

# The Louisiana Jury Verdict Reporter

The Most Current and Complete Summary of Louisiana Jury Verdicts

April 2023

Statewide Jury Verdict Coverage

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Truck Negligence - \$125,000 p.

**Medical Malpractice - The plaintiff suffered a radiation burn to his hand (it was later amputated after an infection) and left flank during a lengthy vascular surgery to repair an endo-leak, his hand having been negligently placed in the fluoroscopic field – the jury found the defendant doctors violated the standard of care, but assessed 75% comparative fault to the plaintiff for failing to protect himself from further infection**

*Lyons v. LSU Health Services*, 806141  
Plaintiff: Walter C. Morrison, IV and Rachel M. Naquin, *Gainsburgh Benjamin David Meunier & Warshauer*, New Orleans

Defense: Peter J. Wanek and Elicia D. Ford, *Wanek Kirsch Davies*, New Orleans

Verdict: \$252,000 for plaintiff less 75% comparative fault

Parish: **Jefferson**

Judge: Nancy Miller

Date: 3-17-23

Walter Lyons, then age 66, underwent an interventional vascular surgery on 2-24-14 at West Jefferson Medical Center. The surgery (to repair an aortic endoleak in Lyons' stomach) was performed by vascular surgeons, Drs. Larry Hollier and Claudie Sheahan. Hollier and Sheahan (the defendants) were employees of the State of Louisiana as a part of the subdivision, LSU Health Services.

The surgery lasted three hours and for 89.1 minutes, the defendants utilized fluoroscopic guidance. There was proof that during that guidance, Lyons' left hand was within the

fluoroscopic field. The radiation also affected Lyons' left flank.

While the endoleak surgery was an apparent success, Lyons began to report itching and pain in his hand and left flank eight days later. It continued to get worse. Thereafter Lyons had numerous hand infections and surgical interventions. He was hospitalized in 2014 some four times for a total of 20 days. Lyons had a grueling course and endured 10 surgeries and 39 hyperbaric treatments as well as seven months of formal wound care. Ultimately a year later in March of 2015, he underwent a forearm amputation. Lyons now has a prosthesis. There was proof that Lyons suffered a progressive and painful injury.

Lyons sued LSU Health Services as the employer of the defendants and alleged they violated the standard of care in exposing him to the fluoroscopic field and thus causing the initial injury which transformed into an infection catastrophe and ultimate amputation. The theory was simple enough – Lyon's hand and left flank should not have been positioned within the fluoroscopic field and because of that error, Lyons suffered a severe radiation burn.

The plaintiff's experts were Dr. Michael Stecker, Interventional Radiology, Boston, MA and Dr. Mark Keldahl, Vascular Surgery, Chicago, IL. The economic damages were quantified by an expert, Randolph Rice, Baton Rouge. Lyons' wife (Kathleen) also presented a derivative consortium claim.

## Civil Jury Verdicts

Timely coverage of civil jury verdicts in Louisiana including court, division, presiding judge, parties, case number, attorneys and results.

The case first went to a Medical Review Panel comprised of Drs. Bradley Shore, Charles Sternbergh (he testified at trial) and Richard Vanderbrook. The panel exonerated the defendants and explained the injury was a risk of the endovascular surgery that outweighed this rare but known complication.

The defendants also relied on several retained experts. They were Dr. Jason Lee, Vascular Surgery, Stewart Bushong, Ph.D. (medical physicist), Baylor University and Dr. Christopher Blais, Infectious Disease. Bushong discussed causation and concluded (quite differently than the other experts in the case including Lee) that there was not enough exposure to cause an injury.

Blais defended with another angle. He went at causation and blamed Lyons' poor course not on the initial radiation but rather on the complex infection course. Blais noted Lyons was affected by numerous and different bacteria that caused infection and Blais linked that to Lyons' work as a farmer where he was regularly exposed to manure and fertilizer. From this causation proof the defense implicated the plaintiff's comparative fault in exposing himself to repeated infection.

This case was tried for five days in Gretna – it took a little more than 10 years from the date of the surgery until a verdict was returned. As the jury deliberated the case it had a question for the court. Judge Miller sealed the question and her answer without explanation.

The jury instructions asked if the plaintiff had established the standard of care by both Hollier and Sheahan. The answer was that the standard was established. The jury further

found in separate instructions that the defendants had both breached that standard and that this breach proximately caused Lyons to "suffer damages that he would not have otherwise incurred."

