

The Mississippi Jury Verdict Reporter

The Most Current and Complete Summary of Mississippi Jury Verdicts

November 2012

Statewide Jury Verdict Coverage

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Tour Bus Negligence - A tour bus driver for a Tunica casino crashed into a vehicle that pulled from a gas station – several passengers on the bus were injured – they sued both the casino and the driver of the vehicle that pulled in front of the bus

Wilkerson v. Harrah's Casino et al,
09-329 c/w 10-07

Plaintiff: J. Harland Webster, *Chapman Lewis & Swan*, Clarksdale

Defense: Kenneth H. Coghlan, *Rayburn Coghlan Law Firm*, Oxford for Harrah's Casino

J. Bryan Hyneman, *Hickman Goza &*

Spragins, Oxford for Davis

Verdict: \$75,000 for each of three plaintiffs; Defense verdict on liability for Davis

Court: **Tunica**

Judge: Albert B. Smith

Date: 8-29-12

It was 1-25-09 and casino patrons from the Birmingham area were visiting Harrah's Casino in Tunica. They had arrived on a tour bus commissioned by the casino and driven by Eric Washington. Among those passengers were three women, Catherine Wilkerson, Tamika Jackson and Nashanta Williams.

Near the casino location on Old Hwy 61 and Casino Center Drive, Luther Davis pulled from a gas station parking lot and into the path of the bus.

Washington could not stop in time and the bus crashed into the Davis vehicle.

All three women were injured in the crash and taken to the ER at Baptist Memorial Hospital-DeSoto. Jackson treated for soft-tissue symptoms, her medicals totaling \$7,533. Wilkerson also complained of soft-tissue symptoms, her medicals totaling \$4,900. The third plaintiff (Williams) was more seriously hurt, her soft-tissue symptoms persisting. Her medical bills were approximately \$25,000.

In this lawsuit the three women targeted two defendants. The first was Davis, the plaintiffs implicating him for pulling into the path of the tour bus. Harrah's too was implicated, the plaintiffs blaming its driver for failing to brake or swerve to avoid the collision. An accident expert for the plaintiff was James Hannah, Jackson.

Davis also brought his own lawsuit against Harrah's. It settled on the eve of trial. He continued to defend the claim against him and suggested it was Washington driving the tour bus who had the last clear chance to avoid the collision.

Harrah's denied fault for the crash and focused that Davis was solely to blame. He pulled in front of the tour bus, Washington not having time to stop. The damages were diminished as well (particularly regarding Wilkerson and Jackson) noting that beyond their initial treatment at the ER, they had very limited care.

This case was tried for two days in Tunica, the jury then deliberating an hour. As the jury deliberated it had a question for the court: Are the hospital bills included or are they separate? Do we include them? If Judge Smith answered his answer did not become part of the court record.

The jury returned with a verdict and it found Harrah's solely at fault – Davis was exonerated. Then to an award of damages all three plaintiffs took \$75,000.

The combined verdict totaled \$225,000. A consistent judgment was entered.

Harrah's has since challenged the verdict in two ways. It has first argued that some fault should have been apportioned to Davis who pulled in front of the tour bus. The damage awards to Wilkerson and Jackson were also described as excessive. When the record was reviewed in October of 2012, the motion was pending.

Products Liability - A high school football player sustained a brain injury (and resulting stroke) during practice – in this lawsuit the teen blamed the injury on the failure of his football helmet (manufactured by Riddell) to have adequate padding to protect him

Wilner v. Riddell, 1:09-703

Plaintiff: William L. Guice, III and Randall S. Wells, *Rushing & Guice*, Biloxi

Defense: Timothy L. Sensing and James L. Crongeyer, Jr., *Watkins & Eager*, Jackson

Verdict: Defense verdict on liability

Federal: **Gulfport**

Judge: Halil S. Ozerden

Date: 10-19-12

Alex Wilner, then age 14 and a high school freshman, attended football practice on 9-13-06 for George County High School. Wilner was a 5'4, 160 pound middle linebacker. Near the end of practice he moved in for a tackle on the team's quarterback. In the process of making the hit, Wilner was struck by a third player – this caused his neck to be stretched. Wilner seemed unhurt.

The football team then moved from contact drills to running wind sprints. This lasted ten minutes and Wilner completed the running without incident. Practice was now complete and the team circled up for the post-practice prayers as led by their coach.

The coach-led prayers completed, the players rose to leave the field. As Wilner did so, he collapsed. It was obvious something was wrong with the boy, but it wasn't clear what that was. He was airlifted to a hospital in Mobile,

AL.

Wilner was diagnosed in Mobile with a dissection of his carotid artery. The dissection led to a stroke, Wilner suffering a permanent and serious brain injury. It has manifested cognitively, physically and emotionally.

In this products liability lawsuit, Wilner sued Riddell Sports which manufactured his "Revolution" brand football helmet. It was his theory, as advanced by an expert, Ali Engin, Engineer, Mobile, AL, that the helmet lacked adequate padding to protect him from injury. Engin opined that the helmet's discrete foam pads were less safe than a design with one single continuous liner. As applied to this case, it was Wilner's theory that the inadequate padding in the helmet caused the carotid artery dissection and subsequent stroke.

Riddell first defended the case and focused that as the actual helmet has since been lost, Wilner could not say which Riddell model it was. [It could have been any of four different helmet types.] Absent this proof of which helmet model Wilner was wearing, Engin's theory merely reflected a possibility. Judge Ozerden agreed and granted summary judgment to Riddell in March of 2011.

Wilner took an appeal, the 5th Circuit reversing nine months later. The court ruled that Wilner had met his burden of proof with his testimony that his helmet had a "Riddell" sticker on it. The appellate court also noted that regardless of which of the four Riddell models Wilner was wearing, all four had the discrete pad design as criticized by Engin. The case returned to Gulfport for a trial on the merits.

Riddell defended the design claim on the merits and explained its helmet didn't cause or contribute to Wilner's very rare injury. The defense further defended that the injury event was related not to the design, but instead to the odd neck extension Wilner suffered in the tackle. Experts for Riddell were David Halstead, Helmet Design, Rockford, TN and the company's director of research and development, Thad Ide.

The judge in this case signed and entered a pre-trial order. That order is a

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