

The Mississippi Jury Verdict Reporter

The Most Current and Complete Summary of Mississippi Jury Verdicts

October 2013

Statewide Jury Verdict Coverage

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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.

Products Liability - A four-year old girl was left permanent paraplegic after a drunk driver struck a minivan in which she was riding – settling with the drunk driver (who was convicted criminally), the girl proceeded against the manufacturer of her booster seat – she alleged it was defectively designed because the shoulder belt was permitted to pop out – a Jackson jury awarded the girl \$50,000,000 for her life care plan
Thrailkill v. Dorel Juvenile Group, 11-226

Plaintiff: Edward L. Sanders and John L. Davidson, *Davidson Bowie Sanders*, Flowood and Edward Blackmon, Jr., *Blackmon & Blackmon*, Canton

Defense: Walter C. Greenough and Jonathan Judge, *Schiff Hardin*, Chicago, IL and Jennifer A. Rogers, *Watkins & Eager*, Jackson

Verdict: \$52,080,450 for plaintiff assessed 50% to the defendant

Court: **Hinds**

Judge: Winston Kidd

Date: 9-12-13

Graceyn Thrailkill, then age 4, was a passenger in a minivan operated by her mother (Holly) on 3-25-08. Holly proceeded on Shiloh Road in Rankin County. Graceyn was situated in the right rear of the vehicle in a Costco Protek belt-positioning booster seat. She was properly positioned. The booster seat was manufactured by Dorel Juvenile Group. It was 8:00 in the morning and Holly was taking Graceyn's older siblings to school.

An instant later a drunk driver, Tonya Gann, approached from the

opposite direction. Gann veered across the centerline and struck the Thrailkill minivan head-on. It was a serious collision. Gann was later convicted of DUI mayhem related to this crash and is now serving a 40-year sentence.

Graceyn fractured her spine in the collision and has been left a permanent paraplegic. [Her mother was badly hurt too, suffering a crush injury to her legs.] By the time of this trial in 2013 (Graceyn now age 9), had undergone a total of ten surgeries including a spinal fusion – the fusion was related to a severe crash-related scoliosis that threatened her internal organs. Because of that fusion, Graceyn's torso is limited in its growth, while the rest of her body will continue to maturity.

There was proof that Graceyn will require an extensive lifelong life care plan. That included attendant and medical care, as well as ongoing catheterizations and other treatment related to her condition. The girl's incurred medical bills were \$1,080,450. The life care plan was estimated at \$60,000,000 by Kathy Smith, Life Care Planner, Birmingham, AL. An economist, Richard Thompson, Clemson, SC, quantified the numbers.

In this lawsuit which was prosecuted by her parents, Graceyn alleged negligence by Gann in crashing into her. Gann settled with the plaintiff on the eve of trial.

That trial proceeded against a second defendant – Dorel Juvenile Group. Graceyn linked her injuries to

and Rodney settled with Spencer for \$100,000 each and proceeded to trial against State Farm, Carolyn's underinsured carrier. State Farm defended that both plaintiffs' neck complaints pre-existed the accident. Both sides elicited expert testimony from Carolyn's treating neurosurgeon, Dr. Glenn Crosby, Memphis.

The trial lasted three days in Hernando. The jury made general awards of \$225,000 to Carolyn and \$50,000 to Rodney. The judgment which followed acknowledged the \$100,000 offset due on both awards, as well as an additional offset of \$66,581 that had been previously paid to Carolyn under worker's compensation. The court ordered that \$58,418 be paid to Carolyn, but that nothing further was owed to Rodney. The judgment has been satisfied.

