

# The Mississippi Jury Verdict Reporter

The Most Current and Complete Summary of Mississippi Jury Verdicts

March 2011

Statewide Jury Verdict Coverage

2 MJVR 3

## In This Issue

### Hinds County

Negligent Security - \$1,000,000 p. 2  
Auto Negligence - Defense verdict p. 5

### Federal Court - Jackson

Premises Liability - Defense verdict p. 1  
Gender Discrimination - \$38,000 p. 5  
Wrongful Death - Defense verdict p. 7  
Premises Liability - Defense verdict p.

### Washington County

Nursing Home Neg - \$1,575,000 p. 1

### Federal Court - Greenville

Products Liability - \$15,570,000 p. 2

### Federal Court - Gulfport

Premises Liability - Defense verdict p. 3  
Construction Contract - \$406,059 p. 7  
Insurance Contract - \$1,499,944 p. 9

### Adams County

Oil Drilling Negligence - \$385,000 p. 3

### DeSoto County

Premises Liability - \$60,000 p. 4

### Forrest County

Medical Malpractice - \$579,789 p. 4

### Pearl River County

Auto Negligence - \$5,022 p. 5

### Federal Court - Aberdeen

Civil Rights - Zero verdict p. 6  
Race Discrimination - Defense verdict p. 8  
Race Discrimination - Directed verdict p. 8

### Pike County

Breach Funeral Contract - \$1,229 p. 6

### Jones County

Wrongful Repossession - \$14,000 p. 6

### Lee County

Negligent Misrepresent - \$183,543 p. 7

### Jackson County

Auto Negligence - \$3,600 p. 8

### Historical Mississippi Verdicts

Notable Memphis, TN Verdicts p. 10

Notable Out of State Verdicts p. 11

## Nursing Home Negligence - The plaintiff alleged a pattern of global neglect at a nursing home

*Gibson v. Arnold Avenue Nursing Home*, 2004-195

Plaintiff: A. Lance Reins, *Wilkes & McHugh*, Tampa, FL

Defense: Michael A. Heilman, Christopher T. Graham and Courtney M. Williams, *Heilman, P.A.*, Jackson  
Verdict: \$1,575,000 for plaintiff

Court: **Washington**

Judge: Betty W. Sanders  
Date: 9-10-09

Henry Gibson, then age 83 and a retired postal carrier, was admitted to the Arnold Avenue Nursing Home in Greenville on 6-21-01 – he had recently suffered a stroke. The nursing home is operated by Magnolia Healthcare. Gibson left the nursing home that December. At that time, he was identified as suffering from pressure sores, infections, a broken arm, and a collapsed lung as well as dehydration and sepsis.

There was further proof he had fallen several times at the nursing home. A month after leaving Arnold Avenue, Gibson died. In this lawsuit, his estate alleged a global pattern of neglect at the nursing home. The theory was that despite being short-staffed, the nursing home eagerly accepted (and billed for) Gibson but then provided woefully inadequate care. Experts for the estate were Leonard Williams, Nursing Home Administration, Seminole, FL and Cynthia Clevenger, RN, Sandy Hook, KY.

The nursing home defended that Gibson's maladies at the nursing home were related to his significant underlying co-morbidities. That is, he was properly cared for by nursing home staff, but in spite of that, Gibson's pressure sores and injuries were unavoidable. Its experts

were Rene Slevenski, RN, Pace, FL and John Payne of Greenwood.

The jury's verdict (it was handwritten) was for the plaintiff in the sum of \$1.5 million in general damages. The jury added \$75,000 more for disfigurement, the verdict totaling \$1,575,000. In the court's judgment, the verdict was reduced to \$575,000 by operation of the statutory limit of \$500,000 on medical awards. [The court directed a verdict for the nursing home on punitive damages.]

The nursing home moved for JNOV relief and argued among other things that several jurors engaged in premature deliberations beginning as early as the second day of trial. That motion was denied. The plaintiff that has since appealed (1) the statutory limit on damages, and (2) the denial of punitive damages. The nursing home too has taken a cross-appeal.

