

The Alabama Jury Verdict Reporter

The Most Current and Complete Summary of Alabama Jury Verdicts

September, 2006

Statewide Jury Verdict Coverage - Published Monthly

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Unbiased and Independently Researched Jury Verdict Results

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* * *The Book is on Sale into September of 2006 * * *

The AJVR 2005 Year in Review

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Medical Negligence - Abandoned computer equipment allowed a spurned husband to distribute confidential psychiatric records – the psychiatrist, who owned the computer and was careless in its disposal, countered the suit that any exposure of records was nothing more than a harmless prank

Redmon et al v. West et al, 01-775

Plaintiff: Julia T. Cochrun, *Pate Lloyd & Cochrun*, Birmingham and Banks T. Smith, *Hall & Smith*, Dothan

Defense: Fred W. Tyson and Patrick M. Shegon, *Rushton Stakely Johnson & Garrett*, Montgomery, for West D. Taylor Flowers, *Lewis Bracken Flowers & Johnson*, Dothan, for

Medical Specialties

Verdict: Defense verdict

Circuit: **Houston**, 6-15-06

Judge: Larry K. Anderson

James Redmond, then age 56, and Beverly Ward, then 50, (initially identified in the record, respectively, as “John Doe” and “Mary Roe”) were psychiatric patients of Dr. Sam C. West, Jr. and Medical Specialties of Dothan. Nurse Judy Johnson started working for Medical Specialties in November 1999. She and Dr. West cleaned out a storage room for her office. In preparing the office, they removed an old computer system.

Johnson believed the computer was inoperable and took it home to get it out of the way. Her husband, Alan Johnson, offered to take the computer to Montgomery for recycling. Judy and Alan Johnson divorced shortly thereafter.

The computer, in fact, was functional and contained the psychiatric records of 1,500 Medical Specialties’ patients. In

May 2001 Redmon and Ward separately received anonymous letters informing them of the confidentiality breach and that Dr. West had abandoned the computer equipment, thus allowing the records to come into the possession of unauthorized third parties. They confronted the staff at Medical Specialties and were told that the letters were not true – just a hoax.

In the resulting suit, Redmon and Ward claimed that both Dr. West and Medical Specialties violated the standard of care for mental health professionals by abandoning the computer and failing to secure their records. Their damages consisted of mental anxiety and stress and continued mental health care. Plaintiffs' standard of care experts were Dr. Fay Farrell, Psychiatry, Dothan, Dr. Larry Benovitz, Psychiatry, Miami, FL and Victoria Luciano, RN, Nursing, Margate, FL. Dr. Benovitz testified that Dr. West's handling of the records fell below the standard of care and that his office relationship with the nurse was also inappropriate. Nurse Luciano was critical of the Medical Specialties' staff for telling the plaintiffs that the letters were just a hoax.

Defendants countered that this was just an unfortunate prank by the jilted ex-husband and that no real harm resulted to the plaintiffs. When Dr. West learned of the letters, he immediately retrieved the computer.

The jury found for the defendants and did not reach damages. A consistent judgment followed.

Civil Rights - The plaintiff alleged he was denied a prescription at a pharmacy because of his race

Boyd v. Walgreen Co., 2:05-328

Plaintiff: Carol R. Gerard and Jay Lewis, Montgomery

Defense: John W. Clark, Jr., *Clark Dolan Morse Oncale & Hair*, Birmingham

Verdict: Defense verdict

Federal: **Montgomery**, 8-22-06

Judge: Mark E. Fuller

John Boyd came on the evening of 4-2-05 to a Walgreen Pharmacy in Montgomery – filling prescriptions in the store that night was a pharmacist, David Dudley. As Boyd, who is black, awaited his script, he asked Dudley why another Walgreen in town closed

so early. [It is in a predominantly black neighborhood.]

Dudley replied that it was because of “you peoples.” Dudley is white – Boyd took umbrage at the remark and challenged Dudley angrily about it – that included remarking that money is green.

Dudley didn't appreciate the challenge and told Boyd he felt harassed and he would not serve him. He also said he was calling the police. That was fine with Boyd who waited at the door for them to come. A police officer came, investigated and determined there was no crime.

This civil lawsuit followed, Boyd alleging Dudley and the pharmacy denied him the right to contract because of his race – quite simply, the theory went, Dudley didn't like serving blacks. The best evidence of this was his “you peoples” remark that Boyd was sure referenced blacks. If prevailing, the plaintiff sought compensatory and punitive damages.

Dudley and Walgreen defended the case on several fronts – first Boyd was denied service because of the harassing nature of his conduct, not his race. Dudley also noted the people referred to in his “you peoples” remark didn't have a color – he meant customers with bad attitudes, a nomenclature that could encompass persons of any color.

The verdict was for Dudley and Walgreen, the plaintiff taking nothing. A defense judgment followed.

Auto Negligence - A cook for a bar drove drunk and caused a crash; he claimed his employer provided him with the alcohol and allowed him to drink on the job

Collins v. Muller, et al., 02-1461

Plaintiff: M. Clay Alspaugh and Donna L. Dixon, *Smith & Alspaugh*, Birmingham

Defense: Stephen L. Poer and Kirk D. Smith, *Campbell Waller & Poer*, Birmingham

Verdict: \$124,712 against Muller; no claims against Warehouse Lounge

Circuit: **Etowah**, 12-2-05

Judge: Shaun Malone

In October of 2000, John Muller was working as a cook for the Warehouse Lounge in Etowah County. It seems the Warehouse Lounge had a unique way of maintaining the morale of its

employees. Specifically, Muller would later claim the Lounge provided him with alcohol and allowed him to drink on the job.

On 10-24-00, Muller had been drinking on the job and became intoxicated. While in that condition, he drove in the area near George Wallace Drive. An instant later, he collided with a vehicle being driven by Charlene Collins.

The record does not reveal the nature of Collins's injuries or the amount of her medical expenses. She filed suit against Muller and blamed him for driving drunk and causing the crash. She also targeted the Warehouse Lounge on a theory of dram shop liability. Finally, Collins's husband, James, presented a derivative claim for his loss of consortium.

Muller and the Warehouse Lounge defended the case as best they could and minimized the claimed damages. Muller was initially represented in the litigation by Charles Y. Boyd of the Gadsden firm of Rhea, Boyd, Rhea & Coggins. However, Boyd eventually withdrew from the case because Muller refused to communicate with him.

In any event, the case was tried in Gadsden, and the jury returned an unusual verdict. First, the jury found for plaintiffs against Muller and awarded \$49,712 in compensatory damages, plus another \$75,000 in punitives. However, the jury made no findings against the Warehouse Lounge.

In response to this unusual result, the court polled the jury regarding its intent to find no claims against the Warehouse Lounge. The jury indicated that was correct, and the court entered a consistent judgment to that effect.

