

The Mississippi Jury Verdict Reporter

The Most Current and Complete Summary of Mississippi Jury Verdicts

December 2010

Statewide Jury Verdict Coverage

1 MSJVR 2

In The December 2010 Issue

Hinds County

| | |
|-----------------------------------|-------|
| Medical Malpractice - \$1,128,050 | p. 2 |
| Premises Liability - \$1,500,000 | p. 6 |
| Auto Negligence - \$50,000 | p. 9 |
| Premises Liability - \$125,000 | p. 10 |

Jasper County

| | |
|------------------------------------|------|
| Products Liability - \$131,500,000 | p. 1 |
|------------------------------------|------|

DeSoto County

| | |
|-------------------------------|------|
| Dump Truck Neg - \$30,000,000 | p. 3 |
|-------------------------------|------|

Lee County

| | |
|-------------------------------------|------|
| Alienation of Affection - \$100,000 | p. 4 |
|-------------------------------------|------|

Lauderdale County

| | |
|----------------------------------|------|
| Wrongful Death - Defense verdict | p. 4 |
|----------------------------------|------|

Federal Court - Jackson

| | |
|----------------------------------|-------|
| Wrongful Death - Defense verdict | p. 5 |
| Employment Retal - \$345,020 | p. 11 |

Pearl River County

| | |
|-----------------------------|------|
| Auto Negligence - \$100,000 | p. 5 |
|-----------------------------|------|

Lafayette County

| | |
|----------------------------------|------|
| Neg Inducement - Defense verdict | p. 6 |
|----------------------------------|------|

Covington County

| | |
|---------------------------------|------|
| Medical Malpractice - \$750,000 | p. 6 |
|---------------------------------|------|

Federal Court - Oxford

| | |
|--------------------------------------|------|
| Premises Liability - Defense verdict | p. 7 |
|--------------------------------------|------|

Jackson County

| | |
|--------------------------------------|------|
| Premises Liability - Defense verdict | p. 7 |
|--------------------------------------|------|

Oktibbeha County

| | |
|----------------------------------|------|
| University Negligence - \$30,000 | p. 8 |
|----------------------------------|------|

Panola County

| | |
|-----------------------------------|------|
| Auto Negligence - Defense verdict | p. 8 |
|-----------------------------------|------|

Federal Court - Hattiesburg

| | |
|-------------------------------------|------|
| Sexual Harassment - Defense verdict | p. 9 |
|-------------------------------------|------|

Federal Court - Gulfport

| | |
|------------------------------|------|
| Sexual Harassment - \$24,000 | p. 9 |
|------------------------------|------|

Tate County

| | |
|-----------------------------------|------|
| Auto Negligence - Defense verdict | p. 9 |
|-----------------------------------|------|

Monroe County

| | |
|--|-------|
| Paintball Negligence - Defense verdict | p. 10 |
|--|-------|

Jefferson Davis County

| | |
|----------------------------|-------|
| Auto Negligence - \$15,000 | p. 10 |
|----------------------------|-------|

Rankin County

| | |
|-----------------------------------|-------|
| Auto Negligence - Defense verdict | p. 11 |
|-----------------------------------|-------|

Historical Mississippi Verdicts

| | |
|------------------------------|-------|
| Notable Memphis, TN Verdicts | p. 11 |
|------------------------------|-------|

| | |
|--------------------------------|-------|
| Employment Retal - \$1,288,044 | p. 12 |
|--------------------------------|-------|

| | |
|--------------------------------------|-------|
| Premises Liability - Defense verdict | p. 13 |
|--------------------------------------|-------|

Notable New Orleans, LA Verdicts

| | |
|--------------------------|-------|
| Civil Rights - \$659,300 | p. 13 |
|--------------------------|-------|

Exclusive Preview for The Mississippi Litigation Review from The Mississippi Jury Verdict Reporter

We have reproduced a portion of the December 2010 issue of the Mississippi Jury Verdict Reporter as an exclusive feature for readers of Mississippi Litigation Review by Philip Thomas. We hope you find it interesting.

