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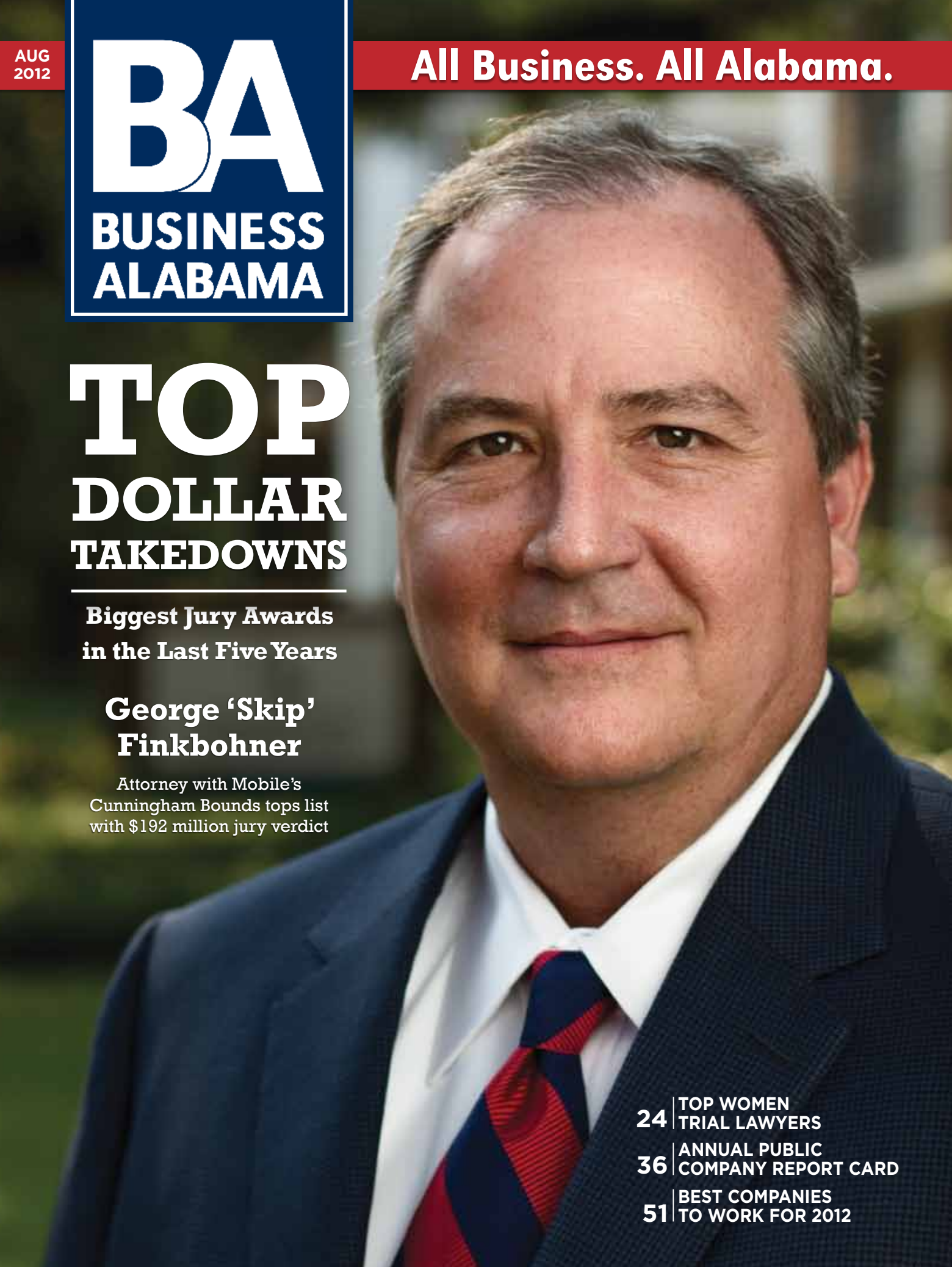


TOP DOLLAR TAKEDOWNS

Biggest Jury Awards in the Last Five Years

George 'Skip' Finkbohner

Attorney with Mobile's Cunningham Bounds tops list with $192 million jury verdict

TOP DOLLAR JURY AWARDS

Some of the state's most skillful plaintiff attorneys give their views of the their big wins—the 10 largest Alabama jury awards in the past five years.