Products Liability - Plaintiff died in a serious crash – her estate blamed her death on a defectively designed seat belt that lacerated her liver

Sasser v. Ford Motor, 98-54.80

Plaintiff: Jere L. Beasley, Richard D. Morrison and Dana G. Taunton, *Beasley Allen Crow Methvin Portis & Miles*, Montgomery, and Mike Jones, *Jones & Coots*, Luverne

Defense: Harlan I. Prather, IV, and S. Andrew Kelley, *Lightfoot Franklin & White*, Birmingham, and Roswell Page, III, *Battle & Boothe*, Richmond, VA, John A. Nichols, Luverne and William R. King, Luverne

Verdict: Defense verdict

Circuit: **Crenshaw**, 8-2-05

Judge: H. Edward McFerrin

On 7-3-98, LeAnna Stubbs, age 27, was driving a 1992 Ford Escort on CR 50. At the intersection of CR 83, she was involved in an accident with a 1993 Oldsmobile 88 operated by the elderly Mary Shultz. Shultz failed to yield the right-of-way and was at fault for the impact.

It was a violent and high speed collision – both drivers were transported by ambulance to Stabler Hospital in Greenville. On 7-5-98, Stubbs died from injuries sustained in the accident, specifically a lacerated liver. Survived by a daughter, she had worked as a physical therapist.

Her estate first settled claims against Shultz and an insurer. This products liability suit against Ford Motor Company alleged that the Escort was defectively designed. The vehicle was equipped with a passive shoulder restraint and a supplemental two-point lap belt. The Estate contended that Ford should have installed a three-point restraint system which would have minimized the injury to Stubbs.

Ford countered that the Escort, as built, met or exceeded all federal safety requirements and that the seat belt system in the Stubbs' Escort performed as designed, i.e., that Stubbs did not die from the seatbelt, but rather from the massive traumatic forces involved in the accident. Ford also introduced evidence that plaintiff's speed played a role in the crash. The record does not identify expert witnesses for either party.

After a week-long trial, the jury found for Ford on liability and the

estate took nothing. A consistent judgment followed.

Medical Negligence – Plaintiff blamed the stillborn death of her fetus on her Ob-Gyn having failed to monitor her pre-eclampsia

McIntyre v. Eldridge, 03-92

Plaintiff: W. Lee Pitman and Elisabeth Roberts, *Pitman Hooks Dutton Kirby & Hellums*, Birmingham

Defense: Jack B. Hinton, Jr., *Gidiere Hinton & Herndon*, Montgomery

Verdict: Defense verdict

Circuit: **Russell**, 2-3-06

Judge: Albert L. Johnson

Kenisha McIntyre was pregnant and under the care of an Ob-Gyn, Dr. Ehrman Eldridge. On 2-14-02, she presented to his office with signs of pre-eclampsia (seizure activity in obstetrical patients). A week later, she was told that there were no fetal heart tones. Her son was stillborn.

McIntyre sued Eldridge alleging that he failed to note or appreciate her pre-seizure activity which resulted in the death of her son. Discovery developed that a nurse in the defendant's office failed to inform him that McIntyre had a history of pregnancy-induced hypertension and abnormal urine protein levels. Had the defendant responded to these warning signs, the theory went, intervention could have commenced and the baby would have been healthy. An expert for the plaintiff on causation was Dr. Juan Felix, Pathology, Los Angeles, CA.

Eldridge defended on causation: plaintiff's 2-14-02 condition did not cause the infant death. Dr. Matthew E. Phillips, Ob-Gyn, testified that there was no deviation from the standard of care. Dr. Hugh Randall, also an Ob-Gyn, indicated that no act or omission on Eldridge's part was the proximate cause of plaintiff's damages. The defense also denied any intra-office communication error.

After hearing the evidence, a Phenix City jury found for the doctor and awarded the plaintiff nothing. A defense judgment was entered.

Medical Negligence - During a pain management procedure, the metal tip of a catheter broke off and became lodged in the patient's lumbar disc; the patient criticized her doctor for causing the catheter tip to break off and for altering his notes to cover-up what had happened

Williamson v. Yearwood, et al., 01-3249

Plaintiff: Charles R. Godwin, Timothy J. Godwin, and Gordon B. Godwin, Atmore; and Chris N. Galanos, Mobile

Defense: Wesley Pipes and Ginger B. Davis, *Wesley Pipes, LLC.*, Mobile

Verdict: \$750,000 for plaintiff

Circuit: **Mobile**, 2-17-06

Judge: Ferrill D. McRae

Bobby Williamson had been living with back pain since 1995. By the autumn months of 1999, she had decided to do something about it. On 10-14-99, Williamson visited the Comprehensive Pain and Rehabilitation clinic in Daphne. There she came under the care of Dr. Thomas Yearwood, a specialist in pain medicine and an employee of the clinic.

Yearwood performed on Williamson a procedure called SpineCath IntraDiscal ElectroThermal Therapy (IDET). The procedure involved putting a needle into certain of Williamson's lumbar discs and then inserting an electrothermal catheter into the discs through the needle. The apparatus used in the procedure was manufactured by a company called Oratec Interventions, Inc.

According to Williamson, Yearwood encountered resistance during the initial insertion of the needle. In response, he tried to force the needle into place. Williamson claims that as a result of this maneuver, a portion of the catheter tip approximately 7mm in length broke off from the needle and became lodged in her disc at L4-5.

Despite this development, Yearwood did not remove the catheter tip and instead continued the procedure on the discs at L2-3 and at L3-4. To this day the catheter tip remains lodged in Williamson's disc.

According to her medical expert, Dr. L. Douglas Kennedy, Anesthesiology, Lexington, KY, the metal part of the catheter tip has separated from its coating and has migrated. Williamson points out that the migration of the

catheter tip has the potential to lead ultimately to paralysis or death. For that reason, she lives each day in fear.

Against that backdrop, Williamson filed suit against Yearwood and Comprehensive Pain and Rehabilitation. She criticized their performance of the procedure that resulted in leaving the catheter tip lodged in her lumbar disc.

Williamson also claimed that after the procedure was over, defendants altered the operative note so as to obscure the facts of what actually happened. Finally, Williamson's husband, Vernon, presented a derivative claim for his loss of consortium. However, that claim appears not to have advanced to trial. Defendants generally denied any breach of the standard of care.

A jury in Mobile heard the case and returned a verdict for Williamson. She was awarded damages in the amount of \$750,000. If the court entered a judgment, it was not part of the record at the time the AJVR reviewed it.

Hospital Negligence - While visiting her mother in the hospital, a woman was asked by a nurse to help move a physical therapy machine; during the moving process, the machine became activated and injured the woman's hand

Burse v. Brookwood Medical Center, et al., 03-7989

Plaintiff: Edward J. Berry, *Jones & Berry*, Birmingham

Defense: Thomas A. Kendrick and James L. Pattillo, *Norman Wood Kendrick & Turner*, Birmingham

Verdict: Defense verdict

Circuit: **Jefferson**, 4-20-06

Judge: Houston L. Brown

In January of 2002, the mother of Lorraine Burse was undergoing a program of rehabilitation for her knee at the Brookwood Medical Center in Jefferson County. Part of the program involved the use of a machine called an "Optiflex Continuous Passive Motion" (CPM) device.

