The Alabama Jury Verdict Reporter

The Most Current and Complete Summary of Alabama Jury Verdicts

June 2006 **Statewide Jury Verdict Coverage - Published Monthly** **6 A.J.V.R. 6**

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 man sought treatment at the ER for an attack of gout; the drug the man was given for his gout interacted adversely with his other medications and led ultimately to his death

Estate of Larrimore v. Springhill Memorial Hospital, 02-3205
Plaintiff: Toby D. Brown, George H. Finkbohner, and David G. Wirtes, *Cunningham Bounds Crowder Brown & Breedlove*, Mobile
Defense: Philip H. Partridge and Bryan D. Smith, *Partridge Smith, P.C.*, Mobile
Verdict: $4,000,000 for plaintiff
Circuit: **Mobile**, 2-17-06
Judge: Charles A. Graddick

As the 20th century drew to a close, Luther Larrimore, age 50, was suffering from multiple medical problems. Among them were ulcerative colitis, kidney failure, high blood pressure, and avascular necrosis of the hips. If those ailments were not enough, he was diagnosed in 1999 with arthritis and gout in his left knee.

Larrimore was given a prescription for colchicine, an anti-inflammatory medication made by Novartis Pharmaceuticals, to control his gout. The plan was for him to take the colchicine as needed for flare-ups. Although this was not a cure, it would at least afford Larrimore some relief from his symptoms.

On 8-15-01, Larrimore's knee pain suddenly became dramatically worse. He went to the ER at Springhill Memorial Hospital in Mobile and came under the care of Dr. John McMahon, an employee of Springhill Emergency Physicians, P.C.

At the ER, Larrimore's wife, Sharon, gave Dr. McMahon a copy of Larrimore's medical history and a list of his medications. Among the medications on the list was

cyclosporine, which Larrimore had been taking for his kidney failure.

McMahon examined Larrimore and diagnosed gout. He then gave Larrimore a new prescription for colchicine. McMahon and would later claim that prior to giving the prescription, he checked the Physician's Desk Reference for dosage and interaction information regarding colchicine. However, he admits he did not check the information for cyclosporine. That lapse would lead to tragic consequences.

Larrimore filled the colchicine prescription later that day at the hospital pharmacy and began taking one tablet every hour until the pain stopped. The next day, his condition began to deteriorate, and he went back to the ER at Springhill.

This time Larrimore was seen by Dr. Michael Mahoney, also an employee of Springhill Emergency Physicians, who diagnosed a stomach virus. Despite treatment, Larrimore's condition continued to deteriorate over the next several days. Finally, he died on 8-19-01 at the Mobile Infirmary.

Larrimore's estate filed suit against Drs. McMahon and Mahoney, as well as against Springhill Emergency Physicians, Novartis Pharmaceuticals, and Springhill Memorial Hospital. However, the estate later settled with the two doctors and their employer, and the court granted Novartis a summary judgment. The case advanced to trial only on the claim against Springhill.

According to Larrimore's estate, the interaction of colchicine with cyclosporine caused Larrimore to develop colchicine toxicity, which Mahoney misdiagnosed as a stomach virus. The unrecognized and untreated colchicine toxicity, in turn, led to tissue breakdown, sepsis, and, ultimately, to Larrimore's death.

The estate criticized the hospital for allowing its pharmacy to fill the colchicine prescription despite the danger of a fatal interaction with Larrimore's other medications. The estate's identified experts included Dr. Rodney Richmond, Pharmacy, Morgantown, WV.

Springhill defended the case and denied wrongdoing. The identified defense expert was Dr. Paul Doering, Pharmacy, Gainesville, FL.

As an interesting aside, Springhill was insured by an entity called Reciprocal of America (ROA), an insurance company based in Virginia. On 1-29-03, ROA was placed in receivership, and the company was later liquidated.

The case was tried for a week in Mobile. The jury deliberated approximately three hours before returning a verdict for the estate in the amount of $4,000,000. If the court entered a judgment, it was not part of the record at the time the AJVR reviewed it.

Wantonness - Plaintiff did not file suit in a rear-end crash case until nearly six years after the accident; when plaintiff's negligence claim was dismissed based on the statute of limitations, only his claim for wantonness remained

Patterson v. Hollinhead, 04-1138
Plaintiff: Henry L. Penick, *H.L. Penick & Associates, P.C.*, Birmingham
Defense: Aubrey J. Holloway, *Gaines Wolter & Kinney*, Birmingham
Verdict: Defense verdict
Circuit: **Jefferson**, 3-9-06
Judge: Helen Shores Lee

On 3-7-98, Henry Patterson was driving a 1990 Nissan Sentra on I-59 North in Birmingham. At a point near the intersection with 22nd Street North, Patterson was rear-ended by a vehicle being driven by Corey Hollinhead. Patterson claimed a back injury due to the crash. His medical expenses are unknown.

