

# The Mississippi Jury Verdict Reporter

The Most Current and Complete Summary of Mississippi Jury Verdicts

September 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.

**Medical Malpractice - The plaintiff, who was rehabbing at a nursing home from an below-the-knee amputation, fell while transferring from his bed to a wheelchair with a slide board and struck his head – he died a month later of a brain injury purportedly sustained in the fall – his estate blamed the fall on the hospital for failing to supervise and assist the plaintiff which then led to the fall – the hospital denied extra assistance was required and also argued the brain bleed was spontaneous rather than traumatic**

*Howard v. Natchez Rehabilitation and Healthcare Center, 20-80*

Plaintiff: R. Paul Williams, III, Matt Newman and Courtney M. Williams, *Williams Newman Williams*, Jackson  
Defense: Rebecca Adelman and Kaitlyn E. Tucker, *Adelman Law Firm*, Memphis, TN

Verdict: \$1,276,818 for plaintiff

Court: **Adams**

Judge: Forrest A. Johnson (Special)

Date: 5-26-22

Glen Howard, age 60, underwent a below-the-knee amputation in early 2020. The amputation was related to long-standing diabetes. Howard was then admitted to Natchez Rehabilitation and Healthcare on 1-10-20, a nursing home, to rehab after the amputation and in preparation for the fitting of a prosthesis so he could live independently at home.

There was proof that Howard's care plan required that he have assistance when moving because of his high risk of falling. Howard had

a first fall on 1-28-20 when moving to a toilet.

On Howard's 36<sup>th</sup> day at Natchez Healthcare, 2-15-20, he was going to breakfast and attempted a transfer with a slide board from his bed to a wheelchair. He was alone at the time.

Howard reported he fell backwards and struck his head on the wall. There were no witnesses to his fall. A few hours later Howard was vomiting and showed signs of a head injury. He was taken to a local hospital in Natchez where a brain bleed was identified.

Howard was then airlifted to UMMC in Jackson where he was treated by Dr. Adam Lewis, Neurosurgery. Lewis identified a subdural hematoma. He believed it was traumatic in nature. Howard died of his head injury a month later on 3-21-20.

Howard's estate sued Natchez Healthcare and alleged it violated the standard of care in two ways, (1) it failed to have staff present when he was moved because he could not make transfers independently, and (2) the slide board and wheelchair should have been out of his reach because of his impulsive behavior. The estate's liability expert was Kathleen Hill-O'Neill, Nursing, Brigantine, NJ.

The estate drew causation to the brain injury from both Lewis and a retained expert, Dr. Keith Miller, Center, TX. If the estate prevailed it sought Howard's medical bills and funeral expense as well as sums for his pain and suffering and the loss of companionship of his "wrongful death beneficiaries," namely, his two

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(Howard's sister) committed fraud as she purportedly testified at trial that Howard had four children – the hospital explained those four children had standing to bring the lawsuit.

The estate replied that the hospital's motion was a "simple regurgitation" of hollow pre-trial motions. It also pointed as dispositive the estate documents from Chancery Court which indicated that Howard had died without children, his only heirs being his two sisters.

Judge Johnson rejected the heirs argument in his order denying the JNOV motion as the sister was the "statutorily defined representative" of the estate regardless of who the heirs might have been. The court also found the plaintiff's proof on liability and causation to be adequate. The motion was fully denied. Natchez Healthcare has since appealed.

**Case Documents:**

[Pretrial Order](#)

[Final Judgment](#)

[Defense JNOV Motion](#)

[Order Denying JNOV Motion](#)

sisters. There was proof the family was very close.

Natchez Healthcare defended on several fronts. The first was that Howard could safely use the slide board without assistance. Thus it first disputed if Howard had even fallen.

The nursing home also contested the injury. Its sole expert on liability and causation, Dr. Robert Kelly, Internal Medicine, believed that Howard's brain bleed was spontaneous in nature as opposed to traumatic.

This case was tried for five days. The jury's verdict was for the estate on liability by a 10-2 count. The plaintiff took medicals of \$474,318

and \$2,500 more for the funeral expense. The jury valued Howard's pain and suffering at \$500,000. The loss of society of his wrongful death beneficiaries was \$300,000.

The raw verdict for the estate totaled \$1,276,818. The court's final judgment for the plaintiff totaled \$976,818 and accounted for Mississippi's tort scheme that limits non-economic damages to \$500,000.

