The Alabama Jury Verdict Reporter

The Most Current and Complete Summary of Alabama Jury Verdicts

September, 2007 **Statewide Jury Verdict Coverage - Published Monthly** **7 A.J.V.R. 9**

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.

Fraud - A real estate developer hired a contractor to work on the construction of a new subdivision; the contractor misappropriated funds, did substandard work, and went out of business without completing the project

Whittelsey Properties, Inc., et al. v. Manifold, et al., 05-137
Plaintiff: Davis B. Whittelsey, *Whittelsey, Whittelsey & Poole, P.C.*, Opelika
Defense: Bradley J. Smith, Eric D. Bonner, and Cynthia N. Williams, *Clark Oncale Hair & Smith, P.C.*, Birmingham
Verdict: $2,750,000 for plaintiffs
Circuit: **Lee**, 11-2-06
Judge: Brady E. Mendheim, Jr.

C. Sheldon Whittelsey, III (hereinafter, "Whitt") has been a successful attorney and real estate developer in Alabama for the past fifty years. His son, C. Sheldon Whittelsey, IV (hereinafter, "Sheldon") is also a real estate developer. Together, they operate a business known as Whittelsey Properties, Inc. (hereinafter, "Whittelsey").

In May of 2004, the Whittelseys were interested in developing a project to be known as the Sanders Creek Subdivision, Phase II. They contracted with a company called Manifold Construction, LLC. to do part of the work. The managing member of Manifold Construction was Jack Manifold.

The agreement between the parties provided that Manifold Construction was to be responsible for construction of the fire and water system, the sewer system, and the entrance drive to the subdivision. Manifold Construction would also handle erosion control, general excavation, and paving operations.

In exchange for Manifold's work, Whittelsey was to pay the sum of

$646,712. The arrangement also provided that Manifold would pay for all labor, materials, etc. out of the funds it received from Whittelsey.

Furthermore, Manifold would submit invoices to Whittelsey at the end of each month, and Whittelsey would pay the invoices shortly thereafter. With each payment, Manifold would provide affidavits affirming the company had paid all labor and material costs to that point.

Manifold began work on the project on 5-28-04. Shortly after work began, however, it was discovered that a great deal of rock lay hidden beneath the surface of the construction site. Based on that discovery, Manifold submitted a change request to Whittelsey for the increased cost of removing the rock.

Whittelsey agreed to the change request and the increased costs. There would allegedly be many more change requests and cost increases over the course of the project. In the end, the total cost Manifold would claim climbed to $883,849.

While Manifold was working on the project, the company was experiencing cash flow problems. In an effort to cope with the problem, Manifold began secretly using the money it was receiving from Whittelsey to pay for expenses relating to other projects in which Whittelsey was not involved.

As a result of this maneuver, many of the expenses relating to the Whittelsey project were going unpaid. Despite that reality, Manifold continued to provide Whittelsey with affidavits affirming that all debts relating to the project were being paid.

Manifold's bookkeeping sleight of hand could not be sustained in the long run. On 11-30-04, Jack Manifold met with Sheldon and informed him the company could not make its payroll and was going out of business.

Also during the meeting, Jack stated that the outstanding debts relating to the project amounted at that time to approximately $200,000. Jack explained that Manifold would liquidate its assets and pay the debts out of the proceeds. In the meantime, Sheldon agreed that Whittelsey would pay Manifold's payroll and take over responsibility for completing the project.

Plaintiffs would later claim, however, that at the same time Jack was promising to pay the outstanding debts out of the proceeds of Manifold's liquidation, he was also telling various vendors that payment would be forthcoming directly from Whittelsey.

Sheldon and Jack had a second meeting on 12-1-04, during which Jack represented that the outstanding debts at that time were only approximately $86,000. Yet the following day, Jack faxed Sheldon a document that listed the unpaid debts at $302,747.

According to plaintiffs, at the time Manifold went out of business the project was substantially incomplete. Whittelsey then stepped in and was forced to act as the general contractor to finish the project. Furthermore, unpaid vendors began coming out of the woodwork and threatening to file liens if payment was not immediately forthcoming.

Whittelsey, Sheldon, and Whitt all filed suit against Manifold Construction and Jack Manifold personally. In their complaint, plaintiffs alleged counts for breach of contract, reckless fraud, innocent fraud, negligence, theft, slander of title, and wantonness.

Plaintiffs's specific allegations criticized defendants for using the money they received from plaintiffs to pay expenses on other projects, repeatedly misrepresenting that all debts relating to the project were being paid, placing plaintiffs in the position of being threatened with liens from unpaid vendors, and forcing plaintiffs to act as the general contractor to complete the project.

In addition, plaintiffs claimed that the work Manifold did complete was done in an unworkmanlike manner such that it failed to pass the required city inspections. Thus, plaintiffs had to incur additional expenses to have the work redone properly. If successful, plaintiffs sought punitive damages in addition to compensatory damages.

Plaintiffs identified a number of experts. They included Charles Bush, Engineer, Opelika; Jim Sailor, Engineer, Atlanta, GA; Davis Bartlett, CPA, Opelika; Walter Dorsey, Building Codes, Opelika; John Fuller, Paving, Opelika; Brady Pollock, Engineer, Opelika; and Gavin McLeod, Rental Equipment, Auburn.

Jack Manifold and Manifold Construction defended the case as best they could. They argued that plaintiffs knew from the beginning that Manifold was having cash flow problems. Defendants simply tried to do what they could to keep their business afloat. Moreover, when Manifold finally did pull out of the project, its work was substantially complete.

The defense also identified a number of experts. They included M. Sanford Thomas, CPA, Birmingham; Dan Brown, Engineer, Sequatchie, TN; and a construction expert in the person of Rayford Smith.

The case was tried for four days in Opelika. At the close of plaintiffs' case, Sheldon dismissed his claim, and the remaining plaintiffs dismissed their breach of contract claim. At the close of all evidence, the court granted plaintiffs a judgment as a matter of law on the counts for negligence, reckless fraud, and innocent fraud.

The jury returned a verdict for plaintiffs and awarded them compensatory damages of $275,000 against both defendants. To that amount was added another $1,500,000 in punitive damages against Manifold Construction, plus $1,000,000 in punitive damages against Jack Manifold.

The court entered a judgment that reflected the verdict. Thereafter plaintiffs filed a motion for additur on the ground that they had presented uncontroverted evidence that their actual damages were $474,000 rather than the $275,000 the jury awarded them.

At the same time, defendants filed a motion for remittitur or for a new trial. The court entered an order remitting the punitive damages component of the award to $825,000 against each of the two defendants. Plaintiffs accepted that decision, but defendants have filed an appeal. At the time the AJVR reviewed the record, the appeal was still pending.

Here's a UK football story that may be hard to believe

By EARL COX
Sports Columnist

If I hadn't lived through the University of Kentucky's shameful Thin Thirty Days, I would swear that a new book, "The Thin Thirty," is a work of fiction. But you couldn't make up what a Louisville author, Shannon Ragland, has written about the shameful period when Charlie Bradshaw coached UK and so brutalized the UK football players that all but 30 quit the team.

Shortly after Bradshaw returned to Lexington to coach his alma mater, I had a conversation with him in front of the Wildcat Bowling Lanes next to Memorial Coliseum. He said that Dr. Ralph Angelucci, the team physician and a member of the UK trustees, told him that the first thing the coach had to do was run off the gays, including actor Rock Hudson, who were dating some of the football players.

You read that right.

Can't win with mules

And Bradshaw went to work. He ran off the homosexuals. The party sites switched to Richmond and involved some of the Eastern players. Hudson helped one of the EKU players, Harvey Yeary, make it big in Hollywood with a new name: Lee Majors!

But Bradshaw also ran off most of his UK football players. All but 30 – thus The Thin Thirty.

I think it was a high school coach named Jim Pickens who told Bradshaw that he had run off the thoroughbreds and was left with mules – "and you can't win on Saturdays with mules." He also told him that Bradshaw shouldn't ever bother to recruit Bowling Green players again because he had run off Dale Lindsey, probably the best player Bowling Green had ever produced. Lindsay finished at WKU and was a star linebacker in the NFL.

