

The Louisiana Jury Verdict Reporter

The Most Current and Complete Summary of Louisiana Jury Verdicts

August 2013

Statewide Jury Verdict Coverage

4 LaJVR 8

In This Issue

Orleans Parish

Medical Malpractice - Defense verdict p. 2

Medical Malpractice - Defense verdict p. 5

Auto Negligence - \$453,509 p. 8

East Baton Rouge Parish

Gas Pump Negligence - \$422,500 p. 1

Police Negligence - \$49,016 p. 2

Underinsured Motorist - \$75,754 p. 11

Federal Court - New Orleans

Products Liability - Defense verdict p. 3

Civil Rights - Defense verdict p. 9

Disability Discrimination - Defense verdict p. 10

St. Tammany Parish

Underinsured Motorist - \$45,336 p. 4

St. Charles Parish

Auto Negligence - \$23,079 p. 6

Jefferson Parish

Auto Negligence - Defense verdict p. 7

Terrebonne Parish

Auto Negligence - \$80,280 p. 9

Civil Jury Verdicts

Timely coverage of civil jury verdicts in Louisiana including court, division, presiding judge, parties, case number, attorneys and results.

Gas Pump Negligence - An

LSU co-ed drove away from her gas pump without removing the hose from her gas tank - the hose and nozzle were slung from her vehicle as she drove away, striking another patron (a local district court judge) on the back of his neck - the injury necessitated spinal fusion surgery

Kelley v. Skinner, 576-336

Plaintiff: Edward J. Walters, Jr. and Darrel J. Papillon, *Walters Papillon Thomas Cullens*, Baton Rouge
Defense: Timothy G. Schafer, *Schafer & Schafer*, New Orleans and Robert E. Birtel, *Law Office of Robert E. Birtel*, Metairie

Verdict: \$422,500 for plaintiff

Parish: **East Baton Rouge**

Judge: Jerome M. Winsberg

Date: 7-17-13

On 3-16-08 East Baton Rouge District Judge Timothy Kelley was pumping gas at Exxon on the Run, located at 4527 Perkins Road in Baton Rouge. Another patron, Louisiana State student Katherine Skinner, who was on her way out of town for spring break, drove away from the island with the hose and nozzle still attached to her BMW's gas tank. As she drove away, the hose stretched and ultimately snapped back, striking Kelley on the back of his neck, just below his skull.

Kelley suffered injuries to his neck, back and spine, as well as an aggravation of his pre-existing neck and back problems that had required surgery prior to the accident. Kelley underwent a cervical spinal fusion in 2012.

Suit was initially filed against a

number of entities related to the pump itself, including the owner of the station, the manufacturer of the hose and those responsible for its maintenance. He complained that the valve on the break-away hose did not function properly. Plaintiff was later able to identify and locate Skinner, which proved challenging due to the car being owned by her father, who resided in Houston, TX.

Once Skinner was added as a party defendant, the other defendants were dismissed on summary judgment without any objection from Kelley. Against Skinner, Kelley simply alleged that she was negligent when she drove away with the hose still attached to her car. He also claimed that she drove away after the incident.

Skinner had a different version of events. She claimed that she drove away slowly and stopped when she felt a tug. She approached Kelley, noticed splattered gas on his shirt and, assuming that he had been sprayed, asked if he was okay and offered to pay to have his shirt cleaned. She said Kelley declined her offer and said that he was alright. She then returned to her car and drove away.

The trial took place in Baton Rouge, the jury considering damages only. It awarded Kelley a total of \$422,500, which included \$130,500 for past medicals, \$12,000 for future medicals, \$150,000 for past physical pain and suffering, plus \$55,000 in that category for the future, and \$75,000 for past mental anguish. No award was made for future mental anguish.

At the time the record was reviewed, no judgment had yet been entered.

Medical Malpractice - While undergoing shoulder surgery, a patient's leg fell off the surgical table unnoticed, where it remained hanging for the duration of the lengthy procedure - the patient suffered femoral nerve palsy as a result

Holley v. Tiel, et al, 08-0687

Plaintiff: John Paul Massicot and M. Damien Savoie, *Silvestri & Massicot*, New Orleans

Defense: Franklin D. Beahm and A. Rebecca Wilmore, *Beahm & Green*, New Orleans

Verdict: Defense verdict on liability

Parish: **Orleans**

Judge: Paulette R. Irons

Date: 5-10-13

In April 2006, Carl Holley, of Jacksonville, FL, then age 36, was injured in a motorcycle accident, suffering a brachial plexus injury to his left shoulder. His treating doctor recommended that Robert Tiel perform the surgery to repair the injury, and it was scheduled for 11-21-06 at Touro Infirmary.

As Tiel prepared Holley for surgery, the patient's legs were not secured to the table and the left leg was prepped for possible surgery in the event that it became necessary to harvest a graft from the sural nerve for use in the shoulder surgery. The procedure on Holley's shoulder lasted over eight hours, during which the surgical table was raised, lowered, tilted forward and backward, and airplaned.