The hospital moved for JNOV relief and focused on two arguments. The first was that the plaintiff's liability (use of the slide board) and the causation (injury) were speculative. It also argued that the administratrix of the estate

**Truck Negligence - The plaintiff changed lanes and was rear-ended by a trucker (the trucker was traveling at 71 mph and the plaintiff was at 59 mph), the impact knocking the plaintiff's pick-up off the road where it flipped three times – the plaintiff has since treated for a mild TBI and other injuries – the plaintiff's non-economic damages were valued at \$900,000 but there was no reduction for Mississippi's statutory scheme to limit those damages**

*Wilson v. M.C. Van Kampen Trucking*, 3:21-98

Plaintiff: L. Clayton Culpepper, III, *Evans Petree*, Memphis, TN

Defense: Benjamin D. West, Oxford and W. Timothy Hayes, Jr., Memphis, TN, both of *Harris Shelton*

Verdict: \$954,140 for plaintiff

Federal: **Oxford**

Judge: Debra M. Brown

Date: 9-2-22

Frank Wilson drove his Ford F-150 pick-up truck on Hwy 72 in Marshall County (MS) on the morning of 2-3-21. There are four lanes at this location and it is separated by a median. Wilson passed a slower moving vehicle in the left lane and moved back into the right lane.

Wilson was traveling at 59 mph. The speed limit at this location was 65 mph. Behind Wilson in traffic was a tractor-trailer carrying 20,000 pounds of office furniture. Shawn Janak piloted the big rig for his employer, M.C. Van Kampen Trucking. Janak had picked up his load in Birmingham and was headed to California. Suddenly Janak rear-ended Wilson's pick-up. There was proof that Janak's truck was traveling at 71 mph at the moment of impact.

The collision was a hard hit and knocked Wilson's pick-up off the

road. It flipped three times and broke a utility pole. The pick-up ended up at rest 100 yards away in a nearby yard.

Wilson suffered several injuries in the collision. They included what the record described as a "mild complicated

TBI" which has manifested as nightmares, PTSD and difficulty driving. Wilson also suffered an ankle strain, cuts to his head and a small brain bleed. Dr. Howard Katz, Physical Medicine, Jackson, confirmed the injuries.

In this lawsuit (originally filed in Marshall County and then removed by the defense) Wilson alleged negligence by Janak in rear-ending him. The theory was simple enough. The fast-moving tractor-trailer rear-ended Wilson and knocked him off the road. The plaintiff's accident expert was Brady McMillan, Hernando. If Wilson prevailed he sought medical bills, property damage and non-economic damages.

Janak and his employer defended the case and cited a fact dispute. Janak recalled that Wilson suddenly changed lanes in front of him. Thus there was no time for him to avoid the collision. The defense accident expert, John Leichty, Germantown, TN, implicated Wilson's look-out in making the lane change. Wilson contested this version and explained that when he changed lanes it was safe to do so and Janak's truck was



*The plaintiff's pick-up after the crash*

"way back."

The jury in this case made separate findings that the defendant was negligent, that Wilson suffered injury and that this crash proximately caused the injury. The jury further found that the plaintiff was not negligent and thus the trucker was solely at fault.

The jury then moved to damages. Wilson took medicals of \$44,140 and \$10,000 more for property damage and the loss of use of his truck. The jury valued his past suffering at \$450,000 and that in the future was the same sum. The non-economic damages were \$900,000. The verdict was \$954,140 and the court entered a consistent judgment for Wilson in that sum with no reduction of the non-economic damages to comply with the state statutory scheme to limit those damages to \$500,000.

**Case Documents:**

[Pretrial Order](#)

[Jury Verdict](#)

[Final Judgment](#)

**Golf Cart Negligence - The plaintiffs went for a ride in a golf cart while visiting an RV dealership – the driver (a dealership employee) took off at high speed, pressing the accelerator to release the brake and in the process, both plaintiffs were thrown from the golf cart and sustained injuries**

*Johnson et al v. Camping World*, 21-19

Plaintiff: M. Scott Bishop and Jason Ruiz, *Morris Bart*, Gulfport

Defense: Danny E. Collier and Regina F. Cash, *Luther Collier Hodges & Cash*, Mobile, AL

