. Theriot and Cliff A. LaCour of *LaBorde & Neuner*, Lafayette to defend and challenge the sanction. While reply motions to the sanctions are pending, the underlying case has since settled.

Employment Contract - A high school teacher attended an off-campus after-prom party and drank beer – the next week there were rumors she had received a lap dance from a male student, among other salacious behavior – she was promptly suspended – in this lawsuit, the teacher (while denying the rumors) explained school officials tortiously interfered with her employment contract by acting on the rumors without investigation or evidence

Helo v. Notre Dame High School, 80207
Plaintiff: Lorna Brasseaux, Baton Rouge
Defense: Troy A. Broussard, *Allen & Gooch*, Lafayette
Verdict: Defense verdict on liability
Parish: **Acadia**
Judge: Edward Broussard
Date: 9-29-10

In the Spring of 2002, Donna Helo was a well-liked English teacher at Notre Dame High School in Crowley. It is a part of the Lafayette Catholic Archdiocese. The school conducted its prom on the evening of 4-24-02. Following the prom, students headed to a post-party.

They made their way to the party in an RV. Along the way, students called Helo and asked her to come along. Helo agreed and was picked up. There was proof that Helo and students were drinking. However it was not a school-sanctioned event and Helo was simply present.

The party continued at a private residence. One student, the lively Trey Broussard, jumped into the bed of a pick-up that was playing music. Broussard would later explain that when he drinks, he likes to get naked. Broussard was drunk.

He did get naked and entertained (or offended) post-prom party-goers with a naked strip. This strip tease happened in the vicinity of Helo although she would later explain she didn't watch it or otherwise participate. She later left the party.

The rumors were rampant in school on Monday. The rumor on the street was that Helo was drinking, Broussard gave her a naked lap dance and that there was some sort of involvement between the two, a rubber band being affixed to his genitalia.

It took no time for school officials, Principal John Dailey and Friar Rusty Richard, to learn of the rumors. When Helo returned to school on Wednesday (after a short vacation), she was confronted and told she was being suspended with pay while an investigation was conducted. Helo was offended by the suspension and promptly resigned.

This litigation followed, Helo alleging Dailey and Richard had tortiously interfered with her teaching contract. It was her proof that the rumors were unfounded, the defendants conducting no investigation before attempting to suspend her. The defendants denied fault and postured that it did nothing wrong – that is, Helo volitionally quit rather than take a paid leave and investigation.

The jury in Crowley found for the principal and the priest that they had not tortiously interfered with the contract and Helo took nothing. A defense judgment followed this three day trial.

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Dog Attack - As the plaintiff walked her dog, she was suddenly attacked by the defendant's three German Shepherds – knocked to the ground, the plaintiff sustained a rotator cuff injury

Reeves v. Groves, 08-11813
Plaintiff: David W. Oestreicher, II, New Orleans
Defense: Scott G. Jones, *Inabnet & Jones*, Mandeville
Verdict: $83,500 for plaintiff
Parish: **Orleans**
Judge: Piper D. Griffin
Date: 5-13-10

Cynthia Reeves was walking her dog in New Orleans on 11-13-07. She proceeded on Constantinople Street near Coliseum Street. Suddenly three German Shepherd dogs charged at Reeves. In the canine melee that followed, Reeves was knocked to the ground.

She landed hard on her shoulder. Her mouth also struck the ground. She has since treated for a rotator cuff tear and a dental injury. Reeves also reported an emotional injury, noting her dog was nearly killed in the attack.

In this lawsuit, Reeves targeted the owner of the German Shepherds, George Graves, who permitted his dog's to run loose. The plaintiff cited proof that Graves had previously allowed his dogs to escape. Graves admitted fault and focused on minimizing the claimed injury.

Groves having stipulated fault, the jury considered a prefatory interrogatory on damages: Did this incident cause or aggravate plaintiff's injuries? The answer was yes. Then to damages, Reeves took medicals of $3,560 plus $25,000 for future care. Medical disability was $10,000.

The plaintiff's past suffering was $30,000 – she took $15,000 more for in the future. Loss of enjoyment of life was rejected. The verdict totaled $83,500. A consistent judgment was entered.

