The Oklahoma Jury Verdict Reporter

The Most Current and Complete Summary of Oklahoma Jury Verdicts

September 2011 **Statewide Jury Verdict Coverage** **1 OKJVR 1**

In This Issue

Civil Jury Verdicts

Timely coverage of civil jury verdicts in Oklahoma including court, division, presiding judge, parties, case number, attorneys and results. Notable out of state results are also included.

Medical Negligence - Following a mastectomy, the plaintiff went for chemotherapy – she blamed her oncologist for beginning chemotherapy before testing for a C-Diff infection – following the chemotherapy, the C-Diff exploded into a colitis catastrophe leaving the plaintiff with a permanent ileostomy

French v. Geister, 08-5704
Plaintiff: Glendell D. Nix and Jacob Diesselhorst, *Nix Law Group*, Edmond and R. Douglas Gentile, *Douthit Frets Rouse Gentile & Rhodes*, Kansas City, MO
Defense: William A. Fiasco and Jennifer Annis, *Atkinson Haskins Nellis Brittingham Gladd & Carwile*, Tulsa
Verdict: $4,500,000 for plaintiff
Court: **Oklahoma**
Judge: Barbara Swinton
Date: 5-9-11

Lynda French, then age 54, was diagnosed with breast cancer in May of 2006. Her surgeon, Dr. Cullen Thomas, performed a mastectomy on 6-28-06. As a part of his care, Thomas prescribed antibiotics. There was evidence in July of 2006 that French had developed a C-Diff (clostridium difficile) infection.

Following her mastectomy, French was treated by an oncologist, Dr. Brian Geister. He commenced a course of chemotherapy on 8-7-06. Prior to beginning the chemotherapy, Geister did not run tests to check the status of the C-Diff infection.

Following the administration of the chemotherapy, French's C-Diff exploded into a catastrophic colitis. She later underwent a colectomy (her entire colon

was removed) and now has a permanent ileostomy. [She had a total of 14 surgeries and incurred medical bills of $557,784 – those in the future were quantified at $839,298.] French continues to suffer significant complications related to her severe colitis.

In this lawsuit against Geister, French alleged negligence by him in failing to test for C-Diff before beginning the chemotherapy – she linked the colitis explosion to that deviation. Her experts were Dr. Stephen Hamburger, Glencoe, IL and Dr. Michael Silverman, Melrose Park, PA. A life care plan was developed by Terry Winkler, Willard, MO – her economist was William Clark, Edmond. [French also sued Thomas alleging his use of antibiotics led to the C-Diff in the first place – he settled just as the trial was to begin.]

Geister defended that his care was proper. He cited proof that disputed that French had C-Diff at all or that it had contributed to her colon injury. Experts for Geister on causation included Dr. David Sheck, Infectious Disease, Tulsa and Dr. Michael Harkey, Pathology, Tulsa. Also for Geister was Dr. Joseph Lynch, Oncology, Tulsa.

A jury in Oklahoma City heard proof on this case for six days. The jury's verdict was for French and she took a general award of $4.5 million. As the plaintiff sought an award of pre-judgment interest of $776,404, the case was dismissed as settled a month later.

Premises/Products Liability - **In this unusual case, the plaintiff blamed a slip and fall both on the failure to maintain the premises (a blob ball toy leaked on the floor) against the retailer but also against the manufacturer of the blob ball, it purportedly having a tendency to leak**

Fritz v. Westlake Hardware & Toysmith, 2008-7419
Plaintiff: James E. Frasier, *Frasier Frasier & Hickman*, Tulsa
Defense: John R. Paul, *The Paul Law Firm*, Tulsa for Westlake Hardware
J. Christopher Davis and Ryan J. Fulda, *Johnson & Jones*, Tulsa for Toysmith
Verdict: $250,000 for plaintiff against Westlake on premises claim
Defense verdict on liability for Toysmith on products claim
Court: **Tulsa**
Judge: Rebecca B. Nightingale
Date: 1-21-11

This most unusual and complex tort case began on 5-24-08 at Westlake Hardware. The plaintiff, Terry Fritz, slipped and fell as he traversed an aisle – he slipped on leakage from a blob ball toy. The leak was described as a thick jelly-like substance. [The toy was manufactured by Toysmith.] Fritz would recall that as he fell, he did the splits before landing on his shoulder.

Fritz has since treated for knee pain and later underwent a knee replacement. His injury was complicated as in 2010 and because of an altered gait, Fritz fell on a boat dock. He landed hard on his face and suffered orbital fractures. He linked both the initial knee injury and the facial fractures to the initial blob ball leak.

In this lawsuit, Fritz targeted two defendants. The first was Westlake Hardware, Fritz implicating it for failing to maintain its premises in a reasonably safe condition. There was proof there had been prior blob ball leaks (of silicone) and thus the hardware store should have been alerted to this risk.

Beyond this simple premises theory, Fritz also sued the blob ball manufacturer, Toysmith, alleging a product defect that led it to regularly leak its slippery blob juice. Plaintiff's products expert was Robert Block, Metallurgy, Norman.

Toysmith denied any defect, but to the extent that its blob ball leaked, it blamed Westlake Hardware for failing to keep its aisles clean. Westlake Hardware for its part blamed the plaintiff's fall on the leaky blob ball, noting the toys had previously leaked.

Following a four-day trial, the verdict was mixed on fault. While finding against Westlake Hardware on the premises claim, Toysmith was exonerated on the products count. Then to damages, Fritz took compensatory damages of $245,000. His wife took $5,000 more, the verdict totaling $250,000. A consistent judgment was entered (including $277,012 in pre-judgment interest) and Westlake Hardware has paid it.