Verdict: \$233,035 for Patricia  
\$37,055 for Edward

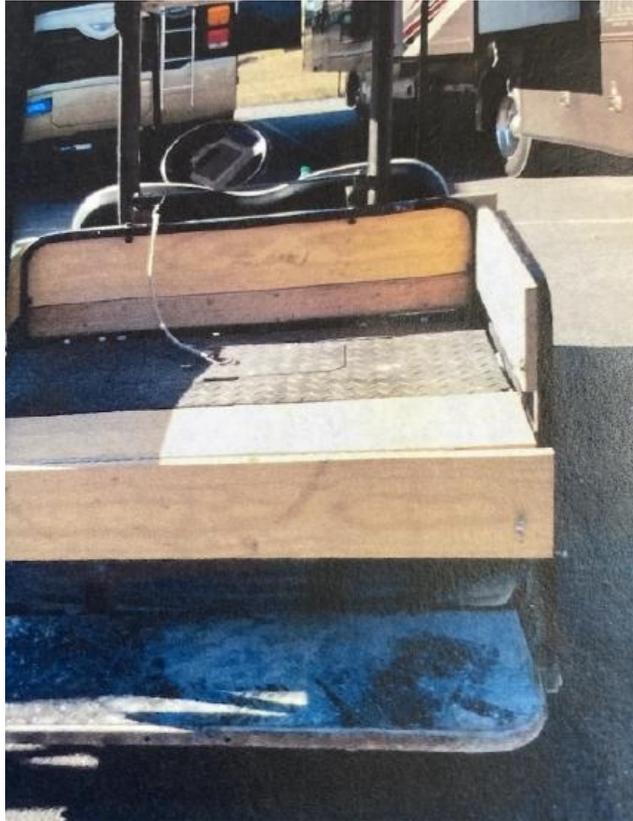
Court: **Harrison**

Judge: Randi P. Mueller

Date: 8-11-22

Patricia Johnson and Edward Williams visited the Camping World location in Biloxi. They were shopping for an RV. A Camping World employee (Ricardo) was going to take them to look at an RV. The dealership area is large and to reach the RV, Camping World uses a modified golf cart. There is a seat in the front for the driver (here Ricardo) while in the back, the passengers just sit on a metal bed. There is no seat belt or safety restraint – in fact there is nothing for the passengers to hold on to at all.

Against this backdrop, Ricardo started to drive away. Johnson and Williams were seated in the back on the metal bed. The brake was depressed on the golf cart. Ricardo got the golf cart moving by pressing the accelerator which in turn would release the brake. The effect of this was that the golf cart would take off quickly. This method of starting the golf cart (hitting the accelerator to release the brake) was against the company's own safety policies. The



*An image of the golf cart involved in this accident*

(Johnson and Williams) sued Camping World and alleged negligence by “Ricardo” in dangerously operating the golf cart. They each sought their medical bills as well as non-economic damages. The defense tepidly made an effort to concede fault, but on cross-examination, it’s corporate representative explained Camping World took no responsibility for the incident. Thus the jury would decide both liability and damages although the plaintiff’s comparative fault was no issue.

policy explained that this method could cause the golf cart to “suddenly jolt.”

As Ricardo drove away aggressively that’s exactly what happened. Johnson was almost immediately thrown from the golf cart as it jolted forward. Williams reached for her and he too fell off the golf cart.

Johnson has since treated for a multi-level (cervical and lumbar) disc injury that is non-surgical. Her treatment has included steroid injections. Dr. Patrick Waring, Pain Management, Metairie, LA, looked to MRI evidence that confirmed Johnson’s injuries. Williams suffered the exacerbation of a pre-existing disc injury as well as a wrist strain.

In this lawsuit the plaintiffs

This case was tried for three days in Biloxi. The jury’s verdict was for the plaintiffs. Johnson took medicals of \$33,035 and \$200,000 more for her pain and suffering. Her verdict totaled \$233,035.

Similarly Williams took his medicals of \$12,055 and \$25,000 for pain and suffering. His verdict was \$37,055. A consistent judgment was entered for the plaintiffs and while the case is not yet concluded, the judgment is expected to be satisfied.

