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CASE SUMMARIES

SUPREME COURT OF ALABAMA

Alabama Dep't of Conservation and Natural Resources v. Exxon Mobil Corp., Case No. 1070716. The present appeal in this litigation over alleged unpaid royalties arises out of the dispute between the parties over the amount of pre-judgment and post-judgment interest owed to the State. In December 2000, a jury returned a verdict for the State and awarded it \$60,194,174 in unpaid royalties plus pre-judgment interest of \$27,498,521, calculated at the statutory rate. In December 2002, the Supreme Court reversed the judgment and remanded the case for a new trial. Following the second trial, the jury awarded the State \$63,769,568 in unpaid royalties. \$23,449,186 of the verdict was compensation for the defendant's fraudulent suppression. The jury also awarded the State \$11.8 billion in punitive damages. On November 19, 2003, the trial court added \$39,235,154 in statutory pre-judgment interest to the award and entered a final judgment in the case. On December 1, 2003, the defendant moved the trial court for a hearing on how it should compute future royalty payments, which the trial court denied on December 5, 2003. The trial court did, however, reduce the punitive damages award to \$3.5 billion.

On the second appeal, the Supreme Court reversed a portion of the compensatory damages for unpaid royalties and struck the damages awarded on the fraud claim. On remand, the present dispute arose out of the parties' disagreement over the amount of pre-judgment and post-judgment interest from the date of the trial court's final order to the date that payment was made; however, the State contended that it was also entitled to additional pre-judgment interest in the amount of \$16,113,836 covering that same date range. Essentially, the State contended that the pre-judgment and post-judgment interest should run concurrently. Similarly, the State claimed that the defendant owed additional post-judgment interest on the unpaid royalties from December 5, 2003, the date the trial court denied the motion for a hearing on the computation of future royalty payments, to the date the judgment was paid. The trial court denied the State's claim for additional interest, and the State appealed. On appeal, the Supreme Court held that the State could not obtain pre-judgment interest beyond the date of final judgment, November 19, 2003. The Court further held that the State was not entitled to post judgment interest on the additional unpaid royalties from December 5, 2003 to the date the judgment was paid. Post-judgment interest is compensation for a judgment creditor's lost opportunity to invest money awarded as damages at trial and is not punitive in nature. The December 5, 2003 order denied no adjudicate or fix an amount of future royalties and did not constitute a money judgment. Consequently, the State was not entitled to post-judgment interest on the unpaid royalties from December 5, 2003, to the date the judgment was paid.

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Southland Bank, et al. v. A & A Drywall Supply Company, Inc., et al., No. 1060204. Chadwick Anderson, owner of A & A Drywall Supply Company, Inc. ("A&A"), approached SouthTrust Bank about acquiring a line of credit to expand his business. Around the same time, Anderson learned of a loan-guarantee program offered through the United States Small Business Administration ("SBA"). Anderson submitted an application to the SBA for such a loan. While waiting for SouthTrust to approve A&A's loan application, Anderson met with Jimmy Adkinson, a senior vice-president at Southland Bank ("Southland"). Southland had previously financed equipment for A&A. During Anderson's conversation with Adkinson, Anderson asked if Southland was interested in writing the loan for A&A instead of SouthTrust. According to Anderson, Adkinson replied "Southland Bank would do a loan if the SBA guaranteed it." Adkinson later submitted a document to the SBA entitled "Lender's Application for Guaranty or Participation," in which Southland stated that it proposed to enter into a guaranteed loan with A&A. Another document submitted to the SBA by A&A stated that "Southland Bank has agreed to lend \$500,000 [to A&A]." Testimony at trial showed that Southland's normal practice was to have loan applications approved before the SBA application was submitted. However, in this situation, Adkinson did not take A&A's loan request to his supervisor for approval prior to submission of the SBA loan-guarantee application. Adkinson testified that he felt there was a better chance of having A&A's loan application approved if the SBA application was granted first because A&A had a poor credit history with Southland. During this process, SouthTrust called Anderson for more information about the line of credit he had requested. Anderson told SouthTrust that he had taken care of the financing through another bank. A&A's SBA application was subsequently approved, and SBA agreed to guarantee 75% of A&A's \$500,000 loan. Anderson testified that he then called Adkinson, who said Southland would close the loan as soon as it received the paperwork. Relying on that statement, A&A began purchasing new inventory and equipment. Adkinson's supervisor later refused to approve the loan to A&A, based on A&A's poor credit history with Southland. Soon thereafter, Southland attempted to repossess equipment that it had previously financed to A&A. A&A also had suppliers cease allowing it to make purchases on credit. A&A and Anderson (collectively, "Plaintiffs") filed suit against Southland and Adkinson (collectively, "Defendants"), alleging fraud, breach of an implied contract, negligent/wanton failure to provide a loan, and negligent/wanton failure of Southland to train or supervise Adkinson. Defendants filed a motion for summary judgment and argued that Plaintiffs' claims were barred by the statute of frauds. The trial court denied that motion, and the case was tried to a jury. At the close of plaintiffs' evidence, the defendants moved for judgment as a matter of law ("JML"). The trial court denied the motion. Defendants renewed their JML motion at the close of all evidence, but it was once again denied by the trial court. Thereafter, the jury returned a verdict in favor of plaintiffs on all but one count, awarded compensatory damages of \$2,100,000 and punitive damages of \$5,505,000. Defendants filed postjudgment motions renewing their previous JML motions and also moved for a new trial. The motions were denied. The defendants appealed, arguing that they were entitled to JML on all of plaintiffs' claims.

