

The Mississippi Jury Verdict Reporter

The Most Current and Complete Summary of Mississippi Jury Verdicts

January 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.

Truck Negligence - The plaintiff was rear-ended on I-55 and his Honda SUV flipped over – the plaintiff alleged a new L4-5 disc injury that will require a spinal cord stimulator all imposed on a pre-existing L5-S1 injury for which the plaintiff underwent a prior fusion surgery in 2010 and a second in 2013 to remove hardware – a Jackson jury awarded the plaintiff non-economic damages of \$1,184,022 to reach a round verdict of \$2,000,000

Tovar v. Krueger International, 19-71

Plaintiff: Rocky Wilkins and

William A. Graves, *Morgan &*

Morgan, Jackson

Defense: Donna M. Meehan and

Michael D. Simmons, *Cosmich*

Simmons & Brown, Jackson

Verdict: \$2,000,000 for plaintiff

Court: **Hinds**

Judge: Winston L. Kidd

Date: 12-1-22

Francisco Tovar, then age 43, traveled on I-55 near Jackson. He was driving a mid-size Honda CRV. Behind him in traffic was Steve Wendt who was operating a tractor-trailer for Krueger International. Wendt was distracted by a circus that was set up on nearby Frontage Road. He looked away at the spectacle.

A moment later in hard hit, Wendt's big rig rear-ended Tovar. Tovar (whose vehicle was at speed) was spun around and into another vehicle. Tovar's CRV then flipped over in the median. Tovar was taken to a local hospital where he was x-rayed, treated and released.

This case was made more complex

because Tovar had a complex history. He was injured at work in 2009 and underwent a long course of care. He had an L5-S1 fusion surgery in 2010 and then three years later, the hardware was removed in a second surgery. Tovar pursued a worker's compensation claim that settled in 2016. There was proof he continued to treat for radiating back pain (it radiated to his knee) through January of 2015.

Moving forward to this crash, Tovar complained of, (1) the aggravation of the prior injury, and (2) a new disc injury at L4-5. The symptoms from the new L4-5 injury resulted in radiating pain that now extended to Tovar's heel.

Tovar treated with Dr. Adam Lewis, Neurosurgery. He recommended the implant of a spinal cord stimulator. Its cost was estimated at \$727,323 by Dr. Todd Cowen, Physical Medicine and Gerald Lee, Economist. That sum included amounts to install the stimulator as well its upkeep including batteries.

In this lawsuit Tovar sought damages from Wendt and his employer. The defense admitted fault for the wreck. It also conceded that Tovar's initial medicals (the ER visit, PCP and a steroid injury) of \$27,654 were crash related. There were additional incurred medicals (\$61,000) which were contested. Tovar also sought to recover future medicals for the spinal cord stimulator. Finally the jury could award him non-economic damages.

Krueger International's defense of the case minimized what it called the

**IN THE CIRCUIT COURT OF HINDS COUNTY, MISSISSIPPI
FIRST JUDICIAL DISTRICT**

FRANCISCO TOVAR **PLAINTIFF**

VS. **CAUSE NO. 25CI1:19-cv-00071-WLK**

**KRUEGER INTERNATIONAL,
INCORPORATED;
AND JOHN DOES #1-10** **DEFENDANTS**

VERDICT FORM 18

In returning your verdict in this case, you are to consider all of the facts and instructions of law given to you, and then return your verdict by completing this form. When a verdict has been reached by you, write out your answers to the following question on this form and notify the bailiff that you have reached your verdict.

1. What is the total amount of damages incurred by Francisco Tovar as a result of the wreck in question?

Admitted Past Medical Expenses:	\$27,654.92
Additional Past Medical Expenses, if any:	\$61,000.00
Future Medical Expenses, if any:	\$727,323
Past, Present and Future Pain and Suffering; Past, Present and Future Mental Anguish; Loss of Enjoyment of Life; Permanent Impairment and, Disfigurement, if any:	\$1,184,022
TOTAL:	\$2,000,000

The Tovar Verdict Form

"alleged" injury. It noted that at the scene, Tovar was able to walk to the ambulance and then he was x-rayed and discharged in good condition. The heart of the defense case was that Tovar's ongoing problems were a continuation of the prior 2009 injury. It looked to trace a straight line of radiating back pain from the 2009 work injury all the way through to

this crash.

