The Louisiana Jury Verdict Reporter

The Most Current and Complete Summary of Louisiana Jury Verdicts

August 2022 **Statewide Jury Verdict Coverage** **13 LaJVR 8**

In This Issue

Civil Jury Verdicts

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

Premises Liability - As the plaintiff shopped at a messy Dollar General store, she avoided a hazard on the floor of spilled dog food but in the process of tiptoeing through that spill, she tripped over a box of rat poison and suffered an L-4 burst fracture

Smith v. Dollar General, 3:19-360
Plaintiff: Chad A. Aguillard, *Aguillard Law Firm*, New Roads and Ali Z. Meronek, Plaquemine
Defense: Trevor C. Davies and Michael L. Ballero, *Wanek Kirsch Davies*, New Orleans
Verdict: Defense verdict on liability
Federal: **Baton Rouge**
Judge: John W. deGravelles
Date: 7-21-22

Stephanie Smith shopped on 3-25-18 at a Dollar General retail store in Erwinville, LA. Along with her husband (Dwayne) she visited the store and was looking for rat poison. As they perused the aisles at Dollar General, they could not find rat poison. They asked for help.

A helpful store employee guided them to the aisle where rat poison was housed.

The employee directed them to the pet food aisle. Its important to note the store was a little messy. There was dog food spilled in the pet food aisle. The employee warned the Smiths about this. Stephanie appreciated this hazard and tiptoed through the spill of the dog food.

What Stephanie didn't notice was a box of rat poison that was on the floor. She tripped over it as she avoided the dog food. Stephanie fell hard and sustained an acute L-4 burst fracture. She later underwent an S1 joint fusion surgery.

Stephanie also developed proof she will need a cervical surgery. Beyond the injuries to her spine, Stephanie treated with a psychiatrist for anxiety that was linked to the fall.

In this lawsuit (originally filed in the 18th District Court and later removed), Stephanie alleged a premises liability claim predicated on a violation of Louisiana's Merchant Liability Statute. The theory was a combination of sorts, namely, rather than just warn about the dog food spill, the employee should have cleaned it up. It was not enough, Stephanie argued, to simply tell her to watch out for the dog food, the employee instead escorting her through it.

Thus this set Stephanie up for failure. She was carefully watching for the dog food and then missed the hazard of the rat poison box. Beyond Stephanie's claim for compensatory damages (including medical bills of $116,587), her husband also presented a derivative consortium claim.

This was not Stephanie's first litigation "rodeo" with Dollar General. She suffered a similar fall incident in 2012 at a Dollar General. That case resulted in a confidential settlement. Dollar General paid her $350,000.

Then in this litigation Dollar General intimated that it seemed awfully coincidental that the same pattern had repeated itself. It sought

at this trial to explore the prior fall and secret settlement. Judge deGravelles would not allow that but he did permit Dollar General to develop proof that Stephanie had a prior injury event.

In defending the merits of the case, Dollar General denied any liability. It cited that its employee had warned Stephanie of the messy dog-food-strewn-aisle and yet Stephanie still proceeded through it. Dollar General also denied that the box of rat poison represented a hazard.

Dollar General also contested damages. It noted that Stephanie had a long history of chronic pain and underlying conditions. The argument was that Dollar General was not to blame for what it called Stephanie's "unfortunate condition." Two IME experts also diminished the claimed injuries, Dr. Everett Robert, Neurosurgery and Lauren Rasmussen, Neuropsychology.

The jury's deliberations in this case lasted two hours. The court's instructions asked if Stephanie had proven that Dollar General was liable under the Merchant Liability Statute as explained by the court. The jury said no and then didn't reach Stephanie's duties, apportionment or damages. A defense judgment was entered.

Auto Negligence - A pedestrian was struck and run over by a motorist who made a right turn on a red light – the plaintiff suffered a crushed leg and a concussion – she settled with the tortfeasor for her $300,000 policy limits and then sought additional damages against the tortfeasor's excess insurer

LeBlanc v. USAA, 20-377
Plaintiff: John E. Sudderth and Kate C. Casanova, Metairie and Dan A. Rouzan, New Orleans
Defense: Michael M. Thompson and Francis C. Cannone, *Taylor Wellons Politz & Duhe*, Baton Rouge
Verdict: $1,610,200 for plaintiffs
Parish: **Orleans**
Judge: Omar K. Mason
Date: 7-20-22

Shonquell LeBlanc was a pedestrian in New Orleans on 6-28-19. She walked on Carrollton Avenue at its intersection with Claiborne Avenue. At the same time Janet Blocker drove on Carrollton. She came to a red light.

