

The Alabama Jury Verdict Reporter

The Most Current and Complete Summary of Alabama Jury Verdicts

March, 2008

Statewide Jury Verdict Coverage - Published Monthly

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Unbiased and Independently Researched Jury Verdict Results

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Premises Liability - A patron at a greyhound racing park suffered career-ending spinal injuries when he visited a restroom in the park and slipped and fell on water that had leaked onto the floor from the urinals

Lawrence v. Macon County Greyhound Park, Inc., 05-23

Plaintiff: Champ Lyons, III, *King Horsley & Lyons, LLC.*, Birmingham; Jock M. Smith and Brian P. Strength, *Cochran Cherry Givens & Smith, P.C.*, Tuskegee

Defense: Stanley F. Gray and Fred Gray, *Gray Langford Sapp McGowan Gray & Nathanson*, Tuskegee

Verdict: \$1,500,000 for plaintiff (allocated \$1,000,000 compensatory and \$500,000 punitive)

Circuit: **Macon**, 2-14-08

Judge: Tom F. Young, Jr.

Since 1984, the Town of Shorter, approximately twenty-five miles east of Montgomery, has been home to a dog t

rack known as the VictoryLand-Macon County Greyhound Park. On 2-3-03, one of the patrons at the park was Ronnie Lawrence, then age 53 and a trim carpenter from the City of Clanton in Chilton County.

At some point during Lawrence's visit to the park that day, he felt a need to answer the call of nature.

Accordingly, Lawrence made his way to the men's room on the third floor. While there, he slipped and fell on water that had leaked onto the floor from the urinals.

Lawrence was badly hurt in the fall and suffered multiple spinal injuries. He later underwent two neck surgeries, and his medical expenses climbed to \$101,000. Despite the surgeries, Lawrence continues to suffer from a lower back condition that his doctors say is permanent. As a result of his injuries, Lawrence's career as a carpenter is over. He will never work again.

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2007 Year in Review

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A summary of every attorney who tried a reported case from 2002 to 2007, sorted and included a brief description of the case type, county, party represented and result. A separate report summarizes the lawyers and law firms that tried the most cases.

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Who made the list in 2007? Also included are six-year totals.

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**In this snapshot preview of the 2007 Year in Review,
the largest verdicts from 2002 to the present are summarized.**
For the full report see the Million Dollar Verdict Report at page 6 in the 2007 Year in Review.

The 2002-2007 Million Dollar Verdicts at a Glance
*The one hundred results are sorted in order from largest to smallest
(2007 results in bold)*

<u>County</u>	<u>Case#</u>	<u>Verdict</u>	<u>Description</u>
Macon Plaintiff:	1065 Jock Smith and Brian Strength	\$1,620,000,000	An insurance agent pocketed premiums -- it was later learned he'd done the same thing before
Fed-Mont Plaintiff:	947 Joe Whatley, Randy Beard and others from out of state	\$1,281,690,000	A class of cattle ranchers alleged a meat packing company unfairly set prices. [The trial court later set aside this verdict.]
Bullock Plaintiff:	421 Greg Allen, Jere Beasley, Lynn Jinks and Walter McGowan	\$122,000,000	A front-seat passenger in a GM sedan sustained a serious head injury in a head-on offset crash. Plaintiffs criticized weakness in the structure of the car. The jury awarded plaintiff \$20,000,000 in compensatory damages, five times that in punitives. This plaintiff is the son of the sitting circuit court clerk in Bullock County.
Hale Plaintiff:	337 Robert Prince, Charles Pearson, Gregory Pearson, Andrew Smithart and James Seale	\$43,800,000	The Chandler family near Moundsville alleged a pipeline company contaminated the area's groundwater with gasoline. Punitives of \$37,000,000 were assessed.
Jefferson Plaintiff:	109 Michael Hardman, James Wettermark and Everette Price	\$34,500,000	A railworker fell from a bridge, becoming a C-5 quadriplegic and losing both his legs. The verdict in this FELA case was subject to a \$14,000,000 - \$7,000,000 Hi-Lo agreement.
Tuscaloosa Plaintiff:	1311 Thomas T. Gallion, III; C. Delaine Mountain; H. Lewis Gillis; and Tyrone C. Means	\$30,000,000	A former assistant coach and recruiting coordinator for the University of Alabama's football program claimed his reputation was tarnished and his employment prospects damaged by statements made about him by a football recruiting analyst.
Shelby Plaintiff:	1374 David H. Marsh and David W. Steelman	\$29,000,000	A man was killed in a head-on collision with a dump truck that crossed the center line; following the crash the dump truck driver tested positive for methamphetamine, and the truck itself turned out to have mechanical defects that should have kept it off the road.
Dale Plaintiff:	769 J. Farrest Taylor, J. Keith Givens and Shannon Saunders	\$25,000,000	Brian Dowling, a prominent Dothan attorney, was killed while jogging by a drunk driver who just left a strip joint, Toy Box Too. In this dram shop action, the bar put up only a minimal defense.
Jefferson Plaintiff:	14 Don Wiginton, Chris Cochran, Lee Pittman, William Traylor and John Watts	\$24,500,000	Four killed in a rear-end interstate MVA. While the individual plaintiffs took assorted sums for compensatory damages, the four estates shared a \$15,000,000 punitive assessment against the trucking defendant.
Mobile Plaintiff:	929 George Finkbohner, III and George W. Finkbohner, Jr.	\$20,000,000	A Bell South lineman was fatally electrocuted when he came into contact with an abandoned but still electrified line

In this lawsuit, Lawrence blamed the Macon County Greyhound Park for allowing the water to leak onto the restroom floor from the urinals and failing to warn him of the hazard. The park defended the case and claimed it had no notice of the presence of water on the restroom floor.

Lawrence responded to this defense with the testimony of a witness in the person of Eddie Jefferson, a longtime patron of the dog park. In fact, it was Jefferson who came to Lawrence's aid immediately after Lawrence fell.

According to Jefferson, the urinals in the third-floor men's room had been leaking water onto the floor every day for many years. Yet the maintenance crews did not clean the floors or repair the urinals.

Jefferson himself complained to the management about the situation at least fifty times prior to Lawrence's fall. However, Jefferson says the management simply brushed off his concerns with the rhetorical question, "Don't you ever get tired of complaining?"

The case was tried for three days in Tuskegee. The jury returned a verdict for Lawrence and awarded him compensatory damages of \$1,000,000. To that figure was added another \$500,000 in punitive damages. At the time the AJVR reviewed the record, the court had not yet entered a judgment.

Auto Negligence - Defendant admitted fault for an intersection crash in Montgomery County

Scofield v. Carr, 06-1132

Plaintiff: Thomas P. Melton, IV, Birmingham

Defense: Ronald J. Gault, *Gaines Wolter & Kinney, P.C.*, Birmingham

Verdict: \$75,000 for plaintiff

Circuit: **Montgomery**, 8-13-07

Judge: Johnny Hardwick

On 5-7-04, Mary Scofield, then age 30, was driving near the intersection of Atlanta Highway and Bell Road in Montgomery County. At the same time, Brenda Carr was also driving in the same area.

Upon reaching the intersection, Carr attempted to make a turn. She did so in Scofield's path, and the two collided. The record does not reveal the nature of Scofield's injuries or the amount of her

medical expenses.

Scofield filed suit against Carr and blamed her for the crash. Scofield also filed an uninsured/underinsured motorist claim against her own insurer, State Farm. However, State Farm later opted out of the case. Carr admitted liability and defended the case on causation and damages.

The case was tried in Montgomery. The jury returned a verdict for Scofield and awarded her damages of \$75,000. The court entered a judgment that reflected the verdict.