At the conclusion of surgery, when the drapes were pulled, it was discovered that the lower portion of Holley's left leg had fallen off the

table for an unknown length of time. As a result, Holley suffered femoral nerve palsy, which caused pain, hypersensitivity, and impaired motor function.

After a medical review panel rejected the claim, Holley sued Tiel, as well as Touro and the state of Louisiana as the employer of Touro's staff. He settled his claim with the state.

In this lawsuit, the litigation continued against Tiel and Touro, Holley claimed that he never returned to work and was unable to pursue his goal to become a registered nurse, as he was totally disabled. Having completed his course of study, Holley had only to complete his clinicals before taking his board examination. Due to his ongoing pain and inability to finish his education and work as a nurse, Holey claimed to have suffered depression and anxiety.

Tiel passed away prior to trial, but the defense contended that great care was taken in positioning Holley before surgery. No safety strap was used on Holley's left leg in order not to contaminate the sterile surgical field. For that same reason, Tiel also did not believe that the leg's position or neurovascular status should be checked.

Defendants claimed that nothing untoward, nor any shifting of Holley's body, occurred to suggest that his leg had come off the table. Likewise, there was no indication at any time that the leg had moved.

The trial lasted five days in Baton Rouge. The jury returned a verdict for the defense, finding that neither Tiel nor Touro Infirmary breached the standard of care. A judgment consistent with the jury's verdict has been entered.

Police Negligence - A Baton Rouge police officer ran a stop sign, causing a collision with an approaching vehicle - the motorist in the other vehicle suffered a bulging disc, as well as an aggravation of a preexisting facet arthropathy

Tate, et al v. City of Baton Rouge, et al, 561820

Plaintiff: Johnnie L. Matthews, Johnnell M. Matthews and Kendall L. Anderson, *Matthews & Matthews*, Baton Rouge

Defense: Arthur H. Andrews, *Office of the Parish Attorney*, Baton Rouge

Verdict: \$49,016 for Sheila Tate, \$59 for Jordan Tate, \$2,069 for Joyce Lee and \$59 for Imiricle Lee

Parish: **East Baton Rouge**

Judge: Todd Hernandez

Date: 4-26-13

On 9-18-07 Baton Rouge police officer Eric Kenny was crossing Scenic Hwy in East Baton Rouge Parish. Although his travel was governed by a stop sign, he failed to stop and instead crossed the road in the path of motorist Sheila Tate, then age 42. Tate's vehicle t-boned Kenny's police cruiser. Riding in Tate's vehicle as passengers were Jordan Tate, Joyce Lee and Imiricle Lee.

Tate suffered the most serious injuries as a result of the accident, including an aggravation of a preexisting facet arthropathy, a bulging disc in her low back, cervical and lumbar strain and symptoms of TMJ. She treated with her general practitioner for four or five months before she was referred to an orthopedic surgeon, where she treated on and off for about a year. She also received a series of epidural steroid injections. Her passengers' injuries were all soft tissue in nature.

This suit was brought by all

occupants of Tate's vehicle against Kenny, the City of Baton Rouge and the Parish of East Baton Rouge. Tate sought recovery for her personal injuries, which included medicals of \$42,000, past wage loss of \$129,000 and future lost earnings between \$202,000 and \$400,000.

Tate claimed that although she returned to her employment as a truck driver several months after the accident, the pain was unbearable, and she had to leave that employment about a year later. Plaintiff's experts included Michael Frenzel, Vocational Rehabilitation, Baton Rouge, Randolph Rice, Economist, Baton Rouge, and Dr. Joseph Boucree, Orthopedic Surgeon, Slidell.

Kenny was dismissed prior to trial, and the city and parish stipulated to liability. However, the defense contested the extent of plaintiff's claimed injuries, claiming that Tate had reached maximum medical improvement before she returned to work and that any pain she experienced after that time was due to the nature of her employment. As experts, the defense presented its IME doctor, Dr. Richard E. Roubichaux, Orthopedic Surgeon, Baton Rouge, Dr. Yong Chen, Internal Medicine, Chagrin Falls, OH, Stephanie Chalfin, Vocational Rehabilitation, Baton Rouge, and Dr. Tom Coburn, Economist, Oklahoma City, OK.

After a five day trial, a Baton Rouge jury found that the accident had caused injuries to Tate and each of the three passengers. It awarded to Tate her past medicals of \$33,116, but none for the future, \$7,500 for mental and physical pain and suffering, and \$8,500 for past wage loss, but nothing in that category for

the future. It also gave her nothing for her loss of enjoyment of life. Joyce Lee received past medicals of \$2,069 and \$500 for her mental and physical pain and suffering, but nothing for her loss of enjoyment of life. Jordan and Imiricle were each awarded \$59 for past medicals, but nothing for pain and suffering. A consistent judgment has been entered.

Tate has since moved for JNOV as to damages, complaining that the awards were too low. That motion is still pending.