Prison Negligence - **An inmate (a former cop with annoying personal habits) was placed with a homicidal cell mate in a private prison – the cell mate strangled the prisoner-cop – the prisoner's estate sued the prison and alleged negligence regarding his placement with a violent prisoner – punitive damages of $500,000 were assessed**

Sites v. Geo Group, 07-84
Plaintiff: Gary L. Richardson, Chris L. Richardson and Jason C. Messenger, *Richardson Richardson Boudreaux Keesling*, Tulsa
Defense: Don G. Pope and Jacob M. Benedict, *Pope & Associates*, Norman
Verdict: $6,500,000 for plaintiff
Court: **Comanche**
Judge: Gerald Neuwirth
Date: 6-22-11

Ronald Sites, then age 49 and a former cop, was an inmate on 1-30-05 at Lawton Correctional Facility. The state prison was operated on a private contract by the Geo Group. [Geo Group operates for-profit prisons around the country.] Despite his status as a former cop, Sites was placed in a dual cell with another inmate.

Introducing

The Oklahoma Jury Verdict Reporter

Available in both Print and PDF Format (Adobe)

Jury Verdict Publications has produced high-quality and innovative jury verdict reporters all over the country since 1997. This is our first foray into Oklahoma – over the last few months, we've traveled the highways and byways of the state uncovering civil jury verdict results. In every case, our staff reviews the pleadings, the depositions and the entirety of the court record to produce an original and unbiased jury verdict report.

Never before have Oklahoma attorneys (both for the plaintiff and the defense) as well as the judiciary and other interested parties had such a comprehensive compilation of jury verdict results. The OKJVR moves the resolution of civil cases out of the realm of hearsay, of rumor, of courthouse gossip, to real results. Real trials. Real facts. Real verdicts.

The Oklahoma Jury Verdict Reporter is published monthly (12 times a year) and is available in either a print or a PDF format. Group licenses are available. Simply contact us for more information at 1-866-228-2447.

This sample represents just a portion of the full September 2011 issue. We hope you found it interesting and will begin subscribing. Good luck resolving, settling and trying your cases. Our staff will be looking for the results as the verdicts are handed down.

Subscribe today to

The Oklahoma Jury Verdict Reporter

In this introductory offer, save $20.00 off the regular price.
Annual subscriptions are $199.00.

Return with your check to:
Oklahoma Jury Verdict Reporter
9462 Brownsboro Road, No. 133
Louisville, KY 40241

$199.00 for a one-year subscription to the
Oklahoma Jury Verdict Reporter (Save $20.00)

Print Version ____

PDF Version ____ (E-Mail Required for PDF)

Your E-Mail _____

_____
Name

_____
Firm

_____
Address

_____
City, State, Zip

We accept MasterCard/Visa/AMEX. Call us toll-free 1-866-228-2447 to place your credit card order.

Statewide Oklahoma Jury Verdict Coverage - Subscribe today - Call 1-866-228-2447

The assignment on this date was with Robert Cooper. Cooper was a convicted murderer with a history of brandishing shanks (homemade knives) at the prison. Sites was discovered strangled in his cell. Cooper was later convicted of murder.

In this lawsuit, the Sites estate alleged negligence by the prison in placing him in a dual cell and as importantly, in doing so with a homicidal inmate. [Cooper had frequently evinced homicidal thoughts.] a prison expert for the plaintiff was Ken Kataris, Tallahassee, FL. The plaintiff developed proof the placement represented reckless disregard for the decedent's safety. Beyond an award for compensatory damages, the estate also sought the imposition of punitives.

The failure to protect and isolate Sites was especially egregious as not only was he an ex-cop (a danger signal), he was also a most annoying inmate. Because of a head injury sustained in an oilfield incident, Sites was described as being a constant talker that tended to annoy other inmates.

Geo Group defended the case that the strangulation was not foreseeable. Its prison expert, Patrick Keohane, Springfield, MO, explained that as long as Sites agreed to the cell transfer with Cooper, the transfer was proper.

The jury's verdict (after three hours of deliberation) was for the estate on the negligence theory (any contributory fault to the decedent was rejected) and the estate took $6,000,000 in compensatory damages. [The duties of the murderer were not in issue for purposes of comparative fault.] Finding by a clear and convincing standard that the prison had acted with reckless disregard, the second punitives phase was triggered. The jury assessed a $500,000 penalty. The verdict totaled $6.5 million.

No judgment had been entered a month later, but the plaintiff has moved for an award of $2.2 million in pre-judgment interest. It is learned that as the jury deliberated, ten of the jurors agreed to the $6.5 million award – two other jurors favored an award of $25 million.

Medical Negligence - A college football player died of necrotizing fascitis, his estate alleging the medical athletic staff at his school treated him improperly

Adair v. University of Tulsa, 4:09-406
Plaintiff: Gregg W. Luther, Bradley C. West and Terry W. West, *West Law Firm*, Shawnee
Defense: James K. Secrest, II, James K. Secrest, III and Edward J. Main, *Secrest Hill Butler & Secrest*, Tulsa and Mark A. Warman, *Wilkerson Wassell & Warman*, Tulsa
Verdict: Defense verdict on liability
Federal: **Tulsa**
Judge: Gregory K. Frizzell
Date: 4-21-11

Devin Adair, then age 21 and of Manhattan Beach, CA, was recruited as a junior college student to play college football at Tulsa University. [The team was then coached by Steve Kragthorpe.] In April of 2006 and during spring practice, Adair attended an off-campus party where alcohol was served. Thereafter Adair was subjected to punishment by Tulsa's coaching staff which included a rough course of grass drills.

Within days of the discipline, Adair was reporting chest and back pain. He was evaluated by a team physician (Michele Neil) on 4-17-06 in the training room. Neil sent him to the hospital with suspicion of an apparent broken rib related to the drills.

Adair was in septic shock in a few days and he died a week later. [Adair never played a down of football for Tulsa.] His death was linked to a necrotizing fascitis infection. His estate believed the infection was caused by grass drills, the Tulsa coaching staff forcing him to relentlessly engage in so-called log-rolls across the football field.

In this lawsuit, the Adair estate sued the coaching staff regarding the abuse. The court directed a verdict for the coaches on this count. The count that survived to trial was advanced against Dr. Neil. It was argued that upon the presentation on 4-17-06, Adair promptly needed the administration of antibiotics to treat a simple staph infection. A key expert for the estate was Dr. Michael Mellman.

Tulsa defended this count that Neil's evaluation of Adair was proper. His death was linked to a rare infection that was described by an infectious disease expert, Dr. Daniel Sexton of Duke, as a rare tropical pyomyositis. Importantly, it was Tulsa's proof that this infection was unrelated to the grass drills.

