The Alabama Jury Verdict Reporter

The Most Current and Complete Summary of Alabama Jury Verdicts

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Unbiased and Independently Researched Jury Verdict Results

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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.

Medical Negligence - A woman suffered abdominal pain after a surgical sponge was left inside her during a hernia operation; the surgical team that did the faulty sponge count was later exonerated, but the radiologist who read the woman's films was criticized for failing to notice the sponge even though it was obvious even to an untrained eye

Green v. Cheyney, et al., 04-1038
Plaintiff: Stewart E. Burns and Christopher R. Garner, *Burns Burns & Garner*, Gadsden
Defense: William S. Haynes and Ben C. Wilson, *Rushton Stakely Johnston & Garrett, P.A.*, Montgomery; Walter W. Bates and R. Todd Huntley, *Starnes & Atchison, LLP.*, Birmingham
Verdict: $205,000 compensatory damages for plaintiff against Cheyney (zero punitives); defense verdict for Miller and Surgical Associates
Circuit: **Etowah**, 2-27-08
Judge: William H. Rhea, III

In July of 2004, Rose Green was scheduled to undergo a hernia operation at the hands of Dr. George Miller, a surgeon employed by Surgical Associates of Gadsden, P.C. The surgery was performed on 7-8-04 at the Gadsden Regional Medical Center located at 1007 Goodyear Avenue in Gadsden.

Although the surgery itself seemed to have been a success, Green found herself plagued by post-operative abdominal pain. Two months later, on 9-7-04, the pain had become so serious that Green sought help in the ER at Gadsden Regional.

During the ER visit, x-rays were taken of Green's abdomen and were subsequently interpreted on 9-11-04 by a radiologist, Dr. David Cheyney. Although Dr. Cheyney apparently failed to notice anything out of the ordinary, it would later be discovered on 9-29-04 that a surgical sponge had

been left inside Green during the hernia operation.

Green underwent a second surgery to remove the sponge. Her medical expenses came to $40,984, all of which was paid by Medicare and an entity identified as "TriCare." That, however, would not be the end of the matter.

Green filed suit initially against Dr. Miller and Surgical Associates. She was critical of their failure to perform an accurate sponge count at the conclusion of the operation and of their failure to supervise the surgical staff in maintaining an accurate sponge count during the operation. Green also named the Gadsden Regional Medical Center as a co-defendant.

Dr. Miller died during the course of the litigation, and his estate was thereafter substituted in his place as a named defendant. Also, Green amended her complaint and added Dr. Cheyney as a co-defendant.

Green criticized Dr. Cheyney's failure to notice the sponge on her x-rays even though the sponge was clearly visible even to an untrained eye. This lapse was so egregious that Green alleged both negligence and wantonness against Dr. Cheyney sought punitive damages. Green's identified radiology expert was Dr. Steven Edell of Wilmington, DE.

Gadsden Regional ultimately settled with Green for $175,000 and got out of the case. Drs. Cheyney and Miller, along with Surgical Associates, defended the case and denied any breach of the standard of care.

The case went to trial in Gadsden. Interestingly, the jury was informed of the settlement with Gadsden Regional, including the amount. Also, the record contains a handwritten jury instruction that if Dr. Cheyney breached the standard of care in his interpretation of the x-ray, then Green could recover compensatory damages only for any additional pain and suffering for the eighteen-day period from 9-11-04 to 9-29-04.

The verdict was complex. On the claims against Dr. Miller and Surgical Associates, the jury found for the defense. On the claims against Dr. Cheyney, the jury found for Green and awarded her compensatory damages of $205,000, plus zero punitive damages.

The jury then deducted from the award $175,000 due to the pro tanto settlement with Gadsden Regional. That brought Green's final award to $30,000. The court entered a judgment that reflected the verdict.

Auto Negligence - A motorcyclist claimed a woman pulled in front of him and thereby set off a chain-reaction crash that ultimately resulted in another motorist's death; the woman argued the motorcyclist admitted having enough time to avoid the collision

Adkins v. Champion, 05-160
Plaintiff: Charles E. Vercelli, Jr., *Vercelli & Associates, P.C.*, Montgomery
Defense: R. Mac Freeman, Jr. and Robert C. Wood, *Rushton Stakely Johnston & Garrett, P.A.*, Montgomery
Verdict: $6,000 for plaintiff
Circuit: **Pike**, 3-11-08
Judge: Jeffery W. Kelley

It was the evening of 3-7-05, and Michael Adkins, then age 48, had just left a Mexican restaurant and was on his way home to the Town of Brundidge, just south of Troy. Adkins was riding a 2004 Yamaha Silverado motorcycle, heading south on U.S. 231.

In that area, U.S. 231 features two lanes of traffic in each direction, plus a turn lane in the median. Adkins was traveling in the outside southbound lane. Up ahead, he noticed a vehicle in the median with its turn signal on, signifying that the driver intended to merge into traffic.

The vehicle in the median was a 1993 Pontiac Grand Am being driven by Christy Champion, then age 29. Champion had just left her home and was on her way to a nearby convenience store. When it appeared to her that the way was clear, Champion merged into southbound traffic.

There would later be some dispute about exactly how Champion performed the merging maneuver. One version of events has her merging first into the inner lane and then only after several seconds had passed merging into the outer lane. Another version has Champion merging from the median, across the inner lane, and directly into the outer lane in one continuous movement.

Regardless of how the merger was performed, Champion soon pulled into the outer lane in front of Adkins. She would later claim she had simply not seen him due to the fact it was very dark that night.

In any event, Champion cut in front of Adkins. He responded by trying to apply his foot brake, but his motorcycle began to fishtail on the wet road. In the next instant, Adkins hit Champion's car on the left side of her rear bumper.

Adkins was thrown over his handle bars onto the pavement at a speed of approximately 55 m.p.h. He landed on his head and arm and then slid along the road face down for some distance before finally coming to a stop.

When Champion realized what had happened, she immediately pulled off to the side of the road on the shoulder and went to render whatever aid she could to Adkins. She managed to get him up onto his feet and lead him back to her car for safety. It would later be determined that Adkins had sustained a broken wrist and a leg injury.

Although at that point it was difficult for Adkins to walk, he was concerned that his motorcycle was still lying in the road and thus presented a hazard to other drivers. In order to remove the hazard, he got back onto his feet and began to walk toward his motorcycle with the intention of moving it.