Products Liability - The plaintiff was killed in a horrific industrial accident when a cauldron of molten steel at 3000 degrees erupted and covered him – he died thirty hours later having sustained severe burns to 100% of his body – in this lawsuit his estate blamed the manufacturers who had not installed a lid on the top of the cauldron as a part of their design, an eruption of molten steel being a known risk

Moyer v. Siemens et al, 2:11-3185
 Plaintiff: Joseph M. Miller, Carisa German-Oden and Benjamin B. Saunders, *Davis Saunders*, Mandeville
 Defense: Nelson W. Wagar, III, *Chopin Wagar Richard & Kutcher*, Metairie and Robert J. Kelly and Joseph Lipari, *Littleton Joyce*, New York, NY for Siemens
 Andrew D. Weinstock and Kevin R. Derham, *Duplass Zwain Bourgeois Pfister & Weinstock*, Metairie for Signal Metal
 Verdict: Defense verdict on liability
 Federal: **New Orleans**
 Judge: Susie Morgan
 Date: 7-19-13

Samuel Moyer, then age 32, worked as a furnace helper on 2-1-11

at the Arcelor Mittal steel plant in LaPlace, LA. The plant had been originally constructed in 1981 by a predecessor to Siemens Services, Voest Alpine. The plant was in the business of making steel from scrap metal.

This was accomplished by melting down the scrap metal. The metal was first melted down at temperatures of 3000 degrees. The furnace where the metal was melted was then tapped and the molten metal was transferred to a ladle. [The ladle is an 85-ton cauldron.] The ladle at this plant was manufactured by Signal Metal of Irving, TX.

The ladle is then placed on a ladle transfer car and moved to an argon stirring station. Siemens was responsible for the design and installation of the transfer car and stirring station as a part of the original construction.

While at the stirring station, argon (an inert gas) is pumped into the ladle to homogenize the steel. This is accomplished via a hose that must be manually connected and disconnected.

The tragedy of this case occurred as Moyer went to disconnect the hose. The molten metal suddenly erupted like a volcano. It covered Moyer and he sustained horrific and severe burns to 100% of his body. He died 30 hours later. Moyer, also a lay preacher, was survived by his wife of ten years.

In this lawsuit prosecuted by his estate, products liability counts were presented against both Siemens and Signal Metal. The theory focused that neither defendant installed a lid on the ladle. There was proof that such an eruption of molten metal is a known risk, the failure to provide shielding leading to Moyer's death.

The estate also implicated the failure of the stirring station to have an automatic hose connecting system.

A key liability expert for the estate was Frank Dietrich, Engineer, Harrisburg, PA. If the estate prevailed at trial, it sought Moyer's pain and suffering, the loss of financial support to his wife and her own consortium loss.

Signal Metal defended the case and denied there was a defect with the ladle. Siemens too denied the ladle transfer car and stirring station were dangerous. It blamed the eruption on the maintenance of the steel plant by both Bayou Steel (which purchased the facility in 1986) and Arcelor Mittal which owned it at the time of the accident. The jury could apportion fault to either of these two non-parties.

Siemens also defended that it was not the manufacturer of the stirring stations in question. It suggested that the plant's original stirring stations had later been replaced by Bayou Steel. This defense would be incorporated into a specific jury instruction that asked if the stirring stations were made before 1986 when Bayou Steel bought the facility.

The jury rejected the products counts against both Siemens and Signal Metal regarding the ladle, the stir station and the ladle transfer car. Interestingly the jury made a specific finding that Siemens made the stir station before 1986 (and before the sale to Bayou Steel), that finding then being made moot by an additional finding the stir station was not unreasonably dangerous.

That should have concluded the deliberations but the court's instructions were clumsy. The jury then made an empty finding, assessing fault 33% to each of three

non-parties, Bayou Steel, Arcelor Mittal LaPlace and Arcelor Mittal USA. The jury's second empty finding was damages, awarding the estate (and against nobody) \$350,000 each for Moyer's physical and mental suffering. His wife's loss of financial support was \$1,552,314 – her consortium interest was valued at \$350,000.

This valuation of the claim by the jury totaled \$2,602,314. The court's consistent judgment ignored it and exonerated both defendants.

Underinsured Motorist - A rear-ended motorist on I-10 complained of an L5-S1 disc impingement

Gutierrez v. Allstate, 11-13775

Plaintiff: David A. Hilleren, *Hilleren & Hilleren*, Evergreen

Defense: James F. Ryan, *Donovan & Lawler*, Metairie

Verdict: \$45,336 for plaintiff

Parish: **St. Tammany**

Judge: William Knight

Date: 4-30-13

Javier Gutierrez, who works as a clerk at the state supreme court, traveled on I-10 in Slidell on 10-26-10. He came to a stop in traffic congestion. Behind him on the interstate was Bryan Zito. Zito, who was driving a vintage 1977 Chevrolet El Camino, could not stop in time. An instant later he hit the brakes and slid into the Gutierrez vehicle. Fault was no issue.

Gutierrez was taken from the scene to an ER with apparent soft-tissue symptoms. Thereafter he treated with Dr. Jacques Guillot, Internist, who identified an L5-S1 disc impingement. Gutierrez has also treated with a chiropractor. His medical bills were approximately

\$28,000.