BY KELLI M. DUGAN

Attorneys with Cunningham Bounds in Mobile: (from left) Skip Finkbohner, Toby Brown, Robert Cunningham, Joseph Brown and David Cain. *Photo by Dennis Holt*

1 MANNSFELD V. INEOS AMERICAS LLC, ET AL

Most people—on a good day—might be lucky to get a penny for their thoughts, but Sven-Peter Mannsfeld walked away from a Mobile courtroom in 2008 with a jury award of more than $192 million for his.

Mannsfeld, the former executive vice president for technology and engineering at Degussa Corp., settled the case one year later for only $40 million, but a clear message had been sent and received: Intellectual property is an incredibly valuable thing.

"I thought Peter Mannsfeld was a really intriguing guy—a genius with a lot of integrity—and every time I got information from him, it was borne out by the truth when we looked at documents or talked to witnesses," says George "Skip" Finkbohner, of Cunningham Bounds LLC in Mobile, one of a team of attorneys who argued the "unjust enrichment" claim against Ineos Americas, the company that acquired Phenolchemie GmbH and Co. KG, a neighboring firm to Degussa, where Mannsfeld worked.

At issue was Mannsfeld's proposal to chemically transform the byproduct of the phenol Phenolchemie produced at Phenolchemie's Theodore, Ala. plant into an ingredient for a substance called "carbonblack," a material used in the production of tires and other industrial rubber products. Otherwise, the company would have faced the costly options of either incinerating the byproduct or having it shipped off-site to be disposed of as hazardous waste.

Mannsfeld's option—which he described to Phenolchemie officials at a meeting between the two companies—stood to not only create a new revenue stream but presented a more environmentally friendly way of doing business in the process, Finkbohner says.

Phenolchemie liked the idea so much they ran with it and even formed a separate operation dedicated to it, but a funny thing happened on the way to the patent office.

"There was a patent on his invention that had five names on it, and none was his, so it really became a matter of principle," Finkbohner says, noting even the parade of premier scientists who testified during the trial conceded Mannsfeld's innovation had never occurred to them.

Mannsfeld, who had long-since retired from Degussa and was 72 at the time the jury awarded him more than $25 million in past damages and another $167 million for projected profits at the Theodore plant through 2025, only found out his idea had been hijacked when he received a letter from Phenolchemie's patent lawyer in 2004.

"I think that (the verdict) vindicated the principle that Mannsfeld was the inventor and what happened to him by not getting any credit for it turned out to be unfair," Finkbohner says.

Jere Beasley (right) and Dee Miles, with Beasley Allen, represented the state as plaintiffs against pharmaceutical giants Novartis and Sandoz. *Photo by David Bundy*

2 STATE OF ALABAMA V. NOVARTIS PHARMACEUTICALS CORP. ET AL and 4 STATE OF ALABAMA V. SANDOZ

"Be greedy and take no prisoners."

When internal company emails reveal little jewels such as this, a plaintiff's lawyer's work is done, which is exactly how Montgomery's Beasley Allen Crow Methvin Portis and Miles PC took Big Pharma to task for picking the pockets of Alabama taxpayers in the name of Medicaid.

As one might expect, the details get a little tricky, but the bottom line is the firm successfully sued the manufacturers of both brand name and generic drugs—for a combined win of nearly $193 million—for failing to pass on the true costs of those medications to Alabama's Medicaid system. Juries found the pharmaceutical giants liable for the program's excess reimbursements.

"It was almost a hornbook version of a fraudulent scheme to cheat the state and overcharge for drugs," says attorney and former Alabama Lt. Gov. Jere Beasley.

In siding with the state of Alabama in its case against Novartis and GlaxoSmithKline, the jury deemed the former liable for $33.3 million and the latter liable for nearly $81 million, for a grand total of more than $114 million in 2009. One year later, the state was awarded another $78.4 million in the Sandoz case, leveling identical arguments against the manufacturer of generic drugs.

In an inexplicable twist, however, the Alabama Supreme Court reversed the Novartis decision in October 2009, rendering its impact moot, and overturned the Sandoz decision in mid-July of this year.

Beasley says he remains perplexed by the high court's change of heart, especially considering it represents "the end of the line" for any recourse against the brand-name drug makers in the state of Alabama, but the firm has already settled more than $600 million in identical claims in eight other states with another $116 million on appeal in other states.