Intentional Tort - While sitting in a restaurant bar, the plaintiff told a neurosurgeon who had cursed a waitress to watch his language – the doctor then sucker-punched the plaintiff, leaving him with a mild traumatic brain injury

Ezell v. Miranne, 658-232
Plaintiff: Anthony J. Staines, *Staines & Eppling*, Metairie and Bobby J. Delise and Alton J. Hall, Jr., *Delise & Hall*, New Orleans
Defense: Bobby Ray T. Malbrough, Kenner
Verdict: $435,513 for plaintiff assessed 95% to the defendant
Parish: **Jefferson**
Judge: Henry G. Sullivan, Jr.
Date: 4-16-10

Dr. Lucien Miranne, a neurosurgeon in Metairie, was at Oscar's Bar and Grill on the evening of 1-4-08. He was with his wife and daughter. A dispute arose between Miranne and a barmaid. It centered on his daughter (who was underage) being present in the bar.

The barmaid asked Miranne to leave. He was belligerent in response and cursed the barmaid. A patron at the bar, Christopher Ezell, age 55 and a marine maritime adjuster for CNA, overhead the doctor's rant. He told the doctor to stop.

An instant later, Ezell had looked away. In that moment, he was sucker-punched by the doctor. The impact knocked Ezell off his stool – in the process of falling, he struck his head on the floor. That impact resulted in a 2 cm cut to his head.

Ezell has since treated for several conditions related to this attack, including a mild traumatic brain injury. It was his proof that a pre-existing bi-polar disorder was aggravated. The effect of these injuries has disabled Ezell.

In this lawsuit, Ezell sought damages from Miranne for this battery. Miranne defended the case and postured that he acted in self-defense. Namely, an apparently aggressive Ezell seemed to be lunging at him apparently with a beer bottle. While the doctor swung, (that was never in dispute), he postured it was a defensive measure. The doctor also diminished damages, noting the blow was inadequate to result in a permanent injury – importantly, Ezell never lost consciousness.

This case was tried in Gretna for five days. The jury's verdict was for Ezell that Miranne had "intentionally interfered with his physical integrity." The jury further found this tort had caused injury.

The jury answered too that Ezell had contributed to these events. Fault was assessed 95% to the doctor, the remainder to Ezell. Then to damages, the plaintiff took $140,000 each for lost wages and future lost wages. His medicals were $130,513, the jury adding $25,000 for pain and suffering. The verdict totaled $435,513.

The court's judgment was for Ezell for the full sum, the court finding that as Miranne acted intentionally, there could be no comparative fault. Miranne moved to correct the judgment and for other relief, arguing the verdict was excessive and an apparent exercise of class warfare. The doctor's motion was denied and he has since appealed.

As the jury had deliberated the case, it had a question for the court on damages: Do we decide the cut or the brain jury? If the court replied, it was not made a part of the court record.

Furniture Loading Negligence - While backing his pick-up to have furniture loaded upon it, store employees (surreptitiously) let down his tail gate – the plaintiff not knowing that backed into the loading dock – he would later complain that the impact between the tailgate and the loading dock was rough and caused personal injury

Rachal v. Ivan Smith Furniture Co., 526135
Plaintiff: B. Trey Morris, *Simmons Morris & Carroll*, Shreveport
Defense: Scott L. Zimmer, *Cook Yancey King & Galloway*, Shreveport
Verdict: Defense verdict on liability
Parish: **Caddo**
Judge: Scott J. Crichton
Date: 3-9-10

Jerome Rachal purchased furniture in

January of 2008 from the Ivan Smith Furniture Company. On the evening of 1-4-08, Rachal backed his Dodge Dakota pick-up towards a loading dock at the furniture store. He would recall that store employees assisted him in that process. [Rachal also remembered they weren't very serious about it, engaging in laughter and jokes.]

An instant later as Rachal followed directions, he was suddenly jarred. It seems that the employees had lowered his tailgate (without telling Rachal) and thus he was unable to judge that he was about to crash. While the crash was at low-speed and involved just the tailgate, Rachal has since treated for soft-tissue injuries.

In this lawsuit, Rachal sued the furniture store. He focused on the careless employees for having lowered his tailgate without advising him that they had done so. His wife presented a derivative consortium claim. Ivan Smith Furniture Store defended and besides denying fault, it also diminished the claimed injury.

The jury answered for the furniture store that its employees were not at fault for this accident. That ended the deliberations and Rachal took nothing. A defense judgment was entered.

Medical Malpractice - A pediatrician (since deceased) was blamed for giving a teenage girl an incorrect antibiotic to treat a sinus infection – because of this error, it was alleged the girl suffered a rash that became necrotic and she lost 65% of her skin

Ellis v. Jeansonne, C-541872
Plaintiff: Donald W. Price, *Due Price Guidry Piedrahita & Andrews*, Baton Rouge and Allen J. Myles, *Myles & Myles*, Plaquemine
Defense: Janie Languirand Coles, *Batiza Godofsky Schroeder & Coles*, Baton Rouge
Verdict: $2,116,597 for plaintiff
Parish: **East Baton Rouge**
Judge: R. Michael Caldwell
Date: 4-30-10

BreAnna Ellis, then age 13, was suffering from an upper respiratory infection. She was treated on 11-10-03 by a pediatrician, Dr. Louis Jeansonne. He told the girl's mother he would prescribe an antibiotic known as Omnicef. In fact the prescription was for a different antibiotic, Septra.