Gutierrez moved first against Zito (an Allstate insured) and settled his primary claim for \$25,000. In this lawsuit, Gutierrez, also an Allstate insured, sought UIM benefits from his carrier. To prevail at trial Gutierrez had to exceed a \$36,401 floor of coverage representing the total pre-trial payments made by Allstate. Allstate defended the case and minimized the claimed injury – it suggested that at best Gutierrez had sustained just a temporary soft-tissue injury.

This case was tried in Covington for two days. The jury first answered that Gutierrez had been injured. Then to damages he took \$14,945 for his medicals, but none for in the future. His loss of enjoyment of life was \$7,000, the jury valuing lost wages at \$1,391. Finally he took \$22,000 for past pain and suffering – that in the future was rejected.

The raw verdict totaled \$45,336. A judgment less the aforementioned credit was entered for Gutierrez against Allstate in the sum of \$8,935.

Medical Malpractice - A morbidly obese patient presented to the emergency room at Ochsner Medical Center with a suspected bowel obstruction and died within two days - the suit against his treating physicians alleged that emergency surgery should have been performed - the defense argued that the standard of care called for conservative treatment

Favorite v. Camero, et al, 10-659

Plaintiff: Paul H. Dué, B. Scott Andrews and Donald W. Price, *Dué Price Guidry Piedrahita & Andrews*, Baton Rouge and Joseph E. Windmeyer, Sr. and Joseph E. Windmeyer, Jr., *Dué Price Guidry Piedrahita & Andrews*, Metairie
Defense: Stewart E. Niles, Jr. and Karen Fontana, *Niles Bourque & Fontana*, New Orleans for Boos and Nicholas Gachassin, Jr. and Daniel C. Palmintier, *Gachassin Law Firm*, Lafayette for Camero

Verdict: Defense verdict on liability

Parish: **Orleans**

Judge: Sidney H. Cates

Date: 1-24-13

Alvin Favorite, Sr., age 56, was morbidly obese and weighed between 480 and 500 at 5'8". He presented to the emergency room at Ochsner Medical Center - Westbank on 11-21-06 with symptoms consistent with a possible small bowel obstruction. He was also severely dehydrated. Due to Favorite's large size, a CT scan was not possible.

Favorite had been recently hospitalized for an abdominal wall infection with suspected recurrence and had been referred to a surgeon for evaluation, but Favorite did not follow up with that consult. At the time of the subject presentation, emergency physician Dr. Luis

Camero, suspecting a small bowel obstruction, admitted Favorite to ICU for fluid administration and conservative management.

Favorite deteriorated dramatically on that day, and consults were obtained from internal medicine, cardiology and pulmonary. Favorite's decline continued on 11-22, and on the morning of 11-23, he coded multiple times.

His family executed a DNR, and Favorite died that day. The cause of death was determined to be bowel obstruction, septic shock, and respiratory failure and arrest. He was survived by his wife and two children.

Favorite's wife filed this suit against Camero and Dr. Thomas Boos, a general surgeon who had been involved with Favorite's care. Plaintiff alleged that her husband should have been taken to surgery emergently. She complained that Boos did not see Favorite until 6:30 am on 11-22 and failed to consider emergency surgery.

As to Camero, plaintiff faulted his failure to prescribe antibiotics despite instructions from Dr. Betty Dowty to do so, as well as his failure to provide Boos with complete and accurate information. Plaintiff's experts were Dr. Anh-Vu Nguyen, Emergency Medicine, Tampa, FL and Dr. Barry Gardiner, General Surgeon, San Ramon, CA.

The doctors defended that the standard of care for a small bowel obstruction is conservative management with NG suction and fluid resuscitation, maintaining that emergency surgery is not the standard of care for the management of a small bowel obstruction. Furthermore, Favorite was an extremely high risk candidate for

surgery due to his morbid obesity, dehydration and hypotension.

Camero's experts were Dr. Jorge Martinez, Emergency Medicine, Metairie and Dr. Lura Wight, Emergency Medicine, Baton Rouge.

Boos identified Dr. Mohammed Haque, Internal Medicine, Bedford, TX, Dr. Betty Dowty, Internal Medicine, New Orleans, Dr. Brian Cospolich, Cardiology, Arabi, Dr. Akio Kitahama, General Surgeon, Marrero, Dr. Emery Minnard, General Surgeon, Gretna, Dr. Michel Lebrun, Pulmonologist, Marrero, and Dr. Bernard Jaffe, General Surgeon, New Orleans, all of whom are attending physicians at Ochsner, as well as Medical Review Panelist Dr. Michael Puyau, General Surgeon, Baton Rouge. Identified for both doctors was Medical Review Panelist Dr. Robert Normand, General Surgeon, Metairie.

The trial began on 1-7-13 and ended on 1-24-13, with the jury returning a verdict for the defense. It found that plaintiff did not prove the standard of care of emergency room physicians. No judgment had been entered at the time the record was reviewed.

