The Mississippi Jury Verdict Reporter

The Most Current and Complete Summary of Mississippi Jury Verdicts

June 2019 **Statewide Jury Verdict Coverage** **10 MSJVR 6**

In This Issue

Civil Jury Verdicts

Timely coverage of civil jury verdicts in Mississippi including court, division, presiding judge, parties, case number, attorneys and results. Notable results from the southern region, including Memphis and New Orleans, are also covered.

Premises Liability - While shopping in the children's clothing section with his mother, a little boy, age 5, suffered an injury to his eye when he struck a low-level clothing rack while playing tag with his brother – his theory against the retailer blamed the use of this sort of rack where the risk of such an injury is foreseeable, there being proof the national retailer had 35 similar incidents in the last five years – a Biloxi jury imposed $1,000,000 in punitive damages against the retailer

Bourg v. J.C. Penney, 16-163
Plaintiff: Mariano J. Barvie, *Hopkins Barvie & Hopkins*, Gulfport
Defense: Nicole C. Huffman and Thomas L. Carpenter, *Carr Allison*, Gulfport
Verdict: $1,468,000 for plaintiff (including $1,000,000 in punitive damages) and assessed 70% to the defendant
Court: **Harrison**
Judge: Christopher L. Schmidt
Date: 5-24-19

Andrew Bourg, then age 5, joined his mother (Natalie) and brother (Evan, age 9) on a trip to the Edgewater Mall in Biloxi on 9-28-14. It promised to be a fun trip. They were going to see a movie.

But before the fun could start, their mother wanted to do some shopping at the J.C. Penney retail store. She was a regular customer. The mother did her business in the children's section.

Andrew and his brother were not much interested, as one would expect, in shopping for clothes. There was proof the boys were engaged in horseplay – they were playing tag, running through the store and winding in and out of the clothing racks.

As Andrew did this, he turned a corner. In so doing he caught his eyelid on a protruding sales rack that was at his eve level. It nearly ripped his entire left eyelid off. A four-hour surgery was performed that day to repair the laceration and Andrew was kept overnight. He later underwent two more surgeries to remove sutures and repair tear ducts. While the eye injury has mostly healed, there was proof Andrew has suffered from anxiety and emotional distress as a result of this incident.

In this lawsuit (pursued by his parents), Andrew sought damages from J.C. Penney. He blamed the incident on the store's use of so-called "six-way" clothing racks. There was proof the rack features arms that protrude beyond the base of the clothing rack.

Particularly this kind of rack has a protrusion with a sharp edge at just the level of a small child. The plaintiff's retail safety expert, Tracy Campbell, Tallahassee, FL, was critical of the use of the six way rack in describing this so-called "run into" incident. This use of this rack was especially dangerous in a children's section where horseplay is common. Campbell was also critical of J.C. Penney for using a rack that had sharp rather than smooth edges.

Then beyond just ordinary negligence, Andrew sought to impose punitive damages for the reckless

Mariano Barvie for the plaintiff

The Six-Way Sales Rack in question

disregard of customer safety. He cited the danger of these sorts of racks was profound and that J.C. Penney knew about it. The plaintiff presented proof of some 35 similar incidents across the country at J.C. Penney stores.

J.C. Penney initially removed the case to federal court on a diversity basis. However as the plaintiff had also sued a store manager (a Mississippi resident), the federal court remanded the case to state court.

J.C. Penney defended on the merits that the use of a six-way rack was normal, reasonable and in fact they were the industry standard. Moreover the arms of the rack were not jagged or otherwise dangerous. A defense retail safety expert was Tara Amenson, Charlotte, NC. The defense also implicated the mother's failure to supervise the boys, there being proof they were exceptionally boisterous, a store manager even correcting the children in the minutes before this incident.

This case was tried for four days in Biloxi. The jury found against J.C. Penney on liability. It also found Andrew's mother was to blame. That fault was assessed 70% to J.C. Penney and the remainder to his mother.

Then to damages, the plaintiff took $468,000. As the verdict itself is not a part of the court record, it is not clear exactly the amount of the verdict or if it was a "general" or a "specific" verdict.