Over the next two weeks, Ellis began to develop a rash. The rash became toxic epidermal necrolysis and Ellis lost some 65% of her skin. In this lawsuit, Ellis alleged error by Jeansonne in prescribing Septra.

The plaintiff suggested that Jeansonne had done so mistakenly, his medical records initially showing he had written Omnicef – he only later scratched that out and wrote Septra in its place. That Septra was the wrong drug, the plaintiff developed that it is not a natural front-line antibiotic for a sinus infection (even if it was an infection at all and not a viral condition) and was thus not appropriate.

An expert for the plaintiff was Dr. Donald Marks, Internal Medicine with a pharmacology specialization, Birmingham, AL, discussed both standard of care and causation. Ellis incurred several hundred thousand dollars in medical bills, but the care was provided at a Shriner's Hospital in Texas and thus was free care to her.

The Medical Review Panel assigned to this case consisted of Roslyn Slaughter, Wallace Dunlap and Christopher Funes. It concluded there was no error, Septra being an appropriate drug. The panel also noted that the plaintiff's condition could have developed from an antibiotic and in fact, might have just been an infection totally unrelated to an antibiotic at all. Jeansonne died in January of 2009 at age 63, the case advancing to trial against his estate.

The jury answered yes that Jeansonne had "committed malpractice" and that this caused injury to Ellis. Then to damages, the girl took medicals of $16,597 plus $2,000,000 in general damages. Her mother took $100,000 more for her consortium interest, the verdict totaling $2,116,597. [The award of $2.1 million was unusual in part because in closing, plaintiff's lawyer had only asked for $1.1 million.] The court entered a consistent judgment reducing general damages to the statutory cap of $500,000. Plaintiff has appealed, apparently seeking to challenge the constitutionality of the cap. Her attorneys have since withdrawn (although they intervened to protect their fee) and have been replaced by Janice M. Myles of Plaquemine.

Pharmacy Negligence - Following cardiac surgery (valve replacement), a little girl was given a Lasix prescription – it was improperly filled at a drug store, the girl being given a dosage that was five times too high – she has since complained of assorted permanent maladies associated with the overdose

Gober v. Walgreen Co., 2008-4242
Plaintiff: Brian E. Crawford, *Crawford & Joyce*, Monroe
Defense: Kurt Blankenship, Richard E. Gruner, Jr. and Michael Freeman, *Blue Williams*, Metairie
Verdict: $35,000 for plaintiff
Parish: **Ouachita**
Judge: Alvin R. Sharp
Date: 10-21-10

Emily Gober (age eight at the time of this alleged tort) was born premature with a heart defect in that she had no pulmonary valve. It was remedied with several surgeries. Gober (of Monroe) underwent a surgery on 5-2-08 at Children's Hospital in New Orleans to replace the valve. The procedure was uneventful.

Returning home after the surgery on 5-12-08, Gober's mother filled a prescription for Lasix at a Walgreen in Monroe. It had been prescribed as 8 mg every twelve hours. The prescription was botched at Walgreen, it being issued at five times that sum.

Over the next 11 days, Gober showed signs of being lethargic and otherwise ill. She saw a doctor on the 11th day for a follow-up to the surgery. It was quickly learned that she was suffering from a Lasix overdose. It manifested itself immediately as dehydration. Beyond that

initial injury, Gober has since complained of complications, including, a liver injury, coughing, leg tremors, a diagnosis of ADD and a potential that her heart valves will be affected.

Gober (through her parents) sued the pharmacy and alleged negligence in mislabeling the prescription. Her pharmacy expert was Ronda Atkins, Shreveport. Economic loss was quantified by Robert Eisenstadt, Monroe.

Walgreen defended the case and focused on causation – that is, any error in filling the prescription had caused no harm to Gober. Experts that diminished the injury were Dr. James Marshall, Pediatric Toxicology, Fort Worth, TX, Dr. Gil Wernowsky, Pediatric Cardiology, Philadelphia, PA and Gary Clark, Pediatric Neurology.