Blocker made a right turn from the red light. She did so as LeBlanc was lawfully crossing in the crosswalk. Blocker ran over LeBlanc, the impact crushing LeBlanc's leg. LeBlanc was also thrown against the concrete and she struck her head. This knocked her out.

LeBlanc was taken by ambulance to the ER at Ochsner Main. She underwent surgery that day to repair a left tibial fracture – a nail was placed. The broken ankle was also surgically repaired. LeBlanc stayed in the hospital for four days and then went through a 15 day rehabilitation. Thereafter her physical therapy was interrupted by Covid.

LeBlanc has additionally treated for concussive symptoms. She reports ongoing pain, weakness and numbness in her left leg related to a peroneal nerve condition. LeBlanc, who now works as an Uber/Lyft driver (and earns more than before) did not make a claim for lost earnings.

LeBlanc moved against Blocker and her son (Gregory Hardy) a co-owner of the vehicle. Blocker paid her $300,000 limits. Hardy had an additional $2,000,000 excess policy with USAA. This case proceeded to trial against USAA only on the excess claim – the insurer would be entitled to a $300,000 credit on any damages awarded. LeBlanc sought both economic and non-economic damages – her two minor children (age 2 and 10 months) also presented consortium claims. The defense of the case minimized the claimed injury and noted LeBlanc's recovery from her injuries.

This case was tried for three days in New Orleans. The only jury issue was damages. LeBlanc took medicals of $121,000 and $125,000 more for future care. Her lost wages were $4,200.

The jury moved to non-economic damages. LeBlanc took $200,000 for past suffering and double that sum for suffering in the future. Similarly her past emotional distress was $200,000 – that in the future was $325,000. Permanent disability was $150,000, while loss of enjoyment of life was $50,000. Finally LeBlanc's permanent scarring was $5,000. Her two minor children took $15,000 each for their consortium interests.

The non-economic damages for LeBlanc were $1,360,000 and the total verdict was $1,610,200. A consistent judgment was entered for the plaintiff and was subject to a $300,000 set-off for the underlying settlement with the tortfeasor.

Truck Negligence - A trucker pulled from a stop sign and into the path of the plaintiff – the plaintiff had a finger amputated and underwent both cervical and lumbar fusions as well as suffering from PTSD – a federal jury awarded non-economic damages of $1,840,892 which resulted in a round verdict of $3,000,000

Bradley v. U.S. Xpress, 6:19-56
Plaintiff: Blake R. David, *Broussard & David*, Lafayette
Defense: James M. Dill and Michael C. Wynne, *Dill Law Firm*, Lafayette
Verdict: $3,000,000 for plaintiff
Federal: **Lafayette**
Judge: Robert R. Summerhays
Date: 8-5-22

Wilfred Bradley of Eunice, LA was on his way to work early on the morning of U.S. 190 in Jefferson Davis Parish. It was dark, foggy and the road was wet. Bradley was in a Volkswagen sedan and approached the inferior LA 26. LA 26 is controlled by a stop sign while U.S. 190 has a yellow flashing light.

At the same time George Fiorucci, driving a big rig for U.S. Xpress, had come to the stop sign at LA 26. He looked both ways and it seemed clear. He pulled out to turn left onto U.S. 190. Fiorucci did so into the path of the oncoming Bradley. Bradley was traveling at between 55 mph to 60 mph (the speed limit was 55 mph) and didn't have time to stop. He crashed hard into Fiorucci's turning truck. It was a significant crash.

Bradley suffered several injuries but most acutely a 10 cm laceration to his head. His ring finger on his right hand was mangled and later had to be amputated. Bradley has also since undergone both cervical and lumbar fusion surgeries. Finally he complains of post-traumatic stress.

The combination of Bradley's injuries has left him totally disabled. He had previously worked as a scaffold builder and took pride in being a productive citizen and active grandfather. His medical bills were $293,108.

Bradley sued Fiorucci and U.S. Xpress (they are a Mountain Lake Risk insured) and alleged negligence by the trucker in pulling into his path. The plaintiff's accident expert was Michael Gillen, Baton Rouge, who placed Bradley's speed at 55 mph and implicated Fiorucci for pulling into his path. Bradley's vocational damages were developed in part by testimony from Larry Stokes.