Assault - A case of road rage escalated into a collision after a Toyota was momentarily forced off the road by a tractor-trailer and the Toyota driver then "flipped the bird" to the truck driver

Williams v. Alan Farmer Trucking, Inc., et al., 05-851

Plaintiff: Bruce L. Gordon and Brock G. Murphy, *Gordon Dana Still Knight & Gilmore, LLC.*, Birmingham

Defense: John W. Clark, Jr., *Clark Hair & Smith, P.C.*, Birmingham

Verdict: Defense verdict

Circuit: **Jefferson**, 1-18-08

Judge: Dan C. King, III

In the early evening of 9-15-04, Terry Williams was driving a 1987 Toyota Corolla, heading south on I-59 in Birmingham. Riding with him as passengers that day were his wife, Stacie Williams, and their one year-old daughter, Madison.

According to the Williamses, they were traveling in the left lane of the highway when at a point between Allison Bonnett Boulevard and Jay Bird Road, a tractor-trailer owned by Alan Farmer Trucking, Inc. and being driven by James Carthen began to move into their lane. Carthen would later claim he was unaware of the Williams' presence at that point.

Due to Carthen's lane-changing maneuver, the Williamses were forced off the road and onto the grassy median in order to avoid colliding with the tractor-trailer. However, Terry immediately got back on the road, sped up, and crossed in front of Carthen.

According to Carthen, while Terry was crossing in front of him, Terry expressed his displeasure by extending his arm out the window and "flipping

Carthen the bird." This insult apparently enraged Carthen.

The Williamses claim that Carthen reacted by increasing his speed and coming up rapidly behind them. Terry then applied his brakes, but Carthen failed to do likewise. Instead, he rear-ended the Williamses and actually pushed their car some sixty to seventy yards.

Eyewitnesses traveling behind the two vehicles observed the Williamses begin to fishtail before the car managed to separate from the truck. The Williamses claim Carthen then rammed his truck into the side of their car before moving past them.

At that point both Terry and Carthen pulled to a stop some distance apart in the median. The two men got out of their respective vehicles, and the trouble seemed about to escalate still further.

Carthen, as it turned out, was a rather large man and apparently black. Terry claims, and eyewitnesses confirm, that Carthen began running after him, waving his arms, and shouting dire threats. Among the threats were the following: "I'm going to fucking kill you!" "I'm going to beat your skinny white ass!" "I'm going to kill your fucking ass!" and "I'm going to kill you, you white mother-fucker!"

Terry made a snap decision that he had best keep away from Carthen. Accordingly, Terry ran into the middle of the interstate among oncoming traffic and began pleading with other motorists to call the police.

Help eventually arrived, and Carthen was cited for reckless endangerment and menacing. The record does not reveal the disposition of the criminal case against him. In any event, the Williamses jointly filed suit against Carthen and his employer, Alan Farmer Trucking.

In their complaint, the Williamses alleged a variety of counts. However, the court later granted defendants summary judgment on all counts except negligence, wantonness, and assault. The negligence and wantonness claims applied to all three plaintiffs, while the assault count applied only to Terry.

Carthen and Alan Farmer Trucking defended the case and offered their own explanation of what happened. At the time Carthen made his initial lane change, he did not see the Williamses,

so he was not convinced he had actually run them off the road. However, he acknowledged that such a thing was not impossible.

More importantly, from Carthen's point of view, the Williamses simply appeared out of nowhere, sped past him while Terry made a rude hand gesture out the window, and then hit their brakes directly in front of him.

Based on that account, defendants blamed the entire incident on Terry. Furthermore, defendants noted that despite all his angry threats, Carthen never actually touched Terry, and none of the three plaintiffs had any physical injuries.

The case was tried for five days in Bessemer. The jury returned a verdict that exonerated Carthen and Alan Farmer Trucking. The court followed with a consistent defense judgment.

Trademark Infringement - A not-for-profit sheep hunting club alleged another similar organization violated its trademark by giving out an award with the same name

Grand Slam Club v. International Sheep Hunters Association et al.,
2:06-4643

Plaintiff: Linda A. Friedman and Joseph B. Mays, Jr., *Bradley Arant Rose & White*, Birmingham

Defense: Patricia Clotfeller, James F. Barger, Jr. and Harriet Thomas Ivy, *Baker Donelson Bearman Caldwell & Berkowitz*, Birmingham and Paul R. Franke, II, *Franke Greenhouse List & Lippitt*, Denver, CO

Verdict: \$2,000,000 for plaintiff

Federal: **Birmingham**, 1-31-08

Judge: Virginia Hopkins

The Grand Slam Club/Ovis is a non-profit organization that gives out awards and makes other recognitions in the field of wild sheep hunting. [Wild goats are hunted too.] Its awards are denoted with a Grand Slam title. That name, for the purposes of sheep and goat hunting, has been trademarked.

This case concerned Grand Slam and two others similar organizations, International Sheep Hunters Association and Foundation for North American Wild Sheep (hereinafter "defendants"). Beginning in 1995, Grand Slam and the defendants entered cooperative agreements regarding annual

conventions. In 2004 the agreement ended and acrimony began.

Grand Slam took umbrage that the defendants were giving out awards with the Grand Slam title and otherwise interfering with their convention business. In this lawsuit, Grand Slam alleged several counts against the defendant, namely, a trademark violation, copyright infringement, contract and tortious interference. If prevailing, plaintiff sought an award of both compensatory and punitive damages.

[**Ed. Note** - While the cases were prosecuted against the defendants jointly in their individual names and thus were slightly nuanced, for purposes of this report, the defendants have been treated as a unified party. Because of the complexity of this case and the multiple claims involved, especially interested readers and sheep herders are advised to review the lengthy court record.]

The defendants denied any trademark or copyright violation, explaining that the term *grand slam* was merely a description of a sporting event and thus not subject to trademark protection. It also diminished the notion of damages, pointing to proof that since the purported infringement, Grand Slam has been growing. The defendants also presented their own counterclaims for contract and tortious interference.

The verdict was complex, but for Grand Slam on virtually every count. It prevailed on the trademark violation, copyright infringement, contract and tortious interference. The plaintiff took a total award of \$1,600,000 in compensatory damages, plus \$400,000 more in punitives, the verdict totaling \$2,000,000. The counterclaims were rejected. A consistent judgment was entered, the court also ordering an injunction.

Auto Negligence - Plaintiff suffered a fractured kneecap in a failure-to-yield crash in Mobile; defendant admitted fault, and the jury deliberated only the issues of causation and damages

Miller v. Gainey, 07-900130

Plaintiff: Bryan E. Comer, *Cunningham Bounds Crowder Brown & Breedlove, LLC.*, Mobile

Defense: Celeste Patton Armstrong, *Varner & Associates*, Birmingham

Verdict: \$40,000 for plaintiff

Circuit: **Mobile**, 11-29-07

Judge: Sarah Hicks Stewart

In the morning of 4-27-06, Melanie Miller was driving south on Demetropolis Road in Mobile County. At the same time, Jason Gainey was driving west on Burma Road. At the intersection of the two roads, Gainey stopped and looked southward for traffic.

Gainey failed to notice Miller's approach, so he proceeded into the intersection. He did so in Miller's path, and an instant later, the two collided. Miller sustained a displaced fracture of her right kneecap, as well as various cuts and bruises, due to the crash. Her medical expenses are unknown.

In this lawsuit, Miller blamed Gainey for failing to yield the right-of-way, pulling into her path, and causing the crash. She also made an uninsured/underinsured motorist claim against her own insurer, Progressive Specialty Insurance Company.

Gainey admitted fault for the crash. Based in part on that admission, the court granted Miller a partial summary judgment on the issue of liability. The case thus went to the jury only on the issues of causation and damages.

The Mobile jury that heard the case returned a verdict for Miller in the amount of \$40,000. The court entered a consistent judgment, and it has been satisfied. Prior to trial, Gainey made an Offer of Judgment in the amount of \$45,100. The record does not indicate whether Gainey filed any post-trial motions.

