

# The Alabama Jury Verdict Reporter

The Most Current and Complete Summary of Alabama Jury Verdicts

May, 2022

Statewide Jury Verdict Coverage - Published Monthly

22 A.J.V.R. 5

*Alabama's Jury Verdict Reporter Since 2001*

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## Civil Jury Verdicts

Complete and timely coverage of civil jury verdicts in Alabama including circuit, presiding judge, parties, case number, attorneys and results.

### **Wrongful Death - A pregnant woman became involved in a car crash with a man who may have been intoxicated; the tortfeasor pled guilty to related criminal charges and went to prison, while plaintiff pursued a civil claim for punitive damages against the him for the death of her unborn child**

*Horton v. Francisco-Bartolo*, 16-902083  
Plaintiff: James R. Moncus, III,  
*Minner Vines Moncus, PLLC.*,  
Birmingham

Defense: Steven C. Corhern and  
Trey Bundrick, *Balch & Bingham,*  
*LLP.*, Birmingham

Verdict: \$3,700,000 for plaintiff  
(comprised entirely of punitive  
damages)

Circuit: **Jefferson**, 4-21-22

Judge: Tamara Harris Johnson

On 3-7-16, a pregnant Tiffany Horton was driving east on U.S. 280 in Jefferson County. At a point near the intersection of Rocky Ridge Road and Green Valley Road, Horton was involved in a collision with a vehicle being driven by 23 year-old Irwin Francisco-Bartolo.

The record provides no further details on how the crash happened. Also, although the record is unclear on this point, it appears that Francisco-Bartolo may have been intoxicated at the time. In any event, Horton's unborn child, later named Adley Horton, died due to injuries from the crash.

Francisco-Bartolo subsequently pled guilty to reckless manslaughter and first-degree assault due to his role in Adley's death. He was sentenced to 18 years in prison and currently resides in the Bibb Correctional Facility.

Horton filed suit against

Francisco-Bartolo and blamed him for causing the crash that resulted in Adley's death. Horton also named Elvira Bartolo Sabastien and Francisco Andres Francisco as co-defendants on the ground that they negligently entrusted their vehicle to Francisco-Bartolo.

It turned out that all defendants in this case were indigent. Sabastien and Francisco filed for and were granted discharge in bankruptcy. Horton thereafter dismissed them from the case. The litigation proceeded solely against Francisco-Bartolo on Horton's claim for Adley's wrongful death.

The record does not describe Francisco-Bartolo's defenses, if any. Interestingly, it appears that Horton pursued only punitive damages against him.

The case was tried for four days in Birmingham. Francisco-Bartolo had to be transported from the Bibb Correctional Facility to the courthouse in order to participate in the trial. The jury returned a verdict for Horton in the amount of \$3,700,000. The verdict form indicated that this figure was comprised entirely of punitive damages.

The court entered a judgment that reflected the verdict. However, it is unclear how much, if any, of the judgment will ever be collected.

### **Case Documents:**

[Jury Verdict](#)

[Final Judgment](#)

**Sexual Harassment - A nurse at a chicken processing facility alleged she was sexually harassed and assaulted by two HR managers (one male and one female) at a late-night off-site meeting – she sued her employer and alleged sexual harassment among other counts as well as pursuing state-law claims individually against the two HR managers – the plaintiff lost the sexual harassment claim against her employer but prevailed against the individual managers on a single state-law assault claim, the jury further finding the employer was not vicariously liable for that assault**

*Gray v. Koch Foods, et al.*, 2:17-595  
Plaintiff: Cynthia Forman Wilkinson, *Wilkinson Law Firm*, Birmingham; Heather Leonard, Birmingham; and Alicia K. Haynes, *Haynes & Haynes*, Birmingham

Defense: Rachel V. Barlotta and Sharonda C. Fancher, *Baker Donelson Bearman Caldwell & Berkowitz*, Birmingham, for Koch Foods; Marion F. Walker, *Fisher Phillips*, Birmingham, for Birchfield and McDickinson

Verdict: Defense verdict on liability on all claims against Koch Foods; \$50,000 for plaintiff against McDickinson and Birchfield on assault and battery only

Federal: **Montgomery**, 3-15-22

Judge: R. Austin Huffaker, Jr.