**Case Documents:**

[Complaint](#)

[Final Judgment/Jury Verdict](#)

**Legal Malpractice - The plaintiff contracted with a lawyer (a former Mississippi Supreme Court Justice) to pursue an alienation of affection claim against his wife's boyfriend – the lawyer never filed suit and the statute of limitations ran – when the plaintiff (with a new lawyer) sued the boyfriend, the case was promptly dismissed because the statute of limitations had run – the plaintiff then sued the first lawyer lawyer and alleged malpractice in handling the case – the lawyer-defendant replied there was no error because, (1) the boyfriend was not yet identified, and (2) the plaintiff was going to lose the “case-within-a-case” anyway because his wife was already done with the husband when she met the boyfriend**

*Land v. McRae Law Firm et al*, 21-8  
Plaintiff: Macy D. Hanson, Madison  
Defense: George E. Abdo, III, *Daniel Coker*, Jackson

Verdict: Defense verdict on the underlying “Case within a Case” while finding defendant negligent

Court: **Madison**

Judge: Dewey Arthur

Date: 8-10-22

Michael Land, who operates a barber shop in Madison, was happily married for more than 20 years to his wife, Theresa “Tee.” They raised a family and ostensibly were doing well. That changed in late 2013 and early 2014. Tee had become disenchanted with Land and moved out on Halloween in 2014. That date marked the end of their relationship and they later divorced.

Land believed his wife had one or more boyfriends and that they had broken up his loving marriage. In July of 2017 he consulted with a

lawyer, Chuck McRae of the *McRae Law Firm* in Jackson. McRae is a former Mississippi Supreme Court Justice. Land and McRae entered a contingency contract to pursue a claim for alienation of affection.

At the time of this initial consultation, Land wasn't quite sure who were all the defendants. He suspected a man named Danny Gray was a possible defendant. Land was also concerned about a paramour known then only as a beer distributor on the coast; McRae would later deny there was any mention of the beer distributor.

The dates in this case are important. The contract was signed in July. The statute of limitation for alienation of affection would run three years from the date that Tee left the marriage. That is, the statute run on Halloween in 2017. McRae never filed a lawsuit against anyone in this representation. Land fired him in 2019.

Thereafter Land consulted with a new lawyer (Macy Hanson, also his lawyer in the present case) to pursue a claim. By this time Land believed he had identified the boyfriend who broke up his marriage. It was Paul Bertucci who it turned out is a beer distributor on the Mississippi Coast.

Hanson filed a lawsuit for Land in Madison Circuit Court in 2020. Bertucci (represented by Stephen B. Simpson, Purvis & Company, Gulfport) moved for summary judgment and cited that the statute of limitations had run. The presiding Judge John Emfinger granted the motion for Bertucci in November of 2020. *See Land v. Bertucci*, 20-14, Madison Circuit Court.

Land then filed this lawsuit in 2021 against McRae and his law firm. He alleged the lawyer committed

malpractice in failing to file a lawsuit within the statute of limitations. This then caused Land to lose the damages he would have taken in the case against Bertucci. Land claimed that had been happily married until Bertucci, (who Land called a SugarDaddy) stole his wife with his opulent and glamorous lifestyle that included vacations, gifts and sex. The simple barber in Madison had been discarded – Land considered his damages (including punitive damages) were significant.

McRae defended on several fronts. The first was that at the time of initial consultation and running through the statutory limitation period, Bertucci was never identified. Land only knew Bertucci as the beer distributor on the coast and McRae of course, denied knowing anything about Bertucci.

McRae also thought regardless of his conduct, Land was not going to win his case against Bertucci. Why? Tee testified that long before any relationship with Bertucci in 2014 and as far back as 2012, the marriage was already dead. When she began her relationship with Bertucci, Tee indicated, her love for Land was over. Thus there were no affections to be alienated.

McRae's standard of care expert, Michael Cory, *Danks Miller & Cory*, Jackson, indicated that in this context, a John Doe complaint was not proper. While the plaintiff did not expert proof as to the John Doe complaint, Judge Arthur denied McRae's directed verdict on that question.

Land replied to both defenses. While Bertucci's identity was unknown, he argued McRae could have easily filed a John Doe complaint to preserve the claim. This was especially true given that he believed the contract was for full scope

alienation of affections representation against all possible defendants. Land also thought McRae's "case-within-a-case" defense relied on taking Tee's "self-serving" testimony as gospel and assuming a jury would agree against Land.