Bad Faith - A home located in the Sullivan-Charnley Historic District of Ocean Springs was destroyed during Hurricane Katrina - when its owners filed a claim with their insurer, USAA, the insurance company refused to pay for the entire loss, claiming an exclusion for flood damage caused by storm surge - the homeowners maintained that the house was destroyed by high winds and tornadoes

Minor v. USAA, 08-204

Plaintiff: Chuck R. McRae and Oliver Diaz, Jr., *McRae Law Firm*, Jackson

Defense: Greg Copeland and Walker R. Gibson, *Copeland Cook Taylor & Bush*, Ridgeland

Verdict: \$1,547,291 for plaintiff

Court: **Jackson**

Judge: Richard Bennett

Date: 9-20-13

Former Biloxi attorney, Paul Minor, and his wife, Sylvia, owned an historic East Beach home, designed by Frank Lloyd Wright, which was located in the Sullivan-Charnley Historic District of Ocean Springs. Paul was once a successful plaintiff's attorney who was indicted in 2003 on judicial bribery charges. Those charges resulted from an investigation by the Department of Justice, which some believe was initiated by Karl Rove because of generous campaign contributions Minor had made to various Democratic candidates in both local and national elections.

Shortly after an August 2005 trial in which the jury acquitted Minor on several charges, but was hung on several others, the Minors' home and its outbuildings were destroyed by Hurricane Katrina. The property was insured by an all perils policy with USAA, which contained an

exclusion for water damage.

In response to the Minors' claim, USAA issued checks to pay a portion of the loss, but denied the remainder of the claim, contending that some of the damage was caused by water, an exclusion under the policy. After negotiating with USAA for some time, the Minors filed this bad faith suit.

During the course of the litigation, Paul Minor was re-tried and convicted on the criminal charges. It was during this second criminal trial that Sylvia learned she had breast cancer which eventually metastasized to her brain and lungs. She died in April 2009 while her husband was in federal prison in Pensacola. He was released a few weeks before the instant civil case went to trial. Having been removed as a party plaintiff, Paul Minor had no financial stake in the suit and did not attend the trial, it being tried on behalf of the Minors' two children.

In addition to the bad faith claim, plaintiffs also asserted claims for the loss of the home, its contents, other structures on the property, including the boathouse, garage and guest cottage, additional living expenses, the loss of refrigerated products and repayment of a wrongful deductible paid. It was plaintiffs' allegation that USAA submitted settlement offers which were unrealistic and which bore no relation to the damage to the house or its contents.

Plaintiffs contended that defendant improperly allocated damages under applicable policy provisions, underestimated the cost of repairs, concealed and misrepresented applicable coverage, failed to take into account the increased cost of repairs due to labor and material shortages in areas impacted by

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Case Style _____

Jurisdiction _____ Case Number _____

Trial Judge _____ Date Verdict _____

Verdict _____

For plaintiff _____ (Name, City, Firm)

For defense _____ (Name, City, Firm)

Fact Summary _____

Injury/Damages _____

Submitted by: _____

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Hurricane Katrina, and failed to timely adjust claims, all actions that were made in bad faith. Plaintiffs maintained that the damage to the property was caused by wind, specifically a tornado that swept across the property before the arrival of storm surge washed ashore. Furthermore, they argued, water never reached the home. During the storm surge, water came up to 10 feet

above sea level. However, the home sat 14 to 15 feet above sea level. Also, because the house sat on piers, there was another three to four feet between the ground and the home's flooring. Plaintiff's expert was Anthony Righellis, Engineer, Las Vegas, NV. USAA defended that it had a justifiable basis for denying the Minors' claim, maintaining that the

home was destroyed by storm surge. While the insurer admitted that the Minors' home had sustained some wind damage, it pointed out that it issued wind damage payments to plaintiff, the checks for which were never cashed. Defense experts included Neil Kuplic, Engineer, Baton Rouge, LA, and Neilson Wilhelm, Forensic Consultant, Atlanta, GA. The case was heard over the course

and it valued the taking at the sum set by Sexton. A consistent judgment was entered and the state paid it.