In any event the parties moved immediately to the punitive damages phase. The jury deliberated this issue and imposed punitives of $1,000,000. The raw verdict totaled $1,468,000. At the time of this report (two weeks post-trial), the original compensatory damages verdict is still not a part of the court record. The punitive damages portion is included. No judgment has been entered either. Presumably it would be for Andrew for the compensatory damages less 30% comparative fault plus the approved amount (subject to the state's punitive damages scheme) of the punitive damages.

Case Documents:
Defense Summary Judgment Motion
Court's Punitive Damage Jury Instructions and Jury Verdict

Race Discrimination - Five exotic dancers, who worked at a Jackson strip club, alleged a broad pattern of race discrimination at the club in terms of scheduling, wages and working conditions – the trial court granted summary judgment on liability for the plaintiffs and the case proceeded to trial on damages, the plaintiffs taking awards ranging from $420,450 to $1,009,200 all totaling $3.391 million

Williams et al v. Danny's Downtown Cabaret, 3:16-769
Plaintiff: Alysia D. Franklin, Christopher Wooley and Gerald L. Miller, *EEOC*, Birmingham, AL
Defense: William C. Walter, Hattiesburg
Verdict: $3,391,550 for five plaintiffs ranging from $420,450 to $1,009,200
Federal: **Jackson**
Judge: Henry T. Wingate
Date: 5-14-19

Danny Owens became well-known as the Strip Club King of Memphis, TN. His network of strip clubs stretched all the way to Jackson. He operated Danny's Downtown Cabaret. His career was interrupted in the 1990s by a federal conviction in Memphis (upheld by the Sixth Circuit) on gambling, prostitution and money laundering charges. Owens received a long sentence in a federal prison.

Owens continued to operate his businesses from federal prison. There

was proof he would make daily calls to check in on the progress of his strip clubs. This litigation would concern the operation of his Jackson businesses.

The five plaintiffs in this case, Ashley Williams, Adrea Williams, Sharday Moss, Jordyn Riddle and Latoria Garner, all worked as exotic dancers at Danny's Cabaret for varying periods between 2006 and 2016. All are black. They alleged a broad pattern of race discrimination was in effect at their place of employment as operated by Danny (from prison and then after his release in 2016) and his son, Dax.

Black dancers were held to a strict schedule and would be fined if they missed a day. White dancers could just show up. Black dancers couldn't make their own schedule – white ones could. There was also a "quota" of black dancers at any time and if there were too many at work (in proportion to white dancers), the black ones were sent home.

Danny's Cabaret also operated a sister club across the street known as Black Diamonds. This club was designed by the company to appeal to black customers. The plaintiffs in this case were forced to take hours at Black Diamonds even though the pay was less (earned from lap dances) and the working conditions inferior. Essentially it represented a pay cut to be banished to the "black" club across the street.

There was also proof that Danny's Cabaret charged black customers more money to enter the club than whites. This was all on top of proof from the dancers that they were regularly subjected to racially derogatory language and remarks. As the case was tried, each of the plaintiffs sought compensatory and punitive damages.

As the litigation progressed, Judge Wingate simplified matters. He granted a summary judgment on liability for the plaintiffs. The case would be heard on damages only. The defendants had raised a variety of defenses related to the identification of the proper party defendant, there being a confusing labyrinth of ownership and title as to Danny's Cabaret. That was ultimately a moot issue by the time of trial.

This case was tried for two weeks on damages. The court's instructions asked if the plaintiffs were entitled to damages as a result of the defendant's actions. The answer was yes.

Each of the five plaintiffs took an award for past and future emotional suffering as well as back pay. Those awards were different as to each plaintiff. The jury made identical $300,000 punitive damage awards to all five plaintiffs.

The combined verdicts for the plaintiffs totaled $3,391,550. They were broken down as follows:
Ashley - $445,400
Adrea - $840,000
Sharday - $676,500
Jordyn - $420,450
Latoria - $1,009,200
At the time of this report a few weeks after the trial, no judgment had been entered.

