The Alabama Jury Verdict Reporter

The Most Current and Complete Summary of Alabama Jury Verdicts

November, 2024 **Statewide Jury Verdict Coverage - Published Monthly** **24 A.J.V.R. 11**

Alabama's Jury Verdict Reporter Since 2001

In This Issue

Civil Jury Verdicts

Complete and timely coverage of civil jury verdicts in Alabama including circuit, presiding judge, parties, case number, attorneys and results.

Products Liability - A tractor-trailer driver was rendered a quadriplegic due to a rollover crash that happened when another motorist crossed the centerline; plaintiff pursued claims against the manufactures of the tractor and alleged the tractor and its seating system were defective and failed to protect him during the rollover

Street v. Daimler Truck North America, LLC., et al., 23-900002
Plaintiff: Benjamin E. Baker, Jr., Kendall C. Dunson, and Wyatt P. Montgomery, *Beasley Allen Crow Methvin Portis & Miles, P.C.*, Montgomery and Mobile; Ralph Edward Massey, III, *Clay Massey & Associates*, Mobile; and Matthew C. Drinkard, *Wilson Drinkard & Drinkard, LLC.*, Grove Hill
Defense: H. Lanier Brown, II and Karmen E. Gaines, Birmingham and Jennifer A. Rogers, Jackson, MS all of *Watkins & Eager, PLLC.*, Robert D. Keahy, *Williams & Keahy, LLC.*, Grove Hill; and Lee B. Ziffer, *Kuchler Polk Weiner*, New Orleans, LA
Verdict: $160,000,000 for plaintiffs (allocated $75,000,000 in compensatory damages and $75,000,000 in punitive damages to Leonard Street and $10,000,000 to Tracy Street for loss of consortium)
Circuit: **Clarke**, 9-6-24
Judge: J. Perry Newton

In the morning of 6-22-22, Leonard Street, then age 60< (a forty-year trucking veteran)was driving a 2023 model year Western Star 4700 SF semi truck owned by his employer, Scotch Plywood, Inc. The truck was pulling a forty-five foot trailer loaded with stacks of plywood as Street traveled east on AL 84 in rural Clarke County near Grove Hill.

At the same time, a 2019 Ford F250 pickup truck being driven by Loran Richardson was also traveling in the same area. Richardson's pickup was pulling a 45-foot trailer, and he was on the job for his employer, Dothan Tarpaulin Products, Inc.

As the two vehicles drew near each other, Richardson crossed the centerline into Street's lane and collided with his driver's side wheel area. This caused Street to lose control, and his tractor-trailer proceeded to roll over. He had been traveling at some 37 mph when the rollover began.

During the rollover, the roof of Street's tractor cab was crushed. At the same time, the air suspension seat in which he was sitting propelled him upward toward the roof. This combination of forces caused Street to suffer a fracture in his neck and a spinal cord injury that has left him an incomplete quadriplegic. That is, he is quadriplegic, though he retains some function and sensation.

It turned out that the tractor had been designed and manufactured by a company now known as Daimler Truck North America, LLC. Daimler had produced this line of tractors for its client, Western Star Truck Sales, Inc. A company called CVG Alabama, LLC. d/b/a National Seating had been involved in the design of the tractor's seating system.

In the wake of the crash Street filed suit against Richardson and Dothan Tarpaulin Products, Inc. He blamed Richardson for causing the crash, and he targeted Dothan Tarpaulin on a theory of vicarious liability.

IN THE CIRCUIT COURT OF CLARKE COUNTY, ALABAMA

LEONARD WILEY STREET and TRACY STREET,	{}	
Plaintiffs,	{}	CASE NUMBER
Vs.	{}	CV-2023-900002
DAIMLER TRUCK NORTH AMERICA LLC; et al., INC.,	{}	
Defendants.	{}	

VERDICT OF THE JURY

Verdict for Plaintiff, Leonard Street

If, after a full and fair consideration of the evidence you find for the Plaintiff, Leonard Wiley Street, then you should use the following verdict form:

X, We, the jury, find in favor of the Plaintiff, Leonard Wiley Street, on his claims and against the Defendants.

We assess Leonard Wiley Street's damages as follows:

Compensatory: Seventy five Million dollars ($ 75,000,000.00).

Punitive: Seventy-five million dollars ($ 75,000,000.00).