At just that moment, a southbound tractor-trailer being driven by Michael Duke, age 37, crested a hill at a spot just before the location of the accident. In the darkness, Duke ran over Adkins's motorcycle and dragged it for some distance while the scraping metal threw off an enormous quantity of sparks. An instant later, the motorcycle exploded into flames.

The shock of that collision caused Duke's tractor-trailer to jackknife. He then lost control of his rig and crossed the center line into oncoming traffic. In doing so, he collided with a second tractor-trailer, this one being driven by Gerald Ruhnow, age 55.

The impact of the two tractor-trailers set off a second explosion that instantly engulfed both trucks. Ruhnow managed to stumble out of his truck and escape with his life. Duke, however, was not so lucky. Tragically, he died from his injuries.

Adkins filed suit against Champion and blamed her for pulling into his path and causing the crash. In addition to his other damages, Adkins claimed medical expenses of approximately

$5,000, property damage amounting to approximately $10,000, and lost wages of $2,500 for the three or four weeks he was off work.

Adkins also claimed pain and suffering in an unspecified sum. In his complaint, Adkins demanded $50,000 in compensatory damages, plus another $150,000 in punitive damages.

Champion defended the case and implicated Adkins's fault. In support of her position, Champion pointed to Adkins's own deposition testimony in which he repeatedly stated he had been traveling behind Champion for approximately five seconds before colliding with her. According to Champion, Adkins thus had ample time to avoid the collision.

The case was tried for two days in Troy. The jury returned a verdict for Adkins and awarded him damages of $6,000. The court followed with a consistent judgment for that amount.

Assault - Defendant pled guilty to a criminal charge of stabbing plaintiff; in the civil litigation that followed, defendant tried to argue in part that he had acted in self-defense because plaintiff was hitting him on the head with a beer bottle

Espinosa v. Rodriguez, 06-1785
Plaintiff: Mark E. Spear, *Richardson Spear Spear & Hamby, P.C.*, Mobile
Defense: Robert C. Campbell, III and Barry C. Prine, *Campbell Duke & Prine*, Mobile
Verdict: $5,000 for plaintiff (allocated $2,500 compensatory and $2,500 punitive)
Circuit: **Mobile**, 5-22-07
Judge: Joseph S. Johnston

For reasons the record does not reveal, there seems to have been bad blood between Onsestes Espinosa and Hector Rodriguez. The conflict between the two men would erupt into violence on 5-18-04. However, the parties offer different accounts of what happened.

According to Espinosa, Rodriguez stabbed him with a knife. As a result of his injuries, Espinosa spent the next ten days in Providence Hospital in Mobile County and accumulated approximately $14,000 in medical bills.

Rodriguez, however, tells a somewhat different story. According to him, he was loading his newborn premature babies into his vehicle when Espinosa came up behind him and began beating him in the back of the head and shoulders with a beer bottle.

Rodriguez defended himself as best he could and then drove to the home of his in-laws where he deposited the babies. Rodriguez then drove himself to the ER at Providence Hospital for treatment of his injuries.

Regardless of which version of events is more accurate, it is known that Rodriguez was charged with 2nd degree assault. He was apparently able to work out a plea agreement pursuant to which he later pled guilty on 5-15-06 to a lesser charge of 3rd degree assault. The record does not reveal Rodriguez's sentence in the criminal case.

Espinosa filed suit against Rodriguez and reiterated that Rodriguez had stabbed him. Rodriguez initially defended the case and denied the assault. He also filed a counterclaim in which he accused Espinosa of assaulting him as described above.

In essence, Rodriguez argued that any assault he might have committed upon Espinosa was in self defense. Rodriguez also argued that by initiating the altercation, Espinosa assumed the risk of being injured.

Espinosa responded by filing a motion for partial summary judgment. He argued that inasmuch as Rodriguez had pled guilty to the criminal charge against him and had thereby admitted the assault, Rodriguez was now judicially estopped from either denying the assault or blaming Espinosa.

The court agreed with that reasoning and granted Espinosa a partial summary judgment that struck Rodriguez's affirmative defenses and counterclaim. The issue of liability was thus determined, and the case proceeded solely on the issue of damages.

A jury in Mobile heard the evidence and returned a verdict for Espinosa. He was awarded compensatory damages in the amount of $2,500, and to that was added another $2,500 in punitive damages. The court entered a judgment for the combined total of $5,000, plus costs of $870. The judgment has been satisfied.

First Amendment - A city firefighter was sacked for having gone outside the chain of command by speaking to the city mayor and the media about a proposed ordinance affecting fire operations

Davis v. Phenix City, 3:06-544
Plaintiff: Thomas A. Woodley and Douglas L. Steele, *Woodley & McGillivary*, Washington, D.C. and Gary Brown, *Fitzpatrick & Brown*, Birmingham
Defense: James R. McKoon, Jr., *McKoon & Associates*, Phenix City
Verdict: Defense verdict on liability
Federal: **Opelika**, 3-6-08
Judge: W. Harold Albritton, III

David Davis worked as a firefighter for Phenix City starting in 1998. By 2005 he was the president of the local firefighter's association. In that capacity, he had a pow-wow for firefighters in September of 2005 to discuss issues. A local reporter showed up and reported on the discussions, particularly focusing on remarks by Davis.

This conduct by Davis drew a rebuke from the fire chief, Wallace Hunter. Davis was told that in the psuedo-military that the firefighters aspired to, any outside discussions were outside the chain of command.

Then to April of 2005, the city was considering an ordinance to change the length of time new firefighters were on probation. Davis opposed it and on 4-20-06, he called the city mayor to discuss the matter. The next day the fire chief fired Davis, citing that he violated a rule against going outside the chain of command.

This lawsuit followed, Davis alleging his free speech rights were infringed, the fire chief firing him because of his speech. If he prevailed, he sought lost wages and damages for emotional suffering.

Phenix City, through the fire chief and the city manager, Bubba Roberts, explained the purpose of the no-talking rule and that it served to build cohesion within the fire department. That is, speaking out publicly was not permitted until the chain of command had been exhausted. [There were fact disputes in this regard as the chief explained in deposition that Davis couldn't talk about fire matters – ever – the chief later explained in an affidavit that he

was confused in his deposition.]

As this case went to the jury, the instructions were very unusual as it was the government that had the proof burden. In other words, if Phenix City didn't meet its burden, the jury would automatically go to damages. That burden then required proof of all of the following, (1) that plaintiff's call to the Mayor violated procedure, (2) that if Davis had exhausted the chain of command, he could have talked to the Mayor or the media, and (3) that plaintiff's conduct was disruptive.