Bear Bryant Jr.

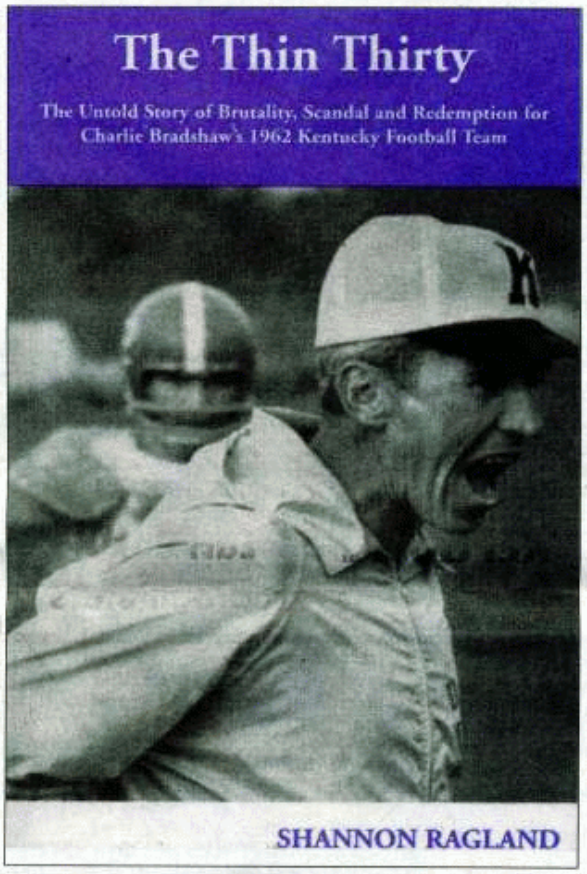
I walked with Bradshaw one day from the Coliseum across the Avenue of Champions to Stoll Field. I told him I was worried about him and I thought what was wrong with him was that he was trying to be someone else – Bear Bryant Jr.

He objected violently to that.

That first season I flew on the UK team plane to a game with the University of Detroit. I have never seen such a beaten-down group of individuals. Actually there were only 29 on the trip. I was the last one on the plane and I couldn't see an empty seat. But Junior Hawthorne, a big tackle, made his teammates squinch up in the back to make room for me.

Homer Rice, a friend who turned Fort Thomas Highlands into a football powerhouse, was a mild-mannered man who was a Bradshaw assistant. He called one day at The Courier-Journal. He said things were so bad that he had told Bradshaw that he would quit if the mistreatment of players didn't stop.

Rice stayed.



Gambling on Xavier?

Earl Ruby, the legendary Courier-Journal sports editor, and I flew on the team plane to Knoxville for the season-ending Kentucky-Tennessee game in 1962. UK won 12-10 and the Wildcats finished the season 3-5-2. Bradshaw lasted six more seasons before he was replaced by the luckless John Ray, who did make a major contribution to UK by being the catalyst for the building of Commonwealth Stadium.

In addition to the sex, Shannon Ragland discovered something I had never heard. He writes that some of the Wildcats tried to throw the Xavier game (the week before Tennessee). Xavier upset the Cats 14-9.

Ragland has done thorough research. I told him that his book could be a good textbook for use by colleges. It should be required for football players planning to be coaches.

Ragland played in two state tournaments as a member of the Eastern High team led by Felton Spencer. He is a graduate of WKU and also of UK's law school.

His book is $18.95. It's on sale now at Joseph Beth in Lexington, and will be available in Louisville later.

Special Notice

Our publisher, Shannon Ragland, has a new book that was just released last week, *The Thin Thirty*, which chronicled Charlie Bradshaw's first year as the football coach at the University of Kentucky in 1962.

This remarkable story chronicles not just the brutality of the Bradshaw system (he was a Bear Bryant disciple), but also reveals a gay sex scandal on the football team that involved of all people . . . Rock Hudson. *The Thin Thirty* also describes how the 1962 football team fixed a game.

A review from Earl Cox in last week's *Louisville Voice-Tribune* (the insert to the left) describes this remarkable story. While this is a Kentucky story, it touches on significantly on Bryant's Kentucky roots and Bradshaw's connection to him.

The Thin Thirty is available at Amazon.com and other fine bookstores. For more information, contact Shannon at sragland@juryverdicts.net or see our website, setshotpress.com

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Auto Negligence - Plaintiff claimed soft-tissue injuries due to a rear-end collision at an intersection; the jury awarded plaintiff approximately 15% of her medical expenses

White v. Norris, et al., 04-773
Plaintiff: D. Dirk Thomas, Birmingham
Defense: Tracy N. Hendrix, *Gaines Wolter & Kinney, P.C.*, Birmingham
Verdict: $600 for plaintiff
Circuit: **Jefferson**, 4-12-07
Judge: Ralph E. Coleman, Jr.

On 12-11-02, Jimmy White, then age 39, was driving west on 9th Street in Bessemer. Behind him was a vehicle being driven by Brandi Norris. Upon reaching the intersection with Nolan Avenue, White stopped for a red light and waited to make a left turn. According to White, three to four seconds after the light turned green, Norris rear-ended him.

White claimed soft-tissue injuries

due to the collision and incurred medical expenses of approximately $3,900. The majority of the medicals were for chiropractic treatments at Town & Country Chiropractic.

In this lawsuit, White blamed Norris for crashing into him. He also targeted a person identified as Jacquelyn Watkins, but the record does not describe what role Watkins allegedly played in the case.

In any event, Norris defended the case and provided her own version of events. According to her, after the light turned green, White moved forward and had not activated any turn signal. He then stopped abruptly, and Norris had no time to react. White responded to this explanation by insisting he did not move forward and that he did have his turn signal on.

The case was tried in Bessemer only on the issue of damages. The jury returned a verdict for White in the amount of $600. The court entered a judgment for that amount, and it has been satisfied.

Medical Negligence - An elderly man admitted to the hospital for treatment of a pulmonary condition was mistakenly prescribed diabetes medications; the man went into a hypoglycemic coma and later died

Estate of Donaldson v. Purvis, et al., 02-203
Plaintiff: Samuel E. Loftin, *Loftin Loftin & Hall*, Phenix City
Defense: D. Taylor Flowers, *Lewis Brackin Flowers & Johnson*, Dothan; and Fred W. Tyson and Ben C. Wilson, *Rushton Stakely Johnston & Garrett*, Montgomery, for Purvis; Alan C. Livingston, *Lee & McInish*, Dothan; and Michael K. Wright and Benjamin D. McAninch, *Starnes & Atchison*, Birmingham, for Flowers Hospital
Verdict: Judgment as a Matter of Law for defendants
Circuit: **Houston**, 10-3-06
Judge: Denny L. Holloway

Beginning in 1991, Buck Donaldson became a patient of pulmonologist Dr. Alan Purvis of Dothan for treatment of "chronic obstructive pulmonary disease" (hereinafter, "COPD"). Dr. Purvis was affiliated with an entity identified as Dothan Specialty Clinic.

In July of 2001, Donaldson, who by then was 69 years old, took a turn for the worse due to a viral infection. On 7-18-01, Dr. Purvis admitted Donaldson to Flowers Hospital in Dothan for more extensive treatment.

Upon Donaldson's admission to the hospital, Dr. Purvis found a list of medications among Donaldson's medical records. Apparently, Dr. Purvis simply assumed the list was an itemization of the medications Donaldson had been taking at home. The medications on the list included Amaryl, Corgard, Lanoxin, and Vioxx.

Of those medications, two would later become of particular importance for this case. Specifically, Amaryl is used for treating diabetes, and Corgard is a beta blocker that enhances the effect of Amaryl and also can cause bronchospasms and a slowing of the heart rate.

Since Dr. Purvis believed these were the medications Donaldson had been taking at home, he prescribed more of them. It would later turn out, however, that the list Dr. Purvis had examined actually related to a completely different patient. In reality, Donaldson did not have diabetes, and Corgard is contraindicated for patients suffering from COPD.

After receiving the medications over the next several days, Donaldson went into a hypoglycemic coma with a disruption of his heart rhythm and impaired ventilation. Tragically, he died approximately a week later on 7-26-01.

