The Mississippi Jury Verdict Reporter

The Most Current and Complete Summary of Mississippi Jury Verdicts

November 2010 **Statewide Jury Verdict Coverage** **1 MSJVR 1**

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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.

Swimming Pool Negligence -

Parents left their children (age 8 and 9) alone at a motel while the father drove the mother to work, the father warning the children to stay out of the motel pool – the children didn't and both nearly drowned – while resuscitated, both children suffered a brain injury – in this lawsuit, the plaintiff alleged negligence by the motel in failing to lock the gate to the swimming pool the night before

Sproles v. La Quinta Inn, 08-495
Plaintiff: J. Ashley Ogden, *Ogden & Associates*, Jackson
Defense: J. Leray McNamara and Monte L. Barton, *Copeland Cook Taylor & Bush*, Ridgeland and E. Charlene Stimley Priester, *Priester Law Firm*, Jackson
Verdict: $5,614,378 for plaintiffs assessed 85% to the defendant
Court: **Hinds**
Judge: Winston Kidd
Date: 8-4-10

It was early on the morning of 7-30-07 and Jessica Sproles, age 8, and her brother, Robert, age 9, were living with their parents at a La Quinta Inn (a motel) in Jackson. The father (Robert, Sr.) needed to take their mother to work. The children were permitted to stay behind. Before leaving just before 7:00 in the morning, the father warned the children to stay out of the hotel pool.

Left alone in the hotel room, the children disregarded the admonition. Jessica fell in the pool. She could not swim. Robert jumped in the pool to help. Both children began to drown. Motel guests heard the commotion and rushed to the pool. Both children were pulled from the water and resuscitated. This near

drowning event left Jessica and Robert with permanent brain injuries.

In this lawsuit, the children alleged negligence by La Quinta in an elegantly simply way. Namely, the pool (which opened at 9:00 a.m.) had been left open the night before. A night clerk would later explain he simply forgot to lock the gate.

Then only because the gate was open were the children able to enter and suffer calamity. [There was also proof that there had been a fatal drowning involving a child at the pool two years earlier.] A safety expert for the plaintiff was Tom Ebro, Lutz, FL.

Each of the child plaintiffs presented a significant claim for their life care plans ($13 million each) associated with a mild cognitive brain injury. Interestingly, their father presented his own bystander claim for emotional distress. He had returned to the pool just as his children were pulled from it and suffered damages associated with observing their near drowning.

La Quinta defended (1) that there was no duty to lock the pool during off hours, and (2) that fault rested with the father for having left his children alone at the motel. Damages were also diminished, IME experts suggesting there was no diminution in the plaintiff's cognitive problems that existed before this incident. The defense also noted that the children are in school and functioning.

La Quinta further distinguished the prior drowning incident in 2005. That child was a teenager (age 16) who could swim and apparently suffered a seizure or asthmatic attack that caused the drowning.

This case was tried over eight days in Jackson. The jury's verdict was mixed on fault. It was assessed 85% to La Quinta, the remainder to the father. Then to damages, Jessica took medicals of $93,525 and $3.5 million for future care. Her suffering was $75,000 – she took $200,000 for lost wages. Jessica's raw verdict totaled $3,868,525.

Her brother took medicals of $45,852 plus $1.5 million for future care. His suffering was $25,000, the jury adding $75,000 for lost wages. His award totaled $1,645,852. The father took $100,000 more for bystander damages, the raw family verdict totaling $5,614,378. After a reduction for comparative fault (15%), the plaintiffs took a total of $4,772,221. [**Ed. Note** - As the vast sum of the awards to plaintiffs represented economic damages, statutory caps are not applicable.]

La Quinta has since moved for JNOV relief. It has argued that the parents knew of the danger and disregarded it. The plaintiffs too have sought JNOV relief – they have argued there was no basis to impose comparative fault, that is, there was no evidence the parents were the "sole cause" of these events. Although the defendant has since deposited the amount of the judgment with the court, the motions were pending when the MSJVR reviewed the record.

Gender Discrimination - A male beverage manager at a Tunica casino was fired for violating HIPAA in letting it be known that a co-worker was off work with tuberculosis – the male manager alleged the firing represented gender discrimination, a female co-worker suffering no discipline when she did the same thing – a federal jury awarded the plaintiff $1,000,000 in punitive damages

Doss v. Sam's Town Casino, 2:08-227
Plaintiff: Jim D. Waide, III and Ronnie Lee Woodruff, *Waide & Associates*, Tupelo
Defense: Karen Gwinn Clay, *Watkins Ludlam Winter Stennis*, Jackson
Verdict: $1,250,000 for plaintiff
Court: **Federal - Greenville**
Judge: W. Allen Pepper
Date: 8-11-10

Glenn Doss was hired in April of 2007 by Sam's Town Casino in Tunica as a beverage manager. He did well in his job over the next seven months. The trouble started in late November when a cocktail waitress (Julie Eckhardt) called in sick. Taken to the hospital, she was given a preliminary diagnosis of the dread disease, tuberculosis.