Conversion - A woman hired a moving company to transport her belongings to her new apartment; before unloading the truck at the destination, the moving company made repeated, unilateral increases in the cost of the move and then refused to release the woman's possessions

Turner v. Jolley, et al., 04-400

Plaintiff: Charles A. Burkhart and Tyrell F. Jordan, *Balch & Bingham, LLC.*, Birmingham

Defense: Dick D. Nave, Birmingham

Verdict: \$605,000 for plaintiff (allocated \$105,000 compensatory and \$500,000 punitive)

Circuit: **Jefferson**, 6-13-07

Judge: Tennant M. Smallwood, Jr.

In early April of 2002, Lorraine Turner needed to move out of her one-bedroom apartment in Birmingham and into another apartment located less than a mile away. Turner felt herself unable to move all of her belongings by herself, so she set about trying to find a professional mover to do the job for her.

On 4-3-02, Turner phoned the Bessemer offices of a moving company called A-Able Jefferson-Shelby Movers. The company is apparently jointly owned by Ralph and Brian Jolley. During the conversation, Turner was quoted a price of \$150 for the entire job. That price included two hours of labor at \$60 per hour, plus another half hour for travel. She was also told she could pay the cost either in cash or by credit card or personal check.

Sometime later, Turner sought another quote from what she assumed was a different moving company with a similar name. This company was called simply Jefferson-Shelby Movers, and they offered to do the job for the same price as A-Able. In the end, Turner decided to hire the second company, Jefferson-Shelby.

In the morning of 4-10-02, the movers arrived at Turner's apartment to begin their work. Interestingly, although Turner thought she had hired Jefferson-Shelby to do the job, it was Brian Jolley of A-Able who showed up on her doorstep.

Brian presented Turner with a contract to sign, but she noticed the "job hours" section had not been filled in. When she brought this omission to Brian's attention, he assured Turner that the entire operation would take only two

hours.

Based on the price quote she had previously gotten from the company, Turner had arranged to have on hand a total of \$180 in cash. This should have been more than enough to cover the \$150 cost of the move.

In due course, all of Turner's possessions were loaded onto the moving truck and transported to her new apartment. Upon arrival, however, and before unloading the items, Brian demanded that Turner pay him \$385 for the move.

Turner explained she only had \$180 on her, but Brian would not accept it. Instead, he said he needed to get a personal check for the balance. Not knowing what else to do, Turner stated she needed to go down the street to a Texaco station to phone her ex-husband and ask him to bring the required check.

Before she headed out for the Texaco station to make her call, Turner asked Brian to wait for her to return. According to Turner, Brian did in fact agree that he and his crew would wait. However, when Turner returned some twenty minutes later, Brian, his moving crew, and the truck containing \$3,500 worth of Turner's belongings were gone.

Shortly thereafter, Turner phoned A-Able's offices and explained she was now in a position to pay the full amount Brian had demanded. Instead, A-Able unilaterally raised the price again, this time to \$487. When Turner's ex-husband, Michael Turner, arrived and attempted to pay, A-Able refused to accept his personal check.

Several days later Turner again phoned A-Able and spoke with Ralph Jolley in an effort to work out a solution to the problem. According to Turner, Ralph was extremely rude to her on the phone, and he jacked up the price yet again, this time to \$700. Thereafter, Turner called A-Able several more times seeking a resolution. In response, A-Able simply hung up on her twice and still has not returned her belongings.

Turner filed suit against A-Able Jefferson-Shelby Movers, Ralph Jolley, and Brian Jolley on a laundry list of counts. They included conversion; trespass to chattels; misrepresentation; wantonness; breach of contract; fraud; replevin; negligent and wanton hiring, supervision, and training; mental

anguish; and negligence.

A-Able and the Jolleys defended the case and made a general denial of all of Turner's claims. They also noted that due to the accumulation of various fees and costs associated with storage of Turner's belongings, she owed the company a total of \$4,056 as of January of 2006.

The case was tried in Bessemer. The jury returned a verdict for Turner and awarded her compensatory damages of \$105,000. To that amount was added another \$500,000 in punitive damages. That brought her total award to \$605,000. The court entered a judgment that reflected the verdict.

Post-trial defendants filed a motion for remittitur. Unfortunately, the record is unclear as to the court's ruling on that motion. In any event, defendants subsequently satisfied the judgment.

Auto Negligence - Two men attempting to tow a disabled car were injured when the car being towed was rear-ended in heavy traffic and was pushed into the rear of the lead car

Williams v. Sherman, 05-196

Plaintiff: M. Adam Jones, *Morris Cary Andrews Talmadge & Jones, LLC.*, Dothan

Defense: Alex L. Holtsford, Jr. and S. Anthony Higgins, *Nix Holtsford Gilliland Higgins & Hitson, P.C.*, Montgomery

Verdict: \$31,000 for plaintiffs (allocated \$18,000 for Ned Williams and \$13,000 for Rodney Williams)

Circuit: **Houston**, 2-15-07

Judge: Jerry M. White

In the late afternoon of 7-30-04, Ned Williams and Rodney Williams were attempting to transport a disabled 1952 Plymouth automobile in Dothan. Rather than simply calling a tow truck, however, the two men decided to tow the vehicle themselves.

The plan was for Ned to drive his Cadillac Eldorado and pull the Plymouth behind him. Rodney's task would be to sit behind the wheel of the disabled Plymouth and steer it as necessary. Having gotten the logistics worked out, the Williamses put their plan into action.

When the Williamses reached a point on the heavily trafficked Ross Clark Circle, they slowed down to make a left turn into the median. As they did so, the

Plymouth in which Rodney was riding was rear-ended by Jordan Sherman. The force of the impact pushed the Plymouth into the rear of the Eldorado that Ned was driving.

The Williamses suffered soft-tissue injuries due to the crash, and Ned followed a course of chiropractic treatments. Their respective medical expenses are unknown. Ned and Rodney filed separate lawsuits against Sherman and blamed him for crashing into them. However, the two cases were later consolidated for trial.

Sherman defended and blamed the crash on the Williamses. According to Sherman, it was the Williamses who made the ill-advised choice to tow the Plymouth themselves instead of calling a tow truck.

Furthermore, the Williamses undertook the towing operation during heavy traffic at a dangerously slow speed and without the benefit of adequate lighting or signage. Finally, Sherman intimated that Rodney was intoxicated the whole time.

The Williamses responded to these arguments by arguing that Rodney's alleged intoxication was simply irrelevant. They also claimed Sherman himself admitted that neither signage nor lighting would have prevented the collision.

The case was tried in Dothan, and the jury returned a verdict for the Williamses. Ned was awarded damages of \$18,000, while Rodney was awarded \$13,000. That brought the combined verdict to \$31,000. The court entered a judgment that reflected the verdict, and it has been satisfied.

Breach of Contract - Plaintiffs hired a general contractor to construct a building for a car dealership; after the project was completed, plaintiffs complained of numerous deficiencies in the materials and workmanship

Town & Country Ford, LLC., et al. v. Jones-Williams Construction Company, Inc., 02-1390

Plaintiff: W. Scott Simpson, *Batchelor & Simpson, P.C.*, Birmingham
 Defense: J. Mitchell Frost, Jr. and Bradley L. Hendrix, *Ferguson Frost & Dodson, LLP.*, Birmingham; and Candice Shockley, *Holliman Shockley & Kelly*, Pelham

Verdict: \$650,100 for plaintiffs

Circuit: **Jefferson**, 9-4-07

Judge: Ralph E. Coleman

In January of 1999, a business entity known as Town & Country Property was the owner of a piece of real estate in Bessemer. The principals of Town & Country Property also formed a separate business entity, Town & Country Ford, LLC., for the purpose of owning and operating a Ford automobile dealership on the property.

Before the new dealership could begin operations, however, a building had to be constructed on the property. On 1-25-99, the two Town & Country entities (hereinafter referred to collectively as "T&C") contracted with a company called Jones-Williams Construction Company, Inc. to do the job.

Jones-Williams completed the project, but T&C was not happy with the results. According to T&C, the construction contained numerous defects. They included improper design and construction of the roof; improperly applied "dryvit" material; improper caulking and sealing; and problems with the gutters, HVAC units, and epoxy floor system.