On 1-18-02, Burse went to the Brookwood facility to visit her mother. At some point during the visit, Nurse Linda Norton asked Burse to help her move the CPM device. Burse complied with the request, and the two women began to maneuver the device to a

different spot.

As they were repositioning the CPM device, however, it somehow became activated and started to move. Burse became entangled in the machinery, as a result of which she sustained an injury to her right hand. Her medical expenses are unknown.

Burse filed suit against both Nurse Norton and the Brookwood Medical Center. She criticized Norton for enlisting Burse's assistance in moving the CPM device in the first place, and she targeted Brookwood on a theory of vicarious liability.

Burse also targeted a company called Encore Medical GP, the manufacturer of the CPM device. She alleged counts under the headings of premises liability, breach of warranty, negligence, wantonness, and the AEMLD.

In addition to her other damages, Burse also made claims for her lost wages, loss of earning capacity, and her medical expenses. Finally, Burse's husband, Charles, presented a derivative claim for his loss of consortium.

During the course of the litigation, Burse reached a settlement with Encore Medical GP and dismissed it from the case. The litigation continued against Norton and Brookwood. They defended and minimized the claimed damages.

The case was tried for four days in Birmingham. On the first day of trial, Burse dismissed her claims for lost wages, loss of earning capacity, and her medical expenses. Also, Charles dismissed his consortium claim. The jury returned a verdict for Norton and Brookwood, and the court's consistent defense judgment followed.

Auto Negligence - Plaintiff was rear-ended by another motorist while driving a tractor along a state road

Montgomery v. Estate of Plunkett, 03-1869

Plaintiff: Erik S. Heninger, *Heninger Burge Vargo & Davis*, Birmingham

Defense: Wilbor J. Hust, Jr., *Summerford & Williamson*, Tuscaloosa

Verdict: \$200,000 for plaintiff

Circuit: **Tuscaloosa**, 2-16-06

Judge: John H. England, Jr.

On 7-28-03, Robert Montgomery was driving a 1980 Ford 4600 diesel tractor on AL 171 in Tuscaloosa

County. Behind him was a vehicle being driven by Hillon Plunkett. An instant later, Plunkett rear-ended Montgomery's tractor.

The record does not reveal the nature of Montgomery's injuries or the amount of his medical expenses. He filed suit against Plunkett and blamed him for the crash. Montgomery alleged counts for both negligence and wantonness, and he sought both compensatory and punitive damages. Additionally, Montgomery sought compensation for the property damage to his tractor.

During the course of the litigation, Plunkett was diagnosed with throat cancer. He underwent chemotherapy and radiation treatments in an effort to combat the disease.

Sadly, Plunkett eventually lost his battle with cancer, and he died on 5-10-05. The court then appointed an administrator *ad litem* to stand in his shoes, and the case proceeded against his estate. Defendant denied negligence and blamed the crash on Montgomery.

A jury in Tuscaloosa heard the case and returned a verdict for Montgomery in the amount of \$200,000. The court's consistent judgment followed. Post-trial, defendant filed a motion for a new trial or for a judgment notwithstanding the verdict.

Defendant cited several grounds for the motion. Among them were the following: (1) it was error for the court to appoint an administrator *ad litem*, (2) the verdict was excessive, and (3) the court erred in allowing plaintiff's counsel to demonstrate and use in front of the jury a model that had not been previously disclosed.

Before the court had a chance to rule, however, defendant seemed to have a change of heart and decided not to pursue the matter. Accordingly, defendant asked the court to deny the motion. The court complied with the request, and defendant subsequently satisfied the judgment.

Insurance Subrogation - After a fire destroyed a divorced couple's home and the couple stopped paying the mortgage, their insurer stepped in and paid off the mortgage for them; the insurer later sought a declaration of no coverage and reimbursement for the mortgage payoff when it concluded the fire was incendiary in origin

Vesta Insurance Company v. Elliott, 03-769

Plaintiff: Tom E. Ellis, *Law Office of Tom E. Ellis*, Birmingham

Defense: James C. Alison, Huntsville

Verdict: Declaratory judgment for plaintiff on coverage issue; \$121,530 for plaintiff on subrogation issue

Circuit: **Morgan**, 4-10-06

Judge: Steven E. Haddock

In 2002, Marlin and Karen Elliott were the owners of a home located at 138 Mesa Verde Road in Decatur. The home and its contents were insured under a policy issued by the Vesta Insurance Company on 8-17-02. The policy provided coverage of \$292,465 for the dwelling, \$204,726 for personal property, and another \$58,493 for loss of use.

On 10-24-02, just over two months after the insurance policy was issued, the Elliotts separated. They were subsequently divorced on 12-3-03. As part of the divorce settlement, Karen got the house. However, she soon found herself having tax problems with the IRS.

In the pre-dawn hours of 1-7-03, a little over a month after the divorce was finalized, a fire destroyed the house. Fortunately, no one was home that night inasmuch as Marlin had long since moved out, and Karen was staying with some relatives. Nevertheless, the damage to the property was catastrophic.

While the investigation of the fire was going on, Karen continued to pay on the mortgage for approximately a year. When she finally stopped paying the mortgage, she still owed \$110,538 on it to the Ameriquest Mortgage Company. Pursuant to the terms of its policy, Vesta stepped in and paid off the mortgage.

In the meantime, Karen filed a claim with the Vesta Insurance Company for the loss of the house and its contents. However, the insurer was suspicious.

For one thing, Vesta believed Karen misrepresented the value of the loss.

Also, as a result of its investigation Vesta concluded the fire was incendiary in origin. However, the company acknowledged there was no evidence the Elliotts themselves were involved in starting the fire or knew of its origins. On that basis, Vesta denied the claim. That, however, would not be the end of the matter.

Vesta filed suit and sought a declaratory judgment to the effect that the company owes the Elliotts no coverage under the policy. In addition, Vesta also filed a subrogation claim and sought reimbursement for the \$110,538 it paid to Ameriquest on the mortgage.

Karen defended the case and denied the fire was incendiary in origin. She also denied that either she or Marlin were involved in the fire in any way. Nevertheless, she also took the precaution of claiming the protections of the innocent spouse doctrine. Finally, Karen denied having misrepresented the value of the house and its contents.

A jury in Decatur heard the evidence and returned a verdict for Vesta. On the declaratory judgment issue, the jury found there was no coverage. On the subrogation issue, the jury awarded Vesta \$110,538, plus another \$10,992 in interest. The court followed with a consistent judgment.