For some reason, Patterson delayed filing suit against Hollinhead until 2-20-04, nearly six years after the accident. In the lawsuit, Patterson alleged counts for negligence and wantonness. His wife, Burnice, also presented a derivative claim for loss of consortium.

In addition to targeting Hollinhead, Patterson also made claims against his own insurer, State Farm. Specifically, Patterson made an uninsured motorist claim, and he alleged counts against State Farm for breach of contract and bad faith.

During the course of the litigation, the court granted State Farm's motion for summary judgment on the breach of contract and bad faith claims. Additionally, the court ruled Patterson's negligence claim against Hollinhead had been filed outside the statute of limitations and must therefore be dismissed.

When the dust finally settled, the only claim to survive to trial was Patterson's claim against Hollinhead for wantonness. If successful, Patterson could be eligible for UM benefits on that claim. Although State Farm thus technically remained in the case due to its potential obligation to pay UM benefits, it chose to opt out. Hollinhead defended and minimized damages.

The case was tried over four days in Birmingham. The verdict was for Hollinhead, and the court's consistent defense judgment ended the litigation.

Truck Negligence - A man was injured in a collision with a tractor-trailer; the driver of the tractor-trailer turned out to be blind in one eye and had a history of fainting, dizziness, and alcohol abuse

Ray v. Billy Barnes Enterprises, 03-223
Plaintiff: David M. Cowan, *Mann Cowan & Potter*, Birmingham
Defense: David M. Wilson and Jud C. Stanford, *Wilson & Barryhill*, Birmingham
Verdict: $3,500,000 for plaintiff
Circuit: **Macon**, 2-10-06
Judge: Tom F. Young, Jr.

On 5-21-03, David Miller, age 47, was driving a tractor-trailer owned by his employer, Billy Barnes Enterprises. Miller was traveling on U.S. 80 near the intersection with Brown Street in Macon County. An instant later, he collided with a vehicle being driven by Howard Ray, age 45.

The record does not reveal the nature of Ray's injuries or the amount of his medical expenses. He filed suit against both Miller and Billy Barnes Enterprises.

It turned out that Miller was legally blind in his left eye, and he had a history of fainting, dizziness, alcohol abuse, and cardiac problems. Ray argued those facts should have disqualified Miller from driving a tractor-trailer.

Accordingly, Ray blamed Miller for the crash, and he blamed Billy Barnes Enterprises for negligently entrusting the tractor-trailer to Miller. Ray's identified expert on motor carrier safety was Whitney Morgan of Birmingham.

Miller initially claimed to have

gotten a special waiver in order to obtain his CDL. However, Ray argued that Miller had been able to get the waiver only by concealing his physical limitations from the doctor who conducted his physical examination.

Miller further claimed he had not suffered any fainting, dizziness, or loss of consciousness before, during, or after the crash. Thus, his physical limitations were essentially irrelevant to the case.

Ultimately, however, defendants admitted fault for the crash. On that basis, the court directed the Tuskegee jury that heard the case to return a verdict for Ray on liability. The only issue that remained for the jury to deliberate was that of damages.

Ray was awarded $1,500,000 in compensatory damages. To that amount was added another $2,000,000 in punitives. That brought the total award to $3,500,000. If the court entered a judgment, it was not part of the record at the time the AJVR reviewed it more than three months post-trial.

During deliberations, the jury asked the court two questions: (1) "In determining the amount of an award (amount of money) - do we (the jury) have to have a majority vote or a unanimous vote?" (2) "Same question for compensatory award." The court's reply is not reflected in the record.

Auto Negligence - A mail carrier was rear-ended as she waited behind a state highway maintenance truck that was stopped in the road to retrieve a sign

Langley v. Chinnis, 04-106
Plaintiff: Eaton G. Barnard, *Eaton G. Barnard & Associates, P.C.*, Mobile
Defense: William D. Montgomery, Jr. and James A. Rives, *Ball Ball Matthews & Novak*, Daphne
Verdict: $35,000 for plaintiff
Circuit: **Mobile**, 3-22-06
Judge: Sarah H. Stewart

On 8-22-02, Jewel Langley, age 54 and a mail carrier for the U.S. Postal Service, was driving her postal route in rural Mobile County. She was in a fully marked Postal Service van with flashing lights that were operating.