The jury also found that Lyons had failed to exercise ordinary care for his own safety and protection. Fault was then assessed just 25% to the defendants and the remaining 75% to Lyons.

Finally the jury reached damages. Lyons took \$42,000 for his medicals but nothing for in the future. His physical and mental suffering (in separate categories) were both \$30,000. His loss of enjoyment of life was \$50,000. The jury rejected any award for permanent disfigurement. Lyons' wife was awarded \$100,000 for her consortium interest.

The raw verdict for the plaintiffs totaled \$252,000. A judgment had not been entered at the time of this report but a tendered judgment was for Lyons in the sum of \$63,000, representing the raw verdict less comparative fault.

**Truck Negligence - Two plaintiffs complained of multi-level disc injuries after a lane incursion crash with a tractor-trailer – as the trial approached the defendants sought a continuance having just recently learned the plaintiffs' phone numbers were in the phone of the leader of the so-called "slammer ring" and it was suggested the plaintiffs were part of that fraud – the plaintiffs countered that there was no proof of this and the trial went on, the plaintiffs taking substantial damages, one taking \$1.845 million in general damages**  
*Alexander et al v. White*, 19-3996  
 Plaintiff: Julie Sumrall, L. Blake Jones and David C. Whitmore, *Blake Jones Law Firm*, New Orleans  
 Defense: Richard E. King and Matthew T. Biggers, *Melchiodi Marks King*, New Orleans  
 Verdict: \$2,390,000 for Alexander  
 \$985,000 for Straughter  
 Parish: **Orleans**  
 Judge: Ellen M. Hazeur  
 Date: 3-29-23

Anthony Straughter, then age 45, was driving a 2008 Mustang on 7-7-18 on U.S. 90B in New Orleans. A passenger with Straughter was Deron Alexander, age 32. As Straughter approached the I-10/Claiborne flyover, their vehicle was struck by a tractor-trailer driven by Matthew White for Trinity Systems.

There was proof that White merged across a solid white line and struck the driver's side of the Straughter Mustang. For his part White did not appreciate the impact and drove off. Another driver ultimately flagged down White.

Both Straughter and Alexander were injured in the collision. Alexander treated conservatively for low-back pain and was referred to a

neurosurgeon, Dr. Bradley Bartholomew, Metairie. He performed trigger point injections and facet blocks. Bartholomew indicated that Alexander will need a future lumbar surgery. His medical bills were \$132,910.

Straughter had a similar course of care. It began with conservative treatment that included some 32 physical therapy visits. As his symptoms persisted he too was referred to Bartholomew. Straughter had stem cell injection therapy at L4-5, Bartholomew indicating he will need a surgical repair. His medical bills were \$201,641.

In this lawsuit both Straughter and Alexander sought damages from White and his employer. Trinity Systems is a Wilshire Insurance insured. As the litigation progressed a consent order was entered on liability for the plaintiffs. The jury would consider damages only.

Just a few weeks before the trial was to begin, the defendants moved for a continuance and to set aside the consent order on liability. They cited that they had just learned that the plaintiffs' phone numbers were in the phone of Cornelius Gorman who had been linked to the infamous "slammer" ring of fraudulent car wrecks. The plaintiffs replied that the allegations were vague and unsubstantiated. Moreover the defendants had four years to fully investigate the case and it was time to try the case.

While there was no written order on the defendant's motion to continue, it was apparently denied as the trial began as scheduled. The trial lasted three days.

The jury considered damages only due to the previous entry of the consent order on liability. Alexander

was awarded medicals of \$45,000, \$500,000 for future care and \$1.845 million more in general damages for a total of \$2,390,000. That represented \$225,000 for past suffering and \$1,000,000 more for in the future. Past loss of enjoyment of life was \$120,000 – that in the future was \$500,000.

Straughter prevailed too. His medicals were also \$45,000 and his future medicals were \$275,000. He took \$115,000 for past suffering and \$300,000 more for in the future. His loss of enjoyment of life in the past was \$50,000, while that in the future was \$200,000. The verdict for Straughter totaled \$985,000, \$665,000 of that sum representing general damages.

At the time of this report no judgment had been entered. Two other plaintiffs in this case (in the same vehicle as Straughter and Alexander) did not participate at trial according to the record. It is not clear if those parties settled their claims.