Case Documents:
Summary Judgment Order
The Jury Verdict

Civil Rights - Having received a call from a resident who reported a prowler, he Jackson Police botched the call from the 911 dispatch all the way to the police who arrived and failed to make contact with the caller – in fact the prowler was now inside and preparing to murder the caller, her body being found the next day – the estate sued the city and alleged both negligence and a civil rights violation – the cases were tried together, a jury ruling on the civil rights counts, the state Tort Claims Act count being tried as a bench trial

Harrion v. City of Jackson, 15-259
Plaintiff: Dennis C. Sweet, III, Eduardo A. Flechas and Dennis C. Sweet, IV, *Sweet & Associates*, Jackson
Defense: J. Richard Davis, *Assistant City Attorney*, Jackson
Verdict: $1,000,000 for plaintiff
Court: **Hinds**
Judge: Adrienne Wooten
Date: 5-21-19

Ruth Harrion, age 67 and described as a beloved mother and grandmother, was home alone at her residence on Kings Road Avenue in Jackson. Her home is on the north side of town, just off I-220 near Medgar Evers Boulevard. Harrion detected a man walking around her home late on the night of 7-14-14.

Harrion called 911 at 2:23 a.m. and spoke to a dispatcher, Debra Goldman. Harrion reported that "there [sic] a prowler around my house." Goldman reported it as a priority call and two Jackson police officers, Tommie Heard and Derrick Evans, were dispatched to Harrion's home. They were sent within two minutes of the call and arrived six minutes later. Goldman hung up with Harrion.

The police arrived at Harrion's home. It was dark and apparently no

one was at home. The police knocked on the door. There was no answer. They were able to observe the backyard was fenced. After poking around for 20 minutes or so, the police left. They'd found no evidence of a prowler.

In fact the prowler was now inside the home and had assaulted Harrion. His name was Alonzo Stewart. He was Harrion's neighbor. Stewart would later explain he was inside the home and heard the police outside trying to make contact with the doomed Harrion.

There was evidence Stewart brutally assaulted and murdered Harrion. She was beaten, strangled and shot in the face. Harrion's neck was also broken and there was evidence of sexual assault. Her body was found 11 hours later by a family member.

Stewart was picked up for the crime several days later. While charged with capital murder, Stewart has not yet been tried in part because of issues about his mental competency.

Harrion's death shocked Jackson. A week later the city's police chief, Lindsey Horton, apologized for the actions of the police officers in failing to search the perimeter of her home and make contact with Harrion. He also suddenly resigned.

Harrion's estate, representing her adult six children, sued the City of Jackson and presented two counts. The first was a Tort Claims Act alleging reckless disregard. The second was founded in civil rights, the police and Jackson dispatch violating her constitutional rights to due process as guaranteed by the 14th Amendment in failing to intervene and protect her.

While the claims were different, they shared the same predicate. Namely, the police response was botched from the beginning. First the dispatcher violated protocol in handling the call. That included not staying on the phone with Harrion until the situation was resolved. The police response at Harrion's home was equally inadequate – they never made contact with Harrion or otherwise cleared the call.

It was not enough to just knock on the door and look over the fence. The plaintiff postured that if policy had been followed and contact made, more likely than not, Harrion would have survived.

The City of Jackson denied fault and postured that there was no evidence of a constitutional violation. The defense cited that Goldman treated the call as a high priority and the officers were promptly dispatched to the scene. The sole tortfeasor, the government argued, was Stewart who assaulted and murdered Harrion.

Because of the duality of the estate's claim, presenting a federal civil rights count predicated on § 1983 as well as a Tort Claims Act count, there was an interesting trial arrangement. The § 1983 claim would be tried to a jury. The state law claim would be tried at the same time with Judge Wooten

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Case Style _____

Jurisdiction _____ Case Number _____

Trial Judge _____ Date Verdict _____

Verdict _____

For plaintiff _____ (Name, City, Firm)

For defense _____ (Name, City, Firm)

Fact Summary _____

_____

Injury/Damages_____

Submitted by: _____

_____

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acting as the fact finder. There was also a key distinction as the burden of proof on the state law claim was the much higher "reckless disregard" standard.

That trial was conducted for five days. The jury got the case and deliberated for almost two hours. It found for the estate on the civil rights count and awarded $1,000,000 in damages. However the record in the case has been poorly maintained. The verdict is not a part of the record, nor are the court's instructions. In fact there is no indication in the court record at all that there was even a jury trial.

