

The Mississippi Jury Verdict Reporter

The Most Current and Complete Summary of Mississippi Jury Verdicts

May 2013

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.

Nursing Home Negligence -

This case involved the alleged negligent care of an Alzheimer's patient - the jury found that plaintiff failed to prove the applicable standard of care

Estate of Cox v. Cleveland Nursing & Rehabilitation Center, 04-103

Plaintiff: George P. Hollowell, Jr.,
Hollowell Law Firm, Greenville

Defense: Clay Gunn, Barry W. Ford
and Bradley W. Smith, *Baker*

Donelson Bearman Caldwell & Berkowitz, Jackson

Verdict: Defense verdict on liability

Court: **Bolivar**

Judge: Johnnie E. Walls, Jr.

Date: 2-19-13

At the age of 70, Vida Cox, who suffered from Alzheimer's and dementia, was admitted to Bolivar Health & Rehabilitation Center by her children because they were having difficulty with her daily activities, as she required 24-hour care and

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supervision. The following month, she was transferred to Beverly Healthcare in Ruleville due to the advancement of her disease. She remained there until April 2001, when she was moved to Beverly's facility in Cleveland.

On 7-1-03, Beverly was sold or became known as Cleveland Nursing & Rehabilitation (Cleveland). At this time, Cox suffered pancreatitis, dementia, Alzheimer's, epilepsy, and had a history of pressure ulcers and urinary tract infections.

During her stay at the Cleveland facility, Cox had several hospital admissions. Suit against the facility was filed in 2004, and on 8-16-05, Cox was moved back to Bolivar Health & Rehabilitation, where she remained until her death.

The suit against Cleveland alleged that employees allowed Cox to be physically abused by her roommate during a physical altercation, that her anti-seizure medication levels were below therapeutic range, and that she suffered weight loss, dehydration and aspiration pneumonia. Plaintiff presented liability expert Ronald Myers, Family Medicine, Greenville. It also identified Becky Carroll, RN, Oakland, CA.

Cleveland defended that physical altercations between Alzheimer's patients are unpredictable and unpreventable. It also maintained that it had recommended the placement of a feeding tube in December 2003, but that her family refused until August 2005, which resulted in her weight loss. Cleveland's gerontological expert was Lou Ann Alexander, RNC, Wiggins. It also presented Dr. W. Mark Meeks, Jr., Geriatric Medicine, Madison.

A Cleveland jury returned a

verdict in favor of the defense, finding that plaintiff failed to prove the standard of professional practice for nursing staff. A judgment consistent with that verdict has been entered.

False Claims Act - Two sisters working as adjustors in the wake of Hurricane Katrina alleged in this False Claims Act lawsuit that State Farm falsely submitted a claim for payment to the government under the National Flood Insurance Program when in fact the home in question had been damaged by wind

U.S.A. Ex Rel (Rigsby) v. State Farm, 1:06-433

Plaintiff: C. Maison Heidelberg and Ginny Y. Kennedy, *Heidelberg Harmon*, Ridgeland and August J. Matteis, Jr., William E. Copley and Derek Y. Sugimura, *Weisbrod Matties & Copley*, Washington, D.C.

Defense: Robert C. Galloway, Gulfport, Jeffrey A. Walker, Phillip B. Abernethy and J. Kennedy Turner, III, Ridgeland and Michael B. Beers, Montgomery, AL, all of *Butler Snow O'Mara Stevens & Cannada*, Gulfport

Verdict: For plaintiff

Federal: **Gulfport**

Judge: Halil S. Ozerden

Date: 4-8-13

Hurricane Katrina struck the Gulf Coast on 8-29-05 and left a wide path of destruction. Important to this case, the hurricane struck the McIntosh home in Biloxi. The home is located on the waterfront and it suffered extensive damage.

The McIntoshes (Thomas and Pamela) had homeowners insurance with State Farm. They were also enrolled through State Farm in the National Flood Insurance Program

(NFIP). State Farm hired outside adjustors from the E.A. Renfroe Company to assist it in handling Katrina claims. Two sisters, Cori and Kerri Rigsby, both experienced adjustors working for E.A. Renfroe, were assigned to handle the McIntosh claim.

At an initial State Farm training session, the Rigsbys would recall they were told to consider Katrina a flood event. The plan then was to immediately pay damage claims up to the \$250,000 NFIP limits. State Farm would then be reimbursed by the government. The sisters would later describe they and other adjustors were trained to consider Katrina "a water storm" and adjust claims accordingly.

As the McIntosh claim was adjusted, this is exactly what happened. State Farm declared the home damaged by flood and paid the \$250,000 limits. It later submitted the claim to the U.S. for reimbursement pursuant to the NFIP. It also paid the McIntoshes \$36,000 for wind damage from an available \$500,000 policy.

This False Claims Act lawsuit followed. The Rigsby sisters proceeding on an *Ex Rel* status as Relators alleged State Farm had falsely submitted the McIntosh claim as flood damage. Why had they done so? To avoid having to pay out a wind claim that could not be reimbursed by the NFIP.

The plaintiffs pointed to a smoking gun "sticky note" of sorts. There was testimony that an initial engineering report indicated the home was damaged by wind. A State Farm bigwig, it was alleged, placed a "sticky note" on this first report that indicated the report was not be discussed. A second engineering report was prepared and it indicated

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