The Alabama Jury Verdict Reporter

The Most Current and Complete Summary of Alabama Jury Verdicts

June, 2011 **Statewide Jury Verdict Coverage - Published Monthly** **11 A.J.V.R. 6**

Unbiased and Independently Researched Jury Verdict Results

In This Issue

Civil Jury Verdicts

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

Conversion - After a self-storage facility terminated a tenant's lease, it gave all the contents of her two storage units to charity about a month later without holding a public sale as promised in the parties' contract

Musgrove v. Uncle Bob's Self Storage, 09-903696
Plaintiff: F. Page Gamble, *F. Page Gamble, P.C.*, Birmingham
Defense: H.C. Ireland, III, *Porterfield Harper Mills & Motlow, P.A.*, Birmingham
Verdict: $85,500 for plaintiff (comprised of $20,000 in compensatory damages and $65,500 in punitives)
Circuit: **Jefferson**, 2-2-11
Judge: J. Scott Vowell

On 11-25-08, Carmen Musgrove leased Storage Unit 170 from Uncle Bob's Self Storage. Four days later, she also leased Storage Unit 172. Into those two units Musgrove moved almost all of her personal belongings, including furniture, clothing, computer equipment, electronics, family pictures and heirlooms, paintings, jewelry, and memorabilia. She retained only some clothes and personal items.

On 12-19-08, Musgrove discovered a water leak had damaged some of her property in Unit 172. She reported this and was told she would not have to pay rent on Unit 172 until she could relocate the contents. Musgrove continued to pay rent on Unit 170.

On 4-26-09, Musgrove noticed some of her items were missing. Believing she had the only key in her possession, she confronted the office manager about the loss. This led to a visit by the police, not only to investigate the possible theft but also because the office manager was alleging disorderly conduct by Musgrove. There were no signs of breaking and entering on the unit, and the police made a report but did not pursue the matter further.

Musgrove came by the office to deliver her May rent in person on 5-5-09. All seemed normal. Thus, she was quite surprised on 5-11-09 when she was at her storage unit and received a notice of rental agreement termination. Uncle Bob's no longer wanted Musgrove as a customer, and they told her that she had to remove all her belongings by 5-31-09 or they would be subject to disposal.

This was hard on Musgrove for several reasons. For one thing she was suffering severe back problems for which she would undergo surgery in July of 2009. She asked Uncle Bob's for additional time so she could find people to help her move her items out of storage. However, Uncle Bob's had a local charity pick up and remove all of Musgrove's items on 6-6-09.

When Musgrove found that all her earthly possessions were gone, she filed suit against Uncle Bob's and blamed it for giving her property away. According to Musgrove, Uncle Bob's should at least have held a public sale so that she could have recouped a small amount of her loss.

The parties' contract clearly stated that in case of default, Uncle Bob's would attempt to sell the renter's property before destroying or otherwise disposing of it. Musgrove's theories included breach of contract, conversion, and negligence.

Uncle Bob's defended and said that it had not acted improperly in disposing of Musgrove's property after she had failed to remove it. It had given her the appropriate notice beforehand. Moreover, the parties' contract limited renters to storing property of no more than $5,000 in value. Uncle Bob's reasoned that Musgrove's damages could be no more than that amount.

A Birmingham jury, however, reasoned differently. It awarded Musgrove $20,000 in compensatory damages and $65,500 in punitives for a total $85,500. A juror allegedly explained to Musgrove's counsel that the jury had awarded $10,000 to Musgrove for her property loss and $10,000 for mental anguish.

After the court entered a consistent judgment, Uncle Bob's moved for a new trial. Musgrove opposed Uncle Bob's motion. After two months of motions, the parties settled their dispute for an undisclosed amount.

Auto Negligence - A collision occurred when one vehicle turned left into the path of another

Jendrzejewski v. Baldwin, 09-901587
Plaintiff: Robert L. Mitchell, *Cunningham Bounds, LLC*., Mobile
Defense: Jason R. Watkins and Juan C. Ortega, *Ball Ball Matthews & Novak, P.A*., Mobile
Verdict: $23,000 for plaintiff
Circuit: **Mobile**, 3-15-11
Judge: Charles A. Graddick

In the afternoon of 10-24-08, Storm Baldwin was driving a Jeep Cherokee near the intersection of Leroy Stevens Road and Cottage Hill Road in Mobile County. It was her first day at her new job, and she was unfamiliar with the area and had gotten lost. To make matters even worse, she was a native New Yorker who ordinarily took public transportation rather than driving.

