

The Alabama Jury Verdict Reporter

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Statewide Jury Verdict Coverage - Published Monthly

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Medical Negligence - When a patient with gall bladder disease, pancreatitis, and coronary artery disease died after gall bladder surgery that had been delayed due to his other conditions, his estate criticized his surgeon's decision to delay the surgery

Estate of Hagen v. Mirelman, et al.,
10-904520

Plaintiff: Lanny Vines and Ken Hooks, *Lanny Vines & Assocs.*, Birmingham

Defense: Michael K. Wright and Jackie H. Trimm, *Starnes Davis Florie LLP.*, Birmingham, for Dr. Ward, Dr. Champion, and Dr. Denton; Larry W. Harper and Lee Clanton, *Porterfield Harper Mills Motlow & Ireland, P.A.*, Birmingham, for Dr. Mirelman; Walter Price and David Fleming, *Huie Fernambucq & Stewart, LLP.*,

Birmingham, for Brookwood Verdict: \$3,000,000 for plaintiff as against Dr. Mirelman and Birmingham Surgical

Circuit: **Jefferson**, 4-2-13

Judge: Joseph L. Boohaker

In late 2008, Alan Hagen was experiencing abdominal pain. He was admitted to Brookwood Medical Center Hospital in Birmingham for a period extending from 11-22-08 to 11-27-08. After being released, he was readmitted two days later on 11-29-08 to stay there until 12-6-08. He was released again, only to return three days later on 12-9-08.

Hagen was suffering from a variety of conditions, including severe coronary artery disease, pancreatitis, and gall bladder disease. During his stay his care was

handled by a variety of doctors. Dr. Daniel Mirelman of Birmingham Surgical, P.C. handled questions relating to gallbladder surgery.

Dr. John Ward and Dr. Aftab Khan, both practicing Internal Medicine, also provided care to Hagen. Other healthcare providers included four gastroenterologists practicing with Gastroenterology Associates of North-Central Alabama, P.C.: Dr. Gregory Champion, Dr. W. Timothy Denton, Dr. William Halama, and Dr. Bradley Rubery. Finally, Dr. Dianne Barnard, Cardiology, discussed with Hagen's team whether Lovenox should be used as a bridge when his current medication Plavix was discontinued.

Although Hagen's doctors agreed early on that he needed gallbladder surgery, his surgery was postponed because of concerns with Hagen's other medical issues. Dr. Mirelman finally performed the surgery, but Hagen died thereafter on 12-25-08.

Hagen's estate contended he had died due to sepsis arising out of the delay in performing the surgery. They criticized the hospital and the doctors involved in Hagen's care and sued them all. The estate's identified experts included Dr. Brad Case, General Surgery, and Dr. Kenneth Scissors, Internal Medicine, both of Grand Junction, CO.

The physicians and hospitals defended and denied having breached the standard of care. Their identified experts included Dr. Christopher Ives, Gastroenterology, Fairhope; Dr. Michael Roberts, Internal Medicine, Opelika; Dr. John Burgess, Internal Medicine, Dothan; and Dr. Leland Allen, Infectious Disease, Birmingham.

Dr. Barnard obtained summary judgment in her favor and left the action. She was soon followed by Dr. Khan, Dr. Rubery, and Dr. Halama. The estate's case proceeded against Dr. Mirelman, Dr. Ward, Dr.

Champion, Dr. Denton, and Brookwood.

Defendants argued that urgent surgery had not been indicated for Hagen. On the contrary, his other conditions of pancreatitis and severe coronary artery disease required the delay in performing the surgery. Defendants also argued Hagen had never been septic. In their opinion, Hagen had probably suffered a sudden cardiac death unrelated to his gall bladder disease.

During the 12-day trial, Drs. Ward, Champion, and Denton were dismissed at or before the close of the estate's case. Brookwood settled after the close of its case on the eleventh day of trial. A Birmingham jury returned a verdict the next day against Dr. Mirelman for \$3,000,000. The court offset this verdict with a prior settlement amount of \$250,000 and entered a judgment of \$2,750,000 for the estate.