This complex case was tried to a Tulsa jury – the verdict was for the university and the estate took nothing. A defense judgment was entered.

Premises Liability - The plaintiff slipped on an unknown object on a grocery store floor and sustained a broken arm

Tackett v. Country Boy Market, 09-2054
Plaintiff: Joe S. Carson, *Homsey Cooper Hill & Carson*, Oklahoma City
Defense: Chris Harper, *Chris Harper, Inc.*, Edmond
Verdict: $100,000 for plaintiff less 25% comparative fault
Court: **Oklahoma**
Judge: Bryan C. Dixon
Date: 1-11-11

Mary Tackett, then age 69, shopped on 7-2-08 at a Country Boy Market. As Tackett walked into the store, she slipped and fell on an unknown object on the floor. The fall was caught on the store's security camera, Tackett seeming to lose control as she slipped on a dark spot on the floor. [The origin and nature of the object was not identified.]

Tackett landed hard and suffered a broken arm. In this lawsuit, she alleged negligence by Country Boy in failing to keep its premises in a reasonably safe condition. Country Boy defended that Tackett simply tripped over her own feet – it also noted that to the extent there was an object on the floor (Country Boy disputed this), that object was open and obvious to Tackett.

The jury's verdict was mixed on fault. It was assessed 75% to Country Boy, the remainder to Tackett. Then to damages,

she took a general award of $100,000. A consistent judgment less comparative fault was entered for $75,000 and the matter has since been dismissed as settled.

Truck Negligence - A locomotive engineer sustained a disabling thoracic injury when she was jostled in her cab after her train struck a tractor-trailer that pulled into the train's path – the trucker defended and pointed to the sudden emergency of a black-out related to a cardiac event

Smith v. Hamm & Phillips, 09-724
Plaintiff: Nelson G. Wolff and Jason P. Kelly, *Schlichter Bogard & Denton*, St. Louis, MO and Clifton D. Naifeh, *Naifeh & Associates*, Norman
Defense: Ian P. Faria, *Coats Rose*, Houston, TX, Stephen R. Palmer, *Collins Zorn & Wagner*, Oklahoma City and David J. Plavnicky, *Plavnicky Kinzel & Makowski*, Houston, TX
Verdict: $1,750,000 for plaintiff
Court: **Grady**
Judge: Richard G. Van Dyck
Date: 4-22-11

Terrie Smith, then age 40, was working as a locomotive engineer for Union Pacific. She was piloting a freight train that traveled near Pocasset. At the same time, a trucker for Hamm & Phillips, Vernon Bruce, was approaching a train crossing on CR 1200.

Bruce crossed onto the tracks in front of the train. Smith couldn't stop in time and a collision resulted. The engine tipped over and it was struck by several rail cars. In the midst of that collision, Smith was thrown about the cab of her locomotive.

The effect of that jostling was to leave her with a career-ending thoracic disc injury. She has also complained of a mild closed head injury. Her vocational loss was quantified from $1.05 million to $1.39 million by an economist from Conway, AR, Ralph Scott.

In this lawsuit, Smith alleged negligence by Bruce and his employer in crossing in front of the train. The train had the right of way, Bruce failing to slow and check that the train tracks were clear.

Hamm & Phillips defended the case and argued that Bruce suffered a sudden cardiac emergency that caused him to pass out. Proof of this cardiac condition and sudden black-out was developed by a defense expert, Dr. Keith Kassabian, Cardiovascular Surgery, Oklahoma City. [The plaintiff countered that Bruce did not pass out until after the collision.] The defense also diminished the claimed injury.

As the jury deliberated, it had a question for the court: "What amount of money did plaintiff's attorney come to as a conclusion? If I remember, was it $3,000,000?" The court didn't answer.

The jury's verdict was for Smith and she took a general award of $1.75 million. A consistent judgment (including pre-judgment interest) was entered for Smith in the sum of $1,905,054.

Dram Shop - A drunk driver left a McAlester hot spot and crashed into a car containing the plaintiffs – the bar denied any knowledge that the drunk driver was visibly intoxicated

Hardy et al v. Peckerheads, 08-168
Plaintiff: Phillip O. Watts, Oklahoma City and Jeffrey H. Contreras, McAlester
Defense: Gerald P. Green, Oklahoma City and J. Heath Lofton, Tulsa both of *Pierce Couch Hendrickson Baysinger & Green*
Verdict: Defense verdict on liability
Court: **Pittsburg**
Judge: James D. Bland
Date: 3-4-11

It was the evening of 12-8-07 and Danette Hardy, then age 34 (it was her birthday) joined friends (including Carl Johnson, age 27) at a McAlester hotspot, Peckerheads. Also at the bar that night was Dana Donathan. Donathan was drinking. Carl would recall laughing as he observed the drunk Donathan walking through the club. Another witness confirmed her intoxication at the club.

Later that night, Danette and Carl left the club in a car driven by Danette's husband. Donathan left too. A collision occurred on Wyandott Avenue, Donathan crossing the centerline and striking the Hardy vehicle – it continued on and struck a commercial building. Danette and Carl were injured in the crash.

In this lawsuit, they sued Peckerheads (it is a d/b/a of Showcase Enterprises) and presented a dram shop theory. They cited proof that the bar had served an intoxicated Donathan. [Donathan's BAC was measured following this crash at .13.] Peckerheads defended and denied any knowledge or competent proof that Donathan appeared intoxicated at the bar.

This case was tried for two days in McAlester. The unanimous verdict was for Peckerheads and the plaintiffs took nothing. A defense judgment closed the case.