Donaldson's estate filed suit against Dr. Purvis, Dothan Specialty Clinic, and Flowers Hospital. However, the court later granted Dothan Specialty Clinic a summary judgment and dismissed it from the case on the ground that Dr. Purvis was not in fact its employee.

The case proceeded against Dr. Purvis and Flowers Hospital. The estate criticized on several grounds the care Donaldson had received from these defendants.

With respect to Dr. Purvis, the estate alleged it was a breach of the standard of care for him to prescribe diabetes medications to a patient who did not have diabetes. That breach was especially egregious given that at least one of the prescribed medications was contraindicated for the condition from which the patient actually suffered.

The estate alleged a number of errors against the hospital. They included failing to (1) monitor Donaldson's blood sugar, (2) ensure Donaldson's medical records accurately reflected his condition, (3) review or compare Dr. Purvis's orders with information gathered from Donaldson himself during his admission to the hospital, (4) compare Donaldson's home medications to those prescribed by Dr. Purvis, and (5) provide adequate nursing and medical staff. The identified experts for the estate included Dr. Raymond Parker, Pulmonology, Miami, FL.

Dr. Purvis and Flowers Hospital defended the case and denied any breach of the standard of care. The identified defense experts included three nurses from Birmingham. They were Carolyn McKinney, Pam Pope, and Christina Lucas. Two other defense experts, both from Montgomery, were Dr. David Franco, Pulmonology, and Dr. Bruce Trippe, Endocrinology.

The case was tried to a jury in Dothan. At the conclusion of the evidence, the court ruled the estate had failed to present the requisite expert testimony establishing the applicable standard of care and thus could not create an issue of fact as to whether defendants ever breached the standard of care. Based on that failure, the court granted a judgment as a matter of law in favor of both defendants.

Construction Negligence - A vacation home that was under construction burned purportedly because of the too-thick application of insulation

Kerns v. Pro-Foam of South Alabama, 1:06-431
Plaintiff: Thomas A. McKnight, *Wallace Jordan Ratliff & Brandt*, Birmingham and Michael A. Montgomery, *Butler Pappas Weihmuller Katz & Craig, Mobile*
Defense: Weyman N. McCranie, Jr. and Lori S. Grayson, *Wright Green*, Mobile
Verdict: $77,980 for plaintiff
Federal: **Mobile**, 8-10-07
Judge: William H. Steele

In November of 2005, Melvin and Pauline Kerns were constructing a vacation home in Gulf Shores, AL. They contracted with Pro-Foam of

South Alabama, to have a special polyurethane foam insulation installed. Pro-Foam is operated by Mark Sealy and James Frank, both Mobile firefighters who operated the business on the side.

As Sealy and Frank made the application, a fire suddenly broke out. While efforts were made to control the fire, the home suffered significant damage. The Kerns claimed $188,899 in fire damage.

In this diversity lawsuit, the Kerns sued Pro-Foam and alleged negligence regarding the application of the insulation. It was their theory that it was applied too thick and thus exothermic heat could not escape – that then led to a spontaneous smouldering fire and the home was damaged. The plaintiff's fire expert was Gordon Damant.

Pro-Foam defended that the insulation was applied consistently with the industry standard. It blamed the fire not on their insulation, but instead on static electricty.

This case came to a jury trial in Mobile. While the verdict is not a part of the record, the judgment indicates the plaintiffs prevailed at trial and were awarded $77,980.

Auto Negligence - A married couple injured in a rear-end crash prevailed against the tortfeasor and their UIM insurer; the court denied the insurer's motion for a set-off for previous payment of medical expenses, and the insurer appealed the decision

Austin v. Horton, 05-1511
Plaintiff: Robert C. Gammons, *Stephens Millirons Harrison & Gammons*, Huntsville
Defense: Ronald J. Gault, *Gaines Wolter & Kinney, P.C.*, Birmingham
Verdict: $190,000 for plaintiffs (allocated $130,000 for Walter and $60,000 for Charlene)
Circuit: **Madison**, 5-2-07
Judge: James P. Smith

On 5-18-04, Walter and Charlene Austin were traveling on Mountain Gap Road in Huntsville. When they stopped in a line of traffic, the Austins were rear-ended by Stephen Horton. The impact pushed the Austins into the vehicle in front of them.

The record does not reveal the nature of the Austins' injuries. However, the vehicle in which they were traveling was owned by their son and daughter-in-law and was insured by Nationwide Insurance. Under the med pay provision of the policy, Nationwide paid $14,630 toward Walter's medical expenses and another $11,201 toward Charlene's medicals.

The Austins filed suit against Horton and blamed him for crashing into them. Plaintiffs also made underinsured motorist claims against Nationwide and against their own insurer, State Farm Insurance.

Both Nationwide and State Farm later opted out of the case. The litigation proceeded against Horton. He defended and minimized the claimed damages.

A jury in Huntsville heard the case and returned a verdict for the Austins. Walter was awarded damages of $130,000, while Charlene was awarded $60,000. That brought the combined award to $130,000.

The court entered a judgment that reflected the verdict. Nationwide tendered partial payment of $115,369 to Walter and $48,798 to Charlene. The rationale for the partial payment was that Nationwide claimed entitlement to a set-off for the amounts it had previously paid under the med pay provision of its policy.

Plaintiffs filed an objection to Nationwide's motion to show the judgment satisfied. The court ruled that Nationwide's decision to opt out of the case amounted to a waiver of the opportunity to ask for special interrogatories so the jury could clarify the allocation of the award. Moreover, the court noted plaintiffs' counsel explicitly excluded past medical expenses from plaintiffs' requested award.

For both these reasons, the court denied Nationwide's motion for set-off and to show the judgment satisfied. Nationwide appealed that decision, and the appeal was still pending at the time the AJVR reviewed the record.

Premises Liability - A woman attending a meeting at a hospital during a rainstorm slipped and fell on rain water that had been tracked into the building; the woman suffered a shoulder injury and was awarded slightly more than twice her medical expenses

Dunlap v. Tenet Health Systems, 00-982
Plaintiff: Robert M. Pears, *Law Offices of Robert M. Pears, P.C.*, Hoover
Defense: Joseph L. Reese, Jr. and J. Bennett White, *Starnes & Atchison*, Birmingham
Verdict: $58,461 for plaintiff
Circuit: **Jefferson**, 8-1-07
Judge: Ralph E. Coleman, Jr. (Special Judge)

In the early evening of 1-6-98, Martha Dunlap, then age 47, was scheduled to attend a meeting in the auditorium at Lloyd Noland Hospital in Jefferson County. Thoughtfully, Dunlap brought a casserole with her to share with the other attendees.

It had been raining all that day and was still raining when Dunlap arrived at the hospital. She walked into main entrance lobby, casserole dish in hand, and made her way to the auditorium. Along the way Dunlap walked across two rugs that had been placed over the linoleum flooring.

As it happened, pedestrian traffic had tracked rain water into the building and left the floor wet. Dunlap successfully navigated the two rugs and was about to enter the auditorium. Her attention was focused on getting through the door and setting her casserole dish down on a table. She thus failed to notice the water on the floor.

Just as Dunlap reached the auditorium door, she slipped on the wet floor and fell down. Several of the other attendees came to her aid, and at least one offered Dunlap the hospital's ER services.

Dunlap was grateful for the assistance and concern, but she assured her colleagues she would be fine. Accordingly, Dunlap declined immediate medical treatment. By the time she got home after the meeting, however, she was crying and in pain.

Dunlap's husband insisted upon taking his wife back to the ER for evaluation and treatment. She was ultimately diagnosed with a right

shoulder injury and underwent an arthroscopic surgery followed by physical therapy. Her medical expenses came to $23,387.

Dunlap filed suit against HealthSouth Metro West Hospital on the belief it was the operator of the Lloyd Noland Hospital. HealthSouth explained it was not in fact the correct party, and the court granted it a summary judgment.

The error was soon corrected, and Tenet Health Systems d/b/a Lloyd Noland Hospital was named as the correct defendant. Also, for some reason Dunlap originally filed the case in the Birmingham Division of the Jefferson Circuit Court. Defendant's motion for change of venue was granted, and the case was transferred to the Bessemer Division.

