

The Mississippi Jury Verdict Reporter

The Most Current and Complete Summary of Mississippi Jury Verdicts

February 2022

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 and a trucker met in a sharp 90 degree curve on a rural road – there was an impact (the parties had different versions of how it happened) but unquestionably it occurred in the plaintiff's lane – however it happened the plaintiff later underwent a C5-6 disc surgery

Lynn v. Wilson Trucking, 20-126

Plaintiff: Rocky Wilkins, Paul V. Ott and John A. Waits, *Morgan & Morgan*, Jackson

Defense: Charles C. Wimberly, III, *Perrier & Lacoste*, Gulfport and Jamie D. Travis, *Gibbs Travis*, Jackson

Verdict: \$723,326 for plaintiff

Court: **Claiborne**

Judge: Tomika Harris-Irving

Date: 2-3-22

Lindsey Lynn, then age 37 and a nurse, traveled on rural Hwy 547 near Patterson, MS on 8-28-19. At the same time a trucker, Isaac Phipps for Wilson Trucking, approached from the opposite direction. They met in a sharp 90 degree curve. There would be fact disputes about what happened.

Lynn alleged that in the sharp turn she pulled to the far right and into the fog line. An instant later she was struck by the Phipps truck. Phipps for his part explained he appreciated the turn was too sharp to navigate at the same time as Lynn and he came to a complete stop. Only then did she hit his stopped vehicle. However this collision occurred there was no dispute it happened in Lynn's lane.

Lynn did not report an injury at the scene. However within a day she had headaches and neck pain. After a

course of conservative care, she was identified as having a C4-5 disc injury. Dr. James Woodall, Orthopedics, later performed a cervical fusion at that level.

In this lawsuit Lynn sought damages from Phipps and his employer. She relied on two damage experts, Ralph Bell, Life Care Plan and George Carter, Economist, who quantified her loss of household services (laundry, etc) as well as lost wages. There was proof that Lynn, who previously was a nurse, now does less hands-on physical work as a medical supervisor. Her loss of household services was estimated at \$334,000.

Wilson Trucking defended on liability as noted above. It also diminished damages noting there was no initial injury. The defense was also prepared to contest the household services claim with two experts, Bruce Brawner, Economist and James Koerber, CPA – they had valued the loss at more like \$110,000. Ultimately the defense elected not to call the experts at trial.

This case was tried for three days. The jury found Phipps solely at fault and rejected any apportionment to Lynn. Lynn then took medicals of \$74,826 and \$4,500 more in lost wages. Her loss of household services was \$75,000.

The jury turned to non-economic damages. The total sum of those damages was \$570,000 and was comprised of the following:
Pain and suffering: \$50,000
Mental Anguish: \$20,000
Scarring/Disfigurement: \$500,000.

The combined verdict for Lynn totaled \$723,326 and a consistent judgment was entered by the court.

Case Documents:

[Pretrial Order](#)

[Final Judgment](#)

Auto Negligence - The plaintiff, a police officer, suffered a traumatic brain injury and other serious injuries (pelvic fracture, collapsed lung and more) when rear-ended by a distracted defendant who was traveling 80 mph – a Lamar County jury awarded the plaintiff \$1,000,000 in non-economic damages, his wife taking \$300,000 more for her consortium interest
Crabtree v. Cotton, 18-119

Plaintiff: Samuel S. McHard and P. Manion Anderson, *McHard McHard Anderson & Associates*, Hattiesburg
 Defense: C. Paige Herring, *McAngus Goudelock & Courie*, Ridgeland
 Verdict: \$4,605,000 for plaintiff
 Court: **Lamar**
 Judge: Anthony Mozingo
 Date: 1-19-22

Caleb Crabtree, a police officer, traveled on I-59 in a Toyota sedan on 9-13-18. The speed limit was 70 mph. There was proof the highway was congested. The defendant, Casey Cotton, was driving a Ford F-250 and there was proof he was on a cellphone. Cotton didn't appreciate the stopped traffic.