Wrongful Death - A teenaged passenger was killed when his driver failed to negotiate a turn on a rural road – his estate alleged negligence by the county in failing to maintain signage on the road – although a defense verdict was returned, the plaintiff's motion for a new trial was granted based on the court's own erroneous instruction on comparative fault

Nault v. Board of Commissioners of Canadian County, 06-535
Plaintiff: Fletcher D. Handley, Jr., *Handley Law Center*, El Reno
Defense: Andy A. Artus, *Collins Zorn & Wagner*, Oklahoma City
Verdict: Defense verdict on liability
Court: **Canadian**
Judge: Gary E. Miller
Date: 9-15-10

Trevor Nault, then age 18 and a high school senior preparing to graduate, was a passenger with his friend (Zac Garrett) on the evening of 4-15-05. It was Garrett's birthday and he was showing off the truck to Trevor, his long-time friend. They traveled on rural 248th Street and Karns Road in Canadian County near the Blaine County line. [Why they were there was unknown as

they were scheduled to be at a restaurant many miles away.]

As Garrett navigated the rural dirt road (248th Street), he failed to appreciate the intersection with Karns Road. Instead of turning, Garrett crashed through a gate and into a field. His pick-up rolled over twice. Nault was ejected and thrown 60 feet. He sustained fatal injuries.

His estate sued the Board of County Commissioners of Canadian County and alleged negligence in failing to maintain a sign warning of the curve – there was proof the sign was knocked down and never replaced.

Canadian County defended that there was never a sign at the location and that the curve was visible without signage. It blamed the crash on Garrett's negligent driving, noting the teen was driving at 75 mph in a 45 mph zone. The plaintiff's own comparative fault was also implicated, the government suggesting the decedent could have told Garrett to slow down.

As the jury deliberated, it had a question for the court: "We need the police report." Judge Miller replied that the jury had all the evidence. It is also learned that the jury made a trip from the courthouse to view the scene of the crash.

Returning with a verdict, it was for the government by a 10-2 count and the estate took nothing. A defense judgment followed.

The estate moved for a new trial and alleged instruction error. Namely, there was no basis for an instruction on comparative fault. The judge agreed in a 1-11-11 order that his instructions were improper and he ordered a new trial. Canadian County has since appealed from that order.

Truck Towing Negligence - A disabled wood chipper that was being towed on U.S. 75 suddenly came loose and struck the plaintiff's tractor-trailer – the impact caused the plaintiff's truck to roll-over, that roll-over crash leaving him with a spinal injury

Nutley v. River Falls Machinery Sales, 6:09-215
Plaintiff: Michael E. Pierce and Christopher M. Spain, *Arnold & Itkin*, Houston, TX and Tim Maxcey, *The Stipe Law Firm*, McAlester
Defense: Paul M. Kolker and Brad Roberson, *Pignato Cooper Kolker & Roberson*, Oklahoma City
Verdict: $200,000 for plaintiff
Federal: **Muskogee**
Judge: James H. Payne
Date: 7-12-11

Paula Nutley, then age 52 and a trucker from Las Vegas, traveled on U.S. 75 in Coal County on 4-26-07. At the same time, Randall Bowling was operating a truck for River Falls Machinery Sales. Bowling was towing a damaged wood chipper. The wood chipper was secured with a draw ring coupling device.

Suddenly the wood chipper uncoupled. It collided with Nutley's cargo trailer, causing her truck to overturn. In that resulting crash, Nutley sustained a spinal injury. Her medical bills were $112,887. [She had also alleged an emotional injury, but dropped that element of her claim when evidence was developed her emotional injuries were related in part to her son's murder conviction and her own cocaine addiction.]

In this lawsuit (filed in Coal County and removed to federal court), Nutley alleged negligence by River Falls Machinery in failing to properly secure the wood chipper. The plaintiff alleged the defendant should have used a chain or break-away lock valve to secure the load. Engineer experts for Nutley were Cline Young, Dallas and Rex McLellan, Houston.

River Falls Machinery defended that the load was properly secured with the draw ring coupling device. The load was only lost because that draw ring failed. A defense expert, William Coleman, Engineer, Norman, explained the draw ring had a hidden defect. [The plaintiff had previously settled with the draw ring manufacturer for $75,000.]

The jury's verdict was for Nutley and she took a general award of $200,000. A consistent judgment was entered that made no account for the $75,000 settlement with the draw ring manufacturer.

Landlord Negligence - A tenant sustained an injury when a ceiling in a hallway suddenly collapsed and struck him in the head

Erwin v. Rice, 08-308
Plaintiff: Greg Laird, *Laird Hammons Laird*, Oklahoma City
Defense: Susan Rice and Shawn E. Arnold, *Beeler Walsh & Walsh*, Oklahoma City
Verdict: $6,821 for plaintiff
Court: **Bryan**
Judge: Mark R. Campbell
Date: 5-12-11

Brent Erwin was a tenant in a rental building owned by Susan Rice on 9-12-07. The property was located in Durant on 212 Walnut Street. On this day as Erwin stood in a hallway, a chunk of the ceiling collapsed upon him. The collapse was occasioned by a leak in the central heating system that caused sheetrock to fall.

The collapsing ceiling left Erwin with a minor injury. In this lawsuit, he sued Rice and alleged negligence by her in failing to maintain the premises. Rice conceded the roof collapse, but disputed how it fell or whether there was time for her to repair it. She also implicated the plaintiff's own contributory fault.

The jury's verdict in Durant was for Erwin and he took a general award of $6,821 – the jury rejected the assessment of contributory fault to Erwin. A month post-trial, no judgment had been entered.

Religious Discrimination - A Muslim teenager was not hired to work at a retail store (that markets to teenagers) because the Muslim's wearing of the religiously-mandated headscarf didn't fit with the store's strict "look" policy

Elauf v. Abercrombie & Fitch, 4:09-602
Plaintiff: Barbara A. Seely, St. Louis, MO, Jeff A. Lee, Oklahoma City and Natasha L. Abel, Philadelphia, PA, all of the *EEOC*
Defense: Mark A. Knueve and Daniel J. Clark, *Vorys Sater Seymour & Pease*, Columbus, OH
Verdict: $20,000 for plaintiff
Federal: **Tulsa**
Judge: Gregory K. Frizzell
Date: 7-19-11

Samantha Elauf, then age 17, applied for a job in June of 2008 at the retail store, Abercrombie & Fitch, located in Woodland Hills Mall. The store markets clothing and other merchandise to 18-22 year olds. A key element of its marketing strategy is that employees conform to a specific "look" policy regarding hair, jewelry and dress.