**Premises Liability** - The plaintiff, an elderly woman, suffered a cervical fracture during or after a fall at a Popeye's restaurant which left her a quadriplegic – she died four months later after a painful and debilitating decline – the plaintiff alleged her injury was sustained either by the condition of the premises, or alternatively, if she fainted and suffered the cervical injury, it was made worse when restaurant employees moved her and aggravated that injury – at a first trial in August of 2022, the plaintiff took damages of \$450,000 less 70% comparative fault – both parties moved for a new trial and the motions were granted – at this second trial in March of 2023, the jury rejected the plaintiff's case on liability

*Reney v. Popeye's Louisiana Kitchen*, 683934

Plaintiff: Gail N. McKay,  
Baton Rouge

Defense: Darrin A. Patin, *Hailey McNamara*, Metairie for Popeye's Louisiana Kitchen  
Rachel G. Webre and Morgan Druhan, *Gieger Laborde & Laperouse*, New Orleans for Aspen American (Excess insurer)

Verdict: Defense verdict on liability

Parish: **East Baton Rouge**

Judge: Wilson E. Fields

Date: 3-31-23

Pearl Reney, age 77, came to the Popeye's Louisiana Kitchen in Ville Platte on the afternoon of 12-19-18. The restaurant is a d/b/a of Shelton's Restaurants.

Reney visited Popeye's with her husband, Ernest. They'd been married for 55 years. Ernest first entered the restaurant and went to the bathroom.

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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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Reney proceeded to the counter. She told the cashier she was a diabetic and was hungry as she had not eaten all day. Suddenly Reney started to faint. The cashier (Josance) came around the counter to help Reney. Reney fell to the floor before Josance could get there.

Reney suffered a C5-6 cervical

burst fracture in the fall. It impinged her spinal cord. There was proof Josance and the store manager (Shannon) assisted Reney at the scene and lifted her head to place a sweater under it.

Reney was taken to the local hospital and then promptly transferred to Rapides General

Hospital in Alexandria. She underwent a fusion surgery. However the cervical injury was severe and it left Reney a quadriplegic. She would later undergo eight surgeries to treat her shattered neck.

Reney was thereafter bed bound due to her condition. She was immobile and developed pressure

ulcers. There was proof she endured a painful, slow and horrible course until her death four months after the fall on 3-26-19. She was survived by Ernest and three adult children.

The plaintiff alleged two theories in this case. The first was founded in premises liability and implicated the serpentine barrier at the counter that was designed to move customers through the line. It was theorized that Reney's foot struck the barrier and it caused her fall. The plaintiff's premises safety expert was Michael Stein.

The plaintiff also advanced an alternative theory. It alleged that after the fall, Reney's cervical fracture was made worse and led to a disabling injury because the store employees had moved her head from the floor. The plaintiff could prevail on either theory. The claimed damages represented Reney's medicals (\$330,612) as well as her non-economic damages and the consortium interest of Ernest and her children.

Popeye's denied the premises liability portion of the claim. It cited that Reney simply fainted which was likely because of her low blood sugar. Quite simply the serpentine barrier wasn't dangerous and in any event, there was no proof it caused Reney's fall.

Popeye's also contested that moving Reney was negligent or had caused any injury. A defense expert, Dr. Archie Melcher, Neurology, Metairie, opined two key things, (1) Reney fell because she fainted, and (2) there was no evidence moving Reney caused an injury. The defense also sought to apportion fault to the decedent.

This case was first tried in Baton Rouge for six days in August of 2022.

The jury had a question for the court: We request the medical bills and the total insurance coverage payments. It is not clear how or if the court answered.

The jury returned with a mixed verdict. It rejected the plaintiff's premises liability claim that the condition of the premises (the serpentine barrier at the counter) represented an unreasonable risk of harm.

The jury was for the plaintiff that the store employees were negligent in moving Reney. Fault was then assessed 30% to Popeye's and the remaining 70% to Reney.

The jury then moved to damages. Reney's general damages (pain and suffering, permanent injury and mental anguish) totaled \$100,000. The jury rejected an award for her medical bills.

The jury continued and her husband took \$300,000 for his consortium interest. The three adult children were awarded different sums for their consortium. They were \$25,000, \$15,000 and \$10,000. The raw verdict for the Reney plaintiffs totaled \$450,000. The final judgment was for \$135,000 representing a reduction for comparative fault. See Case No. 1484 for the original August 2022 verdict report.

The plaintiff then moved for JNOV relief and cited two errors. The first was that the fault assessment of 70% to Reney was improper as she was simply an innocent victim lying on the floor. The plaintiff also argued that the damages were abusively low in light of Reney's grueling and painful course from the injury until her death.