"We haven't lost a single (related) case in any other state, and for good reason," Beasley says. "When you boil the whole thing down, it's a classic example of a prideful, greedy company combined with extremely poor regulation on both the federal and state levels and knowledge on the part of the (pharmaceutical) companies that the state is grossly understaffed and underfinanced. It's a fertile field for fraud."

Attorney Dee Miles contends although the financial awards in and of themselves represent tangible victories for the states that have received settlements, the litigation has actually produced an even more significant outcome.

"These cases have made a significant social change in the way our Medicaid program operates. The federal government has actually revamped its pricing (formula) going forward, and that's a direct result of this litigation," says Miles, whom Beasley credits with leading the aggressive team assembled.

"These cases are so important and are making such an important change that never would have come about if we hadn't taken them on. We're talking about people who were taken off the Medicaid rolls because of (the program's) budget constraints who can now get health care because these verdicts are helping push those budgets in a different direction," Miles says.

And Beasley says the state of Alabama, alone, has been duped out of "close to $1 billion" since the fraudulent practices began.

"It's not just Alabama. It's a systemic problem. There are taxpayers who've been hurt in every state, and it's very simple. Cheating the government cheats the taxpayers," Beasley says.

3 DIRT INC. V. BREDERO SHAW LLC, ET AL

In Robert Cunningham's experience, juries usually get it right.

Such was the case when Dirt Inc. found itself staring at a pile of environmental infractions that—quite frankly—stank to high heaven and cleanup costs that would have easily put the family operation out of business after more than 40 years.

"With juries, you've got 12 people, total strangers from all walks of life. Most of the time, common sense prevails, and they get it right," says Cunningham, of Cunningham Bounds LLC in Mobile, one of a team of attorneys who successfully argued the negligence claim.

The operators of the West Mobile landfill were ultimately awarded $108 million in 2008, and the case has since been settled for an undisclosed amount.

At issue was a case of a joint venture that included Halliburton in the formation of a pipe plant in Mobile to manufacture pipe for undersea use. Unbeknownst to the owners of Dirt Inc., the pipe producers were disposing of their hazardous materials in the West Mobile landfill designated for large construction and demolition only.

Specifically, Cunningham says the defendants knowingly deposited 260 tons of tainted waste in Dirt Inc.'s facility and then represented to the Alabama Department of Environmental Management and the landfill owners that the refuse was not hazardous.

More than two years later, when the problem was finally identified and reported, mercury could be found as deep as 45 feet on the property "not all that far from the Dog River Watershed that feeds directly to Mobile Bay and the Gulf of Mexico," Cunningham says.

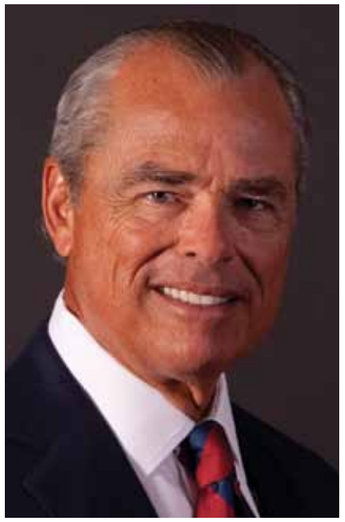
The problem, though, is that landowners are legally responsible in Alabama for the removal and associated costs of hazardous materials, so the Dirt Inc. empire was about to crumble.

"This lawsuit was about who's going to pay the tens of millions of dollars it costs to go back into a landfill to remove hazardous waste, but it was also about punishing Halliburton and its joint venturers for fraudulently placing it there to begin with," Cunningham says.

The jury ultimately assessed the cleanup costs at $100 million and levied an additional $2 million punitive award against each defendant.

"I really couldn't conceive of circumstances under which a jury wouldn't conclude the wrongdoers who generated the waste and then lied about it ought to have to be the ones to pay for it. Had they not (ruled for the plaintiff), it would have destroyed a 40-year-old business that did nothing wrong, but juries usually get it right," Cunningham says.

"With juries, you've got 12 people, total strangers from all walks of life. Most of the time, common sense prevails, and they get it right." — Robert Cunningham, Cunningham Bounds LLC



"Quite honestly, Sunshine Mills is sort of the backbone of the economy of the west end of the county. They've been in business almost 50 years, and this situation darn near put them under." —Daniel McDowell, McDowell, Beason and Hamilton PC

5 SUNSHINE MILLS V. ROSS SYSTEMS

Maybe jurors in this particular case really took exception to a software firm offering products that had never seen the light of day as tried-and-true business solutions.