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Case Style _____

Jurisdiction _____ Case Number _____

Trial Judge _____ Date Verdict _____

Verdict _____

For plaintiff _____ (Name, City, Firm)

For defense _____ (Name, City, Firm)

Fact Summary _____

Injury/Damages _____

Submitted by: _____

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Auto Negligence - A motorcyclist driving on the right shoulder in order to bypass traffic and turn right was struck by a van that was also turning right - the jury found the motorcyclist to be 90% at fault for the collision

Hogan v. Cox Cable, et al, 71195

Plaintiff: Julian G. Baudier, Jr.,

Roberts Baudier & Dye, New Orleans
Defense: Matthew C. Nodier, *Walsh & Bailey*, Baton Rouge

Verdict: \$23,079, assessed 10% to defendant

Parish: **St. Charles**

Judge: M. Lauren Lemmon

Date: 1-14-13

On 4-24-09 Casey Hogan was

riding his motorcycle eastbound on U.S. 90 in Boutte. A Cox Cable van driven by Terry Williams was in front of Hogan. Williams was moving forward with the flow of traffic to reach the driveway to Cox's substation.

As he did so, Hogan, who intended to turn right into a parking lot just

beyond the substation, moved onto the right shoulder. As Williams turned right into the Cox driveway from his lane of travel, his van collided with Hogan's motorcycle.

Hogan suffered fractures to his left hand and left foot, as well as a crush injury to his left knee. He was taken by ambulance to St. Charles Hospital.

Hogan filed suit against Cox and Williams, claiming that Williams suddenly and without warning changed lanes. Hogan contended that Williams failed to use his turn signal or give any indication that he was making a turn.

In addition to the injuries listed above, Hogan alleged to have suffered an aggravation of a bunion on his left foot caused by the trauma to it. He claimed a total of \$5,5583 in past medicals, plus \$12,040 for the future, which included about \$3,600 for surgery related to the bunion. He also claimed future wage loss for the three month recovery following that procedure. Plaintiff lastly sought property damages of \$4,649.

Hogan's experts were Walter Antin, Architect, Miami, FL, Dr. Brent Giuffre, Emergency Medicine, Metairie, Dr. Kenneth Mann, Orthopedic Surgeon, Luling, and Dr. H. Lawrence Haydel, II, Orthopedic Surgeon, Houma.

Williams and Cox blamed the accident on Hogan, pointing out that Hogan was driving on the shoulder at an excessive rate of speed in order to bypass traffic. According to Williams, he was making a legal turn using his signal. He was unaware that Hogan was passing him illegally on the right shoulder. It was Hogan who failed to yield the right-of-way to him.

Williams also alleged that prior to the accident, he witnessed plaintiff

popping wheelies and driving in a reckless manner. The defense's expert was Dr. Jack Heindereich, Family Practitioner, Westwego.

Following a one day trial, a Hahnville jury found both drivers to be negligent, assessing 10% fault to Williams and 90% fault to Hogan. It awarded Hogan \$20,000 for his past medicals and \$3,079 for the damage to his motorcycle. However, it gave him nothing for past and future physical or mental pain and suffering, past and future physical disability, future medicals or past and future wage loss. The judgment that followed reduced the \$23,079 verdict to \$2,307 for Cox's share of liability.

Plaintiff thereafter moved for a new trial, a reconsideration of the judgment and for JNOV, asking for awards in all categories in which the jury declined to make an award. Hogan argued that the jury's verdict was ambiguous since it found that he was injured and awarded past medicals, but gave him nothing for physical pain and suffering.

After a hearing, the court granted plaintiff JNOV and awarded him general damages of \$14,416. It also reduced the jury's award of \$20,000 in past medicals to the claimed amount of \$5,583 and increased the award for property damage to the claimed amount of \$4,649. It then reduced the total award of \$24,648 to \$2,460 for defendants' share of fault.

Auto Negligence - While in a parking lot following a Mardi Gras parade, the plaintiff had some sort of collision with the rear of a Lincoln Town Car and claimed to have suffered a bulging disc and nerve damage in her throat as a result - the driver of the Lincoln denied backing into plaintiff, claiming that she walked into the rear of her vehicle

Bird v. Ellender, 682-516

Plaintiff: Ryan P. Reece, *The Reece Law Firm*, Metairie

Defense: William Ryan Acomb, *Porteous Hainkel & Johnson*, New Orleans

Verdict: Defense verdict on liability

Parish: **Jefferson**

Judge: John Molaison

Date: 5-15-13

During the late afternoon hours of Mardi Gras Day, 2-24-09 Christie Ellender was behind the wheel of a Lincoln Town Car owned by her boyfriend's mother. Julie Bird was standing outside the passenger side of a Saturn Outlook owned by Allen Borne, Jr. What happened next is in dispute.

Bird claimed that Ellender backed the Lincoln into her, causing her head and neck to snap backwards, then lifting her off her feet onto the trunk of the car. Oblivious to the collision, Ellender continued backing into the Saturn, briefly pinning Bird between the two vehicles. Bird alleged that according to witnesses, Ellender appeared to be intoxicated.

Ellender contended that Bird was drunk and walked into the rear of the Lincoln. She denied making any contact with Borne's Saturn, although Bird would later present evidence that Ellender's insurer, State Farm, paid Borne for his property damage.