There was an interesting issue as to damages. Land wanted a full recovery if he prevailed against McRae, including taking the punitive damages he would have been awarded from Bertucci. McRae argued that this didn't make sense as, (1) the jury would essentially be punishing McRae for Bertucci's misconduct which is not appropriate, and (2) it would involve complex proof as to Bertucci's net worth. Ultimately the issue of punitive damages did not go to the jury.

In an unrelated case Land gained some notoriety during the early days of the Covid outbreak. As of the first week of May 2020, Gov. Reeves had closed barber shops. Land was aggrieved by this and just opened up. Local officials shut him down.

Thereafter Land sued the Governor and other state officials in federal court to declare the mandates unlawful. The case was dismissed as moot within days as the Governor rescinded the order on barber shops. **See** *Land v. Gov. Reeves*, 3:20-313, Federal Court - Jackson.

The case at hand was tried for several days in Canton. As the instructions were constructed, there were two issues for Land to prove. The first was that McRae was negligent. Then and only if McRae was found negligent, the jury would consider if Land would have won his case against Bertucci. Finally if Land prevailed on those two issues, the jury would reach his damages, i.e.,

those he would have taken from Bertucci but for McRae's failure to pursue the claim.

The jury returned a mixed verdict. It first found that McRae was "negligent and breached the standard of care" by failing to file the lawsuit by 10-31-17. However the jury exonerated McRae with a further finding on the case-within-a-case question that Land would not have prevailed against Bertucci. A defense judgment was entered for McRae and his law firm.

**Case Documents:**

[Complaint](#)

[Complaint in Case Within a Case](#)

[Summary Judgment in Case within a Case](#)

[Answer](#)

[Defense Summary Judgment Motion](#)

[Plaintiff Summary Judgment Reply](#)

[Defense Expert Disclosure](#)

[Final Judgment](#)

**Auto Negligence - A disputed lane change case was resolved on liability for the defendant**

*Barnes, et al v. Whitehead*, 20-809

Plaintiff: Deshun T. Martin and Vatteria M. Martin, *Martin & Martin*, Jackson

Defense: David E. Stovall, *Stovall Law Firm*, Brandon

Verdict: Defense verdict on liability

Court: **Pike**

Judge: John P. Price

Date: 8-24-22

Brittany Barnes traveled on South Broadway in McComb on 6-29-20. Ashleigh Bettis was a passenger in her vehicle. Barnes recalled she was stopped in the left lane at a red light. She was waiting to make a turn.

Barnes would later allege that Amanda Whitehead tried to pass Barnes on the left. As Whitehead did so, she struck Barnes' vehicle. Barnes

claimed that at all times, she was stopped in the turn lane with her left turn signal on.

Whitehead had a different version of events. She believed that Barnes was in the lane to go straight. Then as Whitehead properly moved into the turn lane, Barnes struck her. A jury would have to resolve the fact disputes.

However it happened both Barnes and Bettis have since treated for soft-tissue injuries. In this lawsuit they sought damages from Whitehead. Whitehead defended on fault as described above.

The jury in this case found for the defendant on liability. It thus didn't reach Barnes' duties, apportionment or the damage claims of the two defendants. A defense judgment was entered.

The plaintiffs have since moved for JNOV relief. They argued the verdict was contrary to the evidence.

However the barebones motion does not explain why. The motion was pending at the time of this report.

**Case Documents:**

[Complaint](#)

[Jury Verdict](#)

[Plaintiff JNOV Motion](#)

## Notable Louisiana Verdicts

**Medical Malpractice - A pain management doctor was blamed for impinging the plaintiff's spinal cord while providing a cervical medial branch block and then failing to promptly diagnose the error all of which led to permanent deficits in the plaintiff's shoulder, arm and hand – the jury's verdict (including \$2.7 million in general damages) far exceeded the state's statutory medical malpractice damage caps**

*Oldenburg v. Elkersh*, 15-2245

Plaintiff: James A. Marchand, Jr. and Katie L. Hebert, *Marchand Law Firm*, Covington

Defense: Deborah DeoGracias Trahan and Tonya K. Gallaspy, *Schroeder & Trahan*, Metairie

Verdict: \$3,975,000 for plaintiff

Court: **Hammond, Louisiana Tangipahoa Parish**

Judge: Erika W. Sledge

Date: 8-12-22

Robin Oldenburg, a St. Tammany Parish deputy court clerk and sometime Bourbon Street area singer, treated for neck pain after a car wreck. That treatment included a course of conservative care but ultimately she was treated by a pain management physician, Dr. Mohamed Elkersh of Advanced Pain Medicine.