More likely, they objected to the revelation of internal emails from Atlanta-based Ross Systems Inc. referring to officials with Sunshine Mills as "clueless fools."

We're betting $61.4 million—the amount the jury awarded the pet food manufacturer in 2011—buys more than a few clues.

"Generally, when you see a large verdict, the jury gets mad at somebody. These folks thumbed their noses at the people of Franklin County," says Daniel McDowell, with McDowell Beason and Hamilton PC in Russellville, who argued the software fraud case alongside a team with Birmingham's Lightfoot Franklin.

"Quite honestly, Sunshine Mills is sort of the backbone of the economy of the west end of the county. They've been in business almost 50 years, and this situation darn near put them under," McDowell says.

The company has recovered "in spite of what went on," but the "substantial" settlement reached between the two parties is confidential, he says.

"Hopefully, this verdict sent the message that you don't need to promise software results that you can't deliver. Ross Systems was making it up as they went along and could not fulfill the promises they made. Plain and simple," McDowell says.

6 KRANTZ V. A. O. SMITH CORP.

Richard and Michele Krantz moved into their dream home in 2005, but it took only four months for a faulty hot water heater to spawn an inescapable nightmare.

Joseph "Buddy" Brown, with Cunningham Bounds, in Mobile, says the couple was living the American dream, having recently adopted two children before moving into a brand new home in Daphne.

A faulty hot water heater valve, however, allowed the garage to fill with gas on that fateful July morning, and when Richard Krantz went to re-light the pilot light—a frequent annoyance with the apparatus—the garage exploded.

Brown says a series of missteps from the beginning are to blame for the accident that ultimately claimed Richard Krantz' life, including the "total and complete incompetence" of a technician A.O. Smith Corp. allowed to service the heater even though he was unlicensed and uncertified.

"In every case you take, you hope you change something for the better. I think this is one of the cases that accomplished that," says Brown, whose team secured a $50 million verdict for the Krantz family in 2008. The suit has since been settled for an undisclosed amount.

The defense argued unsuccessfully that the heater, itself, did not create the gas accumulation that exploded when Richard Krantz ignited the pilot light, but rather a leak from the main line near the roadway.

"We were able and fortunate enough to have well-qualified, articulate first responders and local fire chiefs and fire marshals who were very diligent and highly regarded there on the scene, and these professionals were able to come in and offer testimony that the water heater was the cause of the explosion versus a phantom leak 350 feet from the home," Brown says.

"The defense was intent on discrediting (our witnesses), and they wanted the jury to adopt a theory that defied physics and (Sir Isaac) Newton and everything we learned about from the second grade forward. This verdict was meant as a message to the manufacturer of the product, to hold them accountable for the irresponsibility of selecting these service personnel, as well as the lawyers and experts insistent on selling (the jury) an illogical and unscientific theory as to the true cause of the explosion," Brown says.

Joseph "Buddy" Brown, with Cunningham Bounds

8 GOLDEN V. TAQUERIA JALISCO MEXICAN RESTAURANT

When Daniel Golden responded to a domestic disturbance at a local eatery in August 2005, he was only doing his job as one of Huntsville's finest.

After the police officer was shot dead during the altercation, Golden's family decided the restaurant had gone a little above and beyond in its job selling alcohol to the assailant who took Golden's life.

"This man's funeral shut down the city of Huntsville. He was the epitome of a public servant," says Matthew Minner, with Hare Wynn Newell and Newton LLP, in Birmingham.

Minner recalls the family sitting down in his office, spreading about 50 magazine and newspaper clippings about the fallen hero's life and example, and telling him, "Somebody's got to help us make a change."

"It's a privilege to be able to serve alcohol at any establishment, and Alabama has very specific laws that have to be followed in order to hold that privilege. An establishment cannot legally serve patrons beyond the point of clear intoxication, and it's not what any responsible business would do, with or without the law in place. In this case, the laws are in place to protect the public," Minner says.

The jury agreed in no uncertain terms, returning a $37.5 million judgment in 2011 against the restaurant for continuing to serve a visibly intoxicated employee who later shot and killed an officer of the law.

"Huntsville juries are traditionally very conservative (in terms of monetary judgments), but this case showed they had no tolerance for a restaurant putting public safety in harm's way," Minner says.

Matthew Minner, with Hare Wynn Newell and Newton LLP

7 ESTATE OF STABLER V. KIA MOTORS AMERICA INC., ET AL

"Buckle up."