Popeye's too moved for JNOV relief. It argued there was no proof, medical or otherwise, that moving

Reney had caused an injury. The restaurant thought this was inadequate as Reney's spinal injury was highly technical and specialized. Both JNOV motions were set for hearing in November of 2022. Judge Fields granted *both* motions and reset the matter for a second trial. That second trial was conducted on the last four days of March in 2023.

At the close of the proof in the second trial, Popeye's moved for a directed verdict on the premises liability claim regarding the design of the barrier at the counter. Judge Fields granted the motion. At the first trial Popeye's had prevailed on this question before the jury.

That left just the second question regarding Popeye's employees having moved Reney and thereby allegedly making her initial injury worse. The first jury interrogatory asked if Reney suffered an injury when she fell. The answer was yes. The second question (regarding Popeye's liability) asked if its employees had caused or contributed to any additional injury. The jury said no and thus didn't reach Reney's comparative fault, apportionment or damages. A defense judgment was entered.

**Auto Negligence - The plaintiff complained of a cervical disc injury (she underwent a complex course of care including cervical facet injections, medial blocks and radiofrequency ablations incurring medical bills of \$93,282) after a multi-car rear-ender – the defense expert (Ralph Katz, Orthopedics) believed the plaintiff suffered just a temporary injury that resolved in two months – while the plaintiff asked for \$750,000 in closing arguments, this Covington jury awarded only a portion of the medicals (\$10,198 and representing the initial care) and \$10,000 more in general damages**

*Eisenhardt v. Sherlock*, 11813

Plaintiff: S. Bradley Rhorer, Baton Rouge and Rene P. Frederick, *Rene Frederick & Associates*, Covington

Defense: Darrin O'Connor and Ashley G. Haddad, *Porteous Hainkel & Johnson*, Covington

Verdict: \$20,198 for plaintiff less 50% comparative fault

Parish: **St. Tammany**

Judge: Vincent J. Lobello

Date: 8-11-22

Erica Eisenhardt was a passenger in a vehicle with Kristen Graham on 4-27-16. Graham was stopped at a light. An instant later the Graham vehicle was rear-ended by Jonathan Fritz. Fritz had been struck by a teenager, Christopher Sherlock, a USAA insured through his father.

There would be a fact dispute about how many impacts there actually were. Eisenhardt claimed there was a single impact. However Sherlock suggested there were two impacts and thus Fritz shared some blame. Sherlock's theory was buttressed by proof from Eisenhardt that she recalled feeling two impacts.

In any event Eisenhardt has since treated for a cervical injury. She underwent a complex course of care that included facet injections, medial blocks and radiofrequency ablation. Her medical bills were \$92,282 and she estimated some \$175,000 for future care including rhiziotomies and a surgical repair all per the treating Dr. John Davis, Orthopedics.

Eisenhardt sued Sherlock and sought damages from him. Despite the purported second impact, Eisenhardt only sued Sherlock and did not target Fritz. She sought damages in two categories, (1) her medical bills, and (2) general damages. As the case went to the jury, Eisenhardt's counsel asked the jury to award \$750,000.

Sherlock defended on two fronts. The first was to implicate the non-party Fritz on the theory that there had been two impacts. Additionally, Sherlock also sought to impose fault to two other non-party drivers.

The second line of the defense went to causation. An IME expert, Dr. Ralph Katz, Orthopedics, New Orleans, believed that Eisenhardt suffered just a temporary soft-tissue injury that resolved within two months. It was his belief that just a portion of the medical bills representing the initial care and physical therapy (\$10,918) were crash-related.

This case was tried for four days in Covington and the jury then deliberated for two hours. The jury asked the court for several things as it deliberated including the medical bills, the police report and Fritz's deposition.

The verdict was mixed on fault. It found the defendant to blame as well as the non-party Fritz for the so-called "magic" second impact. Two

other non-parties were exonerated. That fault was then assessed equally (50%) to Sherlock and Fritz.

The jury then moved to damages. Eisenhardt was awarded \$10,918 of her medicals and \$10,000 more in general damages. The raw verdict totaled \$20,918. A consistent judgment less comparative fault was entered against Sherlock.

Eisenhardt moved for a JNOV and/or a new trial and argued the verdict was legally impossible because, (1) there was only proof of one impact, and (2) the damages were inadequate and far less than even the medical bills. She suggested additur of \$400,000. Sherlock replied that the jury simply disagreed with the plaintiff's case and there was sufficient evidence to support the general award of damages.