Mary Goforth
Signature of Foreperson

MARY GoForth
Printed Name of Foreperson

OR

The Street jury verdict (his wife's consortium claim was on page two)

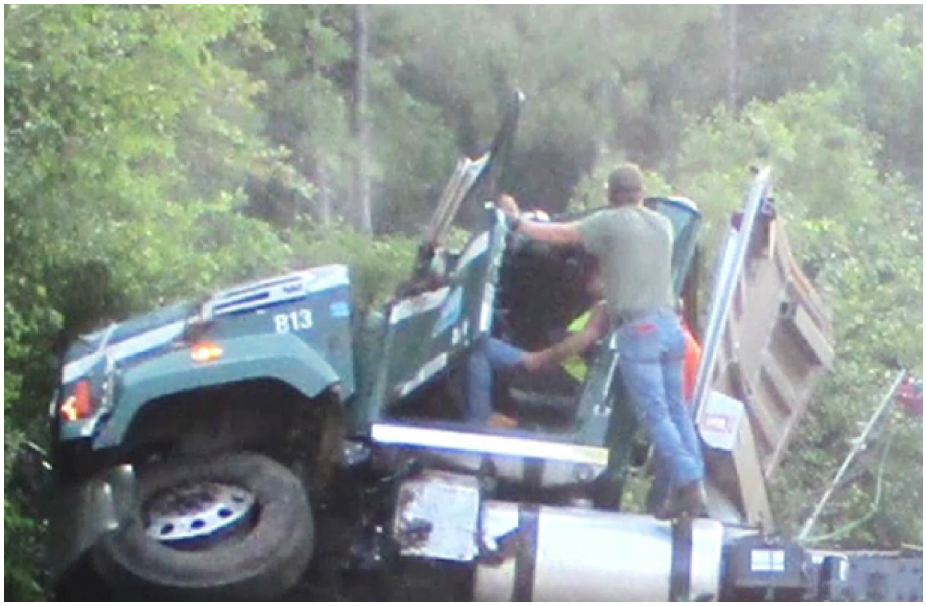
Street also filed suit against Daimler Truck North America, LLC., Western Star Truck Sales, Inc., and CVG Alabama, LLC. and blamed them for the allegedly defective design and manufacture of the tractor and its seating system. Finally, Street's wife, Tracy Street, presented a derivative claim for her loss of consortium.

Plaintiffs identified a large number of experts in this case. They included Bryant Buchner, Accident Reconstruction, Tallahassee, FL; Steven Meyer, Seating System Design, Goleta, CA; Paul Lewis, Jr., Biomechanics, Roswell, GA; Brian Herbst, Vehicle Structure Design, Goleta, CA; Shelly Savant, Life Care Plan, Lafayette, LA; and Robert Johnson, Economics, Los Altos, CA.

It was Meyer's opinion that the kind of air suspension seating used in the tractor was known to be dangerous because it had a propensity to catapult occupants into the roof of the tractor during rollover events. Meyer noted that safer alternative designs were available that would have prevented Street's injuries.

During the course of the litigation, plaintiffs settled their claims with Dothan Tarpaulin and CVG Alabama. Pursuant to those settlements Leonard received a total of $2,850,000, while Tracy received $2,000,000. Plaintiffs then dismissed all defendants except for Daimler Truck and Western Star.

Plaintiffs also dismissed all of their claims grounded in negligence. Instead, the litigation proceeded against the remaining two defendants on claims under the



The Street truck tractor after the roll-over

AEMLD (i.e., the Alabama Extended Manufacturers Liability Doctrine) and for wantonness and loss of consortium.

Plaintiffs specifically alleged that 1) the roof strength of the tractor was inadequate, and 2) the driver's seat was defective. Daimler Truck and Western Star defended the case and denied any wrongdoing. They specifically denied their design and manufacture of the tractor had been defective. A key defense expert on seat design was James Chinni.

The case was tried for two weeks in Grove Hill. The jury returned a verdict for plaintiffs and awarded compensatory damages of $75,000,000 to Leonard along with another $75,000,000 in punitive damages. Tracy was awarded $10,000,000 on her consortium claim.

That brought plaintiffs award to a combined total of $160,000,000. The court applied set-offs for the amounts plaintiffs had received in settlement and entered a judgment for $155,150,000. Defendants have filed a motion for a new trial and argued the verdict was against the weight of the evidence.

Defendants also alleged various erroneous evidentiary rulings and jury instructions, as well as improper statements by plaintiffs' counsel during opening statements and closing arguments. Finally, defendants filed a motion to stay execution of the judgment pending the court's ruling on the motion for new trial. At the time the AJVR reviewed the record, the court had not yet ruled on either of these motions.

Case Documents:

Defense Summary Judgment Motion on Punitive Damages
Plaintiff Summary Judgment Response
Jury Verdict
Final Judgment
Defense Motion for a Stay of Execution of the Judgment
Defense Motion for a New Trial

Auto Negligence - A woman sustained two broken legs in a failure-to-yield crash in Scottsboro that happened when another driver turned in her path; Plaintiff blamed the crash on the tortfeasor's employer on a theory of vicarious liability, but the employer claimed the tortfeasor was on her lunch break and the crash had nothing to do with her employment

Laswell v. Big Rig Truck Parts, LLC., et al., 21-900005
Plaintiff: Tammy Smith, *Wettermark & Keith, LLC.*, Birmingham; and W. N. Watson, *Watson & Neeley, LLC.*, Fort Payne
Defense: Gerald R. Paulk, *Paulk Law Firm, P.C.*, Scottsboro for Big Rig Truck Parts, LLC.; and J. Lenn Ryals, *J. Lenn Ryals, P.C.*, Montgomery, for Lucas
Verdict: Defense verdict
Circuit: **Jackson**, 12-5-23
Judge: M. Brent Benson

During the noon hour on 11-5-20, Judy Laswell was driving a 1998 Ford Explorer as she traveled on AL 79 in Scottsboro. At the same time, a van being driven by Marlina Lucas, an inventory clerk for Big Rig Truck Parts, LLC., was approaching from the opposite direction.