Elkersh treated Oldenburg and provided her a cervical medial branch block. A first injection was administered in 2012 and was a success. Oldenburg came for a second injection on 11-7-12 at Elkersh's office.

There was proof that during this injection that Elkersh injected the steroid/anesthetic medicine past the

bony structure and directly into Oldenburg's spinal cord. She would later argue that this should never happen.

When the procedure was over, Oldenburg immediately had shoulder pain, a headache and numbness in her hand. She was discharged within two hours without any further testing or evaluation to rule out a spinal cord injury.

Oldenburg's symptoms persisted the next morning and she called the office. She was offered an appointment right away in the office in Covington. Oldenburg elected to wait until she could be seen that afternoon in Hammond.

Elkersh evaluated Oldenburg that afternoon and ordered an MRI. The results were initially unclear and Elkersh sent her home. More results came in that evening and revealed a spinal cord insult. Elkersh directed Oldenburg to go immediately to the ER.

Oldenburg was diagnosed at the ER with a spinal cord edema. Finally 29 hours after the initial injection treatment was begun. That included the administration of Solu-Medrol among other treatments. Oldenburg remained in the hospital for several days with right-sided deficits. She continues to report ongoing pain and numbness in her right shoulder and hand.

Oldenburg sued Elkersh and the medical group alleging medical malpractice. Elkersh was blamed for the initial injury in penetrating her spinal cord. Particularly he should have used fluoroscopy in real time to visualize the location of the needle.

Elkersh was also then blamed for failing to timely recognize that injury – particularly he erred in identifying the cause of her symptoms in the

hours after the injection. His medical group was also blamed for its response.

Oldenburg's key experts were DR. Christopher Gharibo, Pain Management, Franklin Lakes, NJ and Dr. Robert Beatty, Neurosurgery, Hinsdale, IL. There was proof Oldenburg was impaired from her two jobs as court clerk and singer. Beyond her claim for damages, her husband (Gair) presented a derivative consortium count.

Elkersh replied that he met the standard of care and blamed the result on a rare but well-recognized complication. He had not penetrated the spinal cord – instead the rare complication was a spinal cord infarction. The doctor then promptly recognized, managed and resolved the condition all as described in the operative note.

Beyond there not being a deviation from the standard of care, Elkersh also diminished the damages. He suggested Oldenburg enjoyed a near immediate, dramatic and marked recovery. The defense experts included Dr. Sean Graham, Pain Management, New Orleans (he was on the Medical Review Panel that exonerated Elkersh) and Dr. John Markman, Neurology/Pain Management, Rochester, NY.

This case was tried for four days before Judge Sledge. The jury found that Elkersh had breached the standard of care and separately that this breach proximately caused injury to Oldenburg. The medical group (Advanced Pain Medicine) was found to have breached the standard of care. However it was exonerated on causation. Thus the jury would consider damages against Elkersh only.

Oldenburg took medical bills of

\$385,000 and \$900,000 more for those in the future. Her general damages totaled \$2.7 million and were comprised of the following:  
 \$750,000 for physical pain and suffering  
 \$500,000 for mental anguish  
 \$500,000 for permanent injury  
 \$500,000 for loss of quality of life  
 \$100,000 each for her husband's loss of consortium and loss of services.  
 The verdict for Oldenburg totaled \$3,975,000.

The court's final judgment and consistent with Louisiana's medical malpractice scheme, assessed \$100,000 to Elkersh and \$400,000 more to the Patient Compensation Fund (PCF). It also assigned the past medicals of \$385,000 to the PCF as well as the future care. The judgment further exonerated the medical group.