T&C also noted that the roof and the windows leaked. As a result of the leaks, the building sustained damage to its walls and floorboards, as well as having an ongoing problem with mold and mildew.

Although T&C claimed it put Jones-Williams on notice of the defects and provided ample opportunity for the construction company to correct them, the repairs were either not made at all or were performed inadequately. In the

end, T&C was forced to hire its own subcontractors to make the necessary repairs.

In this lawsuit, T&C claimed the contract called for Jones-Williams to use good quality materials in the construction and to complete the project in a workmanlike manner. Neither of those conditions were met, and T&C sought both compensatory and punitive damages for its losses. T&C's identified experts included Ben Hixson, Construction, Alabaster, AL; and Mark Moore, Structural Engineering, Norcross, GA.

T&C defended the case and denied any defects in its workmanship. The company also filed third-party claims for indemnification against its subcontractors, Finer Finishes, Inc. and Interstate Painting, Inc. However, the court later granted these third-party defendants' motions to sever those claims from the underlying case.

As a second line of defense, T&C filed a motion to force the case into arbitration. The court denied the motion on the ground that T&C had filed its motion to compel arbitration nearly two years after the suit was originally filed. During that period, T&C had itself substantially invoked the litigation process and thereby waived any right to arbitration the company might have had.

T&C filed an appeal of that decision, and the appellate court affirmed the trial court's decision. The litigation then continued with T&C defending as outlined above. The identified experts for the defense included Thomas Cooper, P.E., Chelsea, AL; and Robert Williams Sr., Construction, Hueytown, AL.

The case was tried for six days in Bessemer. The jury returned a verdict for plaintiffs and awarded damages of \$616,000 to Town & Country Property. At the same time, Town & Country Ford was awarded an additional \$34,100. That brought the combined award for plaintiffs to \$650,100. This information had to be gleaned from the court's judgment inasmuch as the verdict form was not part of the record.

Auto Negligence - Defendant prevailed in a case that arose out of a crash in which a classic Mustang belonging to one of the plaintiffs was totaled

Herbst, et al. v. Brabham, 01-290

Plaintiff: J. E. Sawyer, Jr. and Paul Young, Enterprise

Defense: R. Rainer Cotter, III, *Marsh Cotter & Stewart, LLP.*, Enterprise

Verdict: Defense verdict

Circuit: **Coffee**, 12-2-07

Judge: Robert W. Barr

On 11-17-99, Michael Herbst, then age 20, was driving a 1972 Ford Mustang convertible owned by Donna Edberg. Herbst was traveling on Glover Avenue in Enterprise when he became involved in a collision with John Brabham. Edberg's Mustang was totaled.

The record does not reveal the nature of Herbst's injuries or the amount of his medical expenses. He filed suit against Brabham and blamed him for the crash. Edberg also joined the case as a co-plaintiff and sought compensation for the damage to her car.

The case encountered a few procedural bumps on its long road to trial. In 2003, for example, the case was dismissed for want of prosecution. However, the court later granted plaintiffs' request to reinstate the case. Later, in October of 2007, Brabham died. His estate, which was thereafter substituted in his place, defended and minimized the claimed damages.

A jury in Enterprise heard the evidence and returned a verdict for Brabham. The court's consistent defense judgment brought the case to a close.

Dog Attack - A resident of a trailer park was mauled by a neighbor's Rottweiler; plaintiff blamed the trailer park management for failing to enforce its rule against keeping aggressive dogs as pets

Bosarge v. Devine Properties, Inc., 06-299

Plaintiff: Adam M. Milam and W. Kyle Morris, *Miller Hamilton Snider & Odom, LLC.*, Mobile

Defense: Thomas M. Galloway, Jr., *Galloway Wettermark Everest Rutens & Gaillard, LLP.*, Mobile

Verdict: Defense verdict

Circuit: **Baldwin**, 9-13-07

Judge: Charles C. Partin

Among the residents of the Devine Mobile Home Park, located on CR 38 South in Summerdale, were Calvin Moore, his wife, Shucette Moore, and their young daughter. It would later become significant for this case that the rental agreement at the park contained a pet provision that stated, "No Chow, Pit Bull, Doberman Pinscher, Rottweiler, or any aggressive dog."

Despite the explicit language of the rental agreement, the Moores acquired a Rottweiler in 2004 and, according to other residents, allowed it to roam free throughout the park. This prompted complaints from the other residents, but the park management took only minimal action.

On 4-1-04, the park management sent a written notice to all residents reminding them of the rule concerning aggressive dogs. Some four months later, on 8-9-04, the management delivered a second notice to the Moores that instructed them to get rid of their dog.

The Moores did not comply with this instruction, and the park management never followed up. One of the other residents of the park would later speculate that the management's reluctance to take any further action was motivated by fear of reprisals inasmuch as the Moores were reputed to be drug dealers.

In fact, a drug raid on the Moores' trailer in March of 2005 found drugs hidden under the dog house. Yet the park management continued to allow the Moores to live there. It was also in March of 2005 that Amanda Bosarge, age 20, moved into the trailer next door to the Moores.

Roughly two months later, in May of 2005, the Moores acquired a second Rottweiler, allegedly to serve as a mate to the first one. This second Rottweiler was typically kept chained up in the front yard.

Approximately one and a half weeks later, on 5-24-05, the second Rottweiler had somehow managed to slip free. The Moores' young daughter approached Bosarge and asked her to help guide the dog back to the yard.

Bosarge agreed to help and attempted to place on the dog a harness that was attached to a chain to prevent the dog from running free. The dog, however, would have none of this. In an instant, the dog turned on Bosarge and began to maul her.

By the time the attack ended, Bosarge had been bitten on both her legs and arms, and she had injuries to her neck and face. The record does not reveal the amount of her medical expenses. Interestingly, after Bosarge was attacked, the park management finally filed the paperwork necessary to evict the Moores.

Bosarge filed suit against the Moores and against Devine Properties, Inc., the owner and operator of the trailer park. She blamed the Moores for having the dangerous dog in the first place, for failing to maintain control over dog, and for allowing the dog to attack her.

Bosarge blamed the park management for failing to enforce its own rule against the possession of dangerous dogs. The park defended and denied any wrongdoing. It is not clear what defense the Moores relied upon, but that issue would in any event later become moot.

The case was tried for two days in Bay Minette. On the first day of trial, the court granted Bosarge's motion to dismiss her claim against Shucette Moore due to lack of service of process. On the second day of trial, the court granted Bosarge's motion to dismiss her claim against Calvin Moore. The record does not reveal the grounds for that motion.

The sole remaining claim was against Devine Properties, Inc. The jury returned a verdict that exonerated the trailer park, and the court followed with a consistent defense judgment.

Auto Negligence - Plaintiff was awarded less than one-fourth of her medical expenses in a car crash case in Jefferson County

Cole v. Dennis, 05-847

Plaintiff: Stan Brobston, Bessemer; and Michael Lipscomb, Bessemer

Defense: Ralph D. Gaines, III and Andrew J. Moak, *Gaines Wolter & Kinney, P.C.*, Birmingham

Verdict: \$500 for plaintiff

Circuit: **Jefferson**, 5-3-07

Judge: Ralph E. Coleman, Jr.

On 6-27-03, Albetnetta Cole, then age 33, was driving on Woodward Road in Jefferson County. At a point between the intersection of Vandergriff Road and Henson Road, Cole became involved in a collision with Bradford Dennis.

The record does not reveal the nature of Cole's injuries. However, her medical expenses came to \$2,387. She filed suit against Dennis and blamed him for the crash. Cole also made an uninsured motorist claim against her own insurer, Nationwide Mutual Insurance Company.

Nationwide filed a motion to dismiss the UM claim on the ground that Cole had not purchased either med pay or UM coverage. Instead, she had purchased only liability coverage. In support of the motion, Nationwide pointed out that Cole had signed a valid UM rejection form on 2-11-02.