Defendants argued that plaintiffs' breach of contract claim was barred by the statute of frauds. The Supreme Court held that, because the parties never closed the loan, the only contract at issue was a loan commitment, which the Court defined as a lender's binding promise to lend a borrower a specified amount of money in the future. Pursuant to Alabama's Statute of Frauds (Ala. Code § 8-9-2), any commitment to loan \$25,000 or more must be memorialized in a writing that contains a recitation of consideration and is signed by the party to be charged therewith. As such, loan commitments in Alabama are only enforceable if there is some consideration which the prospective borrower paid in exchange for the loan commitment. The Supreme Court found that there were no documents in the record evidencing that A&A paid consideration to Southland in exchange for a loan commitment. As such, Southland's purported loan commitment was void under the Statute of Frauds, and defendants were entitled to JML on plaintiffs' breach of contract claim. With regard to plaintiffs' allegation of fraud, Defendants argued that plaintiffs had actually alleged a claim of promissory fraud. Under Alabama law, an allegation of promissory fraud can only be sustained if either: (1) the plaintiff can show that the defendant had a present intent to deceive the plaintiff when the purported fraudulent statement was made, or (2) the defendant, at the time of the misrepresentation, had no intention of performing the act he promised to perform. Defendants argued that plaintiffs failed to prove that defendants had any intent to deceive Anderson. The Supreme Court found that there was no evidence in the record showing that, at the time of the loan, Adkinson either intended to deceive Anderson or had no intention of carrying out his promise. As such, the Supreme Court held that defendants were entitled to JML on plaintiffs' allegations of fraud.

Defendants also argued that there was insufficient evidence for plaintiffs' negligent training and supervision allegations to be submitted to the jury. To sustain a claim for negligent training and supervision in Alabama, a plaintiff must establish by affirmative proof that the employer actually knew, or reasonably should have known, of the employee's incompetence. The Supreme Court found that plaintiffs only presented proof of one act of negligence by Adkinson—his promise to Anderson that Southland would issue the loan if A&A's SBA application was approved. Thus, plaintiffs failed to present evidence that Southland was aware of any incompetence on Adkinson's behalf prior to his promise regarding the loan. As such, the Supreme Court held that defendants were entitled to JML on plaintiffs' negligent training and supervision claims. As to the negligent/wanton failure to provide a loan claim, defendants argued that they were under no duty to make a loan. The Supreme Court held that a duty to provide a loan could only arise in this case by virtue of a contract. Because the only purported contract between the parties violated the statute of frauds, plaintiffs presented no evidence that defendants were under a contractual duty to provide a loan. As such, defendants were entitled to JML on plaintiffs' negligent/wanton failure to provide a loan claim. Because defendants were entitled to JML on all of plaintiffs' claims, the Supreme Court reversed the trial court's judgment and entered judgment in favor of defendants.

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Brown v. ABUS Kransysteme GmbH, No. 1071184. Decedent was killed while operating a crane when a wire rope on the hoist snapped. Defendant, a German limited liability company, manufactured the hoist. Decedent's wife sued Defendant, alleging claims under the Alabama Extended Manufacturer's Liability Doctrine, among others. Defendant moved to dismiss for lack of *in personam* jurisdiction. The trial court continued consideration of the motion to allow Plaintiff to conduct limited jurisdictional discovery. Defendant objected to certain discovery requests, and limited deposition testimony, concerning Defendant's activities "in the United States" or "in North America." Plaintiff moved to compel, and Defendant responded with an affidavit tracing the hoist in issue: it had been manufactured in Germany as a special order for a Canadian customer, who agreed not to resell the hoist in the United States. The trial court denied Plaintiff's motion to compel and granted Defendant's motion to dismiss. On appeal, the Alabama Supreme Court declined Plaintiff's invitation to overrule the "stream-of-commerce-plus" test for personal jurisdiction adopted in *Ex parte Allow Wheels International, Ltd.*, 882 So. 2d 819 (Ala. 2003), because the stream-of-commerce doctrine was not implicated in this case. Rather, stream-of-commerce applies only to the "regular and anticipated flow of products from manufacture to distribution to retail sale." Here, however, although Defendant distributed other products into the United States, the hoist model that caused the accident was not authorized for sale anywhere in the United States, much less Alabama. Thus, because Defendant could not have anticipated the product entering Alabama, the hoist was not within the stream of commerce. Because the hoist was apparently the *only* one of that model to enter the United States, that single contact was insufficient to confer *in personam* jurisdiction. The Court also affirmed denial of Plaintiff's motion to compel. In order to prevail, Plaintiff must show that the outstanding discovery was material to disposition of the issue of personal jurisdiction. Yet, based on Defendant's affidavit, as discussed above, Plaintiff's theory of personal jurisdiction was unavailing. Consequently, Plaintiff could not show materiality of the outstanding discovery. The Court affirmed the trial court's judgment.