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| | |
|---------------------------------|-------|
| Medical Malpractice - \$523,755 | p. 14 |
|---------------------------------|-------|

Notable Mobile, AL Verdict

| | |
|----------------------------------|-------|
| Premises Liability - \$1,793,000 | p. 14 |
|----------------------------------|-------|

Notable Jonesboro, AR Verdict

| | |
|-----------------------------------|-------|
| Products Liability - \$19,000,000 | p. 15 |
|-----------------------------------|-------|

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 Memphis, TN, Mobile, AL and New Orleans, LA are also covered.

Products Liability - A highly regarded major league prospect suffered fatal injuries in a Ford SUV rollover – his estate valued his economic loss (assuming he was of All-Star capability) at from \$112 million to \$147 million – while wage loss was just \$56,000,000 of the verdict, this was a pre-tort reform lawsuit and the caps were not applicable – the case settled before the punitive damages

phase

Cole et al v. Ford Motor Company,
12-0076

Plaintiff: C. Tab Turner, *Turner & Associates*, Little Rock, AR, Wayne E. Ferrell, Jr., James W. Nobles, Jr. and Angelo J. Dorizas, Jr., Jackson, Theodore J. Leopold, *Leopold-Kuvin*, West Palm Beach, FL and Thomas L. Tullos, Bay Springs

Defense: Michael B. Wallace and Rebecca W. Hawkins, *Wise Carter Child & Caraway*, Jackson, Walker W. Jones, III, Barry W. Ford, J. Stephen Kennedy and Brad C. Moody, *Baker Donelson Bearman Caldwell & Berkowitz*, Jackson and R. Gordon Sproule, Jr. and J. Patrick Strubel, *Huie Fernambucq & Stewart*, Birmingham, AL

Verdict: \$130,000,000 for estate of Brian Cole; \$1,500,000 for Ryan Cole

Court: **Jasper**

Judge: Billy Joe Landrum

Date: 9-2-10

Brian Cole, age 22, was a highly regarded major league prospect in March of 2001. The previous summer, Cole, an outfielder, had starred in Class A baseball

**Coming in the January 2011 Edition of the
Mississippi Jury Verdict Reporter**

Federal - Oxford - Plaintiff broke both arms in a fall over a grocery store barricade - \$1,150,000

Hinds County - Toddler badly bitten by neighbor's dogs - \$125,000

Laurel County - Asbestos exposure - \$15,198,400

Lauderdale County - Delay in delivering a healthy child led to an infection complication for the mother - \$25,000

Lee County - Plaintiff badly injured and blamed roadway design - Directed verdict

Hinds County - Plaintiff injured by a suddenly dropping elevator - \$602,000

Pearl River - Bladder nicked during a hysterectomy - Defense verdict

And many more

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in Florida. His talent compared favorably to another minor leaguer, Albert Pujols, who has since gone on to stardom with the St. Louis Cardinals. Moving into the Spring of 2001, Cole was to play Double-A ball (two steps below the Major Leagues), the Mets projecting him as a starter in 2003.

Brian, a Meridian native, had been both a high school baseball and football star. He selected baseball and was an 18th round selection by the New York Mets. On the key date in this case, Brian was traveling near the Florida-Georgia stateline on his way back from spring training. He was piloting a 2001 Ford Explorer Sport. A passenger with Brian was his teenage cousin, Ryan Cole, age 17, of Rose Hill in Paulding County.

While traveling at some 80 mph, the Explorer suffered a tire blow-out. Brian lost control of the SUV and it rolled over. In that process (it was a one-car accident), Brian was ejected. His injuries were catastrophic and he died soon after at a Florida hospital. There was however evidence (some contested) of his conscious pain and suffering. Ryan too was badly hurt (he was not ejected) and has complained of a traumatic brain injury.