Eckhardt was desperate to let bigwigs at the casino know of her condition. She had trouble reaching HR and found Doss at home. [Doss had gone home ill.] Doss then instituted efforts to let senior management know of Eckhardt's condition. That included informing a supervisor and a co-manager of Eckhardt's condition. Word quickly got around the casino to everyone of Eckhardt's condition. [As it turned out, she in fact did not have tuberculosis.]

In any event, management at the casino made a decision to terminate Doss for exercising bad judgment in violating HIPAA by revealing confidential medical information. As that decision was being made, Doss's employment record was further scrutinized and attendance problems were noted. He was terminated a day later on 11-29-07. From the perspective of Sam's Town, that should have been the end of the matter.

Doss by contrast believed he was a victim of gender discrimination. He cited proof that a co-manager (Kathy Pritchett) also revealed Eckhardt's condition and yet she suffered no discipline. In fact, she was later promoted to Doss's spot. If Doss prevailed in this federal lawsuit, he sought both compensatory and punitive damages.

The casino defended that gender had nothing to do with its decision. It explained that Pritchett was a dual-duty employee, working mostly as a cocktail waitress and filling in on weekends as a beverage manager. Because her role was subordinate and out of the normal chain of command, her treatment was different – the casino argued Doss should have known better than to let this information get out. Sam's Town suggested Doss could have handled the matter better by calling a 24-hour human resources hotline.

Doss countered that he hadn't violated HIPAA and that Eckhardt had wanted him to let management know of her condition. Then to his handling of the matter, he cited company policy, "SOS", which

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This sample represents just a portion of the full November issue (the complete premiere issue coming late in October of 2010). We hope you found it interesting and will begin subscribing. Good luck resolving, settling and trying your cases. Our staff will be looking for the results as the verdicts are handed down.

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stands for "see it, own it and solve it." Doss thought he did just that, his employer firing him on trumped up HIPAA charges and then changing its story (to cite attendance problems) when this became clear.

This case was tried before a federal jury in Greenville. The verdict was for Doss on the gender discrimination claim. He took compensatory damages of $250,000 plus $1,000,000 more in punitives. Several weeks post-trial no judgment had been entered. Presumably, Doss's award will be limited to the $300,000 statutory cap on such actions.

Medical Malpractice - **The plaintiff suffered complications following an exploratory laparotomy where her ureter was injured, including the loss of a kidney – the plaintiff blamed her doctor for performing the surgery in the first place as it was unnecessary especially in light of her prior surgical history**

Saint v. Grimm, 05-286
Plaintiff: D. Briggs Smith and Jason Nabers, *Smith Phillips Mitchell Scott & Rutherford*, Batesville and John Cocke, *Merkel & Cocke*, Clarksdale
Defense: Tommie Williams and Tommie G. Williams, Jr., *Upshaw Williams Biggers & Beckham*, Greenwood
Verdict: Defense verdict on liability
Court: **DeSoto**
Judge: Jimmy McClure
Date: 4-1-10

Shirley Saint, then age 64 and of Nesbit, was complaining of abdominal pain. A surgeon, Dr. Leander Grimm of Southaven and Memphis, TN, performed an exploratory laparotomy on Saint – he suspected a bowel blockage. The surgery was conducted at DeSoto Baptist. During the surgery, Saint resected a portion of Saint's sigmoid colon.

Unknown to Grimm (and Saint too), Grimm had apparently stapled Saint's ureter during the surgery. Thereafter she endured a long course of complications that began with a vesicocolic fistula, urine spilling into her rectum. This cascade of complications resulted in Saint losing her kidney – she also relies on a permanent colostomy.

Saint sued Grimm and alleged negligence by him in undertaking the surgery at all. That is, she didn't have a blockage and was simply suffering from diverticulitis, a condition for which surgery was not indicated.

Saint also cited that besides the procedure not being necessary, it was especially not indicated for her because of her prior history of abdominal surgeries, having undergone both an appendectomy and a hysterectomy. Plaintiff's liability expert was Dr. James Shamblin, Surgery, Tuscaloosa, AL.

Saint's incurred medical expenses were $176,769. Beyond her claim for damages, Saint's husband (Thomas), presented a derivative consortium claim. Saint had also pursued a credentialing claim against the hospital citing evidence of prior malpractice claims against Grimm.

Grimm defended the case on several fronts, including arguing that (1) the surgery was indicated, (2) he did not injure her ureter, and (3) Saint's poor outcome represented a surgical complication, not malpractice. His expert was Dr. Charles Pigott, Surgery, Tupelo.

This case concluded on the first day of April. The verdict was for Grimm on liability and Saint took nothing. A defense judgment closed the case.