With the procedural complications resolved, the case proceeded in Bessemer against Lloyd Noland Hospital (hereinafter "LNH"). Dunlap blamed LNH for failing to mop up the accumulated rain water that had been tracked in and for failing to place warning signs in the area.

The hospital defended the case and called the condition of the floor open and obvious. Defendant pointed out that Dunlap knew it had been raining that day, and she was aware that water could be tracked into a building during periods of rain. Thus, Dunlap's fall was due to her own lack of care for her own safety.

The case was tried in Bessemer. The jury returned a verdict for Dunlap and awarded her damages of $58,461. The court entered a consistent judgment for that amount.

Auto Negligence - A man claimed an injury to his lower back due to a chain-reaction rear-end crash at a stop light

Lewis v. Skelton, 03-866
Plaintiff: Harry P. Hall, II, Dothan
Defense: William L. Lee, IV, *Lee & McInish*, Dothan
Verdict: Defense verdict
Circuit: **Houston**, 9-28-06
Judge: C. Lawson Little

On 10-22-02, Bobby Lewis, then age 48, was driving near the 100 block of North Oates Street in Dothan. Behind him was a vehicle being driven by Martha McRiney. Behind her was Brian Skelton.

At a certain point, Lewis stopped for a red light. An instant later, Skelton rear-ended McRiney. The impact pushed McRiney into the rear of Lewis's vehicle. The crash was serious enough that McRiney briefly lost consciousness.

Lewis was taken by ambulance to the ER at Southeast Alabama Medical Center. Lewis suffered an injury to his lower back due to the crash. He followed a course of chiropractic treatments, but they did not provide him with relief.

Lewis underwent several surgeries on his lower back, and he incurred medical expenses totaling $182,332. Despite the surgeries, Lewis continues to complain of ongoing severe pain in his lower back, running down his right leg, as well as in his neck, shoulder and right arm. He also complains of numbness and stabbing sensations.

In this lawsuit, Lewis targeted both McRiney and Skelton. However, the court granted McRiney a summary judgment and dismissed her from the case. The litigation continued against Skelton, now on active duty in the U.S. Marine Corps. Also, Lewis's wife, Cindy Lewis, presented a derivative claim for her loss of consortium.

Skelton was insured under a policy issued by Alfa Insurance with liability limits of $100,000. Lewis's insurer, Allstate Insurance, advanced that sum and agreed to pay any additional amount required by the verdict up to its policy limits. Allstate then opted out of the case.

The case was tried for four days in Dothan. The jury returned a verdict for Skelton, and the court entered a consistent defense judgment.

Lewis filed a motion for a new trial on the ground that the verdict was against the weight of the evidence. The court denied the motion, and Lewis filed an appeal. At the time the AJVR reviewed the record, the appeal was still pending.

Excessive Force - The operator of a truck stop was beaten when he questioned a state trooper who had pulled over a trucker and was blocking the truck stop's entrance

Phillips v. Alabama State Police, 1:05-131
Plaintiff: Weyman W. McCranie, Jr. and Lori S. Grayson, *Wright Green*, Mobile
Defense: Jack M. Curtis and F. Tim McCullom, *AL. Dept. of Public Safety*, Montgomery
Verdict: Defense verdict
Federal: **Mobile**, 8-2-07
Judge: William H. Steele

William Phillips operates a truck stop on Hwy 43 in Alexis, AL – on 3-4-03, an Alabama state trooper, B.E. Irvin, stopped a logging truck right at the entrance to the truck stop. Phillips saw the stop and left to run errands.

When he returned forty-five minutes later, Irvin's stop was ongoing. Phillips was concerned because the logging truck was affecting traffic on Hwy 43 and the entrance to his truck stop.

Phillips inquired if Irvin could move his stop of the logging truck. Irvin declined. Phillips asked for Irvin's badge number and an instant later, Phillips was under arrest. While under arrest, Phillips alleged he was roughed up and that his handcuffs were applied too tightly.

While the criminal case against Phillips was dismissed, only an excessive force case was pursued to trial by him against the trooper. Irvin defended the case and explained that Phillips was arrested when he interfered with the police investigation. The arrest he further explained, was reasonable in light o f plaintiff's resistance and the handcuffs were not too tight.

The verdict on the excessive force count was for the police and Phillips took nothing. A defense judgment was entered.

Truck Negligence - On a dark night, an auto mechanic was towing a derelict vehicle to his home on a trailer when his rig suffered engine failure that caused its lights to go out; an approaching motorist failed to see the rig in the dark and collided with the trailer

Clark v. Kindley, 05-91
Plaintiff: Joshua J. Wright, *Hollis & Wright, P.C.*, Birmingham
Defense: R. Larry Bradford, *Bradford & Sears, P.C.*, Birmingham
Verdict: Defense verdict
Circuit: **Franklin**, 5-9-07
Judge: Terry L. Dempsey

As a professional auto mechanic, Larry Kindley enjoyed working on cars. On 12-22-03, Kindley purchased a used vehicle that was not in working condition. He planned to take the vehicle to his home and repair it.

It was around dusk that Kindley loaded the vehicle onto a trailer and prepared to make the twenty mile drive home. Before heading out, however, he checked to make sure the lights on his pickup truck and the trailer were working.

Once Kindley satisfied himself that the lights were in good working condition, he hit the road. His route took him along C.R. 77 at a speed of approximately 45 mph. Everything seemed fine until Kindley reached a point near the intersection with AL 24, approximately half a mile from his home.

It was at that point while going up a hill that his pickup truck began to smoke due to leakage of transmission fluid. Nevertheless, the lights were still working. Kindley reacted to his truck's malfunction by slowing to between five and six miles per hour.

Kindley continued to creep along as he went up a second hill. When he crested that hill, his lights began to flicker, and his engine sputtered and quit. Kindley would later recall that he didn't know at that point whether his lights were still working. This was significant inasmuch as by this time it had become pitch dark.

Despite the fact that his truck had lost power, the ever resourceful Kindley was not to be stymied. According to Clark, Kindley simply began to coast the rest of the way to his driveway (Kindley would later deny this). At just that moment, however, Sandra Clark, then age 43, approached Kindley from behind.

Due to the darkness, Clark was unable to see Kindley until his rig was illuminated by her headlights. By that time it was too late for her to stop. Instead, she tried to swerve to the left to avoid a collision. The evasive maneuver was not successful.

Clark ran into Kindley's trailer, flipped over, and landed upside down in Kindley's front yard. The record does not reveal the nature of Clark's injuries or the amount of her medical expenses. She filed suit against Kindley and blamed him for operating his rig on a dark road without his lights on.

In addition to her claim for negligence, Clark also alleged a count for wantonness. The court granted a summary judgment for Kindley on the wantonness claim, and the litigation proceeded solely on the remaining claims. Kindley defended and denied wrongdoing.

The case was originally tried in January of 2006. That trial resulted in a defense verdict, and Clark appealed. In a published opinion, the appellate court reversed and remanded the case to be retried on the wantonness claim.

The case was tried the second time for three days in May of 2007. The jury again returned a verdict for Kindley, and the court entered a defense judgment. Post-trial, Clark filed a motion for a new trial on the ground that the verdict was against the weight of the evidence. The court denied the motion.

Auto Negligence - A married couple claimed soft-tissue injuries and aggravation of pre-existing conditions due to a rear-end crash

Hogans v. Reynolds, 04-220
Plaintiff: Joseph G. Stewart, Jr., *Joseph G. Stewart, Jr., P.C.*, Montgomery; and Lynn W. Jinks, *Jinks Daniel & Crow, P.C.*, Union Springs
Defense: Ronald G. Davenport, *Rushton Stakely Johnston & Garrett, P.A.*, Montgomery
Verdict: $14,500 for plaintiffs (allocated $7,500 to Valisa and $7,000 to Obra)
Circuit: **Barbour**, 3-8-07
Judge: Burt Smithart

On 11-30-02, Valisa Hogans, then age 45, was driving north on Eufaula Avenue in Eufaula. Her husband, Obra Hogans, was riding with her as a passenger. Behind them and headed in the same direction was a vehicle being driven by Roy Reynolds.

