

The Mississippi Jury Verdict Reporter

The Most Current and Complete Summary of Mississippi Jury Verdicts

January 2011

Statewide Jury Verdict Coverage

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Premises Liability - Walking out of a retail store, the plaintiff tripped on a barricade that was designed to slow down shoplifters - she fell forward and broke both her arms

Whiteacre v. Fred's Stores, 3:08-129
Plaintiff: Philip A. Stroud, *The Stroud Law Firm*, Southaven and James B. Lees, Jr., *Hunt & Lees*, Charleston, WV
Defense: Robert T. Jolly and Scott B. Hollis, *Watkins Ludlam Winters & Stennis*, Olive Branch

Verdict: \$1,150,000 for plaintiff less 19% comparative fault

Court: **Federal - Oxford**

Judge: Michael P. Mills

Date: 11-16-10

Vicki Whiteacre of Hornlake shopped on 12-23-07 at Fred's Dollar Store in Southaven. She was picking up last minute Christmas items. As she exited the store and entered the busy parking

lot, she headed for her car.

What Whiteacre did not appreciate was a wooden barricade in the parking lot. It stood 15 inches high according to Fred's - Whiteacre described it as 12 inches high. The barricade altered the foot traffic of shoppers (creating a maze of sorts) and was designed to deter shoplifters as they fled.

Whiteacre tripped over the barricade and fell forward on her arms. She broke both her arms. One continues to be virtually non-functioning. She also suffered broken teeth.

Whiteacre sued Fred's and alleged negligence by it regarding the placement of the barricades. A safety expert, E.J. Lacoste, Jackson, opined that the barricade was unreasonably dangerous in part because it obstructed a public pathway. Namely, patrons that exited the store couldn't walk directly into the parking lot, but had to make an elaborate

set of turns. Beyond her claim for damages, her husband also presented a derivative consortium claim.

Fred's defended the case that the barricades were not dangerous and in any event, they were open and obvious. It further noted that since the erection of the barricade, some 20,000 customers visited this store and only Whiteacre fell. To the purpose of the barricade, a Fred's bigwig explained the primary concern was to protect patrons in the parking lot from vehicular traffic.

The jury's verdict was mixed on fault after 3 hours of deliberation. It was assessed 81% to Fred's, the remainder to Whiteacre. Then to damages, she took a general award of \$1,150,000. The consortium claim was rejected. A judgment less comparative fault was entered for the plaintiff in the sum of \$931,500.

Medical Malpractice - The plaintiff blamed his failed knee replacement on the purported substandard technical performance by his orthopedist

Ford v. Fairbanks, 09-61

Plaintiff: David C. Dunbar,
DunbarMonroe, Ridgeland

Defense: Diane V. Pradat and Bradley K. Overcash, *Wilkins Stephens & Tipton*, Jackson

Verdict: \$511,621 for plaintiff

Court: **Adams**

Judge: Forrest Johnson

Date: 11-11-10

Johnny Mack Ford underwent a left knee replacement surgery on 12-3-07 at Natchez Community Hospital. It was performed by an orthopedist, Dr. John "Rusty" Fairbanks. Following the surgery, Ford developed an infection in his knee. Because of the infection and swelling, Ford later underwent a total of three knee surgeries, including a revision of the original replacement. Ford continues to complain of pain in his knee.

In this lawsuit, Ford sued Fairbanks and alleged negligence by him in the technical performance of the surgery. That included selecting the wrong sized

components and screws. Ford's expert, Dr. Forbes McMullin, Orthopedics, St. Louis, MO, opined that errors by Fairbanks led to the complex repair course.

Fairbanks defended that his technical performance was compliant with the standard of care. He blamed the poor result on a post-surgical complication. The defendant also pointed to the fault of a non-party, Dr. Ronald Gregg. Gregg had treated Ford and to relieve the swelling had inserted a penrose drain into the knee. The insertion of the drain was linked to the increased infection.

[Ford countered that there was no error by Gregg and even if there was, it flowed from Fairbanks's original error.] A defense expert was Dr. Leo Whiteside, Orthopedics, Des Peres, MO.

Following a three-day jury trial, the verdict was for Ford that Fairbanks was negligent and that this negligence proximately caused Ford's injury. Then to damages, Ford took \$300,000 for non-economic damages and \$211,621 for economic damages. The jury further rejected any apportionment to the non-party Gregg. The verdict totaled \$511,621. A consistent judgment was entered.

Fairbanks has since sought JNOV relief. He has first argued that the evidence required that some fault be assigned to Gregg – even the plaintiff's expert (McMullin) was critical of Gregg's use of a penrose drain. The defense has also alleged juror misconduct. In an affidavit, a juror indicated her vote came under duress – apparently in the jury room, any opposition to the plaintiff's case was called racist. [The record does not indicate the race of the parties or this juror.] The motion is pending.

Employment Retaliation - A black manager for the state medicaid office alleged she suffered retaliation when she complained of race discrimination

Brown v. MS Division of Medicaid, 3:09-221

Plaintiff: Louis H. Watson, Jr., Nick Norris and Jessica L. Long, *Louis Watson, Jr., PA*, Jackson

Defense: Peter W. Cleveland, *Assistant Attorney General*, Jackson

Verdict: Defense verdict on liability

Court: **Federal - Jackson**

Judge: Daniel P. Jordan, III

Date: 9-29-10

Helen Brown, who is black, worked for many years for the Mississippi Division of Medicaid. After being promoted several times, she served as a Division Director. In April of 2008, Brown presented a claim alleging race discrimination. It came in the form of her receiving a greater workload than white counterparts.

Following her complaints, Brown alleged the Division of Medicaid began a campaign of retaliation against her. That included excluded her from meetings and e-mails, among other slights. The mistreatment led to stress and Brown took FMLA leave. By that fall, her psychiatrist concluded she needed an extended leave. While on that leave, she was fired. Brown sued her former employer and alleged she suffered retaliation for having complained of discrimination.

The government defended and first argued that Brown had not voiced actionable opposition as the workers she complained about were not similarly situated. The court rejected this argument and concluded that it was Brown's reasonable belief that counted and not her understanding (or lack thereof) of Fifth Circuit precedent. To the merits, the defense denied any retaliation, explaining at best the conduct represented just petty slights.

The jury answered for the government that Brown had not suffered retaliation. That ended the deliberations and she took nothing.

Following the entry of the verdict, the court learned that the jury had received

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