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Construction Negligence - A Target employee took shoes down from a wall just as the wall was being destabilized as part of a construction project – the wall fell on the employee and she sustained a lumbar disc injury

Durr v. MBS Construction, 3:07-455
Plaintiff: J. Ashley Ogden, James W. Smith, Jr. and Wendy M. Yuan, *Ogden & Associates*, Jackson
Defense: Gregg L. Spyridon and John M. Herke, *Spyridon Palermo & Dornan*, Metarie, LA and John G. Corlew, Corlew *Munford & Smith*, Jackson
Verdict: $2,950,000 for plaintiff less 30% comparative fault
Court: **Federal - Jackson**
Judge: Tom S. Lee
Date: 5-24-10

Megan Durr worked at a Target retail store in Jackson, MS on 8-26-06. A construction project was underway to expand the store. As a part of that project, a wall was being removed. It was Durr's job to remove merchandise (shoes) that had been placed on the wall.

At the same time that Durr worked taking down the shoes, a contractor on the project, MBS Construction, was destabilizing the wall by removing its anchors. The wall (standing fourteen feet high) suddenly collapsed upon Durr. She sustained a low-back disc injury and later underwent a double fusion surgery at L4-5 and L5-S1.

In this lawsuit, Durr sued MBS Construction and alleged negligence in weakening the wall while Target employees were still working on it – importantly, Durr denied receiving notice the wall was destabilized. MBS Construction denied fault and pointed to the duties of Target to protect Durr. It also diminished the claimed injury.

The jury's verdict was mixed on fault. That fault was assessed 70% to MBS Construction, the remainder to Target. Then to damages, Durr took medicals of $350,000 plus $100,000 more for lost wages. Her pain and suffering was valued at $2.5 million, the raw verdict totaling $2,950,000.

In the court's judgment, the suffering damages were reduced to $1,000,000 by the Mississippi state law cap. That reduced sum was reduced again by the 30% comparative fault of Durr's employer, the final judgment against MBS Construction totaling $1.015 million.

Medical Malpractice - An infant was delivered stillborn, his demise being linked to a placental abruption – his parents blamed their treating Ob-Gyn for failing to manage the risk of this condition and perform a pre-emptive c-section

Haynes v. Kot, 07-217
Plaintiff: Isaac K. Byrd and Suzanne Keys, *Byrd & Associates*, Jackson
Defense: R. Robert Ramsay, *Ramsay & Hammond*, Hattiesburg
Verdict: Defense verdict on liability
Court: **Forrest**
Judge: Robert Helfrich
Date: 8-28-10

Chiquita Haynes was in the midst of her first pregnancy in the summer of 2006. Her treating Ob-Gyn was Dr. Libby Kot. Haynes' son, Cole, was delivered at Forrest General Hospital on 9-12-06. The infant was stillborn. His death was linked to a placental abruption.

Haynes and her husband, Allen, sued Kot and alleged error by her in mismanaging the pregnancy. It was the plaintiff's theory that it was a high-risk pregnancy as evidenced by her high blood pressure and abnormal foot swelling. Had Kot so considered the pregnancy, Haynes would have been hospitalized for closer monitoring or Kot could have performed a pre-emptive c-section.

Plaintiff's liability expert was Dr. David Chatman, Ob-Gyn, Chicago, IL. Chatman focused on purported error by Kot in failing to provide greater surveillance of this pregnancy. If the plaintiffs prevailed, they sought medicals, loss of society and loss of companionship.

Kot defended that plaintiff's condition during the pregnancy was not alarming. Then to the placental abruption, it was described as sudden and neither predictable nor preventable. There was also evidence that Haynes has since lost two other pregnancies, the defense developing a theory that she is more susceptible to this condition. [Haynes countered that the later pregnancies were much different, each ending much earlier in the gestation process.] Defense experts were Dr. John Morrison, Ob-Gyn, Jackson and Dr. Paul Rice, Ob-Gyn, Jackson.

The jury's verdict was for the doctor on liability and the plaintiffs took nothing. A defense judgment was entered.

Fraudulent Misrepresentation - Two lawyers that prosecuted an asbestos settlement for several hundred railroad workers were sued by the railroad when it was learned (after the settlements were paid) that two of the plaintiffs had presented misleading information about their prior asbestos claim information – the lawyers defended that they hadn't known of the false statements

Illinois Central Railroad v. Guy et al, 5:06-160
Plaintiff: Daniel J. Mulholland and Tanya D. Ellis, *Forman Perry Watkins Krutz & Tardy*, Jackson
Defense: John G. Corlew and Kathy K. Smith, *Corlew Munford & Smith*, Jackson for Guy and Brock
Wayne Dowdy, Magnolia for Harried and Turner
Verdict: $420,000 for plaintiffs against Guy and Brock; Defense verdict for Harried and Turner
Federal: **Federal - Natchez**
Judge: David C. Bramlette, III
Date: 3-11-10

William Guy and Thomas Brock, lawyers in the McComb firm of *Guy and Brock,* prosecuted civil tort cases for a group of several hundred railroad workers that claimed asbestos-related injuries against Illinois Central Railroad. A settlement was reached in August of 2002, the railroad agreeing to make payments to plaintiffs after they

submitted to a pulmonary questionnaire.