While Elauf had a good work history at the mall in retail, she was not selected for a position with Abercrombie & Fitch for a single reason – she wore a hijab or as it is called, a Muslim headscarf. A Muslim by birth, Elauf started wearing the headscarf when she was 13 as a symbol of Islam and modesty. While she doesn't pray towards Mecca five times a day (and isn't even sure where a mosque is located in Tulsa), Elauf is observant and does pray.

Following the failure to hire, Elauf turned to the EEOC. It pursued the religious discrimination lawsuit on her behalf against the retailer. The theory was simple – Elauf was not hired because of her religious belief.

Abercrombie & Fitch resisted that its look policy was essential to the brand and there was no way to accommodate Elauf's headscarf. The company's retail expert, Erich Joachimsthaler (who was paid $110,000 for his opinions in this case) explained the importance of the policy. Judge Frizzell was not impressed and granted summary judgment for Elauf on liability – he noted that Abercrombie & Fitch made exceptions for other religious headgear, noting some Jewish employees had been permitted to wear a yarmulke.

As the court had decided liability for Elauf, this jury considered damages only. It awarded Elauf $20,000 in compensatory damages after four hours of deliberations. The imposition of punitives was rejected. A consistent judgment was entered for the plaintiff.

Civil Rights - The home of the plaintiffs was searched on a stale tip, the police barging in when permission for a consensual search was denied

Tubbs v. Oklahoma City Police, 5:07-1206
Plaintiff: Stanley M. Ward and Scott F. Brockman, *Ward & Glass*, Norman
Defense: Susan A. Knight and Stacey H. Felkner, *Fenton Fenton Smith Reneau & Moon*, Oklahoma City
Verdict: $24,000 for plaintiffs
Federal: **Oklahoma City**
Judge: Vicki Miles-LaGrange
Date: 1-14-11

Jeremy Harrison and Timothy Munzy worked as policemen for Oklahoma City. On 12-13-05, they appeared at the residence of James and Tammy Tubbs. The police were working on a hot tip that the Tubbs home was a hotbed of drug activity. The tip from an anonymous source had been received *seven* months earlier.

The police knocked on the door and asked if they could perform a consensual search. James refused. The police smelled marijuana and believed there was no time to waste. They barged into the residence and conducted a search. James was also roughly arrested and thrown to the ground. The search yielded a stash of marijuana.

James and Tammy faced criminal charges. The charges were later thrown out of court, a trial judge suppressing the marijuana evidence upon a finding the initial entry was unlawful. The Tubbses then sued the police.

Both husband and wife plaintiffs alleged the entry, search and seizure of their home represented a constitutional violation. They argued the so-called "marijuana smell" justification to enter was bogus. James also presented a separate excessive force count. The police defended that they had smelled marijuana and this justified the entry. [There was no dispute that but for smelling drugs, there was no lawful basis to enter as the anonymous tip was too stale.]

The verdict was mixed. Both plaintiffs prevailed on the entry, search and seizure counts. Conversely, the verdict was for the police on husband's excessive force count. Then to damages, each plaintiff took a compensatory award of $11,000 plus $500 more in punitives (against each defendant). The combined verdict for the plaintiffs totaled $24,000. A consistent judgment was entered.

Wrongful Termination - A yard-spotter for a trucking firm was fired after he was summoned for jury duty

Barnhill v. Marlin Transport, 07-721
Plaintiff: Jeffrey Taylor, *Absolute Legal Services*, Oklahoma City
Defense: Dan K. Jones, *Mills & Jones*, Oklahoma City
Verdict: Defense verdict on liability
Court: **Muskogee**
Judge: Norman Thygeson
Date: 7-12-10

Kevin Barnhill worked in March of 2007 for Marlin Transport in Muskogee. It was his job as a yard-spotter to transport loaded trailers a short distance around the facility. He was summoned for jury duty in McIntosh County on 3-26-07. Marlin Transport attempted to get him out of it and wrote a letter explaining he was essential to its operations. The attempt failed. Shortly thereafter Barnhill was fired.

Barnhill believed the firing represented a public policy violation, namely, he was sacked because he was summoned for jury duty. That the firing was related to his jury service, Barnhill cited that Marlin Transport described

him as essential in its efforts to get him out of jury duty. Marlin Transport denied the jury summons had anything to do with it and cited poor performance by Barnhill. It also noted that even before he was summoned for jury duty, the company had already placed a help wanted advertisement in the newspaper for his position.

The jury's verdict was for Marlin Transport and Barnhill took nothing. The defendant subsequently moved for an award of attorney fees – it argued the case was frivolous. Barnhill did not respond to the motion and the court assessed fees of $26,470. There is no evidence in the record that Barnhill has paid any of that sum.

Go Kart Negligence - A dentist suffered a serious degloving injury to her hand when she was involved in a go kart accident

Genoff v. Celebration Station Properties, 08-3329
Plaintiff: James E. Cinocca, Jr., *McCormick Field & Cinocca*, Tulsa
Defense: Thomas A. LeBlanc, *Best & Sharp*, Tulsa
Verdict: Defense verdict on liability
Court: **Tulsa**
Judge: P. Thomas Thornbrugh
Date: 10-22-10

Leslie Genoff, a young Tulsa dentist, was with friends on 7-24-07 at an entertainment outlet (now defunct) known as Celebration Station. It featured go kart racing. Genoff was racing along with several other patrons in a go kart.

Genoff was bumped by another driver and spun out. Her go kart became stuck. In an attempt to push herself back on to the track, she stuck her hand out and began to push the go kart. Just as she did that, a teen driver plowed into the side of her go kart. The impact left Genoff with a serious degloving injury to her hand – essentially, a significant portion of the skin was peeled away. She incurred medical bills of $34,597 and suffered an impairment to her hand-sensitive profession.

In this lawsuit, Genoff sued Celebration Station and alleged it negligently operated the track. She cited that there were too many cars racing at one time and then after her spin-out, track security was slow to respond. Celebration Station defended and denied fault – it blamed Genoff for her own poor decision in putting her hand outside her go kart and onto the track.

The jury's unanimous verdict was for Celebration Station and Genoff took nothing. A defense judgment concluded the case.