Krueger International also suggested Lewis' testimony regarding the spinal cord stimulator suggested it was just for a trial and in fact, it might not work or be needed. Tovar countered that Lewis indicated it was needed and a high chance of providing relief.

This case was tried for four days in

Jackson. The jury only considered damages. The past medicals of \$27,654 as conceded by Krueger International were already filled in on the verdict form.

The jury then awarded Tovar \$61,000 more for additional medical care that had been contested. The plaintiff also took \$727,333 for future care. This sum was consistent with the amount claimed for the spinal cord stimulator. Finally Tovar took the odd number of \$1,184,022 for his pain and suffering which then reached a total verdict of \$2,000,000.

The court's final judgment was interesting. It did not reduce the non-economic damages from \$1,184,022 to \$1,000,000 to account for Mississippi's tort scheme for a presumed \$1,815,978 judgment. Instead without any mention of the scheme, Judge Kidd's final judgment (entered four days after the trial) was for the full \$2,000,000.

Krueger International has since moved for a new trial and/or additur. It has challenged the court's failure to admit "relevant and probative proof" which led to a verdict that was 33 times the medical bills. Particularly Judge Kidd excluded evidence of Tovar's 2009 worker's compensation claim, those records indicating Tovar complained of back pain 16 days before the crash.

Krueger International also cited instruction error. The jury was instructed regarding a pre-existing injury that the defense "is liable" for damages (suggesting they must be awarded) as opposed to the permissive "may be" awarded. Finally the defense sought to remit the damages as excessive.

Tovar replied to the motion and argued that the worker's compensation file was properly

excluded as collateral evidence. He also argued that in light of the evidence, notably a new L4-5 disc injury and the need for the spinal cord stimulator, that the verdict was reasonable. The motion was pending at the time of this report.

Case Documents:

[Complaint](#)

[Jury Verdict](#)

[Final Judgment](#)

[Defense Motion for a New Trial](#)

[Plaintiff New Trial Response](#)

Medical Malpractice - The plaintiff died of a bleed at a hospital while on blood-thinners – he blamed his cardiologist for failing to diagnose and treat the bleed in a timely fashion

Mitosinka v. Mohamad, 18-203

Plaintiff: Walter C. Morrison, IV, Ridgeland and Claire E. Kreider, New Orleans, LA, both of *Gainsburgh Benjamin David Meunier & Warshauer*
Defense: Whitman B. Johnson, III and Lorraine W. Boykin, *Currie Johnson & Myers*, Jackson

Verdict: Defense verdict on liability

Court: **Rankin**

Judge: M. Bradley Miller

Date: 12-1-22

William Mitosinka, then age 50 and a trucker, was admitted on 10-4-17 to River Oaks Hospital by a hospitalist, Dr. Michael Bookhardt. Mitosinka had shortness of breath and weight gain after a recent hip surgery. He was diagnosed with heart failure.

Dr. Almois Mohamad, a cardiologist, was consulted. Because of a risk of a pulmonary embolus, Mohamad ordered a blood-thinner, Coumadin. Mitosinka improved over the next four days.

There was evidence that Mitosinka

suffered a fall on 10-9-17. Labs at that time were suggestive of a bleed. A CT scan taken the next around noon showed a large abdominal bleed. That afternoon Mohamad ordered a blood count. It was not promptly transmitted to him.

When Mohamad received the results at 6:15 p.m., he was concerned and ordered STAT blood product replacement. The blood was never given. Mitosinka coded at 7:50 p.m. and was pronounced dead at 9:06 p.m. The cause of death? Exsanguination. Mitosinka had essentially bled to death in the hospital. An autopsy indicated he'd lost half of his blood volume.