The motion was heard on 11-17-22 and Judge Lobello ruled from the bench. He indicated from the bench that the motion was denied. Interestingly (and oddly too) in the final order, Judge Lobello wrote not that the motion was denied or overruled but rather that it was dismissed. In any event (denied or overruled), Eisenhardt lost and subsequently the judgment was satisfied.

There was an additional issue. Sherlock had made a \$100,000 offer of judgment before trial and sought to impose costs on Eisenhardt. Eisenhardt too made her own motion for costs. Ultimately the parties agreed to "walk away" from their cost motions and that issue and the entire case are fully resolved.

**Insurance Contract/Bad Faith - The plaintiffs alleged their insurer low-balled and delayed payment of their claim after their Lafayette home was struck by two hurricanes in two months, Laura in August of 2020 and Delta two months later**

*Jackson v. State Farm*, 6:21-2117

Plaintiff: Trent J. Moss, Rene C. Gautreaux and Mary K. Taliancich, *Hair Shunnarah Trial Attorneys*, Metairie

Defense: Peter J. Wanek and Emily E. Booth, *Wanek Kirsch Davies*, New Orleans

Verdict: Defense verdict on liability

Federal: **Lafayette**

Judge: David C. Joseph

Date: 3-9-23

Charles and Ericka Jackson own a home on Chevalier Boulevard in Lafayette. They are a State Farm insured. Hurricane Laura struck the area on 8-27-20 and damaged the Jackson home. They promptly reported the damage to their insurer.

A little more than six weeks later on 10-9-20, Hurricane Delta struck. The initial Laura damage was exacerbated. There was proof the Jackson home suffered damage to the roof, brick veneer and stucco. Again the Jacksons reported the damage to State Farm and made a claim.

State Farm made an initial investigation and concluded the value of the damage was less than the Jacksons' \$28,431 deductible. It thus denied the claim.

Over the course of the next year the Jacksons documented some \$324,000 in hurricane damage to the home. This was developed by an engineer expert, Arnulfo Escamilla, Katy, TX and a general contractor. State Farm ultimately did make several payments to the Jackson that totaled \$23,540.

Thereafter the Jackson retained counsel and sued State Farm to enforce their insurance contract. They also presented a bad faith claim that State Farm had delayed making payment. They cited that as of October of 2020, the insurer had notice of the claim and still delayed making payments. Thus the claimed damages represented not just those under the contract, but additional bad faith compensatory damages and penalty damages. The Jacksons have been unable to make necessary repairs because of a lack of funds.

State Farm denied fault and postured that at all times it had properly adjusted the claim. The Jacksons then were fully compensated. State Farm's engineer experts were Matthew Richardson, Metairie and Danny Smith, Gadsden, AL.

This case was heard for four days by a federal jury in Lafayette. The first interrogatory asked if the plaintiffs were entitled to additional damages beyond the \$23,540 deductible and the \$28,431 already paid. The answer was no and the jury then didn't reach what damages that Jacksons might have been entitled to as well as the bad faith and penalty damage questions. A defense judgment was entered.

The Jacksons moved for a new trial on 3-27-21 and argued the overwhelming proof was that State Farm had failed to pay the claim in a timely fashion. They also cited instruction error in that the jury never considered separate bad faith after answering the initial question.

Judge Joseph didn't waste any time ruling. He denied the motion the next day in a written order without the benefit of hearing from State Farm. The court wrote that the

evidence supports the verdict. Moreover if there was instruction error (Joseph didn't think there was by the way), it was waived as the plaintiffs failed to object at the charging conference.

**Auto Negligence - The plaintiffs (an adult and her two minor children) complained of soft-tissue injuries after a minor rear-ender – a New Orleans jury rejected the case on causation**

*Young et al v. Boudreaux*, 20-2186

Plaintiff: Dwayne Burrell and Allen Burrell, New Orleans

Defense: Scott A. Cannon and Shannon Livermore, *Cannon & Livermore*, Slidell

Verdict: Defense verdict on causation

Parish: **Orleans**

Judge: Omar K. Mason

Date: 2-1-23

Lori Young traveled on Earhart Boulevard on 9-24-19. Her minor children (Kash and Ayanna) were passengers with Young. She was stopped at a red light in a line of cars. The light turned green. An instant later she was rear-ended by John Boudreaux. Boudreaux explained his foot slipped off the pedal and his vehicle rolled forward. The collision resulted in minor damage.

Young and her children have since treated for injuries. Young was most seriously hurt and complained of a cervical disc injury. She underwent a rhizotomy procedure and incurred medical bills of \$54,909. Her children treated for more minor injuries.