At a certain point, Valisa came to a stop in traffic due to several vehicles stopped in front of her. An instant later, Reynolds rear-ended her. According to Plaintiffs, Reynolds had been traveling at approximately 55 mph in a 50 mph zone. The impact was substantial enough to break Valisa and Obra's front seat belts.

Both Valisa and Obra sustained soft-tissue injuries in the crash. However, Valisa's injuries seem to have been the more serious. In addition to pain in her neck, lower back, and shoulders, as well as numbness in her right thigh, Valisa claimed aggravation of certain pre-existing conditions.

Specifically, Valisa had previously suffered from Lupus, sleep apnea, and narcolepsy. All of those conditions had been under control, but the crash reactivated her symptoms. As a result, Valisa once again began to suffer from joint pain, night sweats, swollen joints, red blotches on her face, and disruptions in her sleep patterns.

Valisa underwent surgery for her conditions on 1-23-03. Unfortunately, she claims the surgery was not a complete success, and she continues to take medications for her narcolepsy due to her ongoing experience of daytime sleepiness. Her medical expenses came to $26,527. Obra's medical expenses were listed as $5,800.

Valisa and Obra filed suit against Reynolds and blamed him for following too closely, speeding, and crashing into them. For some reason, Valisa and Obra filed their claims as separate cases under separate cause numbers. Eventually, however, the two cases were consolidated into one.

Reynolds defended the case and denied he was speeding at the time of the crash. According to him, Valisa abruptly slowed down without warning, and Reynolds was simply unable to react in time to avoid hitting her. In any event, he claimed the impact was not severe..

The case was tried in a single day in Eufaula. The jury returned a verdict for plaintiffs and awarded damages of $7,500 to Valisa and $7,000 to Obra.

The court entered a judgment that reflected the verdict, and it has been satisfied. Prior to trial, Reynolds made Offers of Judgment of $7,500 to each plaintiff.

Medical Negligence - During an epidural block procedure, an anesthesiologist injected the narcotic directly into an elderly man's spinal fluid; the man displayed symptoms of overdose and later died

Estate of Morgan v. Schwock, et al., 02-209
Plaintiff: Julia T. Cochrun, *Pate & Cochrun, LLP.*, Birmingham; and J.E. Sawyer, Jr., Enterprise
Defense: Daniel S. Wolter and Staci G. Cornelius, *Gaines Wolter & Kinney, P.C.*, Birmingham
Verdict: Defense verdict
Circuit: **Coffee**, 6-15-07
Judge: Jeff W. Kelley

On 9-5-00, James Morgan, age 66, was a patient at the Medical Center Enterprise. During Morgan's time there, he came under the care of anesthesiologist, Dr. Kathy Schwock, an employee of Enterprise Anesthesia and Critical Care Associates, P.C.

Part of Dr. Schwock's care of Morgan included the administration of an epidural block injection. Plaintiff would later allege that during the procedure, Dr. Schwock accidentally punctured the dura and injected the narcotic directly into Morgan's spinal fluid.

This error allowed the narcotic to travel up Morgan's spinal cord to his brain and resulted in an overdose. Although Morgan displayed the symptoms of overdose, such as respiratory distress, those symptoms were not recognized or addressed.

Morgan's condition deteriorated following the procedure. He was subsequently transferred to Flowers Hospital where he died on 9-14-00, just nine days after having received the injection from Dr. Schwock.

Morgan's estate filed suit against a variety of defendants in the case. They included Medical Center Enterprise, several members of the nursing staff, Dr. Schwock, and Enterprise Anesthesia. There was eventually a shake-out in the parties, after which the only defendants remaining were Dr. Schwock and Enterprise Anesthesia.

Plaintiff criticized defendants' care in several respects. However, it boiled down to Dr. Schwock's injection of the narcotic into Morgan's spinal fluid, resulting in an overdose and subsequent death.

The identified plaintiff's experts included Dr. Charles Payne, Anesthesiology, Birmingham. According to him, the symptoms of overdose should have been recognized and addressed promptly with administration of Narcan, a drug designed to reverse the effects of narcotics. If that had been done, the tragedy could have been avoided. Dr. Schwock and Enterprise Anesthesia defended and denied any breach of the standard of care.

The case was tried in Enterprise. The jury returned a verdict for Dr. Schwock and Enterprise Anesthesia. The court entered a consistent defense judgment.

Auto Negligence - A woman claimed injuries that she blamed on a rear-end crash; the jury returned a defense verdict

Maye v. Allen Sheetmetal, Inc., et al., 02-1814
Plaintiff: Britt V. Bethea, *Greene & Phillips, LLC.*, Mobile
Defense: James W. Killion, *Killion & Associates, P.C.*, Mobile
Verdict: Defense verdict
Circuit: **Mobile**, 3-13-07
Judge: Rick P. Stout

On 5-30-00, Shawnte Maye, then age 28, was driving on Airport Boulevard in Mobile. Behind her was a vehicle being driven by Lee Allen, an employee of Allen Sheetmetal, Inc. Allen was in the course of his employment at the time.

At a point near the intersection of Schillinger Road and Dawes Road, Allen rear-ended Maye. As a result of the collision, Maye claimed injuries to her neck, back, and wrist. Her medical expenses are unknown.

In this lawsuit, Maye blamed Allen for crashing into her. She also targeted Allen Sheetmetal on a theory of respondeat superior. Allen and Allen Sheetmetal defended the case and minimized Maye's claimed injuries.

The case was tried to a jury in Mobile and resulted in a defense verdict for Allen and Allen Sheetmetal. That information had to be gleaned from other sources inasmuch as the verdict form was not part of the record. Also, if the court entered a judgment, it too was not part of the record when the AJVR reviewed it.

Premises Liability - While visiting the home of a terminally ill friend, an elderly woman tripped and fell on a concrete step

Thomas v. Tatum, 04-812
Plaintiff: Byron McMath, Jasper
Defense: Richard E. Fikes, *Jackson Fikes Hood & Brakefield*, Jasper
Verdict: Defense verdict
Circuit: **Walker**, 5-16-07
Judge: Hoyt Elliott

In the early months of 2004, Billie Thomas, age 62, was concerned about the declining health of her longtime friend, Guy Tatum. On 3-19-04, Thomas decided to pay Guy a social visit at his home in Walker County.

The Tatum home was built in 1976 and originally featured a carport that included a concrete step leading up to the kitchen. In 1979, three years after the house was built, the carport was enclosed and converted to a den. The concrete step remained in place and was covered with carpet.

When Thomas arrived at the Tatum home to visit Guy, she was greeted at the door by Guy's wife, Alice Tatum. Alice led Thomas through the house to Guy's bedroom. Their route took them along a well-lit hallway, through the den, and into the kitchen. At that point Alice gestured toward the step and warned Thomas to be careful of it.

The two ladies proceeded from the kitchen to Guy's bedroom. Alice then left the two old friends to talk while she returned to the den. As she went, Alice turned off the lights in the hallway.

When Thomas had concluded her visit with Guy, she emerged from the bedroom to discover the lights were out. Despite being unable to see clearly in the darkness, Thomas made her way to the kitchen, and from there she called out to Alice.

Alice heard the call and responded that she was in the den. Thomas followed the voice and walked toward the den. In doing so she missed the step, fell down, and briefly lost consciousness.

Thomas's injuries included a left

humerus fracture, a displacement of the left humeral head, and severe pain. She also claims to have been left with a limited range of motion and lingering complications. Her medical expenses are unknown.

Thomas filed suit against Guy and characterized the step between the den and the kitchen as a safety hazard. She blamed Guy for allowing the dangerous step to exist on his property. During the course of the litigation, Guy's medical condition took a turn for the worse.

In reality, Guy was terminally ill and had become bed-ridden. As his condition continued to deteriorate, defense counsel informed plaintiff's counsel that Guy might not be available for trial. As a precaution, defense counsel recommended adding Alice as a defendant.

Thomas took the advice and amended her complaint accordingly. Interestingly, Guy's name subsequently disappeared from the case caption. The litigation proceeded with Alice as the named defendant.