The court granted Nationwide's motion, and the litigation proceeded against Dennis. In addition to her other damages, Cole claimed lost wages of \$250, plus pain and suffering in an undisclosed amount. Dennis defended and minimized the claimed damages.

The case was tried for two days in Bessemer. The jury returned a verdict for Cole and awarded her damages of \$500. Post-trial, Dennis filed a motion for costs of \$608 based on Cole's rejection of a pre-trial Offer of Judgment in the amount of \$1,500. Dennis asked the court to offset the \$608 against the verdict amount.

At the same time, Cole filed a motion for a new trial on the ground that the verdict was inadequate. Specifically, she claimed that her medical expenses and her testimony regarding her pain and suffering had been uncontroverted at trial. Furthermore, Cole argued the court had erred in allowing testimony that some or all of her lost wages were

paid by her employer as "sick days" pay.

The court denied Cole's motion for a new trial, and Dennis withdrew his motion for costs. Thus, the post-trial battle ended in a draw. The record indicates that Dennis has satisfied the judgment.

Medical Negligence - A man undergoing a stress test in his doctor's office suffered a cardiac arrest and later died; the estate claimed the doctor refused the man's request to stop the test because he was having chest pains

Estate of Lee v. Bowling, et al., 02-485

Plaintiff: Stephen Shay Samples, *Hare Wynn Newell & Newton*, Birmingham

Defense: Walter W. Bates, *Starnes & Atchison, LLP.*, Birmingham

Verdict: Defense verdict

Circuit: **Colbert**, 12-11-07

Judge: Harold V. Hughston, Jr.

In August of 2001, Victor Lee was experiencing a problem with acid reflux. On 8-13-01, Lee consulted on the matter with Dr. Darin Bowling, a family practitioner and an employee of the Avalon Medical Center, P.C. in Colbert County.

Lee returned to Dr. Bowling's office again slightly less than a month later on 9-10-01. During this second visit, Lee reported symptoms of abdominal pain, acid reflux, and chest pain. Dr. Bowling diagnosed abdominal pain with gastroesophageal reflux disease and then referred Lee to Dr. James Meckes, a general surgeon.

It was later that same day that Lee met with Dr. Meckes. During that consultation, Lee revealed for the first time that he occasionally experienced discomfort while walking. In response to this revelation, Dr. Meckes contacted Dr. Bowling and asked that he subject Lee to a stress test.

The following day, on 9-11-01, Lee presented once again to Dr. Bowling's office for the stress test. As part of the test, Lee was required to ride a stationary bicycle. The parties would later provide differing accounts of what happened next.

According to plaintiff, Lee continued with the test as long as he could, but it became too much for him. Lee began to froth at the mouth, and he asked that the

test be stopped. Plaintiff claims, however, that Dr. Bowling refused the request and insisted that the test continue. Shortly thereafter, Lee passed out.

Plaintiff claims there were no oxygen canisters in the test room when Lee passed out. As a result, Lee was not given oxygen until a canister was located and brought to the room several minutes later.

In any event, Lee was subsequently revived. An ambulance then arrived to transport him to Helen Keller Hospital. While en route, however, Lee became unresponsive, and the ambulance was diverted to Shoals Hospital. Upon his arrival at Shoals Hospital, the medical staff attempted to revive Lee, but they were unsuccessful, and he was pronounced dead.

Lee's estate filed suit against Dr. Bowling and the Avalon Medical Center. Plaintiff was critical of Dr. Bowling's administration of the stress test in the first place and of his refusal of Lee's subsequent request to stop the test.

Plaintiff also criticized defendants for not being adequately prepared to deal with a cardiac arrest. In particular, Dr. Bowling should have made sure there was at least one oxygen canister in the test room.

The identified medical expert for plaintiff was Dr. Patrick Guiteras, Family Medicine, Chapel Hill, NC. It was the opinion of Dr. Guiteras that Lee was displaying signs and symptoms of unstable angina. For that reason, the stress test should not have been administered at all. By subjecting Lee to the test, undue stress was placed on his heart that resulted in his death.

Dr. Bowling and the Avalon Medical Center defended the case and insisted their treatment of Lee was in accordance with the standard of care. According to them, Lee experienced some chest pain during the test, and that prompted Dr. Bowling to stop the test immediately.

Defendants went on to claim that there was indeed a supply of oxygen in the test room, and it was administered to Lee without delay when he passed out. In short, defendants argued that nothing they did or failed to do contributed in any way to Lee's death.

The case was tried for four days in Tuscumbia. The jury returned a verdict

for Dr. Bowling and the Avalon Medical Center, and the court entered a defense judgment.

Auto Negligence - A parking lot collision resulted in property damage but no personal injuries

Halcomb v. Wood, 05-243

Plaintiff: Roger D. Halcomb, Bessemer
Defense: Kellie P. Esposito, *Law Office of J. Michael Crouch*, Birmingham

Verdict: Defense verdict

Circuit: **Jefferson**, 8-22-07

Judge: N. Daniel Rogers, Jr.

On 1-26-05, a collision took place in the parking lot of the Earl S. Usher YMCA in Bessemer. Although the record does not describe exactly how the collision occurred, it involved the passenger side door of Jan Wood's vehicle making contact with the driver's side door of John Halcomb's vehicle.

Neither party was injured in the incident. However, Halcomb claimed significant property damage that resulted in diminishing the value of his vehicle. He filed suit against Wood and sought compensation for his loss. In his complaint, Halcomb demanded \$3,000.

Wood defended the case and disputed the amount of the damage. In addition, Wood also blamed the incident on Halcomb and accused him of failing to mitigate his damages. Wood's identified expert on car values was Fred Jensen.

The case was tried for two days in Bessemer. The jury returned a verdict for Wood, and the court entered a consistent defense judgment.

Employment Retaliation - A woman claimed she was constructively discharged from her job in retaliation for her having previously filed a worker's compensation claim

Harrison v. Masterbrand Cabinets, Inc., 05-785

Plaintiff: Lawrence T. King and Linsey O. Hill, *Goozee King & Horsley*, Birmingham

Defense: William H. Webster and Michael L. White, *Webster Henry Lyons & White*, Montgomery

Verdict: Defense verdict

Circuit: **Lee**, 1-16-08

Judge: John V. Denson, II

In April of 2002, Tammy Harrison

began working for a company called Masterbrand Cabinets, Inc. in Auburn. Harrison's first job with Masterbrand was to install hinges on cabinet doors. Later, however, she was moved to position assembling pedestals.

The pedestal assembly work took its toll on Harrison, and she began to notice a persistent pain in her left elbow. In March of 2003 Harrison was diagnosed with a case of "tennis elbow" due to the repetitive motion. She filed a worker's compensation claim, was placed on restrictions, and ultimately underwent a corrective surgery.

Harrison's work restrictions were later lifted, but her doctor cautioned that her continued work on the pedestal assembly line would continue to injure her arm. In order to avoid any such further injury, Masterbrand moved Harrison into a position as an "Expediter" in March of 2004. This position carried a number of responsibilities, including tracking down missing parts.

Apparently, Harrison did not much care for her new job as an Expediter. Nevertheless, she stuck it out for over a year. That changed, however, on 4-25-05 when she informed her supervisor that she needed to take some time away for a doctor's appointment.

According to Harrison, her supervisor asked whether her doctor's appointment was related to her worker's compensation injury. She said that it was, but she added that her own private insurance would cover the cost.

Shortly after this conversation, Harrison was called into her supervisor's office for a meeting. During the discussion, Harrison was informed that certain new tasks were going to be added to the Expeditors' list of responsibilities.

This came as a shock to Harrison, and she considered this move by Masterbrand management to be nothing more than thinly disguised retaliation against her for having filed her worker's compensation claim. In response, Harrison became upset, began to cry, and explained she could not perform these additional tasks.

Harrison walked out of the meeting but returned a short while later with a message for her supervisor. It was a small note containing the terse message "I quiet", by which she meant "I quit."