Among the plaintiffs that submitted questionnaires were rail workers, William Harried and William Turner. Harried's settlement was $90,000 – Turner took $120,000. At the time they completed their questionnaires, the two checked that they had not participated in an earlier 1995 asbestos settlement. In fact they had and this was unknown to Illinois Central.

Sometime later the railroad learned they had participated and sued Harried and Turner for fraud. In deposition the two men (one of whom is semi-literate) explained their lawyers had handled everything. Illinois Central amended its lawsuit to name Guy and Brock.

Thus as the case advanced to trial, the railroad sued the clients and the lawyers both for fraudulent inducement. The theory was simple – but for the false promise, Illinois Central would not have paid the claim. An additional good faith and fair dealing count was pressed against the lawyers. If the railroad prevailed, it sought an award of compensatory and punitive damages.

The two workers defended the case that they had told their lawyers the truth and relied on them to handle the matter. The lawyers by contrast defended that their clients had checked "no" regarding prior litigation and thus they had no knowledge this statement was false. They also noted that there were many cases (nearly 400) and of all those cases, there was only a problem in these two.

Guy and Brock also argued (unsuccessfully to the trial court) that the claims were barred by the statute of limitations. They cited proof Illinois Central knew of their potential involvement for nearly four years before they brought suit.

The verdict was mixed at trial. The railroad lost against the two individual workers (Harried and Turner) on the fraudulent inducement count. By contrast, this jury found against both the lawyers.

The jury further found a breach of a duty of good faith and fair dealing against Guy and Brock. [This claim was not presented against the workers.]

Finally to damages, the jury awarded Illinois Central $90,000 on the claim of Harried and $120,000 regarding Turner. [That sum was equal to the settlement.] The jury also imposed punitives of $210,000 against the lawyers. A judgment was entered against Guy and Brock that included pre-judgment interest.

The defendants have since moved for JNOV relief arguing among other things that the verdict was inconsistent. It asked: How could Harried and Turner be exonerated and their lawyers found at fault? Illinois Central answered in its reply that the jury concluded the lawyers were the bad actors, the workers simply doing what their lawyers told them to do. In late September, the motions were still pending.

Negligent Security - **A college basketball player at Mississippi Valley State was paralyzed at a nightclub after being shot by a security guard – the security guard had fired wildly (discharging nine shots) at a purported gunman, the hoopster being struck inadvertently in the barrage**

Archie v. Club Focus et al, 04-48
Plaintiff: Carlos E. Moore, *Moore Law Firm*, Grenada
Defense: *Pro se*
Verdict: $12,000,002 for plaintiff
Court: **Leflore**
Judge: Richard A. Smith
Date: 2-9-10

Michael Archie was a student at Mississippi Valley State University in Itta Bena. He also played on the basketball team. On the night of 1-28-03 after a game against Prairie View State, Archie joined other students at a local nightclub, Club Focus. Operated by Rose Brown, Club Focus is just across the street from campus.

There was trouble at Club Focus that night and its security guard, Johnny King of King Security, intervened to protect patrons. That included firing at a patron (who may have had a gun) and wildly discharging some nine bullets. Archie was struck in the back by a stray bullet and was left paralyzed from the waist down.

In this lawsuit, Archie sued Brown and King regarding the shooting. He cited proof that there was a long history of misconduct at Club Focus, including violence, unruly behavior, gambling and public nudity.

A default judgment was entered against Brown. King answered and defended. He did not appear at trial. The case then went to trial on damages.

Archie prevailed and took a general award of $12,000,000 in compensatory damages. The jury also imposed a single dollar more (against each defendant) in punitive damages. The verdict totaled $12,000,002. A consistent judgment was entered.

The jury had also written a separate note on its verdict form: We think the justice system failed in allowing this business to remain open considering the prior incidents. The note from the jury aside, it is not believed that any portion of this verdict will be collected.

Civil Rights - **The plaintiff was arrested for DUI and lodged in a holding cell at Jackson Police headquarters – a rogue jailer attacked the plaintiff and broke bones in his face – in this lawsuit, the plaintiff targeted three other jailers (non-participants in the beating) who stood by and failed to intervene to protect him**

Singleton v. City of Jackson, 3:06-79
Plaintiff: Jeanine M. Carafello and M. Judith Barnett, Jackson
Defense: Pieter Teeuwissen, Jackson and Anthony R. Simon, Jackson
Verdict: $64,035 for plaintiff
Court: **Federal - Jackson**
Judge: Henry T. Wingate
Date: 9-10-10

Maryland Singleton, then age 30, was arrested on DUI charges on 2-11-05. His blood alcohol level was measured at .13. Singleton was taken to Jackson Police headquarters where he was placed in a

holding cell. After jailers learned that Singleton still had his cell phone, a jailer (Larry Davis) entered the cell to retrieve it.