In the suit that followed, Bird alleged to have suffered bulging discs

at C5-6 and C6-7, as well as pain radiating into her arm caused by an impinged nerve at C7. She underwent a series of epidural steroid injections, and cervical fusion surgery has been recommended. She has been given a 10% disability rating to her neck and whole body.

Bird also claims to have suffered laryngeal nerve paresis, making it difficult for to swallow. Surgery is recommended for that injury as well.

Plaintiff asserted \$39,108 in past medicals, as well as future expenses of \$74,606 for the cervical fusion and \$15,000 for the throat surgery. Her experts were Stephen Barrett, D.C., Carbondale, IL, Dr. Sonjay Fonn, Neurologist, Cape Girardeau, MO, and Dr. Randall Paniello, Otolaryngology, St. Louis, MO.

The defense diminished Bird's injuries, characterizing the disc bulging as mild and degenerative in nature. Ellender contended that Bird had reached maximum medical improvement, denying that any future surgery was needed.

The defense next questioned Dr. Fonn's credibility, pointing out that he admitted to the State Medical Board of Ohio his failure to provide information on his training certificate application for his residency and giving false information in a deposition during an investigation of the matter. It also presented evidence that Fonn had long been friends with Bird and her husband, who are both chiropractors, and that the Birds had referred patients to him. Defense experts were Dr. Robert Steiner, Orthopedist, Metairie, and Dr. Robert Applebaum, Neurologist, Marrero.

The case was heard over three days in Gretna. The jury returned a verdict for the defense, finding that

Ellender was not negligent. A defense judgment was entered.

Auto Negligence - A sideswipe accident caused plaintiff a lumbar injury that left him 5% permanently impaired - the defense diminished his injuries, claiming he had reached maximum medical improvement

White v. Simmons, 09-5146

Plaintiff: Edward J. Womac, Jr. and Jason F. Giles, *Law Office of Edward J. Womac, Jr. & Associates*, New Orleans and A.M. "Tony" Clayton and Michael P. Frugé, *Clayton & Frugé*, Port Allen

Defense: Michael R. Sistrunk, Devin Fadaol, Donna Bramlett Wood and Heather M. Nagel, *McCranie Sistrunk Anzelmo Hardy McDaniel & Welch*, Covington

Verdict: \$453,509 for plaintiff

Parish: **Orleans**

Judge: Piper D. Griffin

Date: 4-24-13

On 8-7-08 Ronald White, then age 22, and Peggy Simmons were both driving next to each other on the Airport Access Road approaching Airline Hwy. Simmons veered into and hit White's vehicle, causing a sideswipe collision.

About a week after the accident, White began to suffer headaches and low back pain. He was found to have suffered an acute lumbar strain and herniated discs at L4-5 and L5-S1. He had one steroid injection, as well as an Intradiscal Electrothermal Therapy (IDET) procedure on his lower back.

In his suit against Simmons and his underinsured carrier, State Farm, White alleged that he suffered a 5% permanent impairment and is unable to lift over 50 pounds. He presented

a life care plan of \$301,385. His experts were Dr. Cornelius Gorman, Life Care Planner, Lafayette, Dr. Allen Johnston, Orthopedic Surgeon, Baton Rouge, Dr. Andrew DeAbate, Internal Medicine, New Orleans, Dr. Charles Aprill, Radiologist, Kenner, Dr. K.E. Vogel, Neurosurgeon, Kenner, and Shael Wolfson, Economist, New Orleans.

The defense diminished plaintiff's injuries, rejecting Dr. Gorman's life care plan. It argued that White received relief from the IDET procedure, had no treatment since March 2010 and had reached maximum medical improvement. It also pointed out that White had returned to work. Defense experts were its IME doctor, Dr. James Butler, Orthopedic Surgeon, Slidell, Dr. Olga Krivitsky, Physical Medicine, Metairie, Ken Boudreaux, Economist, New Orleans, and Mike Frenzel, Vocational Rehabilitation, Baton Rouge.

The trial lasted three days in New Orleans, with the jury finding that White was injured as a result of the accident. It awarded him past medicals of \$69,062 and \$134,000 for the future. He received lost wages of \$8,446. Past and future pain and suffering was valued at \$200,000, while he received \$12,000 for his past and future mental anguish.

For his loss of enjoyment of life, the jury awarded White \$30,000. The total award was \$453,509. No judgment had been entered at the time the record was reviewed.

Auto Negligence - A motorist rear-ended at a high rate of speed alleged to have suffered bilateral arm and elbow injuries as a result

Stassi v. Degorge, et al, 164041

Plaintiff: Brian J. Marceaux and Julius P. Hebert, Jr., *Hebert & Marceaux*, Houma

Defense: Charles A. Mouton and Cynthia G. Sonnier, *Firm*, City

Verdict: \$80,280 for plaintiff

Parish: **Terrebonne**

Judge: George J. Larke, Jr.