Although Harrison resigned from her job, she considered herself to have been constructively discharged. She filed suit against Masterbrand and accused the company of loading up her job responsibilities to an impossible degree in retaliation for the filing of her worker's compensation claim.

Masterbrand defended the case and offered its own explanation of what happened. According to Masterbrand, Harrison had long been under scrutiny due to performance issues. For one thing, she had a tendency to interrupt her work in order to talk and socialize with her fellow employees. On several occasions, Harrison's supervisor had to tell her to talk less and work more.

It also appears that Harrison was prone to emotional outbursts and would sometimes become upset when she was asked to perform even simple tasks that were well within her abilities. Yet despite these problematic traits, Harrison's supervisors did all they could to nurture her and to help her improve her work performance.

Masterbrand also claimed the addition of new tasks to the Expeditors' list of responsibilities had nothing to do with Harrison's worker's compensation claim. In fact, these new tasks were given to all the Expeditors on the first and second shifts, and still more tasks have been added since Harrison's departure from the company.

Moreover, Harrison herself provided support for Masterbrand's position. In particular, she admitted in her deposition that she was frankly not sure whether there was a connection between her worker's compensation claim and the new tasks added to her job.

The case was tried for three days in Opelika. The jury returned a verdict for Masterbrand, and the court entered a consistent defense judgment.

Auto Negligence - Plaintiff claimed defendant ran into him on his bicycle because defendant was distracted by talking on a cell phone; defendant claimed the crash occurred because plaintiff turned left in front of her

DeLeon v. Morrison, 05-1012

Plaintiff: *Pro se*

Defense: Celeste Patton Armstrong, *Varnier & Associates*, Birmingham

Verdict: Defense verdict

Circuit: **Jefferson**, 12-6-07

Judge: Dan C. King, III

On 8-7-03, Tony DeLeon, then age 51, was riding a bicycle at a divided intersection between Woodfield Road and Woodward Road in the Town of Midfield. At the same time, Sheryl Morrison, age 48, was driving a 1997 Nissan Altima in the same area.

According to DeLeon, he had crossed the street on a green light and was traveling on the shoulder of the left side of the road when Morrison arrived on the scene. He would later claim Morrison was talking on a cell phone at the time and apparently failed to notice DeLeon on his bicycle. An instant later, Morrison ran into him.

DeLeon claimed to have suffered various cuts and bruises due to the collision, and he incurred medical expenses in the amount of \$2,315. As it happened, DeLeon had been disabled since 1984 and was receiving Social Security Disability benefits. Because of this, many of his medical expenses were paid by Medicaid.

In this lawsuit, DeLeon blamed Morrison for talking on her cell phone rather than paying attention to the road and for running into him. In his *pro se* complaint, DeLeon accused Morrison of being guilty of "Willfully Wantonness." [sic]

DeLeon sought compensation for his injuries and for his pain and suffering, which he calculated at \$24,000. He also sought another \$15,000 for a mysterious category of damages identified only as "stresses."

Furthermore, DeLeon noted that due to his disability, his wife, Willie DeLeon, functioned as his caregiver. Due to his injuries in the accident, Willie was made to shoulder additional burdens in providing care to her husband. Her lost wages in that regard came to \$1,560. Although this count of the complaint did not so identify it, the

court seemed to treat it as a loss of consortium claim.

Finally, DeLeon sought punitive damages in the amount of \$14,000. The explicit grounds for the punitive damages claim was that Morrison had allegedly given the investigating police officer false information concerning the exact location where the accident occurred.

In addition to his claims against Morrison, DeLeon also named her insurer, Allstate Insurance, as a co-defendant. However, the court later granted Allstate's motion to dismiss on the ground that under Alabama law, plaintiff cannot maintain a direct action against defendant's insurer.

The litigation proceeded on the claims against Morrison. She defended and denied any wrongdoing. In particular, she claimed the accident was caused by DeLeon turning left in front of her. That account was consistent with the conclusions recorded in the police report by the investigating officer.

DeLeon continued to represent himself and his wife throughout the litigation. As the case came to trial, DeLeon filed pleadings that contained a number of interesting arguments. Among them was the contention that inasmuch as Morrison's attorney, Celeste Patton Armstrong, was being paid by Morrison's insurance company, it was patently unfair for him not to be allowed to reveal to the jury that Morrison was in fact insured.

Additionally, DeLeon considered attorney Armstrong's filing of a motion in limine as a "ploy to prevent and Obstruct the Plaintiffs' [sic] from producing evidence and witness [sic] to meet the Plaintiffs' 'burden of proof.'" He also regarded as "outrageous" Armstrong's request that the court deny admission of evidence unless plaintiffs "superior" [sic] expert witnesses for each and every item plaintiffs plan to introduce as "Medical documented evidences." [sic]

A jury in Bessemer heard the case and returned a verdict for Morrison. If the court entered a judgment, it was not part of the record at the time the AJVR reviewed it.

During deliberations, the jury asked a question: "If we find that the Plaintiff had contributory negligence, do we rule for the defendant? Please explain this

rule." The court's response is unknown. Post-trial, DeLeon filed a *pro se* appeal alleging a bewildering variety of alleged errors by the trial court. At the time the AJVR reviewed the record, the appeal was still pending.

Medical Negligence - When a teenager died from complications of diabetes, his mother criticized his doctor for failing to manage the boy's condition properly

Estate of Kelley v. Pennington, 02-188

Plaintiff: Stephen Shay Samples, *Hare*

Wynn Newell & Newton, Birmingham

Defense: William T. Mills, II and Larry Harper, *Porterfield Harper Mills & Motlow, P.A.*, Birmingham

Verdict: Defense verdict

Circuit: **Limestone**, 11-30-07

Judge: Robert M. Baker

In late July and early August of 2000, Doug Kelley, age 17, began to experience increased thirst accompanied by "nocturia" (i.e., the need to get up during the night to urinate). Kelley's symptoms continued to worsen, and on 8-10-00 he presented himself at the office of Dr. William Pennington, Sr., a family practitioner in Athens.

In addition to his other symptoms, Kelley complained of nausea, vomiting, and dryness in his mouth and throat. He also showed signs of hyperactivity, and he was not mentally clear. Tests revealed Kelley had a blood sugar level of 508. The record describes this level as "astronomical." Indeed, a normal level would be around 100.

Dr. Pennington diagnosed Kelley as being a new diabetic and placed him on a twice-daily regimen of insulin. Dr. Pennington also gave Kelley instructions to return the following day. Kelley complied with that instruction and came back to Dr. Pennington's office on 8-11-00.

On this follow-up visit, Kelley's blood sugar level measured 336. Although this was considerably lower than the level of the previous day, it was still grossly elevated. Dr. Pennington instructed Kelley to stay on the same dose of insulin.

The next day, on 8-12-00, Kelley returned to Dr. Pennington's office yet again. Kelley reported that he was feeling bad, was unable to sleep, and his mouth and throat were still dry. His

blood sugar level on that third visit was 334. Dr. Pennington instructed Kelley's family to continue monitoring Kelley's blood sugar level and giving him insulin.

Two days later, on 8-14-00, Kelley was admitted to Athens-Limestone Hospital in a diabetic coma. He was suffering from diabetic ketoacidosis (D.K.A.), a potentially life-threatening complication of diabetes brought on by inadequate insulin levels and resulting in elevated blood sugar.

Efforts to save Kelley's life were unsuccessful. On 8-23-00, slightly over a week after his admission to the hospital, Kelley died of cerebral anoxia and brain death brought on by complications of D.K.A.

Kelley's mother, Shirley Brown, filed suit as his next friend and criticized Dr. Pennington's care. She also presented a claim against the Athens Clinic on the belief that Dr. Pennington was an employee of the clinic. However, the clinic insisted it had no connection with Dr. Pennington, and Brown later voluntarily dismissed that claim.