Just as Baldwin decided she needed to make a left-hand turn, Debra Jendrzejewski drove westward on Cottage Hill Road. Baldwin, who had started her turn before she saw Jendrzejewski's approach, hit her brakes but was unable to avoid colliding with the side of Jendrzejewski's vehicle.

Baldwin and Jendrzejewski got out of their respective vehicles and talked to one another while waiting for police to arrive. Medical personnel were not called to the scene. However, Jendrzejewski later claimed that she was injured as a result of the accident. The record does not identify the nature of her injuries or the amount of her medical expenses.

Jendrzejewski filed suit against Baldwin and blamed her for causing the collision. Her theories included negligence and wantonness. Jendrzejewski also named her UIM/UM carrier, State Farm Mutual Automobile Insurance Company, as a co-defendant.

Baldwin defended and minimized the damages claimed by Jendrzejewski. Before trial, the court granted partial summary judgment on Jendrzejewski's claim of wantonness. State Farm opted out of the action.

A Mobile jury returned a verdict of $23,000 for Jendrzejewski after hearing the parties' arguments. The court entered a consistent judgment.

Medical Negligence - A doctor recommended TEE chemotherapy to a patient who had been suffering from prostate cancer but had successfully undergone radiation and hormone therapy; the patient underwent the chemotherapy but contracted pneumonia and died

Estate of Rutherford v. Bolger, et al., 08-900399
Plaintiff: Jack B. McNamee and Brian K. Miller, *McNamee & Miller*, Birmingham
Defense: Michael D. McKibben and Benjamin L. McArthur, *Bradley Arant Rose & White, LLP*., Birmingham
Verdict: Defense verdict
Circuit: **Jefferson**, 3-11-11
Judge: Robert S. Vance

In 2005, Robert Rutherford, who had been diagnosed with prostate cancer, successfully underwent surgery to remove lymph nodes in his pelvis. He also underwent hormone therapy and radiation treatment, and his PSA level had decreased from 23 to 0.

On 8-19-05, Rutherford was referred to Dr. Graeme Bolger, an oncologist employed by the University of Alabama Health Service Foundation, for consultation regarding the possibility of chemotherapy treatment. Dr. Bolger recommended Rutherford undergo Estramustine, Etoposide and Paclitaxel Treatment (TEE Chemotherapy) following completion of the radiation and hormone therapy.

Rutherford agreed to undergo the TEE chemotherapy. However, Rutherford was not warned of the risks and did not provide informed consent. TEE chemotherapy is highly toxic and has significant risk factors, including death.

Rutherford started four stages of TEE Chemotherapy in November 2005. As of 1-11-06, he completed three of four treatments. On that date, he presented to Dr. Bolger with cold or flu-like symptoms, including fever and shortness of breath. Dr. Bolger examined Rutherford, but instead of providing a treatment he scheduled Rutherford for his fourth round of TEE Chemotherapy for the next day. Rutherford duly underwent the chemotherapy.

He did not, however, improve in condition. On 1-31-06, Rutherford was diagnosed with PCP pneumonia and admitted to Memorial Hosp in Chattanooga, Tennessee. He died on 2-11-06 of complications from PCP pneumonia.

Rutherford's estate filed suit against Dr. Bolger and the University of Alabama Health Service Foundation and criticized Dr. Bolger's recommendation that Rutherford undergo TEE chemotherapy treatment even though Rutherford had no metastatic disease at that time, had a PSA level of 0 and had successfully undergone hormone and radiation therapy.

Defendants denied having breached the standard of care and disputed whether the TEE chemotherapy had caused Rutherford's death. Defendants' identified experts included Dr. Pamela Sims, Pharmacology, Birmingham, who opined as to the appropriate medications and dosages during Rutherford's chemotherapy.

A Birmingham jury reviewed the evidence and returned a defense verdict. The court entered a consistent judgment. It has since been appealed.

Auto Negligence - When a truck driver went for a walk and trespassed onto a construction site, an employee who intended to warn him away ran over the truck driver's leg with a pickup truck

Whittington v. Watkins, et al., 08-901876
Plaintiff: S. Joshua Briskman and Charles J. Potts, *Briskman & Binion, P.C.*, Mobile
Defense: James P. Wilson, Jr. and Christopher J. Latimer, *Mitchell McNutt & Sams*, Columbus, MS for Watkins; L. Bratton Rainey, III and S. Gaillard Ladd, *Luther Crowe & Rainey, P.C.*, Mobile, for Conlan
Verdict: $20,000 for plaintiff
Circuit: **Mobile**, 3-18-11
Judge: John R. Lockett

On 11-14-08, Billy Joe Whittington, a truck driver for U.S. Trucking and a

resident of Ashland City, TN, was heading along I-10 when he decided to take a break. He exited at the Theodore-Dawes Road exit and headed toward a Pilot truck stop, where he parked. He then left his truck in order to walk around and stretch his legs.