As Langley traveled west on Moffett Road in a drizzling rain, she pulled up behind an Alabama State Highway maintenance truck near the intersection with Powell Drive. Langley observed the truck first slow down and then come to a stop to retrieve a sign from the side of the road.

Langley stopped to wait for the truck to complete its retrieval operation. An instant later, she was rear-ended by a vehicle owned by Jason Pendergraft and being driven by Dustin Chinnis. Langley sustained a back injury due to the collision. The record does not reveal the amount of her medical expenses.

In this lawsuit, Langley sought compensation from Chinnis and blamed him for the crash. She also stated a claim against Pendergraft for negligent entrustment. Finally, Langley made an uninsured/underinsured motorist claim against her insurer, State Farm.

State Farm opted out of the litigation, and the case proceeded against Chinnis and Pendergraft. They defended and disputed the reasonableness and necessity of Langley's medical treatment. However, Langley voluntarily dismissed Pendergraft slightly less than two weeks before trial.

A jury in Mobile heard the evidence against Chinnis and returned a verdict for Langley in the amount of $35,000. The court granted Langley's motion for costs of $3,067. If the court entered a judgment, it was not in the record when the AJVR reviewed it nearly two months post-trial.

Breach of Contract - A sock manufacturer agreed to purchase a million pounds of cotton yarn from a yarn manufacturer; when the price of cotton declined, the sock manufacturer breached the contract and purchased yarn more cheaply on the open market

Southwest Textiles, Inc. v. Robin Lynn Mills, Inc., 03-321
Plaintiff: Glenn E. Waldrop, Jr., *Lightfoot Franklin & White*, Birmingham; and E. Allen Dodd, Jr., *Scruggs Dodd & Dodd*, Fort Payne
Defense: Robert G. Wilson, *Wilson & Scott*, Fort Payne
Verdict: $301,863 for plaintiff; for plaintiff on defendant's counterclaim
Circuit: **DeKalb**, 3-30-06
Judge: Randall L. Cole

Robin Lynn Mills, Inc. of Fort Payne is a textile company that specializes in manufacturing socks. In 2000 and early 2001, Robin Lynn Mills's president Cleve Chisenhall, undertook negotiations with company called Southwest Textiles, Inc. of Abernathy, Texas.

Southwest Textiles was in the business of making and selling cotton yarn. On behalf of Robin Lynn Mills, Chisenhall agreed to purchase one million pounds of yarn from Southwest at a price of ninety-three cents per pound.

Apparently, the plan was for Robin Lynn Mills to order individual shipments of yarn as needed until the combined shipments reached the agreed upon total of one million pounds. Southwest agreed to this plan, and the parties memorialized the contract in writing.

In order to meet its contractual obligation to Robin Lynn Mills, Southwest purchased more than one million pounds of cotton from a company called ACG Marketing. Southwest would then transform the cotton into yarn and ship it out to fill Robin Lynn Mills's orders.

Over the subsequent months, Robin Lynn Mills placed several orders that added up to approximately 144,584 pounds of yarn. Southwest filled those orders as agreed. Soon, however, the situation took an unexpected turn.

In 2001, the market price for cotton declined. Shortly thereafter, Robin Lynn Mills informed Southwest that the sock maker would not be needing one million pounds of yarn after all. Southwest later learned that Robin Lynn Mills then went into the open market and purchased more than a million pounds at the lower market price.

It seemed to Southwest that Robin Lynn Mills had entered into the contract simply as a hedge against the possibility that the market price for cotton might go up. When the price instead went down and cotton yarn could be bought more cheaply on the open market, Robin Lynn Mills backed out of the deal.

Southwest filed suit against Robin Lynn Mills on counts for fraud and breach of contract. Robin Lynn Mills defended the case and filed a counterclaim. Southwest calculated its damages at $300,000.

According to Robin Lynn Mills,

Southwest produced yarn of inferior quality that failed to meet the sock maker's specifications. Also, Southwest failed to ship the yarn in a timely manner, and this forced Robin Lynn Mills to buy yarn from other sources.

During the course of the litigation, the court granted Robin Lynn Mills a summary judgment on the claim for fraud. The case then advanced to trial solely on the breach of contract claim and on Robin Lynn Mills's counterclaim.

At the conclusion of a four-day trial in Fort Payne, the jury returned a verdict for Southwest and awarded it damages of $301,863. The court entered a consistent judgment for that amount and for Southwest on the counterclaim.