Mitosinka's estate (representing his widow) pursued claims against both Bookhardt and River Oaks regarding the failure to manage his conditions. Those claims were resolved before trial. The sole defendant at trial was Mohamad although the duties of the resolved parties (Bookhardt and the hospital) remained in issue for purposes of apportionment.

The plaintiff's liability expert, Dr. Barry Uretsky, Cardiology, Little Rock, AR, was critical of Mohamad for failing to diagnose, monitor, treat and manage the bleed complication. Particularly Uretsky indicated Mitosinka needed immediate blood replacement on the afternoon of 10-10-17.

The jury could award the estate both economic and non-economic damages. The economic damages were quantified at \$1.37 million by an economist, Bill Brister.

Mohamad defended the case that when he learned of a suspected bleed in the afternoon, he ordered a STAT blood count. However he was not immediately informed of the results

– as soon as he was at 6:15 p.m., he did order blood replacement and consult with a surgeon to respond to the bleed. However before the blood replacement could be administered, Mitosinka coded and then died. The defense experts were Dr. Earl Fyke, Cardiology, Jackson and Dr. Jerry Sheppard, Internist, Jackson.

The court's instructions asked if Mohamad was "guilty" of negligence that proximately caused or contributed to Mitosinka's death. The jury said "no" and then didn't reach the duties of Bookhardt or the hospital, apportionment or damages. A defense judgment was entered.

Case Documents:

[Pretrial Order](#)

[Plaintiff Expert Report \(Uretsky\)](#)

[Jury Verdict](#)

[Final Judgment](#)

Truck Negligence - The plaintiff was inside a tractor-trailer and was unloading it at a loading dock when the trucker drove away – this caused the plaintiff to fall out of the back of the trailer – in that fall the plaintiff suffered serious injuries including a compound tib-fib fracture and a broken collarbone – a jury in Hernando found for the plaintiff awarded him \$2.25 million for non-economic damages which was reduced in the final judgment to conform to the Mississippi damage scheme

Barksdale v. Ballentine Express, 19-448

Plaintiff: Rocky Wilkins, Jackson and Ryan M. Skertich and William T. Hackett, both of Memphis, TN and all of *Morgan & Morgan*

Defense: Mark C. Carrol and Luke E. Whitaker, *Carroll Bufkin*, Ridgeland

Verdict: \$3,440,064 for plaintiff 20% comparative fault

Court: **DeSoto**

Judge: Celeste E. Wilson

Date: 12-7-22

Steven Barksdale was working at a loading dock on 1-6-18 for Amerisource Bergen in Olive Branch. It was his job to unload trucks. A trucker for Ballentine Express had parked a box truck at a loading dock. Barksdale has just finished unloading the shipment and returned to the truck to retrieve a pallet jack.

As Barksdale did this, the trucker pulled away. Barksdale fell out of the truck to the concrete surface below. He suffered serious injuries including a compound tib-fib fracture and a broken collarbone. His medical bills were \$247,745 and his future care was estimated at \$522,317. Lost wages were \$120,000 and Barksdale claimed \$300,000 more for in the future. The special

damages totaled \$1,190,064. The injuries were confirmed by Dr. Howard Katz, Physical Medicine.

In this lawsuit Barksdale alleged negligence by the Ballentine Express driver in pulling away from the dock. He cited that there was a lighting system at the dock with two options for drivers, red or green. There was proof that at the time the driver abruptly pulled away, the light was green.

The case was simplified at trial. The parties agreed to stipulate to the special damages of \$1,190,064 and thus there was no need for expert economic or vocational proof. As the jury was instructed and despite the stipulation, the line for economic damages was left blank. The presumption if the jury found fault, it would award the \$1,190,064 as stipulated. The instructions however did not require that and the jury could have awarded any sum.

