

DAILY REPORT

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Putting GM Verdict in Historical Context

How Biggest Win in State Stacks Up

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Staff Reporter

If there were a verdict Hall of Fame, what place of honor would last week's 105.24 million Fulton State Court award against General Motors Corp. command?

That is the question court-watchers have been asking ever since James E. Butler Jr. and Robert D. Cheeley walked out of the courtroom with a victory that pushed GM stock into heavy trading, consumer groups back to the doorstep of the National Highway Traffic Safety Administration, and GM into a quick and deci-

sive war against NBC. Based on interviews with professional trial-trackers, conversations with Georgia lawyers and previous *Daily Report* articles, it appears this much can be said about the verdict against GM for a pickup fuel tank that exploded on impact and killed 17-year-old Shannon C. Moseley: It is Georgia's first nine-figure verdict and the nation's fourth-largest product liability award. *Moseley v. General Motors*, No. 90-V-6276 (Fult. St., Feb. 22, 1990)

As to who is Georgia's verdict leader, *Moseley* removes whatever doubts there may have been. Butler now holds

claim to four of what are believed to be the top eight verdicts in Georgia. *See chart, bottom.*

"[I]n terms of total value of verdicts, Jim has eclipsed everyone in the state," says W. Carl Reynolds of Macon's Reynolds & McArthur, winner of Georgia's sixth-largest verdict.

Butler and Cheeley received help on *Moseley* from associates Patrick A. Dawson and Peter J. Daugherty, as well as Gerald Davidson Jr. of Lawrenceville's Anderson, Davidson & Tate, who referred the case to Butler, Wooten, Overby & Cheeley. Nationally, last

week's verdict is surpassed in size by product awards of 128.46 million, 127 million and 106.8 million, according to Jury Verdict Research, a Pennsylvania company that tracks jury verdicts. *See chart, page 2.*

Those awards, however, do not come close to the nation's largest verdict ever, the 10.53 billion judgment Pennzoil won against Texaco in a 1985 unfair-business practices case. Texaco ended up in Chapter 11 bankruptcy and eventually settled for 3 billion.

Despite their glory, few big verdicts ever survive undiminished after judgment,

BIG GEORGIA VERDICTS

\$105.24 MILLION

WINNING LAWYER – JAMES E. BUTLER, JR.

Moseley v. General Motors Fulton State 1993

Case Type – Product Liability
(Pickup Truck Fuel Tank)

\$ 35 MILLION

WINNING LAWYER- WILLIAM W. GARDNER

Metro Airlines v. Phoenix Airline Services Fulton Superior 1988

Case Type – Breach of Fiduciary Duty
and Conspiracy

\$ 30.25 MILLION

WINNING LAWYER – JAMES E. BUTLER JR.

Hilliard v. Ocilla Industries Fulton State 1988

Case Type- Wrongful Death (Tractor - Trailer)

\$ 28 MILLION

WINNING LAWYER – PHILIP C. SMITH

Skipper v. Georgia Power Cherokee Superior 1990

Case Type – Personal Injury

\$ 25.5 MILLION

WINNING LAWYER – JAMES E. BUTLER JR.

Clay v. National Health Care Forsyth Superior 1990

Case Type – Medical Malpractice

\$ 23.5 MILLION

WINNING LAWYER – W. CARL REYNOLDS

Zachery v. Schneider National Northern District 1991

Case Type – Wrongful Death (Tractor- Trailer)

\$ 15.5 MILLION

WINNING LAWYER – JAMES E. BUTLER JR.

Bagley v. Short White Superior 1990

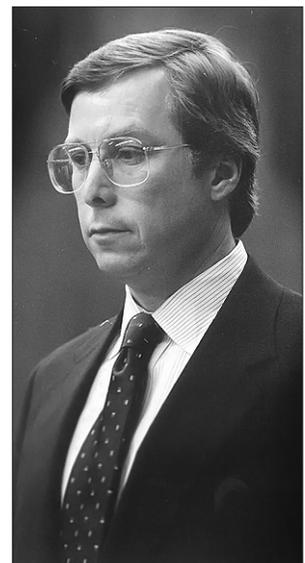
Case Type – Wrongful Death

\$ 9.3 MILLION

WINNING LAWYER – FOY R. DEVINE

Stubblefeld v. Ford Fulton Superior 1982

Case Type – Product Liability (MustangII)



James E. Butler Jr. holds claim to four of what are believed to be Georgia's eight biggest verdicts.

be it through settlement, problems in collection or outright reversal. GM has already vowed an appeal and, as a sign of its determination, this week forced a primetime apology out of NBC for rigging pickup cash tests for a November news magazine show.