As it happened, a large industrial storage facility owned by the Conlan Company was being built next to the Pilot truck stop. At that time, the facility was in the final stages of construction, and a large paved section ran over a quarter of a mile long and hundreds of yards across. There was no gate and no signs warning the public away. Whittington decided the pavement looked like a good place to take his walk.

Whittington was walking along the pavement when a Ford F-150 pickup truck pulled up next to him. The truck was driven by Robert Watkins, an employee of Conlan. Watkins told Whittington he was trespassing.

Whittington and Watkins later disagreed as to the precise nature of their conversation. The conclusion, however, was that Whittington turned to leave. Watkins drove his truck at Whittington with the apparent intention of encouraging his departure. Watkins swerved at the last moment with the intention of missing Whittington. Unfortunately, he swerved just a second too late.

Watkins's truck hit Whittington, whose left leg broke in several places. Whittington later claimed that at least one and possibly both of his shoulders were also broken by the impact. He underwent surgery to install hardware in his leg, and he was forced to go on Coumadin for the rest of his life to deal with blood clots. He was hospitalized for a month and underwent physical therapy thereafter. His workers' compensation insurance paid $107,444 on his behalf for his medical expenses.

Whittington filed suit against Watkins and Conlan and blamed them for the incident that led to what he described as what would be a life-long disability. His theories included negligence and wantonness. Whittington's wife Patricia filed a derivative claim for loss of consortium, though it does not seem to have survived to trial.

Watkins and Conlan defended and pointed out that Whittington had been trespassing. They also disagreed with Whittington about the severity of his injuries, asserting that he could not prove his left shoulder had been broken. In addition, they pointed to preexisting arthritis that Whittington suffered in his left knee and a preexisting blood-clotting disorder.

Other evidence also supported defendants' theory that Whittington was not as badly injured as he claimed. Whittington's physical therapist admitted that Whittington could do basic household chores within two to three months after the accident without any shoulder pain, and he could stand and walk for two hours without needing any rest.

One year after the accident, Whittington could climb into and out of a truck, handle a steering wheel, and shift gears, even though he claimed he could not work as a truck driver. Finally, defendants obtained surveillance pictures of Whittington walking without a cane while carrying a backpack full of books.

The trial before a Mobile jury lasted for a full week. On Friday at 4 pm, the jury received the case for deliberations. It deliberated between half an hour and an hour before returning a verdict finding Watkins negligent but awarding no damages.

The court instructed the jury a second time on the law of damages and sent them back to deliberate again. This time, the jury deliberated for about fifteen minutes before coming back with a verdict of $20,000 for Whittington against Watkins. The court entered a consistent judgment.

Whittington filed a motion for new trial or *additur*, arguing that he was entitled to at least the $107,444 for which the workers' compensation carrier had a medical lien, $30,000 for lost wages, and a reasonable amount of damages for pain and suffering. Watkins opposed the motion. At the time the AJVR reviewed the record, the court had not yet entered an order as to the dispute.

Assault - After a homeowner's children wandered onto a neighbor's property, the homeowner and neighbor entered into an acrimonious discussion that ended when the homeowner visited the neighbor and the neighbor shot the homeowner in the shoulder

Hart v. Burttram, 09-901342
Plaintiff: Mark Erdberg and Jessica Powers Davis, *Jaffe & Erdberg*, Birmingham
Defense: Roderick K. Nelson and Katherine L. Taylor, *Spain & Gillon, LLC*., Birmingham and Bruce A. Burttram, *Burttram & Henderson*, Birmingham
Verdict: $125,000 for plaintiff ($32,000 in compensatory damages and $93,000 in punitives)
Circuit: **Jefferson**, 3-25-11
Judge: Tom King, Jr.

On the morning of 4-9-09, Jade Lake in Pinson was a peaceful place with a number of homes that fronted the lake. Three children decided to go for a walk around the lake that day. They were Ryan Williams, Vann Lantrip, and Cady Hart. They set out from the home of Cary and Teresa Hart.

During their walk, the children entered the grounds of a home owned by Charles Burttram on the other side of the lake from the Hart house. Burttram's son told the children to leave the property.