On all three prongs of the defendant's case, the answer was yes and having so found, damages were not reached. A judgment was entered for Phenix City.

Auto Negligence - Although plaintiff prevailed in her car crash case, her medical care providers' subrogation claims exceeded the amount of her award

Patterson v. Coffey, 05-640
Plaintiff: John B. Brunson, *Farris Riley & Pitt, LLP.*, Birmingham
Defense: Tracy N. Hendrix, *Gaines Wolter & Kinney, P.C.*, Birmingham
Verdict: $10,000 for plaintiff
Circuit: **Jefferson**, 12-5-06
Judge: Houston L. Brown

A crash took place on 2-4-03 near the intersection of Finley Boulevard and 32nd Street North in Birmingham. It happened when Elicia Patterson collided with Lisa Coffey. The record does not reveal the nature of Patterson's injuries or the amount of her medical expenses.

Patterson filed suit against Coffey and blamed her for the crash. Coffey defended and minimized the claimed damages.

At the conclusion of a two-day trial in Birmingham, the jury returned a verdict for Patterson and awarded her damages of $10,000. The court entered a judgment for that amount.

It turned out that a number of Patterson's medical care providers claimed subrogation interests in the proceeds of the litigation. Unfortunately, the total amount of the claims exceeded the verdict amount, and efforts to negotiate the amounts of the claims downward were unsuccessful.

In an effort to clear up the matter, Patterson filed a post-trial motion for interpleader and declaratory relief. In essence, she asked the court to determine the amounts each claimant was entitled to receive. Patterson's attorney sweetened the pot by agreeing to reduce his fee from the usual 40% down to 25%.

The court considered the matter and entered an order that divided up the proceeds as follows: Patterson and her attorney were each to receive $2,500. St. Vincent's Hospital was to receive $133, and another $488 went to Physician's Medical Center. The balance of the award was to be paid into court and held pending further claims by any interested party.

Medical Negligence - A man being treated for nausea was accidentally given an overdose of a medication that he claims has left him with permanent neurological damage

Slick v. Patient First Healthcare, Inc., 03-318
Plaintiff: Ralph Bohanan, Jr., *Bohanan & Associates, P.C.*, Birmingham
Defense: M. Christopher Eagan, *Starnes & Atchison, LLP.*, Birmingham
Verdict: $150,000 for plaintiff James; defense verdict on Donna's consortium claim
Circuit: **Calhoun**, 2-15-08
Judge: Malcolm B. Street, Jr.

On 4-4-01, James Slick was experiencing symptoms of nausea, vomiting, and fever. He presented himself at the facilities of Patient First Healthcare, Inc. in the Town of Oxford where he came under the care of Dr. David Denney.

At the conclusion of Dr. Denney's examination, he issued orders for Slick to be given an IV that included 80 mg. of an antibiotic called gentamicin and 25 mg. of an anti-nausea medication called phenergan. The task of actually administering the IV fell to medical technician Angela Adams.

Somehow, Adams apparently became confused in her preparation of the IV. Rather than giving Slick a 25 mg. dose of phenergan, she instead mistakenly gave him a 250 mg. dose. This was a dangerously high dosage that rendered Slick comatose for over twenty-four hours.

Although Slick eventually emerged from his coma, he complains of lingering effects of what he believes to have been phenergan toxicity. Among other things, Slick claims to suffer from damage to the frontal lobe of his brain, as well as memory loss, anxiety, agitation, confusion, seizure disorder, and headaches.

Slick filed suit against a number of the players in this drama. They included Angela Adams, Dr. Denney, Patient First Healthcare, Dr. Edwin Keel (one of the owners of Patient First), and an entity identified as Westinghouse Anniston. In addition, Slick's wife, Donna Slick, presented a derivative claim for her loss of consortium.

There was later a shake-out in the alignment of the case with plaintiffs ultimately dismissing all of the defendants except Patient First Healthcare. Plaintiffs criticized Patient First for failing to ensure that Slick was administered the correct dose of phenergan. The identified experts for plaintiffs included Dr. Pamela Sims, Pharmacy, Birmingham; and Dr. Maura Carter, Neuropsychology, Birmingham.

Patient First identified a number of medical experts. They included Dr. Jack Como, Pharmacy, Birmingham; Dr. Chandra Sekar, Neuroradiology, Birmingham; Dr. Chuck Fagan, Neurology, Birmingham; and Dr. Sue Thomas, Pharmacy, Auburn.

According to the defense experts, an overdose of phenergan can indeed cause neurological problems. However, the defense experts agreed that this was not the cause of any of Slick's complaints. Thus, Patient First admitted the overdose was a breach of the standard of care and instead defended on causation.

The case was tried for five days in Anniston. The jury returned a verdict for James and awarded him damages of $150,000. However, the jury found in favor of Patient First on Donna's consortium claim.

The court entered a judgment that reflected the verdict. Post-trial, Patient First filed a motion for a judgment notwithstanding the judgment, or for a new trial, or for remittitur. As grounds for the motion, Patient First cited various allegedly erroneous evidentiary rulings by the court. At the time the AJVR reviewed the record, the motion was still pending.

Auto Negligence - A woman claimed soft-tissue injuries due to an intersection crash; although plaintiff won, she was awarded only a fraction of her claimed damages

Woods v. Allred, 07-512
Plaintiff: Ronald R. Crook, *Smith & Alspaugh, P.C.*, Birmingham
Defense: Vincent J. Bodin, *Law Office of Michael Crouch*, Birmingham
Verdict: $857 for plaintiff
Circuit: **Jefferson**, 11-26-07
Judge: J. Scott Vowell

In the evening of 5-29-06, Ida Woods was traveling south on 6th Avenue in Birmingham. As she sat stopped in traffic waiting to make a turn at the intersection with 18th Street, a vehicle being driven by James Allred crashed into her.

As a result of the crash, Woods claimed soft-tissue injuries to her chest and right leg. Her medical bills came to approximately $4,088. She also claimed damage to her vehicle in the amount of $3,200.

Woods filed suit against Allred and blamed him for crashing into her. In addition to her other damages, Woods also claimed lost wages of $540. Allred defended the case and minimized the claimed damages.

A jury in Birmingham heard the case and returned a verdict for Woods in the amount of $857. The court followed with a judgment for that amount. Interestingly, the judgment was later set aside by agreement of the parties, and the case was dismissed with prejudice.