Products Liability - The plaintiff was injured when a stepladder collapsed

Campbell et al v. Home Depot, 5:09-1069
Plaintiff: Rex Travis and Paul Kouri, Oklahoma City for Campbell
Robert P. Redemann, *Perrien McGivern Redemann Berry & Taylor*, Tulsa for Commerce & Industry Insurance
Defense: Paul V. Kaulas, *McVey & Parsky*, Chicago, IL and Christian S. Huckaby, *Hall Estill*, Oklahoma City
Verdict: Defense verdict on liability
Federal: **Oklahoma City**
Judge: Stephen P. Friot
Date: 3-24-11

Richard Campbell was working for Premier Communications on 3-11-06. He was installing a satellite dish. In this work, he utilized an eight-foot fiberglass stepladder. The ladder was manufactured by Home Depot. As Campbell stood on the ladder, it suddenly collapsed under him.

Campbell suffered a broken foot and a lumbar injury. He blamed the collapse of the ladder on a broken rivet. In this lawsuit, Campbell sought damages from Home Depot alleging a manufacturing defect. A second plaintiff, Commerce & Industry Insurance, also sought medical and lost wage specials it had paid on behalf of Campbell. These totaled $219,050. Home Depot blamed the ladder fall not on a defect, but instead on misuse by Campbell – that included setting the ladder on an uneven surface in an awkward position.

The manufacturing defect claim was resolved for Home Depot and Campbell took nothing. A consistent judgment was entered.

Negligent Supervision - A young boy had his bike stolen and the plaintiff wound up with it as an innocent purchaser – when the plaintiff wouldn't surrender the bike immediately, the boy (at his father's direction) came for the bike with a baseball bat – the boy beat the plaintiff leaving him with a skull fracture – the plaintiff then sued both the boy and his parents regarding the attack

King v. Johnson, 09-8665
Plaintiff: Daniel E. Smolen, II, David A. Warta & Laura Lauth, *Smolen Smolen & Roytman*, Tulsa
Defense: Stephen M. Coates, *Wilson Cain & Acquaviva*, Tulsa for Brad Johnson
William R. Cathcart, *Cathcart & Dooley*, Oklahoma City for Albert & Sherry Johnson
Verdict: $175,000 for plaintiff
Court: **Tulsa**
Judge: Rebecca B. Nightingale
Date: 4-14-11

Brad Johnson, then age 12, suffered a childhood insult in January of 2008 when his beloved and expensive Haro "trick" bike was stolen. Brad loved his red bicycle and was on the look-out for it in his Broken Arrow neighborhood. Within days, Brad saw the bike. It was being piloted by another boy, Joshua King, age 15. Apparently Joshua had purchased the stolen bike from another child for $25.

Brad came to see Joshua on 1-18-08 and Brad was able to match up the serial numbers. Joshua wouldn't surrender the bike. There was evidence Brad discussed the matter with his father (Albert Johnson) and Albert suggested Brad take it by force. [There was also an implication that Brad's mother (Sherry) was involved in the repossession plan.]

The next day Brad gathered a group of

friends and they came for the bike. Brad also came armed – with a baseball bat. They found Joshua and the boys briefly chased him. Joshua was then beaten by Brad with the baseball bat. He sustained a skull fracture and was hospitalized for five days. His medical bills were $23,252. He continues to complain of post-traumatic migraines.

In this lawsuit, Joshua sued Brad and his parents. The assault claim against Brad was simple enough. It was negligent supervision that was more nuanced and unusual, Joshua blaming Brad's parents for suggesting he retrieve his stolen bike via force. The defendants denied fault at trial as well as they could.

After a four-day trial in Tulsa, Joshua prevailed on the assault count against Brad and also on negligent supervision against Brad's parents. The jury assessed compensatory damages of $165,000. It also awarded $10,000 in punitives against Brad only. A consistent judgment was entered and it has been satisfied.

Auto Negligence - The plaintiff sustained a soft-tissue injury after a rear-end crash

Porter v. Kennedy, 2008-2622
Plaintiff: Chris Hammons, *Laird Hammons Laird*, Oklahoma City
Defense: James L. Gibbs, *Goolsby Proctor Heefner & Gibbs*, Oklahoma City
Verdict: $10,603 for plaintiff
Court: **Cleveland**
Judge: Rod D. Ring
Date: 12-6-10

Raymond Porter was involved in a rear-end car crash on 4-16-08 in Norman. It occurred on an I-35 overpass. Porter was struck by Stephen Kennedy who was apparently distracted because he was texting. The crash resulted in moderate damage.

Porter has since treated for whiplash and soft-tissue symptoms including with a chiropractor, Dr. Michael Chiaffitelli, Oklahoma City. His medical bills are not known. In this lawsuit, he sought damages from Kennedy. Kennedy defended and minimized the claimed injury.

Fault having been admitted, the jury considered damages only. Porter took a general award of $10,603. A consistent judgment was entered and Kennedy paid it.

Assault - In an unusual case involving two women involved with the same Nigerian man – the plaintiff, his lawful wife, alleged the man's girlfriend (she considered herself a sister-wife as a part of a culturally polygamous tradition) assaulted her at Wal-Mart

Gbodi v. McFarthing, 10-3048
Plaintiff: Cynthia D'Antonio-Brown, *Smith & D'Antonio*, Oklahoma City
Defense: *Pro se*
Verdict: Defense verdict on liability
Court: **Oklahoma**
Judge: Patricia G. Parrish
Date: 4-5-11

Grace Gbodi was happily married in February of 2010 to Paul Gbodi. Grace did have a problem – Gbodi's former girlfriend, Ekanem McFarthing, had a history of stalking Grace and sending sexually suggestive texts to Paul. It came to a head for Grace on 2-24-10 while she was shopping at Wal-Mart.

McFarthing came up behind her in the greeting card section and struck Grace in the face. The blow left Grace with a cut to her nose and a bruised eyelid. In this lawsuit, Grace alleged three counts against McFarthing, (1) assault, (2) battery, and (3) outrage.

McFarthing defended the case and added significant facts. Namely, she conceded Grace was married to Paul, but she too shared a continuing bond with him. As a part of his Nigerian Yoruba tradition, Paul was polygamous.