If Butler and Cheeley use the opportunity of an appeal to test the constitutionality of Georgia's restrictions on product liability awards, it could be years before the 105,241,612.84 verdict is paid in full, if ever.

"There's a huge difference between a 100 million verdict being awarded and a 100 million verdict being collected," says Michael Rustad, a law professor at Suffolk University Law School in Boston who follows big verdicts.

Close Behind the Pinto

Of all the nation's famous verdicts, Butler and Cheeley's case most resembles the 1978 Ford Pinto litigation, which also dealt with a controversial fuel system design. *Grimshaw v. Ford Motor* involved a Ford Pinto fuel tank that punctured and exploded in 1972, and severely burned a 13-year-old boy. An Orange County, Calif., jury delivered the largest product liability verdict ever, 128.46 million, and the award forced the recall of hundreds of thousands of Pintos.

The trial judge in that case later reduced the 125 million punitive damages award to 3.5 million, says plaintiffs' attorney Mark P. Robinson Jr. of Robinson & Phillips in Mission Viejo, Calif., and the parties reached an undisclosed settlement shortly thereafter. Robinson's former partner, Arthur N. Hews, who is now retired, assisted him in the case. Los Angeles attorney Richard Fox represented Ford.

Two other product liability

<p style="text-align: center;">BIG NATIONAL PRODUCT LIABILITY VERDICTS</p> <p style="text-align: center;">\$128.46 MILLION WINNING LAWYER – MARK P. ROBINSON JR. <i>Grimshaw v. Ford Orange County, Calif.</i> Case Type – Product Liability (Pinto Fuel Tanks)</p> <p style="text-align: center;">\$127 MILLION WINNING LAWYER – BARRY D. GOLDBERG <i>Proctor v. Upjohn Cook County, Ill., 1991</i> Case Type – Product Liability</p> <p style="text-align: center;">\$30.25 MILLION WINNING LAWYER – DAVID L. PERRY <i>Durrill v. Ford Nueces County, Texas, 1983</i> Case Type – Product Liability</p> <p style="text-align: center;">\$105.24 MILLION WINNING LAWYER – JAMES E. BUTLER JR. <i>Moseley v. General Motors Fulton State 1993</i> Case Type – Product Liability (Pickup Truck Fuel Tank)</p>

verdicts also eclipse Butler's award in *Moseley*.

A Cook County, Ill., jury in 1991 awarded 127 million in compensatory and punitive damages in a case involving a man who lost an eye after an ophthalmologist injected it with a steroid. In *Proctor v. Upjohn*, jurors determined Upjohn Co. failed to warn that the product should not be injected directly into the eye. Barry D. Goldberg of Goldberg & Goldberg in Chicago was plaintiff's attorney.

Ford was also popped for the country's third-largest product liability verdict in 1983 when a Nueces County, Texas, jury in *Durrill v. Ford* found against the automaker for 106.8 million in compensatory, special and punitive damages. David L. Perry, of Perry & Haas in Corpus Christi, Texas, represented the family of a woman who died when her 1994 Mustang II exploded after another vehicle struck it in the rear. M.W. Meredith Jr. of Meredith, Donnell & Abernethy in Corpus Christi defended Ford.

The *Moseley* judgment

bumps a 76 million award into fifth place nationally among product liability verdicts. A Baltimore jury rendered that award in 1989 in *Coyne v. Celotex Corp.*, a case involving an employee who developed chronic asbestosis after working in a paper factory. New Jersey attorney Michael B. Leh represented the plaintiff, while Clifford W. Cuniff of Baltimore defended Celotex.

Butler's Other Record

In Georgia, plaintiffs attorneys agree that the *Moseley* award dwarfs all other jury verdicts, surpassing a 1988 35 million award granted in a breach of fiduciary duty and conspiracy case. That case, *Metro Airlines v. Phoenix Airline Services*, came before Fulton Superior Court Judge William W. Daniel.

The jury determined the defendants conspired to compete with Metro while still employed there. The Georgia Court of Appeals later overturned the award, and the Georgia Supreme Court overturned the finding of liability against the defendants.

William W. Gardner, a sole practitioner formerly with Smith, Gambrell & Russell, brought the case for Metro along with David M. Brown of Smith, Gambrell. David H. Flint of Schreeder, Wheeler & Flint defended Phoenix in the case.

