

# The Mississippi Jury Verdict Reporter

The Most Current and Complete Summary of Mississippi Jury Verdicts

June 2012

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.

\* \* \* Introducing \* \* \*

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**Premises Liability - A retail store manager slipped in a dark storeroom in ankle-deep water that had accumulated from a leaky roof - in this lawsuit (having suffered a lumbar disc injury in the fall), the manager sued her employer's landlord for failing to fix the leaky roof**

*Mize v. Grocery Depot*, 07-134

Plaintiff: Baskin L. Jones, *John D.*

*Giddens, P.A.*, Jackson and E. Hyde

Carby, *Carby & Carby*, Natchez

Defense: M. Reed Martz and Andrew

Shull, *Freeland Shull*, Oxford

Verdict: \$150,000 for plaintiff assessed 22% to the defendant

Court: **Adams**

Judge: Lillie Blackmon Sanders

Date: 4-13-12

Beverly Mize, then age 40, worked on 3-22-05 as a manager at a retail store in Natchez known as Only a Buck. Only a Buck leased its premises from a company known as Grocery Depot. Early that morning Mize entered a dark storeroom to throw a breaker.

As Mize stepped into the room, she slipped and fell in ankle-deep water. That

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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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**Medical Malpractice - In an exceptionally odd case, the plaintiff linked a permanent erectile dysfunction injury to a penis injection given to him by a nurse at the direction of a physician – the catch was the injection was purportedly given by the nurse in the doctor’s bedroom, all the parties having been engaged in the so-called “swinger lifestyle” – the swinging doctor and nurse defended that they weren’t practicing medicine at the time of the injection and in any event, it was the plaintiff who injected himself – the trial court granted a directed verdict on the first day of trial, the plaintiff**

**failing to have a medical expert**  
*Wasser v. Stanley et al*, 08-31  
 Plaintiff: John G. Holaday, *Holaday Law Firm*, Flowood  
 Defense: Reeve G. Jacobus, Jr., *Williford McAllister & Jacobus*, Ridgeland for Dr. Mark Stanley  
 Heber S. Simmons, III, *Simmons Law Group*, Ridgeland for Nurse Denise Stanley  
 Verdict: Directed verdict  
 Court: **Warren**  
 Judge: James Chaney, Jr.  
 Date: 11-28-11

Bill Wasser, a long-time herbicide salesman and Madison resident, was a part of the so-called swinger lifestyle.

Swingers as they are known engage in consensual group sex. Wasser developed a sexual relationship with a Vicksburg couple, family practice doctor, Mark Stanley and his wife, Denise. [Denise is a nurse.]

Wasser would alleged that on the evening of 11-11-06, he was a guest at the Stanley home. The three were swinging. Wasser recalled that Denise gave him a PGE1 injection into his penis – this is a common erectile dysfunction treatment. The injection, Wasser alleged, was given at Dr. Stanley’s direction. Following the injection, Wasser suffered an erection that lasted . . . four days. By the time Wasser finally

sought treatment, the long-lasting erection (priapism) had resulted in arterial damage in his penis. He is permanently impotent.

In this lawsuit Wasser alleged medical malpractice by Dr. Stanley and Denise in administering the injection. This was especially so as Wasser had previous bad experience with PGE1 and didn't want another injection. He also later presented an assault and battery count against the Stanleys regarding the injection.

The Stanleys defended on several fronts. That included (1) arguing that they were not practicing medicine at the time of the injection, (2) denying Denise gave the injection at all, Wasser having given it to himself, and (3) implicating Wasser's own comparative fault in failing to seek treatment after his priapism developed. The Stanleys additionally cited the plaintiff's failure to produce a standard of care expert.

Dr. Stanley individually presented his own counterclaim against Wasser alleging defamation, harassment and alienation of affections. He had cited proof that following this erectile misadventure, Wasser stalked the Stanleys and attempted to embarrass them in the Vicksburg community.

The court entered a summary judgment (a directed verdict equivalent) for the defendants on the first day of trial. Judge Chaney ruled that Wasser's medical case was deficient in that he lacked standard of care proof, there being no *Coleman v. Rice* layman's exception. The court also dismissed Wasser's assault and battery count, it not being filed within the one-year statute of limitation.