There has been no judgment entered yet either. The parties have since been begun the process of preparing proposed findings of fact on the state law claim. Notably the defendant has argued that whatever mistakes were made by the City of Jackson, they did not rise to the level of reckless disregard. At the time of this report, the government had filed its findings, while the estate had not. The case is pending.

Case Documents:
Defense Proposed Findings of Fact

Negligent Security - Two war veterans met for a night of drinking in West Point – when the bars closed and the party moved to the Huddle House, the men (they are white) were beaten in the parking lot (one very severely) after exchanging racial banter with fellow Huddle House patrons – in this lawsuit the veterans presented a negligent security theory against the restaurant

Weems et al v. Huddle House, 15-66
Plaintiff: Edward Blackmon, Jr., Bradford J. Blackmon, *Blackmon & Blackmon*, Canton, David C. Owen, Columbus, MS and Amanda K. Meadows, Columbus
Defense: John B. Brady, *Mitchell McNutt & Sams*, Tupelo and Willie T. Abston, Flowood for Huddle House
Robert Haughton, Columbus for Security Guard Avant
Verdict: Defense verdict on liability
Court: **Clay**
Judge: Lee J. Howard
Date: 5-2-19

Ralph Weems, then age 32 and a war veteran, met a buddy, David Knighten, also a veteran for a night of drinking in West Point, MS on 8-22-14. The pair had seen a lot in their decorated service in Afghanistan and other international locations. Both were disabled by their military service related to post-traumatic stress.

The pair were joined by a designated driver, Christina Sparks, and they made the rounds of West Point bars. That included a stint at The Pony. There was proof Weems was intoxicated and passed out at one point at The Pony.

The clubs were closing down and the group went to Waffle House to eat. They recalled an ominous warning as they went inside. Weems and Knighten, who are white, were told there were racial tensions this evening at the Waffle House in part because of the infamous events concurrently happening in Ferguson, MO.

Weems and Knighten (the plaintiffs) were unconcerned by the warning. They were military veterans who had served with people of color in all sorts of capacities all over the world.

Despite that confidence, words were exchanged at the Waffle House between the plaintiffs and black patrons. There was proof Weems used racially charged language included the n-word. As things escalated at the Waffle House, Weems picked up bottles to defend himself. The black patrons picked up chairs.

The police were called to the Waffle House and the tempest was diffused. All were given instructions to go home. The designated driver, Starks, had implored the police to let her take the obviously intoxicated Weems home rather than arrest him.

In the minutes that followed, Weems prevailed on Starks to continue the evening. They went to another late night restaurant, Huddle House. It was now past two in the morning. There was another confrontation between the plaintiffs and black patrons. There was proof again that Weems used the n-word repeatedly.

Huddle House had a security guard working that night, Anne Avant. Avant was moonlighting, her day job being a local jailer and auxiliary West Point cop. Avant told the men to take it outside. They did just that.

Several men jumped Weems in the parking lot and his head hit the ground violently. They then began to kick him. When Knighten was knocked down, his shirt moved so that the attackers could see he was carrying a pistol. They fled. Three of the Weems assailants were later apprehended and pled guilty regarding the assault.

Weems was badly hurt in the attack and suffered a permanent brain injury. He now lives in a rehabilitation hospital in Louisiana and will require care for the rest of his life. His damages were enormous and were quantified by several experts including, Dr. Howard Katz, Physical Medicine, Aaron Wolfson, Life Care Plan, Metairie, LA and Bill Brister, Economist. His total damages were quantified at $15,000,000.

Knighten has improved from his injuries sustained in the attack but there was proof his pre-existing post-traumatic stress was made worse. His medicals were $66,000 and he sought half-a-million more dollars in non-economic damages.

In this lawsuit the plaintiffs sued Litco (the parent of Huddle House) and presented a negligent security theory. Avant was also sued individually and had her own counsel throughout the litigation.

The plaintiff's theory blamed Huddle House for trying to cash in on West Point's so-called "Club Night." When the bars close down, the theory went, hundreds of patrons come to eat and Huddle House cashes in. Despite the late night environment mixed with alcohol, the plaintiffs argued, the security was inadequate.