Medical Negligence - Plaintiff had a seizure and fell at home – taken to the ER, no head CT was done, thus delaying the treatment of what would turn out to be a fatal blood clot

Coleman v. Morgan, 03-216

Plaintiff: W. Lee Pitman and Elisabeth Roberts, *Pitman Hooks Dutton Kirby & Hellums*, Birmingham, and James L. Martin, Eufaula

Defense: Scott M. Salter, *Starnes & Atchison*, Birmingham

Verdict: Defense verdict

Circuit: **Barbour** – Eufaula, 3-3-06

Judge: Burt Smithart

On 6-11-01 at 6:25 a.m., Donella Coleman, then age 63, arrived at Lakeview Community Hospital ER by ambulance. The EMT reported that she had a seizure and fell in her bathroom at home. Coleman had a bruise on the side of her head. Her seizure medication had been recently changed.

Coleman was seen initially at the hospital by an ER doctor, Theodore Morgan. At 7:45 a.m., she was discharged by a second ER physician, Jimmy W. McLeod. Notably, no CT of the head was ever ordered.

Coleman returned to the ER at 5:43 p.m. later the same day. A CT was ordered and revealed a subdural blood clot – she was promptly transferred to Southwest Alabama Medical Center for surgery in Thomasville. She died there a week later because of complications secondary to the blood clot. No autopsy was performed.

Coleman's estate sued Morgan for failing to obtain a CT scan of the head, thus allowing the blood clot to go undetected. In understanding this case, it's important to note that the emergency room physicians at Lakeview are independent contractors working twenty-four hour shifts, from 7:00 A.M. to the next morning at 7:00 A.M. They often work alone. Morgan had done the initial triage in the emergency room. He reported that she was stable when his shift ended at 7:00 a.m. and he left the hospital. Coleman's care then shifted to McLeod who discharged her.

Morgan defended as above and argued that a CT scan was not required. The plaintiff later added McLeod as a defendant. McLeod moved for summary judgment arguing that as to him, the statute of limitations had run before he was added. While that motion was pending, the estate voluntarily dismissed him.

After deliberating the case in Eufaula, the jury found for Morgan and awarded the estate nothing. A consistent judgment followed.

Auto Negligence - The plaintiffs were driven off an interstate ramp and into a tree by an RV

Bohlman v. Siegmund, 04-140

Plaintiff: Will G. Phillips, *Greene & Phillips*, Mobile

Defense: L. Merrill Shirley, Elba

Verdict: Defense verdict

Circuit: **Butler**, 3-15-06

Judge: H. Edward McFerrin

On 9-15-04, Constance Bohlman and her husband, Eugene, were traveling north on I-65 in Butler County. Constance, then age 66, was driving. They left the interstate and were on a

ramp intending to stop at the rest area. Suddenly they were struck from the rear by William Siegmund, who was driving a Fourwinds Hurricane RV. That impact propelled the Bohlman's off the ramp and into a tree. The motor home continued, also leaving the ramp and striking a second tree. The Bohlman's were injured and transported by EMS to Stabler Hospital. Their vehicle was a total loss. Photos showed severe damage.

Constance and Eugene filed suit against Siegmund and blamed him for the crash. The record does not reveal the plaintiffs' claimed damages.

Siegmund defended that the Bohlman's were driving too slowly on the exit ramp and that the motor home brakes failed. Both sides employed accident reconstructionists. The Bohlman's utilized Neff Weber, Mobile. Weber opined that in the most likely scenario, Siegmund was on cruise control and inattentive. The motor home entered the ramp at 75 M.P.H. and failed to brake in time.

Defendant called Larry Dewberry, Panama City, FL. His calculation revealed that at impact the Bohlman's were traveling at ten M.P.H. and the motor home at 37 M.P.H. The left side of the RV struck the rear of plaintiffs' car.

Following deliberations, the jury found for the defendant and awarded nothing to the plaintiffs. A consistent judgment was entered. Plaintiffs then moved for JNOV and/or a new trial, arguing that there was no evidence to support a finding for the defendant on liability. That motion is pending.

Grocery Negligence - Plaintiff bought pork ribs at a grocery and froze them – several months later, she cooked them, sustaining an injury to her mouth when she bit into a foreign object in the meat

Woods v. Bruno's Supermarkets et al, 7:05-0024

Plaintiff: Charles C. Tatum, Jr. and Thomas L. Carmichael, Jasper, AL
 Defense: Ronald J. Gault, *Gaines Wolter & Kinney*, Birmingham, AL for Bruno's

Turner B. Williams and Kermit L. Kendrick, *Burr & Forman*, Birmingham, AL for Smithfield Packing

Verdict: Defense verdict
 Federal: **Tuscaloosa**, 7-18-06
 Judge: L. Scott Coogler

Lamiko Woods shopped on 9-3-03 at the Bruno's Supermarket in Tuscaloosa. Among other things, she selected boneless pork ribs. Returning home, Woods put the meat in a freezer in her home. They stayed there until 11-3-03 when they were unfrozen and prepared by her husband.

As Woods bit into the cooked ribs, a sharp metal object stuck her in the roof of her mouth. It was later identified as part of a marinade injection needle. In this lawsuit, Woods sued Bruno's and its meat-packing supplier, Smithfield Packing. Her theory was simple – at some point in the manufacturing process, the defendants who controlled that process completely, permitted the foreign object to be introduced into the meat.

Smithfield Packing first defended that its meat has a shelf-life of 22 days and its last shipment to Bruno's before this sale was two months earlier. Thus any meat it had supplied was long gone by the time Woods made her purchase. There was also proof that there is no metal used in its packing process. [Plaintiff countered on the time issue that sometimes shipped meat is frozen at the store and can have a longer shelf life.]

Bruno's further defended that other than to stock the meat, it was unaltered. In disputing causation, the defendants pointed out that it was the plaintiff who exclusively controlled the meat in the two months following its sale.

The case advanced to a jury on a negligence theory – both defendants

were exonerated and Woods took nothing. A defense judgment followed.

Auto Negligence - The verdict for a rear-ended plaintiff exceeded the defense offer of judgment

Graham v. Hunter, 02-2383

Plaintiff: Eaton G. Barnard, Mobile
 Defense: James W. Killion, *Killion & Associates*, Mobile

Verdict: \$41,000 for plaintiff

Circuit: **Mobile**, 3-17-06

Judge: Ferrill D. McRae

On 7-23-00, Dorothy Graham was traveling northbound on Martin Luther King Boulevard and slowed to make a right turn. Her vehicle was rear-ended by R. C. Hunter. Graham's litigation, initiated by a *pro se* handwritten complaint, sought damages for loss of employment and pain and suffering. Hunter defended and minimized his damages – his offer of judgment was for \$5,000..

The jury considered damages only, awarding Graham \$41,000 – punitives were rejected. [The record is not clear what conduct by Hunter merited consideration of punitive damages.] A consistent judgment was entered which has been satisfied.