Auto Negligence - In a backing from a driveway case, the jury found both drivers equally at fault and elected to award the plaintiff no damages

Ra-Sheem-I v. Reed, 12-20693

Plaintiff: Albert R. Jordan, IV,

Denham Law Firm, Ocean Springs

Defense: Christopher H. Murray,
Daniel Coker Horton & Bell, Gulfport

Verdict: Defense verdict on damages

Court: **Jackson** (County Court)

Judge: T. Larry Wilson

Date: 8-21-13

Ra-Sheem-I was backing from a driveway in a subdivision when he was involved in a collision. He was struck by Lashannon Reed. Ra-Sheem-I would testify he had backed out and was preparing to proceed when struck by Reed.

Reed for her part defended that Ra-Sheem-I suddenly entered the right lane. However it happened, the collision occurred at low-speed and resulted in very minor vehicle damage.

Ra-Sheem-I has since treated for a soft-tissue injury. His medical bills were \$1,082. He also sought \$2,144 in property damage. Those claims were advanced to trial in Jackson County Court. Reed defended on fault and also disputed that Ra-Sheem-I had suffered a compensable injury.

This case was tried in a single-day. The jury's verdict was equally split on fault, it being assessed 50% to each party. The distinction made little difference, the jury then rejecting any award of damages to the plaintiff. A consistent judgment

was entered.

A Notable Tennessee Verdict

Medical Negligence - Following a routine pre-natal visit in the morning, a high risk expectant mother was sent by wheelchair for an urgent delivery – the attending approved a resident's plan to wait until the afternoon – the baby was not delivered until six hours after admission and 79 minutes beyond the plan – the child suffered severe and permanent brain injury - a Memphis jury awarded the child nearly \$33.6 million

Long v. Lipscomb, et al, 3764-07

Plaintiff: Stephen C. Offut, *Janet*

Jenner & Suggs, Baltimore, MD

Defense: Darrell E. Baker, Jr.,
Deborah Whitt and M. Jason Martin,
Baker & Whitt, Memphis

Verdict: \$33,591,900 to plaintiff

Court: **Memphis, Tennessee
Shelby Circuit Court**

Judge: Robert L. Childers

Date: 7-15-13

On 4-28-05 at 10:30 am, Nichole Carter arrived at the UT Medical Group clinic for her regular prenatal visit. She was 39 weeks into her pregnancy. It was soon learned that her child was in grave danger. She told the doctor that she had noticed decreased fetal movement that day.

The doctor attempted to create movement of the fetus by using acoustic stimulation. This is done by turning on a wand, a so-called "acoustic stimulator", that vibrates and produces a loud humming sound. The wand is placed against the mother's belly for a few seconds and the noise and vibration will wake up virtually any sleeping fetus.

This was done while watching the baby on an ultrasound. There was no response. They then applied the fetal heart monitor to measure the baby's heart rate. While the heart rate was in the normal range, there was no variability or accelerations and this was determined to be very non-reassuring.

The doctor then attempted again to stimulate the baby with acoustic stimulation – no response. The testing was then stopped and the mother was sent by wheelchair over to the hospital next door "for delivery".

A note was created explaining these alarming findings and the note presumably accompanied her to the hospital. There she waited to be admitted. At 11:19 she was admitted. At 11:45 her baby was finally hooked back up to the Fetal Heart Monitor (FHM). It was still non-reassuring. At trial, even the defense would later admit that there was an "Urgent" need to deliver this baby by cesarean section at the time of admission.

Sometime between 12 noon and 12:30 pm a 2nd year resident went to evaluate Carter and the baby. At 12:32 this junior resident spoke with the attending obstetrician – Dr. Gary Lipscomb (employed by UT Medical Group) who then created a "plan of care" without ever seeing his patient. The plan was to call this an "elective" cesarean section (lowest priority) and wait because Carter had eaten breakfast earlier that morning.

The plaintiff's Maternal Fetal Medicine expert (Joseph Brunner, Vanderbilt) indicated there should not have been any waiting and the baby should have been delivered within the hour. The baby was in danger and while the normal heart rate indicated no injury had yet happened, it was

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