While it was true that Huddle House had a security guard, it was argued her efforts were inadequate. In confronting an emergency, Avant's instructions were to call her District

Manager as opposed to the police. Then in this circumstance, her only reaction was to send the already combative patrons outside to settle the matter. She took no steps to protect Weems or Knighten. The plaintiff's security expert was John Tisdale, Jackson.

Huddle House defended that Weems and Knighten were to blame for the incident. It cited a combination of their intoxication and Weems' use of racist language. He went looking for a fight, attorney Abston told the jury in closing arguments, and he found one. Huddle House also denied there was any atmosphere of violence at the restaurant or that it could have foreseen this assault. A defense security expert was Bruce Jacobs, Allen, TX. Avant too defended that she did her job in controlling the situation as she perceived it.

The plaintiffs countered that Huddle House was doing all it could to deflect blame in the case. Their attorney, Blackmon, told the jury that they were more concerned with making money than keeping their patrons safe. They essentially crossed their fingers and hoped – Blackmon further explained the use of the n-word did not excuse Huddle House's duty to provide a safe environment. A single phone call, Blackmon argued, would have saved the plaintiffs from this attack.

Key proof in the case was the surveillance video from the Huddle House. While it provided a broader look at what happened, the attorneys for both sides told the jury to look to the testimony to fill in the gaps.

This case was racially charged from start to finish. As the jury was being selected, Huddle House used three of four strikes on white jurors. The plaintiffs made a *Batson* challenge, the restaurant then defending their decision to strike. This was the interesting reverse-*Batson* case where a civil defendant sought to strike white jurors and have a jury panel with a larger minority representation. Ultimately the jury that was impaneled had eight black members and four who were white.

The case was tried for several weeks and was in court for a total of 11 days. The jury deliberated less than thirty minutes. The court's primary instruction asked if Huddle House or Avant was at fault. The answer was no and then jury did not reach the duties of "other parties", the plaintiffs, apportionment or damages. A defense judgment was entered.

Case Documents:
Defense Motion for Summary Judgment
Plaintiff Summary Judgment Reply
The Jury Verdict

Medical Malpractice - An anesthesiologist was blamed for error in failing to secure the plaintiff's airway after a five vessel bypass surgery

Hayden v. Painter, 13-102
Plaintiff: James D. Dukes and Seth M. Hunter, *Dukes Dukes & Hunter*, Hattiesburg
Defense: Romney E. Entrekin, Richard O. Burson, P. Grayson Lacey, Jr. and Benjamin B. Morgan, *Burson Entrekin Orr Mitchell & Lacey*, Laurel
Verdict: Defense verdict on liability
Court: **Lamar**
Judge: Claiborne McDonald, IV
Date: 5-21-19

James Hayden, age 65, underwent a five vessel bypass surgery on 4-23-13. It was performed by Dr. Joseph Rubelowsky at Wesley Medical Center. The defendant in this case, Dr. Christopher Painter, provided anesthesia during the surgery. The surgery itself was uneventful.

A routine chest x-ray was taken following the surgery and it indicated the endotracheal tube was improperly placed. Painter was consulted and attempted to advance the tube. This led to the loss of Hayden's airway.

Painter undertook efforts to regain the airway and was ultimately successful. However Hayden was not fully oxygenated for a period and this led to cardiac arrest and an anoxic brain injury. His condition deteriorated over the next few days and he died four days later when life support was removed.

The Hayden estate sued Painter and alleged error by him in mismanaging the airway. His expert, Dr. Stanley Hall, Anesthesia, New Orleans, LA, was critical of Painter in assessing and replacing the tube. Particularly in facing the emergency of a compromised airway, Painter lacked a plan to restore it – this was especially important as Painter knew that the morbidly obese Hayden had a difficult airway. An economist for the estate who valued the decedent's economic loss was George Carter.

Painter defended that when he arrived at the bedside, he immediately identified that the tube was inadvertently misplaced and that it was an emergency. He then took appropriate steps to restore the airway.

Painter's experts explained medicine is not an exact science and that he acted reasonably. Particularly, Painter was not to blame for the initial loss of the airway and then in

confronting that emergency, he couldn't know the tube was irreparably compromised.