In describing this case in his summary judgment order, Judge Huffaker wrote that virtually every fact was disputed. It was, the court wrote, as if one party said the sky was blue, the other would describe it as red.

Against that backdrop, the plaintiff in this case, Ka'toria Gray, was hired in 2011 as a nurse by Koch-AL, a subsidiary of Koch Foods, that operates a chicken deboning plant. At relevant times in

this case, the plant's "complex" HR manager was David Birchfield. The number two in the HR department was Melissa McDickinson.

This case turned on a fateful late Saturday night "work" meeting in McDickinson's garage on 11-14-15. Gray alleged she was invited to the meeting (it was 11:30 at night) and reluctantly attended because she believed it was about so-called "work stuff." Gray alleged that at the meeting McDickinson propositioned her for sex in front of Birchfield. The HR managers then acted in concert and sandwiched Gray in an attempt to dance with her. There were also offensive touchings.

Gray further alleged that as she pulled away and rebuffed the advances McDickinson then fellated Birchfield. Gray fled into the house to the bathroom to collect herself before departing. Gray claims that a week later McDickinson propositioned her again at work. Gray rejected the advance.

McDickinson and Birchfield hotly contested this version of events. For his part Birchfield not only denied there was a sexual advance, he claimed that in fact he wasn't even in Montgomery at the time. Rather, he was visiting an old friend in faraway Florence, AL. McDickinson also denied the visit had any sexual component or that she had made an advance to Gray a week later, or in fact at any time.

In any case, Gray made complaints about these alleged events (particularly the 11-14-15 incident in the garage) to persons at Koch-AL. She later filed an EEOC complaint in 2016. Within a week of that complaint both McDickinson and Birchfield resigned. They have since married.

Gray filed this lawsuit against Koch-AL and presented a variety of counts. The first was that the conduct of the HR managers represented

severe and pervasive sexual harassment based on her gender. Gray additionally presented state-law counts against McDickinson and Birchfield (assault, invasion of privacy, and outrage) that sought to impose liability against the managers and additionally against Koch-AL on a vicarious liability theory.

Gray also advanced negligent and wanton training, supervision and retention claims against Koch-AL. These claims were based on allegations of misconduct by the two managers in the months leading up to the incident in the garage – particularly, that they had improperly propositioned other employees.

McDickinson's and Birchfield's defense was simple enough. They flatly denied the allegations regarding the incident in the garage. The alleged incident was fully made up by Gray, Birchfield explaining he wasn't even present at the time. The defendants also filed their own defamation and invasion of privacy counterclaim regarding Gray's allegations. They volitionally dropped the counterclaims in the weeks leading to trial. Thus, for the jury McDickinson and Birchfield stood solely as co-defendants with Koch-AL.

Koch-AL's defense was slightly more nuanced. It argued that whatever happened in the garage (who could know for sure?), it was a single incident and didn't rise to the level of being severe and pervasive. Moreover, there was proof that McDickinson had sexually harassed male employees too.

Given that McDickinson was thus as an equal opportunity harasser, the purported sexual harassment of Gray was not gender-based. Koch-AL also denied any vicarious liability on the state-law claims or that it acted improperly in retaining or supervising the two HR managers.

The jury returned a mixed verdict that found against the HR managers in part and that further fully exonerated Koch-AL. The jury first found that Gray was not sexually harassed because of her sex, and thus that claim was fully defeated. The jury did find for Gray on the assault and battery claim against both managers. However, the jury further concluded that Koch-AL was not vicariously responsible for that tortious conduct.

The jury also rejected Gray's invasion of privacy and outrage claim against the managers. Similarly, the jury said "no" for Koch-AL on negligent and wanton training. The jury then moved to damages.