By all accounts in that process, Davis attacked Singleton and punched him in the face. [The attack was not provoked.] Singleton was badly hurt and sustained fractures to his cheekbone, jaw bone and nose. He also had ten stitches to his face.

The jail performed an investigation into the beating and reviewed a videotape of it. A decision was made to fire Davis. That would end Davis's involvement in the matter as his whereabouts could not be determined.

In this federal lawsuit, Singleton sued three other jailers who were present at the time of the beating but did not participate in it. They were Tony Collins, Billy Slaughter and Cornelius Johnson. Singleton advanced a "bystander liability" theory, such that the three defendants had a duty to protect him from excessive force. Plaintiff's lawyer told the jury that while the defendants may be good fathers, sons and husbands, on this day "they weren't good men."

The defendants replied that Singleton had been unruly and used coarse language before the beating. Then to their conduct, they described upon seeing the beating, they did intervene and pulled Davis from him. [Plaintiff had contradicted this version that the three jailers stood by and did nothing.]

The jury's verdict was for Singleton against all three defendants on the bystander theory. He was awarded medicals of $14,035 plus $50,000 more for pain and suffering. Disfigurement was rejected. The verdict totaled $63,035 and a consistent judgment was entered.

Dental Malpractice - **The plaintiff, age 22, died of a pulmonary edema after a procedure to remove her wisdom teeth – her estate alleged error by her dentist in performing the surgery especially in light of her history of premature congestive heart failure – a directed verdict was granted, the court finding plaintiff's causation proof was "speculative"**

Barrow v. May, 07-1212
Plaintiff: William W. Fulgham, *Fulgham Law Firm*, Flowood
Defense: John T. Banahan and Jessica B. McNeal, *Schroeder Castigliola & Banahan*, Pascagoula
Verdict: Directed verdict
Court: **Hinds**
Judge: W. Swan Yerger
Date: 7-23-10

Latisha Barrow, age 22, underwent a procedure to have her wisdom teeth removed on 7-14-06. It was performed by a dentist, Dr. Revel May, at his office. The procedure seemed uneventful except that Barrow was especially anxious about it.

She was released and went home. Within a day she was found unconscious by her mother. Barrow was rushed to the hospital and could not be revived. Her death was linked to an acute pulmonary edema.

Her estate prosecuted this malpractice lawsuit against May and alleged error by him in performing the surgery at his office. The plaintiff cited that Barrow had a long history of congestive heart failure and at the time of the dental surgery, she was on a waiting list for a heart transplant.

Thus her death (the pulmonary edema) was linked to the temporary overload of her system in terms of stress. Had the surgery been performed at a hospital, the plaintiff's theory went, she likely would have been revived.

Plaintiff's liability expert was Dr. Orrett Ogle, Oral Surgery, Brooklyn, NY. Causation evidence came from a cardiologist, Dr. Robert Stark, Greenwich, CT, who explained that Barrow was at a hospital, the edema would have been avoided by the administration of oxygen and other therapies.

The plaintiff had also pursued a claim against University of Mississippi Medical Center. That theory was predicated on clearing Barrow for this surgery in the first place based on her complex history. The hospital settled before trial.

May (who saw Barrow upon referral) defended that his care was proper. He also developed proof that regardless of where the oral surgery was performed, the result would have been the same. His experts were Dr. Willie Hill, Dentist, Madison and Dr. Raymond Fonesca, Oral Surgery, Chandler, NC.

At the close of the plaintiff's proof, Judge Yerger granted the defendant's motion for a directed verdict. Yerger cited that proof from plaintiff's causation expert (Stark) was speculative.

The estate subsequently moved for a new trial and alleged the defendant's *Daubert* motion had created a procedural trap at trial. The motion was denied and the estate has since appealed.

Excessive Force - **Arrested and jailed on a DUI charge, the plaintiff alleged she was beaten by jailers when she tapped on the cell window to request to make a phone call**

Carrubba v. Harrison County Jail, 1:07-1238
Plaintiff: Patrick R. Buchanan and Mark V. Watts, *Brown Buchanan*, Biloxi
Defense: James L. Davis, III and Ian A. Brendel, *Law Office of Jim Davis*, Gulfport
Tim C. Holleman, *Boyce Holleman & Associates*, Gulfport and Haley N. Broom, *Dukes Dukes Keating & Faneca*, Gulfport for Harrison County Jail
Verdict: Defense verdict on liability
Court: **Federal - Gulfport**
Judge: Louis Guirola, Jr.
Date: 8-26-10

After running a red light on 6-17-06, Marguerite Carrubba was arrested and charged with DUI. She was lodged in the Harrison County Jail. Carrubba

made repeated requests from her cell to make a telephone call – those requests came in the form of tapping on her cell window.