The defense experts were Dr. John Cooper, Anesthesia, Houston, TX and Dr. Steven Songer, Critical Care Medicine, Hattiesburg. Songer particularly focused that because of his co-morbidities, including obesity, Hayden already had a very limited reserve when confronting this emergency. The plaintiff countered that the whole crux of the case came down to Painter's emergency response, it being argued that the doctor didn't have a plan in place already to confront the loss of the airway.

This case was tried for a week in Purvis. The jury returned a handwritten verdict for Painter and the estate took nothing. A defense judgment was entered.

Case Documents:
The Pretrial Order

Auto Negligence - A minor right-of-way collision in a Sonic parking lot left the plaintiff with a high grade partial tear of her shoulder – she later underwent three repair surgeries – a Greenville jury awarded the plaintiffs economic damages of $250,000

Patton v. Hilpert, 16-38
Plaintiff: Edward "Ted" P. Connell, Jr. and Charles M. Merkel, Jr., *Merkel & Cocke*, Clarksdale
Defense: Brandon I. Dorsey, *Alexander Law Firm*, Jackson
Verdict: $339,104 for plaintiff
Court: **Washington**
Judge: Richard Smith
Date: 5-16-19

There was a right-of-way collision in a Sonic parking lot on 1-17-14 in Leland, MS. The defendant, John Hilpert, was exiting the parking lot. He was preparing to exit onto Hwy 82. Hilpert then made a decision to turn his vehicle to the right to throw away some garbage in a trash can.

At just this moment, the plaintiff, Vanessa Patton, was exiting the parking lot too. She pulled to the right side of Hilpert to turn out. Just as she did this, Hilpert made his right turn and struck her vehicle. Hilpert never saw Patton's vehicle before the crash. The impact resulted in minor damage.

Patton has since treated for a high grade partial tear of her shoulder. She later underwent three surgical repairs and a six percent impairment was assigned. Her medical bills were $80,871 and she claimed $8,233 more for mileage.

In this lawsuit Patton sought damages from Hilpert. She developed her causation proof from her treating orthopedist, Dr. James Ramsey. While the crash was minor, he related her shoulder injury to the crash and noted, (1) she had no prior shoulder pain, and (2) the injury was identified in an MRI taken soon after the crash.

Hilpert contested liability and implicated the plaintiff's own comparative fault. He also challenged causation and argued this wreck was too minor to have led to a serious injury.

This case was tried for two days and the jury deliberated 75 minutes. The jury in this case found Hilpert solely at fault. Patton took her specials of $89,104 plus $250,000 more for non-economic damages. The verdict totaled $339,104. A consistent judgment was entered. Hilpert has since filed a barebones motion for a new trial. That motion is pending.

Case Documents:
The Pretrial Order
Final Judgment

Premises Liability - As the plaintiff sat down on a chair at a slot machine, it malfunctioned and suddenly lowered, that movement calling the plaintiff to fall from the chair and break her leg

Jackson v. Ameristar Casino Vicksburg, 17-107
Plaintiff: James W. Nobles, Jr., Clinton
Defense: Timothy D. Moore, Ridgeland
Verdict: Defense verdict on liability
Court: **Warren**
Judge: M. James Chaney, Jr.
Date: 5-24-19

Ronda Jackson was a patron on 8-20-17 at the Ameristar Casino Vicksburg. She and her husband came to the casino after receiving a mailer inviting them to drink and gamble. Jackson decided to play the casino's penny slots.

The slot machines have so-called slot chairs in front of them. These chairs feature gas canisters that permit the chairs to go up and down, as controlled by the customer, to the desired height to see the gambling machine. There was proof this chair (as a part of a large buy of 400 chairs) was purchased in 2008. The chair was in continuous service from that time until Jackson sat there in 2017.

A moment later as Jackson sat on the chair, it suddenly "bottomed out" because of a malfunction in the gas canister. This caused Jackson to fall from the chair. She sustained a broken femur near her hip in the fall. Her medical bills were $46,391.

Jackson sued Ameristar and alleged negligence in failing to maintain the

chair. She argued that in the nearly ten years of service of this chair, there was no inspection or maintenance of it. This culminated with it bottoming out and occasioning Jackson's injuries.

Ameristar denied there was any defect with the chair. It also postured the slot chairs, including this one, were regularly inspected. The defense suggested that Jackson simply fell out of the chair as she failed to sit squarely. Ameristar pointed to surveillance video which it argued supported its version of events.