In this lawsuit the Young plaintiffs sought damages from Boudreaux. Fault was no issue. Boudreaux defended damages with an IME, Dr. Everett Robert, Neurosurgery, New

Orleans. The expert (he was paid \$10,000 for his expertise) believed Young's injuries were related to degenerative conditions. The defense also noted that, (1) the collision was minor, and (2) the plaintiffs did not treat until three days later.

This case was tried for three days. The jury's verdict (it is not in the record) was for Boudreaux on causation and the plaintiffs were not awarded damages. A defense judgment was entered.

The plaintiffs have moved for JNOV relief and argued that reasonable persons could not conclude the plaintiffs were not injured. The ER doctor had confirmed an injury and the defendant even essentially conceded that. The plaintiffs suggested that the verdict was a result of the defense effort to cast doubt and suspicion on the plaintiffs' case – it rose to the level of "character assassination," the defense arguing the plaintiffs' case was a fraud without pleading fraud. The motion was pending at the time of this report and the defendant had not yet responded.

**Medical Malpractice - An infectious disease doctor was blamed for failing to timely review wound cultures on the plaintiff's infected foot and thus he failed to order the proper antibiotic – in turn the foot became septic and the plaintiff died**

*Nugent v. Azmeh*, 602004

Plaintiff: Robert Hallack, *Hallack Law Office*, Baton Rouge, Lee M. Schwalben, Lake Charles and Mark A. Delphin, II, Lake Charles

Defense: Garrett S. Callaway and Tara S. Bourgeois, *Mang Bourgeois Callaway & Thomas*, Baton Rouge

Verdict: Defense verdict on liability

Parish: **East Baton Rouge**

Judge: Trudy M. White

Date: 3-24-23

Dennis Nugent, then age 62, was referred on 9-19-18 to Dr. Wanef Azmeh, an infectious disease doctor insured by LAMMICO. Nugent had a wound on the heel of his right foot. Azmeh prescribed an antibiotic, Amoxicillin. He set an appointment to see Nugent on 9-30-18.

Nugent saw Azmeh on 9-30-18 and he had a fever and vomiting. Azmeh began Nugent on a course of antibiotic (Daptomycin) therapy via injection. A wound culture the next day indicated that the bacteria in question was not responsive to Daptomycin.

Over the course of the next several weeks, the infection became worse and Nugent was referred for amputation of his foot. However the infection had advanced, his foot became gangrenous and sepsis had developed. The amputation was called off when he could not be cleared for surgery. Nugent was taken to hospice and he died a few days later on 10-28-08. He was survived by his wife of some 30 years

and two adult sons.

The plaintiff sued Azmeh and blamed Nugent's death on the failure to follow the wound culture results and prescribe the right antibiotics. Because of this error, the theory went, the bacterial infection progressed to sepsis and Nugent's ultimate death.

The plaintiff's experts were Dr. John Cascone, Infectious Disease, Joplin, MO and Dr. David Goldstein. Cascone recognized that Azmeh failed to identify the appropriate bacterial organisms that were causing the infection. The plaintiff sought damages in several categories including wrongful death, survival action, loss of enjoyment of life, medical bills as well as the consortium interests of Nugent's wife and two sons.

The case was submitted to a Medical Review Panel comprised of Drs. Stephanie Taylor, Julie Garcia-Diaz and William Hubbard. The result of the panel is not a part of the record and is unknown. The doctors on the panel did not testify at trial.

Azmeh defended the case and denied fault. He blamed the poor result not on his care but instead on the natural course of the aggressive infections. His experts at trial were Dr. Faith Joubert, Infectious Disease, Slidell and Dr. Ghiath Mikdadi, Cardiology.

There was an interesting pre-trial issue regarding expert Cascone. He had issues with his licensure related to substance abuse some ten years earlier. Azmeh was eager to explore those issues to impeach Cascone's credibility. The plaintiff thought it was a smear campaign. In a written order Judge White indicated she would permit cross-examination on the issue.

A Baton Rouge jury heard this case



for five days (a Monday to Friday) and then deliberated one hour on that Friday night until 7:00 p.m. The court's instruction asked if the plaintiff had proven Azmeh failed to follow the standard of care in treating Nugent and that caused or substantially contributed to Nugent's death. The jury said no and then did not reach damages. A defense judgment was entered by the court.