As the two vehicles drew near each other Lucas attempted to make a left turn at the intersection with Goosepond Drive. She did so in Laswell's path, and the two collided. Laswell suffered fractures of the tibia and fibula in her right leg and a shattered left ankle due to the crash. She underwent surgery on both legs. Her medical expenses are not known.

Laswell filed suit against Lucas and blamed her for failing to yield the right of way, turning in her path, and thereby causing the crash. Additionally, Laswell claimed that Lucas had been on the job for Big Rig at the time of the crash and was

driving a vehicle owned by Big Rig. Based on that version of the facts, Laswell named Big Rig as a co-defendant on a theory of vicarious liability.

Although Lucas had separate legal counsel in the case, it appears that the litigation proceeded mainly against Big Rig. The company defended the case denied owning the vehicle Lucas had been driving. Instead, Big Rig claimed Lucas's van was actually owned by Lucas's father.

Furthermore, Big Rig denied that Lucas was doing any work for Big Rig at the time of the crash. Rather, Lucas was on her lunch break and was traveling to her father's place of employment to have lunch with him. Thus, Lucas was on an entirely personal errand that had nothing to do with her employment.

The case was tried for two days in Scottsboro. Interestingly, Lucas is not mentioned on either the verdict form or the judgment. In any event, the jury returned a verdict for Big Rig Truck Parts, LLC., and the court entered a defense judgment.

Case Documents:
Jury Verdict
Final Judgment

Race Discrimination-Harassment - **A cancer researcher (of Iranian descent) at UAB alleged she suffered severe racial harassment for years by a co-worker, and then separately that she was arrested and jailed for 30 hours (after a scuffle with her boss) in retaliation for threatening to report the harassment to the department chair – the researcher then sued the alleged harassing co-worker individually regarding that harassment as well as UAB for retaliation**

Moeinpaur v. UAB, 2:21-1302
Plaintiff: Teri Ryder Mastando, Eric J. Altrip and Anthony Mastando, *Mastando & Altrip*, Huntsville
Defense: Anne R. Yeungert and Cortlin L. Bond, *Bradley Arant Boult Cummings*, Birmingham for Cagle Lynlee Wells Parker and Daniel B. Harris, Birmingham and Dion Y. Kohler, Atlanta, GA all of *Jackson Lewis* and David R. Mellon, *UAB Office of Counsel*, Birmingham, all for UAB
Verdict: $3,825,000 for plaintiff assessed $3,000,000 to UAB and $825,000 to Cagle (co-worker)
Federal: **Birmingham**, 9-9-24
Judge: R. David Proctor

Fariba Moeinpaur, age 62, began her work in 2005 as a cancer researcher at UAB School of Medicine. She was born in Iran (and is of Persian descent) and immigrated to the U.S. in 1989. Moeinpaur is a naturalized citizen. Her supervisor was Dr. Clinton Grubbs, who in turn reported to the Department Chair, Dr. Bruce Chen.

Moeinpaur began to work in 2011 with a co-worker, Mary Jo Cagle. Cagle was a secretary. The two had a long-time conflict that rose to the level of severe and pervasive racial harassment. Moeinpaur alleged that Cagle regularly engaged in verbal harassment. The list of events was long and included Cagle telling Moeinpaur, "You've got a weird ass name," "Go back to Iran. We don't need your kind." "As a non-believer Moeinpaur wold burn in hell," among other similarly offensive remarks. Moeinpaur also alleged Cagle stalked her and even brandished a weapon.

Moeinpaur alleged she made complaints over the years about Cagle's conduct and nothing was done. By February of 2020, Moeinpaur had enough. She had a conversation with Grubbs and indicated she wanted to report Cagle's conduct. Grubbs dissuaded her from doing so because of his belief that Cagle was mafia-connected and there would be repercussions. Moeinpaur recorded the conversation.

Moeinpaur was not deterred and met the next day with Grubbs in his office. She indicated that she would report the harassment to Dr. Chen. Its not clear what happened next as there are differing versions. Moeinpaur indicated Grubbs attacked her in a rage as he feared her reporting Cagle's harassment. In self-defense Moeinpaur slapped Grubbs to get away. Grubbs for his part thought it was he who had been assaulted by Moeinpaur.