Uninsured Motorist - The verdict in a UM trial was for the insurer on causation issues

Herrick v. State Farm, 03-905

Plaintiff: Angela J. Mason, *Cochran Cherry Givens Smith Lane & Taylor*, Dothan

Defense: Joel W. Ramsey, *Ramsey Baxley & McDougle*, Dothan

Verdict: Defense verdict

Circuit: **Houston**, 2-14-06

Judge: Sidney E. Jackson

On 5-18-02 Frederick Herrick, then age 55, was traveling southbound on Oates Street in Dothan. They stopped for a red light. At the same time, an uninsured teenager, Joshua Buckley was headed in the same direction. He failed to stop and he rear-ended the Herricks. Fault was no issue.

Herrick complained of a wrist/hand injury and neck pain. He was treated by Dr. Henry H. Bernard, II, Orthopaedics, Dothan, who eventually performed a discectomy and fusion at two levels in the cervical spine. Dr. Bernard related the surgery to the accident by chronology only. Herrick's

medical expenses totaled soft \$30,000. Unrelated to the accident, Herrick died of a heart attack in January 2004 while in Angola providing security for the American embassy there – his estate continued to advance this case against his insurer, State Farm for UM benefits.

It defended the case on causation -- the key issue then at trial was whether the wreck was responsible for the multi-level disc injury. State Farm postured the wreck was too minor to have caused the injury.

A Dothan jury found for State Farm and rejected the plaintiff's claim. A consistent judgment followed.

Medical Negligence – A seven month old infant died of meningitis; claims of negligent diagnosis and delay in treatment were rejected

Jones v. Herod et al, 01-109

Plaintiff: Joe E. Sawyer, Jr., Enterprise and J. Anderson Harp and Jefferson C. Callier, *Taylor Harp Callier & Morgan*, Columbus, GA
 Defense: Frank J. Stakely and Fred W. Tyson, *Rushton Stakely Johnson & Garrett*, Montgomery, and Dale Marsh, Enterprise for Herod
 Michael K. Wright and George E. Newton, *Starnes & Atchison*, Birmingham, and Richard W. Whitaker, Enterprise, for Medical Center Enterprise

Verdict: Defense verdict

Circuit: **Coffee**, 5-24-06

Judge: Thomas E. Head, III

On the morning of 5-20-99, little Tyishaudra Jones, then seven months old, was taken to see her family doctor, Joseph Herod – the girl had a high fever, was not eating, nor did she produce urine. Lab work was ordered, but no definitive diagnosis was made.

On 5-21-99, the infant was still fussy and warm. At 4:00 in the afternoon on that date, she went to see Herod, but he was gone for the day. In the ER she was seen by Dr. Andy Kirk and released at 6:40 p.m. A 104°F fever was noted, Kirk suspecting a viral illness.

Mayrene again took the child to the Medical Center Enterprise ER that same night at 11:00 p.m. – the girl had a rectal temperature of 104.4°F and vomiting. In the ER, Herod was contacted at home – he admitted the patient.

Herod called the next morning to evaluate Tyishaudra – he then saw her at noon and it was clear she was very sick – he performed a spinal tap, diagnosed meningitis and promptly arranged a transfer to Children's Hospital in Birmingham. The girl died there two days later of pneumococcus sepsis and meningitis.

The estate was critical of Herod in two keys ways, in (1) not starting IV fluids or antibiotics, and (2) not appreciating the white blood count indicated a bacterial infection. It was the estate's contention that a combination of errors by Herod and the hospital nurses led to the delayed diagnosis of meningitis. An expert for the plaintiff was an RN, Mary Wysochansky, Americus, GA.

As to the hospital particularly, there was evidence that its protocol required a pediatric assessment by a registered nurse, but that was not done. The assessment was instead performed by an LPN who noted that the child was lethargic and demonstrated anterior fontanelle bulging or a bulging of the "soft spot." Both of these were ominous signs of meningitis that went unnoticed.

Herod and the hospital defended that their treatment and evaluation of little Tyishaudra was proper – they blamed her demise on the disease process that was unrelated to their care. That is, when the girl became worse on 5-22-99, Herod diagnosed meningitis and arranged a transfer to Birmingham – unfortunately, it was too late, the disease overcoming the child.

An Enterprise jury found in favor of the defendants and the estate took nothing. A defense judgment ended this case.

Auto Negligence - The plaintiff was rear-ended while stopped in interstate traffic for a wreck ahead of her – the defendant blamed the crash on a combination of heavy rain and the one-car wreck that led to the stoppage of traffic

Bowman v. Morgan Auto Sales, 1:05-274

Plaintiff: Jeffrey A. Rhoades, *Swift & Rhoades*, Lafayette, LA

Defense: Norman E. Waldrop, Jr. and J. Walton Jackson, *Armbrecht Jackson*, Mobile

Verdict: Defense verdict

Federal: **Mobile**, 8-16-06

Judge: William H. Steele

Joseph Bowman was a passenger on 5-21-03 in a car with Betty Reid. They traveled on I-10 in St. Tammany Parish in Louisiana. Ahead of them, Jacqueline Bessa had been involved in a one-car crash. She blocked the interstate. Reid came to a stop.

Behind Reid on I-10 was Donald Morgan, who was then transporting a car for his company, Morgan Auto Sales. He saw the plaintiff's car, but as the brake lights weren't on, he didn't appreciate it was stopped – his vision was also impaired by heavy rain that was falling. He rear-ended the Reid vehicle.

Bowman has since complained of left knee pain – he underwent a knee replacement surgery, incurring medical bills of \$68,280. In this diversity case, he sought damages from Morgan.

Morgan defended on fault above that it was a combination of the sudden emergency and the rain that caused the wreck. He also diminished damages in two regards, citing (1) that the wreck was a bump, and (2) plaintiff had a history of knee pain, this replacement surgery actually being a repair of failed earlier replacement.

Resolved by a federal jury in Mobile, the verdict was for the defendant, Bowman taking nothing. A defense judgment followed.

Premises Liability – An elderly grocery store shopper tripped on pallet left on the floor, the fall aggravating the arthritic process

Allen v. Piggly Wiggly, 04-150

Plaintiff: Todd B. Watson, Evergreen, and Max Cassidy, Fairhope
 Defense: Craig W. Goolsby, *Carr Allison*, Daphne

Verdict: \$62,500 for plaintiff

Circuit: **Concuh**, 12-06-05

Judge: Samuel Welch

On 11-9-04, Alma Allen, then age 77, was shopping at the Piggly Wiggly. She pushed her grocery cart past a pallet lying on the floor and walked to the meat department. The pallet measured four feet by three feet and was made of black plastic. The Piggly Wiggly floor was white.

Allen then went to a vegetable display and passed the same pallet. Allen returned to the meat department,

selected a package of sausage and passed the pallet a third time. This time she tripped over it and fell

While not sustaining a fracture, Allen has since treated for the aggravation of pre-existing osteoarthritis. Her medical expenses totaled approximately \$1,500. In this suit, she blamed the Piggly Wiggly regarding the placement of the pallet in the aisle.