Judge Chaney also directed Dr. Stanley to begin his defamation and outrage counterclaim. The doctor had wanted to stay the presentation of his counterclaim pending Wasser's presumptive appeal. When the doctor refused to go forward, Chaney entered a judgment against him.

Wasser has since taken an appeal – Denise has also taken a cross-appeal. Wasser's lawyer (Holaday) has since moved to withdraw. The Supreme Court

denied his motion. Wasser's appeal has since been dismissed because of the failure to pay costs.

**Auto Negligence - The plaintiff complained of a multi-level disc injury after being rear-ended by a commercial utility vehicle – a jury in Laurel rejected damages in this case where fault was admitted**

*Livingston v. Mississippi Power*, 09-52  
 Plaintiff: Eugene C. Tullos, Raleigh and S. Wayne Easterling, Hattiesburg  
 Defense: Richard L. Yoder, Jr., *Gilchrist Sumrall Yoder & Boone*, Laurel and R. Mark Alexander, *Balch & Bingham*, Gulfport  
 Verdict: Defense verdict on damages  
 Court: **Jones**  
 Judge: Billy Joe Landrum  
 Date: 4-11-12

Tina Livingston, then age 36, was injured in a 9-15-04 crash. She was rear-ended by a commercial vehicle driven for Mississippi Power by John Walley. It occurred on Hwy 84 as Livingston sat in traffic in her 1995 Lexus sedan. Mississippi Power conceded fault for the wreck.

Livingston was not injured at the scene, but did treat two days later for neck and back pain. Following that initial care, Livingston did not treat for 2 ½ more years. Her neurosurgeon, Dr. Michael Molleston, performed a cervical laminectomy. The surgery was not a success, Livingston now suffering from a post-laminectomy syndrome.

Livingston has also complained of low-back disc injury at several levels. The combination of these injuries have resulted in depression as well. Livingston's medical bills were approximately \$77,000. In this lawsuit she sought damages from Mississippi Power.

The utility defended the case and focused on two themes, (1) the significant gap in care, and (2) Livingston having been involved in a 1997 car wreck that resulted in similar symptoms. The defense IME expert, Dr. David Bomboy, Neurosurgery, diminished the causal link between this wreck and Livingston's current

symptoms.

This case was tried for three days. As fault was admitted, it was tried on damages only. The court's instructions asked the jury to assess damages for each of six categories, lost wages, medicals, future medicals, pain and suffering, loss of enjoyment of life and the consortium claim. This Laurel jury wrote "0" for each category, Livingston taking nothing. A defense judgment was entered.

Livingston has since moved for a new trial and/or additur citing her proof of a painful and permanent injury. Mississippi Power has replied that the matter was for the jury to decide, there being competing proof at trial of injury causation. The motion was pending in late May of 2012.

**Auto Negligence - The verdict in a disputed right of way passing crash case was for the defendant**

*Jones v. Greer*, 08-73  
 Plaintiff: Robin L. Roberts and Sarah K. Liles, *Roberts & Blackledge*, Hattiesburg  
 Defense: Patrick H. Zachary, *Zachary & Leggett*, Hattiesburg  
 Verdict: Defense verdict on liability  
 Court: **Lamar**  
 Judge: Anthony Mozingo  
 Date: 6-9-12

There was a right of way crash case on 7-10-06 on Hwy 98 in Lamar County. The plaintiff, Pansy Jones, alleged that as she passed Casey Greer (in the passing lane), Greer veered into her lane. This forced Jones off the road, her car crashing and overturning in a culvert. Jones was treated at the ER and later followed with her family doctor for the aggravation of underlying fibromyalgia. Jones would later describe that following the wreck, she was a "total wreck for a while." In this lawsuit, Jones sought damages from Greer, blaming her for encroaching her lane. Greer defended that it was Jones who had swerved into his lane.

The jury's handwritten verdict was for Greer and Jones took nothing. A defense judgment closed the case.

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