The jury in this case returned a handwritten verdict for Ameristar on liability and Jackson took nothing. A defense judgment was entered.

Case Documents:

The Pretrial Order

A Notable Arkansas Verdict

Products Liability - A fireman suffered burn injuries when his ostensibly custom made fire jacket failed to protect him as he fought a fire

Wesby v. Globe et al, 3:16-235

Plaintiff: Keith R. Mitnik and T. Michael Morgan, Orlando, FL and Peter B. Gee, Jr., Memphis, TN all of *Morgan & Morgan*

Defense: Donald H. Bacon, *Friday Eldredge & Clark*, Little Rock, AR for Casco; Kevin D. Bernstein, *Spicer Rudstrom*, Memphis, TN for Globe

Verdict: $1,500,000 for plaintiff assessed 62.5% to Casco; Defense verdict for Globe

Court: Federal Court
Jonesboro, Arkansas

Judge: D.P. Marshall, Jr.

Date: 4-12-19

Damien Wesby was hired as a firefighter by the West Memphis (AR) Fire Department. As a part of his employment, Wesby was provided with a fireman's coat. It was described as a G-Xtreme Turnout Coat. The coat was made (using custom measurements) by Globe Manufacturing and distributed by Casco.

The fire coat was delivered and Wesby had it for some seven months. Apparently Wesby thought the coat was a good fit. It is important to note that the fit was not easy to make for Wesby because of his "bodybuilder" type build with muscular arms.

The key event in this case occurred on 4-12-15. Wesby responded to a house fire – this was seven months after the coat was delivered. As he moved through the flames (wearing his fire coat), he suffered burns to his arms, shoulders and ears. How had he suffered these burns when protected by the fire coat? Wesby explained it was a poor fit.

Wesby sued Globe and Casco and alleged negligence in failing to provide him a fire coat that fit properly. His engineer expert was Elizabeth Buc. There was proof that Wesby suffered scarring and pain associated with his significant burn injuries.

The defendants denied fault and postured that the coat was built to the measurements as provided by Wesby. Moreover if there was a problem with the fit, Wesby had the coat for seven months and said nothing. Wesby countered that he didn't know the fit was poor, Buc explaining Wesby wouldn't have appreciated the poor fit.

This case was heard by a Jonesboro jury. It returned a mixed verdict on fault. The jury exonerated Globe, but found against Casco. Wesby was also found at fault.

The jury assessed that fault 62.5% to Casco and the remaining 37.5% to Wesby. While the record does not reflect it, the odd apportionment of fault is highly suggestive of a quotient method being employed. Then to damages, Wesby took $1.5 million for medical bills. The jury rejected any award for pain and suffering and scarring. A consistent judgment was entered against Casco (and less comparative fault) in the sum of $937,500.

Wesby has since moved for a new trial. He has argued the verdict was inadequate in that it rejected non-economic damages. The proof was uncontradicted that he was badly burned – the defense conceded as much – and yet there was no award of pain and suffering. The motion is pending.

A Notable Louisiana Verdict

Utility Negligence - A prominent Shreveport psychiatrist suffered fatal injuries when he went to light a cigar and he became engulfed in flames – the fire was linked to a leak in a natural gas line behind his turn-of-the-century home in an equally old cast iron gas pipe – his estate took substantial damages including a $750,000 bystander award to his wife who witnessed the fire event

Williams v. CenterPoint Energy et al, 600967

Plaintiff: Lee H. Ayres and J. Todd Brown, *Ayres Shelton Williams Benson & Paine*, Shreveport

Defense: G. Bruce Parkerson and James K. Ordeneaux, *Plauche Masterson Parkerson*, New Orleans and Vicki C. Warner, *Barham & Warner*, Shreveport for CenterPoint Jennifer P. McKay, *Colvin Smith & McKay*, Shreveport for City of Shreveport

Verdict: $8,369,536 for plaintiff assessed 80% to Centerpoint (Jury) Defense verdict on liability for City of Shreveport (Bench)

Parish: **Caddo Parish Shreveport, Louisiana**

Judge: Michael A. Pitman

Date: 3-29-19

Dr. Richard Williams, age 65, was a prominent Shreveport psychiatrist on 7-31-16 when he retired to his back porch. He lived in a fashionable part of Shreveport on Fairfield Avenue in a large turn-of-the-century home. The neighborhood was served by natural gas.