This apparently aggravated jail officials who then placed her in handcuffs. A short time later Carrubba slipped from the handcuffs and began her tapping on the window. Two jailers, Karle Stolze and William Priest, re-entered the jail cell and attempted to handcuff Carrubba again.

Carrubba would recall that in so doing, she was slammed to the cell floor face-down. In this lawsuit, Carrubba alleged excessive force by the two jailers and that a custom existed within the county jail to mistreat prisoners.

The jailers defended the case that Carrubba was drunk and disorderly. She was making such a commotion in tapping on the window and shouting obscenities that the officers feared a "cascade of disruption" within the jail if Carrubba was not brought under control. Then to the handcuffing incident, the defendants denied excessive force was used.

The verdict was for the individual defendants (after forty-five minutes of deliberation) on the excessive force counts and having so found, the jury then did not go on to consider the custom claim against the jail. A defense judgment was entered.

Saddle Negligence - After purchasing a new horse saddle (it cost $1,382), the plaintiff tried it out – the saddle failed and the plaintiff was thrown from his horse, sustaining a serious knee injury in the process

Sullivan v. Cowboy Corner, 07-386
Plaintiff: D. Briggs Smith and Jason Nabers, *Smith Phillips Mitchell Scott & Rutherford*, Batesville
Defense: Jonathan S. Masters, *Holcomb Dunbar*, Oxford
Verdict: Defense verdict on liability
Court: **Panola**
Judge: Jimmy McClure
Date: 10-6-09

Randall Sullivan, then age 71, purchased a horse saddle on 7-18-06 from Cowboy Corner in Southaven, MS. He paid $1,382 for the saddle which was manufactured by Tucker Saddlery of Yokum, TX. Cowboy Corner adjusted the rigging on the saddle so that it was "western" style.

Two days later Sullivan used the saddle for the first time. He saddled his horse and took a ride around the corral. Suddenly the billet strap broke on the saddle and Sullivan was thrown. Beyond cuts and bruises, he sustained a serious injury knee injury. It was later surgically repaired, his medical bills totaling $28,596.

Sullivan instituted this tort lawsuit against Cowboy Corner alleging negligence by it in modifying the saddle. Particularly, the rear billets of the saddle were removed. He also presented a products claim against Tucker Saddlery. An expert, Steve Siegel, Buellton, CA, explained the saddle failed because inferior leather was used. Plaintiff's wife also presented a derivative consortium claim.

Tucker Saddlery defended the case to the eve of trial and then settled with the plaintiff. It was represented by W.O. Luckett, Jr. of the *Luckett Tyner Law Firm* in Clarksdale.

The remaining defendant, Cowboy Corner, replied that there was no defect with the saddle nor was its rigging improper. In fact it had been rigged "western" style as Sullivan requested. The defense blamed the mishap on Sullivan for having used the saddle improperly.

The jury's verdict was for Cowboy Corner on liability and Sullivan took nothing. A defense judgment followed this two-day trial and there was no appeal.

Sexual Harassment - A fingerprint technician for a school district alleged she was harassed by the district's safety director

Carter v. Jackson (MS) Public School District, 3:07-393
Plaintiff: Louise Harrell, Jackson
Defense: Gail W. Lowery and JoAnn Stephens, Jackson for Jackson Public Schools
Alison T. Vance and Paul G. Ardelean, *Butler Snow O'Mara Stevens & Cannada*, Ridgeland for Coleman
Verdict: Defense verdict on liability
Court: **Federal - Jackson**
Judge: Henry T. Wingate
Date: 8-6-10

Sonia Carter worked in graphic arts for many years for the Jackson (MS) Public School District. In 2000 she switched to the district's safety division where she became a fingerprint technician. In that role, she handled the fingerprinting of personnel and volunteers. Her new boss (the district's safety director) in 2002 was John Coleman – he was a retired policeman.

Over the next three years, Carter alleged she was subjected to an ongoing hostile sexual environment. She would recall Coleman regularly made sexual remarks, including expressing a fetish for fat women – thus she heard every obscene permutation that described that fetish. Finally when Carter complained about the abuse, she was simply transferred to another division in a lower-paying position.

Carter then sued the school district and Coleman individually alleging a hostile sexual environment had been created and then she suffered retaliation when she complained. Coleman for his part denied it all. Similarly, the school district was suspicious, noting Carter said nothing about the harassment (for three years) until after she had been disciplined for poor performance.

The verdict was for the school district on both sexual harassment and retaliation counts. Similarly, Coleman prevailed on the individual counts against him. A few days post-trial, no judgment had been

entered.