This led to a somewhat acrimonious phone conversation later in the day when Cary Hart called Burttram. Not long after the phone call ended, Burttram saw Hart driving up in his truck. Hart parked, got out of his truck, and started for Burttram's house.

On the basis of the previous phone conversation, Burttram believed Hart was coming to hurt him. He did not intend to allow that. Burttram took his gun and fired approximately 10 feet above Hart's head. Burttram's intent was to persuade Hart to leave the property. When Hart did not leave, Burttram fired again.

Burttram later described his second shot as being fired with the intent to protect his life, house, and family. He wanted the bullet to come close enough to Hart to stop him from coming further and carrying out his threats, but he did not intend to hit Hart. Unfortunately,

he did so.

Fortunately, Hart had only been shot in the shoulder. He turned, ran to his truck, and left. The record does not identify the amount of Hart's medical expenses to treat the wound. Criminal charges were filed against Burttram but later dismissed.

Hart and his wife Teresa filed suit against Burttram and blamed him for shooting Hart. Their theories included assault and battery. They also claimed they were afraid to leave their home and added theories of false imprisonment and nuisance.

Burttram defended and insisted he had not meant to shoot Hart, only to frighten him into leaving. Burttram also filed a counterclaim against plaintiffs for Hart's threats and trespass onto his property.

The record does not show what happened to Teresa's claims, but they appear to have been resolved before trial. After a five-day trial, a Birmingham jury awarded Hart $32,000 in compensatory damages and $93,000 in punitives. It also found in favor of Hart on Burttram's counterclaim. The court entered a consistent judgment.

Auto Negligence - A driver suffered a disc rupture that required surgery after he was in two separate motor vehicle accidents a few months apart

James v. Henderson, 08-2214
Plaintiff: L. Daniel Mims and Theresa N. Williamson, *L. Daniel Mims, P.C.*, Mobile
Defense: Thomas M. Galloway, Jr., *Galloway Wettermark Everest Rutens & Gaillard, LLP*., Mobile
Verdict: Defense verdict
Circuit: **Mobile**, 3-15-11
Judge: Sarah Hicks Stewart

Michael James was an unlucky man. On 12-15-06, he was in a motor vehicle collision allegedly caused by Bruce McDonald on Hwy. 43 in Mobile County. On 2-4-07 he was in another motor vehicle collision on Hays Street in Mount Vernon. This time the driver allegedly at fault was Nana Henderson.

Because of the collisions, James suffered a disc rupture that required surgery. The record does not show the amount of his medical expenses.

James filed suit against McDonald and Henderson and blamed them for causing the two accidents. His theories included negligence and wantonness.

McDonald and Henderson defended and minimized the damages alleged by James. McDonald made James an offer of judgment in the amount of $10,000. Shortly thereafter, McDonald and James settled, and McDonald was dismissed from the action.

Henderson believed that James was partly at fault for the collision, which had occurred when she was backing a truck out of a driveway as James was driving along the road. Henderson, who had been holding a turkey neck in her right hand and eating it at the time she backed out of the driveway, had not seen James approaching.

During the two-day trial, Henderson argued unsuccessfully that she was entitled to judgment as a matter of law because the testifying physicians were unwilling to opine as to whether James's disc rupture had been caused by the accident with Henderson or the accident with McDonald.

The Mobile jury deliberated for about 10 minutes before returning with a defense verdict. The court entered a consistent judgment.

James moved for a new trial on the ground that it had been error to charge the jury as to contributory negligence. He noted that the jury had submitted a jury question note asking about contributory negligence during its deliberations. The court had responded by reading the pattern jury instruction on contributory negligence once again. The court denied James's motion.

Storage Unit Negligence - A driver passing through a residential area shortly before sunset collided head-first with a rented storage unit that was left in the road

Chima v. SHEDS Portable Self Storage, et al., 09-902965
Plaintiff: K. Rick Alvis and Mary Leah Miller, *Alvis & Willingham, LLP*., Birmingham
Defense: Laura S. Maki, *Wade S. Anderson & Assocs*., Birmingham
Verdict: Defense verdict
Circuit: **Jefferson**, 12-7-10
Judge: Tom King, Jr.

On a clear and sunny day around 6:00 p.m. on 9-15-07, Uhomba Chima left his home in Center Point to go shopping. As he drove through a residential area, he made a right turn on Country View Terrace. He later claimed he was driving west and the sun's rays temporarily blinded him.

Suddenly, Chima spotted a steel storage unit directly in his path on the road. It was white and with dimensions of about 8x20x7.5 feet. The storage unit took up his entire lane, and the other lane of travel was occupied by cars. Chima braked but was unable to stop before he collided head-on with the storage unit.

