

# The Mississippi Jury Verdict Reporter

The Most Current and Complete Summary of Mississippi Jury Verdicts

May 2011

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 Memphis, TN are also covered.

### Premises Liability - The plaintiff slipped on a wet floor at a casino buffet and sustained a broken elbow

*Cushing v. Gold Strike Casino*, 09-229

Plaintiff: Christopher E. Kittell, *Merkel & Coker*, Clarksdale

Defense: Scott B. Hollis and Courtney Leyes Tomlinson, *Watkins Ludlam*

*Winter & Stennis*, Olive Branch

Verdict: \$250,000 for plaintiff

Court: **Tunica**

Judge: Charles Webster

Date: 3-15-11

Joy Cushing was a patron on New Year's Day in 2007 at the Gold Strike Casino near Tunica. Cushing, along with her husband and son, had driven to the casino that morning from Little Rock, AR. Before navigating the casino breakfast buffet (the Cushings had been seated by a waitress), Cushing had to use the restroom.

In that interim while she walked to the distant bathroom (and waited in line), her son and husband entered the buffet line. They recalled noticing a drink machine was leaking on the buffet's tile floor. Just as Cushing returned, the Cushing men had finished eating. It was estimated that 15 to 30 minutes passed between the observation of the spill and Cushing's return.

Cushing herself then went directly to the buffet line. She slipped on the wet floor and landed hard – her elbow was fractured in the process. Her medical proof indicated she has lost ten degrees of extension in the arm. The plaintiff's medicals were \$6,708 and she sought \$6,926 in lost wages.

In this lawsuit, Cushing alleged the casino had failed to maintain its premises in a reasonably safe condition – she focused on the leaky drink machine. Gold Strike defended and denied there was even a drink machine in this location. [The “there wasn't a drink

machine” defense was neutered in part, a former casino employee indicating there had been a drink machine.]

Cushing prevailed at trial and the jury awarded her damages of \$250,000. A judgment in that sum was entered.

**Ed. Note** - This is the second peril the Cushings have recently survived. Their Little Rock, AR trailer was destroyed (with the Cushings inside it) during a May 2010 tornado outbreak. The Cushings survived with only minor injuries.

### Workplace Negligence - While repairing brakes on a garbage truck, the plaintiff suffered a brain injury when the brake suddenly exploded – the plaintiff blamed the explosion on the garbage company's failure to maintain the brakes

*Myrick v. Enviro, Inc.*, 08-897

Plaintiff: Eugene M. Harlow and Roy A.

Howell, Jr., *Hortman Harlow Bassi*

*Robinson & McDaniel*, Laurel

Defense: Lee Davis Thames and Meade

W. Mitchell, *Butler Snow O'Mara Stevens*

& *Cannada*, Ridgeland

Verdict: \$1,715,000 for plaintiff

Court: **Jones**

Judge: Billy Joe Landrum

Date: 1-31-11

Thomas Myrick, then age 65, worked on 11-4-05 for Adams Repair as an experienced brake mechanic. On this day, Myrick was working on a garbage truck that had been sent in for repairs by Enviro. As Myrick loosened the slack in the brakes to repair them, the brake chamber suddenly exploded.

The parts of that exploding spring brake struck Myrick in the head. It was a significant impact that left Myrick comatose for several weeks. He has since treated for a traumatic brain injury. While Myrick has improved, he continues to suffer cognitive deficits that affect language and memory.

plaintiffs took a joint award of \$50,000 (it included the consortium award). As the plaintiffs failed to exceed the floor of UIM coverage, a defense judgment was entered.

**Auto Negligence - A soft-tissue verdict in Purvis was twice the incurred medicals**

*Cash v. Carruba*, 08-227

Plaintiff: S. Robert Hammond, Jr. and J. Robert Ramsay, Hattiesburg

Defense: R. Douglas Vaughn, *Allen*

*Cobb Hood & Atkinson*, Gulfport

Verdict: \$35,000 for plaintiff

Court: **Lamar**

**(County Court)**

Judge: William Andrews, III

Date: 2-10-11

Carole Cash, then age 62, was involved in a right of way crash on 11-26-05 in Hattiesburg. It occurred as a USM co-ed, Rachel Carruba, turned left in front of Cash on Westover Drive. Carruba did not contest fault.

Cash was taken to the ER with a cuts and bruises as well as soft-tissue neck and knee pain. She subsequently followed with a chiropractor (Chris West) for her injuries. Cash's incurred medicals were \$18,719.

In this lawsuit, Cash sought money damages from Carruba. Carruba defended and diminished the claimed injury. She relied in that regard on an IME expert, Dr. Eric Lawson, Radiology, Gulfport, who linked Cash's ongoing symptoms to degenerative conditions.

Fault was not a jury issue. Cash took a general award of \$35,000. A consistent judgment was entered.