The defense of the case focused on several factors. The first was the wreck itself. U.S. Xpress believed that Bradley was speeding (its accident expert, Eric Burson, Metaire, placed Bradley's speed at 60 mph) and failed to keep a look-out. The defense theorized that once Fiorucci began his safe turn and "pre-empted" the intersection, Bradley forfeited his right of way. It was also argued that even 55 mph might have been too fast for the dark, foggy and rainy conditions.

U.S. Xpress also contested damages. Its expert, Dr. Thomas Bertuccini, Neurosurgery, Lafayette, suggested Bradley had a long history of neck pain and thus this accident didn't lead to the cervical fusion. Similarly Bertuccini noted Bradley had also previously reported chronic low-back pain. A vocational expert, Michael Brenzel, Baton Rouge, thought Bradley was highly skilled and could transition to light duty work.

The proof in this case came in over four days. On the fourth day the jury deliberated into the evening for two hours. It did not reach a verdict. The jury returned the next day in the morning (the fifth day) and deliberated 4.5 hours before returning a verdict.

The jury first found that the defendant was solely at fault for the wreck and rejected any apportionment to Bradley. Bradley then took medicals of $293,108 as claimed plus $500,000 for future care. His lost wages were $125,000 and lost earning capacity was $241,000 more.

The jury turned to non-economic damages. Bradley took $692,892 for past suffering and $400,000 more for that in the future. His emotional distress was $250,000 while for disfigurement and scarring, the award was $500,000. The odd past pain and suffering award ($692,892) makes more sense when it allowed the total verdict to equal the round sum of $3,000,000. The non-economic damages represented $1,840,892 of the verdict. At the time of this report no judgment had been entered.

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Louisiana 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 - The plaintiff complained of multiple injuries (lumbar, cervical and shoulder) and has undergone several surgeries with more to come after a moderate rear-end crash – while the plaintiff sought $4.75 million from a federal jury, the plaintiff took just a fraction of that at trial – this was the first federal jury trial in Lake Charles since Hurricane Laura struck the region in August of 2020
Broussard v. LeBlanc, 2:19-603
Plaintiff: Garrett P. Marceaux, *Marceaux Law Firm*, Lake Charles
Defense: Daniel G. Brenner and Jonathan A. Cobb, *Bolen Parker Brenner Lee & Miller*, Alexandria
Verdict: $430,000 for plaintiff less 30% comparative fault
Federal: **Lake Charles**
Judge: James D. Cain, Jr.
Date: 7-22-22

Garrett Broussard, then age 41, pulled out of a Circle K parking lot onto Maplewood Avenue in Sulphur,

LA on 4-19-18. He intended to then make a left turn from Maplewood. Broussard cut across several lanes of traffic and entered the turn lane at an angle. His vehicle (a heavy duty Ford F-350) partially blocked the center lane as it angled into the left lane.

At the same time the defendant, Wilfred LeBlanc (insured by Farmers Mutual of Texas) approached the scene in a 2006 Ford Explorer. He was distracted as he looked at the GPS on his cellphone. An instant later he rear-ended Broussard's pick-up truck.

It was a moderate impact and there was significant damage to LeBlanc's Ford Explorer. It's bumper was lower than the Ford F-350 and underrode that truck. The airbags in the Ford Explorer actually deployed. The damage to Broussard's Ford F-350 (it had a steel flatbed) was minor and Broussard actually returned the rented vehicle that afternoon to Enterprise.

Broussard has since treated for multiple injuries. That included two lumbar epidural steroid injections. He's undergone a cervical surgery and two shoulder surgeries. Broussard treated with Dr. Brett Cascio, Orthopedics, among others.

There was proof that Broussard still requires, (1) a lumbar surgery, (2) a right shoulder replacement, (3) a right hip replacement, and (4) a left hip surgery. His damages were quantified by two experts, Ted Deshotels, Vocational and John Theriot, Economist, Metairie.

Broussard sued LeBlanc in Calcasieu Parish (LeBlanc removed the case to federal court) and alleged negligence by him in this rear-ender. Broussard sought both economic and non-economic damages (his incurred medicals and those in the future were both $200,000) at trial. As the jury heard the case Broussard sought a total award of $4.75 million.