The litigation proceeded solely against Dr. Pennington with plaintiff identifying a number of alleged errors on his part. Among them were the failure to diagnose and treat Kelley's condition adequately, failure to order proper tests, failure to manage Kelley's diabetes, failure to stabilize Kelley's blood sugar levels, and failure to admit Kelley to the hospital for monitoring.

According to plaintiff, these failures on the part of Dr. Pennington constituted deviations from the standard of care and cost Kelley his life. The identified experts for plaintiff included Dr. G. Patrick Guiteras, Family Medicine, Chapel Hill, NC.

Dr. Pennington defended the case and denied any breach of the standard of care. The identified standard of care expert for the defense was Dr. William Coleman, Family Practice, Scottsboro. The defense also identified Dr. David Bell, Endocrinology, Birmingham, who was prepared to testify concerning the cause of Kelley's death.

A jury in Athens heard the evidence and returned a verdict for Dr. Pennington. The court followed with a consistent defense judgment.

Auto Negligence - In a car crash case in which a driver and one of her passengers claimed injury, the jury returned a defense verdict

Clark v. Carpenter, 06-81

Plaintiff: Abner R. Powell, III, *The Powell Law Firm, P.C.*, Andalusia

Defense: Kenneth A. Hitson, Jr., *Nix Holtsford Gilliland Higgins & Hitson, P.C.*, Daphne

Verdict: Defense verdict

Circuit: **Covington**, 5-24-07

Judge: M. Ashley McKathan

It was 6-4-05, and Nina Clark, then age 51, was playing chauffeur for two passengers. One of them was Lorene Wilson, while the other was Donald Clark, manager of a Discount Auto Parts store.

As Clark and her passengers traveled on their way, they became involved in a collision with Frank Carpenter. Clark would later claim that at the time of the crash, Carpenter was acting within the scope of his employment with a company called C&C Vinyl Siding.

The record is unspecific about how the crash happened, the nature of plaintiffs' injuries, or the amounts of their respective medical expenses. Allegedly, however, the effects of the crash left Donald Clark totally disabled. He underwent a cervical surgery and has not worked since that time.

Nina and Donald Clark both filed suit against Carpenter and C&C Vinyl Siding. However, Donald's claim appears not to have survived to trial. Carpenter and C&C Vinyl Siding defended and minimized the claimed damages.

The case was tried for two days in Andalusia. At the close of evidence, the court granted C&C Vinyl Siding a judgment as a matter of law. Also, Nina dismissed her claim for wantonness against Carpenter. The verdict came back for Carpenter, and the court followed with a defense judgment.

Fraud - Plaintiffs purchased a used BMW based on representations by the seller that the car had only minimal prior damage; plaintiffs later learned the car had in fact previously been totaled in a crash and then completely rebuilt

Williams, et al. v. Baker, 05-434

Plaintiff: John T. Robertson, IV, *Henslee Robertson Strawn & Knowles, LLC.*, Gadsden

Defense: Robert K. Jordan, *Robert K. Jordan, Attorney, P.C.*, Fort Payne

Verdict: Defense verdict

Circuit: **DeKalb**, 1-28-08

Judge: Randall L. Cole

In June of 2002, Jimmy Baker purchased a used 2000 BMW 323Ci from a company called Kars International. Approximately a year later on 6-17-03, Baker entered into negotiations to sell the car to Roy Williams and Pamela Blansit.

During the discussions, Williams and Blansit claim they specifically asked whether the car had ever been wrecked or damaged. According to them, Baker stated that the only damage the car had ever sustained was to one of its doors.

In reliance on the information Baker provided them about the car's condition, Williams and Blansit went forward with the purchase. On 7-31-03, the Alabama Department of Revenue issued a Certificate of Title that put the car in Williams's name.

Some two years later, in July of 2005, Williams and Blansit learned that, contrary to what Baker had told them, the car had in fact previously been involved in a serious accident. It turned out that a prior owner in Arkansas had become involved in a crash that caused damage to the car in excess of 70% of its retail value.

Shelter Insurance, the company that covered the loss on the Arkansas accident, had declared the car totaled. Sometime thereafter, the car was acquired by Kars International in Scottsboro. After Kars International rebuilt the car, they sold it to Baker.

Unfortunately, the State of Alabama determined that Kars International failed to have the car inspected after rebuilding it and before selling it to Baker. That failure was a violation of state law, and on that basis, the state later revoked Williams's title to the car.

Williams and Blansit filed suit against

Baker and Kars International for selling them a rebuilt wreck with bad title and for misrepresenting the car's actual history. According to plaintiffs, the paper trail clearly indicated the car had been issued a "Damaged" title and that both Kars International and Baker knew it.

Plaintiffs claimed Kars International and Baker deliberately concealed this information and falsely represented to plaintiffs that the car had only minimal prior damage. If plaintiffs had known of the actual history of the car, they never would have purchased it. Baker and Kars International defended and denied any wrongdoing.

The case was tried to a jury in Fort Payne. At the start of the trial, plaintiffs made a motion in open court to dismiss Kars International. The motion was granted, and the case went to the jury only on the claim against Baker. The verdict came back for the defense, and the court entered a consistent judgment.

Auto Negligence - A teenager driving his father's vehicle claimed injury when he became involved in a collision with another motorist

Lancaster v. Wade, 06-1148

Plaintiff: Robert D. McWhorter, Jr.,
Inzer Haney & McWhorter, P.A.,
Gadsden

Defense: M. Andrew Donaldson, *Slaten & O'Connor, P.C.*, Montgomery

Verdict: Defense verdict

Circuit: **Etowah**, 1-29-08

Judge: David A. Kimberley

A crash took place on 4-5-05 in Etowah County. It occurred on U.S. 411 when Larry Wade collided with a vehicle owned by David Lancaster and being driven by Lancaster's sixteen year-old son, Jeffery Lancaster.

The record does not reveal the nature of Jeffery's injuries or the amount of his medical expenses. Through his father as his next friend, Jeffery filed suit against Wade and blamed him for the crash. David Lancaster also presented a claim for the property damage to his vehicle. Wade defended and minimized the claimed damages.

The case was tried in Gadsden. In a motion in limine filed just prior to trial, there was some suggestion that the Lancaster family had been subjected to some sort of harassment by Wade's

family, presumably due to the litigation.

Wade sought to exclude evidence of any such harassment as being irrelevant to the case. The court's ruling on the motion is unclear from the record. In any event, the jury returned a verdict for Wade, and the court entered a consistent defense judgment.

Insurance Contract - After a claim for Hurricane Katrina wind damage and a subsequent fire, an insurer filed a declaratory action against its insured

Allstate v. Jackson, 1:06-554

Plaintiff: Mark E. Spear and Faith Ann Pate, *Richardson Spear Spear Hamby & Owens*, Mobile

Defense: Robert H. Turner, Jr., Marion

Verdict: Verdict for insurer

Federal: **Mobile**, 12-20-07

Judge: Callie V.S. Granade

Mary Jackson was an Allstate insured that lived in Lisman, AL. When Hurricane Katrina blew through in August of 2005, Jackson sustained wind damage to her home. She made a claim for some \$16,000 to Allstate. Then just two months later, Jackson sustained a second loss. Her house burned down. In this second claim, again with Allstate, she presented a loss of some \$280,000.

Allstate didn't immediately pay. It discovered that Jackson had four prior fire losses from 1992 to 2001 that had not been disclosed. The insurer believed she fabricated the wind damage claim, expecting some easy money. When Allstate didn't immediately pay, the financially strapped Jackson just burned her house down. That she was having problems, there was proof Jackson had been trying to sell her home – she also filed two bankruptcies within in a four-month, availing herself of both Chapter 7 and Chapter 13 protections.

Allstate initiated the litigation and filed this declaratory action against Jackson. It took the position that she was owed nothing. Jackson countered that her home had been damaged by the wind. She also denied setting fire to her home, pointing to evidence it was electrical in nature.

The jury's verdict was for Allstate on both the wind and fire claims, Jackson taking nothing. A consistent judgment was entered.