Grubbs in fact called the police for relief. The police then arrested Moeinpaur and charged her with Domestic Violence third degree. Moeinpaur was then jailed for 30 hours. The criminal charges against her were later dismissed. A few days later when she didn't return to work, UAB fired her.

Thereafter Moeinpaur filed this lawsuit against Cagle individually as well as UAB. The claim against Cagle was that her campaign of racial harassment had interfered with Moeinpaur's 42 U.S.C. § 1981's contract rights. Moeinpaur's proof burden was that the harassment

created a hostile environment (not just hostile generally) because of Moeinpaur's race. She could take both compensatory and punitive damages against Cagle.

The claim against UAB represented Title VII retaliation. That claim was that UAB had her arrested in retaliation for her threat to complain to Dr. Chen. She could take compensatory damages on this claim which included not only the mental anguish associated with the 30 hours in jail, but also her tarnished professional reputation. While the jury instructions did not limit her award of damages, Title VII does so in this context to $300,000.

Cagle's defense was elegantly simple. She denied she'd harassed Moeinpaur at all. Alternatively, to the extend there was harassment, that harassment was not severe and pervasive. Cagle described it (even if proven as true) as simply unprofessional workplace conduct that didn't come close to interfering with Moeinpaur's right to contract. UAB (only implicated on retaliation regarding the arrest) argued it was not liable for having called the police in response to Moeinpaur slapping Grubbs. Rather, it was the police who made the decision to arrest Moeinpaur.

This case was tried for five days in Birmingham. The jury had two related questions as it deliberated: "Do we consider UAB and Dr. Grubb as one and the same? Are his actions representative of UAB?" It is not clear if or how Judge Proctor answered.

However the questions were resolved, the jury was able to reach a verdict. The jury first found that Cagle had created a hostile environment because of Moeinpaur's race and that the harassment caused Moeinpaur to suffer emotional pain and mental anguish. The jury valued those compensatory damages against Cagle at $500,000. The jury also found Cagle acted with malice and imposed $325,000 more in punitive damages, the verdict against her totaling $825,000.

The jury then turned to retaliation. It found that Moeinpaur had proven by a preponderance of the evidence all of the following: (1) she engaged in a protected activity in telling Grubbs she intended to tell Chen, (2) the arrest was an adverse action against her, (3) she believed in good faith she was harassed, (4) Grubbs called the police to prevent Moeinpaur making a report, and (4) the arrest caused her damages. As the instructions were constructed, the retaliation claim focused on the conduct leading to the arrest. The jury assessed the damages from "the arrest" at $3,000,000. The combined verdict against the UAB defendants was $3,825,000.

Judge Proctor did not enter a final judgment. He instead entered a "Jury Order" that memorialized the trial result. Why? He explained he would wait until post-trial motions were resolved and there were adjustments to the verdict to account for the Title VII statutory limits on damages.

The defendants both moved for post-trial relief Cagle has argued that as a co-worker (just a secretary), she had no authority to thwart Moeinpaur's contract. Moreover, Moeinpaur's allegations of harassment were so incredulous as to defy belief. Finally, the $500,000 in compensatory damages was described as excessive for what Moeinpaur testified was just a little stress and anxiety.

UAB too moved for a new trial. It argued that it was the police who made the decision to arrest Moeinpaur and not the university. UAB also repeated its argument that the Cagle and UAB claims should have been severed. It additionally argued the damages of $3,000,000 were excessive for the distinct event of the arrest whereas Cagle's years of harassment were worth just $500,000 in compensatory damages. These motions are pending.

Moeinpaur has also filed for post-trial remedies. She first moved for an award of attorney fees. Judge Proctor struck the motion as premature as there is no final judgment. Pending is her motion for equitable relief that seeks back pay, front pay, an expungement from UAB records about the arrest, and a requirement that UAB provide her a positive letter of recommendation.

Case Documents:

Pretrial Order
Summary Judgment Order
Jury Question
Jury Verdict (Cagle)
Jury Verdict (UAB)
Jury Order
Defense Judgment as a Matter of Law (Cagle)
Defense Motion for a New Trial (UAB)
Plaintiff Motion for Equitable Relief

Have you tried a case lately? We are traveling all over the state and communicating with court personnel, but if we know about a verdict, we'll get on it right away
Let us know about it at the
Alabama Jury Verdict Reporter

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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Auto Negligence - Plaintiff (apparently a police officer) was on a motorcycle directing traffic at an interstate exit ramp when a passing motorist ran into him; plaintiff sought compensation for his injuries that included a fractured fifth toe

Stubbs v. Wright, 21-900019
Plaintiff: Candace T. Brown, *Shunnarah Injury Lawyers, P.C.*, Birmingham
Defense: Clifton S. Price, II, *Kracke & Price*, Leeds
Verdict: Defense verdict
Circuit: **St. Clair**, 12-6-23
Judge: Billy R. Weathington, Jr.