Cotton crashed into Crabtree at high speed – Crabtree had slowed to 2 mph or so (he was just rolling) at the moment of the impact. An accident expert, Kevin Bundy, Hattiesburg, would later estimate Cotton's speed at 83 mph. Whatever the exact speed was, Cotton was traveling very fast and the collision was very significant. Crabtree's Toyota was knocked forward into the



Crabtree's vehicle at the scene of the crash

next vehicle.

Crabtree's injuries were serious and he was treated for a pelvic fracture, twelve rib fractures, a broken arm, a collapsed lung and a lumbar transverse fracture among others. Crabtree was initially placed in the ICU in critical condition.

Beyond the broken bones, Crabtree has also been treated for a traumatic brain injury. It has affected his memory, cognition and executive skills. A treating neurologist, Dr. Wendell Helveston, identified a mild neurocognitive injury. The overall effect of Crabtree's injuries has limited his work in the law enforcement profession.

In this lawsuit Crabtree sought damages from Cotton. The plaintiff relied on proof from two damage experts, Aaron Wolfson, Life Care Plan and George Carter, Economist. Crabtree's wife (Adrienne) also presented a derivative consortium

claim.

As the case came to trial the plaintiff also received a spoliation instruction because the so-called "black box" in Cotton's truck was removed. The instruction provided that the jury could assume the speed and braking of Cotton's truck would not be favorable to him. Cotton defended the case as well as he could.

There was other interesting process in this case. Crabtree had sued Allstate (Cotton's insurer) and State Farm (his own UIM insurer) for bad faith. Those claims were removed to federal court. Those claims were dismissed by the federal court without prejudice pending the underlying case in Lamar County.

Cotton also assigned his own bad faith claim against Allstate to the plaintiff as a part of his bankruptcy. Cotton's policy limits were just \$25,000. Proceeding on that assignment, Crabtree sued Allstate in

federal court in December of 2021. That action is also pending, Crabtree alleging (in the shoes of Cotton as assignee) that Allstate dragged its feet in not immediately tendering the \$25,000 policy limits.

All the bad faith and assignment litigation aside, the underlying case was tried over six days. The jury's verdict awarded Crabtree \$150,000 in lost wages plus \$1.5 million for in the future. His medicals were \$655,000, the jury adding \$1,000,000 for in the future.

The jury moved to non-economic damages. Crabtree took \$1,000,000 for his pain and suffering. His wife was awarded \$300,000 more for her consortium interest. The verdict for the Crabtrees totaled \$4,605,000 and in the final judgment there was no reduction for Mississippi's tort scheme as the awards to the two individual plaintiffs (Caleb and his wife) did not exceed \$1,000,000.

Case Documents:

[Complaint](#)

[Jury Instructions](#)

[Jury Verdict](#)

[Final Judgment](#)

[Amended Bad Faith Complaint](#)

staffers at a podiatrist's office alleged their boss sexually harassed them, the alleged harassment including offensive remarks, hugs and sexual advances – three of the four plaintiffs prevailed on liability at trial and took modest damages

Tate et al. v. Zaleski & Total Foot Care, 2:19-63

Plaintiff: Abby Robinson, Jackson

Defense: Daniel M. Waide, *Johnson*

Ratliff & Waide, Hattiesburg

Verdict: \$34,000 for Young

\$24,000 for Myers

\$18,000 for Tate

Defense verdict on claim by Landing

Federal: **Hattiesburg**

Judge: Taylor B. McNeel

Date: 1-14-22

This litigation involved four women, Angela Tate, Dena Myers, Darshun Young and Hope Landings, who were employees of Total Foot Care. The company provides podiatry services at several offices in Columbus, MS, Laurel, MS, Hope, MS and Hattiesburg, MS and is operated by a podiatrist, Dr. Michael Zaleski. The women (hereinafter the plaintiffs) worked at different Total Foot Care offices and while their claims in this litigation were not directly connected to each other, they were very similar.

Each of the four plaintiffs alleged that Zaleski engaged in a pattern of sexual harassment during their employment as medical assistants. It is important that Zaleski's alleged harassment of the various plaintiffs occurred separately and none of the plaintiffs witnessed any of the other plaintiffs being harassed.