Construction Negligence - In a dispute between a *pro se* landlord and a *pro se* tenant over home repairs, the landlord won but was awarded far less than her claimed damages

Gonzalez v. Curry, 07-45
Plaintiff: *Pro se*
Defense: *Pro se*
Verdict: $300 for plaintiff
Circuit: **Monroe**, 12-3-07
Judge: Dawn W. Hare

Annie Gonzales was the owner of a house she apparently rented out to Albert Curry. At some point, an arrangement was made for Curry to make some repairs to the roof. Although the record is unclear and extremely sparse, it seems the repair job did not go well.

According to Gonzales, Curry actually ruined the house by removing a partition between two of its rooms. He also broke a ceiling fan, took a lawn mower, and failed to pay rent. Gonzales filed suit in small claims court and claimed Curry owed her $2,000.

Gonzales won her small claims case and was awarded damages of $1,000, plus costs. Curry appealed the decision to the Circuit Court and denied any wrongdoing. According to him, the house had already been damaged by a hurricane. Thus, he was not responsible for the damage. Curry also claimed the rent was fully paid.

The case was tried in Monroeville with both parties proceeding *pro se*. The jury returned a verdict for Gonzales and awarded her $300. The court entered a judgment for that amount.

Auto Negligence - A minor pedestrian claimed a passing motorist ran into him; the motorist claimed the minor ran into the street and collided with him

Glasco v. Hill, 03-2732
Plaintiff: Gregory R. Cox, Birmingham
Defense: Celeste Patton Armstrong, *Varner & Associates*, Birmingham
Verdict: Defense verdict
Circuit: **Jefferson**, 12-11-07
Judge: Helen Shores Lee

On 5-4-01, Charles Hill was driving on Main Street in the Town of Brighton. As he did so, he ran into Paul Glasco, a minor, who was apparently on foot. The record does not reveal the nature of Glasco's injuries or the amount of his medical expenses.

Through his mother, Lillie, as his next friend, Glasco filed suit against Hill and blamed him for the incident. Hill defended the case and gave his own explanation of what happened. According to him, Glasco ran into the street and collided with the driver's side of Hill's vehicle.

The case was tried to a jury in Birmingham and resulted in a defense verdict for Hill. If the court entered a judgment, it was not part of the record at the time the AJVR reviewed it.

Premises Liability - While driving on a road through a real estate development that was still under construction, a woman lost control of her vehicle, went down an embankment into a pond, and died; the woman's estate blamed the tragedy on the failure of the development company to block access to the road or to place warning signs

Estate of Enslen v. The Waters at Waugh, LLC., 05-2741
Plaintiff: Jere L. Beasley and Benjamin E. Baker, Jr., *Beasley Allen Crow Methvin Portis & Miles, P.C.*, Montgomery
Defense: William H. Brittain, II, *Ball Ball Matthews & Novak, P.A.*, Montgomery
Verdict: Defense verdict
Circuit: **Montgomery**, 2-19-08
Judge: Johnny Hardwick

In August of 2005, a company called The Waters at Waugh, LLC. (hereinafter, "Waters") was engaged in developing a piece of real estate located at 2239 Marler Road in an area known as Pike Road. Part of the construction included building a road that apparently ran over the Jake Lake Dam.

On 8-3-05, Marie Enslen, a resident of Okaloosa County, FL, was visiting the Waters project. The record does not reveal the reason for her visit. In any event, on her way out, Enslen tried to drive on the road over the dam toward the exit.

Unbeknownst to Enslen, the gate at the end of the road had been locked, thereby blocking access to the exit. When Enslen realized this, she apparently attempted to back up or drive in reverse in order to retrace her path and find another way out.

As Enslen was attempting to extricate herself from this situation, however, she managed to lose control of her vehicle and careen down an embankment into the pond below. Her vehicle was soon completely submerged in the water, and Enslen died.

Enslen's estate filed suit against Waters, as well as against several of the contractors working on the project. The estate ultimately dismissed all defendants except Waters, and the estate blamed the company for failing to block access to the road and for failing to place signs warning of the

hazard.

According to the estate, Waters had previously been placed on notice of the dangers of vehicles driving over that particular road. Yet the company did nothing to prevent this disaster from happening. The estate characterized Enslen's status as that of an invitee and argued that Waters breached its duty to protect her from known dangers on the premises.

Waters defended the case on several fronts. First, the company characterized Enslen as a licensee rather than an invitee. On that basis, Waters denied owing Enslen any duty to warn her of the dangers of the road.

Second, Waters denied that Enslen had drowned to death. Instead, the company pointed to records from the Baptist Hospital ER that suggested Enslen had died of cardiac arrest. The estate retorted that the coroner identified the cause of death as drowning.

Finally, Waters asserted various affirmative defenses, including assumption of risk. However, the company later voluntarily withdrew that defense but still implicated Enslen's own fault. Waters also denied the road was dangerous at all.

The case was resolved by a jury in Montgomery in favor of Waters. The court followed with a consistent defense judgment.

Auto Negligence - Each party blamed the other for a crash that took place on a county road

Hardge v. Johnson, 03-9
Plaintiff: Joseph C. McCorquodale, III, *McCorquodale & McCorquodale*, Jackson; and John W. Thomson, II, Butler
Defense: Christopher G. Hume, III, *Miller Hamilton Snider & Odom, LLC.*, Mobile
Verdict: $175,000 for plaintiff
Circuit: **Choctaw**, 2-25-08
Judge: James T. Baxter

On 11-4-02, Geraldine Hardge was driving on C.R. 32 near the intersection with Blackberry Road in the Town of Lisman in Choctaw County. At the same time, Clementine Johnson was also traveling in the same area in a vehicle owned by Joe Johnson.

According to Hardge, she was stopped and completely off the road when Johnson collided with her. As a result of the crash, Hardge claimed injuries to her neck, shoulders, and back. Her medical expenses are unknown.

Interestingly, Johnson filed suit against Hardge first. A few days later, Hardge filed a separate suit against Johnson. Each party blamed the other for the crash. In addition, Hardge made a claim against Joe Johnson for negligently entrusting the vehicle to Clementine.

The claim against Joe evidently did not survive to trial. Also, Hardge made an underinsured motorist claim against her own insurer, Allstate. However, Allstate later opted out of the case.

Johnson's and Hardge's separate claims were ultimately consolidated into a single case with Hardge identified as both the defendant and the counterclaim plaintiff. Allstate later agreed to a settlement of Johnson's claim against Hardge.