Gober prevailed on the negligence count and that she had suffered damages. The jury valued those damages at $35,000, that sum representing only pain and suffering. Disability, loss of ability to enjoy life and lost wages were all rejected as was the consortium count of her plaintiffs. A week post-trial when the LaJVR reviewed the record, no judgment had been entered.

Truck Negligence - A doctor's wife was rear-ended in her Mercedes by a truck – while not complaining of an injury at the scene, the wife has since reported persistent soft-tissue symptoms

Asbahi v. Beverly Industries, 121024
Plaintiff: Lewis O. Unglesby, *Unglesby & Marionneaux*, Baton Rouge and Ernest M. Forbes, *Forbes Law Firm*, Denham Springs
Defense: Robert S. Reich and John B. Esnard, III, *Reich Album & Plunkett*, Metairie
Verdict: $2,097,837 for plaintiff
Parish: **Livingston**
Judge: Elizabeth P. Wolfe
Date: 10-15-10

Huda Asbahi, then age 47, traveled in Denham Springs on Florida Boulevard. Asbahi, the wife of a local pediatrician (Badi) came to a red light in her late model Mercedes sedan. An instant later she was rear-ended by Austin Duskin, then piloting a work truck for Beverly Industries. It was a moderate collision – fault was no issue.

Asbahi did not seek treatment at the scene. She subsequently followed for apparent soft-tissue symptoms. They did not resolve and she has since undergone injection treatments in her spine with Dr. Hazem Eissa, New Orleans. A video of these injections was produced, Asbahi appropriately wincing as the injections occurred.

In this lawsuit, Asbahi sought damages from Duskin and his employer. Beverly Industries defended the case and noted among other things that, (1) there was no initial injury, and (2) a treating doctor (Fraser Landreneau, Neurosurgery, Baton Rouge) concluded the plaintiff had just a temporary soft-tissue injury from which she had recovered. Landreneau also looked to pre-existing conditions.

This case was tried on damages only. The jury concluded for Asbahi that she was injured and that it was caused by this accident. Then to damages, she took medicals of $41,837 plus $480,000 for future care. Past suffering was $100,000, the jury awarding her $1.3 million for that in the future. Loss of enjoyment of life was $150,000, Dr. Asbahi taking $26,000 for his consortium interest.

The verdict totaled $2,097,837. A week post-trial, no judgment had been entered. As the jury deliberated, it had a question for the court: Are there maximum and minimum amounts to award for pain and suffering? If the court replied, that answer was not a part of the court record.

USERRA - An anesthesiologist alleged he was denied partnership status because of his military service

Baudoin v. Mid-Louisiana Anesthesia Consultants, 1:07-751
Plaintiff: Robert G. Nida, *Gold Weems Bruser Sues & Rundell*, Alexandria
Defense: Ronald Fiorenza, *Provosty Sadler deLaunay Fiorenza & Sobel*, Alexandria
Verdict: Defense verdict on liability
Court: **Federal - Alexandria**
Judge: James D. Kirk
Date: 1-27-10

Bryan Baudoin, a board-certified anesthesiologist, was employed by a medical group in Alexandria, Mid-Louisiana Anesthesia Consultants. Baudoin had been recruited to the group and was offered a $300,000 salary. His two-year contract (signed on 3-29-04) also provided that at the end of the term, he would be offered a partnership.

Nearly twenty months later, Baudoin, who served in the U.S. Army Reserves, was called up to active duty. That service started in January of 2006 and lasted for 90 days. When Baudoin returned to the medical group in April, he was told he would not immediately be made a partner. The group was evaluating him for two more months – as a concession, it upped his pay to $450,000.

Over the next few months, Baudoin continued to work but would not sign a new employee contract. He thought he should be a partner. In December he was told by a group bigwig that there would be no partnership for him. The reason was a belief among the partners that Baudoin had not earned it. Baudoin quit the next day. He left Alexandria and took a lower paying job in Lafayette.

In this lawsuit, Baudoin presented two counts. The first was that the contract provided that upon the completion of two years, he would become a partner. He fulfilled his two years and thus he posited that automatically he would be granted partnership status.

The second count was predicated on USERRA, Baudoin alleging he was denied partnership status because of his

military service. He noted that until his 90 days of military duty, his work was praised. Following it, Baudoin was criticized for all sorts of things, including his technical performance of anesthesia procedures.

The medical group first defended that the partnership status only kicked in after 24 months (and Baudoin missed three because of his service) and as importantly, it was earned on merit. As Baudoin failed on both points, he was not entitled to be a partner. The court denied summary judgment for the defendant, ruling that partnership was not automatic as argued by Baudoin upon the completion of two years, nor was it completely discretionary as the defendant thought. Judge Kirk ruled that if Baudoin fulfilled his duties, then the contract was breached. He called this a question of fact for the jury to decide. Mid-Louisiana Anesthesia Consultants also denied that its decisions had anything to do with Baudoin's military service.