Cash moved for JNOV relief and/or additur arguing the verdict was shockingly low. Carruba replied the matter was within the jury's discretion. The motion was denied and the judgment has since been satisfied.

**FELA - A rail worker linked a bilateral carpal tunnel injury to cumulative trauma**

*Davis v. Illinois Central Railroad*, 07-1037

Plaintiff: C.E. Sorey, II, *Law Offices of William Guy*, McComb and Benjamin P. Cowan, *Law Offices of Chris Christy*, Little Rock, AR

Defense: George H. Ritter, *Wise Carter Child & Caraway*, Jackson

Verdict: Defense verdict on liability

Court: **Hinds**

Judge: Tomie Green

Date: 2-3-11

Otis Davis started working in 1995 for the Illinois Central Railroad as a trackman and ballast operator. As a part of his duties, Davis regularly worked with tools and equipment that exposed his upper extremities to excessive force, repetitive motions and awkward positions. These conditions occurred on a nearly daily basis, Davis not being given adequate manpower, protective equipment or sufficient rest.

As a result of this cumulative trauma, Davis developed bilateral carpal tunnel injuries. In this FELA lawsuit, he alleged the Illinois Central workplace described above was not reasonably safe. That included a component that the railroad failed to train its employees to recognize and avoid the early onset of cumulative trauma. The plaintiff's workplace safety liability expert was Lloyd "Chip" Wade.

The railroad defended that its workplace was safe as were the tools and work methods provided to him. It also disputed the notion that repetitive force was causally linked to carpal tunnel syndrome. Illinois Central's workplace experts were Jim Trimble and Will McCraney, both Ph.Ds.

This Jackson jury answered that the railroad was not at fault and Davis took nothing. A consistent defense judgment was entered.

**Truck Negligence - A utility truck pulled in front of the plaintiff who then t-boned the truck in a hard crash – despite suffering a C-2 hangman's fracture, the jury's award was less than the incurred special damages**

*Fuller v. Tippah Electric Power*, 05-62

Plaintiff: David W. Cheek, *Gatti Keltner Bienvenu & Montesi*, Memphis, TN

Defense: William C. Murphree, *Mitchell McNutt & Sams*, Tupelo

Verdict: \$60,500 for plaintiff

Court: **Tippah**

Judge: Andrew K. Howorth

Date: 9-28-06

Paula Fuller, then age 33, traveled on CR 101 near Three Forks on 10-20-03. Suddenly a Tippah Electric Power truck, driven by William Wilkerson, pulled from an inferior drive and into Fuller's path. Fuller couldn't stop and t-boned the utility truck in a hard crash.

Fuller subsequently treated for a C-2 hangman's fracture and a bruised knee. Her treatment included having a halo placed on her head to prevent motion. The plaintiff's medicals were \$29,233 and she incurred lost wages of \$33,849.

In this lawsuit, Fuller sought damages from the power company. Her husband presented a derivative consortium claim. Tippah Electric defended on damages at trial as well as it could.

This case was tried on damages only. In a handwritten verdict form, the plaintiff took medicals of \$30,000 and \$20,000 more for lost wages. Her pain and suffering was \$10,500 – the consortium claim was rejected. The verdict totaled \$60,500 and a consistent judgment was entered.

Fuller moved for a new trial and/or additur and argued the award was inadequate. This was especially so in light of her incurred specials and even the defense argument in closing that the jury should award \$100,000. [The plaintiff had asked for \$500,000.]

The judge entered an odd order indicating that he was prepared to grant the motion and order additur if the parties did not first resolve the matter. That apparently happened, an order of dismissal promptly following the judge's order.

**Ed. Note** - While this verdict is admittedly

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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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stale (the case was tried in 2006 before the MSJVR was publishing), it is noteworthy as the clerk reports it is the last personal injury case to be tried to a jury in this county. Thus in considering Tippah County verdicts (and within the framework of Northeast Mississippi verdicts in general), it is relevant and timely.

**Historical Mississippi Verdicts**

**Education Due Process - A high achieving high school student was suspended after an open can of beer was found in her car – she protested the suspension was unfair, her hearing being a rubber-stamp as it was the girl’s mother who had left the beer can from the night before**

*Langley v. Monroe County School District, 1:05-40*

Plaintiff: Jim D. Waide, III and W. Brent McBride, *Waide & Associates*, Tupelo

Defense: Robert J. Mims and Terry D. Little, *Daniel Coker Horton & Bell*,

Oxford

Verdict: Defense verdict on liability

Federal: **Oxford**

Judge: Michael P. Mills

Date: 2-14-07

On the morning of 9-14-04, Laura Langley was a senior at Smithville High School – the school is a part of the Monroe County School District. At Smithville, Langley was a good student and a member of the softball team. As Langley started her car to drive to school, it was dead. She took her mother’s instead. Langley parked the car and walked inside.

Later that day, an assistant principal was on patrol in the parking lot. He noted the Langley car didn’t have a student parking

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