The settlement and subsequent dismissal of Johnson's claims led to a realignment of the case with Hardge now identified as the plaintiff and Johnson as the defendant. In her role as defendant, Johnson denied negligence and minimized Hardge's claimed injuries.

The case was tried to a jury in Butler. The record indicates that the jury was informed of the settlement of Johnson's claim but not of the amount. In any event, the jury returned a verdict for Hardge and awarded her damages of $175,000. If the court entered a judgment, it was not part of the record at the time the AJVR reviewed it.

Race/Age Discrimination - A black applicant for a police chief job alleged he was passed over because of a combination of his race and age

Nunley v. City of Brewton, 1:06-712
Plaintiff: Jay Lewis, Montgomery
Defense: Andrew J. Rutens, *Galloway Wettermark Everest Rutens & Gaillard*, Mobile
Verdict: Defense verdict on liability
Federal: **Mobile**, 3-5-08
Judge: Kristi K. DuBose

Donnie Nunley, then age 58, applied in July of 2005 for the open position of the police chief in Brewton. Nunley had thirty years of experience in law enforcement and believed himself to be eminently qualified. Brewton received 13 applications and interviewed three, including Nunley.

The decision was made in a 9-27-05 vote of the city council. It elected to hire Monte McGowin – McGowin was just 32 years old and he was white. Nunley thought he had been passed over because of a combination of his age and race.

He cited proof that a city council member had remarked that they had had a prior problem with a black chief. Nunley also heard that the city favored someone in their 30's that would be around awhile. Based on these facts and his experience as compared to McGowin, Nunley filed this federal discrimination lawsuit.

Brewton defended that the decision was made solely on merit. That is, McGowin was the better candidate. While he had less overall experience than Nunley, McGowin had more administrative experience. The government also cited concerns about Nunley in that he had previously maintained a discrimination lawsuit against Atmore. Thus the issue wasn't race or age, but rather cohesiveness that motivated Brewton.

The verdict was for Brewton on both the race and age discrimination counts, Nunley taking nothing. A defense judgment was entered.

Conversion - A company submitted plans and specifications as part of a proposal relating to a construction project; the company sought compensation when the builder later used the plans and specifications without paying for them

Contracts, LLC. v. Buchanan, 05-4571
Plaintiff: Craig Izard, Birmingham
Defense: E. Martin Bloom, *Ellis & Bloom, LLC.*, Birmingham
Verdict: $2,000 for plaintiff
Circuit: **Jefferson**, 2-5-08
Judge: Joseph L. Boohaker

John Buchanan was involved in a building project at 1873 Gadsden Highway in Trussville. As part of the project, a company called Contracts, LLC. submitted to Buchanan a package of materials that included certain plans, specifications, and drawings.

This submission from Contracts, LLC. was apparently just a proposal, and the company was never paid for it.

Nevertheless, Buchanan apparently used the plans and specifications for purposes of obtaining permits and passing inspections.

Contracts, LLC. was unaware that Buchanan intended to use the proposal materials in that way. When the company learned of what Buchanan had done, litigation soon followed. Contracts, LLC. filed suit against Buchanan and against Buchanan's contractor, Milam & Company Construction, Inc.

Milam & Company was later dismissed from the case. The litigation continued against Buchanan. Contracts, LLC. accused Buchanan of using their plans and specifications without paying for them and without the company's knowledge or consent.

Plaintiff alleged counts under both conversion and *quantum meruit*. In its complaint, Contracts, LLC. demanded damages of $25,000. Buchanan defended the case on several fronts.

First, Buchanan argued that Contracts, LLC. had never made any request for the return of the plans and specifications. If the company had made such a request, Buchanan would have promptly returned them.

For that reason, Buchanan argued he never exercised exclusive dominion and control of the materials. Thus, one of the essential elements of a claim for conversion is absent, and so that count of plaintiff's case must therefore fail.

Second, Buchanan argued that Contracts, LLC. never had any contract with him in his individual capacity. Therefore, plaintiff cannot maintain a cause of action against him in his individual capacity. In essence, plaintiff has sued the wrong party. Finally, Buchanan argued that if any conversion did take place, it was due to the actions of his contractor, over which he had no control.

The case was tried for two days in Birmingham. The jury returned a verdict for Contracts, LLC. and awarded the company damages of $2,000. The court entered a judgment for that amount.

Auto Negligence - A teenager attempted to make a left turn just as the vehicle behind her attempted to pass her on the left; the teenager was injured in the crash, and her mother also made a claim for the teenager's medical expenses

Williams v. Cunningham, 07-48
Plaintiff: J. Barton Warren, *Warren & Simpson, P.C.*, Huntsville
Defense: Benjamin R. Rice, *Spurrier Rice & Forbes, LLP.*, Huntsville
Verdict: $33,000 for plaintiffs (allocated $20,000 to Porsha Williams and $13,000 to Tina Williams)
Circuit: **Madison**, 2-28-08
Judge: Laura W. Hamilton

On 2-1-05, Porsha Williams, then age 17, was driving south on AL 53 in Madison County. Behind her was a vehicle being driven by Frederick Cunningham.

At a certain point on her journey, Porsha activated her left turn signal and began to make a left turn. Just as she did so, Cunningham attempted to pass her on the left. Instead, he collided with the driver's side of Porsha's vehicle.

The record does not reveal the nature of Porsha's injuries or the amount of her medical expenses. Her mother, Tina Williams, filed suit both on her own behalf and on behalf of Porsha. Together, plaintiffs blamed Cunningham for causing the crash.

Tina also made a claim for recovery of the medical expenses she had paid on behalf of her daughter. Cunningham defended the case and minimized the claimed damages.

The case was tried for three days in Huntsville. The jury returned a verdict for plaintiffs and awarded damages of $20,000 to Porsha and $13,000 to Tina. The court entered a judgment for those amounts, plus costs.

Post-trial, plaintiffs filed a motion for costs of $1,656. The court granted the motion, but only in the reduced amount of $821.

Notary Negligence - A public notary was accused of notarizing a forged signature and thereby furthering a fraudulent scheme to transfer title to a piece of real estate without the owner's knowledge or consent

Washington v. Sherrod, 04-5416
Plaintiff: William F. Prosch, Jr., Birmingham
Defense: Arthur Shores Lee, Birmingham
Verdict: Defense verdict
Circuit: **Jefferson**, 1-14-08
Judge: Joseph L. Boohaker

In the latter half of 1998, Emmett Washington, then age 62, was part owner of a piece of real estate in Jefferson County. The record is unclear, but it appears that Washington acquired his ownership interest in the property by way of an inheritance.