The court's verdict was for the medical group on both contract and USERRA counts, Baudoin taking nothing. A defense judgment was entered and the case is closed.

Truck Negligence - On the Huey Long Bridge near New Orleans, the plaintiff (a state worker) was sideswiped by a tractor-trailer driver

Phillips v. Roofer's Mart Southeast, 2:09-3691
Plaintiff: Terry Loup and Kristen Fitzgerald, *Morris Bart*, New Orleans
Defense: Debra J. Fischman, *Sher Garner Cahill Richter Klein & Hilbert*, New Orleans
Verdict: Defense verdict on liability
Court: **Federal - New Orleans**
Judge: Eldon E. Fallon
Date: 8-18-10

Dewey Phillips, then age 54 and working in juvenile corrections for the State of Louisiana, traveled at the foot of the Huey P. Long Bridge in New Orleans, LA. Traffic was heavy in the traffic circle that led onto the bridge. Phillips would recall a tractor-trailer (driven by Douglas Boudreaux for Roofer's Mart Southeast) encroached his lane and struck his pick-up. The impact rocked his vehicle, ripping off the side-view mirror.

Boudreaux did not initially stop, another motorist alerting him to the wreck. For his part, Boudreaux explained the crash in two ways, (1) it was so minor he didn't feel the impact with his trailer, and (2) it was Phillips that encroached his lane. Phillips countered that Boudreaux struck him. In support of that theory, Phillips pointed to the debris field in his lane of travel.

Whoever was at fault, Phillips did not seek treatment until two days later. He subsequently complained of neck pain and later had a C2-3 fusion surgery. In this lawsuit, Phillips sought damages from Boudreaux and his employer. The defense replied on fault as noted above – it also diminished damages noting the wreck was minor and that Phillips had a long history of pre-existing problems with his neck.

The jury's verdict was for the defense on liability and that ended the deliberations, Phillips taking nothing. A defense judgment was entered.

Elevator Negligence - The plaintiff tripped when she exited an elevator on the third floor of an office building – the elevator had mis-leveled and was six inches lower than the level of the floor

Jones v. Hancock Holdings, 3:06-14
Plaintiff: Alfreda Tillman Bester, *Tillman Bester & Associates*, Baton Rouge
Defense: John P. Wolff, III, *Keogh Cook & Wilson*, Baton Rouge
Verdict: Defense verdict on liability
Court: **Federal - Baton Rouge**
Judge: Ralph E. Jones
Date: 6-22-10

Irma Jones was an invitee on 7-15-04 at the Hancock Holdings Building in Baton Rouge. She entered an elevator and headed for the third floor. The elevator arrived at its destination and Jones exited the elevator.

What Jones failed to appreciate in exiting the elevator was that it had mis-leveled – that is, it was six inches below the level of the third floor. An instant later Jones tripped as she exited and sustained injuries to her neck, back and knee.

In this lawsuit she alleged Hancock Holdings failed to maintain the elevator in a reasonably safe condition. She cited proof that the elevator frequently malfunctioned, got stuck and had mis-leveling events.

Hancock Holdings removed the case to federal court from East Baton Rouge District Court. It defended on the merits that the mis-leveling of six inches was so open and obvious that it did not represent an unreasonable risk of harm. Hancock Holdings also defended that it had no notice of the purported defect, it reasonably relying on an elevator maintenance company. [The jury could apportion fault to that non-party and the plaintiff.]

The court's liability instructions required Jones to prove all of the following: (1) there was a vice or defect that created an unreasonable risk of harm, (2) the defendant knew of this condition, and (3) it could prevent the risk of harm with the exercise of reasonable care. The answer was no on the first inquiry and that ended the deliberations, the jury not reaching plaintiff's duties, those of the non-parties, apportionment and damages. A defense judgment was entered.

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Medical Malpractice - A McGlinchey Stafford lawyer (delivering her fifth child) died of a post-partum hemorrhage – her estate alleged error by her maternal fetal doctor in failing to appreciate the condition and intervene in a timely fashion

Sileo v. Montgomery et al, 633-448
Plaintiff: John Paul Massicot and Damien Savoie, *Silvestri & Massicot*, New Orleans
Defense: Don S. McKinney, *Adams & Reese*, New Orleans
Verdict: Defense verdict on liability
Parish: **Jefferson**
Judge: Lee V. Faulkner, Jr.
Date: 4-30-10

Susan Sileo, age 41 and a lawyer at McGlinchey Stafford, delivered her fifth child on 12-20-01 at the Oschner Clinic just before ten in the morning.. Her treating maternal fetal specialist was Dr. Douglas Montgomery. The delivery was uneventful and apparently uncomplicated.