Ballentine Express contested liability that Amerisource Bergen

had a dock restraint system that should have locked the truck in place. It cited that Barksdale was in charge of that doing that and moreover, he failed to chock the wheels or advise anyone he was still in the trailer after it had been unloaded. The defense also noted that after this incident, the plaintiff's employer was cited for an OSHA violation. A defense truck safety expert was Jim Stanley, Franklin, TN.

The jury's verdict was mixed on fault. It found Ballentine Express 80% at fault. The jury assessed 20% more to Barksdale employer (Amerisource Bergen) but rejected any apportionment to Barksdale. The 20% assessment to his employer would work to reduce any award of damages by that amount.

The jury moved to damages and wrote in the \$1,190,064 that was stipulated for economic damages. It added \$2.25 million more for his pain and suffering. The non-economic damages were 2.67 times the specials.



The Bounds impact

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Mississippi Jury Verdict Reporter

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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The raw verdict was \$3,440,064. But for Mississippi's tort scheme (it limits non-economic damages to \$1,000,000 in this context), the final judgment would have been for \$2,752,051, representing the raw verdict less 20% comparative fault.

However because of the scheme, the \$2.25 million in pain and suffering was first reduced to an even \$1,000,000. The adjusted total

verdict of \$2,190,064 (the \$1,000,000 plus the special damages) was then further reduced by comparative fault. Thus the final judgment entered by Judge Wilson was for \$1,752,051. **Ed. Note** - Interestingly Mississippi's tort scheme saved the defendant (a Tennessee company) exactly \$1,000,000, i.e., \$2,752,051 versus the final \$1,752,051.

Case Documents:

[Pretrial Order](#)
[Jury Verdict](#)
[Final Judgment](#)

Auto Negligence - The plaintiff, driving an asphalt truck, complained of disabling neck and back injuries after being rear-ended by a pick-up truck – the collision destroyed the pick-up, but resulted in relatively minor damage to big rig – there was also video evidence in plaintiff's tractor which suggested the impact resulted in only minimal movement to the plaintiff's body – an Ellisville jury rejected the case on causation and wrote "zero" for the plaintiff's damages

Bounds v. 3D Mechanical, 21-9

Plaintiff: William L. Morton, III, William A. Graves and Nicholas A. Puckett, *Morgan & Morgan*, Jackson
 Defense: L. Clark Hicks, Jr. and R. Lane Dossett, *Hicks Law Firm*, Hattiesburg

Verdict: Defense verdict on damages

Court: **Jones**

Judge: Dal Williamson

Date: 12-9-22

Russell Bounds was driving an asphalt truck on the morning of 8-11-20. He traveled on I-59 near Purvis. The defendant, Dusty Farrish (he worked for 3D Mechanical) was driving a pick-up truck. He fell asleep. Farrish crashed hard (he was going 75 mph or so) into the Bounds truck. The pick-up truck suffered severe damage. There was only minor damage to the rear of the asphalt truck. Fault was no issue.

Bounds reported neck and back pain at the scene was taken to the Forrest General Hospital where he was treated and released for a chest bruise and soft-tissue injuries. A few weeks later he began to treat with Dr. David Lee, Neurosurgery for neck and back pain.

Lee confirmed those injuries and began a course of care that included physical therapy, neck and back injections, a radio frequency ablation and the insertion of a spinal cord stimulator. Bounds reports debilitating back pain that radiates down his left leg and into his toes. His medical bills were \$132,000 and there was proof he will require future care including pain medications and maintenance of the spinal cord stimulator. In this lawsuit Bounds sought damages from Farris and his employer.

The defense admitted fault but contested the case on causation. It first looked to testimony from an IME, Dr. Richard Clatterbuck, Neurosurgery, Hattiesburg. The expert thought that it was likely there was no injury at all and at worst, Bounds suffered just a "possible" temporary injury.

Clatterbuck's opinions were buttressed by video taken in the cab of Bounds' truck. It suggested just a minor impact and minimal movement of Bounds' body. The video contradicted Bounds' testimony his chest struck the steering wheel at impact. Then in the moments after the collision, Bounds jumped in and out of the truck and moved around it bending over and otherwise not suggesting any pain or limitation in his movement. The heart of the defense then was that Bounds was not credible and didn't suffer a compensable injury.

