

The Mississippi Jury Verdict Reporter

The Most Current and Complete Summary of Mississippi Jury Verdicts

November 2013

Statewide Jury Verdict Coverage

4 MSJVR 11

In This Issue

Hinds County

Malicious Prosecution - Defense verdict p. 2

Jefferson County

Products Liability - \$875,000 p. 1

Federal Court - Jackson

Medical Negligence - \$417,003 p. 2

Claiborne County

Products Liability - Defense verdict p. 3

Madison County

Legal Malpractice - Defense verdict p. 5

Simpson County

Auto Negligence - \$19,881 p. 7

DeSoto County

Medical Malpractice - Defense verdict p. 7

Notable Tennessee Verdict

Memphis, Tennessee

Medical Malpractice - \$4,350,000 p. 8

Notable Louisiana Verdict

New Orleans, Louisiana

Medical Malpractice - \$795,000 p. 9

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.

Products Liability - A Natchez man who was employed in the construction industry developed silicosis - his lawsuit proceeded to trial against the manufacturer of the respirator he used during his employment

Holmes v. Mine Safety Appliances Co., 07-63

Plaintiff: Timothy W. Porter, Patrick C. Malouf and John T. Givens, *Porter & Malouf*, Jackson

Defense: Charles W. Wilbanks, Jr., Matthew R. Dowd and G. Austin Stewart, *Brunini Grantham Grower & Hewes*, Jackson

Verdict: \$875,000 for plaintiff, assessed 90% to defendant

Court: **Jefferson**

Judge: Lamar Pickard

Date: 6-26-13

Huey Holmes of Natchez was employed from 1958 until 1964 by T.P. Groome Construction, where he was exposed to silica dust at various worksites in Jefferson, Franklin and Yazoo Counties. He later developed silicosis, despite his use of personal respiratory equipment, including a MSA Dustfoe 66 which was manufactured by Mine Safety Appliances Co.

After Holmes became ill, he sued a host of defendants, but only Mine Safety Appliances remained at the time of trial. Holmes's suit was based on claims of defective design and manufacture, as well as inadequate warnings.

Specifically, it was alleged by two experts, Darrell Bevis, Industrial Hygiene, San Diego, CA, and Ching-Tsen Bien, Occupational Safety,

Crofton, MD, that the personal respirator utilized by Holmes had anywhere between 5% and 20% leakage due to faulty exhalation valves, which had a tendency to stick open and not seal correctly. The mask also had a face to face-piece leakage defect which caused silica to leak excessively because the face-piece was made of malleable aluminum which could not maintain its proper shape.

Furthermore, the respirator's dust filter was made from a resin-impregnated felt material known to degrade in filtering efficacy when exposed to normal and common conditions found in plaintiff's workplace, such as humidity and oil mists. The result was significant leakage of particulates through the filter media. Plaintiff's other experts included Edward W. Karnes, Human Factors, Morrison, CO, Dr. Vernon Rose, Industrial Hygiene, Nashville, TN, Dr. Steven Haber, Pulmonology, Houston, TX, and Frank Giles, Life Care Planner, Madison, MS.

Mine Safety Appliances denied that its products were defective or that plaintiff's injury was due to any defect of its product, maintaining that Holmes's exposure while using its respirator was insufficient to have developed silicosis. The manufacturer also pointed to the negligence of other third parties, including plaintiff's employer, T.P. Groome. Among defendant's identified experts were Dr. Sheldon Rabinovitz, Pharmacology, Potomac, MD, and Dr. James Johnson, Industrial Hygiene, Pleasanton, CA.

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