Chima, who was wearing his seatbelt, suffered chest pain from the deployment of his airbag and lost consciousness. He was taken by ambulance to UAB Hospital where he was treated for his pain and thoracic and cervical sprain.

Chima was also given a neck brace and pain medication and told to do exercises. When his medication ran out, he went to a chiropractor for further treatment. His lower back and neck pain did not resolve. The record does not show the amount of his medical expenses.

Chima discovered the storage unit had been deposited in the street by a group of related companies allegedly owned by William Beard: South Hall Self Storage Center, South Hall Express Delivered Storage, Inc., South Hall of Irondale, LLC., South Hall Mini Storage, Inc., and South Hall Truck Rental, Inc. South Hall Express Delivered Storage, Inc., did business as SHEDS Portable Self Storage.

The South Hall companies rented out storage units, which were normally placed in the driveways of the person who rented them. However, an alternative approach was to place the storage unit in the street in front of the renter's home or business.

Chima filed suit against the South Hall companies and Beard and blamed them for leaving a storage unit in the road without employing any warning devices, reflectors, or traffic cones. His theories included negligence and wantonness.

Defendants responded and denied wrongdoing. They also suggested that Chima was at fault himself for the collision. His wantonness claim, they argued, was unjustified because Chima

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Trial Judge _____ Date Verdict _____

Verdict _____

For plaintiff _____ (Name, City, Firm)

For defense _____ (Name, City, Firm)

Fact Summary _____

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Behavioral Health Services, a facility located at the Crestwood Medical Center in Huntsville. Crestwood Medical Center was owned by Triad Hospitals.

Unfortunately, Augustus's condition did not improve during her hospitalization. She committed suicide on 1-4-07 while a patient.

The estate of Augustus filed suit against Triad, Crestwood Medical Center, Crestwood Behavioral Health, Dr. Alfrefai, and Valley Behavioral Services and criticized their failure to document a proper suicide risk assessment and establish a safety plan based on the assessment. The estate's identified experts included Dr. Harry Doyle, Forensic Psychiatry, Philadelphia.

Triad was dismissed with prejudice from the litigation. The court granted summary judgment in favor of the two Crestwood defendants after they argued that their actions or inactions were not the cause of Augustus's death. The remaining defendants, Dr. Alfrefai and Valley Behavioral Services, responded and denied having breached the standard of care.

After a trial that spanned six days, a Huntsville jury returned a defense verdict. The court entered a consistent judgment.

Backhoe Negligence - A city's backhoe collided with a motor vehicle at a city intersection

Hebert v. City of Citronelle, 09-900401
Plaintiff: Robert L. Mitchell and Lucy E. Tufts, *Cunningham Bounds, LLC.*, Mobile
Defense: Thomas O. Gaillard III and Alicia M. Jacob, *Galloway Wettermark Everest Rutens & Gaillard, LLP.*, Mobile
Verdict: $180,000 for plaintiffs (comprised of $105,000 for Tyler and $75,000 for Melissa)
Circuit: **Mobile**, 3-2-11
Judge: James C. Wood

In the afternoon of 12-29-08, Larry Griffin was driving a Komatsu backhoe for the City of Citronelle at the intersection of South Fifth Street and

State Street in Mobile County. A stop sign marked the intersection. Meanwhile, Melissa Hebert was driving a vehicle along State Street with her son Tyler Hebert as a passenger. Suddenly, the backhoe struck the Hebert vehicle.

Tyler and Melissa suffered injuries in the collision. Tyler was taken by ambulance to Springhill Medical Center. The record does not describe Melissa's injuries or the medical expenses the Heberts incurred. The Hebert motor vehicle was totaled.

The Heberts filed suit against Griffin and the City and blamed them for bad backhoe driving that led to the collision. Their theories included negligence and wantonness.

Defendants responded and minimized the damages claimed by the Heberts. They also suggested the Heberts had been partially at fault for the accident. Defendants' identified experts included the engineer Joey Parker, who opined that the Heberts had been traveling about 36 mph before the impact and had experienced a change of about 3.6 mph as a result of the impact. Griffin was dismissed as a defendant before trial.

A Mobile jury heard the evidence and returned a verdict of $105,000 for Tyler and $75,000 for Melissa. The court entered a consistent judgment. Thereafter, the City filed for *remittitur* on the ground that the maximum award against a city was $100,000 and Tyler's award had exceeded that amount. At the time the AJVR reviewed the record, the court had not yet ruled on that motion.

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