Gray took \$5,000 against each manager in compensatory damages for the assault for a total of \$10,000. The jury assessed \$20,000 more (again to each manager) for a total of \$40,000. The final judgment then was for Gray for \$50,000 (\$25,000 to each manager) on the assault and battery claim. The managers were exonerated in the judgment on the other counts, the judgment also reflecting that Koch-AL had prevailed.

Gray has since moved for a new trial and argued among other things that the verdict was inconsistent. She asked how could the jury find the managers assaulted her, but that this did not represent sexual harassment? Gray has also moved to contact jurors. Both motions were pending at the time of his report.

#### Case Documents:

[Summary Judgment Order](#)

[Koch Foods Trial Brief](#)

[Plaintiff Trial Brief](#)

[Jury Verdict \(Liability\)](#)

[Jury Verdict \(Damages\)](#)

[Final Judgment](#)

[Plaintiff Motion for a New Trial](#)

**Auto Negligence - Plaintiff suffered a concussion and soft-tissue injuries in a rear-end crash; after plaintiff's underinsured motorist insurer rejected her policy limits settlement demand, plaintiff won an excess verdict that imposed on the insurer liability that was \$125,000 more than its policy limits**

*Mauldin v. Brandon, et al.*, 17-904972

Plaintiff: Matt Abbott, *Wettermark Keith, LLC.*, Birmingham

Defense: Mark D. Hess and Kevin D. Hon, *Hand Arendall, LLC.*, Birmingham

Verdict: \$200,000 for plaintiff

Circuit: **Jefferson**, 4-20-22

Judge: Carole C. Smitherman

On 11-28-15, Jan Mauldin, single mom and an Army veteran in her 40s, was driving on U.S. 280 in Birmingham. Mauldin's minor daughter, Autumn Mauldin, was riding as a passenger in the back seat. Behind the Mauldins and traveling in the same direction was a vehicle being driven by James Brandon.

Mauldin stopped for a red light at the intersection with Cahaba Park Circle. At just that moment Brandon became distracted by something on his windshield. As a result, he failed to notice that Mauldin had stopped. An instant later Brandon rear-ended the Mauldin vehicle at between 50 to 55 mph.

Mauldin hit her head on her steering wheel due to the impact and suffered a concussion. Her other injuries included bilateral ankle pain, as well as pain in her neck, back, and right shoulder. Mauldin was later diagnosed with a right shoulder labral tear and a partial thickness rotator cuff tear that will require future surgery.

Autumn was also injured when the trunk of the vehicle was pushed into the passenger compartment. Her injuries were to her upper back and neck. Although the record is unclear

about the amount of the Mauldins' respective medical expenses, it is known that the Department of Veteran's Affairs would later assert a lien of \$22,238.

Mauldin also lost her job due to her injuries. This, in turn, caused her to fall behind on her mortgage and resulted in her eviction from her home. Mauldin filed suit against Brandon, both on her own behalf and on behalf of Autumn as her mother and next friend.

Plaintiffs also made an underinsured motorist claim against their own insurer, State Farm. Plaintiffs' policy with State Farm provided UIM coverage of \$25,000. For his part, Brandon's insurance coverage totaled \$50,000. Thus, the total amount the Mauldins stood to recover prior to trial was \$75,000.

The identified plaintiffs' IME was Dr. P. Lauren Savage, Jr., Orthopedics, Birmingham. It was Dr. Savage's opinion that Mauldin's neck, back, and right shoulder injuries were caused by the crash. Dr. Savage stated that Mauldin's ankle injury was pre-existing but was made symptomatic by the crash.

Autumn settled her claim prior to trial. Also, State Farm opted out of the case. The litigation proceeded thereafter solely on Jan Mauldin's claims against Brandon. He defended the case and minimized Mauldin's claimed damages.