While the harassment was different and unique as to each plaintiff, it was generally similar. Zaleski was alleged to have made

lewd and offensive comments as well as making sexual advances. There was proof he would stare inappropriately and ask the women out. When they rebuffed him, the proof went, he retaliated against them.

If the plaintiffs proved their respective sexual harassment claims, they could each take compensatory damages. The jury could also impose punitive damages. The claim of a fifth defendant was dismissed by summary judgment because she failed to disclose the claim in a bankruptcy disclosure.

Zaleski's defense (and that of Total Foot Care too) was simple. The allegations by the women were all a complete fabrication and the lawsuit was an attempt to extort him. He pursued a defamation counterclaim against the plaintiffs but dropped it as the trial began.

Originally this litigation was handled by Judge Keith Starrett through November of 2020. At that time it was reassigned to the neophyte Judge McNeel who handled it through trial.

This case was tried for five days. The jury returned a mixed verdict. Three of the four plaintiffs (Tate, Myers and Young) prevailed on identical instructions that asked if they had proven their sexual harassment claims. The jury also rejected Total Foot Care's affirmative defense that it had acted reasonably. By contrast the jury rejected the claim by the fourth plaintiff, Landing.

Then on the issue of damages the prevailing plaintiffs Young, Myers and Tate, respectively took the sums of \$34,000, \$24,000 and \$18,000. The jury also rejected (for all three prevailing plaintiffs) the imposition of punitive damages. The combined verdict for the three prevailing

plaintiffs was \$76,000. A consistent judgment was entered.

Zaleski has since moved for JNOV relief and focused on two arguments. The first was that the plaintiffs had not proven Total Foot Care had 15 employees at all relevant times. Moreover the court was simply wrong that Total Foot Care had waived this issue by not raising it as a disputed fact in the pretrial order. [The pretrial order is by the way a state secret in McNeel's court.] The defense further explained that Total Foot Care couldn't waive an "essential element" of the plaintiff's case.

The motion also argued that the four plaintiffs should have had separate trials as their claims were completely different. The result of combined trials led to a "bombardment" of sexual harassment testimony that was unfair to Zaleski.

The plaintiffs replied that the defense "ambushed" the plaintiffs by raising the "numerosity of employees" defense on the fourth day of trial. They further explained that in the Fifth Circuit, trial by ambush is not allowed and in any event, the proof was in the defendant's own EEOC findings that it had more than 15 employees. The JNOV motion is pending.

The plaintiffs have also moved for an award of sanctions because Zaleski pursued a frivolous defamation claim to the eve of trial and forced the plaintiffs to defend it at a cost of \$25,000. Zaleski wasn't impressed with this motion at all and thought it represented "extortion" and a "greedy shakedown." Why had he dropped those claims? Zaleski described it as a strategic trial decision. The motion for sanctions is

pending too.

Case Documents:

[Complaint](#)

[Jury Verdict \(Tate\)](#)

[Defense JNOV Motion](#)

[Plaintiff Response to JNOV Motion](#)

Medical Malpractice - The plaintiff alleged error by her surgeon when during a gallbladder removal surgery, he injured her common bile duct – the surgeon defended that the transected common bile duct was a recognized complication and did not represent a deviation from the standard of care – in this Tort Claims Act lawsuit, the trial judge found for the defendant on liability

Lampkin v. Domkam, 19-62

Plaintiff: A. Bryan "Trey" Smith, III, *Simmons Dallas*, Ridgeland

Defense: Tommie G. Williams, Jr., *Upshaw Williams*, Greenwood

Verdict: Defense verdict on liability (Bench verdict)

Court: **Leflore**

Judge: W. Ashley Hines

Date: 1-20-22

Amber Lampkin underwent a gallbladder removal surgery on 6-30-18. It was performed at the publicly-operated Greenwood Leflore Hospital by a hospital-employed surgeon, Dr. Alain Domkam. The surgery itself was apparently uneventful and Lampkin was discharged two days later.

Lampkin returned to the hospital two days later with abdominal pain. It was learned at this time that during the initial gallbladder surgery Domkam had transected Lampkin's common bile duct. Lampkin underwent a surgical repair. She endured additional procedures and there was evidence that Lampkin will endure additional procedures in

the future among other complications.

