

DAILY REPORT

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Firm Whips GM, Wants More

LAWYER IN GA. CASE WITH SIMILAR FACTS PREDICTS REPEAT OF BIG ALABAMA AWARD

BY EMILY HELLER
Staff Reporter

A Columbus plaintiffs firm renowned for winning huge jury verdicts says its latest one, a \$150 million award from an Alabama jury against General Motors Corp., increases the likelihood of success in two similar suits in Georgia.

Alabama juries are so famous for handing out huge awards that their state has been dubbed "tort hell" by insurers and attorneys who defend against such suits. The awards are also known for being thrown out on appeal. Most recently a multimillion-dollar award was struck down by the U.S. Supreme Court in the famous BMW paint-job case.

But George W. Fryhofer III, a partner in Butler, Wooten, Overby, Cheeley, Pearson & Fryhofer and co-lead counsel in the Alabama case, says the award that goes to a man paralyzed after crashing his Chevrolet Blazer is bulletproof. *Hardy v. General Motors*, Nos. CV-93-56, CV-93-57 (Lowndes Cir. Ct. verdict June 3, 1996).

"We don't believe that there is any error in the case,"

Fryhofer says. "We believe the judge bent over backward to give General Motors a fair trial."

The verdict also could signal the strength of two nearly identical claims pending in Georgia, he says.

"We felt confident a verdict like this could be the result once any jury heard all the evidence of General Motors' guilty knowledge," Fryhofer said by phone from Montgomery.

Last fall, the firm pulled the plug in one of the Georgia cases nine days into the trial in Fulton Superior Court. After unfavorable evidentiary rulings from Chief Judge Isaac Jenrette, the plaintiffs dismissed the suit and later refiled in Fulton State Court. *Roberts v. General Motors*, No. 95-VS-106748 (Fult. St. filed Nov. 22, 1995) (Daily Report, Oct. 25, 1995).

But the big win has emboldened the firm over the pros-

pect of carrying over some of that momentum. "Roberts is even stronger than *Hardy*," Fryhofer proclaims, saying that the evidence of alleged door-latch failure is stronger in the Georgia case.

"General Motors has the same lawyers, the same tired defense and the same experts rejected by the jury in the *Hardy* case," Fryhofer says.

GM attorneys could not be reached to discuss their plans, if any, for an appeal.

The company's lead counsel in the case, Richard A. Bowman of the Minneapolis firm of Bowman & Brooke, was traveling and unavailable for comment. Robert D. Hays Jr. of King & Spalding did not return two calls seeking comment. King & Spalding co-counsel Jamie Carroll deferred to Hays.

In a written statement, GM called the award "completely outrageous" and a "crushing blow to the concept of indi-

vidual responsibility." The company claims that the injured man fell asleep at the wheel and lost control of his truck. It also claims he had been drinking, an allegation the plaintiff's attorneys vigorously deny.

Firm's Biggest Verdict Yet

It was an Alabama jury that awarded a doctor \$4 million in punitive damages because BMW repainted his car without disclosing it. The U.S. Supreme Court struck down the award, which the Alabama Supreme Court had reduced to \$2 million, as grossly excessive and unconstitutional. *BMW of North America v. Gore*, No. 94-896 (U.S. dec'd May 20, 1996).

On Monday, in the biggest verdict to date for the firm headed by James E. Butler Jr. (see table, Page 1), a Lowndes County Circuit Court jury in Alabama awarded \$50 million in compensatory and \$100

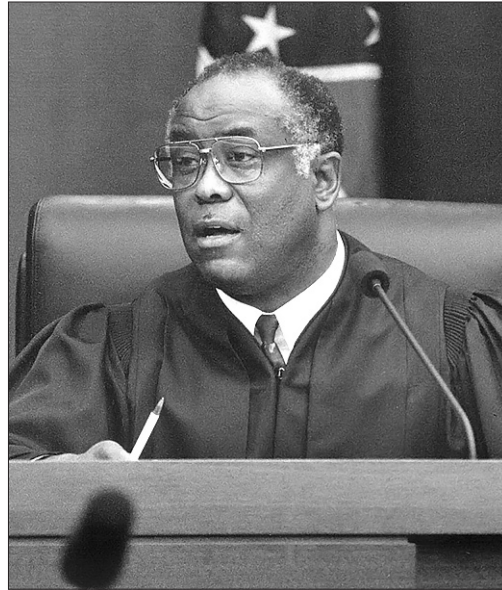
Butler Firm's Biggest Verdicts 1988-1996

Case	Type/Court	Losing Firm	Verdict
Hardy v. GM	Product liability Lowndes Cty. Cir.(Ala.), 1996	Bowman & Brooke; King & Spalding	\$ 150 million
Moseley v. GM	Product liability Fulton State, 1993	Kirkland & Ellis King & Spalding	\$ 105.24 million
Rodriguez v. Suzuki	Product liability St. Louis Cir. Ct., 1995	Beirme, Maynard & Parsons	\$ 90 million
Bibbs v. Toyota	Product liability Fulton State, 1994	Long Weinberg, Ansley & Wheeler	\$ 46.45 million
Hillard v. Ocala	Wrongful death Fulton State, 1988	Drew, Eckl & Farnham	\$ 30.25 million
Clay v. National Health Care	Medical malpractice Forsyth Superior, 1990	Long Weinberg, Ansley & Wheeler	\$ 25.5 million

Co-lead counsel George W. Fryhofer III says the verdict also could signal the strength of two nearly identical claims pending in Georgia.