Mauldin also attempted to settle her claim prior to trial for the available policy limits. However, State Farm's final settlement offer to her was only \$32,000. In response, Mauldin informed State Farm that she would seek an excess verdict and that if successful, State Farm would be liable for the full amount.

The case was tried in Birmingham. The jury returned a verdict for Mauldin and awarded her damages of \$200,000. This award was \$125,000 in excess of the amount

State Farm would have paid had they acceded to Mauldin's settlement demand.

The court entered a judgment for Mauldin in the amount of \$200,000. As described above, State Farm will be liable for the full amount of the judgment minus Brandon's \$50,000 policy limits.

**Case Documents:**

[Jury Verdict](#)

[Final Judgment](#)

**Underinsured Motorist - Plaintiff was injured when he was rear-ended by a semi tractor-trailer on the interstate; after plaintiff dismissed his claims against all other co-defendants, he pursued a UIM claim against his own insurer and won a substantial verdict**

*Nall v. State Farm*, 18-900499

Plaintiff: Eaton G. Barnard and Joseph Dennis, *Taylor Martino, P.C.*, Mobile

Defense: James W. Killion, *Killion & Associates, P.C.*, Mobile

Verdict: \$2,474,923 for plaintiffs (comprised of \$2,249,930 for Christopher Nall and \$224,993 for Amy Nall)

Circuit: **Mobile**, 3-23-22

Judge: Ben H. Brooks

On 5-4-17, Christopher Nall was driving a 2004 Chevrolet Avalanche sport utility pickup truck as he traveled on I-65 in Mobile County. Behind Nall in traffic was a semi tractor-trailer owned by H.G. Companies & Assurance, LLC. and occupied by Jose Padillo MaGallan (a resident of Mexico) and Jorge Guerra-Garcia. The record is unclear on the issue of which of the two men were driving the rig. In any event, MaGallan and Guerra-Garcia were on the job for their employer, Truck King Transport.

At a point between Celeste Road and Hwy 158, the tractor-trailer rear-ended Nall. The record does not

reveal the nature of Nall's claimed injuries. Nor does the record reveal the amount of his incurred medical expenses.

Nall filed suit against MaGallan, Guerra-Garcia, Truck King Transport, and H.G. Companies & Assurance. Nall blamed MaGallan and Guerra-Garcia for crashing into him, and he targeted Truck King and H.G. Companies on counts that included vicarious liability, wantonness, and negligent and wanton entrustment. Regarding the latter count, Nall noted that MaGallan had an expired driver's license that had been issued in Mexico.

Additionally, Nall presented an underinsured motorist claim against his own insurer, State Farm. Nall's wife, Amy Nall, also presented a derivative claim for her loss of consortium.

Plaintiffs later dismissed their claims against all defendants except for State Farm. The litigation continued thereafter solely on the underinsured motorist claim and on Amy's consortium claim. State Farm defended the case and minimized plaintiffs' claimed damages.

The case was tried for three days in Mobile. The jury deliberated just fifty-six minutes before returning a verdict for plaintiffs that awarded damages of \$2,249,930 to Christopher. The jury went on to award damages of \$224,993 to Amy on her consortium claim.

That brought plaintiffs' award to a combined total of \$2,474,923. The court scheduled an evidentiary hearing to determine the appropriate set-off to apply. Plaintiffs also filed a post-trial motion for costs of \$30,004. At the time the AJVR reviewed the record, both matters were still pending.

**Breach of Contract - Three sets of plaintiffs each purchased homes built by the same construction company, and each claimed to have discovered various defects with their respective homes after taking possession; plaintiffs alleged that the builder's failure to repair the defects constituted a breach of contract as well as a breach of warranty**

*Veal, et al. v. Vintage Homes, LLC.*, 08-000317

Plaintiff: H. Arthur Edge, III and David L. Horsley, *Arthur "Art" Edge, III, P.C.*, Birmingham

Defense: Travis I. Keith and Robert E. Hawthorne, III, *Gaines Gault Hendrix, P.C.*, Birmingham

Verdict: Defense verdict

Circuit: **Jefferson**, 1-13-22

Judge: Jim Hughey, III

Between 2005 and 2008, a company called Vintage Homes, LLC. constructed a number of homes in the Ross Bridge development in Hoover. Among those for whom Vintage constructed homes were David and Mary Veal, John and Maria Fandetti, and Charles and Nicole Purter.

