

The Louisiana Jury Verdict Reporter

The Most Current and Complete Summary of Louisiana Jury Verdicts

November 2023

Statewide Jury Verdict Coverage

14 LaJVR 11

In This Issue

Orleans Parish

Medical Malpractice - Defense verdict p. 5

Noise Nuisance - Directed verdict p. 7

Battery (Employment Tort) - \$48,518 p. 10

East Baton Rouge Parish

Medical Malpractice - \$15,960,602 p. 1

Auto Negligence - Defense verdict p.

Rapides Parish

Auto Negligence - \$1,030,000 p. 2

Bossier Parish

Medical Malpractice - Defense verdict p. 3

Caddo Parish

Medical Malpractice - Defense verdict p. 6

Federal Court - New Orleans

Breach of Contract - \$1,125,000 p. 8

Civil Jury Verdicts

Timely coverage of civil jury verdicts in Louisiana including court, division, presiding judge, parties, case number, attorneys and results.

Medical Malpractice - An infant suffered a permanent brachial plexus injury during a 2006 delivery and sustained a permanent loss of the use of his left arm – the boy blamed his Ob-Gyn’s technical performance of the delivery – at a jury trial 17 years later, a Baton Rouge jury awarded the boy (and his parents) \$15.75 million in non-economic damages, the final judgment reducing the verdict to just \$710,602 in accordance with Louisiana’s medical malpractice scheme

Morley v. Dautrive, 572203

Plaintiff: James F. d’Entremont and Sarah E. Hunter, *Thompson d’Entremont & Hebert*, Baton Rouge

Defense: Amy C. Lambert, Ann M. Halphen and Shelly G. Laplante, *Taylor Porter Brooks & Phillips*, Baton Rouge

Verdict: \$15,960,602 for plaintiff

Parish: **East Baton Rouge**

Judge: Ronald R. Johnson

Date: 9-15-23

Angelle Morley (married to Garrett) was 39 weeks pregnant when she presented for delivery on 3-31-16 to her Ob-Gyn, Dr. Ralph Dautrive of the Ochsner Clinic Foundation. She was a first-time mother and a diabetic, but otherwise her pregnancy was uneventful.

During the delivery Dautrive encountered a shoulder dystocia complication. He applied force and delivered a baby boy, Westin who weighed 9 pounds and 3 ounces. Westin suffered a permanent brachial plexus injury during the delivery. Despite a surgical repair and a course of therapy, Westin has

no function in his arm.

Westin (through his parents) filed a lawsuit against Dautrive in August of 2008. It was alleged that Dautrive had mismanaged the pregnancy and delivery, all of which led to the brachial plexus injury.

The plaintiff’s liability expert, Dr. Michael Kreitzer, Ob-Gyn, believed that in light of Angelle’s presentation (diabetic and a first-time pregnancy), Dautrive should have had a “gameplan” to address the risk of shoulder dystocia. That is there was a risk of a large baby.

Then to the delivery itself, Dautrive erred in using forceps too soon. Furthermore when Dautrive encountered shoulder dystocia, he rushed the delivery and failed to utilize appropriate maneuvers including the so-called McRoberts. This was developed by testimony of persons in the delivery room. A second expert for the plaintiff on causation was Dr. Stephen Heinrich, Orthopedics. If the plaintiff prevailed it sought damages for Westin as well as the consortium interest of his parents.

The Medical Review Panel concluded that Dautrive had not violated the standard of care. The panel was comprised of Drs. Carol Patin, Renee Haris and Shawn Kleinpeter. The defense retained expert was Dr. Robert Gherman, Ob-Gyn, York, PA. Dautrive defended his care that he encountered a shoulder dystocia complication and then (raising a fact dispute), he quickly performed a McRoberts maneuver and safely delivered the child. Westin’s injury was described as a complication that can neither be predicted nor prevented.

This case was tried in five days in

and visible when Driver was examined, and the evidence was clear there was one. Judge O'Callaghan denied the motion in July of 2021 and wrote that there was no clarity on how pronounced the rash had to be in terms of the standard of care and he deferred to the jury's decision. The plaintiff has appealed.

