

The Mississippi Jury Verdict Reporter

The Most Current and Complete Summary of Mississippi Jury Verdicts

December 2010

Statewide Jury Verdict Coverage

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Preview - Issue Coming Soon

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Notable Memphis, TN Verdicts

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Notable New Orleans, LA Verdicts

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December is Coming Soon

Introducing the Mississippi Jury Verdict Reporter

The nation's most innovative jury verdict publisher has come to Mississippi - for 15 years, we've done original, on-the-ground and in-the-courthouse research on verdict results in Alabama, Tennessee, Kentucky, Indiana and Louisiana. This month we introduce the newest addition to our line-up,

The Mississippi Jury Verdict Reporter.

We've traveled the highways and byways, digging out the details at the courthouse. Every month, the MS JVR brings you timely coverage of civil jury verdicts from all over the state. We are regularly communicating with court officials and endeavor to report every civil verdict we can uncover in state and federal court. More details on subscribing are inside or call us toll-free at 1-866-228-2447. **Introductory rates start at \$199.00.**

Let's get to the verdicts.

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 – case then settled before the punitive damage 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 the Class A baseball 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, it 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, mostly 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 mismanaging 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 he 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, Hamil 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 the 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

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