LeBlanc defended the case on several fronts. While LeBlanc had rear-ended Broussard, Broussard shared some blame as he partially blocked the center lane with his angled truck. The defense also relied on an accident expert, Dean Tekell, Lafayette. Tekell calculated the impact was minor for Broussard, the Delta-v of his truck being just 5 mph.

LeBlanc also relied on an IME, Dr. Douglas Bernard, Orthopedics, New Iberia. Bernard looked to a long history of degenerative conditions that pre-dated this wreck as well as prior use of hydrocodone by Broussard. Bernard also agreed that Broussard needed a hip replacement – however that was unrelated to this crash.

This case was tried for five days (from a Monday to Friday) and the jury then deliberated for three hours. This was the first federal jury trial in Lake Charles in nearly two years since Hurricane Laura struck the region.

The jury's verdict was mixed on fault. It was assessed 70% to LeBlanc and the remainder to the plaintiff. The plaintiff was awarded his past medicals of $150,000 and $50,000 more for in the future. His lost wages were $80,000.

Then moving to non-economic damages, Broussard was awarded $75,000 for his pain and suffering. The jury rejected any award for mental anguish. Finally Broussard took $50,000 each for loss of ability to enjoy life and disability. The non-economic damages totaled $175,000. The raw verdict totaled $430,000 and presumably the final judgment will be for Broussard (less the allocation of fault) in the sum of $301,000.

Auto Negligence - The plaintiff complained of a multi-level cervical disc injury and a fusion surgery has been recommended – a Gretna jury awarded the plaintiff $150,000 in general damages

Aych v. Randon, 774008
Plaintiff: Robert J. Daigre and George M. McGregor, *Burgos and Associates*, New Orleans
Defense: Matthew A. Mang and Victoria H. Fabre, *Lobman Carnahan*, New Orleans
Verdict: $187,000 for plaintiff
Parish: **Jefferson**
Judge: June B. Darensburg
Date: 6-15-22

Cindy Aych, then age 54, had just left her job as a municipal bus driver. She traveled on Napoleon Avenue when she stopped in traffic. An instant later she was rear-ended by Madison Randon who was driving a sedan for Alfortish Enterprises. The company was a State Farm insured with $500,000 policy limits.

The crash resulted in very minor vehicle damage. There was no injury at the scene. Fault would not be contested.

Aych began treating three days later for apparent soft-tissue symptoms. She underwent some nine months of chiropractic care with little relief. Her symptoms persisted and an MRI was performed. It revealed a multi-level cervical disc injury.

Aych then treated with Dr. Bradley Bartholomew, Neurosurgery, who performed a facet block, a medial branch block and a rhizotomy. There was proof Aych will need a cervical fusion surgery in the future. Aych's incurred medical bills were $74,359 and she sought $132,115 more for in

the future. Bartholomew causally related her injuries to this collision.

In this lawsuit Aych sought damages from Randon. Her case was buttressed by a biomechanics expert (also a chiropractor) David Barcyzk. If Randon prevailed she sought medicals, future medicals and future lost earnings as well as general damages in several categories.

Randon's defense focused that this was a low-speed collision that resulted in very minor damage. A biomechanics expert, Richard Baratta, thought the collision was too minor to have caused an injury and likened the forces to an ordinary sneeze or falling into a soft chair.

The defense also noted that Aych had a pre-existing history of similar complaints as well as having previously been involved in car wreck events in both 2001 and 2008. This was echoed by an IME, Dr. David Aiken, Orthopedics, Metairie (described by Randon as an "additional medical examination") who explained a multi-level cervical disc injury would have required severe trauma – this crash clearly didn't meet that standard.

This case was tried for three days. Aych took medicals of $37,000. Her future care and future lost earnings were both rejected. Aych took $75,000 for past suffering and $75,000 more for in the future. The jury rejected an award for mental anguish and loss of enjoyment of life. The verdict for Aych totaled $187,000. A consistent judgment was entered.

It is interesting that following the entry of the judgment, both parties have challenged the verdict. Randon moved for a new trial and/or remittitur. The defense argued the $75,000 in future pain and suffering was illogical as the jury rejected any award for future medicals.

Aych also moved for a new trial and/or additur. She argued she was entitled to the full measure of her medical bills and she noted that they were uncontradicted. Moreover even the defense expert (Aiken) conceded the medical care was reasonable. Both motions were pending at the time of this report.