Underinsured Motorist - A man was injured when the vehicle in which he was riding as a passenger was hit by another motorist who had run a stop sign; after settling with the other motorist, the man sought further compensation from his UIM carrier

Ledbetter v. Nationwide Mutual Fire Insurance Co., 05-766

Plaintiff: J. Chris Cochran, *Pittman Dutton Kirby & Hellums, P.C.*,
Birmingham

Defense: Vincent J. Bodin, *Law Office of J. Michael Crouch*, Birmingham

Verdict: \$10,000 for plaintiff

Circuit: **Tuscaloosa**, 2-16-07

Judge: Thomas S. Wilson

Late in the evening of 4-2-05, Phillip Boyd, then age 41, was driving a 2000 Pontiac Grand Am, heading south on 10th Avenue in Tuscaloosa. His passengers that night were Charlotte Boyd and Ken Ledbetter.

At the same time, Clinton Leonard, then age 19, was driving west on 29th Street in a 1998 Jeep Cherokee. At the intersection of the two roads, Leonard ran a stop sign and crashed into Boyd. The record does not describe the Boyds' or Ledbetter's injuries or reveal the amounts of their respective medical expenses.

The Boyds and Ledbetter filed suit against Leonard and blamed him for the crash. Ledbetter later amended his complaint to add an underinsured motorist claim against his own insurer, Nationwide Mutual Fire Insurance Company.

The parties eventually settled their claim against Leonard for an undisclosed sum. Following Leonard's dismissal from the case, the only claim remaining was Ledbetter's UIM claim against Nationwide. The insurer defended and minimized the claimed damages.

The case was tried in Tuscaloosa, and the jury returned a verdict for Ledbetter in the amount of \$10,000. The court followed with a judgment that reflected the verdict.

Auto Negligence - Defendant prevailed in a case that arose out of a crash on a rural road in Walker County

Wingo v. Kitchens, 05-741

Plaintiff: Samuel B. Bentley, Jasper

Defense: Mark Bishop Turner, *Turner Law Firm, LLC.*, Jasper

Verdict: Defense verdict

Circuit: **Walker**, 1-16-08

Judge: H. Douglas Farris, Jr.

It was 10-14-05, and Christopher Wingo, then age 39, was driving on AL 118 East in Walker County. At the same time, William Kitchens, age 36, was also driving in the same area. At a point between the Cordova Cut-Off Road and Industrial Parkway, the two collided.

The record does not reveal the nature of Wingo's injuries or the amount of his medical expenses. He filed suit against Kitchens and blamed him for the crash. Wingo's identified medical expert was Dr. Mark Prevost, Orthopedic Surgery, Jasper.

Wingo also made an uninsured/underinsured motorist claim against his own insurer, Alfa Insurance. However, he later dismissed Alfa due to a *pro tanto* settlement, the terms of which are unknown. The litigation proceeded against Kitchens. He defended and minimized the claimed damages.

The case was tried for two days in Jasper. The jury returned a verdict for Kitchens, and the court followed with a consistent defense judgment.

Auto Negligence - Plaintiff was a passenger in a vehicle that stopped in the road to render assistance to a stalled motorist; while plaintiff sat in the stopped vehicle, defendant rear-ended her

Kaiser v. Maze, 06-229

Plaintiff: A. Patrick Ray, III, *Goldberg Attorneys, P.C.*, Birmingham

Defense: Edward E. Blair, *Varner & Associates*, Birmingham

Verdict: Defense verdict

Circuit: **Morgan**, 9-20-07

Judge: Steven E. Haddock

On 3-31-04, Hollie Kaiser was riding as a passenger in a vehicle being driven by Kristy Ray. The two were traveling on Hwy 31 in Decatur. Upon reaching the intersection of Lenwood and

Southfield Drive, Ray and Kaiser came upon a vehicle that was stalled in the road.

The two women stopped to render assistance to the occupants of the stalled vehicle. An instant later, however, they were rear-ended by a vehicle owned by William Maze and being driven by Sally Maze. The impact pushed Kaiser and Ray's vehicle into the rear of the stalled vehicle ahead of them.

Immediately following the crash, Kaiser went to the ER at Parkway Medical Center where she was treated and released. She returned the hospital several days later on 4-5-04 and was treated for a myofascial strain/sprain injury that she attributed to the crash. She also claim she suffered an aggravation of a pre-existing scoliotic condition (i.e., curvature of the spine).

In this lawsuit, Kaiser blamed Sally Maze for crashing into her, and she added William Maze as a co-defendant on a theory of negligent entrustment. Kaiser also made an uninsured/underinsured motorist claim against her own insurer, State Farm.

State Farm later opted out of the case, and the litigation proceeded on Kaiser's claims against the Mazes. The Mazes defended and minimized the claimed damages.

The case was tried for two days in Decatur. On the first day of trial, Kaiser dismissed her claim against William Maze. The jury thus deliberated only the claim against Sally. The verdict came back for Sally, and the court entered a consistent defense judgment.

Notable Out of State Verdicts

Products Liability - The plaintiff suffered a catastrophic burn injury when a highly flammable adhesive product ignited – there were fact disputes about whether the fire started because of a flashback from fumes or instead because of adhesive on the plaintiff's clothes that ignited because of a nearby torch

Campbell v. Polyguard Products, 2:06-2059

Plaintiff: Henry N. Didier, Jr., *Didier Law Firm*, Orlando, FL and Jeffrey S. Rosenblum and Matthew T. May,

Rosenblum & Reisman, Memphis

Defense: Lawrence Sutter, Cleveland, OH and J. Britt Phillips, Franklin, both of *Sutter O'Connell & Farchione*

Verdict: Defense verdict

Federal: **Memphis, Tennessee**

Judge: John Phipps McCalla
2-19-08

Jesse Campbell was working at an Ashley Furniture Store in Germantown on 12-21-04 – employed by a contractor, Campbell was with a three-man team that was applying a waterproofing system to the store's exterior. Before the waterproofing membrane could be applied, a liquid adhesive had to be applied. Campbell and his team utilized a brand, 650 LT Liquid Adhesive manufactured by Polyguard Products.

The adhesive is sold in five gallon buckets. Besides being very sticky, the adhesive has another significant characteristic. It is highly flammable and this is noted in numerous warnings on the product container. The adhesive itself is not just flammable, so too are its heavy vapors.

To the worksite, the bucket of the 650 LT was opened. It was stored some twelve feet or so from the wall. Before it could be applied, the wall had to be very dry. To accomplish the drying, a co-worker utilized a blowtorch.

A moment later a fire ignited and Campbell was burned over 60% of his body. He lost several fingers in the fire, among other catastrophic injuries that have left him vocationally disabled. In this lawsuit, Campbell sued Polyguard Products and alleged the 650 LT was defective and unreasonably dangerous.

It was the plaintiff's theory that the fire started because of a flashback. That is vapors from the open bucket spread

from a distance of twelve feet and then ignited when the co-worker applied the torch to the wall. An expert for Campbell, Robert Anderson, Engineer, Los Alzos Hills, CA, called the product extremely hazardous and was especially critical of Polyguard Products for not undertaking a competent regimen of hazard analysis testing.

A second expert, Kenneth Laughery, Psychology, Houston, TX, addressed human factors, concluding that while the inherent flammability of the product was discernible, the heavy vapors and risk of flashback fires were not open and obvious to the typical user. If Campbell prevailed, he sought an award of both compensatory and punitive damages.

Polyguard Products defended the case on several fronts. It first implicated plaintiff's own failure to exercise care to protect himself, noting the numerous warnings of the product's propensity to ignite. That made the use of a torch in close proximity to the 650 LT a very poor decision indeed. The company also disputed the cause of the fire, suggesting it wasn't a heavy vapor-induced flashback, but rather an ignition caused by the product that had spilled on Campbell's clothes. Identified experts for Polyguard Products were Galen Hartman and Greg Scott.

The jury rejected both a products and a negligence count, Campbell taking nothing. A defense judgment was entered.

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