Lampkin sued the hospital in this Tort Claims Act lawsuit and alleged negligence by Domkam in performing the surgery. Her expert, Dr. Joseph Broucek, Surgery, Vanderbilt (TN), discussed that Domkam failed to obtain a "critical view of safety" during the surgery and otherwise adequately identify Lampkin's anatomic structures. This failure in turn led to the common bile transection and her complex recovery course.

Broucek had testified that "I cannot confidently say that a critical view of safety was obtained" and moreover that "So unable to say that while he obtained a critical view of safety, yet this injury happened anyway, I can't say that because I can't say with confidence that the critical view of safety was even achieved." While Broucek's testimony in sum identified a standard of care by Domkam, as described above, it certainly could have been clearer.

Domkam defended that he met the standard of care and at all times he acted to correctly identify Lampkin's anatomy. His expert, Dr. Guy Voeller, Surgery, Memphis, TN, described the transection of the common bile duct as a recognized complication of the surgery that can and does occur despite the surgeon having acted within the standard of care.

This case was heard by Judge Hines in September of 2021. The court issued its final order in January of 2022. Judge Hines wrote that the opinion of the plaintiff's expert was too "equivocal" to rise beyond a preponderance of the evidence. The court further noted Voeller's opinion that inflammation of the gallbladder distorted Lampkin's anatomy and

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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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further complicated the matter. The bench verdict was for Domkam and Lampkin took nothing.

Case Documents:

[Final Judgment](#)

Uninsured Motorist - A phantom driver sideswiped the plaintiff and the plaintiff has since treated for headaches – the defense (the plaintiff's own insurer) minimized the collision and noted

she'd treated for similar headaches since 1992 – a Hernando jury rejected the case on causation and the plaintiff took nothing

Plunkett v. Auto-Owners Insurance, 17-81

Plaintiff: J. Wesley Hisaw, *Holland Law*, Horn Lake

Defense: Bradley W. Eskins, *Eskins King & Marney*, Memphis, TN

Verdict: Defense verdict on

causation

Court: **DeSoto**

Judge: Gerald Chatham, Sr.

Date: 1-11-22

Charlotte Plunkett traveled on Hwy 302 on a bridge near I-55 on 7-1-14 in Southaven. Suddenly a phantom driver crossed into her lane and sideswiped her vehicle. The collision resulted in minor damage. The at-fault driver was never identified.

Plunkett, who lives in Columbia, TN, has since treated for ongoing headaches. While she had a history of headaches and used a Botox treatment every three months, she now relies on that treatment every month. Her medical bills were \$45,682 and the treating Dr. Louise Ledbetter, Neurology, Columbia, TN, confirmed the injury.

In this uninsured motorist lawsuit, Plunkett sought damages from her carrier, Auto-Owners Insurance. The theory was simple enough – the phantom driver had crashed into her car and she sustained an aggravation of her headache condition.

Auto-Owners made the matter more complex and looked to proof from an IME, Dr. Tulio Bertorini, Neurology, Cordova, TN. Bertorini believed that Plunkett suffered only an “abbreviated exacerbation” of her pre-existing condition and most of her ongoing care was unrelated. He also noted she’d treated for headache pain since 1992 and in fact sought treatment for that on the day of this wreck. The expert also traced other injury events including C5-6 surgery in 1992, a fall on stairs in 2000, a 2013 basketball to the face incident and finally a 2014 car wreck.

This case was tried for two days in Hernando. The jury returned a handwritten verdict for Auto-Owners, apparently on causation (although not explicitly described) as liability was not contested. A defense judgment was entered.