By a little after one in the afternoon, Sileo was losing blood secondary to a post-partum hemorrhage. It caused her to collapse. Montgomery considered and deliberated her condition for the next forty-five minutes. While he considered a hemorrhage, he also concluded her condition could represent many things.

Finally at 2:00 p.m., Sileo's abdomen was distended with blood and Montgomery correctly diagnosed her. He called for a surgery. It didn't start until 45 minutes later. Fifteen minutes later Sileo's heart stopped. She could not be revived. She was survived by her husband and their five children.

Her estate sued Montgomery and the Oschner Clinic (his employer) alleging error in failing to diagnose the hemorrhage. It was the plaintiff's contention that by 1:05 p.m., Sileo was exhibiting classic symptoms of a bleed. Had Montgomery intervened by 2:00 p.m., the plaintiff's proof developed, the event would have been survivable.

The theme then of the plaintiff's case was that Sileo should not have bled to death at a major metropolitan hospital. The plaintiff's liability expert was Dr. Harold Miller, Maternal Fetal Medicine, Houston, TX.

Montgomery defended the case as noted above, namely, that he considered a hemorrhage among other conditions. He explained it would have been error to immediately operate in light of her presentation at 1:05 p.m., as to do so would have had its own considerable risks. His expert, Dr. Gary Dildy, Maternal Fetal Medicine, New Orleans, LA, said the case gave him chills – this was because the presentation was so complex that even in the best of hands (and his too), Sileo would have still died. [The medical review panel in this case had found for Montgomery.]

At the close of five days of proof, the case was deliberated by a Gretna jury. The verdict was for Montgomery that he had not breached the standard of care. That ended the matter, the jury not reaching damages. A defense judgment was entered.

Sileo's estate has moved for a new trial and argued the verdict was contrary to the proof and represented the most egregious of wrongs. Montgomery replied it was a clean trial, the jury taking many notes and paying careful attention. The motion was denied.

Legal Malpractice - In a complex case where the plaintiff's car wreck case was passed from lawyer to lawyer, the statute of limitations was missed – the jury then exonerated the two defendants at trial, but then inconsistently apportioned fault to those exonerated lawyers and made an award of damages

Palumbo v. Bartels et al, 2001-11504
Plaintiff: Jacques F. Bezou, Covington and Henna Ghafoor, New Orleans
Defense: William E. Wright and Charlotte C. Meade, *Deutsch Kerrigan & Stiles*, New Orleans for Bartels and Pigg
Patrick H. Hufft and J. Thomas Beasley, *Hufft & Hufft*, New Orleans for Shapiro
Verdict: Mixed verdict and inconsistent verdict; Directed verdict for Shapiro
Parish: **Orleans**
Judge: Rosemary Ledet
Date: 7-14-10

This case started with in 1996 with an ordinary event. Bonnie Palumbo was involved in a car wreck on 11-12-96. She subsequently treated for a soft-tissue injury. She retained a lawyer, Stephen Shapiro, to prosecute an injury claim against the tortfeasor. A lawsuit was filed in June of 1997.

Thereafter Shapiro took a federal clerkship and discontinued his private practice. He transferred the case to the law firm of Bartels and Pigg – it is operated by William Pigg and Joseph Bartels.

The law firm later transferred the case to a third lawyer, Clayton Bankston. While not a part of the Bartels and Pigg law firm, he did work out of their office. Thereafter Bankston botched the case in failing to prosecute it. A trial judge dismissed it in June of 2000 finding that Palumbo had abandoned it.

Palumbo then sued her lawyers and alleged negligence in failing to prosecute. She targeted them all, Shapiro and Bankston as well as the law firm and its two partners. Bankston could never be served and would forever be a non-party to this lawsuit. [The jury would consider his duties for purposes of apportionment however.] Palumbo's damages if she prevailed were those that she would have recovered in the underlying civil case – it was thus a classic "case within a case".

Shapiro defended the matter that his involvement was limited. That is, he appropriately referred the case to Bartels and Pigg. A proper referral, his duties were appropriately concluded. The trial court agreed and directed a verdict for him at trial.