This case was tried for three days. The deliberations lasted just a few minutes. The jury returned a defense verdict on causation and wrote "zero" for the plaintiff's damages. A defense judgment was entered.

Case Documents:

[Complaint](#)

[Jury Verdict](#)
[Final Judgment](#)

Auto Negligence - Two plaintiffs were injured in a red light collision – they took damages equal to their medical bills – the plaintiffs have moved for a new trial and cited the jury was sympathetic to the likeable defendant who they described as "a very cute young lady" – the trial court subsequently granted additur to each plaintiff (\$9,000 each) which the defendant promptly rejected

Walton v. Chamblee, 22-112

Plaintiff: Philip W. Gaines, Jackson and Kenneth Mayfield, *Mayfield Law Firm*, Tupelo

Defense: J. Bryan Hyneman, *Hickman Goza & Spragins*, Oxford

Verdict: \$7,828 for Deandre and \$6,193 for Albert both less 80% comparative fault

Court: **Lee**

Judge: James D. Moore

Date: 11-26-22

Albert Walton operated a vehicle in Tupelo on 10-2-21 on Gloster Street. His passenger was Deandre Walton. Albert had a green arrow to turn left. As he made the turn and having almost cleared the intersection, he was struck by Mabry Chamblee. Both vehicles spun around and the Walton vehicle struck a pole.

Both Waltons were treated at the ER and followed for a month or so with physical therapy for soft-tissue symptoms. Albert's medical bills were \$6,193, while Deandre incurred \$7,828. Their care was essentially identical except Deandre had a few more diagnostic tests at the ER.

In this lawsuit the Waltons sought damages from Chamblee (she's a student at Ole Miss) and blamed her for running the light. She contested

- 4) The instant case involved practical factors that would naturally stir emotional aspects of undue sympathy that would be very difficult for any person to set aside as required for proper judgment in this case. The Defendant is a very cute young lady who is a student at a nearby university and who the jury knew was not only having to defend herself in this formal lawsuit but also having to take a final examination for her university classes the next day. Although a full-time student, she is an extraordinarily admirable young person who is also working to help pay for college and who was on the way to that job when the accident occurred. There is no way any human-hearted

A snippet of the plaintiff's new trial motion referencing a "very cute young lady"

that it was Albert who ran the light. She also diminished the claimed injuries.

The jury's verdict was mixed on liability. It found both parties at fault. That fault was assessed 80% to Albert and the remaining 20% to Chamblee.

The jury moved to damages. Albert took a general award of \$6,193. Deandre's award was \$7,828. [Those sums were equal to the medical specials.] They were both reduced to \$1,238 and \$1,565, respectively, by the application of comparative fault in the final judgment.

The plaintiffs have moved for a new trial and cited that the jury's verdict was motivated by a natural sympathy to the defendant who was portrayed as sympathetic. Chamblee had worked hard in college and was described as a "Mis Mabry" who was a "very cute young lady." The plaintiffs suggested an additur of 2.5 times the medical bills.

Chamblee replied and thought there was no basis to supplant the jury's decision. She noted moreover if there was any sympathy here, it flowed to Albert who was paralyzed

in a fall a few months after the wreck. She thought additur of \$500 per plaintiff (for 41 days of treatment) was the most that would be reasonable.

Judge Moore ruled on the motion on 12-29-22. He found the damages inadequate and granted additur of \$9,000 for each plaintiff on top of the verdict. That represented (with the allocation of comparative fault) a net verdict of \$3,038 for Albert and \$3,365 for Deandre. Chamblee promptly filed a notice rejecting additur.

Case Documents:

[Jury Verdict](#)

[Final Judgment](#)

[Motion for a New Trial](#)

[Defense Response to New Trial](#)

[Motion](#)

[Order of Additur by Judge Moore](#)

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