Auto Negligence - While riding as a passenger with a hired driver, plaintiff was injured in a disputed turn crash

Harrington v. Moore, et al., 04-65
Plaintiff: Nicholas H. Wooten, *Wooten & Carlton*, LaFayette
Defense: Steve R. Perryman, Valley, for Moore; W. Evans Brittain, *Ball Ball Matthews & Novak*, Montgomery, or Bartlett
Verdict: $35,000 for plaintiff
Circuit: **Chambers**, 9-19-05
Judge: Tom F. Young, Jr.

It was 11-11-03, and Demetrius Harrington, then age 26, was doing some traveling. His family had arranged for him to be picked up at a bus station in Opelika and driven to LaFayette. The person hired to do the transport was Tamaurio Moore.

Moore picked up Harrington as planned and began the journey to LaFayette. As Moore drove east on Highway 280 in Opelika, he intended to take exit ramp 62 onto I-85 North. In order to do that, he needed to turn left across the westbound lanes of Highway 280.

While this was going on, Davis Bartlett was approaching from the opposite direction. Moore would later claim that as he made his turn on a green arrow onto the ramp to I-85, Bartlett continued through the intersection and collided with Moore's vehicle on the passenger side.

Moore's passenger, Harrington, was taken to the ER at the East Alabama Medical Center. The record does not reveal the nature of his injuries or the amount of his medical expenses. Harrington filed suit against both Moore and Bartlett and blamed them for the crash.

The two defendants each pointed the finger of blame at the other. Moore went so far as to file a cross-complaint against Bartlett and blamed him for running the light and causing the crash.

Bartlett, however, claimed Moore had a green circle light rather than a green arrow. Thus, Bartlett had the right-of-way, and it was Moore who caused the crash by pulling into Bartlett's path.

A jury in LaFayette resolved this case in favor of Harrington and awarded him damages of $35,000. Interestingly, the record is silent on the issues of Moore's cross-claim and the allocation of liability for the damages award between the two defendants. In any event, the court's consistent judgment has been satisfied.

Gender Discrimination - A male social worker alleged he was denied promotion because of his gender

Stuart v. Jefferson County, 2:02-2237
Plaintiff: Coker B. Cleveland, *Cleveland Law Firm*, Birmingham and M. Brandon Walker, *Gentle Pickens & Turner*, Birmingham
Defense: Felicia M. Brooks, *Alabama Department of Human Resources*, Montgomery
Verdict: Defense verdict on liability
Federal: **Birmingham**, 4-27-06
Judge: Virginia Emerson Hopkins

Thomas Stuart was hired in 1980 as a social worker for Jefferson County – in 1992 he became a welfare supervisor. In that role, he handled food stamp distribution.

In June of 2001, Stuart sought a promotion. He was passed over, the department head, Caro Shanahan, selecting a female for advancement. Since that promotion, Shananan has since advanced nine female employees. No men have been promoted.

Stuart sued Jefferson County and alleged he was denied promotion because of his gender. If prevailing, he sought an award of compensatory and punitive damages. Shanahan defended her hiring decisions that they were based solely on merit.

The verdict was mixed but for the government – the jury first found that Stuart had been denied promotion, but further concluded his gender was not a motivating factor in that decision. That ended the deliberations and Stuart took nothing. A defense judgment followed.

Medical Negligence - Following surgery to open a blocked artery, a woman developed deep vein thrombosis and had to have her lower extremities amputated; she blamed the fiasco on faulty post-operative care by her medical team

Washington v. Kingsley, et al., 02-4155
Plaintiff: Julia T. Cochrun, *Pate & Cochrun*, Birmingham
Defense: Randal H. Sellers and L. Ben Morris, *Starnes & Atchison*, Birmingham
Verdict: Defense verdict
Circuit: **Jefferson**, 2-6-06
Judge: G. William Noble

Sometime in 2000, Virginia Washington, age 38 and an LPN with the JBS Mental Health Authority, was suffering from cramping in her right leg. She was referred to vascular surgeon Dr. John Kingsley at the Norwood Clinic.

On 8-22-00, Kingsley performed an arteriogram on Washington and diagnosed a blocked artery. He recommended a surgical repair, and Washington agreed. Three days later, on 8-25-00, she was admitted to the Carraway Methodist Medical Center.

At around noon Washington underwent a right popliteal endarterectomy performed by Kingsley with the assistance of Dr. R. Bryce Turnage. When Washington awoke at around 8:00 p.m., Kingsley was at her bedside.

Kingsley informed Washington that the artery had been repaired and that the blood was once again flowing to her leg. As it happened, Washington had a clot in her knee that had been there for several years. According to her, Kingsley removed the clot during the surgery without informing her.

In any event, Washington stayed in the hospital over the weekend and was discharged on Monday. However, all was not well. Washington claims that at the time of her discharge, she was running a temperature and was