In this lawsuit, Brian's estate and Ryan

individually, sued Ford and alleged the Explorer was defective. They focused on stability, the SUV being susceptible to roll over. Similarly, the estate developed that Brian was wearing his seat belt, the restraint failing to keep him inside the vehicle.

Among the many experts discussing design questions, the plaintiffs relied on Steve Syson, Goleta, CA, Ian Jones, Accident Reconstruction, Great Fall, VA, Martha Bidez, Restraint Systems, Birmingham, AL. An economist, Richard Thompson, quantified Brian's economic loss at \$112 million to \$147 million. That proof was estimated on Brian becoming an All-Star caliber player. Proof in this regard was provided by the former Mets general manager, Jim Duquette. Beyond the claims for compensatory damages, the plaintiffs also sought the imposition of punitive damages.

Ford defended the case and blamed the crash on excessive speed and driver error by Brian. While at high speed, Ford explained, Brian drifted off the road for unknown reasons. He then turned the wheel and overcorrected, the vehicle rolling over some three times.

Then during the rollover event, Ford

further defended that had Brian been wearing a seat belt (there was disputed proof in this regard), he would not have been ejected. That the Explorer was designed properly, Ford noted that Ryan (who was belted unquestionably) was not ejected. A key liability expert for Ford was Michael Klima, Occupant Restraint, Novi, MI. Damages were also diminished in part with proof from Keith Law, a senior baseball writer for ESPN.

Before a verdict could be reached, this case was mistried twice, most recently in January of 2010. A first jury deadlocked in June of 2004 before Judge Robert Evans – the 2010 mistrial was heard before Judge Landrum.

There was a motion in this case for a third mistrial. In a handwritten motion, Ford argued it was prejudiced by arguments made by Cole's attorney that Ford had a "gazillion dollars", "held all the money", and had "bank accounts all over the world." The motion was denied.

The presentation of this case this September involved the use of highly sophisticated technical presentations. The courthouse in Paulding was unable to accommodate that technology and parts of the case were heard in Laurel (Jones County) where there is a more advanced courtroom.

Following ten days of trial, the case concluded in Paulding. The jury (by a 9-3 count) answered for the plaintiffs that the Ford Explorer was defective so as to be unreasonably dangerous and separately that the injuries were proximately caused by this defect. Apportionment to the decedent was rejected.

Then to damages, Brian's estate took \$56,000,000 for future lost wages and \$25,000,000 for loss of love and society. Brian's conscious pain and suffering was valued at \$50,000,000, his compensatory verdict totaling \$130,000,000. Ryan took a general award of \$1.5 million.

Then as the case was preparing to enter the punitive damages phase, the parties entered a confidential settlement. Six weeks post-trial, no judgment or order of dismissal has been entered in the record. [The last document of the record is the

verdict.] As this was pre-tort reform litigation, caps would not have applied to awards of non-economic damages.

Medical Malpractice - The plaintiff died of a bleed injury, his estate alleging his doctors mismanaged a stomach ulcer

Hamil v. Cleveland et al, 07-34

Plaintiff: Larry Stamps and Alton E. Peterson, *Stamps & Stamps*, Jackson
 Defense: Whitman B. Johnson, III and Lorraine W. Boykin, *Currie Johnson Griffin Gaines & Myers*, Jackson for Cleveland

Stephen P. Kruger and Kristopher A. Graham, *Page Kruger & Holland*, Jackson for Smith-Vaniz

Mark P. Caraway, *Wise Carter Child & Caraway*, Jackson for Central Mississippi Medical Center

Verdict: \$1,128,050 for plaintiff assessed against all three defendants

Court: **Hinds**

Judge: Winston Kidd

Date: 5-27-10

Emmett Hamil, then age 42, presented to Central Mississippi Medical Center on 11-10-04 with complaints of gastric pain. Testing revealed free air in his abdomen. Dr. Ken Cleveland came in on a surgical consult. A week later Cleveland performed an exploratory laparotomy – during that procedure, a wedge resection of a stomach ulcer was performed. A second doctor, George Smith-Vaniz, provided a gastroenterology consult.