Alice called the condition of the step open and obvious. She also noted that Thomas admits being aware of the step and that Alice warned her to be careful of it. According to Alice, Thomas fell due to her own inattention.

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

Auto Negligence - A woman sustained a back injury when she was hit by a drunk driver who may have been attempting to commit suicide

Holloway v. Dennison, 05-936
Plaintiff: J. Michael Comer, *Patterson Comer*, Tuscaloosa
Defense: R. Larry Bradford, *Bradford & Sears, P.C.*, Birmingham
Verdict: $6,500 for plaintiff (allocated $5,000 compensatory and $1,000 punitive)
Circuit: **Tuscaloosa**, 1-30-07
Judge: W. Scott Donaldson

By September of 2004, Edward Dennison's love affair with liquor had landed him in trouble with the law on at least two occasions. In 2001 Dennison was convicted of driving while intoxicated, and in 2003 he was convicted of public intoxication.

On 9-20-04, Dennison was back in the legal system yet again, this time on a charge of driving under the influence. The experience may have left him sufficiently distraught that he decided to take drastic action.

Two days later, on 9-22-04, Dennison was driving near the intersection of Preacher Lee Road and C.R. 21 in Tuscaloosa County when he crashed into a vehicle occupied by Jo Ann Holloway. According to Holloway, Dennison was drunk at the time and was either contemplating or attempting suicide.

As a result of the crash, Dennison was charged with driving under the influence and second degree assault. He was convicted and sentenced to three years in prison. In addition, Dennison was fined, and his driver's license was suspended for 90 days. The record indicates he was later arrested yet again, this time for failure of a drug test.

Holloway sustained injuries to her back, including a bulging disc and spinal problems, due to the crash. Her medical expenses are unknown. She filed suit against Dennison and blamed him for driving drunk and causing the crash. Holloway also alleged a count for wantonness and sought punitive damages based on Dennison's intoxication. He defended and minimized the claimed damages.

Dennison was insured by Progressive Specialty Insurance Company under a policy that carried liability limits of $100,000. However, that policy did not provide coverage for punitive damages. For that reason, Progressive filed a complaint in intervention for the sole purpose of requesting verdict forms that would separately list compensatory and punitive damages.

The idea behind this move was to clarify what portion of the ultimate verdict, if any, would be covered under Progressive's policy. The court denied Progressive's motion to intervene. Also, Holloway amended her complaint to add an underinsured motorist claim against her own insurer, Alfa Insurance. After the court denied Alfa's motion to dismiss for failure to state a claim, Alfa opted out of the case.

The case was tried to a jury in Tuscaloosa. The verdict was for Holloway, and she was awarded compensatory damages of $5,000. To this amount was added another $1,500 in punitives. That brought Holloway's total award to $6,500. The court entered a judgment for that amount, and it has been satisfied. Prior to trial, Dennison made an Offer of Judgment of $12,500.

Medical Negligence - While undergoing a laparoscopic procedure to correct a hiatal hernia, a man sustained a gastric perforation; he criticized the doctor in charge of his post-operative care for failing to recognize and treat the perforation in a timely manner

Partin v. Boshell, et al., 01-172
Plaintiff: M. Clay Alspaugh, *Smith & Alspaugh, P.C.*, Birmingham
Defense: Tabor R. Novak, Jr., *Ball Ball Matthews & Novak, P.A.*, Montgomery; and Edward T. Hines, Brewton
Verdict: Defense verdict
Circuit: **Escambia**, 7-31-07
Judge: Bert W. Rice

In April of 1999, James Partin, then age 42, was troubled by gastric reflux symptoms, including pain, regurgitation of food, and mild gas bloating. He was diagnosed with a hiatal hernia, a condition in which the upper portion of the stomach protrudes into the chest cavity through a hole in the diaphragm.

Conservative treatment with medications failed to provide Partin with complete relief, so on 4-21-99 he was referred to a surgeon, Dr. Salem Saloom, an employee of Surgical Associates of South Alabama. Dr. Saloom determined that the best course of treatment would include a laparoscopic "Nissen fundoplication," a procedure in which part of the stomach is wrapped around the lower esophagus.

Dr. Saloom performed the procedure on Partin on 5-27-99 at the D.W. McMillan Memorial Hospital in Brewton. Dr. Saloom was assisted by Dr. Thomas Boshell, a fellow employee of Surgical Associates of South Alabama.

Following the procedure, Dr. Boshell took over Partin's primary post-op care. The next day, Partin displayed symptoms that included pain, nausea, vomiting, and abdominal distention with no bowel sounds. Also, his blood tests showed abnormal results.

These were the classic symptoms of a gastric perforation. However, Dr.

Boshell dismissed Partin's symptoms as being due instead to a combination of anxiety and abdominal wall spasms. When another day passed and Partin's condition continued to worsen, a different surgeon, Dr. John Schurtz, performed an emergency exploratory laparotomy on 5-29-99.

Upon entering Partin's abdominal cavity, Dr. Schurtz found a massive quantity of bilious drainage and an egg-shaped gastric perforation approximately one and a half to two inches long. Dr. Schurtz drained the bile and repaired the perforation.

Partin later developed incisional hernias that he attributed to the extensive surgery and the damage from the gastric perforation. He is now disabled and receives $804 per month in Social Security benefits. Although the exact amount of Partin's medical expenses is unknown, Blue Cross/Blue Shield of Alabama paid approximately $80,000 toward his medicals.

Partin filed suit against Drs. Boshell and Saloom, as well as against Surgical Associates and the D.W. McMillan Memorial Hospital. However, Partin later dismissed the hospital due to a pro tanto settlement, the terms of which is unknown. The claim against Dr. Saloom also apparently did not survive to trial. Partin's wife, Kathy, presented a derivative claim for her loss of consortium.

The case proceeded solely against Dr. Boshell and Surgical Associates. Interestingly, Partin did not base his claim upon his experience of the gastric perforation. Rather, he based his claim instead on the argument that the complication was not timely recognized and treated. Partin's identified medical expert was Dr. Michael Quinones, Surgery, Decatur, GA.

Dr. Boshell and Surgical Associates defended the case and denied any wrongdoing. In particular, they argued that Partin's post-operative complication was not due to any breach of the standard of care, and they insisted the gastric perforation was recognized and treated in a timely fashion.

A jury in Brewton heard the case and returned a verdict that exonerated Dr. Boshell and Surgical Associates. The court entered a consistent defense judgment.

Auto Negligence - As a man passed an interstate entrance ramp, an approaching motorist turned in his path and crashed into him; the other motorist claimed the man had activated his turn signal and indicated he was also going to merge onto the ramp where he would have to yield the right-of-way

George v. Hannon, 05-1211
Plaintiff: G. Stephen Wiggins, *Wiggins & Jones, P.C.*, Tuscaloosa
Defense: Ralph D. Gaines, III, Tracy N. Hendrix, and Travis G. McKay, Jr., *Gaines Wolter & Kinney, P.C.*, Birmingham
Verdict: Defense verdict
Circuit: **Jefferson**, 5-3-07
Judge: Dan C. King, III

On 10-29-03, Benny George, then age 41, was driving south on Eastern Valley Road in Bessemer. At the same time, Jill Hannon approached from the opposite direction in a 1998 Saturn.

As the parties drew near each other, Hannon made a left turn in an attempt to enter the ramp onto I-459. She turned in George's path, and the two collided. The record does not reveal the nature of George's injuries or the amount of his medical expenses.

In this lawsuit, George blamed Hannon for turning in his path and causing the crash. In addition, George's wife, Rita George, presented a derivative claim for her loss of consortium. Finally, plaintiffs amended their complaint to add an underinsured motorist claim against their own insurer, Progressive Casualty Insurance Company. Progressive later opted out of the case.

Hannon defended the case and disputed the nature, extent, and causation of George's claimed injuries. Beyond disputing damages, Hannon also offered a different explanation of how the accident happened.

According to her, George had activated his right turn signal to indicate that he too was planning to merge onto the I-459 ramp. Hannon knew that when George entered the ramp, he would be facing a yield sign that would give her the right-of-way.