On 9-15-19, John Stubbs, Jr. was operating a motorcycle on I-20 near Exit 162 in St. Clair County. Although the record does not say so explicitly, it appears that Stubbs was a police officer. What the record does reveal is that he was escorting a bus convoy that was traveling west toward Birmingham.

Stubbs was directing traffic at the point where Exit 162 merges with I-20. At just that moment Robert Wright was driving down Exit 162 in a Hyundai Veloster compact car. As he did so, he ran into Stubbs's motorcycle.

The impact sent Stubbs flying into the air. Stubbs survived the collision, but he sustained a fracture to the fifth toe of his right foot. He also complained of soft-tissue pain in his knees, neck, and back. Stubbs's medical expenses totaled $48,854.

Stubbs filed suit against Wright

and blamed him for not paying attention, failing to yield the right-of-way, and running into him. Wright defended the case and sought to minimize Stubbs's claimed damages.

The case was tried for three days in Pell City. The jury returned a verdict for Wright, and the court entered a defense judgment.

Case Documents:
Jury Verdict
Final Judgment

Trailer Maintenance Negligence - Plaintiff suffered an L-4 fracture when the pickup in which he was riding on the interstate collided with a tire that had detached from a cargo trailer being towed by a vehicle in front of him; plaintiff blamed the incident on both the driver of the other vehicle and the company that had recently performed maintenance on the trailer

Deakle v. Absolute Trailers, LLC., et al., 22-900830
Plaintiff: Bryan E. Comer and Lacey D. Smith, *Tobias & Comer Law, LLC.*, Mobile
Defense: Michelle L. Hendrix and Gregory Harris, II, *Vernis & Bowling of Northwest Florida, P.A.*, Pensacola, FL, for Absolute Trailers; Steven P. Savarese, Jr., *Holtsford, Gilliland, Hitson, Howard, Stevens, Tuley & Saverese, P.C.*, Daphne, for Castillo
Verdict: $1,318,000 for plaintiff (comprised of $659,000 compensatory and $659,000 punitive) against Absolute Trailers; defense verdict for Castillo
Circuit: **Mobile**, 8-21-24
Judge: Brandy B. Hambright

In early April of 2022, Pascual Castillo and his wife, Maria, were planning on driving from their home in Gainesville, GA to their native Mexico. The plan was that they would make the trip in their Ford E-350 van while towing a 2018 Horton cargo trailer loaded with their belongings. Castillo would drive while Maria would ride with him as a front seat passenger.

The cargo trailer was allegedly in a state of disrepair, and so Maria arranged for maintenance to be done on it in preparation for the long drive. In particular, Maria arranged for the trailer's brakes and hubs to be replaced.

The work was done by a repair shop called Absolute Trailers, LLC. located near the Castillos' home. The job required the Absolute Trailers technician to remove all four of the trailer's tires, replace the brakes and hubs, and then reattach the tires.

The maintenance work was completed on 4-7-22, and the Castillos set out on their journey. Two days later, on 4-9-22, the Castillos had made it to southern Alabama. Pascual was driving south on I-65 in Mobile County while Maria rode with him as a front seat passenger when disaster struck.

Directly behind the Castillos was a white Ford F-250 pickup truck in which Brandon Deakle was riding as a backseat passenger. At a point near mile marker 16, the front driver's side tire on the trailer detached and rolled under the pickup in which Deakle was riding.

The impact caused the pickup to become momentarily airborne. When it came back down the force of the landing caused Deakle to suffer a closed L-4 fracture. He reports that it still causes him pain to this day. The record does not reveal the amount of Deakle's medical expenses.

Deakle filed suit against Castillo and blamed him for failing to maintain his trailer in a safe condition. Deakle later amended his complaint to add a claim against Absolute Trailers for failing to perform the maintenance on the properly.

If successful, Deakle sought both compensatory and punitive damages against both Castillo and Absolute Trailers. Finally, Deakle presented underinsured motorist claims against Integon National Insurance Company and USAA Casualty Insurance Company. The identified experts for Deakle included Jay Zenbower, Cargo Trailer Maintenance, Altamonte Springs, FL; and Dr. Matthew Kern, Neurosurgery, Navarre, FL.

Integon National paid its policy limits and was dismissed from the case. USAA remained in the case but opted out. The litigation proceeded against Castillo and Absolute Trailers.

The specific allegation against Absolute Trailers was that its technician had failed to tighten the lug nuts on the trailer tires. In support of this theory Deakle noted that a friend of Castillo repaired the trailer after the crash and found all the lug nuts on the remaining tires were loose.

Castillo and Absolute Trailers defended the case and pointed the finger of blame at each other. Castillo joined Deakle in blaming the incident on the negligence of Absolute Trailers's technician in failing to tighten the lug nuts.

Absolute Trailers, by contrast, blamed the incident on Castillo for not stopping every 50 to 100 miles along his journey to make sure the lug nuts were still secure. The identified defense experts included Dr. Donald Tyler, II, Neurosurgery, Mobile.