It defended and beyond minimizing the claimed injury, blamed Allen's own inattention for the fall. That is, the pallet wasn't small, it was a different color from the floor and finally she successfully passed by it twice before without falling.

The court submitted the case to a jury to consider the store's negligence and damages. Allen prevailed and she was awarded \$62,500. A consistent judgment followed.

Post-trial practice commenced. Piggly Wiggly moved for a JNOV and/or a new trial arguing that (1) the pallet was an open and obvious condition and (2) the damages awarded were excessive in light of the proof and the medical expenses. The court agreed and granted the store's motion. The next day an order was entered settling the case, Piggly Wiggly paying \$35,000.

Auto Negligence - Defendant prevailed in a case arising out of an intersection crash in which a minor claimed to have been injured

Williams v. Peterson, 04-924

Plaintiff: R. Andrew McKinney, *Hayes & Swinford*, Birmingham

Defense: Tracy N. Hendrix and Brandon T. Bishop, *Gaines Wolter & Kinney*, Birmingham

Verdict: Defense verdict

Circuit: **Jefferson**, 10-24-05

Judge: G. William Noble

On 2-10-02, a crash occurred in Birmingham at the intersection of 1st Avenue North and 17th Street North. The crash happened when a vehicle occupied by Gregory Williams, then age 14, collided with a vehicle being driven by Michelle Peterson.

Williams claimed to have been injured in the crash, and he was taken to the ER at Children's Hospital. However, the record does not reveal the nature of his injuries or the amount of his incurred medical expenses.

Through his mother, Benita Smith, as his next friend, Williams filed suit against Peterson and blamed her for crashing into him. Peterson defended and minimized the claimed damages.

The case was resolved by a jury in Birmingham in favor of Peterson. The court entered a consistent defense judgment.

Breach of Contract/Battery - While a contractor got the job, trouble brewed and an altercation resulted in injury; there was a race to the courthouse, the parties filing competing lawsuits – the jury sorted it out and awarded nothing to everyone

Reebals v. White, 03-4218

Plaintiff: Tom Burgess and Laura Susan Hardin, *Burgess & Hale*, Birmingham, for Reebals

Phillip R. Collins, *Huie Fernambucq & Stewart*, Birmingham, for Design Development Group

Jamie Durham, Birmingham, for Alabama Homebuilder's Licensure Board

Defense: G. Huston Howard, II, *Howard Dunn Howard & Howard*, Wetumpka

Verdict: Defense verdict

Circuit: **Jefferson**, 3-17-06

Judge: Robert S. Vance, Jr.

Luke and Julie White decided to renovate their home on Brookwood Road in Birmingham. On 4-9-02, they contracted with Design Development Group (DDG). The contract price totaled \$115,092. DDG was owned by Chris Reebals who held a degree in architecture from Auburn University.

Reebals asserted that many change orders were requested by the Whites which increased the price. He further alleged that Luke became verbally abusive and refused to pay amounts due under the contract. This business relationship quickly went south and fistcuffs soon erupted. Reebals insisted that he was attacked and assaulted by Luke.

In the resulting suit, Reebals and DDG asserted a lien and alleged breach of contract, unjust enrichment and assault. Both compensatory and punitive damages were demanded.

The Whites denied the allegations and counterclaimed for battery, fraud, negligent construction and breach of

contract. In particular, Luke noted that as a result of the fight, he sustained a fractured arm and spent three days at Brookwood Medical Center. His medical expenses totaled \$71,832.

The pre-trial practice became complicated. In the spring of 2004, both Reebals and DDG filed for bankruptcy. Thereafter, the court dismissed the complaint and released the lien, but allowed the Whites' counterclaim to proceed with their recovery limited to the provisions of the Alabama Homeowner's Recovery Fund.

Luke's assault claim was bifurcated and stayed pending the outcome of coverage litigation between Reebals and Cincinnati Insurance Company in federal court in Birmingham. See CV-05-AR-0903-S). Reebals prevailed and the matter then advanced to trial.

Finally then in March of this year, Luke's assault counterclaim against Reebals proceeded to trial. Each claimed the other caused the fray. On the issue of fault, the jury found for Reebals and against Luke. They therefore did not reach damages or whether Reebals was within the scope of his DDG employment. A consistent judgment followed.

Post-trial, Luke moved for a JNOV and/or a new trial. He argued that the jury's denial of his assault claim was against the clear weight of the evidence. In a bare-bones order, the court denied the motion.

Auto Negligence - Plaintiff claimed a shoulder injury after being rear-ended by a young and inexperienced driver on an interstate

Swain v. Caldwell, 05-4173

Plaintiff: Brian Allison, *The Allison Law Firm*, Birmingham

Defense: Tracy N. Hendrix and Brandon Bishop, *Gaines Wolter & Kinney*, Birmingham

Verdict: Defense verdict

Circuit: **Jefferson**, 5-17-06

Judge: Tom King, Jr.

On 10-19-04, Sheila Swain was driving a 2003 Toyota Corolla on I-65 between the intersections with Oxmoor Road and Lakeshore Parkway in Birmingham. Also traveling in the same area was a 1997 Infinity 130 owned by Joseph Caldwell and being driven by Emily Caldwell. An instant

later, Caldwell rear-ended Swain.

Swain complained of a shoulder injury that she attributed to the crash. Her medical expenses are unknown. Her identified medical expert was Dr. Jeffrey Cusmariu, Orthopedics, Birmingham.

Swain filed suit against both Emily and Joseph Caldwell. She blamed Emily for speeding, following too closely, and crashing into her. Swain blamed Joseph for negligently entrusting the vehicle to Emily. According to Swain, Emily was a young and inexperienced driver, and Joseph should have known better than to let her drive.

The claim against Joseph seems not to have advanced to trial. Instead, the litigation proceeded solely against Emily. She defended and minimized the claimed damages.

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

Medical Negligence - A traumatic delivery left a newborn baby with serious, continuing medical problems; the baby's parents blamed the botched delivery on the ob-gyn's substandard care

Jackson v. McLaury, 02-5906

Plaintiff: William P. Traylor, III, *Yearout & Traylor*, Birmingham; and William Q. Bird, *Bird & Mabrey*, Atlanta, GA

Defense: Randal H. Sellers and M. Christopher Eagan, *Starnes & Atchison*, Birmingham

Verdict: Defense verdict

Circuit: **Jefferson**, 4-13-06

Judge: Robert S. Vance, Jr.

In September of 1994, Susan Jackson, age 35 and an employee of Bruno's Foods in Birmingham, was anticipating the birth of her new baby. Late in the evening of 9-30-94, Jackson went to St. Vincent's Hospital in labor. The ob-gyn attending to her care was Dr. Daniel McLaury.

The delivery did not go smoothly. By the morning of the next day, and despite the use of medications to induce contractions, there was still no progress. McLaury then tried to use forceps to facilitate the delivery. However, the forceps slipped off.