Date: 3-28-13

On 7-15-10 Bridgett Stassi and Christopher Degorge were both driving westbound in the left lane of LA Hwy 90, with Degorge following Stassi. Stassi began to slow because of congestion, and Degorge, who was unable to stop in time, struck her from behind. He was traveling at 55 mph at the time of the collision. Stassi suffered neck and back pain, as well as pain in both her arms and elbows. She was found to have suffered a disc bulge at C4-5 and C5-6, requiring three months of treatment with a chiropractor. She also suffered TMJ, which required splint therapy.

The pain in Stassi's right arm and elbow persisted, and she received steroid injections and platelet gel injections. She also had to wear an elbow brace and compression stockings. Her medicals totaled \$24,890.

In Stassi's suit against Degorge, she sought compensation for her injuries and claimed that her elbows had been disfigured due to swelling and discoloration caused by the injections. Stassi's husband asserted a claim for loss of consortium. Plaintiff presented her treating doctors as experts, including Dr. Brett Casey, Orthopedic Surgeon,

Houma, Jake Bordelon, D.C., Houma, and David Blythe, D.D.S., Houma.

Defendant first alleged that Stassi was comparatively negligent for the accident. He next contested her injuries. He claimed that after the accident, plaintiff stated that she was okay, did not appear injured and did not seek treatment until five days post-accident. He argued that the disc bulges were degenerative in nature and that the TMJ resolved after one month of therapy.

As to the elbow injury, Degorge argued that plaintiff had no complaints of elbow pain until four months post-accident. He also pointed to a prior arm injury and preexisting carpal tunnel in both arms dating back to 2006. Defense experts were orthopedists Dr. Delmar Walker and Dr. William Kinnard, both of Houma, Dr. Christopher Cenac, Orthopedic Surgeon, Houma, as well as Drs. Blythe and Casey.

The case was heard over three days in Houma. The jury found that Stassi had suffered injuries as a result of the accident and awarded her \$30,000 for past physical pain and suffering with an additional \$12,000 in that category for the future, \$5,000 for past mental pain and suffering, \$9,280 in past medicals, plus another \$20,000 for the future, and \$4,000 for plaintiff's loss of enjoyment of life. Nothing was awarded for future mental pain and suffering or for disfigurement or permanent disability.

The award totaled \$80,280. Stassi's husband received nothing for his alleged loss of consortium. A judgment consistent with the jury's verdict followed.

Civil Rights - As the plaintiff played Xbox video games at a friend's apartment, the police burst in to conduct a stolen property bust – the plaintiff, who was not involved in any crime, stood up in surprise and was shot in the face by a detective – the detective defended that he acted reasonably when the plaintiff challenged him and went for his gun

Chaney v. St. Tammany Parish Sheriff's Office, 2:10-316

Plaintiff: Philip J. Kaplan, Los Angeles, CA

Defense: Charles M. Hughes, Jr., *Talley Anthony Hughes & Knight*, Mandeville

Verdict: Defense verdict on liability

Federal: **New Orleans**

Judge: Lance M. Africk

Date: 5-28-13

Anthony Chaney, then age 23, was visiting the Slidell apartment of a friend on 2-4-09. Chaney took a spot on the floor and began to play an Xbox video game.

Unknown to Chaney, a confidential informant (working with the St. Tammany Sheriff's office) was in the midst of a stolen property sting. Chaney was not implicated in moving stolen property – he had simply come to the apartment to give his friend a ride to the laundromat.

An instant later a sheriff's detective, Stephen Lucia, knocked on the door and then barged in. A startled Chaney rose from the floor. He was facing Lucia who had a flashlight in one hand and a high caliber pistol in the other.

A moment later Lucia fired his gun. The bullet struck Chaney in the face – it passed through his jaw and lacerated his tongue. The sustained injury was complex, Chaney needing

a respirator for a time.

That the shooting was a mistake, Chaney would recall in the moments after it that the police were confused. He would recall the police screaming that "We f\$%ked up!" There was then a delay in calling for emergency personnel to treat the wounded Chaney. [Chaney would later be successfully prosecuted on criminal charges related to an attempted assault on Lucia.]

In this federal lawsuit Chaney sued the sheriff's office and alleged excessive force by Lucia. The theory was simple – Lucia had shot an unarmed man without provocation. If Chaney prevailed at trial the jury could award him compensatory and punitive damages.

The sheriff's office defended and raised fact disputes. When Lucia entered the apartment, a confrontational and defiant Chaney challenged him. Lucia would recall that Chaney told him, "Whatcha gonna do?" Chaney then reached for Lucia's gun (the detective recalled) and only then did Lucia fire in self-defense. The defense would posture that Lucia acted reasonably. Chaney denied this version of the shooting.

The jury's verdict was for the sheriff's office on the excessive force claim and Chaney took nothing. A defense judgment was entered.

