The Louisiana Jury Verdict Reporter

The Most Current and Complete Summary of Louisiana Jury Verdicts

May 2013 **Statewide Jury Verdict Coverage** **4 LaJVR 5**

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Civil Jury Verdicts

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Medical Malpractice - Plaintiff sought emergency room treatment for the removal of glass from his arm after punching a plate glass window - the treating doctor failed to remove a glass fragment - plaintiff claimed that the mistake resulted in nerve damage

Abshire v. Sherrod, 91329
Plaintiff: Bobby R. Lormand, Jr., Baton Rouge and Martin K. Maley, Sr. and Todd Comeaux, *Maley Comeaux & Falterman*, Baton Rouge
Defense: Gary J. Delahoussaye, *Gachassin Law Firm*, Lafayette
Verdict: $460,595 for plaintiff
Court: **Vermilion**
Judge: Patrick L. Michot
Date: 11-1-12

After drinking a 6-pack of beer and arguing with his girlfriend, on 9-20-07 Travis Abshire, then age 23, punched a plate glass window with both fists, causing lacerations to his right arm. He removed a large piece of glass from his arm, which caused

significant bleeding. He wrapped his belt around his arm to stop the blood flow and went to the emergency room at Abrom Kaplan Memorial Hospital, where he was treated by Rome Abdul Sherrod, III. Sherrod removed glass fragments from Abshire's arm, sutured it and instructed Abshire to follow up with his family doctor in one to two weeks.

When Abshire saw Dr. Cher Aymond for suture removal during the first week of October he reported worsening neurologic symptoms in his right arm. She recommended that he see an orthopedist as soon as possible and made an appointment with one for him. However, Abshire canceled that appointment and contacted a lawyer instead. He then waited nearly two months before having the retained glass fragment removed by orthopedist Ronald Sylvest, Baton Rouge.

This suit against Sherrod followed. Abshire claimed that Sherrod's failure to remove all the glass fragments from his arm resulted in a median nerve injury. He asserted $19,237 in past medicals. His experts were Sherrod, Dr. Robert Lecky, Jr., Emergency Medicine, Lafayette, Pat Culbertson, Economist, Baton Rouge, and Dr. Joel Bartfield, Emergency Medicine, Albany, NY.

Sherrod defended that Abshire caused his own nerve injury, most likely when he removed the piece of glass himself before going to the hospital, arguing that such an incident that would result in a heavy loss of blood is consistent with the type of injury that would be expected to damage a median nerve. Defendant also faulted Abshire for his delay in seeking follow-up treatment after he became aware of sufficient facts that would have led any reasonable person to believe that he had something very wrong with his arm. Furthermore, Sylvest, who removed the retained fragment, did not determine the fragment to be in proximity to the median nerve.

One expert, Dr. Eric George, Hand Surgeon, Metairie, opined that plaintiff recovered well, suffering only a mild sensory deficit. A second defense expert was Randolph Rice, Economist, Baton Rouge.

Following a four day trial, the jury deliberated for two and a half hours. It found that Sherrod had breached the standard of care and that the breach was a legal cause of injury to plaintiff. It also found no negligence on the part of Abshire.

The jury awarded $300,000 for past and future physical and mental pain and suffering, past medicals of $19,237 and future medicals of $141,358. It gave plaintiff nothing for loss of enjoyment of life or for physical impairment, disfigurement and disability. A consistent judgment was entered.

Defendant thereafter moved for JNOV and for a new trial. He complained that the jury ignored the overwhelming evidence that Abshire caused his own injury, including plaintiff's own treating doctor and expert witness, who stated that the retained fragment was not in the proximity of the median nerve and so could not have caused the injury. Defendant also believed the pain and suffering award to be excessive because Abshire has recovered well and requires very little medical treatment and no physical therapy or occupational therapy. He visits his doctor sporadically, only to refill his prescription medication. The case settled prior to a hearing on defendant's motion.

Products Liability - A cottonseed processing plant blamed a shut down and substantial damages on defective processing equipment – at a first trial in 2011, a jury awarded the plaintiff $1.75 million against the equipment manufacturer's insurer, but this sum was still less than a $4,000,000 floor of coverage representing the plaintiff's settlement with the manufacturer – a new trial was granted because of an improper question asked by defense counsel and at a second trial nearly two years later, the plaintiff took a larger award of $6.45 million that exceeded the floor of coverage

Hollybrook Cottonseed Processing v. American Guarantee & Liability Insurance, 3:09-750

Plaintiff: Joseph R. Ward, Jr. and Lisa A. Condrey, *Ward & Condrey*, Covington

Defense: Scott L. Zimmer, Kristina B. Gustavson and Michael D. Lowe, *Cook Yancey King & Galloway*, Shreveport

Verdict: $6,451,042 for plaintiff

Federal: **Monroe**

Judge: Donald E. Walter

Date: 4-5-13

Hollybrook Cottonseed Processing operates a manufacturing plant near Lake Providence that processes cottonseed into oil and other products. The company purchased processing equipment from Carver-Lummus. Hollybrook was told the equipment could process 150 tons a day.

The equipment didn't work correctly and led Hollybrook to shut down the plant. In this lawsuit, Hollybrook sued Carver-Lummus and alleged breach of contract. It also

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