

The Mississippi Jury Verdict Reporter

The Most Current and Complete Summary of Mississippi Jury Verdicts

June 2019

Statewide Jury Verdict Coverage

10 MSJVR 6

In This Issue

Hinds County

Civil Rights - \$1,000,000 p. 3

Harrison County

Premises Liability - \$1,468,000 p. 1

Federal Court - Jackson

Race Discrimination - \$3,391,500 p. 2

Clay County

Negligent Security - Defense verdict p. 6

Lamar County

Medical Malpractice - Defense verdict p. 7

Washington County

Auto Negligence - \$339,104 p. 8

Warren County

Premises Liability - Defense verdict p. 8

Notable Arkansas Verdict p. 9

Notable Louisiana Verdict p. 10

Civil Jury Verdicts

Timely coverage of civil jury verdicts in Mississippi including court, division, presiding judge, parties, case number, attorneys and results. Notable results from the southern region, including Memphis and New Orleans, are also covered.

Premises Liability - While shopping in the children's clothing section with his mother, a little boy, age 5, suffered an injury to his eye when he struck a low-level clothing rack while playing tag with his brother – his theory against the retailer blamed the use of this sort of rack where the risk of such an injury is foreseeable, there being proof the national retailer had 35 similar incidents in the last five years – a Biloxi jury imposed \$1,000,000 in punitive damages against the retailer

Bourg v. J.C. Penney, 16-163

Plaintiff: Mariano J. Barvie, *Hopkins Barvie & Hopkins*, Gulfport

Defense: Nicole C. Huffman and Thomas L. Carpenter, *Carr Allison*, Gulfport

Verdict: \$1,468,000 for plaintiff (including \$1,000,000 in punitive damages) and assessed 70% to the defendant

Court: **Harrison**

Judge: Christopher L. Schmidt

Date: 5-24-19

Andrew Bourg, then age 5, joined his mother (Natalie) and brother (Evan, age 9) on a trip to the Edgewater Mall in Biloxi on 9-28-14. It promised to be a fun trip. They were going to see a movie.

But before the fun could start, their mother wanted to do some shopping at the J.C. Penney retail store. She was a regular customer. The mother did her business in the children's section.

Andrew and his brother were not much interested, as one would expect, in shopping for clothes.

There was proof the boys were engaged in horseplay – they were playing tag, running through the store and winding in and out of the clothing racks.

As Andrew did this, he turned a corner. In so doing he caught his eyelid on a protruding sales rack that was at his eye level. It nearly ripped his entire left eyelid off. A four-hour surgery was performed that day to repair the laceration and Andrew was kept overnight. He later underwent two more surgeries to remove sutures and repair tear ducts. While the eye injury has mostly healed, there was proof Andrew has suffered from anxiety and emotional distress as a result of this incident.

In this lawsuit (pursued by his parents), Andrew sought damages from J.C. Penney. He blamed the incident on the store's use of so-called "six-way" clothing racks. There was proof the rack features arms that protrude beyond the base of the clothing rack.

Particularly this kind of rack has a protrusion with a sharp edge at just the level of a small child. The plaintiff's retail safety expert, Tracy Campbell, Tallahassee, FL, was critical of the use of the six way rack in describing this so-called "run into" incident. This use of this rack was especially dangerous in a children's section where horseplay is common. Campbell was also critical of J.C. Penney for using a rack that had sharp rather than smooth edges.

Then beyond just ordinary negligence, Andrew sought to impose punitive damages for the reckless