On 9-15-98, Sarah Washington (no relation to Emmett) arranged for the execution of a warranty deed to transfer the property into her name. The deed was notarized by Carrie Sherrod (formerly, Herndon), who acknowledged Emmett's signature and herself signed the deed as a notary and witness.

However, there was a problem. According to Emmett, he never authorized the transfer, nor did he ever sign the warranty deed. Rather, his signature on the deed was a forgery, and the entire transfer of the property was a fraud.

Emmett filed suit against Sarah and Sherrod and accused them of fraudulently transferring his property into Sarah's name. He claimed that as a result of defendants' actions, he has lost the value of his property that he estimates at $49,000. If successful, Emmett sought both punitive damages and an order declaring the deed void and restoring his legal ownership of the property.

Sarah failed to answer the complaint, and the court subsequently entered a default judgment against her in the amount of $25,000. That figure was comprised of $8,667 in compensatory damages, plus another $16,333 in punitive damages.

The litigation continued against Sherrod with Emmett criticizing her for notarizing his signature when he wasn't even present at the time. She defended

and noted that at most Emmett had only a one-seventh interest in the subject property. Rather than the $49,000 figure that Emmett quoted, Sherrod valued his ownership interest at no more than $7,000.

Sherrod also pointed out that Emmett never attempted to redeem the property, never paid taxes on the property, never paid any part of the mortgage, and never paid for any of the upkeep or maintenance on the property. In fact, as of 11-7-05, the taxes on the property were delinquent to the tune of $1,875. In essence, it seemed that Emmett had simply abandoned the property until he learned of its transfer.

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

Auto Negligence - A teenager who was distracted by looking at the aftermath of an accident on the side of a country road ran into a motorcycle that he hadn't noticed had stopped in front of him

Dodson v. Bowers, 06-617
Plaintiff: William V. Powell, Jr., *Powell & Denny, P.C.*, Birmingham
Defense: Celeste Patton Armstrong, *Varner & Associates*, Birmingham
Verdict: $7,000 for plaintiff
Circuit: **Morgan**, 11-8-07
Judge: Steven E. Haddock

Around dusk on 10-6-05, Jason Dodson, then age 38, was riding a motorcycle, heading east on Modaus Road in Morgan County. Behind him was a vehicle being driven by George Bowers, a teenager employed by Chik-fil-A, who was on his way home to prepare for basketball practice.

As the parties approached a point near the intersection of Asheville and Shady Grove Road, Bowers noticed that traffic up ahead had stopped. The traffic jam was due to a car that had gone off the opposite side of the road and run into a telephone pole.

Bower would later recall that as he looked at the car off the side of the road, he noticed out of the corner of his eye what appeared to be Dodson's tail light. Bowers quickly slammed on his brake and tried to stop.

It was no use. In the next instant, Bowers ran into Dodson. Although the record is not entirely clear, it seems that Dodson suffered soft-tissue injuries due to the crash and later followed a course of chiropractic treatments. His medical expenses are unknown.

Dodson filed suit against Bowers and blamed him for taking his eyes off the road and causing the crash. Bowers, who is now a student at Bob Jones University in Greenville, NC, defended the case and minimized the claimed damages.

The case was tried in Decatur. The jury returned a verdict for Dodson and awarded him damages of $7,000. The court entered a judgment for that amount, and it has been satisfied.

Breach of Contract - A man hired a construction company to make some improvements to his home; the man later claimed that the company failed to do the work as agreed and that the company owner pocketed the up-front partial payment

Arsani v. Cook, et al., 06-1104
Plaintiff: A. Riley Powell, IV, *The Powell Law Firm, P.C.*, Gulf Shores
Defense: *Pro se*
Verdict: $100 for plaintiff against Fibre Coat on contract claim; defense verdict on remaining claims
Circuit: **Baldwin**, 10-31-07
Judge: Charles C. Partin

Kourosh Arsani was interested in having some construction work done at his home located at 348 Collinwood Loop in Foley. The company he hired to do the job was Fibre Coat Industries Pool Resurfacing, Inc. Although the record is unclear, it appears that Fibre Coat is owned and operated by Fred Cook.

The project called for the construction of a swimming pool; a shed with an arbor, water, and electricity; a screen enclosure, a patio cover, a driveway, a large fence, an outdoor shower, and an outdoor bar with a sink. The cost for the project was set at $46,725.

Arsani paid Cook $25,000 to get started. However, the project was never completed. According to Arsani, Cook did not in fact do the work, and none of the $25,000 was used to pay for labor or materials.

In the resulting lawsuit, Arsani alleged counts against both Cook and Fibre Coat under breach of contract, willful misrepresentation, and conversion. He claimed that the $25,000 he had paid to Cook simply went into Cook's pocket rather than into the project. Thus, Cook converted Arsani's property to own use, and he wilfully failed to live up to their agreement.

Cook apparently represented himself and Fibre Coat throughout the litigation. In his *pro se* Answer, Cook declared that all of Arsani's allegations were false. According to Cook, all of the money Arsani paid him went to cover the costs of the project. Furthermore, those portions of the project that Cook did complete were worth more than $25,000.

Cook went on to explain that Arsani demanded certain changes in the plans that drove up the cost and complexity of the project. In the end, Cook stopped work on the project only because Arsani asked him to do so "until some permit or certain aspect of the job." It is unclear exactly what Cook meant by that statement.

In addition to denying all of Arsani's allegations, Cook also stated in his Answer that he was countersuing for $25,000 on each of the counts Arsani had alleged in his Complaint. Arsani later filed a motion to dismiss the counterclaim.

The grounds for the motion were: (1) failure to state a claim, (2) Arsani was never properly served with a counterclaim, and (3) it was unclear from Cook's pleadings what Arsani was being called upon to defend against. The record does not explicitly reveal the court's ruling on the motion. However, Cook's counterclaim seems to have disappeared from the case sometime after the motion was filed.

At the conclusion of a three-day trial in Bay Minette, the jury returned a mixed verdict. On the claim for breach of contract, the jury found for Arsani and awarded him damages of $100 against Fibre Coat.

At the same time, the jury found for Cook and Fibre Coat on the counts for conversion and willful misrepresentation. The court entered a judgment that reflected the verdict, plus costs of $328.