Based on what she thus took to be George's intent, Hannon believed it was safe for her to make her turn. For his part, George disputed this account and reiterated that he intended all along to continue straight on Eastern Valley Road.

George insisted he had not activated his turn signal, and he was not in the right-hand turn lane. In fact, he claims he had already passed the turn lane by the time Hannon began to make her turn. Thus, Hannon simply had no basis for believing George was going to do anything other than proceed straight ahead.

The case was tried to a jury in Bessemer. The verdict came back for Hannon, and the court entered a consistent defense judgment.

Underinsured Motorist - A motorcyclist who was injured in a crash with another motorist settled for the motorist's policy limits and then sought further compensation from his own insurer; although plaintiff won a substantial verdict, set-offs reduced the judgment to zero

Crocker v. State Farm Insurance, 04-462
Plaintiff: Terry G. Key, *Cochran Cherry Givens Smith Lane & Taylor, P.C.*, Dothan
Defense: Joel W. Ramsey, *Ramsey Baxley & McDougle*, Dothan
Verdict: $100,000 for plaintiff
Circuit: **Houston**, 2-16-06
Judge: Sidney E. Jackson

On 3-21-03, David Crocker, then age 52, was riding a motorcycle in Houston County. He became involved in an accident with a vehicle owned by James Kelley and being driven by Justin Hinkle. Crocker sustained injuries to his right leg in the crash. His medical expenses are unknown.

Hinkle had insurance coverage of only $25,000. His insurer paid the policy limits, and Crocker turned to his own insurer, State Farm Insurance, for further compensation. State Farm had issued three separate policies to Crocker with limits of $100,000, $50,000, and $25,000, respectively. That brought the total available coverage to $175,000.

Crocker made a claim with State Farm pursuant to the underinsured motorist provisions of his policies. State Farm declined to pay, and Crocker filed suit. According to Crocker, he was clearly injured in the crash, and Hinkle's policy limits were insufficient to compensate him adequately. Thus,

State Farm is obligated under the terms of the three contracts to make up the difference.

State Farm tendered $75,000 of the available $175,000 and insisted that was enough. According to State Farm, Crocker had simply failed to prove the extent of his loss. Based on State Farm's analysis, the tendered $75,000 constituted adequate compensation.

A jury in Dothan heard the case and returned a verdict for Crocker in the amount of $100,000. However, the court applied set-offs for the $25,000 Crocker previously received from Hinkle and for the $75,000 State Farm had already paid. The combined set-offs exactly canceled out the damages award. As a result, the court entered a judgment for Crocker but for zero damages.

Auto Negligence - A motorcyclist suffered a broken hand when another motorist ran a red light and crashed into him at an intersection

Turrentine v. Letson, 03-1007
Plaintiff: Thomas P. Melton, IV, Birmingham; and Mark A. Dutton, Moulton
Defense: James G. Adams, Jr., *Eyster Key Tubb Weaver & Roth, LLP.*, Decatur
Verdict: $3,247 for plaintiff
Circuit: **Morgan**, 6-12-07
Judge: Steven E. Haddock

On 6-29-03, Ricky Turrentine, then age 47 and an employee of the West Morgan East Lawrence Water and Sewage Authority, was out for a ride in the fresh air. Turrentine was operating a 2003 Yamaha XVS motorcycle and was carrying Robin Martin as his passenger.

As Turrentine and Martin traveled on Hwy 31 in Hartselle, Kristen Letson was driving on Nanceford Road in a 2000 Ford Mustang owned by Stanley Letson. At the intersection of the two roads, Letson ran a red light and entered the intersection in Turrentine's path.

Letson crashed into Turrentine and caused him in turn to collide with a third-party. Both Turrentine and Martin were injured. Martin's injuries included two broken bones in her left hand, a crushed left pinkie finger, and tow other broken fingers on her left hand.

Turrentine also suffered a broken right hand, and both he and Martin sustained various cuts, scrapes, and bruises. They were treated for their injuries at the Hartselle Medical Center. Their medical expenses are unknown.

Turrentine's motorcycle was totaled in the crash, and he was later paid $8,075 by his insurer for the value of the bike. Martin lost her job due to her injuries and claimed at one point as much as $25,000 in lost income.

Together, Turrentine and Martin filed suit against both Kristen and Stanley Letson. They blamed Kristen for running the red light and causing the crash. Plaintiffs targeted Stanley on a theory of negligent entrustment. However, the claim against Stanley appears not to have survived to trial.

The litigation proceeded against Kristen. She defended and minimized the claimed damages. During the course of the litigation, Martin dropped out of sight. When plaintiffs' counsel were unable to locate her, they withdrew from her representation.

The case was tried for two days in Decatur. Martin, who was then officially a *pro se* plaintiff, failed to appear for trial, and the court granted a defense motion to dismiss her claim. The jury returned a verdict for Turrentine and awarded him damages of $3,247. The court entered a judgment for that amount, plus costs. The judgment has been satisfied.

Subrogation - When a transportation company's vehicle was damaged in an auto accident, the company's insurer paid for the damage under its policy; the insurer then sought to recover the loss from the alleged tortfeasor

General Security Insurance Co., et al. v. Leonard, 00-731
Plaintiff: Robert R. Kracke, *Kracke Thompson & Ellis, P.C.*, Birmingham
Defense: Hugh C. Harris, *Bland Harris & McClellan, P.C.*, Cullman
Verdict: Defense verdict
Circuit: **Cullman**, 2-6-07
Judge: Don L. Hardeman

On 8-9-00, an employee of Shane Transportation, Inc. was driving on I-65 in a vehicle owned by his employer. At the intersection with AL 69 in Cullman, the Shane Transportation vehicle became involved in a collision with a vehicle being driven by Teresa Leonard.

Shane Transportation was insured under a policy issued by General Security Insurance Company. The policy provided for a deductible of $2,000. Except for the deductible, General Security paid Shane Transportation for the damage to its vehicle.

Having paid for the damage under its policy, General Security filed suit against Leonard to recover its losses. Although the record does not specify how much General Security paid, the insurer demanded a judgment of $40,000. Leonard defended the case and minimized the claimed damages.

A jury in Cullman heard the case and returned a verdict for Leonard. The court followed with a consistent defense judgment.

Auto Negligence - An elderly woman riding as a passenger with her husband claimed disk injuries when they were rear-ended at the end of an interstate exit ramp; defendant claimed the impact was too minor for anyone to have been hurt

Skates v. Hampton, 06-48
Plaintiff: Erik S. Heninger, *Heninger Garrison Davis, LLC.*, Birmingham
Defense: Ralph D. Gaines, III and Staci Cornelius, *Gaines Wolter & Kinney, P.C.*, Birmingham
Verdict: Defense verdict
Circuit: **Jefferson**, 5-24-07
Judge: Ralph E. Coleman

On 1-20-04, Patricia Skates, age 65, was riding as a passenger in a 2002 Lincoln Navigator being driven by her husband, Wayne Skates, age 66. The two were traveling south on I-59 near the exit to Academy Drive in Jefferson County.

When the Skateses exited I-59, they stopped at the end of the exit ramp for a red light. Approaching from behind was a vehicle being driven by L.C. Hampton, age 77. As Hampton neared the end of the ramp, he realized the Skateses had stopped in front of him.

Hampton applied his brakes but was unable to stop in time. In the next instant he rear-ended the Skateses. The parties would later disagree about the severity of the impact. According to the Skateses, Hampton hit them at a speed of approximately 30 mph., while Hampton claimed it was more like 3 to

5 mph.

In any event, Patricia was jerked around inside the Skateses vehicle and hit her right arm on the dash. After the collision, Wayne drove her to the ER at UAB West because she was experiencing pain in her neck and left shoulder.

Patricia underwent two cervical diskectomies. The first was at C4-5 and was performed on 4-14-04. The second was at C5-6 and was performed the following year on 6-29-05. Although the record does not specify the precise amount of Patricia's medical expenses, there is an indication that an entity identified as "Mail Handlers" paid $29,902 toward her medicals.

Patricia filed suit against Hampton and blamed him for failing to stop in time and for crashing into her. Wayne also presented a derivative claim for his loss of consortium. Finally, Mail Handlers asserted a subrogation claim for the amount it had paid toward Patricia's medical expenses.

