

The Louisiana Jury Verdict Reporter

The Most Current and Complete Summary of Louisiana Jury Verdicts

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Statewide Jury Verdict Coverage

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Civil Jury Verdicts

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

Products Liability - A teenage girl (the plaintiff) suffered a catastrophic and permanent head injury when her driver (also a teenage girl who was drinking) ran off the road and the 2001 Ford Escape she was driving flipped over – the plaintiff sued Ford and alleged the Escape was defective because it lacked an integrated restraint system to protect her during the roll-over – Ford replied the vehicle was safely designed and met all standards and the company instead blamed the injuries on the severe roll-over accident

Garraway v. Ford, 631668

Plaintiff: Joseph E. Ritch, *Elliott & Ritch*, Corpus Christi, TX and Donald J. Cazayouz, Jr. and Lane Ewing, Jr., *Cazayouz Ewing*, Baton Rouge

Defense: Robert W. Maxwell and Carl W. Giffin, Jr., *Bernard Cassisa Elliott & Davis*, Metairie and Thomas E. Bazemore, III, *Huie Fernambucq & Stewart*, Birmingham, AL

Verdict: Defense verdict on liability

Parish: **East Baton Rouge**

Judge: Donald R. Johnson

Date: 8-12-22

Madison Garraway, then age 17 and of St. Francisville, was a passenger in a 2001 Ford Escape driven by her friend, Jamee Allen (also 17) on 7-13-13. It was 1:30 in the morning and the girls were returning home from a party. They were late and had missed curfew. There was also proof they had been drinking. Allen's blood alcohol level was later measured at .03.

As Allen drove on LA 964 in East Feliciana Parish, she lost control in a

curve. Her vehicle ran off the road and rolled over. It landed on its roof. There were fact disputes as to how exactly the roll-over went, i.e., were there 2.5 rolls or a just a one-half roll, and also whether the vehicle struck one or two trees. In any event it was a very serious crash.

Garraway suffered a catastrophic head injury in the roll-over. She had a depressed and comminuted skull fracture. Garraway was immediately taken to a hospital in Zachary and then promptly transferred to Our Lady of the Lake in Baton Rouge.

Garraway underwent a craniectomy to relieve pressure on her brain. She was also treated for a brain injury and a diffuse axonal injury. Her course of recovery was grueling and difficult. She suffered respiratory failure, seizure, had a PEG tube installed and endured a PICC line infection complication among other difficulties. She later went to a rehabilitation hospital where she remained until October.

Garraway was diagnosed with a permanent traumatic brain injury. She has persistent vertigo and is subject to falls. She also has a visual defect and suffers regular headaches. There was proof Garraway will permanently require moderate assistance and she won't drive a car. Her lifetime needs are substantial. A life care plan expert, Cornelius Gorman, estimated the lifetime of care at from \$10 million to \$33 million.

Garraway sued Ford and alleged a design defect in the vehicle. It was her theory that the vehicle lacked an integrated restraint system that would

have protected her during the roll-over. Particularly she cited that the Escape did not keep her in position in her seat during the roll-over and this permitted Garraway to move up and to the right – it was that movement (striking the structure of the roof) that led to the severe injury.

Garraway further developed that with an alternative design of the vehicle, her injury would have been less serious. Her key experts were Paul Lewis, Biomechanics, Roswell, GA, Steve Meyer, Vehicle Design, Goleta, CA and Wayne McCracken, Accident Reconstruction, Chapel Hill, NC.

The plaintiff also pursued a claim against her driver, Allen, who had a \$25,000 liability limits with State Farm. Allen ultimately paid her limits. Allen also faced juvenile criminal charges related to this crash and pled guilty.

Ford's defense as to the design of the Escape was simple enough. It met all federal safety standards and was in fact a "state of the art" design. Moreover Ford argued that in this exceptionally violent crash, the Escape had performed well. Ford also contested that there was proof of a feasible engineered alternative design. The defense experts included Michael Carhart, Design, Phoenix, AZ and Thomas Perl, Accident Reconstruction, Orem, UT.

Ford also diminished the claimed damages. While conceding a serious injury, Ford noted that in the years since the crash, Garraway was married for a time, lived independently and had a child – this all undercut the notion of Garraway's claim for future damages.

Beyond the issues being framed in this way, there were several other nuances in the case. The first was

about the wreck itself. The plaintiff postured that the Escape rolled over 2.5 times, the injury occurring when Garraway's head struck the roof of the car. Ford thought it was just a single one-half roll, the vehicle striking two trees. Ford then developed Garraway's head struck either the ground or a tree, the design issue having nothing to do with the sustained injury and thus there was no proximate cause. Ford also created an exemplar based on Garraway's proposed design and concluded that design would not have protected the plaintiff.

There was also competing proof about Allen's intoxication. Garraway thought the BAC was extremely low (.03) and while this was still illegal for an underage driver, this minimal intoxication level was not a cause of the crash. This was developed in part by Gary McGarity, a toxicologist originally retained by Allen. Ford by contrast thought the drinking was important to understanding the case. Ultimately the court excluded proof that Garraway was also drinking but allowed it regarding's Allen intoxication. Garraway had hotly contested the admission of this proof as she feared Ford would unfairly smear her and Allen as so-called "party girls."

This case originally came to trial in August of 2018. The then-presiding Judge Michael Kelley had entered an order precluding proof that Garraway was also drinking. Then in voir dire Ford's counsel referred to the girls having been drinking but not necessarily Garraway. Judge Kelley declared a mistrial.

The case would come to trial again some four years later and more than nine years after the crash. The trial lasted two weeks and the jury then

deliberated 2.5 hours.

During those deliberations the jury had questions:

Why is Jamee included in the lawsuit as her name is on the header? Are we to consider her percentage of fault?

[Ed. Note - The instructions did provide for apportionment to the driver.] Judge Johnson answered that the header is not evidence and the jury should follow the instructions.

The court's liability instruction (it was wordy) asked if the seatbelt in the 2001 Ford Escape was unreasonably dangerous by way of a design defect because it didn't incorporate an integrated restraint system. The jury answered "no" for Ford to this first question and didn't reach separate liability questions on proximate cause and whether there was an "engineered alternative design." that ended the deliberations and Garraway took nothing. A defense judgment was entered.

Medical Malpractice - The plaintiff reported to his primary care physician with a history of several chest pain incidents in recent days – the plaintiff was not in distress at the time and after a clear EKG, the doctor told the plaintiff not to worry – the plaintiff was back at the ER 12 hours later with a heart attack and in this lawsuit he blamed the doctor for not intervening earlier

Gniady v. Ochsner Clinic, 17-11897

Plaintiff: Harry E. Forst,

New Orleans

Defense: Peter E. Sperling and Timothy P. Scanlan, Jr., *Frilot, LLC*, New Orleans

Verdict: Defense verdict on liability

Parish: **Orleans**

Judge: Ellen H. Hazeur

Date: 8-19-22

David Gniady, then age 62 and a