Auto Negligence - Plaintiff claimed soft-tissue injuries to her neck and lower back that she attributed to a rear-end crash; the jury returned a verdict for the defense

Burnette v. Jackson, 06-3458
Plaintiff: Maricia Woodham, M. Wayne Sabel, and Mark W. Sabel, *Sabel & Sabel, P.C.*, Montgomery
Defense: Laura Sidwell Maki, *Wade S. Anderson & Associates*, Birmingham
Verdict: Defense verdict
Circuit: **Jefferson**, 11-6-07
Judge: Robert S. Vance

On 6-13-04, Christine Burnette, then just two weeks shy of her 43rd birthday, was on her way home to Montgomery after having attended her daughter's basketball game at Homewood High School. Burnette, who worked as a graphic art technician for the State of Alabama Finance Department, was driving a 1990 Honda Accord on Lakeshore Parkway in Jefferson County.

During her journey, Burnette stopped for a red light at the intersection of I-65 and Crest Road. As she sat waiting for her light to turn green, Burnette was rear-ended by a 1992 Honda Accord being driven by Ken Jackson.

Burnette suffered soft-tissue injuries to her neck and lower back. She followed a course of chiropractic treatments at a cost of at least $3,934. She also missed three days of work due to her injuries. Burnette's wage loss amounted to $304.

In this lawsuit, Burnette blamed Jackson for failing to stop in time and for rear-ending her. In addition to her negligence claim, Burnette also alleged a count for wantonness. Jackson defended and minimized the claimed damages.

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

Uninsured Motorist - After plaintiff was rear-ended in a serious crash by an uninsured motorist, she sought compensation from her own insurer; plaintiff prevailed at trial, and the court reduced the verdict amount to her UM policy limits, plus costs

Carr v. Allstate Insurance - 07-900601
Plaintiff: Dwain C. Denniston, Jr., *Taylor Martino Kuykendall*, Mobile
Defense: Celeste Patton Armstrong, *Varner & Associates*, Birmingham
Verdict: $150,000 for plaintiff (allocated $75,000 compensatory and $75,000 punitive)
Circuit: **Mobile**, 11-29-07
Judge: Sarah Hicks Stewart

On 8-26-06, Donie Carr was driving a 2004 Nissan Murano on South McKenzie Street in Foley. As Carr traveled along, she was rear-ended by Santiavates Haire. The impact sent Carr's vehicle across the median where it flipped over several times before finally coming to a rest.

The record does not reveal the nature of Carr's injuries or the amount of her medical expenses. As it happened, Haire was uninsured at the time of the accident. Accordingly, Carr made a claim pursuant to the uninsured motorist provision of her own policy with Allstate Insurance.

Allstate apparently denied the claim, and Carr filed suit against the insurer. If successful, Carr sought both compensatory and punitive damages.

Carr's identified medical experts included Dr. Scott Moore, Emergency Medicine, Foley; Dr. L. Dean Mason, II, Orthopedics, Orange Beach; and Dr. Karin Pardue, General Practice, Lillian. Allstate defended the case and minimized the claimed damages.

The case was tried in Mobile. The verdict came back for Carr with an award of $75,000 in compensatory damages. To that amount the jury added another $75,000 in punitive damages. That brought the total award to $150,000.

The court entered a judgment that reflected the verdict. Carr's motion for costs was granted in the amount of $1,600. However, Allstate filed a motion for *remittitur* on the ground that the company's liability extended only to its policy limits of $60,000. Allstate went on to argue that the award of costs should be included in that figure.

The court granted the motion for *remittitur* and reduced the judgment to Allstate's policy limits of $60,000. At the same time, the court rejected the argument that costs should be included in that figure. In other words, the court ruled that Allstate would be required to pay its policy limits, plus costs.

Allstate complied with the judgment and paid the full amount as required. However, Carr claimed she was also entitled to interest on the judgment in the amount of $1,800. On that basis, she filed a motion for execution to collect what she believed she was owed. At the time the AJVR reviewed the record, the motion was still pending.

Auto Negligence - Plaintiff suffered soft-tissue injuries in a rear-end crash; according to plaintiff, the crash happened because defendant was distracted with trying to place a call on his cell phone

Nichols v. Carter, 05-407
Plaintiff: William R. Davis, *Davis & Herrington, LLC.*, Montgomery
Defense: Alex L. Holtsford and Murry S. Whitt, *Nix Holtsford Gilliland Higgins & Hitson, P.C.*, Montgomery
Verdict: Defense verdict
Circuit: **Autauga**, 2-16-07
Judge: Ben A. Fuller

On 1-2-04, Edward Nichols, then age 58, was driving on East Main Street in Prattville. At some point during his journey, Nichols stopped in traffic. An instant later, he was rear-ended by Bobby Carter.

Nichols claimed injuries to his neck, back, and shoulder that he attributed to the crash. The record does not reveal the amount of his medical expenses.

In this lawsuit, Nichols blamed Carter for crashing into him. According to Nichols, the crash happened because Carter was distracted with trying to place a call on his cell phone and thereby failed to notice Nichols had stopped in front of him.

In addition to alleging negligence on Carter's part, Nichols also made a claim for wantonness. Carter defended the case and minimized Nichols's claimed damages.

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

Prior to trial, Carter made an Offer of Judgment in the amount of $7,500. Based on Nichols's rejection of the offer, Carter filed a post-trial motion for costs of $1,868. The court denied the motion.

Uninsured Motorist - A motorist crossed the center line and crashed head-on into plaintiff; when it turned out that the other motorist's insurance policy had been canceled only a month before the crash, plaintiff sought uninsured motorist benefits from her own insurer

Harp v. GEICO, 06-291
Plaintiff: Matt Abbott, *Abbott & Davis, LLC.*, Pell City
Defense: Paul L. Sotherland, *Sotherland Law Firm, LLC.*, Mountain Brook
Verdict: $30,000 for plaintiff
Circuit: **St. Clair**, 1-10-08
Judge: James E. Hill, Jr.

In the afternoon of 9-10-05, Paula Harp was riding as a passenger in her own 2003 KIA Rio that her daughter, Jennifer Harp, was driving. The two were traveling north on Slasham Road in the Town of Southside in Etowah County.

At the same time, a 1961 Ford F100 pickup truck being driven by John Hollingsworth was approaching from the opposite direction. As the two vehicles drew near each other, Hollingsworth crossed the center line and collided with the Harps in a head-on crash.