SUSAN MCCARTER/DAILY REPORT
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In a trial held last fall in Fulton Superior Court, Chief Judge Isaac Jenrette sharply limited the testimony of a key witness whose testimony was not restricted in the Alabama case.

million in punitive damages to Alex Hardy and his wife, Thelma.

At issue in that case as well as the Georgia suits are claims that General Motors manufactured some 40 million vehicles in model years 1978 to 1987 with defective door latches that pop open in collisions, ejecting the people inside.

In the incident that led to the *Roberts* suit, Dennis A. Roberts was killed in 1991 after his 1986 Chevrolet pickup was struck by another vehicle and rolled over. The plaintiffs, Roberts' ex-wife bringing suit on behalf of the couple's children, contend the door unlatched and Roberts was thrown from the vehicle as it continued rolling.

Fryhofer, also lead plaintiffs' counsel in *Roberts*, says the verdict "reflects the awful fact that General Motors has known since 1982 that this door latch was weak, substandard and defective and that doors were flying open—killing and injuring innocent victims."

The other Georgia door latch case, *Conkle v. General Motors*, No. 92-CV-730 (Muscogee St. filed Sept. 18, 1992), is pending in Columbus. A pre-trial matter in *Conkle* is on appeal in the case. Muscogee State

Court Judge Andy Prather defaulted General Motors for concealing documents and other discovery abuse, Fryhofer says, noting that the judge struck GM's answer.

GM appealed to the Georgia Court of Appeals, where the matter is pending. *General Motors v. Conkle*, No. A96I0185 (Ct. App. Ga. filed Feb. 12, 1996); *General Motors v. Conkle*, No. A96A1785 (Ct. App. Ga. filed May 2, 1996);

Elwell Again a Key Witness

Key to unlocking such a huge verdict in *Hardy*, says Fryhofer, was the undisputed evidence that GM engineers in 1985 advised the company to stop using the latches. He says the company indeed stopped in 1987 and destroyed its inventory, but failed to advise federal safety officials.

Fryhofer says GM's own statisticians and engineers calculated that the company could expect 18,000 such door openings per year, Fryhofer says. Replacing the latches would have cost \$916 million, Fryhofer says.

The jury in *Hardy* heard a former GM engineer's testimony, excluded in *Roberts*, about what the company knew about the performance of the latch, Fryhofer says.

The witness, Ronald E. Elwell, told the *Hardy* jury that GM asked him to evaluate the latch and that he determined it was indefensible, Fryhofer says.

"The jury in the *Roberts* case was never allowed to hear that," Fryhofer says.

"That's why we were so disappointed when we were left with no choice but to dismiss and refile *Roberts* after the Superior Court in *Roberts* handled the evidence in a manner that ensured reversible error for all parties."

Roberts is now pending before Fulton State Court Judge Cynthia D. Wright and could come to trial in the fall.

Elwell's testimony proved powerful in another *Butler*, *Wooten* suit against General Motors, in which a Fulton State jury stung the auto maker with a \$105.24 million award to the parents of Shannon Moseley, who died in a fire after a crash involving his GM truck, equipped with sidesaddle gas tanks. The case was thrown out on appeal, after which the *Moseleys* settled for a confidential sum.

The appellate court overturned the verdict largely because the trial judge improperly allowed plaintiffs' lawyers to tell the jury about

120 other sidesaddle fuel tank cases without requiring proof that the incidents were substantially similar to the one at issue. *General Motors v. Moseley*, 213 Ga. App. 875 (1994).

Fryhofer says he hopes Elwell will figure prominently and fare better in the new *Roberts* trial. Earlier, General Motors attorneys pummeled Elwell on cross-examination. That played a part in prompting *Butler*, *Wooten* to dismiss the case.

General Motors claimed the plaintiffs pulled out because they were tipped off by an excused juror that things were not going well.

The dismissal of the case followed Jenrette's excusing a juror because of a hardship. After the dismissal, a *Butler*, *Wooten* associate stopped the juror outside the courthouse and engaged in a discussion.

General Motors attorneys called the move "inappropriate and unethical."

Under questioning by Jenrette, Fryhofer said the firm didn't learn anything meaningful and that the conversation didn't figure into the decision to dismiss the suit. Jenrette took no action against the plaintiffs' firm, noting that he had no jurisdiction because the suit was dismissed. □