The case was tried for three days in Mobile. The jury returned a mixed verdict that exonerated Castillo but found against Absolute Trailers. The jury awarded Deakle compensatory damages of $659,000 solely against Absolute Trailers. To that amount the jury added another $659,000 in punitive damages.

That brought Deakle's award to a

combined total of $1,318,000 solely against Absolute Trailers. The court entered a judgment for that amount, and a defense judgment for Castillo. Absolute Trailers has satisfied the judgment.

Case Documents:
Jury Verdict
Final Judgment

Auto Negligence - Plaintiff sought compensation for injuries he sustained in a crash on a rural road in Walker County

Martin v. McCollum, 20-900069
Plaintiff: Kirby D. Farris, *Farris Riley & Pitt, LLP.*, Birmingham
Defense: Clifton S. Price, II, *Kracke & Price*, Leeds
Verdict: $450,000 for plaintiff
Circuit: **Walker**, 11-14-23
Judge: Doug Farris

On 9-16-19, Michael Martin was driving on Alternate Seventy-Eight in Walker County. At the same time, John McCollum was also driving in the same area. An instant later, McCollum turned in front of Martin. It was a significant impact.

Martin subsequently complained of radiating neck pain that went to his arm. He subsequently underwent a fusion repair surgery. His medical bills were $107,000 of which there was a $35,000 subrogation interest..

Martin filed suit against McCollum and blamed him for causing the crash. He did not seek introduce proof at trial of his medical bills or the subrogation interest. McCollum defended the case and minimized Martin's claimed injuries.

The case was tried for two days in Jasper. The jury returned a verdict for Martin and awarded him damages of $450,000. The court entered a judgment for that amount, and it has been satisfied.

Case Documents:
Jury Verdict
Final Judgment

Medical Negligence - A trial attorney underwent a carpal tunnel release surgery that he claimed resulted in a cut to 80% of his median nerve; plaintiff blamed the nerve injury on his orthopedic surgeon for performing the procedure incorrectly and then failing to recognize and treat the injury

Hall v. Sparks, et al., 21-900453
Plaintiff: S. Shay Samples, *Hare Wynn Newell & Newton*, Birmingham
Defense: Scott M. Salter and J. Bennett White, *Starnes Davis Florie, LLP.*, Birmingham
Verdict: Defense verdict
Circuit: **Etowah**, 9-27-24
Judge: Jennifer M. Howell

In December of 2019, Anthony Hall was a patient of Dr. Dierick Sparks, an orthopedic surgeon in Rainbow City. On 12-13-19, at Riverview Regional Medical Center in Gadsden, Dr. Sparks performed an endoscopic carpal tunnel release procedure on Hall's right arm.

Although Dr. Sparks recorded in his operative notes that there were no complications during the procedure, Hall would later disagree. Over a month later on 1-21-20, Dr. Gary Maddox performed a second surgery on Hall's right arm. During that surgery Dr. Maddox discovered that 80% of Hall's median nerve had been cut at the level of the carpal tunnel.

It was Hall's belief that Dr. Sparks had cut the median nerve during the procedure on 12-13-19 and had failed to recognize it. Given that Hall is right-handed, the surgery had thus been on his dominant arm. He claims the damage to the median nerve in that arm has impaired his ability to engage in his profession as a trial attorney partly because it is now more difficult for him to take notes.

Hall filed suit against Dr. Sparks and Dr. Sparks's practice group, The Orthopedic Center, LLC. Hall criticized Dr. Sparks for performing the procedure incorrectly by cutting the median nerve and then failing to recognize and treat the injury. The identified experts for Hall included Dr. Julian Aldridge, III, Orthopedic Surgery, Durham, NC.

Dr. Sparks defended the case and denied his treatment of Hall represented a breach of the standard of care. Dr. Sparks blamed the surgical error on Hall's allegedly aberrant anatomy. Hall's expert, Dr. Aldridge, rebutted that testimony and maintained that Hall's anatomy was not in fact aberrant.

The case was tried for five days in Gadsden. The jury returned a verdict that exonerated Dr. Sparks and his practice group. The court entered a defense judgment.

Case Documents:
Jury Verdict

Truck Negligence - Plaintiff was injured when a tractor-trailer backed into her; plaintiff initially sought recovery against both the driver of the tractor-trailer and the driver's employer, but she subsequently dismissed the employer and pursued recovery solely against the driver

Milton v. Wright, 19-900127
Plaintiff: William R. Phillipi, III, *Gilmore Law Firm*, Grove Hill
Defense: Caitlin V. Malone, *Webster Henry Bradwell Cohan, Speagle & DeShazo, P.C.*, Montgomery
Verdict: $125,000 for plaintiff
Circuit: **Clarke**, 11-7-23
Judge: J. Perry Newton

In the late afternoon of 12-5-17, Dominique Milton was driving north on West Front Street in the town of Thomasville. Just up ahead, Marcus Wright was operating a tractor-trailer for his employer, W. S. Babcock Corporation.