The Veals entered into a home sale agreement with Vintage on 11-4-05 and took occupancy on their new home on 9-1-06. The Fandettis entered into their agreement with Vintage on 2-14-06 and took occupancy on 1-16-07. The Purters entered into their agreement with Vintage on 11-5-05 and took occupancy on 6-22-06.

The Veals, the Fandettis, and the Purters each entered into a limited warranty agreement with Vintage. This agreement limited Vintage's obligations and required the company to repair, replace, or pay the reasonable cost of repairing or replacing certain latent defects in the homes provided that Vintage receive notice of the alleged defects within

one year of the purchasers taking occupancy.

The Veals, the Fandettis, and the Purters all claim they discovered various defects in their respective homes shortly after taking occupancy. They each claim they notified Vintage of those alleged defects within the one-year time period. Vintage denied the claims.

A large number of parties who were similarly situated filed suit against Vintage and other defendants and alleged numerous counts relating to the construction of their respective homes. There was ultimately a shake-out that simplified the case considerably.

When the dust finally settled, the only plaintiffs remaining were the Veals, the Fandettis, and the Purters. The only defendant remaining was Vintage Homes, LLC., and the only counts remaining were those for breach of contract and breach of express warranty.

Each of the plaintiffs alleged specific defects with their respective homes. The Veals alleged problems with their windows and doors. Those problems included improper sealant around the perimeters and brick binding. According to the Veals, Vintage was required to pay for replacing all of their windows. The Fandettis also alleged problems with their windows, including wood rot and deterioration of window components and brick binding. Like the Veals, the Fandettis also claimed that Vintage was required to pay for the replacement of all their windows.

Finally, the Purters alleged problems with the wood framing installed at or below grade. They claimed that Vintage was obligated to pay the reasonable cost of replacing the framing as well as other components of the home that

would need to be replaced in order to complete the framing repair.

Vintage defended the case and denied that its workmanship had been in any way substandard. Although Vintage seems to have acknowledged at least some problems with the framing of the Purters' home, the company denied responsibility for any of the other claimed defects.

Vintage also denied having been given proper notice of the various alleged defects within the required time period. Finally, Vintage argued that even if the alleged defects had existed during the warranty period, the total replacement of the relevant components was neither necessary nor proper.

The case was tried for four days in Birmingham. During closing arguments, the Veals asked the jury to award them damages of \$75,000, the Fandettis asked for an award of \$78,500, and the Purters asked for \$173,544.

The jury returned a verdict for Vintage Homes, LLC. on all counts. The court entered a defense judgment. Prior to trial, the Veals made a final settlement demand of \$50,000. The Fandettis' final settlement demand was also \$50,000, and the Purters' final settlement demand was \$78,000.

**Underinsured Motorist - A drunk driver lost control of his vehicle and crashed into plaintiff as she sat in her vehicle in a driveway just a few feet off a rural road; after settling for the tortfeasor's policy limits, plaintiff sought further compensation from her UIM carrier**

*Evans v. State Farm*, 20-900063

Plaintiff: Alan B. Lasseter, *Lasseter Law Firm, P.C.*, Birmingham

Defense: Ralph D. Gaines, III, *Gaines Gault Hendrix, P.C.*, Birmingham

Verdict: \$60,000 for plaintiff (comprised entirely of compensatory damages and \$0 punitives)

Circuit: **Fayette**, 3-15-22

Judge: Samuel W. Junkin

In the evening of 4-3-20, Kimberly Evans had left her job as an RN in Birmingham and was on her way home. She was driving a 2016 Chevrolet Traverse SUV on Hwy 171 in rural Fayette County. At a point near the intersection with C.R. 121, Evans noticed a pony in a pasture near the side of the road that appeared to be entangled in a barbed wire fence.