That cautious directive is uttered by millions of parents each day, sending their children out onto crowded interstates and city streets.

So imagine the horror when the parents of Mobile teenager Tiffany Stabler realized the seatbelt in her 1999 Kia Sephia failed to properly latch and their indignation when the automaker claimed their daughter had simply failed to engage the safety device before the crash that ejected her through the windshield, claiming her life.

According to trial testimony, Kia officials were aware of the faulty seatbelts in 1999 models but opted not to include them in a recall of vehicles produced between 1995 and 1998.

The Stabler case—which included five years of litigation and two appeals to the Alabama Supreme Court—ultimately ended in June 2011 with a jury returning a $40 million wrongful death verdict against Kia Motors of America Inc., Kia Motors Corp., and DBI/Celltrion.

"Tiffany's father would never have given his little girl that car if he thought it was unsafe," plaintiff's attorney George "Skip" Finkbohner said in a prepared statement.

"While the jury's verdict does not change the fact that Tiffany's death could have been, and should have been, prevented, hopefully it will result in a change in business practices so that when a product manufacturer knows that its product has a safety defect, it will make full and complete disclosure and promptly recall all of the defective products and not just some of them," said Finkbohner, one of a team of Cunningham Bounds lawyers representing the Stabler estate.

George "Skip" Finkbohner, with Cunningham Bounds

Photo by Matthew Coughlin

9 BLADES V. THERMAL TECHNOLOGIES, ET AL

Rebekah Blades' life changed forever the day she walked through a doorway as a quality control manager at Walmart and an unsecured, 40-pound counterbalance fell, crushing portions of her skull and causing irreparable damage.

"This accident basically took her life away. She was relegated from being an accomplished young woman to being totally dependent on others," says attorney Mark Andrews, with Morris Cary Andrews Talmadge and Driggers LLC, in Dothan.

Blades was awarded $21 million in damages by a Pike County jury in 2011, but Andrews says the amount will never fully restore his client to the life she knew before negligence left her disfigured and suffering from persistent neurological damage.

Mark Andrews, with Morris Cary Andrews Talmadge and Driggers LLC

"I do feel like (the verdict) has helped her move on and be compensated for her loss. We did not seek any punitive damages, only compensatory," says Andrews, noting the award is reportedly the largest compensatory-only verdict ever awarded in a negligence case in the state of Alabama.

"We're talking about horrific injuries to a young lady who had done nothing wrong. Nothing will restore the quality of life she's lost, but this verdict shows there was never any question who was in the wrong," Andrews says.

Blades still suffers seizures—a condition caused directly by the blunt force trauma of the blow—and remains incapable of working, driving or caring for her child alone.

"This case is an example of just how callous negligent actions can be, especially when they're made by corporations and manufacturers who never stop for a moment to consider the life-changing damage such actions can cause," Andrews says.

10 ESTATE OF HALL V. BOUDREAUX, ET AL

Paulett Hall was only 32 the day she was admitted to Springhill Memorial Hospital for a surgical procedure. The mother of two never again saw the faces in the waiting room, assured by all involved she was in good hands.

Attorney David Cain, with Cunningham Bounds, says the $20 million awarded the family in 2010 certainly sends a message of accountability, but wonders at what cost.

"Anytime you have somebody who is as young as she was who walks into the hospital with a condition that is determined to be not life-threatening and then learn she has died as a result of aspiration, which could clearly (have been anticipated) and should have been considered and precautions put in place when she was intubated, you question whether she got the attention she needed, and it turns out she didn't," Cain says.

"I think the size of the verdict was intended to send a message to these doctors that the jury didn't consider anything they did in the care and treatment of Ms. Hall acceptable," Cain says.

Hall's weight at the time of the surgery placed her at a higher risk for pulmonary aspiration, yet the surgical team took no precautions against such an outcome, and she ultimately choked on her own bile.

"Everybody—at some point in life—will face a position where they're forced to put their life in someone else's hands to take care of them. I think it's very scary that the anesthesia team didn't take the necessary steps to learn about her condition before they injected her with drugs that were going to take away her ability to take care of herself," Cain says.

"The other message here is that a doctor must know his or her patient and undertake to learn about them before taking action or providing treatment that could be detrimental. She was healthy and she was 32, no explanation for her death other than lack of diligence," he says.

Kelli Dugan is a freelance writer for Business Alabama. *She lives in Mobile.*