**Products Liability - A teenage girl (the plaintiff) suffered a catastrophic and permanent head injury when her driver (also a teenage girl who was drinking) ran off the road and the 2001 Ford Escape she was driving flipped over – the plaintiff sued Ford and alleged the Escape was defective because it lacked an integrated restraint system to protect her during the roll-over – Ford replied the vehicle was safely designed and met all standards and the company instead blamed the injuries on the severe roll-over accident**

*Garraway v. Ford*, 631668

Plaintiff: Joseph E. Ritch, *Elliott & Ritch*, Corpus Christi, TX and Donald J. Cazayouz, Jr. and Lane Ewing, Jr., *Cazayouz Ewing*, Baton Rouge

Defense: Robert W. Maxwell and Carl W. Giffin, Jr., *Bernard Cassisa Elliott & Davis*, Metairie and Thomas E. Bazemore, III, *Huie Fernambucq & Stewart*, Birmingham, AL

Verdict: Defense verdict on liability

Court: **Baton Rouge, Louisiana  
East Baton Rouge Parish**

Judge: Donald R. Johnson

Date: 8-12-22

Madison Garraway, then age 17 and of St. Francisville, was a passenger in a 2001 Ford Escape driven by her friend, Jamee Allen (also 17) on 7-13-13. It was 1:30 in the morning and the girls were returning home from a party. They were late and had missed curfew. There was also proof they had been drinking. Allen's blood alcohol level was later measured at .03.

As Allen drove on LA 964 in East Feliciana Parish, she lost control in a curve. Her vehicle ran off the road and rolled over. It landed on its roof. There were fact disputes as to how

exactly the roll-over went, i.e., were there 2.5 rolls or a just a one-half roll, and also whether the vehicle struck one or two trees. In any event it was a very serious crash.

Garraway suffered a catastrophic head injury in the roll-over. She had a depressed and comminuted skull fracture. Garraway was immediately taken to a hospital in Zachary and then promptly transferred to Our Lady of the Lake in Baton Rouge.

Garraway underwent a craniectomy to relieve pressure on her brain. She was also treated for a brain injury and a diffuse axonal injury. Her course of recovery was grueling and difficult. She suffered respiratory failure, seizure, had a PEG tube installed and endured a PICC line infection complication among other difficulties. She later went to a rehabilitation hospital where she remained until October.

Garraway was diagnosed with a permanent traumatic brain injury. She has persistent vertigo and is subject to falls. She also has a visual defect and suffers regular headaches. There was proof Garraway will permanently require moderate assistance and she won't drive a car. Her lifetime needs are substantial. A life care plan expert, Cornelius Gorman, estimated the lifetime of care at from \$10 million to \$33 million.

Garraway sued Ford and alleged a design defect in the vehicle. It was her theory that the vehicle lacked an integrated restraint system that would have protected her during the roll-over. Particularly she cited that the Escape did not keep her in position in her seat during the roll-over and this permitted Garraway to move up and to the right – it was that movement (striking the structure of the roof) that led to the severe injury.

Garraway further developed that with an alternative design of the vehicle, her injury would have been less serious. Her key experts were Paul Lewis, Biomechanics, Roswell, GA, Steve Meyer, Vehicle Design, Goleta, CA and Wayne McCracken, Accident Reconstruction, Chapel Hill, NC.

The plaintiff also pursued a claim against her driver, Allen, who had a \$25,000 liability limits with State Farm. Allen ultimately paid her limits. Allen also faced juvenile criminal charges related to this crash and pled guilty.

Ford's defense as to the design of the Escape was simple enough. It met all federal safety standards and was in fact a "state of the art" design. Moreover Ford argued that in this exceptionally violent crash, the Escape had performed well. Ford also contested that there was proof of a feasible engineered alternative design. The defense experts included Michael Carhart, Design, Phoenix, AZ and Thomas Perl, Accident Reconstruction, Orem, UT.

Ford also diminished the claimed damages. While conceding a serious injury, Ford noted that in the years since the crash, Garraway was married for a time, lived independently and had a child – this all undercut the notion of Garraway's claim for future damages.

Beyond the issues being framed in this way, there were several other nuances in the case. The first was about the wreck itself. The plaintiff postured that the Escape rolled over 2.5 times, the injury occurring when Garraway's head struck the roof of the car. Ford thought it was just a single one-half roll, the vehicle striking two trees. Ford then developed Garraway's head struck

either the ground or a tree, the design issue having nothing to do with the sustained injury and thus there was no proximate cause. Ford also created an exemplar based on Garraway's proposed design and concluded that design would not have protected the plaintiff.

There was also competing proof about Allen's intoxication. Garraway thought the BAC was extremely low (.03) and while this was still illegal for an underage driver, this minimal intoxication level was not a cause of the crash. This was developed in part by Gary McGarity, a toxicologist originally retained by Allen. Ford by contrast thought the drinking was important to understanding the case. Ultimately the court excluded proof that Garraway was also drinking but allowed it regarding's Allen intoxication. Garraway had hotly contested the admission of this proof as she feared Ford would unfairly smear her and Allen as so-called "party girls."