Parking Lot Negligence - A policeman pulled into a parking lot of a gas station to put air in his tires – an instant later a man in a pick-up backed up and into the policeman's cruiser

Robinson v. Ryan et al, 3:07-74
Plaintiff: D. Reid Wamble, Holly Springs and Michael D. Cooke, Iuka
Defense: Brian A. Hinton, *Anderson Crawley & Burke*, Ridgeland
Verdict: Defense verdict on liability
Court: **Federal - Oxford**
Judge: Michael P. Mills
Date: 7-22-10

Danny Robinson was working as a police officer on 1-20-05 for Sherman, MS. He pulled his cruiser into Wild Bill's Truck Stop just off Hwy 9 in Sherman to put air in his tires. Robinson would recall pulling some six to ten feet behind a pick-up truck. Certainly, Robinson believed, the pick-up had room to back up and exit the parking lot.

An instant later Rodger Ryan, the operator of the pick-up and working for Intervect USA, exited Wild Bill's and started to leave. He started to back up and never saw Robinson or his cruiser. Ryan's pick-up struck the police car and knocked Robinson (who was standing in the car door) back into his vehicle.

That impact left Robinson with a serious and debilitating injury to his right arm. An eggshell plaintiff of sorts, Robinson already had a disabled left arm related to a boyhood accident. While he had coped with one good arm and done well in law enforcement, the loss of use of his right arm ended his police career. Plaintiff's medicals were $55,369 and he sought lost wages of $565,927.

In this lawsuit, Robinson sought damages from Ryan related to this crash. Ryan defended the case that when he exited Wild Bill's, Robinson's cruiser was not present – Robinson literally pulled in behind him between the time Ryan exited and got in the pick-up. The defense also suggested that rather than being six to ten feet behind him, it was actually closer to just three feet.

The court's instructions asked if Ryan was liable for negligence that contributed to the plaintiff's damages. The answer by this Oxford jury was no and Robinson took nothing. Even though damages were now moot, the jury continued and wrote "zero" in the verdict form. A defense judgment was entered.

Robinson has since moved for a new trial citing that as a matter of law, Ryan was at fault for backing into his police car – it was not a case where no one was to blame, that is, Ryan's pick-up didn't back up on its own. When the record was reviewed, the motion was pending.

Nursing Home Negligence - An elderly nursing home resident (age 74 and recovering from a hip fracture) fell and broke his hip again – the nursing home was blamed for failing to institute a fall protection protocol

Lee v. McComb Nursing & Rehabilitation Center, 07-16
Plaintiff: W. Eric Stacener and W. Andrew Neely, *Hawkins Stacener & Gibson*, Jackson
Defense: W. Davis Frye and Bradley Smith, *Baker Donelson*, Jackson
Verdict: $25,000 for plaintiff
Court: **Pike**
Judge: Michael M. Taylor
Date: 7-1-10

Robert Lee, age 76, sustained a fall in December of 2004 and broke his hip. He was admitted on 1-25-05 to McComb Nursing and Rehabilitation Center. Five days later Lee rose from his bed and fell. His hip was immediately in pain – a day later a portable x-ray revealed a fracture. It was surgically set.

Lee subsequently pursued this negligence lawsuit against the nursing home. He alleged it erred in failing to institute a fall protection protocol. This was especially significant in light of his frail and confused condition. Lee died before the case could be tried and his estate advanced thereafter.

The nursing home defended the case that there was a fall plan, noting rails were placed on his bed in a low position. Damages were also diminished, there being evidence that Lee's osteoporosis contributed to his injury.

The jury in Magnolia answered for the plaintiff that the nursing home had breached the standard of care. The plaintiff was awarded medicals of $20,000 plus $5,000 more for pain and suffering. The verdict totaled $25,000. A consistent judgment was entered.

The estate has moved for a new trial and/or additur, arguing the award was inadequate. This is especially so in light of Lee's incurred medicals of $29,975 and substantial evidence of pain and suffering. The nursing home replied that simply being dissatisfied with an award did not mean it was inadequate. The motion was pending when the MSJVR reviewed the record. The nursing home too has appealed that there was no evidence it violated the standard of care.

Negligent Security - The plaintiff was robbed at gunpoint while visiting her sister at a gated apartment community – the plaintiff blamed the apartment complex for inadequate security

Seaton v. Crossings Apartments, 09-632
Plaintiff: Precious T. Martin, Sr. and Gerald A. Mumford, *Martin & Associates*, Jackson
Defense: James D. Holland, *Page Kruger & Holland*, Jackson
Verdict: $900,000 for plaintiff
Court: **Hinds**
Judge: Malcolm S. Harrison
Date: 8-20-10

Ollie Seaton spent most of 5-29-09 fishing with her sister, Mildred Stamps. At 1:30 in the morning, they returned to the Crossing Apartments were Mildred lived. It is a gated community.

Having entered the complex, Seaton and her sister were robbed at gunpoint of their purses. While not physically injured, both women have since complained of significant emotional distress.