Paula suffered thoracic and spinal injuries due to the crash. The record does not reveal the amount of her medical expenses. Hollingsworth had previously been insured under a policy issued by the Infinity Insurance Company. However, the policy had been canceled on 8-7-05, just over a month before the crash.

Although Hollingsworth was uninsured, Paula had another option. She was insured by the Government Employees Insurance Company (GEICO) under policies that carried stacked coverage of 100/200.

Paula made an uninsured motorist claim with GEICO under her policy, but the company refused to pay. She filed suit and sought the UM benefits available under her policy. GEICO defended the case and minimized Paula's claimed damages.

A jury in Pell City resolved the matter in favor of Paula. She was awarded damages of $30,000, and the court entered a judgment for that amount.

Auto Negligence - Each party blamed the other for a failure-to-yield intersection crash

Montgomery v. Reed, 06-111
Plaintiff: James Marks, Sheffield; and J. Glynn Tubb, *Eyster Key Tubb Roth Middleton & Adams, LLP.*, Decatur, on the defense against Reed's counterclaim
Defense: Earl T. Forbes, *Spurrier Rice & Forbes, LLP.*, Huntsville
Verdict: Defense verdict
Circuit: **Colbert**, 10-18-07
Judge: Harold V. Hughston, Jr.

On 3-16-04, Selma Montgomery and Michael Reed were both driving near the intersection of 1st Street and Atlanta Avenue in Sheffield. The record is unclear about the exact position of the two parties. According to Montgomery, she was driving on 1st Street. According to Reed, however, Montgomery was driving south on Atlanta Avenue while Reed was driving west on 1st Street.

In any event Montgomery and Reed collided in the intersection. The record does not reveal either the nature of Montgomery's or Reed's injuries or the amounts of their respective medical expenses.

Montgomery filed suit against Reed and blamed him for causing the crash. Reed defended the case and filed a counterclaim in which he blamed Montgomery for the crash. According to Reed, it was Montgomery who faced a red light at the intersection. Instead of stopping, however, she failed to yield the right-of-way, entered the intersection illegally, and caused the crash.

The case was tried for two days in Tuscumbia. The jury returned a verdict for Reed on Montgomery's claim. Unfortunately, the record contains no indication of the status of Reed's counterclaim. The court entered a defense judgment for Reed.

Underinsured Motorist - An underage university student was out bar hopping past midnight; when she walked across a street toward her next watering hole, she was hit by a passing motorist

McGee v. State Farm Insurance, 05-312
Plaintiff: Mary Turner, *Turner Webb & Roberts, P.C.*, Tuscaloosa; and Mark D. Morrow, *Law Office of Mark D. Morrow*, Tuscaloosa
Defense: William J. Donald, III, *Donald Randall & Donald*, Tuscaloosa
Verdict: Defense verdict
Circuit: **Tuscaloosa**, 9-12-07
Judge: Charles R. Malone

In the evening of 1-29-04, Emily McGee, then age 18 and a student at the University of Alabama, was out for a bit of bar hopping. One of her stops that night was at the Hounds Tooth Sports Bar located near the intersection of University Boulevard and 13th Avenue in Tuscaloosa.

Despite being under the legal drinking age, McGee succeeded in purchasing and consuming an unknown amount of alcohol. Ultimately, however, the Hounds Tooth management became aware of the situation and asked McGee to leave.

It was approximately two o'clock in the morning of 1-30-04 when McGee left the Hounds Tooth Bar. As it happened, right across the street from the Hounds Tooth was another drinking establishment known as Eagan's Bar.

The lure proved to be too much for McGee to resist, and she proceeded across University Boulevard toward Eagan's. At the same time, Kim Cobb was driving west on University Boulevard in a 1992 Toyota Camry owned by Robert Lanoux. It would later be alleged that Cobb was also intoxicated at the time.

As McGee walked across the street, Cobb ran into her. It was a serious impact that left McGee with injuries to her right leg and knee, cuts to her face and body, a concussion with post-concussion syndrome, and memory loss. She also suffered dental injuries that included several broken and chipped teeth.

McGee underwent surgery on her leg and knee, and she had dental surgery to repair her teeth. She also had to take a leave of absence from school due to her

memory loss. The record does not reveal the amount of her medical expenses.

In the ensuing litigation, McGee initially targeted Cobb, Lanoux, and the Hounds Tooth Bar. She blamed Cobb for running into her, Lanoux for negligently entrusting his car to Cobb, and the Hounds Tooth Bar for dram shop liability and for not providing McGee with assistance for her safety when she was told to leave. McGee's parents also made a claim for the loss of tuition they had paid on McGee's behalf.

After McGee filed suit, her insurer, State Farm Insurance, filed a motion to intervene in the case on the ground that the company might become subrogated to McGee's rights to the extent of any uninsured/underinsured motorist payments. The court granted the motion, but State Farm later opted out.

Thereafter, McGee entered into a *pro tanto* settlement with the Hounds Tooth and dismissed the bar from the case. McGee's parents also dismissed all of their claims against all defendants. Finally, McGee settled with Cobb and Lanoux for their $20,000 policy limits with Progressive Insurance.

As part of this shakeout in the alignment of the case, McGee amended her complaint to add an underinsured motorist claim against State Farm and thereby brought the company back into active participation in the case. State Farm initially denied McGee was injured to the extent she claimed. However, the parties later resolved by agreement the issue of damages.

The case was thus tried only on the issue of damages. After three days of testimony, the Tuscaloosa jury that heard the case deliberated only thirty minutes before returning a verdict for State Farm.

Interestingly, the jury foreman originally signed the verdict form in the section indicating a verdict for McGee. He then marked out that signature and wrote "Oops!" in the margin before signing the section that indicated a verdict for State Farm. Thereafter, the court entered a consistent defense judgment.

Post-trial, McGee filed a motion for a new trial and argued the verdict was against the weight of the evidence. She also claimed the jury considered matters not in evidence and that the court had issued an erroneous evidentiary ruling.

In particular, it seems the accident had exacted a heavy toll on Cobb. She blamed McGee and the accident for her own subsequent crack cocaine addiction and the eventual loss of her job, her home, and the custody of her children.

McGee wanted to cross-examine Cobb on the matter of her drug addiction, but the court had issued a ruling that prohibited that line of questioning. McGee thought that ruling was in error, and partly on that basis she argued she was entitled to a new trial. The court denied her motion.

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