The natural gas provider, contracted through the City of Shreveport, was the Texas-based CenterPoint Energy. It delivered the natural gas to customers in cast iron pipes that were as old as the homes above them.

In May of 2016 CenterPoint had been in the area making repairs to the line in the alley behind the Williams home. In the months after that repair, there were numerous complaints of a natural gas odor in the neighborhood. Williams too had complained. Finally there was proof the City of Shreveport was negligent in failing to manage a sinkhole, the sinkhole purportedly shifting the ground above the gas pipe and thereby contributing to the leak.

Against this backdrop, Williams walked outside. He was about to light a cigar. At just that moment, his wife, Michelle, walked inside to get a bottle of wine. Williams lit the cigar.

The flamed ignited natural gas fumes and engulfed Williams. His wife heard the boom and saw that Williams' entire upper body was essentially a wall of fire. There were additional explosions as gas ignited in a storage shed on the property.

Williams himself did the best he could to put out the flames. He rolled on the ground. That didn't work and he then jumped in the family pool. His wife saw it all as she was on the phone with 911 in a panicked emergency call.

Williams remained in the pool until emergency responders arrived. He was described as alert and conscious during the ambulance ride the hospital. The fire was extremely intense, there being proof of Williams' skin being found on the bricks on their home.

Williams suffered horrific burns in the fire. While conscious at the scene and while transported to the hospital, he subsequently lost consciousness and was never able to describe his versions of events. He died 82 days after the fire.

In this lawsuit the Williams estate (representing his widow and one adult daughter), alleged negligence by both CenterPoint and Shreveport. The decedent's brother (John R. Williams) is an attorney at the Shreveport firm that represented the estate.

The utility was blamed for failing to maintain and replace the century old cast iron gas pipes. This was especially so because of the earlier repair made that year and the complaints following that repair of a natural gas leak. The estate described a systematic failure by CenterPoint that led to this event.

Shreveport too was blamed for its role in managing CenterPoint as the utility franchisee. Key experts for the plaintiff included Edward Ziegler, Natural Gas Operations, Rick Jones, Cause/Origin and Robert Bartlett, Metallurgy.

The damages were significant in this case. There was proof that Williams, despite his age, had planned to continue his career. Beyond the decedent's pain and suffering, his widow sought not only her consortium interest but also damages as a bystander having witnessed the explosion and resulting injuries. One of Williams' adult daughters also sought consortium damages.

This case was tried via a hybrid method. A jury would decide the case against CenterPoint. However while the proof would come in at the same time, Judge Pitman would rule on the claim against Shreveport.

CenterPoint postured that it accepted its responsibility in the case. However it believed the City of Shreveport played a significant role in

the incident. CenterPoint cited the city's conduct regarding the sinkhole affected the soil and led to the leak. For its part, CenterPoint called the outcome a one-time freak occurrence. Shreveport denied any fault and blamed CenterPoint for the inadequate maintenance of the line and resulting explosion.

The case was tried for 13 days. The jury's verdict was mixed on fault. It was assessed 80% to CenterPoint, 15% to Shreveport and 5% to Williams. It rejected any apportionment to the plaintiff's wife.

Then moving to damages, the estate took $1,203,346 in medicals. Williams' lost earnings were $986,978. The funeral bill was $7,129, the estate taking $22,083 more for property damage.

The jury valued Williams' pain and suffering and mental anguish (in separate categories) at $1.75 million. His pre-death loss of enjoyment of life was $100,000.

The plaintiff's wife took $750,000 each for her bystander and consortium interests. The daughter's consortium damages were $1.2 million. The raw verdict totaled $8,369,536.

While the jury made its own finding, Judge Pitman came to a different result. It concluded Shreveport was not at fault. Thus in the final judgment, it was for the estate in the sum of $6,695,629 against CenterPoint (the raw verdict less 20%) and then for Shreveport on the bench trial verdict. At the time of this report, no substantive post-trial motions had been filed.

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