This case originally came to trial in August of 2018. The then-presiding Judge Michael Kelley had entered an order precluding proof that Garraway was also drinking. Then in voir dire Ford's counsel referred to the girls having been drinking but not necessarily Garraway. Judge Kelley declared a mistrial.

The case would come to trial again some four years later and more than nine years after the crash. The trial lasted two weeks and the jury then deliberated 2.5 hours.

During those deliberations the jury had questions:

Why is Jamee included in the lawsuit as her name is on the header? Are we to consider her percentage of fault?

[Ed. Note - The instructions did provide for apportionment to the

driver.] Judge Johnson answered that the header is not evidence and the jury should follow the instructions.

The court's liability instruction (it was wordy) asked if the seatbelt in the 2001 Ford Escape was unreasonably dangerous by way of a design defect because it didn't incorporate an integrated restraint system. The jury answered "no" for Ford to this first question and didn't reach separate liability questions on proximate cause and whether there was an "engineered alternative design." that ended the deliberations and Garraway took nothing. A defense judgment was entered.

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## A Notable Tennessee Verdict

**Sex Discrimination - A female employee at a brewery alleged her first suspension for complaining about a conflict with a co-worker and then her firing when she complained another co-worker was smoking marijuana at work all represented sex discrimination – the brewery countered it investigated the complaints and elected to fire the plaintiff not because of her sex but rather because her complaints were false**

*Grant v. Blues City Brewery*, 2:20-2305

Plaintiff: Ralph T. Gibson, Alexandria Holloway and Emily Johnson, *Gibson Perryman Law Firm*, Memphis

Defense: Louis P. Britt, III and Mollie K. Wildmann, *Ford Harrison*, Memphis

Verdict: \$240,000 for plaintiff

Federal: **Memphis, Tennessee**

Judge: Thomas L. Parker

Date: 8-25-22

Ariane Grant worked in a packaging position for Blues City

Brewery in Memphis. The company bottles beer and other beverages. Grant had a dispute with co-workers on 9-6-19 about overtime and it ended with a slammed clipboard.

Grant complained to Blues City HR that her co-workers had mistreated her. Blues City conducted an investigation and could not substantiate Grant's version. Eleven days later HR informed Grant of this and indicated she'd be suspended for three days for having made a false complaint.

At the meeting informing Grant of the suspension, Grant made another complaint. She alleged another co-worker had smoked marijuana at work. Blues City investigated that complaint including asking the employee if he had done that. He denied it. Blues City decided that Grant had made up this allegation and it fired her three days later. Thus from the perspective of the employer, Grant was let go for having falsified two complaints to HR about her co-workers.

Grant filed this lawsuit and alleged both the suspension and termination represented sex discrimination. How so? She cited that male co-workers were treated differently, that is, first their version of the clipboard incident was taken as true over her version.

Similarly the denial by the co-worker of using marijuana at work was just accepted. There was no drug test and Blues City simply concluded Grant wasn't telling the truth. As the case was tried both the suspension and termination counts were separately presented – Grant could prevail on one or both of them and of course, they could both be rejected. Grant also sought the imposition of punitive damages.

Blues City's defense was not complex. It denied that Grant's sex had anything at all to do with either employment decision. A fair investigation was conducted and it concluded that Grant had lied. This justified the adverse employment actions.

This case was tried for four days in Memphis. Grant prevailed separately on both the "suspension" and "termination" counts. Her damages for suspension were backpay of \$478 and \$521 more for emotional distress. That verdict totaled an even \$1,000. The termination damages were backpay of \$14,000 and \$25,000 more in compensatory damages – they totaled \$39,000. The combined compensatory damages were \$40,000.

The jury also found that Grant had proven either malice or reckless behavior by Blues City. The jury then imposed punitive damages of \$200,000. The combined verdict for Grant totaled \$240,000. A consistent judgment was entered by the court.

**Case Documents:**

[Summary Judgment Order](#)

[Pretrial Order](#)

[Jury Verdict](#)

[\(Liability/Compensatory\)](#)

[Jury Verdict \(Punitive damages\)](#)

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