## Premises Liability - A floor tech at a hospital slipped on a wet floor and broke his ankle – he blamed a contract housekeeping firm for failing to maintain the premises in a safe condition

*Montgomery v. Hospital Housekeeping Services*, 3:09-208

Plaintiff: Gary D. Thrash and John N. Satcher, II, *Singletary & Thrash*, Jackson  
Defense: Ronnie L. Walton and Reed C. Darsey, *Glover Young Walton Phillips & Tucker*, Meridian

Verdict: Defense verdict on liability

Court: **Federal - Jackson**

Judge: Tom S. Lee

Date: 8-16-10

Michael Montgomery was working on 3-7-08 at River Oaks Hospital in Flowood as a floor tech. This day while walking down a hospital hallway, he suddenly slipped and fell. Montgomery broke his ankle in this process. As he was helped to his feet, Montgomery realized he had slipped on a wet floor.

## 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 are also covered.

### Notable Out of State Verdicts

*(Involving Mississippi Attorneys)*

**Assisted Living Negligence - An elderly assisted living resident was critical of her facility for admitting her in the first place – that is, her condition was so frail that she was not a good candidate – the plaintiff cited proof the assisted living facility’s director had no medical background and was paid a \$400 bonus for admissions**

*Bynum v. Elmhurst of Hendersonville, 32073*

Plaintiff: Amy J. Quezon and D. Bryan Chaffin, *McHugh Fuller*, Hattiesburg, MS

Defense: Steven C. Trent and Chad E. Wallace, *Baker Donelson Bearman Caldwell & Berkowitz*, Johnson City, TN

Verdict: \$250,000 for plaintiff

Court: **Sumner Circuit Court Gallatin, Tennessee**

Judge: C.L. Rogers  
1-28-10

Juliet Bynum, then age 86, was admitted on 12-2-07 to Elmhurst of Hendersonville – it is an assisted living facility. Over the next month (Bynum left Elmhurst on 1-8-08), Bynum had numerous falls. By the time she left the facility, she had a broken shoulder and multiple bruises.

Bynum sued Elmhurst and alleged negligence in admitting her in the first place. The theory was that because of her frail condition and risk of falls, an assisted living facility was inadequate to meet her needs – she needed more skilled care.

It was Bynum’s proof that Elmhurst was more in the business of making money than assessing the needs of its residents. The plaintiff cited proof that the Elmhurst director had no medical background and was paid a \$400 bonus for new admissions. Had Elmhurst assessed Bynum properly, she would not have been admitted. Bynum died in May of 2009 before this case came to trial – her estate continued to advance the

claim. A nursing home administrator expert for the plaintiff was Mike Sturm of Marietta, GA.

Elmhurst defended the case and denied negligence in assessing Bynum. Its expert was Judy Moak, Administrator, Ooltewah, TN. The defense also thought the plaintiff’s case because this was essentially a claim for medical malpractice, yet plaintiff lacked any expert medical proof.

The case was tried to the jury on an ordinary negligence count – not medical malpractice. The verdict was for the estate in the sum of \$250,000. A consistent judgment was entered. During trial, the jury apparently had questions – those questions are not a part of the court record.

Elmhurst moved for JNOV relief and argued that (1) there was no expert proof of medical malpractice and however the plaintiff framed this case, it still sounded in malpractice, and (2) the damages were excessive, representing 69 times the medicals. The motion was denied. Elmhurst has appealed.

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**Ed. Note** - In fifteen years of publishing in jurisdictions around the country, we’ve never had difficulty identifying jury verdicts in a particular jurisdiction. Until now.

Harrison Circuit Court in Gulfport and Biloxi is a mystery. The clerk knows nothing. The court administrator is too busy to help. And we remain unable to identify which civil cases are being tried in that county.

We’re still working on it.

But we were writing at this time to let our readers know a lack of jury verdicts from Harrison County is not for a lack of trying. Phone calls. E-mails. Trips to the courthouse. It’s a tough nut.

If you are able to help us identify cases or know of a trial in Harrison County, let us know. We’ll certainly follow up.

And if you know anyone in the court systems, judges, clerks, anyone, who knows something or might be helpful,

we’d appreciate it if you’d bend their ear.

Our work has a legitimate justice function. What is the best measure of how a civil case should settle: Similar jury verdict results. And if we report jury verdicts and they became publicly known, a court is more rather than less likely to settle cases before it. Settling a case is more efficient than trying it. By contrast, when trials are secret, a court may end up trying a case that could have been settled.

We’ll keep you posted on how our progress (it is a standstill right now) goes in Harrison County.

Shannon Ragland, Editor  
February 25, 2011

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### About Jury Verdict Publications

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