IN THE CIRCUIT COURT OF CLARKE COUNTY, ALABAMA

DOMINIQUE MILTON, {}

Plaintiff, {}

Vs. {}

MARCUS DWAYNE WRIGHT, {}

Defendant. {}

CASE NUMBER

CV-2019-900127

VERDICT OF THE JURY

We, the Jury, find in favor of Dominique Milton and against Marcus Dwayne Wright, and assess damages in the amount of $ 125,000.00 Dollars.

FOREPERSON

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CIRCUIT CLERK'S OFFICE
CLARKE COUNTY, ALABAMA
2023 NOV -7 PM 4:40
CIRCUIT CLERK

OR

We, the Jury, find against Dominque Milton and in favor of Marcus Dwayne Wight in the claims that Dominque Milton has against Marcus Dwayne Wright.

FOREPERSON

The Milton v. Wright jury verdict

For reasons the record does not explain, Wright was backing up the tractor-trailer in the road. As he did so, he ran into the front of Milton's vehicle. The record does not describe the nature of Milton's claimed injuries or reveal the amount of her medical expenses.

Milton filed suit against both Wright and W. S. Babcock Corporation. She blamed Wright for backing into her, and she targeted W. S. Babcock Corporation on a theory of vicarious liability. However, Milton later dismissed W. S. Babcock Corporation from the case.

The litigation continued thereafter solely on Milton's claim against Wright. He defended the case and sought to minimize Milton's claimed damages.

The case was tried for two days in Grove Hill. The jury returned a verdict for Milton and awarded her damages of $125,000. The court entered a judgment for that amount, plus costs. The judgment has been satisfied.

Case Documents:

Jury Verdict

Final Judgment

Insurance Contract - In this unusual and nuanced take on the traditional "house burned down" insurance case, there were complex issues as to who set the fire, public policy, bad faith and ultimately a set-off for a so-called "other insurance" provision in the contract that reduced the raw verdict from $425,000 to $226,727

Renfroe v. USAA, 4:21-1649

Plaintiff: F. Michael Haney, *Inzer Haney McWhorter & Haney*, Gadsden and E. Allen Dodd and Eric Brisendine, *Scruggs Dodd & Brisendine*, Fort Payne

Defense: James L. Patillo and Priscilla K. Williams, *Christian & Small*, Birmingham

Verdict: $425,000 for plaintiff

Federal: **Anniston**, 2-27-24

Judge: Staci G. Cornelius

Martin Renfroe co-owned a property and residence in Centre, AL (Cherokee County) on 7591 County Road Route 16 with his adult daughter, Sherry Lambert. For much of the time that Renfroe owned the property, he did not have insurance on it. Lambert insured it with Allstate.

There was proof that Renfroe and Lambert had a very fractured relationship. She wanted a quitclaim deed to the property from her father and indicated she'd not let him see his grandson if he did not relent. By contrast he accused her of misconduct including falsely suggesting he had Alzheimer's.

Things had really broken down between father and daughter by the end of 2019. That December Renfroe sued Lambert in Cherokee County to order the property sold. There was a hearing in January in the case, and Lambert made allegations that her father wanted his own homeowner's insurance so that his interest would be protected to the extent of that coverage if there was a fire loss.

Lambert took that as a threat that her father would burn the property down.

In any event, Renfroe did secure a $500,000 policy on the property on 1-18-20 with USAA. A few weeks later on 2-12-20, the Cherokee County court ordered the property sold. Lambert was again concerned that her father would burn down the house, and she reported those concerns to the police two days later. Renfroe denied any intention ever to burn down the house.

Twelve days after the hearing (and five weeks after Renfroe secured the policy), the property on 7591 County Road was consumed by fire on the morning of 2-24-20. The fire department got there six minutes after the call came in. The home was fully engulfed. The fire was later linked to a propane heater. While there was no evidence to suggest the fire was intentionally set or that any person had done so, the fire was suspicious.

Renfroe subsequently filed a claim with USAA for the fire loss. He sought the full $500,000. At all times he denied having anything to do with setting the fire. He pointed to proof that on the morning of the fire, he was far away meeting with his financial advisor in Rome, GA. Nevertheless, there was still proof from a cell phone tower that placed him closer to the property.

USAA performed an investigation and denied the claim. It concluded the fire was intentionally set and that it was done by either Renfroe or his daughter. The insurer cited a "co-insured" exclusion such that there was no coverage when even if Renfroe didn't set the fire, his co-insured daughter had done so. Lambert too made a claim and settled her claim against Allstate.

This litigation followed. Renfroe sued USAA in state court to enforce the insurance contract. USAA removed the case to federal court. Renfroe's contract claim was simple. The fire had destroyed the home, and he was entitled to the full policy limits as it related both to the property damage and his mental distress.