McLaury's next move was to apply a vacuum while the nurses applied fundal pressure. That caused the vertex to be delivered, but McLaury observed a shoulder dystocia complication. In response, he placed Jackson in the McRoberts position and cut a 4th degree episiotomy.

Soon thereafter, baby Ira rotated and was delivered with Apgars of 1, 3, 4, and 4. His condition was not good. The trauma of the delivery left baby Ira with a depressed partial skull fracture and internal injuries. This, in turn, led to several other serious conditions.

Among baby Ira's continuing medical difficulties are chronically low levels of calcium and potassium, reduced platelet count, anemia, Erb's palsy, and developmental delays. Jackson attributes these problems to the botched delivery.

The exact amount of baby Ira's medical expenses is unknown. However, the Jacksons were insured by Blue Cross/Blue Shield. The insurer is listed in the record as having paid \$73,246 toward the medicals.

Jackson, her husband, and baby Ira, filed suit against McLaury and criticized his technique in managing the delivery. Specifically, McLaury failed to recognize and treat a failure of descent and failure of progress.

According to plaintiffs, it was a mistake for McLaury to have attempted the delivery via forceps and vacuum when the fetus was in an inappropriate station. They further claimed he applied the forceps and vacuum incorrectly. Instead, he should have switched to a c-section sooner. Had he done so, baby Ira's chances of a healthy birth would have been improved.

Plaintiffs noted that following the delivery, McLaury asked Jackson if he could pray with her. He also allegedly told her the baby had been too big, and he wished he had switched to a c-section sooner. Plaintiffs also named St. Vincent's as a co-defendant but later stipulated to its dismissal.

Initially, one of plaintiffs' identified standard of care experts was Dr. William Koontz, an ob-gyn from Louisville, KY. However, it turned out that McLaury had trained under Koontz, so Koontz withdrew his services from the case.

Following Koontz's departure, he was replaced by Dr. Larry Griffin, Ob-

gyn, Louisville, KY. Plaintiffs' other identified experts included Dr. Thomas Burns, Neuropsychology, Atlanta, GA; and Dr. Marcus Hermansen, Neonatology, Nashua, NH. It was Dr. Hermansen's opinion that baby Ira's injuries were due to asphyxia and/or birth trauma.

In addition to the causation and standard of care medical experts, plaintiffs identified an economist in the person of John Brown, Alpharetta, GA; and they identified Marissa Howell as a vocational expert. Finally, nurse LuRae Ahrendt of Lawrenceville, GA provided a Life Care Plan.

McLaury defended the case and denied any breach of the standard of care. His standard of care experts included three Ob-Gyns. They were Dr. Dwight Hooper of Tuscaloosa, Dr. Sam Gray of Birmingham, and Dr. James Lyle, III of Birmingham. McLaury's causation expert was Dr. Paul Maertens, Pediatric Neurology, Mobile.

Dr. Maertens offered the opinion that baby Ira's injuries were due to the use of the forceps. However, he went on to say that the baby would not have survived if McLaury had switched to a c-section after the forceps slipped off.

McLaury's remaining identified expert witnesses included Dr. Carol Walker, Neuropsychology, Huntsville. McLaury's vocational expert was Russ Gurley of Birmingham, and his life care planner was Rusty Peavy of Fairhope.

A jury in Birmingham heard the evidence and returned a verdict that exonerated McLaury. The court entered a consistent defense judgment.

Underinsured Motorist - A jury awarded UIM benefits to the plaintiff and wife, the fault of the tortfeasor having been conceded

Bryson v. Progressive Insurance, 04-472

Plaintiff: Michael Gamble and David W. Rousseau, *The Gamble Law Firm*, Dothan

Defense: Herman Cobb and Leon A. Boyd, *Cobb Shealy Crum & Derrick*, Dothan

Verdict: \$50,000 for plaintiffs

Circuit: **Houston**, 12-06-05

Judge: Sidney E. Jackson

On 12-17-03, Michael Bryson was injured in a motor vehicle accident

caused by Jonah Harper. Fault was no issue. Harper had liability limits of \$25,000 with State Farm and paid them to Bryson.

Above that sum, Bryson sought UIM benefits from his carrier, Progressive. His medical expenses were nearly \$12,000, but the nature of his injury was not revealed in the court file. Bryson's wife, Paula, pursued a loss of consortium claim. In the resulting litigation, Progressive did not contest Harper's fault, but minimized damages.

After hearing the evidence, the jury returned an award of \$42,500 for Bryson, his wife taking \$7,500 more for her consortium interest. A judgment less the underlying \$25,000 was entered for the plaintiffs and Progressive paid it.

Auto Negligence - Defendant admitted fault in a case that arose out of a failure-to-yield crash in which a veterinary technician was injured

Maynard v. Jaubert, 04-2005

Plaintiff: J. Knox Boteler, III, *Moore & Wolfe*, Mobile

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

Verdict: \$20,000 for plaintiff

Circuit: **Mobile**, 4-11-06

Judge: James C. Wood

In the afternoon of 5-24-03, Thomas Maynard, a veterinary technician at the Animal Care Center West in Semmes, was enjoying some time away from the office. He had been at work earlier in the day but then went home to putter in his yard for a few hours.

Shortly after 2:30 p.m., Maynard was called back to the office to assist in euthanizing a dog. Maynard climbed into his car and headed out. His route took him north on Schillinger Road toward the intersection with Moffett Road.

At the same time, Edward Jaubert was also driving in the same area. Jaubert was taking his wife to Gulf Shores to visit his in-laws. Upon reaching the intersection, Maynard intended to make a left turn onto Moffett Road. However, Jaubert failed to yield the right-of-way, and the two collided.

The record does not reveal the nature of Maynard's injuries or the amount of his medical expenses. He filed suit against Jaubert and blamed him for

failing to yield and thereby causing the crash. Jaubert admitted fault and defended the case on damages.

The case was tried to a jury in Mobile. At the close of proof, Maynard made a motion for a judgment as a matter of law on the following issues: (1) whether Jaubert exercised reasonable care in the operation of his vehicle, (2) whether Maynard was contributorily negligent, and (3) whether Maynard was injured. The court granted the motion.

The jury deliberated solely on the issue of damages and returned a verdict that awarded Maynard \$20,000. The verdict form contained a helpful explanatory note indicating that the award was only for pain and suffering. If the court entered a judgment, it was not part of the record at the time the AJVR reviewed it.

Prior to trial, Jaubert made an Offer of Judgment in the amount of \$7,500. During deliberations, the jury asked the court several questions. Among them were the following: (1) "If Render A Judgement [*sic*] who's paying, Defendant or Insurance Co.?" (2) "Can we award property damage or pain & suffering without paying medical bills?" (3) "If we award less than \$11,000 will defendant get any pain and suffering damages & will he have to pay the balance?"