Employment Retaliation-Ageist and Sexual Harassment

- A sheriff's deputy alleged he suffered retaliation after complaining of an ageist hostile environment (a fellow deputy called him old man and other insults), and then reassigned to the radio room that handles 911 calls (and that was female-dominated), he suffered a sexual hostile environment which he alleged the women in the radio room were so sexually charged that he compared it to *Girls Gone Wild*

Richard v. St. Tammany Parish Sheriff's Office, 2:17-9703

Plaintiff: John O. Pieksen, Jr. and Michael G. Bagneris, *Bagneris Pieksen and Associates*, New Orleans

Defense: Chadwick W. Collings and Sarah W. Fisher, *Milling Benson Woodward*, Mandeville

Verdict: $90,000 for plaintiff on sexual harassment retaliation; Defense verdict on three counts, ageist hostile environment, ageist hostile environment retaliation and sexual harassment

Federal: **New Orleans**

Judge: Nanette J. Brown

Date: 7-14-22

Mark Richard, now age 49, started working in 2013 as a sheriff's deputy for the St. Tammany Parish Sheriff, Randy Smith. Richard was assigned to criminal patrol. Richard alleged that a fellow deputy (Patrick Penton) regularly engaged in age-related harassment.

Penton would call Richard an "old man" and wondered if he could "get it up." There were also remarks about Richard needing to use Geritol. Richard explained he could take a joke but the problem was that Penton made the remarks while they were on service calls interacting with the

public. When Penton would not relent from his ageist remarks, Richard complained.

A few weeks later in what would be called the "Million Dollar Road" incident, Richard came across a pedestrian walking on a road. The pedestrian had a problem with bright lights (a seizure disorder) and Richard conducted the investigation in the dark without his lights illuminated. The sheriff's office later looked into the matter and concluded Richard had engaged in a safety violation, i.e., working in the dark on the side of the road. This occurred just a few weeks after he had complained of Penton's ageist remarks.

Richard was then reassigned to the so-called Radio Room. The Radio Room handles sheriff communications including 911 calls. There were nine other employees in the office – eight were women. Richard alleged the office was sexually charged and the women regularly discussed sex, sexual positions and danced provocatively among other things. Richard compared the workplace to being akin to an episode of *Girls Gone Wild*.

Richard made a complaint that this represented sexual harassment and the very next day he was required to take a typing test. The test was related to proficiency in handling 911 calls and required that Richard type at 25 words per minute. He failed in part because he had an on-the-job hand injury (he had closed a cruiser door on his hand) a few months earlier. Having failed the typing test, the sheriff's office terminated Richard.

From this basic set of facts, Richard presented several claims against the sheriff's office. The first was that Penton's ageist remarks created a hostile environment. His second claim was that his complaints about the ageist remarks led to his transfer from criminal patrol to the Radio Room. Richard thought the "Million Dollar Road" incident was a pretext to mask that retaliation and he'd properly handled the matter.

Richard's third claim was hostile environment sexual harassment regarding the conduct by the women in the Radio Room. Finally Richard alleged he suffered retaliation (the sudden typing test and then his termination) after he complained about that harassment. If Richard prevailed on any count he sought an ward of general damages. The parties stipulated his back pay was $44,197 and if he prevailed on any count, he would take that sum.

The sheriff's office denied all counts, (1) there was not a hostile environment based on Richard's age, (2) Richard mishandled the traffic stop and committed a safety violation that justified his transfer to the Radio Room, (3) the Radio Room did not represent a sexually harassing environment, and finally, (4) there was no retaliation for his complaint as the typing test was essential to performing Richard's duties in the Radio Room including handling 911 calls.

This case was handled for years by Judge Martin Feldman who wrote the order denying the defense motion for summary judgment. After Feldman died in January of 2022, the case was reassigned to Judge Brown who then took it to trial.

The jury deliberated some seven hours before returning a verdict. The verdict was mixed. The jury rejected, (1) the ageist harassment claim, (2) age discrimination retaliation, and (3) hostile sexual environment in the Radio Room.

However the verdict was for Richard on the retaliation claim related to sexual harassment. He was awarded damages of $90,000. The final judgment was for $134,157 which represented the verdict and the stipulated back pay. Richard is expected to seek an award of attorney fees.

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