**Truck Negligence - The plaintiff was rear-ended by a trucker on I-55 which caused her SUV to roll-over – she subsequently complained of a mild TBI as well as a C5-6 disc injury**

*Hernandez v. Scales et al*, 16-1067

Plaintiff: John W. Redmann, L. Scott Joanen and Edward L. Moreno, *Law Office of John Redmann*, Gretna  
 Defense: Sidney E. Cook, Jr., *Cook Yancey King & Galloway*, Shreveport for tortfeasor

W. Jacob Gardner, Jr. and Norman C. Sullivan, Jr., Frilot, LLC, New Orleans for excess insurer (Great American Insurance)

Verdict: \$300,000 for plaintiff

Parish: **Tangipahoa**

Judge: Charlotte H. Foster

Date: 7-1-22

Zoila Hernandez was driving a Nissan Quest SUV on 4-16-15 on southbound I-55. She was rear-ended by a trucker, Fate Scales, who was driving a big rig for Pratt Corrugated Scales. They are a Travelers insured – there was an additional insured, Great American Insurance, which was the trucker's excess insurer.

The collision (which occurred at speed) caused the Hernandez' vehicle to strike a bridge rail and then roll-over. It was a hard hit. Hernandez has since treated for a

mild traumatic brain injury as well as a C5-6 disc injury. There was proof she may require a future fusion surgery.

In this lawsuit Hernandez sought damages from Scales and his employer. Her economic specials were quantified by Aaron Wolfson, Life Care Plan and Shael Wolfson, Economist as well as her medical team.

The defense minimized the claimed injury with a team of experts. They included Dr. Chambliss Harrod, Orthopedics, Baton Rouge, Dr. Archie Melcher, Neurology, Metairie and Kevin Greve, Neuropsychology, Metairie.

This case was tried on damages only. The jury did first answer that Hernandez was injured. She took medicals of \$45,000 plus \$75,500 for future care. Her lost wages were \$48,000 – those in the future were also \$48,000.

The jury moved to non-economic damages. She took a total of \$85,500 in non-economic damages (over six categories) for a total verdict of \$300,000. Her husband's consortium interest was rejected. A consistent judgment was entered against Scales and his employer. The verdict exonerated the excess insurer. The final judgment has since been satisfied.

**Food/Grocery Negligence - The plaintiffs bought crawfish at Rouse's and after they and their family began eating them, they discovered the crawfish were contaminated with dead frogs – this caused the plaintiffs to gag, feel sick and suffer emotional distress – the trial court dismissed the case at the close of the proof "due to a lack of evidence"**

*Williams et al v. Rouse's*, 669313

Plaintiff: Monique H. Fields, Baker

Defense: Matthew L. Mann, *Porteous Hainkel & Johnson*, Baton Rouge

Verdict: Defense verdict on liability (Bench trial)

Parish: **East Baton Rouge**

Judge: Donald J. Johnson

Date: 3-16-23

Jeannetta Williams and Stephanie Williams bought what they called a "large sum" of crawfish from a Rouse's grocery in May of 2019 in Zachary, LA. They brought the crawfish home to their families and they all began to eat.

The families soon discovered something alarming as they consumed the crawfish. It was contaminated with the corpses of dead frogs. Everyone spat out the crawfish and gagged. They also felt sick to their stomachs and have since reported a loss of ability to fully taste and enjoy food as well as food-related depression and anxiety.

In this lawsuit the Williamses (and on behalf of their children – there were several children involved) sued Rouse's and alleged negligence in selling the contaminated crawfish. Rouse's denied fault and argued there was insufficient evidence that any injury had been sustained.

The case was tried as a bench trial before Judge Johnson. At the close of the plaintiff's case the defense moved to dismiss it. The court granted the

motion for orally explained reasons from the bench that were not reduced to a writing. The judge did in the final order indicate the case was dismissed “due to a lack of evidence.”

### **Disability Discrimination - A high school teacher alleged he was terminated because of both his FMLA activity and a disability**

*Evans v. East Baton Rouge Parish School Board*, 3:19-542

Plaintiff: Gregory J. Miller, *Miller*

*Hampton & Hilgendorf*, Baton Rouge

Defense: Melissa Losch and Pamela Wescovich Dill, *Hammonds Sill Adkins & Guice*, Baton Rouge

Verdict: Defense verdict on liability

Federal: **Baton Rouge**

Judge: Shelly D. Dick

Date: 9-28-22

Keith Evans worked from 2012 until 2017 as a teacher for the East Baton Rouge Parish School Board. He was assigned to Tara High School and taught special education. That spring semester he developed anxiety and depression over a course of three months.