This lawsuit followed, the sisters suing Heritage Properties (which managed the complex) and Ridgeland Land Company

(which owned it), arguing a negligent security theory. Experts for the plaintiff advancing the claim were Willie Mack, Security Expert, Jackson and William Clay, Criminology, Weston, WV. Plaintiff's expert on the emotional injury was Wood Hiatt, Neuropsychiatry, Ridgeland.

The defendants replied to the case and denied fault. They described the attack as unforeseeable. The plaintiff's own care was also implicated. The defendants further diminished damages.

The apartment complex defendants also raised a procedural defense. Upon moving into the apartment complex, Stamps signed a lease and that lease contained an arbitration provision for the resolution of tort claims. The court sided with the defense on this question and Stamps' case was severed. The jury then would only decide Seaton's claim.

As the jury deliberated the case, it had two questions. The first was: We agree on liability, but can't come to an agreement on damages. Apparently they did agree as a verdict was returned. The second question concerned Stamps: Why is Ollie the only plaintiff.

To the verdict, it was mixed on fault, the jury assessing it equally to Heritage Properties and Ridgewood Land. None was assigned to the plaintiff. Then to damages, Seaton took $374,200 for future medical care and $525,800 for emotional distress. The verdict totaled $900,000. A consistent judgment was entered.

The defendants have since moved for a new trial citing juror misconduct. Namely a former neighbor (some ten years) of the plaintiff (Verressia) sat on the jury and this was not disclosed. The apartment complex also cited error in that, (1) damages were excessive, and (2) there was no apportionment of fault to the assailants.

Auto Negligence - The plaintiff was rear-ended on the interstate and complained of soft-tissue neck and back pain as well as a mild brain injury – the defendant replied that the plaintiff was stopped in the traveled portion of the highway

Booker v. Moore, 5:08-309
Plaintiff: Carlos E. Moore and Tangala L. Hollis, *Moore Law Firm*, Grenada
Defense: Steven C. Cookston and Charles C. Auerswald, *Upshaw Williams Biggers & Beckham*, Greenwood
Verdict: Defense verdict on liability
Court: **Federal - Natchez**
Judge: David C. Bramlette, III
Date: 6-21-10

Stanley Booker was operating a tractor-trailer on 12-24-06 on I-55 in the middle of the night. He would recall being rear-ended by a pick-up driven by Marcus Moore. The impact sent Booker's truck off the roadway where it rolled over on its side.

A trooper arrived on the scene and found Booker on the ground covered with a blanket. He was taken to the ER and treated for soft-tissue symptoms and a mild brain injury. [The impact briefly knocked him out.]

Booker subsequently sued Moore in Yazoo County alleging his negligence caused injury. Moore removed the case to federal court and raised fact disputes. Namely at the time of the crash, he described that Booker was stopped in the traveled portion of the highway.

He also pointed to the suggestion that Booker was drunk. The investigating trooper so believed, especially as Booker refused a sobriety test. Booker countered that he wasn't drunk and there was no proof of it. He also denied his truck was stopped. A federal jury in Natchez would resolve these fact disputes.

The jury's verdict was for Moore on liability, it answering that he wasn't "guilty of negligence" that contributed to the accident. That ended the deliberations and the jury did not reach the plaintiff's duties, apportionment or damages. A defense judgment was entered.

Gender and Race Discrimination - Three female VA radiologists alleged they suffered discrimination because of their gender and race

McIntyre v. Veterans Administration, 3:08-148
Plaintiff: Dennis L. Horn, *Horn & Payne*, Madison
Defense: Angela G. Williams and Mitzi G. Payne, *Assistant U.S. Attorneys*, Jackson
Verdict: $65,634 for Hatten
$72,551 for McIntyre
$45,566 for Finnegan
Court: **Federal - Jackson**
Judge: Tom S. Lee
Date: 8-10-10

Brighid McIntyre, who is American, Linda Finnegan (Malay-Chinese) and Margaret Hatten (American), were all employed as radiologists at the VA Hospital in Jackson. They alleged a pattern of gender, race and national origin discrimination prevailed in the radiology department.

Namely, the discrimination worked in favor of Indian male radiologists and against the plaintiffs. That was evinced in the quality and quantity of work assigned (this related to pay) as well as scrutiny of their work and breaks. Indian male radiologists were not similarly scrutinized. Then when the plaintiffs complained, they suffered retaliation.

The three plaintiffs sued the VA and presented assorted discrimination and retaliation counts. If prevailing, they sought backpay and other compensatory damages. The VA denied all the allegations. [Interestingly in this rather ordinary case, many key documents (summary judgment motions and others) were sealed by the court.]

The jury's verdict was for the plaintiffs on all counts except as noted: (1) gender discrimination, (2) race discrimination, (3) national origin discrimination, and (4) retaliation (Hatten only, rejected as to McIntyre and Finnegan).

Then to damages, Hatten took backpay of $65,634. Finnegan took $45,566 for the same category – McIntyre's award of

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