Hamil was released from the hospital eight days later. Within hours he suffered intense pain and just eight hours after being released, he collapsed. While Hamil was revived and returned to the hospital, his condition was grave. He had lost too much blood, the stomach ulcer having started to bleed. He died the next day.

In this lawsuit, Hamil's estate sued Cleveland, Smith-Vaniz and the hospital in managing his case. The plaintiff's expert, Dr. Louis Silverman, Thoracic Surgery, Houston, TX, was critical of Cleveland for failing to properly work-up Hamil and then prescribe anti-ulcer

medications upon his release from the hospital. Similarly, Smith-Vaniz was blamed for a work-up error – but for that error, Silverman explained, a total gastrectomy would have been performed. The nursing care was also implicated. The combination of these errors and the overall mismanagement of Hamil's ulcer caused the hemorrhage and death.

The hospital defended through an expert (Stephanie Jackson, RN, Madison) that it's care was proper. It prevailed by directed verdict on negligence – however it still faced vicarious liability as the employer of Cleveland and Smith-Vaniz.

The defendants replied that Hamil's case was properly managed and it was appropriate to release him. That is, there was no reason to suspect the ulcer would perforate. Then to the bleeding incident, it was described as a new event. Thus the defendants further developed that regardless of their care, this new bleed was going to occur and the end result would not have been different. Defense experts were Dr. Thomas Helling, Surgery, Jackson, Dr. Nina Garrett, Gastroenterology, Montgomery, AL and Dr. Claude Minor, Surgery, Monroe, LA.

The estate prevailed by a 9-3 verdict against the defendants and took \$628,050 for economic damages. The award for the non-economic variety was \$500,000, the verdict totaling \$1,128,050. While the hospital had prevailed on its individual liability via directed verdict, the court's consistent judgment was entered against all three defendants, the hospital being implicated by vicarious liability.

The defendants moved for JNOV relief and argued that (1) there was no proof the outcome would have been different, and (2) plaintiff's expert (Silverman) presented surprise evidence. The motion was denied (on 8-24-10) and the defendants have appealed.

Dump Truck Negligence (Catastrophic) - An overloaded dump truck (by 20,000 pounds) and with just one functional brake ran a red light and crashed into the plaintiff – the plaintiff, just 16, suffered a permanent and catastrophic brain injury that has left him confined to a wheelchair

Bryant v. APAC-TN et al, 06-261

Plaintiff: Paul R. Scott, Hernando and Robert R. Morris, III, Batesville, both of *Smith Phillips Mitchell Scott & Nowak*

Defense: W. O. Lockett, Jr. and Brian Yoakum, *Lockett Tyner Law Firm*, Clarksdale for APAC-TN

H. Richmond Culp, III, *Mitchell McNutt & Sams*, Tupelo for Everything Wholesale

Verdict: \$30,000,000 for plaintiff assessed 70% to APAC and 10% to Everything Wholesale

Court: **DeSoto**

Judge: Robert P. Chamberlain

Date: 8-14-09

Ethan Bryant, then age 16, and his friend, Patrick Taylor, operated a small home irrigation business in the summer of 2006. They traveled on 8-3-06 in Hernando in a pick-up truck. At the same time, Chad McCarty was operating a dump truck for his employer, Everything Wholesale. He was hauling gravel to a construction site.

The gravel had been loaded at Memphis Stone and Gravel and was being taken to a construction site operated by APAC-TN. APAC paid for the deliveries based on total weight. There was proof this was the fifteenth delivery made by McCarty with an overloaded truck.

At an intersection in Southaven, McCarty ran a red light. His dump truck (overloaded by 20,000 pounds) plowed into the Bryant pick-up truck. The impact sent the pick-up careening 100 feet away. Taylor was killed instantly. Bryant sustained a catastrophic brain injury and remained in a coma for eight months.