For the fall semester Evans was going to be assigned to teach social studies. This exacerbated his anxiety. It was his proof he met with the school principal and indicated the new course would exacerbate his anxiety.

As the semester began that fall, Evans missed several days of work. From his perspective he was in the midst of a FMLA leave. The school board terminated Evans on 10-13-17 and it cited excessive absenteeism.

Evans sued the school board and alleged the firing represented FMLA interference. It was his position that he gave notice of his need for time off

and then was fired. Evans also presented a disability discrimination count that he was terminated because of his anxiety/depression condition. His proof burden on this count was that the condition interfered with a major life activity. He sought damages for lost wages, mental anguish and loss of enjoyment of life.

The school board defended on several fronts. The first was to raise a fact dispute that Evans had not given notice of his request for FMLA leave and thus was terminated for absenteeism. The defense also denied any discrimination for the same reason (it was the absenteeism) and in any event, his purported disability did not interfere with a major life activity. The school board also raised an “after acquired evidence” defense and proved it had discovered evidence that would have justified the firing. That is, it later learned Evans had also been working as a flight attendant and if the school board proved this defense, it would limit any award of lost wages.

The case was tried for three days. The jury rejected the FMLA case by concluding Evans had not provided proper notice of his request for time off and it thus didn’t reach the interference question. Similarly the disability claim was rejected as the jury determined Evans didn’t have a disability that interfered with a major life activity. A defense judgment was entered.

Evans moved for JNOV relief and argued the verdict was against the great weight of evidence as he had met with his principal and advised her he would need time off. Similarly it could not be denied his disability interfered with a major life activity. The school board replied that there were fact disputes and the jury chose

to believe the four school board witnesses over Evans. Nearly five months after the issue was fully briefed, Judge Dick had still not ruled on the issue.

### **A Notable Mississippi Verdict**

#### **Truck Negligence - A trucker ran a red light in Yazoo City and crashed into the plaintiff (an elderly woman), the collision leaving her with a scalp laceration (it took six staples to close) as well as a rotator cuff tear and mild TBI – the jury made her a general award of \$125,000 which was less than her past and future medical bills**

*Young v. Kincaid Trucking*, 22-6

Plaintiff: LaToya T. Jeter, *Brown Bass & Jeter*, Jackson and Joe N. Tatum, *Tatum & Wade*, Jackson

Defense: C. Maison Heidelberg and Ginny Y. Deliman, *Heidelberg Patterson Welch Wright*, Ridgeland

Verdict: \$125,000 for plaintiff

Court: **Yazoo City, MS**  
**Yazoo County**

Judge: Janine M. Lewis-Blackmon  
Date: 3-23-23

Larry Ickom was operating a fully-loaded logging truck in Yazoo City on 7-15-02 for Kincaid Trucking. As he proceeded at the intersection of Hwy 49 and Broadway, he followed another truck through a red light intersection. The light had turned red and Ickom just failed to appreciate it.

A moment later and in a hard hit, Ickom struck a Ford Explorer driven by Essie Young, age 76. Young’s vehicle was broadsided on the driver’s side. Young was briefly unconscious and was pinned between the door and the center console.

Young has since treated for several

injuries. Most acutely she had a laceration to her scalp and a bruised cornea. The laceration took six staples at the ER to close it. She has also since complained of post-concussive symptoms that were linked to a mild traumatic brain injury.

Young also reported a rotator cuff tear. It was surgically repaired. Her medical bills were \$54,203 and her future medicals (as discussed by Dr. Howard Katz, Physical Medicine and quantified by George Carter, Economist), were approximately \$94,000.

In this lawsuit Young blamed Ickom for the crash. Liability was admitted by the defense. Young sought damages in a single general category. Her husband (Leon) presented a derivative consortium claim. The defense of the case diminished the claimed injury.

This case was tried for two days in Yazoo City. The jury answered that Young was injured and made her a general award of damages in the sum of \$125,000. The consortium claim was rejected. A consistent judgment was entered by the court.

Young has since moved for post-trial relief. She has argued the verdict was less than even her proven past and future medical bills. She further suggested the jury had failed to follow the law and that the court should order a new trial or grant additur. The motion is pending.

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The Louisiana Jury Verdict Reporter is published at 9462 Brownsboro Road, No. 133, Louisville, Kentucky 40241. Phone at 1-866-228-2447. Denise Miller, Publisher, Shannon Ragland, Editor, Sandra Tharp, Editor Emeritus and Aaron Spurling, Assistant Editor.

Annual subscriptions are \$329.00 per year.

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