Auto Negligence - While leaving the parking lot of a Goodwill Store, defendant cut across traffic to enter her preferred lane; in doing so, defendant pulled into plaintiff's path, and the two collided

Sanders v. Grant, 05-880

Plaintiff: David N. Cutchen, *Fostman & Cutchen*, Birmingham

Defense: Peyton C. Thetford, *Wade S. Anderson & Associates*, Birmingham

Verdict: \$6,000 for plaintiff

Circuit: **Jefferson**, 4-4-06

Judge: G. William Noble

On 2-14-03, Christine Grant, age 54 and a home health care associate for Stevens Home Health care, was visiting the Goodwill Store on Green Springs Avenue in Birmingham. Having completed her business, Grant was on her way out of the Goodwill parking lot and attempting to enter the right lane of Green Springs Avenue.

Unbeknownst to Grant, a vehicle

being driven by Sheila Sanders, age 38 and a mailer in the packaging and distribution department of the Birmingham News, was traveling south on Green Springs Avenue. Oncoming traffic stopped to let Grant cross over into the right lane. Sanders arrived on the scene at just that moment, and the two collided.

Sanders was taken to the ER and evaluated for soft-tissue symptoms. Following the evaluation, she was discharged and sent home. Her medical expenses are unknown.

Sanders filed suit against Grant and blamed her for the crash. In addition to her claim for negligence, Sanders also alleged a count for wantonness. Grant defended the case and denied fault. Instead, she suggested the crash might have been due to Sanders's speeding.

The case was tried to a jury in Birmingham. At the close of Sanders's case, Grant made a motion for a judgment as a matter of law. The court granted the motion on the wantonness claim but denied it on the claim for negligence.

The jury returned a verdict for Sanders and awarded her damages in the amount of \$6,000. The court entered a consistent judgment for that amount, plus costs.

Auto Negligence - Soft-tissue injuries due to an intersection crash were valued at \$10,000 in Lawrence County

Terry v. Claborn, 03-48

Plaintiff: Thomas B. Denham, Moulton

Defense: Ralph D. Gaines, III and Staci G. Cornelius, *Gaines Wolter & Kinney*, Birmingham

Verdict: \$10,000 for plaintiff

Circuit: **Lawrence**, 8-10-05

Judge: Philip Reich

On 3-14-01, Donald Terry, age 58 and a retired GM worker, was driving a 1995 Dodge Ram pickup truck on the roads of Lawrence County. As Terry drove along, a vehicle being driven by Ronald Claborn pulled out of an intersection and hit the front left wheel of Terry's truck.

Terry would later complain of low back pain that he attributed to the collision. His medical expenses are unknown. Terry filed suit against Claborn and blamed him for the crash. Terry's identified accident

reconstructionist was Jim Griffin. Claborn defended the case and minimized the claimed damages.

The case was originally tried on 5-17-05. However, twice during the presentation of testimony at that trial, there was inadvertent mention in front of the jury of liability insurance coverage. On that basis, the court ordered a mistrial.

The case was tried again for three days in Moulton in August of 2005. The verdict was for Terry in the amount of \$10,000. The court entered a consistent judgment for that amount, plus costs of \$239. The judgment has been satisfied.

Construction Contract - A plumbing contractor was blamed for a home's foundation problems

Plyler v. Wright, 03-261

Plaintiff: Thomas S. McGrath, Huntsville

Defense: Gary K. Grace and J. Mark Debro, *Grace Evans & Matthews*, Huntsville

Verdict: Defense verdict

Circuit: **Morgan**, 11-17-05

Judge: Sherrie W. Paler

In the Spring of 1996, Herbert and Marie Plyler began the construction of a new home at 3217 Manassas Run. They operated as their own general contractor. The Plylers contracted with Jerry Wright to establish water service and provide plumbing.

The Plylers occupied the home in September 1996. By February of 1999, they noticed a drywall crack over one of the doors. This crack grew in size and they began to notice others. Foundations and Structural Renovations (FSR) found movement of the foundation slab and walls. FSR also found a substantial leak where the bathtub drain enters the sewer.

The Plylers filed suit against the plumber, Jerry Wright, claiming negligent construction and breach of contract. They alleged out-of-pocket expenses of \$20,028. In addition to FSR, plaintiffs also relied on David Carlisle, Engineer, Birmingham. Wright countered that his construction work was sound, the foundation difficulties being related to a soil problem.

The three-day trial resulted in a jury verdict for the defendant. A consistent

judgment followed.

Insurance Fraud - An insurer explained it sent a letter out in error that advised the plaintiff he was entitled to a refund - when the plaintiff didn't get the refund, he sued the insurer and alleged fraud

Alford v. State Farm Life Insurance, 01-207

Plaintiff: Nick H. Wooten, *Wooten Law Firm*, Lafayette

Defense: James H. Anderson, *Beers Anderson Jackson Patty & VanHeest*, Montgomery

Verdict: \$1,041,978 for plaintiff

Circuit: **Chambers**, 9-14-05

Judge: Tom F. Young, Jr.

George Alford and Donny Holley had known each other for much of their lives. They attended the same high school. Alford became a businessman and owned a pawn shop and car lot. Holley went to work as a captive agent for State Farm.

In February 1989, Alford purchased a universal life insurance policy from State Farm through his agent, Holley. The policy grew over the years to include a death benefit of \$350,000 - because of several loans, Alford had reduced its value.

In late 1999 or early 2000, Alford decided to replace the State Farm policy with one from Metropolitan Life. He elected to reduce the State Farm coverage to \$50,000. State Farm then contacted him directly by mail advising him to accept a premium refund of \$20,989. The refund was to avoid negative tax consequences should the IRS deem the policy to be a modified endowment contract (MEC). Alford took the letter to Holley who told him that there must be some mistake.

Alford maintained that he never heard further from State Farm and never received his premium refund. He sued State Farm and Holley to correct this wrong.

Discovery revealed that State Farm utilized two computer generated form letters whenever a policy change raised the possibility of an MEC situation. The first was in the case of excess premiums. The second resulted from reduced coverage and policy loans. State Farm should have sent the second letter (policy loans) but instead sent the first in error. Thus, Alford was never

due a premium refund. In addition, defendants contended that after the wrong letter was sent, State Farm contacted Alford, explained the mistake and discussed the MEC situation. Plaintiff continued to insist he was a victim of fraud by the insurer.

After considering the evidence, the jury found for plaintiff Alford. Against State Farm, they awarded \$30,000 in compensatory damages and \$970,000 in punitives. Against agent Holley, they awarded \$20,989 in compensatory damages, plus the same sum for punitives. The resulting judgment totaled \$1,041,978.

Post-trial practice began. Defendants moved for JNOV and/or a new trial citing excessive punitive damages, a lack of evidence that Alford suffered any damages and that they were entitled to summary judgment or a directed verdict. In a bare-bones order, the court rejected these arguments. Defendants then appealed. While that appeal was pending, the parties jointly moved to dismiss the case.

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