Disability Discrimination - A janitor who suffered from diabetes and had a walking and standing limitation alleged her employer failed to accommodate her disability – the company (which provides custodial services) countered that it had no sedentary janitor positions

Anthony v. Porter Industrial Environmental Services, 2:11-2713

Plaintiff: Hollis Shepherd, New Orleans

Defense: Carl A. Butler and Michael L. Fantaci, *LeBlanc Butler*, Metairie

Verdict: Defense verdict on liability

Federal: **New Orleans**

Judge: Helen G. Berrigan

Date: 7-30-13

Katie Anthony was employed as a janitor for Porter Industries Environment Services. The company provides custodial services at the Michaud Assembly Factory. Anthony took FMLA leave in May of 2010 because she was suffering from diabetes-related symptoms that limited her ability to walk, stand and bend.

Her FMLA leave ran out 12 weeks later and Anthony went on long-term disability pursuant to a policy provided by her employer. She also successfully pursued a Social Security Disability claim while on leave.

In the Fall of 2010, Porter Industrial advised Anthony that she would be terminated in February of 2011. In the weeks leading up to that date, Anthony provided a note from her doctor. It indicated that she continued to have limitations.

From Anthony's perspective the letter represented a part of the interactive process. It was her hope that this process would lead to her return to work, Porter Industrial

providing her an accommodation. Instead on 2-1-11 she was terminated. Porter Industrial's position was simple. There was no way it could provide an accommodation as the very nature of janitorial work is non-sedentary.

Anthony pursued this ADA discrimination claim. She focused that the company prematurely terminated during the interactive process. It was her position she was a qualified individual who could perform her janitor job if only Porter Industries would have interacted with her.

Porter Industries defended as above – there was no reasonable accommodation. It also raised a defense that Anthony could not now claim she could return to work with accommodations when she claimed the opposite in her Social Security Disability application.

Only if Anthony first hurdled each of two prefatory questions would the jury consider whether Porter Industries had failed to provide her an accommodation. The jury answered "no" to the first interrogatory that asked whether Anthony was a qualified individual with a disability. That ended the deliberations without the jury reaching the second prefatory charge that asked if Anthony had explained the inconsistency in her Social Security application and her ADA claim. A defense judgment was entered.

Underinsured Motorist - A motorist with a significant history of preexisting back problems suffered an aggravation in a rear-end collision - the trial focused on how much of his treatment was necessitated by the accident

Thorgeson v. General Insurance, 569569

Plaintiff: Brian J. Prendergast,

Prendergast Law Firm, Baton Rouge

Defense: Andrew W. Eversberg,

Guglielmo Marks Schuttler Terhoeve & Love, Baton Rouge

Verdict: \$75,754 for plaintiff

Parish: **East Baton Rouge**

Judge: R. Michael Caldwell

Date: 3-27-13

On 9-12-07 Rudolph Thorgeson, then age 52, and a colleague were driving back from a business meeting in Houston. As they traveled eastbound on I-12 between College Drive and Essen Lane, a westbound vehicle driven by Reina Burns crossed the median into the eastbound lane in front of Thorgeson. Thorgeson took evasive action to avoid a collision, but the vehicle behind him, driven by Gavin Suggs, hit him from behind.

Thorgeson had a significant history of low back problems prior to the accident, having had surgeries and multiple denervations. Despite his injuries, however, Thorgeson was functional, able to travel enjoy golf and other physical activities.

That changed post-accident, and his physical activities became more restricted. Thorgeson had to pre-plan any kind of physical exertion, needing to rest both before and after. His pre-accident dosage of codeine was 10 mg per day. Post-accident, the dosage increased first to 30 mg, then to 60 mg. He now takes 80 mg of codeine per day and also manages his pain with steroid injections and

heat.

Thorgeson underwent additional denervations, as well as surgery to his lower back, and endured over 100 visits with a physical therapist. His medical expenses totaled about \$125,000.

After settling with the two primary liability carriers for \$25,000 each, Thorgeson proceeded to trial against his own underinsured carrier, General Insurance Company of America. (His passenger's trial is set for September 2013.) He claimed that, despite his prior injury, he was able to enjoy a normal physical and social life. The accident resulted in a complete lifestyle change, as he is now embedded in pain and depression. His wife asserted a claim for loss of consortium.

Plaintiff's last demand prior to trial was \$250,000. His experts were Dr. Michael Burdine, Anesthesiology, Baton Rouge, and Phillipe Veeters, Physical Therapist, Baton Rouge.

General Insurance denied liability, maintaining that Thorgeson's back injury was preexisting. The defense argued that plaintiff suffered a herniated disc of the lumbar spine in 2002, which required surgery, and that he had routinely treated for back pain since that time.

General Insurance believed that Thorgeson's claims were sufficiently satisfied by the liability limits of Suggs and Burns and made no offer of settlement prior to trial. The company's identified expert was Dr. Lawrence Messina, Orthopedic Surgeon, Baton Rouge.

The trial lasted three days in Baton Rouge. The jury found that plaintiff had sustained damages caused by the accident, awarding him \$25,754 for past medicals, \$25,000 for physical pain and suffering, and \$25,000 for

loss of enjoyment of life. He was awarded nothing for his mental suffering, and his wife was found not to have suffered any loss of consortium. The judgment that followed applied a \$50,000 credit for prior settlements, reducing the total \$75,754 award to \$25,754.

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