Concerned for the pony's safety, Evans decided to try to notify the owner. She continued down the road for about three quarters of a mile and then turned around and came back to the pony's location. There were two driveways nearby, and Evans pulled into one of them that led to a church.

Evans sat in her car for a moment and looked around to see if she could determine which nearby residence might belong to the pony's owner. She quickly concluded that the driveway she needed to pull into was a bit farther down the road.

Evans planned to exit the driveway she was in and then drive to the residence she'd selected. However, there was a Dodge Dakota pickup truck heading south down the road toward her location. Evans decided to wait for the pickup to

pass before she would exit the driveway.

The pickup was being driven by James Gilliland. It turned out that Gilliland was drunk at the time. His blood alcohol level would later be measured at 0.16 – i.e., twice the legal limit. As he approached Evans's position, Gilliland lost control of his truck, drifted across the centerline and the opposing lane of traffic, went off the road and into a ditch, and then crashed into a culvert that was just to the left of Evans's SUV.

Immediately after crashing into the culvert, Gilliland continued on and crashed into the driver's side door and front quarter panel of Evans's vehicle. The force of the impact pushed Evans's vehicle some twenty-five feet away where she came to rest in a ditch.

In the aftermath of the crash Evans was taken by ambulance to a local hospital where she was diagnosed with a fractured left collarbone. Within 24 hours she underwent surgery that included the implantation of hardware. Sixteen months later Evans had a second surgery to remove the hardware. Her medical expenses were slightly in excess of \$34,000.

Meanwhile, Gilliland was charged with DUI as well as assault and battery. He pled guilty and was sentenced to ten years in prison. However, that sentence was reduced to two years, and even then Gilliland was not actually jailed. Instead, he was allowed to continue working, though he was required to check in periodically with the Department of Corrections.

Gilliland was insured by Alfa Insurance under a policy that carried liability limits of \$50,000. Evans was insured under three stacked policies with State Farm. Alfa tendered Gilliland's policy limits, and State Farm consented to the settlement.

Evans subsequently filed suit against State Farm on an underinsured motorist claim. The record does not reveal the amount of her coverage. In any event, Evans did not seek reimbursement for her medical expenses or lost wages.

The damages for which Evans sought reimbursement were pain and suffering and permanent injury. In addition to compensatory damages, Evans also sought punitive damages. State Farm defended the case and minimized Evans's claimed damages.

The case was tried for two days in Fayette. Forty-eight hours before trial, State Farm offered to settle the case for \$37,886. Evans declined the offer. At the trial itself, State Farm called no witnesses. The jury returned a verdict for Evans and awarded her \$60,000 in compensatory damages. The jury rejected punitive damages.

The court applied a set-off for the \$50,000 payment Evans had received from Alfa Insurance and entered a reduced judgment for Evans in the amount of \$10,000. The judgment has been satisfied. The court also granted Evans's post-trial motion for costs in the amount of \$5,361. The case is now closed.

#### **Case Documents:**

[Jury Verdict](#)

**Mortgage Fraud - The plaintiff, who was facing foreclosure, called her mortgage servicer and was told the foreclosure was "suspended temporarily" – five days later the bank foreclosed and the plaintiff then sued and alleged the "suspended temporarily" remark represented fraud – the jury rejected two fraud counts but found for plaintiff on a "mistaken or innocent" misrepresentation claim**

*Harbin v. Roundpoint Mortgage*, 2:15-1069

Plaintiff: Jason L. Yearout, *Yearout & Traylor*, Birmingham; and M. Stan Herring, *Watts & Herring*, Birmingham

Defense: Shaun K. Ramey, Birmingham and T. Dylan Reeves, Nashville, TN, both of *McGlinchey Stafford*

Verdict: \$12,500 for plaintiff

Federal: **Birmingham**, 2-2-22

Judge: Sharon L. Blackburn

Allison Harbin owned a home in Helena, AL on Stonecreek Way. She had a mortgage on the property from First Guaranty Mortgage. At relevant times in this case, the loan was serviced by Roundpoint Mortgage.