Auto Negligence - When a vehicle stopped on a highway to wait for traffic to clear so that it could turn into a private drive, another driver failed to notice the stopped traffic and caused a three-vehicle chain-reaction crash

Portis v. Kimbell, 09-901729

Plaintiff: J. Matthew Shelby, *Greene & Phillips, Attorneys at Law, LLC.*, Mobile

Defense: James W. Killion, *Killion & Potts*, Mobile

Verdict: \$18,884 for plaintiff

Circuit: **Mobile**, 1-9-13

Judge: Sarah Hicks Stewart

On 9-5-07, Mitchell Portis was a passenger in a vehicle on U.S. Hwy. 45 near its intersections with Marks Drive and Main Street in Mobile County. The vehicle stopped to wait for an opportunity to turn into a private drive. Behind it, Roger Few slowed to wait for the turn to be completed.

Just then, Carroll Kimbell was driving along U.S. Hwy. 45 behind Few. She realized too late that traffic had stopped ahead of her. She tried to brake but could not stop in time. Kimbell hit Few, and Few hit the vehicle in which Portis was a passenger.

Portis suffered unspecified injuries as a result of the collision. The record does not identify the amount of his medical expenses.

Portis filed suit against Kimbell and blamed her for causing the collision by driving too fast. His theories included negligence and wantonness. Kimbell defended and minimized the damages claimed by Portis.

After a three-day trial, a Mobile jury returned a verdict of \$18,884 for Portis. The court entered a consistent judgment, and it has since been satisfied.

Fraud - Less than a month after two buyers purchased a property, a retaining wall on the property collapsed and cost them thousands of dollars

Medland v. Dutton, 08-380

Plaintiff: Hugh C. Harris and Nancy F. McClellan, *Bland Harris &*

McClellan, P.C., Cullman

Defense: H. Doug Redd, Pinson

Verdict: \$37,501 for plaintiffs

(comprised of \$37,500 in compensatory damages and \$1 in punitives)

Circuit: **Cullman**, 10-18-12

Judge: Gregory A. Nicholas

On 11-6-07, Kevin and Sharon Medland entered into a contract with Michael Dutton to buy a piece of land and a 1998 Sweetwater Home double-wide mobile home located at 1140 County Road 198, Crane Hill. The lot was a waterfront property and included a boat house and a retaining wall. After a home inspection, the Medlands went

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through with the deal and bought the property on 4-24-08.

On 5-11-08, the retaining wall suffered a catastrophic failure. The record does not provide details about the failure, but the Medlands expended thousands in its repair.

The Medlands filed suit against Dutton and blamed him for not informing them that the wall was in poor condition. Their theories included fraud, wantonness, and fraudulent concealment.

Dutton defended and argued he had not known the retaining wall had any defects. He also pointed to the fact that the Medlands had hired a professional home inspector to check out the property. As far as Dutton was concerned, the problem with the wall was unfortunate but not due to any concealment on his part.

After a four-day trial, a Cullman

jury returned a verdict of \$37,500 for the Medlands on their claims for fraudulent misrepresentation and wantonness. It also awarded the Medlands \$1 in punitives. The court entered a consistent judgment.

Excessive Force (Wrongful Death) - A mentally ill man (who had committed no crime) was standing in the street and being escorted to a hospital by EMS when he became unruly – Birmingham police became involved and tasered the man 18 times in 11 minutes – he died of a cardiac event secondary to being tasered

Patrick v. Birmingham Police, 08-380
 Plaintiff: Thomas F. Talty and William M. Acker, III, Birmingham
 Defense: Frederic L. Fullerton, II and Javon P. Patton, *City of Birmingham Legal Department*,

Birmingham and Lawrence Cooper, Birmingham

Verdict: Defense verdict

Federal: **Birmingham**, 4-12-13

Judge: Virginia Emerson Hopkins

Clyde Patrick, age 44, had a history of mental illness. He was acting out on 8-2-07 and had been hospitalized at UAB Hospital. After being released his condition did not improve. He was acting erratically and standing in the middle of a downtown Birmingham street. Patrick had committed no crime and was not being violent.

EMS personnel came to the scene and attempted to persuade Patrick to return to the hospital. He walked a short distance with EMS, but remained combative and reluctant to be hospitalized again. At this juncture the Birmingham Police became involved. The cavalry came in the form of several officers

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