With his verdict last week, Butler outperformed his previous best—a 30.25 million award in 1988, believed to have been the former Georgia record in product liability cases. In *Hilliard v. Ocilla Industries*, which came before Fulton State Court Judge Jerry W. Baxter, Butler and partner C. Frederick Overby represented a widower whose wife died in a collision with a tractor-trailer that was speeding.

Sole practitioner Samuel P. Pierce Jr., then with Drew, Eckl & Farnham, defended Ocilla, and Greer, Klosik & Daugherty partner Robert J. McCune represented a co-defendant. Butler says he settled with the defendants for a lesser, undisclosed amount.

Among Butler's other big verdicts, a Forsyth Superior Court jury in 1990 awarded 25.25 million to a man who came out of knee surgery brain-damaged from an anesthesia mishap. *Clay v. National Health Care*. Butler says he and partner Joel O. Wooten Jr. settled with the defendant for an undisclosed amount.

Long, Weinberg, Ansley & Wheeler partner Robert Tanner and Weymon H. Forrester of Gainesville's Forrester & Brim served as defense counsel.

That same year, Butler and Cheeley scored a 15.5 million verdict in *Bagley v. Short*, which involved a restaurant owner high on marijuana who killed two people in a head-on collision. White Superior Court Judge Richard Story later reduced the award to 2.5

million.

Steven J. Kyle of Bovis, Kyle & Burch served as defense attorney.

In 1990, Canton sole prac-

Magruder, Sumner & Brinson defended Georgia Power.

Macon lawyer Reynolds won his big verdict, 23.5 million, in a 1991 federal wrong-

Reynolds says he settled for an undisclosed amount on the third day of the second trial in 1992. Robert E. Corry Jr. and R. Clay Porter, of Dennis, Corry, Porter & Gray, represented the defendants.

Preserving Victory

As other big winners before him, Butler may have trouble keeping his verdict intact, especially since the jury attached the 101 million in punitive damages to a mere 1 for pain and suffering, Reynolds says.

"I think he would recognize he's got a problem with the punitive damages award, but it's a wonderful problem to have," Reynolds says.

Jurors explained after the trial that while they believe Moseley suffered as he burned to death following his collision with the truck of a drunken driver, they awarded his estate just 1 for pain and suffering because the victim wasn't alive to enjoy the award. At Butler's urging, they mainly set out to punish GM. The 1, which came on top of a 4.24 million compensatory award, enabled the jury to reach the punitives phase of the trial.

Sole practitioner Foy R.

Devine may be one of the few attorneys to collect in full on a Georgia megaverdict. A Fulton Superior Court jury in 1982 in *Stubblefield v. Ford* awarded 9.3 million in the case of Teri Stubblefield, who burned to death after her Mustang II caught fire in a collision.

Ben L. Weinberg Jr., of Long, Weinberg, Ansley and sole practitioner John E. Talmadge defended Ford.



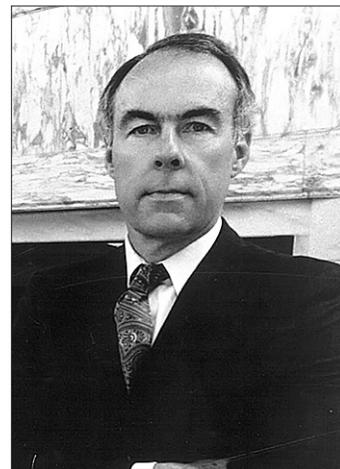
"I think [Butler] would recognize he's got a problem with [the punitive damages award], but it's a wonderful problem to have," says W. Carl Reynolds.

tioners Philip C. Smith and H. Christopher Keown won a 28 million award against Georgia Power Co. on behalf of a man burned by an electrical guide wire. In *Skipper v. Georgia Power*, 25 million of the verdict represented punitive damages.

Smith says he later settled the case for 11.2 million. J. Clinton Sumner Jr. of Rogers,

ful-death case. In *Zachery v. Schneider National Carrier*, a mother died and her daughter was injured when their car collided with a tractor-trailer.

Northern District of Georgia Judge Orinda D. Evans ordered a new trial after determining the entire award, including 10 million in compensatory damages, was excessive.



Sole practitioner Foy R. Devine may be one of the few attorneys to collect in full on a Georgia megaverdict.

After the Georgia Court of Appeals upheld the verdict and the Georgia Supreme Court denied certiorari, Devine says he collected 12.1 million, including interest. □