

# The Mississippi Jury Verdict Reporter

The Most Current and Complete Summary of Mississippi Jury Verdicts

July 2023

Statewide Jury Verdict Coverage

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## Civil Jury Verdicts

Timely coverage of civil jury verdicts in Mississippi including court, division, presiding judge, parties, case number, attorneys and results. Notable results from the southern region, including Memphis and New Orleans, are also covered.

### Premises Liability - The plaintiff tripped in a messy Dollar General store on a gift bag on the floor and she sustained a rotator cuff injury – a jury in Fayette awarded the plaintiff past medical bills of \$17,000 and \$348,000 more for pain and suffering all less 30% comparative fault

*Halford v. Dollar General*, 20-17

Plaintiff: Samuel F. Creasy, Bradley Kelly and Brennan Ducote, *Morgan & Morgan*, Jackson

Defense: Nicholas K. Thompson and Andrea B. Pacific, *Copeland Cook Taylor & Bush*, Hattiesburg

Verdict: \$400,000 for plaintiff less 30% comparative fault

Court: **Jefferson**

Judge: Tomika H. Irving

Date: 6-28-23

Lisa Halford, age 45, visited the Dollar General in Fayette on 12-188-17. She was shopping for paper towels. The paper towel aisle was blocked with merchandise. She diverted down the party good aisles.

As Halford walked in that aisle, she stopped a moment to look at a candle. She stepped out of the way to do so to let another customer pass. Halford then stepped backwards. As Halford did she she slipped on a silver gift bag on the floor. It had apparently fallen from a shopping bin on the floor.

Halford landed hard and struck the shelving as she fell. She immediately reported shoulder pain. She was treated that day at the ER for her shoulder and other soft-tissue symptoms including to her knee. Halford had also jarred her neck in

the fall.

Halford subsequently treated for ongoing shoulder pain. A rotator cuff injury was identified. A plaintiff's IME, Dr. Donald Baker, Orthopedics, identified the shoulder injury and that Halford will require a surgical repair. Halford's other injuries resolved.

In this lawsuit Halford sued Dollar General and alleged negligence regarding the condition of the store. She cited it was extremely messy and that mess contributed to the fall. Halford pointed out that the gift bags were scattered on the floor.

Dollar General defended the case that and argued it hadn't created the hazard nor did it have any notice of the hazard. Moreover there was no proof how long the gift bag hazard was on the floor or even how the gift bag wound up on the floor in the first place.

Halford countered that Dollar General had missed the point. It was the overall messy nature of the store that led to the hazard. Merchandise was stored in bins and customers were allowed to peruse and create hazards like this. How messy was it? A local deputy sheriff was present when Halford fell and he testified about the disheveled nature of the premises. Thus from the plaintiff's perspective Dollar General created a scenario where a hazard (i.e., merchandise crudely stored in bins on the floor) could occur.

This case was tried in Fayette for two days. The jury returned a mixed verdict on liability – the verdict itself is not part of the court record. It first

15-16 at River Oaks Hospital. Lewis discovered in the surgery the leads to the stimulator in the St. Jude system would not extend to the Boston Scientific battery. Lewis altered the surgical plan (it was supposed to be a simple battery replacement) and removed the leads by way of multi-level laminectomies. The surgery was completed and Upchurch was taken to the PACU.

There was proof that on the afternoon of the surgery (5:00 p.m. or so) that Upchurch reported numbness in one toe. She also had paralysis in her left leg. There were fact disputes as to whether the hospital nurses informed Lewis of the findings. They said they did. He said they didn't.

In any event there was no intervention on the date of the surgery. The next day Lewis made his rounds and identified that Upchurch lower-extremity paralysis. He acted quickly (and all agreed appropriately) to immediately take her into surgery to evacuate a spinal hematoma.

Despite Lewis' surgical intervention that morning (and two other surgeries in the coming days), Upchurch is paralyzed from the waist down. She also lacks bowel or bladder control. The condition is permanent and irreversible. She also now has a neurogenic bladder and it is at high risk of UTIs which can lead to serious complications.

Upchurch sued Lewis and alleged medical error in several ways. The first was in failing to obtain consent for the more complex surgery with the leads. Her expert, Dr. Narlin Beaty, Neurosurgery, Tallahassee, FL, indicated that as the surgery was non-urgent, Lewis should have stopped and obtained consent. Beaty

was also critical of the technical performance of the surgery which led to the hematoma.

The second error was on the afternoon after the surgery. It was alleged Lewis failed to intervene when Upchurch showed signs of a looming paralysis crisis. At this time she needed intense monitoring and intervention to relieve the spinal hematoma. The plaintiff (as described above) conceded Lewis' intervention the next morning was appropriate.

The combination of these errors, the plaintiff's theory went, led to her permanent paralysis. The theme was that she went in for a relatively simple battery replacement surgery and instead endured a risky procedure that left her paralyzed. An additional standard of care expert was Dr. Stephen Bloomfield, Neurosurgery, Edison, NJ.

Upchurch relied on Lisa Busby, Life Care Plan, who quantified her future medicals at \$4.175 million. An economist, Charles Dennis, Leander, TX, put numbers to Busby's plan. Her medical bills were \$601,471. Beyond Upchurch's claim for non-economic damages, her husband (Richie) presented a derivative consortium claim.

Upchurch had also pursued a claim against River Oaks based on a claim that the nurses had failed to intervene on the afternoon of the surgery. The hospital settled.

Lewis defended on several fronts. The first was to emphasize the complexity of Upchurch as a patient. Regarding the allegations against him, he postured that Upchurch was fully informed of the risks and consented to the surgery. That included consent to an additional procedures that were necessary and

in this case, altering it when the existing leads were not compatible. In so doing he saved Upchurch the inconvenience of another surgery. Upchurch had replied that Lewis either didn't know that in advance of the surgery or was incompetent for not knowing. Moreover the development of the hematoma and related paralysis were risks of the surgery that were fully described to Upchurch.

Lewis further defended that he had reasonably relied on the nurses to inform him of Upchurch's condition on the afternoon and they had not done so. Thus he challenged the nurse version that he was informed and a fact dispute remained on this question.

Lewis relied on several experts. Regarding liability they were Dr. Warren Neely, Neurosurgery, San Antonio, TX and Dr. Frederick Jones, Anesthesia, Southaven. He addressed damages with Gregory Compton, Life Care Plan, Johns Island, SC, Dr. Howard Katz, Physical Medicine, Jackson and Gerald Lee, Economist.

Lewis is no stranger to civil litigation. This is the fourth jury trial in which he was a defendant. In 2011 (*Hathaway v. Lewis*, Case No. 15, Hinds), he prevailed in a case where the plaintiff suffered paralysis after an L5-S1 surgery. Lewis took a directed verdict in a 2017 case (*Thomas v. Lewis*, Case No. 747, Hinds) again involving paralysis after a surgery. Lewis again won by directed verdict in 2018 (*Scott v. Lewis*, Case No. 834, Hinds) involving a "dura" injury during a spinal surgery.

The jury's instructions asked if Lewis was negligent in his care and treatment of Upchurch. On the last day of June the jury answered no and the jury then didn't reach the duties of