Noise Nuisance - A residential neighbor of the iconic Bourbon Street district bar, Pat O'Brien's Bar, alleged in a 2004 lawsuit (it took nearly 20 years to go to trial) that the bar represented a noise nuisance that interfered with the enjoyment of their property – the trial judge granted a directed verdict for Pat O'Brien's Bar and concluded the noise was a “mere inconvenience”

Yokum et al v. Pat O'Brien's Bar,
04-16001

Plaintiff: Michael G. Stag and Matthew D. Rogenes, *Stagg Liuzza*, New Orleans

Defense: Benjamin R. Grau, David F. Bienvenu and Casie Z. Davidson, *Simon Peragine Smith & Redfearn*, New Orleans for Pat O'Brien's Catherine N. Thigpen and Ashley E. Gilbert, *CNA Corporate Litigation*, Metairie for Columbia Casualty

Verdict: Directed verdict for defendant

Parish: **Orleans**

Judge: Richard G. Perque

Date: 5-27-23

Pat O'Brien's Bar on St. Peters Street (adjoining Bourbon Street) is a New Orleans icon. It opened in 1933 and is famous for *Hurricane* cocktails. The bar is especially favored by Bourbon Street tourists. The bar (as is common on Bourbon Street) features amplified music. It can be noisy.

Peterson Yokum (a local artist)

has lived in his family's home since 1966 at nearby 723 Toulouse Street. It is described as one of the oldest private homes (built in 1797) in New Orleans. Yokum has shared the home since 1993 with his partner, Polly Anderson. The courtyard of the home faces Pat O'Brien's.

Beginning in the 1990s Yokum and Anderson (the plaintiffs) began to complain of excessive noise from Pat O'Brien's. They ultimately filed this lawsuit in 2004 against Pat O'Brien's and alleged a noise nuisance. The case encompassed nuisance, negligence and a violation of municipal codes regarding excessive noise. The ongoing effect of the amplified music at Pat O'Brien's was that it interfered with the plaintiffs' enjoyment of their home.

The case was presented, in part, pursuant to Louisiana's "vicinage" articles. The plaintiffs built their case for excessive noise through an auditory expert, Amo Bommer. Bommer took random samples that he concluded represented excessive noises. His selected measurement points were St. Patrick's Day in 2011 and then the BCS Championship game in 2012. Bommer recorded loud decibel levels.

The course from filing a petition to trial was not a short one. There was an appellate adventure and ultimately nearly 20 years after the suit was filed, a jury was finally empaneled in May of 2023. The defendants were Pat O'Brien's and its insurer, Columbia Casualty.

Pat O'Brien's denied it was a nuisance. That included pointing out the Bourbon Street entertainment district within the French Quarter is always noisy. Moreover not all of that noise comes just from Pat O'Brien's. The defendant also contested Bommer's measurement methods.

Interestingly this was not the only Bourbon Street area bar that the plaintiffs had sued. They pursued multiple claims and several settled. At least one came to trial in 2014. At that time a defense verdict on a noise nuisance claim was returned for Funky 544 bar. The verdict was affirmed on appeal.

This case was tried for several days and at the close of the plaintiffs' proof, Pat O'Brien's moved for a directed verdict. Judge Perque granted the motion from the bench and a week later (6-1-23), he reduced his judgment to a writing.

The court held that the plaintiffs had failed to prove more than a "mere inconvenience" according to Louisiana law. The plaintiffs moved for a new trial. Judge Perque denied the motion and the plaintiffs have since appealed.

Auto Negligence - A bicyclist was involved in a collision with a motorist and complained of injuries – a Baton Rouge jury rejected the case on causation
Hunter v. Beebe's Pest & Termite,
679289

Plaintiff: John C. Jacob, *Joubert Law Firm*, Baton Rouge

Defense: Gregory Kent Moroux, Jr., *Kinchen Walker Bienvenu Bargus Reed & Helm*, Baton Rouge

Verdict: Defense verdict on causation

Parish: **East Baton Rouge**

Judge: Richard "Chip" Moore

Date: 5-4-23

Jamal Hunter (a woman) was riding a bicycle on 7-9-18 in Baton Rouge on North Street near the Plaza Apartments. She was involved in a collision with a commercial vehicle driven by John Sherman for Beebe's Pest and Termite. They are a Shelter Mutual insured.

Hunter did not report an injury at the scene. She has since treated for a multi-level disc injury from C-7 to T-1 that included facet injections,