Harbin fell behind on her loan in 2014, and by the Spring of 2015 the process of foreclosure was underway. Harbin entered a forbearance agreement that provided she make certain payments. That agreement was to end on 6-1-15. Two days later the home was set to be sold at foreclosure to the highest bidder.

Harbin called Roundpoint Mortgage on 5-29-15 (five days before the foreclosure) and sought to apply for a loan modification. She spoke to a loan servicer, Daniel Gerstenfeld. Gerstenfeld indicated to Harbin that it looked like the foreclosure was "temporarily suspended."

Harbin who was consulting with a

bankruptcy attorney and who was prepared to file bankruptcy, relied on this promise. She assumed she had more time to prepare her loan modification. Harbin even followed up with Gerstenfeld by email to confirm the suspension.

As it happened, the call had been recorded, and so there was no doubt that Gerstenfeld had made the “temporarily suspended” remark. However, he later explained he meant the application for the loan modification was temporarily suspended as the forbearance agreement was still in effect. The agreement would end on 6-1-15.

It turned out the home was foreclosed on 6-3-15 as scheduled without Harbin’s knowledge. She had no opportunity to file bankruptcy or otherwise avert the foreclosure. She found out about the sale a few weeks later. There was evidence she suffered compensatory damages associated with the foreclosure as well as suffering emotional distress.

Harbin sued Roundpoint Mortgage and advanced three claims to trial. The first two were predicated on fraud, namely that Gerstenfeld had either made an intentional misrepresentation and/or made a reckless one, inducing her with the “temporarily suspended” remark to not seek bankruptcy. Harbin advanced a third count that the remark was a “mistaken or innocent” misrepresentation. The heart of her case was that Gerstenfeld lied or acted recklessly in telling her the foreclosure was suspended.

If Harbin prevailed on any of the three counts she could take compensatory damages associated with the foreclosure as well as damages for emotional distress. If the jury found for her on either of the first two fraud counts, it could also impose punitives. A finding for

Harbin on “mistaken or innocent” misrepresentation would not trigger punitive damages.

The then-presiding David Proctor initially granted summary judgment for Roundpoint Mortgage in March of 2018. Harbin took an appeal to the 11<sup>th</sup> Circuit. The appellate court reversed in March of 2019 (a per curiam opinion from Judges Tjoflat, Jordan, and Rosenbaum) and held jurors could find for Harbin that the temporary suspension referred to the foreclosure and not the forbearance agreement.

The case returned to the trial court, and in February of 2020, it was reassigned to Judge Blackburn who would take it to trial. Roundpoint Mortgage defended on the merits and argued that Gerstenfeld (as noted above) was discussing the forbearance agreement and not the foreclosure.

The jury’s verdict was mixed on fault. On both the intentional and reckless misrepresentation counts, the jury found that Gerstenfeld made a false representation and Harbin relied on it. However the defense was exonerated as the jury concluded this failed to cause harm to Harbin. However, on the third “mistaken or innocent” misrepresentation count, the jury found for Harbin. It awarded her \$12,500 in compensatory damages but rejected any award for mental anguish. The court’s final judgment reflected the mixed verdict.

**Case Documents:**

[11<sup>th</sup> Circuit Opinion](#)

[Pretrial Order](#)

[Final Judgment](#)

The Alabama Jury Verdict Reporter is published at 9462 Brownsboro Road, No. 133 Louisville, Kentucky 40241; Denise Miller, Editor; Sandra Tharp, Editor Emeritus, Aaron Spurling, Editor and Shannon Ragland, Associate Editor. Phone at 1-866-228-2447. Annual subscriptions are \$349.00 per year.

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