Bartels and Pigg defended similarly. They postured that the case was transferred to Bankston and it was Bankston alone that abandoned it. Palumbo countered that at all times, she believed Bankston was part of the law firm. He worked in the same office and it was represented to her that he was part of the firm. The defendants resisted this notion.

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This case went to a jury after three days of proof. The verdict was hopelessly confused. The jury first found that Palumbo was not Pigg's client and thus didn't reach fault regarding him. In a slightly different way, the jury found no deviation by Bartels. [Whether she was his client was no issue.]

Then despite that finding (also finding error by the non-party Bankston), the jury apportioned fault as follows: Bankston-40%, Plaintiff - 40%, Bartels - 10%, Shapiro - 5% and Pigg - 5%. [Thus the jury had exonerated both Pigg and Bartels and still apportioned fault to them – oddly it was also apportioned to Shapiro for whom a verdict had been directed.] Finally to damages, plaintiff was awarded $35,000.

The court's judgment is procedurally correct in that it accurately reflects the inconsistent verdict – that is, it is a judgment for no one against no one. The plaintiff has moved for a new trial and argued the verdict was inconsistent. The lawyers replied that a defense judgment should be entered on their behalf.

Attorney Attack - **In a remarkable open court tort case, it was alleged that the plaintiff (an attorney himself) provoked a former district attorney (he called him rotten in the job) and the district attorney proceeded to body slam the attorney who had impugned his reputation – the body-slammed attorney sued and alleged battery – the body-slammer counter-claimed that he had been assaulted and defamed – a Houma jury sorted it out and awarded the competing parties nothing**

Lewis v. Greenburg, 151424
Plaintiff: Allen J. Myles, *Myles & Myles*, Plaquemine
Defense: Joseph J. Weigand, Jr., Houma
Verdict: Defense verdict on liability on primary claim and counterclaim
Parish: **Terrebonne**
Judge: David W. Arceneaux
Date: 9-24-10

Anthony Lewis and Douglas Greenberg are practicing lawyers in Houma. Greenberg had previously been the local District Attorney. The two had a history of acrimony. It boiled over in open court in Houma on 5-26-06.

Greenburg would recall that Lewis had a history of personal attacks. They focused on Greenburg's performance as District Attorney, Lewis punctuating his description of his duties as being rotten. Believing he was under attack (in open court), Greenburg grabbed Lewis's lapels. The two men tumbled to the ground.

Lewis has since treated for soft-tissue injuries, depression and post-traumatic symptoms. He filed this lawsuit against Greenburg and alleged the attorney had battered him. It was his position that no matter his advocacy, there was no excuse for him to be attacked and thrown to the floor. He flatly denied having provoked Greenburg.

Greenburg defended as noted above that Lewis had provoked him, both by his words and his aggressive behavior. Then to the attack itself, Greenburg explained the two simply tumbled to the ground, the defendant resisting that he had body-slammed Lewis. From this version, Greenburg presented both an assault (he was placed in great fear by Lewis) and defamation counterclaims.

This case was deliberated in Houma for four days. To the claims of Lewis, the jury found that while he had been battered, it further concluded that Greenburg acted in self defense. Similarly, while finding that the plaintiff had assaulted and defamed Greenberg (in separate counts), the jury answered that Greenberg had suffered no damages. A defense judgment closed this matter.

School Negligence - **At a parish event while food was being prepared, a young girl (age 12) was badly burned when a pot of beans spilled upon her as she pulled it from an oven – she blamed the parish for failing to supervise the cooking – the parish defended the girl's father (an experienced bean cooker) had been present and left the girl alone to run an errand**

Lirette v. Saint Rosalie School, 664-821
Plaintiff: Stephen M. Petit, Jr., Willis J. Ray and Brittany R. Bonnaffons, Metairie
Defense: Gregory G. Gaudry and William H. Voigt, *Gaudry Ransom Higgins & Gremillion*, Gretna
Verdict: $1,000,000 for plaintiff assessed 80% to the defendant
Parish: **Jefferson**
Judge: Raymond P. Stieb, Jr.
Date: 9-1-10

It was 9-26-07 and that meant it was time for a parish fair at the Saint Rosalie School – the school is part of the New Orleans Archdiocese. Food was being prepared by Daniel Lirette in the school's kitchen. He had done this several times before, his daughter (Vanessa, then age 12), assisting him in that cooking. The proof was that she was no novice.

This day a pot of beans was placed in an oven. Daniel left the kitchen to attend to an errand. Vanessa was left alone. The beans were cooked and she proceeded to remove them from the oven. In the process the pot spilled upon Vanessa. She sustained painful first and second degree burns to her chest and torso. The proof would develop she had a 10% permanent impairment related to scarring including on her chest. She later underwent four painful debridements. For a year following these events, Vanessa wore a compression vest and complained her injuries impaired her regular activities.