Hampton defended the case and called the impact too minor for anyone to have been hurt in it. Not only was it a low-speed impact, but Patricia herself indicated immediately afterward that she was okay.

Hampton also noted that the accident report indicated no visible damage to the Skates' vehicle. The Skateses disputed that characterization and claimed there had been damage to their rear bumper cover, rear door, and trailer hitch.

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

Medical Negligence - An elderly man died from the effects of an abdominal hernia; his estate blamed his doctor for having missed the diagnosis and thereby depriving him of the opportunity for prompt, life-saving surgery

Estate of Azevedo v. Kovacs, et al., 03-474

Plaintiff: Joe C. "Buzz" Jordan, *Ross & Jordan, P.C.*, Mobile; Joseph A. Kott and James C. Klick, *Herman Herman Katz & Cotlar, LLP.*, New Orleans, LA

Defense: A. Danner Frazer, Jr. and D. Brent Baker, *Frazer Greene Upchurch & Baker, LLC.*, Mobile

Verdict: Defense verdict

Circuit: **Mobile**, 4-2-07

Judge: Robert H. Smith

In June of 2001, Donald Azevedo, age 69, was manifesting some disturbing symptoms of illness. They included nausea, vomiting, abdominal cramping, and general malaise. On 6-22-01, Azevedo's wife, Shirley, and their son, Steven, took him for a consultation with Dr. Henrietta Kovacs, Internal Medicine, Mobile. Dr. Kovacs was affiliated with a practice group called Mobile Family Physicians, P.C.

Upon his arrival in Dr. Kovacs's office, Azevedo was lethargic, occasionally incoherent, and unable to climb onto the examination table. He also vomited during his visit. Dr. Kovacs administered medications to control Azevedo's nausea and then instructed Shirley and Steven to take him to Springhill Hospital to be admitted.

It was approximately 1:30 p.m. when Shirley and Steven brought Azevedo to Springhill Hospital. At that time he was extremely sedated, incoherent, and unable to respond to questioning.

A couple of hours later, first at 4:30 p.m. and then again half an hour later at 5:00 p.m., Dr. Kovacs phoned in orders to the hospital regarding Azevedo's treatment. Contrary to hospital policy, however, the hospital's records do not describe the content of those orders.

It is significant that upon his admission to the hospital and for the first several hours thereafter, Azevedo was not seen by a doctor. Instead, his care was managed entirely by several nurses, including Tammy Lee, Christine Kidd, and Rod Whatley.

After the admission process was complete, Shirley and Steven asked the nursing staff if they could leave to get something to eat and gather other members of Azevedo's family. The nurses allegedly told Shirley and Steven that Azevedo was doing fine, and there would be no problem with their leaving his bedside.

Based on this assurance, Shirley and Steven left Azevedo in the care of the nursing staff. A short while later, and before Shirley and Steven returned, Azevedo had an episode of projectile vomiting.

The nurses called a code, and ER doctor Jorge Alsip arrived at approximately 5:42 p.m. to take charge of the situation. This was the first time since Azevedo's admission to the hospital that he was seen by an actual doctor.

Dr. Alsip ordered Nurse Whatley to insert a nasogastric tube. Whatley complied with this instruction, but he apparently performed the procedure incorrectly. Rather than going into Azevedo's stomach, the tube instead went into his lung.

The misplacement of the tube resulted in a puncture of Azevedo's lung. This in turn led to extensive bleeding. Tragically, Azevedo died a short while later at approximately 6:10 p.m. According to his estate, the cause of Azevedo's death was bleeding in combination with aspiration.

An autopsy was performed and revealed the symptoms that led to Azevedo's original hospitalization had been caused by a "strangulated abdominal hernia." This condition constitutes a medical emergency for which the appropriate treatment is immediate surgery.

Azevedo's estate filed suit against Dr. Kovacs, Mobile Family Physicians, Springhill Hospital, and Nurses Lee, Kidd, and Whatley. The claims against the nurses and the hospital were based in part on the misplacement of the nasogastric tube. However, the pathologist who performed the autopsy later stated that Azevedo died due to the effects of the hernia. The misplacement of the tube was thus irrelevant.

Based in part on this opinion by the pathologist, the court granted Nurse Whatley a summary judgment and dismissed him from the case. Also, the claims against the other nurses and against Springhill Hospital did not

survive to trial.

The case proceeded solely against Dr. Kovacs and Mobile Family Physicians. The estate blamed Dr. Kovacs for failing to appreciate the seriousness of Azevedo's condition during his office visit and failing to arrange for his prompt admission to the hospital for treatment of his hernia.

The identified experts for the estate included Dr. I. Michael Leitman, Surgery, NY, NY. According to Dr. Leitman, if Dr. Kovacs had timely diagnosed Azevedo's condition, he would have had immediate surgery and likely would have survived. Dr. Kovacs and Mobile Family Physicians defended the case and denied any breach of the standard of care.

The case was tried to a jury in Mobile and resulted in a defense verdict for Dr. Kovacs and Mobile Family Physicians. This information had to be gleaned from other sources because at the time the AJVR reviewed the record, it did not contain either the verdict form or a judgment.

Race Discrimination - Two black sheriff employees in Mobile County alleged a combination of discrimination and retaliation

Crosby et al v. Mobile County Sheriff, 1:04-144
Plaintiff: Jerry D. Roberson, *Roberson & Roberson*, Birmingham
Defense: K. Paul Carbo, Jr. and Greg Evans, *The Atchison Firm*, Mobile
Verdict: Defense verdict
Federal: **Mobile**, 8-17-07
Judge: Callie V.S. Granade

James Crosby started working in 1983 for the Mobile County Sheriff. In April of 2003, Crosby testified in a race discrimination lawsuit brought by a fellow employee. A month later, Crosby, who was a Captain, was transferred from field operations to support.

The sheriff, Jack Tillman, ostensibly explained that the move was lateral and didn't represent a demotion. Crosby disagreed and pursued this federal lawsuit alleging retaliation.

There was a second plaintiff in this lawsuit, Jimmie Gardner, who also advanced a similar claim against the sheriff. Gardner, who is black, alleged a racially hostile environment existed against black employees. Then when he complained about the hostile environment, it was his proof that the sheriff began an investigation of him that ultimately led to his suspension.

The sheriff defended the case and denied a hostile environment. Regarding retaliation, the government further explained the employment decisions were based on merit.

These two separate cases were tried in the same week by different jury panels. Crosby went first and lost on retaliation. Crosby's trial ended on 8-9-07.

Gardner was next, the second jury rejecting both his hostile environment and retaliation claims – this second trial concluded on 8-17-07. A defense judgment followed.

Auto Negligence - A man who sustained a back injury in a five-vehicle chain-reaction crash was awarded $1,334 in Phenix City

Spooner v. Lewis, 05-451
Plaintiff: Michael J. Crow, *Beasley Allen Crow Methvin Portis & Miles, P.C.*, Montgomery; and William J. Benton, Jr., *Benton & Benton*, Phenix City
Defense: Stanley A. Martin, Opelika
Verdict: $1,334 for plaintiff
Circuit: **Russell**, 7-25-07
Judge: Albert L. Johnson

On 7-6-05, Earl Spooner was driving on Hwy 80 in Phenix City when he stopped for traffic. An instant later, Joseph Lewis rear-ended a third-party. That collision set off a five-vehicle chain reaction crash in which Spooner's vehicle was hit.

Spooner claimed a disc herniation at L5-S1 that he attributed to the crash. He later followed a course of physical therapy. The record does not reveal the amount of his medical expenses.

Spooner filed suit against Lewis and blamed him for setting in motion the chain of events that resulted in Spooner's vehicle being hit. In addition, Spooner made an underinsured motorist claim against his own insurer, State Farm.

State Farm opted out of the case, and the litigation proceeded against Lewis. He defended the case and minimized Spooner's claimed damages.

The case was tried for three days in Phenix City. The jury returned a verdict for Spooner and awarded him damages of $1,334. The court entered a judgment for that amount, and it has been satisfied.

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