The Mississippi Jury Verdict Reporter

The Most Current and Complete Summary of Mississippi Jury Verdicts

February 2011 **Statewide Jury Verdict Coverage** **2 MJVR 2**

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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 Memphis, TN are also covered.

Auto Negligence - A rear-end plaintiff complained of radiating low-back pain – there were no post-trial motions, the parties entering a Hi-Lo agreement, its parameters not being a part of the court record

Thomas v. Pittman et al, 07-118
Plaintiff: Michael R. Ratliff, *Johnson Hall & Ratliff*, Hattiesburg
Defense: Roger C. Riddick, *Upshaw Williams Biggers Beckham & Riddick*, Ridgeland
Verdict: $996,820 for plaintiff assessed 42% to defendant
Court: **Covington**
Judge: Robert G. Evans
Date: 7-30-10

Tyrone Thomas, then age 42 and of Seminary, traveled in Hattiesburg on 12-19-05. While stopped in traffic, he was rear-ended by Jason Pittman, then in the employ of American Air Specialists. Fault for the wreck was not disputed.

Thomas treated at the ER and later with a pain management specialist. He finally came under the care of Dr. Michael Molleston, Neurosurgery, Hattiesburg. As radiating low-back persisted, Molleston performed an L4-5 disc surgery in 2007. [Thomas had undergone a similar surgery before the wreck.]

Despite that surgical intervention, Thomas continues to complain of disabling pain. That injury affected him vocationally. At the time of the wreck, he

was just beginning a home maintenance franchise (Service Master), it being the plaintiff's proof that but for this injury, the franchise would have been a success. The economic loss was valued at $854,000 by a Hattiesburg CPA, Jim Koerber.

In this lawsuit, Thomas sought damages from Pittman and his employer. Pittman defended on several fronts. He first thought the surgery by Molleston was unnecessary. In Molleston's deposition, the expert was questioned if a recent bankruptcy by the doctor had motivated his treatment decisions. Molleston thought the inquiry was classless and a smear. Whatever he thought, the jury was permitted to reduce damages based on the surgery not being necessary.

The economic loss was also diminished, the defense noted Koerber calculated it based on the plaintiff's prior employment at Sunbeam ($18 per hour) which had closed in 2003. Pittman thought the present economic realities suggested there were no $18 per hour jobs to be had.

Thomas prevailed at trial and took medicals of $89,480. His future medicals were valued at $68,040. The jury awarded him $604,800 for economic loss. Finally his pain and suffering was valued at $234,500. The raw verdict totaled $996,820.

The jury made an additional finding that the surgeries by Molleston were not reasonable. It then answered that 58% of the plaintiff's injuries were related to those procedures, implicitly reducing the raw award by that sum. However there was no judgment in this case or post-trial proceedings, the parties entering an undisclosed Hi-Lo agreement.

Products Liability - The plaintiff suffered serious injuries when he fell 25 feet from a deer stand – he blamed the fall on the failure of a J-bolt in the safety strap that held the deer stand in the air

Ouzts v. Simmons Systems Archery, 06-59
Plaintiff: Ralph E. Chapman, *Chapman Lewis & Swan*, Clarksdale and Gerald Jacks, *Jacks Adams & Norquist*, Cleveland
Defense: Jeffrey S. Dilley and Elizabeth T. Bufkin, *Henke-Bufkin*, Clarksdale and Lindsey C. Meador, *Meador & Crump*, Cleveland
Verdict: $4,008,000 for plaintiff
Court: **Bolivar**
Judge: Charles Webster
Date: 10-21-10

Brad Ouzts, then age 43 and a pilot (and proprietor) for Cleveland Flying Service, was deer hunting near Vicksburg on 10-7-04. Ouzts had ascended a tree some 25 feet using a makeshift ladder. He then secured himself on a deer stand with a safety belt manufactured by Simmons Systems Archery.

As dusk approached, Ouzts crouched and prepared to fire at a deer. Suddenly the J-bolt in the belt broke in the turnbuckle. The deer stand and Ouzts tumbled to the ground. He landed hard.

Ouzts suffered serious injuries including two shattered heels (one was compound), a broken knee (it was fixed with 13 screws), a tibial plateau fracture, a cracked pelvis, a broken hand and assorted infections that developed within these several injuries. Ouzts has since undergone 11 surgeries and it is believed there will be more to come including bilateral knee replacement surgeries. His incurred medical bills were approximately $338,000.

In this lawsuit, Ouzts sued Simmons Systems Archery and alleged the belt was defective. His liability expert, Richard Forbes, Engineer, Mississippi State, opined that an alternative triple stitch design would have been safer.

Simmons Systems defended the case that the belt was to be utilized only for climbing. That is, it was to be used only for climbing (and to install steps with a free hand) and not as fall protection. But for that unforeseeable misuse by Ouzts, the defense argued there would have been no accident. A defense expert was Thomas Ackerson, Charleston, SC.

This case was tried in Cleveland for four days. The jury found for Ouzts that the belt was defectively designed and unreasonably dangerous. It separately found that this defect proximately caused the injury. The jury rejected an apportionment to Ouzts or two non-parties, a component manufacturer and the local hunting store that sold the belt.

Then to damages, the plaintiff took medicals of $558,000 plus $450,000 for lost wages. The plaintiff's non-economic damages were $2.5 million – his wife took $500,000 more for her consortium interest. The raw verdict totaled $4,008,000. The court's judgment reduced the verdict by $2,000,000 (the husband's award of non-economic damages was $2.5 million) to conform to the statutory cap (of $1,000,000) on non-economic damages.

Simmons Systems has moved to amend the judgment. It has suggested the award should be reduced by another $500,000. That is the husband and wife plaintiffs were an indivisible party. Their combined non-economic awards were $3,000,000 and thus the reduction should be by $2.5 million instead of just $2,000,000 as done in the judgment. The plaintiffs replied that such a result would negate the consortium award completely, the wife representing a separate plaintiff. They analogized that if a plane with 200 persons crashed in Mississippi with no survivors, assuming the defense argument, the non-economic damages of all 200 plaintiffs combined would be limited to $1,000,000. The motion is pending. The defense has also moved for JNOV relief and repeated trial arguments.

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