In this lawsuit (advanced by her parents), Lirette alleged negligence by the parish in failing to supervise the kitchen and otherwise prevent her injury. Namely, the parish knew that children were frequently in the kitchen and

participated in cooking. Vanessa also focused that her injures represented "deep" second-degree burns. Her incurred medical bills were $6,300.

The plaintiff had also pursued a claim against the manufacturer of the oven, Cleveland Range. It prevailed by summary judgment. The manufacturer's counsel were Mark N. Bodin and Lorraine P. McInnis, McGlinchey Stafford, New Orleans.

The parish defended the case and focused that it was Vanessa's father who placed the white beans in the steamer and then left the premises – had he stayed on the premises, it was argued, there would have been no mishap. Alternatively, it was postured that Vanessa was familiar with the cooking process (she had done so before), it simply being an accident. The parish further defended that the injuries were relatively minor and that Vanessa is well-healed with scars that can be repaired surgically.

The jury found for Lirette that the parish had breached its duty. It further found fault against Vanessa, her mother and her father, it being apportioned respectively, 80% to school, 2% to mother and 9% each to Vanessa and her father. [The net effect was to assess fault 80% to Saint Rosalie.]

Then to damages, Lirette took $250,000 for physical suffering and $100,000 for mental suffering. Scarring and loss of ability to enjoy life were both $100,000. The jury added $350,000 for a category entitled past and future medicals. Her parents took $50,000 each for their respective consortium interests, the raw verdict totaling $1,000,000. A consistent judgment less comparative fault was entered.

The school moved for JNOV relief and argued the damages were excessive and that the apportionment finding was improper. The motion was pending when the LaJVR reviewed the record.

Medical Malpractice - An elderly hospital patient fell in her room and broke her hip – she criticized the hospital for failing to institute a fall prevention protocol

Puissegur v. Oschner Clinic, 2:06-8517
Plaintiff: Christopher J. Bruno and Lewis S. Joanen, *Bruno & Bruno*, New Orleans
Defense: Don S. McKinney and Maurice C. Ruffin, *Adams & Reese*, New Orleans
Verdict: Defense verdict on causation
Court: **Federal - New Orleans**
Judge: Sarah S. Vance
Date: 3-3-10

Maude Puissegur, then age 85, was suffering depression and other physical problems. She was admitted on 11-20-05 to the Oschner Clinic. She had a history of wandering and confusion. Over the next two weeks, a course of electro-convulsive treatments were administered. On 12-6-03, Puissegur rose in her room to go to the bathroom. She tripped over a trash can and broke her hip.

Puissegur sued the hospital and alleged negligence by it in failing to institute and follow a fall prevention protocol. The hospital defended there was a policy, requiring that Puissegur be checked every fifteen minutes. [Puissegur countered that if there were checks made, no record was made of it.] The hospital further defended that it otherwise provided Puissegur a clear walkway and non-skid boots. As Puissegur was neither an invalid nor frail, the standard of care required nothing more.

The verdict was mixed. While the jury found the hospital was negligent, it further concluded that negligence had not caused injury to Puissegur. That ended the deliberations and the plaintiff took nothing.

Auto Negligence - A right-of-way collision resulted in a spinal injury

Taylor v. Jimcoily & Dyke Industries, 07-7709
Plaintiff: Frank M. Buck, Jr. and P. Lindsey Williams, New Orleans
Defense: Charles R. Capdeville, *Law Offices of Robert Birtel*, Metairie
Verdict: $340,968 for plaintiff
Parish: **Orleans**
Judge: Robin M. Giarrusso
Date: 5-18-10

Stanley Taylor, then age 55 and a postal carrier, traveled on Parry Street in New Orleans on 8-7-06. An instant later, Oscar Jimcoily, a driver for Dyke Industries, backed out of a parking lot. He did so into the path of Taylor and there was a collision.

Taylor has since treated for a spinal injury. This care included a surgery. [The record does not fully describe his course of care.] In this lawsuit, Taylor sued Jimcoily and his employer and alleged negligence regarding this crash. The defense implicated the plaintiff's look-out and minimized the claimed injury.

The jury in this case found the defendant solely at fault. Then to damages, Taylor took medicals of $98,968 plus $20,000 for future care. Lost wages were rejected. Then to general damages, Taylor was awarded $222,000. The verdict totaled $340,968. A consistent judgment was entered and following the entry of that judgment, there was no further activity in the court record.

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