McFarthing then was a junior sister-wife to Grace. In fact, McFarthing and Paul shared three children. At the time of the purported attack, she recalled that Grace was giving her the evil eye at the store. McFarthing then called Paul to report this – only then did an enraged plaintiff come at her.

This case of unusual fact disputes would be resolved by an Oklahoma City jury. It's unanimous verdict was for the defendant on assault, battery and outrage claims, Grace taking nothing. Several months post-trial, no judgment had been entered.

False Arrest - Sheriff's deputies roughly arrested the plaintiff when they came (without a warrant) to investigate a complaint from a neighbor that a meth lab might be operating

Gilley v. Board of County Commissioners of Stephens County, 07-48
Plaintiff: John P. Zelbst and David Butler, *Zelbst Holmes & Butler*, Lawton
Defense: Stephen L. Geries and Wellon B. Poe, Jr., *Collins Zorn & Wagner*, Oklahoma City
Verdict: $125,000 for plaintiff
Court: **Stephens**
Judge: G. Brent Russell
Date: 4-26-11

Arnold Gilley was home with his mother (in the trailer they share) outside of Duncan on the evening of 9-20-05. Sheriff'x deputies in Stephens County had received reports that a meth lab might be operating at the Gilley residence. There was a strong smell of ammonia.

A team of deputies arrived after dark with no warrant at Gilley's home. Gilley saw flashlights shining outside the trailer and went to investigate. Strapped to his waist in a holster was a large knife.

When he stepped outside, Gilley recalled being roughly confronted by the police. They told him to surrender the knife. Gilley thought it was legal to keep the knife. He retreated back inside. The police followed and broke the screen door. He was arrested and tased.

The police charged Gilley with battering an officer, obstruction and resisting arrest. Those charges were later dropped after Judge Bunton granted a motion to suppress.

This lawsuit followed, Gilley alleging he was unlawfully arrested. He cited that

there was no warrant or evidence of a felony, nor had he committed a misdemeanor in their presence. Quite simply, there was no basis to arrest him.

The police defended that as they came to investigate, an animated Gilley walked from the trailer and announced he had a knife. When a deputy reached to take it away, Gilley slapped his hand. Only then did the police (as they explained) use reasonable force to arrest him.

The jury's verdict was for Gilley and he took a general award of $125,000. A consistent judgment was entered and the county paid.

Judge Russell also found a juror in the venire panel in direct contempt and fined him $500. The offense? The juror had said "that's bullshit" when told by the court that he would not be released.

Livestock Negligence - The plaintiff was injured when her vehicle struck the defendant's cattle that were running loose on the highway

Noah v. Moore, 2008-318
Plaintiff: Tim W. Green, Guthrie
Defense: Thomas E. Baker, *The Baker Law Firm*, Owasso
Verdict: Defense verdict on liability
Court: **Payne**
Judge: Phillip C. Corley
Date: 3-16-11

Sharon Noah traveled in her 1989 Cadillac on 8-14-06 near Perkins. Proceeding before dawn on Hwy 33, her vehicle struck cattle that had wandered into the road. They belonged to nearby rancher, Audry "Jay" Moore.

The collision not only damaged the Cadillac, it also left Noah with a back injury. In this lawsuit, she sued Moore and alleged negligence by him in letting his cattle roam free. She cited evidence from neighbors of Moore that cows had been out in the days leading to this incident.

Moore defended and conceded the cows were his. However he cited that he maintained a five-strand barbed wire fence and otherwise acted reasonably to keep his cattle fenced. The defendant also raised contributory fault in the form of the plaintiff's failure to keep a look-out.

Following a two-day trial, the jury's verdict was for Moore by a 12-0 count and Noah took nothing. A defense judgment was entered.

Premises Liability - The plaintiff slipped in a motel bathroom and sustained a broken hip – he blamed his fall on a worn and slippery adhesive strip

Ellison v. Best Budget Inn, 06-5793
Plaintiff: Joe D. Wheeler, Jr. and Earl R. Donaldson, *Wheeler Wheeler Morgan Faulkner & Donaldson*, Oklahoma City
Defense: Amy R. Steele and Kayce L. Gisinger, *Abowitz Timberlake Dahnke & Gissinger*, Oklahoma City
Verdict: Defense verdict on liability
Court: **Oklahoma**
Judge: Bryan C. Dixon
Date: 4-5-11

Fred Ellison, then age 65, was a guest on 2-26-05 at the Best Budget Inn in Oklahoma City. It is operated as a d/b/a by Shree Jalaram. Ellison checked into Room 102 and took a shower. As he reached for the soap, Ellison slipped and fell in the standard porcelain tub. He landed hard and suffered a broken hip. A hip replacement surgery followed.

Ellison sued Best Budget and alleged negligence regarding the condition of the tub. He focused that his fall was caused by a worn adhesive strip on the tub – while designed to be an adhesive strip to prevent falls, it had worn to an extent that the anti-skid strip now represented a hazard. Best Budget defended the case and denied fault – it postured that Ellison was in a bathtub which is known to the everyone as potentially slippery.

The trial court first granted summary judgment for Best Budget in December of 2007. Ellison appealed. The Supreme Court reversed in August of 2008 and ruled that fact issues remained as Ellison had not complained that he fell because the tub was wet. His complaint was the worn adhesive strip.

The case was tried for two days in April. The verdict was for Best Budget by a 9-3 count and Ellison took nothing. A defense judgment was entered.

Auto Negligence - While the plaintiff linked a lumbar disc injury to a rear-end crash, the verdict for the plaintiff was far less than the incurred medical bills

Benedict v. Van Pelt, 09-1031
Plaintiff: David C. Bean and Kirk R. Schauer, *Rode Law Firm*, Tulsa
Defense: Matthew B. Wade, *Angela Ailles & Associates*, Oklahoma City
Verdict: $6,000 for plaintiff
Court: **Tulsa**
Judge: Deborah C. Shallcross
Date: 2-15-11

Charla Benedict, then age 31, was injured in a 4-25-07 rear-ender in Owasso at 129th E Avenue and 91st Street. She was struck at a stop sign by Clark Van Pelt. The collision resulted in minor vehicle damage. Van Pelt conceded fault.