Renfroe also alleged bad faith by USAA in denying the claim. He argued the "co-insured" exclusion had already been declared void by the Alabama Supreme Court. Thus, it was "bad faith" for USAA to deny the claim on a "void" provision of the contract.

A flurry of summary judgment motions followed. USAA sought relief and argued that, (1) Renfroe was not entitled to mental anguish damages in a contract case, and (2) as the claim was fairly debatable (maybe Renfroe did set the fire), there was no bad faith. Renfroe too moved for summary judgment on bad faith because of the insurer's reliance on the void co-insured provision.

The court's order on those motions clarified the issues for the case. Judge Cornelius granted summary judgment for USAA on Renfroe's bad faith claim, as even if the co-insured provision was void, it was still fairly debatable whether Renfroe was involved. The court denied summary judgment to USAA as to the mental anguish claim. Thus, as the case came to trial, the sole remaining count was Renfroe's breach of contract claim which included damages for both property loss and mental anguish. While USAA could not raise the co-insured arson defense (either Renfroe or Lambert had set the fire), it could look to the proof that Renfroe (he denied this at all times) was involved.

This case was tried for three days. The jury asked three questions:
(1) On monetary awards, does the award have to be $500,000 or more for claim and damages?
(2) Was refund given for premiums?
(3) Was there an appraisal? What is the plaintiff's military background? Why did he have USAA coverage if no military? A relative?
The third set of questions was interesting as while anyone with a television knows you must have served in the military to buy USAA coverage, that was not an issue in this case. The record does not reveal how or if the court answered the questions.

The jury returned a verdict for Renfroe in the sum of $425,000. It was a general award, and it is not clear how much, if any, of that sum represented emotional distress. Judge Cornelius did not immediately enter a judgment but asked the parties to brief the court on outstanding issues.

USAA sought to reduce the verdict because of an "other insurance" provision in the insurance contract. This related to the daughter's Allstate coverage. USAA calculated that its policy ($500,000) plus the Allstate policy ($437,247) totaled $937,247. USAA constituted 53.3% of that coverage ($500,000 of $937,247) and thus was only on the hook for 53.3% of the verdict. That equaled $226,727. The plaintiff too sought pre-judgment interest on the verdict.

The court had its finally judgment a little more than seven months after the trial. The verdict was reduced to $226,727 consistent with USAA's motion. The court also denied pre-judgment interest as the damages were in dispute and not liquidated. USAA took an appeal from the final judgment. Renfroe took a cross-appeal from the summary judgment order. The appeals have both been lodged with the 11th Circuit Court of Appeals.

Case Documents:
Summary Judgment Order

Jury Verdict
Jury Questions
Defense Motion to Reduce Verdict

A Notable Georgia Verdict
(Involving Alabama Counsel)

Nursing Home Negligence -
The plaintiff (age 75 and a long-term nursing home resident) suffered a sudden and severe decline leading to her death which her estate linked to the negligence by the nursing home in failing to treat an infection

Alexander v. Lake City Nursing & Rehabilitation Center, 1:20-4986
Plaintiff: Eldridge Suggs, IV, Mari Agasarkisian and Robbin Shipp, *The Suggs Law Firm*, Atlanta, GA
Defense: R. Gordon Sproule, Jr., *Huie Fernambucq & Stewart*, Birmingham
Verdict: Defense verdict on liability
Federal: **Georgia Northern District Atlanta, GA**
Judge: Victoria M. Calvert
Date: 9-10-24

Mary Alexander, then age 66, was admitted to the Lake City Nursing and Rehabilitation Center (Morrow, GA) in 2010. She had a long list of co-morbidities that included vascular dementia. She'd remain at the nursing home until January of 2019. There was no issue with Alexander's care at Lake City Nursing from 2010 until November of 2018.

There was evidence Alexander, then age 75, suffered a severe decline in her health in January of 2019. She was hospitalized at Piedmont Hospital on 1-22-19 with an infection. She continued to decline and died eight months later.

In this lawsuit Alexander's estate sued the nursing home and alleged it had failed to monitor and note her decreasing oral and fluid intake. This signaled an infection The error was that in failing to identify the infection, Alexander became dehydrated and septic, all of which led to her decline and death. The estate's liability expert was Dr. Inna Sheyner, a Geriatrician from Tampa, FL. If the estate prevailed it could take a general award of damages.

The nursing home first removed the case from Clayton County to federal court. The nursing home denied any violation of the standard of care and linked Alexander's decline to her multiple co-morbidities that had naturally advanced. It also denied causation as to death, noting all the records suggested her passing was related to a stroke. The defense expert was Dr. Sharon Brangman, Geriatrics, Syracuse, NY.

This case was tried to a jury in Atlanta. The instructions asked if the plaintiff had proven by a preponderance of the evidence that the nursing home breached the standard of care. The jury said no and then didn't reach the issues of proximate cause and damages. A defense judgment was entered for the nursing home.

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