Case Documents:

[Jury Verdict](#)

[Final Judgment](#)

Medical Malpractice - The plaintiff underwent an elective aortic repair (he’d suffered a prior aneurysm) as a preventative life-extender – the plaintiff purportedly suffered an esophageal injury in the surgery that was not promptly detected and which led to his death weeks later

Lafont v. Eckholdt et al., 17-188

Plaintiff: Caleb H. Didriksen, III and Erin B. Saucier, *Didriksen Saucier & Woods*, New Orleans

Defense: Don S. McKinney, *Adams & Reese*, New Orleans for Eckholdt Ashley E. Bass and Shaan M. Aucoin, *Cashe Coudrain & Bass*, Hammond for Arvind and North Oaks Medical Center

Verdict: Defense verdict on liability
Court: **Amite City, Louisiana Tangipahoa Parish**

Judge: Brian K. Abels
Date: 1-14-22

Dennis Lafont, age 70 and retired from Proctor & Gamble, had a history of a prior aortic aneurysm. He consulted in 2011 with a cardiothoracic surgeon, Dr. Gregory Eckholdt. Eckholdt recommended and Lafont agreed to a thoracoabdominal aortic repair. While Lafont was healthy and active (he mowed the yard every week), the elective procedure was presented as a life-extender in light of Lafont’s prior aneurysm history.

The surgery was performed on 6-4-11 at North Oaks Medical Center by Eckholdt. While the surgery was complex, it was apparently uneventful. However over the next month Eckholdt’s condition deteriorated. His care was managed additionally in the post-operative period by a critical care physician, Dr. Yertha Arvind, as well as treatment by hospital nurses.

Lafont’s apparent signs of an infection were responded to with antibiotics.

Despite that intervention Lafont only got worse. It turns out there was a problem that had not been detected. His esophagus was ruptured and the contents were leaking into his chest and abdomen.

Finally on 7-5-11 (a month post-surgery), a gastroenterologist, Dr. Jason Reina, performed a scope of Lafont’s esophagus. It revealed a large 36 cm opening that encompassed 50% of the esophagus. A surgical repair was attempted but Lafont’s prognosis was grave. His organs failed and he died two days later.

The plaintiff alleged a combination of errors led to his death. They went back to the surgery itself, the plaintiff theorizing the esophagus was injured at that time by an errant stitch. Alternatively the arterial supply was so diminished in the surgery that it caused part of the esophagus to rupture and die. In either version of events it traced to error by Eckholdt.

The error continued in the post-operative period. The plaintiff alleged that as an esophageal injury was a known risk of the surgery, it could have been easily and timely identified with a simple scope. This was not done until it was too late in July. Thus Eckholdt and Arvind (a hospital employee) were blamed for failing to intervene in the month after the surgery before the discovery of the injury – this was especially problematic as while Lafont continued to get worse, there was no real effort to investigate the problem and the only solution was to continue to provide antibiotics. Hospital nurses were also implicated for mismanaging Lafont’s NG tube.

Experts for the plaintiff included Dr. Tyler Greenfield, Cardiovascular

A Notable Louisiana Verdict

Surgery, Kingsport, TN and Dr. Perry Hookman, Gastroenterology, Potomac, MD. The plaintiff's damages included both Lafont's medical bills (\$840,031) and pain and suffering as well as the consortium interests of his widow of 48 years and his adult daughter.

The defense described it as a case involving a complex and risky surgery. Then following the surgery Lafont was carefully monitored in the ICU, provided antibiotics and otherwise received aggressive quality care. The scope was timely and while there was an attempted esophageal repair, the infection had already progressed too far.

The defense also contested causation regarding the initial esophageal injury. It wasn't a stitch or an arterial supply problem, but instead the esophagus broke down over time which was a surgical risk. Defense experts included Dr. Charles Smith, Pulmonary Care (he was on the Medical Review Panel) as well as retained experts, Dr. Ross Klingsberg, Pulmonary Care, New Orleans and Dr. Michael Weaver, Cardiothoracic Surgery, New Orleans, LA.

This case was tried more than ten years after Lafont's death. The jury exonerated all three defendants on liability and the plaintiff took nothing. A defense judgment was entered by the court.

the parties, interesting trial practice and verdict results.

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The Mississippi Jury Verdict Reporter is published at 9462 Brownsboro Road, No. 133, Louisville, Kentucky 40241. Phone at 1-866-228-2447. Denise Miller, Publisher, Shannon Ragland, Editor and Aaron Spurling, Assistant Editor.

Annual subscriptions are \$329.00 per year.

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