Benedict has since treated for radiating L4-5 back pain. She describes that it burns. Her medical bills were $41,571. She has treated with Dr. John Balbas, Orthopedics, Tulsa. In this lawsuit, she sought damages from Van Pelt. Her husband presented a derivative consortium claim. Van Pelt defended and minimized the claimed injury – he looked to proof from an IME, Dr. Rick Beller, Edmond.

Benedict prevailed at trial and took a general award of $6,000. Her husband's consortium claim was rejected. A consistent judgment was entered.

Dental Negligence - A dentist was blamed for mispositioning a bridge and then further attempting to make it fit by altering the plaintiff's bite – the result was a permanent TMJ injury

Oxford v. Berg, 2008-987
Plaintiff: Joseph H. Rogers, III and Shad Withers, *Miller Dollarhide*, Oklahoma City
Defense: Kyle N. Sweet and Vanessa A. Hicks, *The Sweet Law Firm*, Oklahoma City
Verdict: Defense verdict on liability
Court: **Canadian**
Judge: Gary E. Miller
Date: 4-12-11

Julie Oxford started treating in May of 2007 with a dentist, Dr. Tamara Berg to have bridge work done. The bridges were delivered, but the fit was poor and Oxford's bite was incorrect. In an attempt to correct this, Berg adjusted Oxford's teeth.

Oxford's result was not good and she continues to complain of jaw pain related to a temporormandibular joint dysfunction. In this lawsuit, Oxford alleged error by Berg in an overly aggressive adjustment to her bite. Her expert (the treating Dr. Rick Willingham) was critical of the full mouth equilibrium that he believed was unnecessary.

Berg defended that her care was proper and her attempts to adjust Oxford's bite were compliant with the standard of care. Berg also developed that Oxford's jaw pain (it also extended to her neck) could be linked (in part) to a long history of cervical disc disease. [Oxford replied her TMJ pain was different.] Experts for Berg were dentists, Dr. Patrick Jones and Dr. Mark Balenseifen.

The jury's verdict was for Berg by an 11-1 count and Oxford took nothing. A defense judgment followed.

Premises Liability - While taking her grandsons to a movie, the grandma plaintiff missed a step (when she got up in the dark to take one child to the bathroom) and suffered a broken leg

DeSmet v. Cinemark USA, 08-1128
Plaintiff: Mark S. Stanley, *Carpenter Stanley & Myers*, Tulsa
Defense: W. Joseph Pickard, *Secrest Hill Butler & Secrest*, Tulsa
Verdict: Defense verdict on comparative fault
Court: **Tulsa**
Judge: Jefferson D. Sellers
Date: 1-11-11

Janet DeSmet, then age 58, attended a matinee movie on 2-21-06 with her grandsons at Cinemark USA. They took a seat in theater in a special elevated seat – it took a special step up to reach. [It was the only seat in the theater with this feature.]

Once the movie had begun and the theater was dark, one of the grandsons had to go to the bathroom. DeSmet rose to take him. She missed the step down and broke her leg just below the knee. She incurred medical bills of $43,006.

In this lawsuit, she alleged the combination of the dark theater and the raised step contributed to her fall. Cinemark defended that DeSmet knew the step was there and simply missed it – the defense suggested she was in a hurry to get to the bathroom with her grandson.

This Tulsa jury returned a white verdict sheet indicating a split on comparative fault. That assignment was 55% to DeSmet, the remainder to Cinemark. That finding ended the deliberations and the plaintiff took nothing.

DeSmet has since moved for a new trial arguing it was error to deny her motion for a directed verdict. She cited that there was no proof of her contributory fault. Cinemark replied that DeSmet had ascended the step just minutes before falling and thus the condition was open and obvious. The motion was pending in July when the record was reviewed.

About Jury Verdict Publications

We have continually published civil jury verdict reporters around the country since June of 1997. We are unaffiliated with any organization, public or private or otherwise. Our singular mission to report civil jury trial results without favor, fairly presenting the positions of the parties, interesting trial practice and verdict results.

Our current list of publications includes the:
Alabama Jury Verdict Reporter- 2001-
Federal Jury Verdict Reporter - 2005-
Indiana Jury Verdict Reporter - 2000-
Kentucky Trial Court Review - 1997-
Louisiana Jury Verdict Reporter - 2010-
Mississippi Jury Verdict Reporter - 2010-
Tennessee Jury Verdict Reporter - 2004-
Oklahoma Jury Verdict Reporter - 2011-

The Oklahoma Jury Verdict Reporter is published at 9462 Brownsboro Road, No. 133, Louisville, Kentucky 40241. Phone at 502-339-8794 or 1-866-228-2447. Fax to 502-326-9794. Denise Miller, Publisher, Shannon Ragland, Editor, Sandra Tharp, Editor Emeritus and Aaron Spurling, Assistant Editor.

Annual subscription is $219.00 per year.
E-Mail - Info@juryverdicts.net
See the Oklahoma Jury Verdict Reporter online at juryverdicts.net.

The Oklahoma Jury Verdict Reporter
9462 Brownsboro Road, No. 133
Louisville, Kentucky 40241
1-866-228-2447
Online at Juryverdicts.net

Statewide Oklahoma Jury Verdict Coverage

Ordering is Easy

The Oklahoma Jury Verdict Reporter
The Most Current and Complete Summary of Oklahoma Jury Verdicts

Special Offer - Take advantage of our introductory subscription rate of $199.00
Save $20.00 off the regular rate
Do you need a firm license or other special rate? Contact us for details.

Call to Place your MasterCard/Visa/Amex Order - 1-866-228-2447

Return with your check to:
The Oklahoma Jury Verdict Reporter
at the above address

(Save $20.00 off the regular rate of $219.00)
____$199.00 for a one-year subscription to the Oklahoma Jury Verdict Reporter *(12 issues)*
____Print Version

____PDF Version

Your E-mail _____
(Required for PDF version)

_____
Name

_____
Firm Name

_____

_____
Address

_____
City, State, Zip