He has been left a permanent quadriplegic and is confined to a wheelchair. Bryant also suffers from a seizure disorder. An economist for the estate was Lewis Smith, Oxford, who

expanded on the work of a life care planner, Pamela Brown, Little Rock, AR. The plan was valued at \$10.818 million.

In this lawsuit, Bryant sought damages first from Memphis Stone and Gravel. The theory implicated it for having overloaded McCarty's truck. The gravel firm settled, but its duties remained in issue for purposes of apportionment.

McCarty and his employer, Everything Wholesale, were also implicated for negligence both in running the red light and in operating a substandard dump truck. The truck wasn't just overloaded, it had just one functioning brake and there was a blown tire on the middle axle. To the wreck itself, while McCarty wasn't speeding, because of the excessive weight and lack of brakes, there was no way for McCarty to slow his truck in time.

The third defendant was APAC, Bryant arguing that McCarty too was supervised by the firm. There was proof it accepted many illegal overweight loads from McCarty. Thus but for the negligent supervision of McCarty, the theory went, there would have been no accident.

McCarty was later convicted of aggravated assault regarding this incident and thus at trial, he and his employer defended as well as they could. The court had directed a verdict on fault against McCarty and thus the jury only considered apportionment. APAC's defense focused that McCarty was an independent contractor and it owed no duty other than to confirm that he had a commercial driver's license. [Plaintiff countered that as APAC accepted 15 overweight loads, it not only should have known of this danger, it in fact did know.]

The jury's verdict (it was unanimous) was mixed on fault. It was assessed 70% to APAC, 10% to McCarty and Everything Wholesale and the remainder (20%) to the non-party Memphis Stone and Gravel. Then to damages, the estate took \$15,000,000 for economic damages. Taylor's parents took \$1,241,163 for their economic loss.

This Hernando jury added \$13,758,837 more for Bryant's non-economic loss. The raw verdict totaled \$30,000,000. The court's judgment reduced it to \$17,241,163 to conform to statutory limits and comparative fault.

As the jury deliberated, it had a question for the court: If we find Memphis Stone and Gravel at fault, will it have to pay Bryant or will he have to sue them? The court replied to the jury that it should not be concerned with this.

APAC sought JNOV relief and argued that McCarty acted independently, the firm not being negligent in using a trucking contractor. It also thought the 10% apportionment to McCarty was inadequate, APAC noting he was convicted of aggravated assault. Bryant countered that APAC's duty was supreme, it knowing there had been some 15 illegal loads transported from its site before this tragedy.

The motion was denied and APAC has since appealed. Its new counsel (handling post-trial issues) is Mark D. Jicka and Graham P. Carner, *Watkins & Eager*, Jackson.

Alienation of Affection - The plaintiff sued his wife's lover for having broken up his marriage – the jury returned a first verdict writing that the husband was entitled to attorney fees and court costs – the judge sent the jury to deliberate again and this time, the husband took \$100,000

Cooley v. Wood, 06-199

Plaintiff: J. Mark Shelton and Jana L.

Dawson, *Shelton & Dawson*, Tupelo

Defense: Jason D. Herring, *Law Office of Jason Herring*, Tupelo

Verdict: \$100,000 for plaintiff

Court: Lee

Judge: James L. Roberts, Jr.

Date: 9-10-09

Jason Cooley took Jennifer as his bride in February of 2002 and expected the union to last forever. He would recall that into 2006, the marriage was good. He and Jennifer shared a child.

What Cooley didn't know was that Jennifer had a boyfriend at work – his name was Chuck Wood. It was undisputed that Wood developed a romantic relationship with Jennifer. The Cooleys divorced.

Thereafter Cooley sued Wood and alleged the affair had broken up the marriage. It was Cooley's proof that the divorce devastated him – he continues to hurt and has yet to resume dating. That Wood persuaded, enticed and induced his wife, Cooley pointed to gifts that were provided to Jennifer. If Cooley prevailed, he sought an award of compensatory and punitive damages.

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