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ALABAMA COURT OF CIVIL APPEALS

Child Day Care Association v. Christesen, No. 2070286. Christesen injured her right ankle while working for the Child Day Care Association ("CDCA"). While participating in post-surgery therapy, she ruptured a tendon in her right knee, which itself required surgery. She then sued the CDCA for workers' compensation benefits. After a trial, the court awarded her permanent-total-disability benefits. The CDCA appealed to the Alabama Court of Civil Appeals, arguing that Christesen's injuries should have been compensated as "scheduled members." The Court of Appeals explained that injuries to a scheduled member may be compensated at a higher rate if the injury to the scheduled member causes pain or other symptoms that render nonscheduled parts of the body less efficient. Here, Christesen presented expert testimony from her doctor that the injuries to her knee and ankle were causing chronic pain in her back and that her back was less efficient because of that pain. Accordingly, the Court held that the award was supported by substantial evidence and affirmed the judgment.

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Ball Healthcare-Jefferson, Inc., et al. v. Alabama Medicaid Agency, No. 2070135. Thirteen nursing-home providers challenged the Alabama Medicaid Agency's practice of using a minimum occupancy rate of 85% in the formula to determine property-cost-center reimbursements for services provided to Medicaid patients. An administrative law judge heard the consolidated cases and recommended that the Agency's commissioner render an order stating that the Agency's use of the 85% divisor was proper. The commissioner complied. The Montgomery County Circuit Court upheld the commissioner's order, and the providers appealed. The Agency's six-step reimbursement methodology is set forth in Chapter 22 of the Agency's Administrative Code in Regulation 560-x-22-.06. This dispute concerned step six, under which the adjusted sum of certain assets is totaled and then "that total will be divided by the facility's reported patient days to determine the facility's [reimbursement] rate." However, in actual practice, the Agency directed the submitting party to divide the adjusted sum of the asset column by 85% of the total possible patient days (if that figure is greater than the reported actual patient days). In reversing, the Alabama Court of Civil Appeals noted that the agency itself has adopted a regulation that envisions the use of reported patient days as the divisor. Because the regulations in Chapter 22 of the Medicaid Administrative Code are regarded as having the force of law, the Court held that the Agency and its officials must vigorously comply with the requirements set forth in those regulations. Additionally, the Court noted that the rules and regulations of an administrative agency are subject to the same principles of construction as statutes, specifically the premise that special provisions that related to specific subjects (such as the determination of fair rental reimbursement payment under regulation 560-x-22-.06(d)6) control over general provisions relating to general subjects (such as Regulation 560-x-22-.02, which addresses reimbursement determinations generally). The Court recognized that to affirm the Agency's use of general reasonableness principles in an area governed by another, more specific regulation would be to turn that principle of construction on its head. As such, the trial court's judgment was reversed, and the case was remanded for further proceedings.

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Nelson v. Estate of Wiley Nelson, No. 2070845. In 2007, a widow filed a petition to remove the administration of her deceased husband's contested estate from a probate court to a circuit court, pursuant to Ala. Code § 12-11-41. Thereafter, two of the decedent's nephews filed a motion in the circuit court seeking a declaratory judgment validating a postnuptial agreement entered into between the widow and the decedent and an *inter vivos* transfer of property from the decedent to the nephews. The circuit court entered a judgment as a matter of law in favor of the nephews. The widow appealed. The Court of Civil Appeals, in dismissing the appeal, determined that the circuit court never acquired jurisdiction over the matter because the circuit court never entered an order removing the administration of the estate from the probate court.

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Johnson v. Hall, No. 2070927. Darryl and Sondra Hall filed suit in the Jefferson Circuit Court against Alvin Johnson and Johnson Realty, requesting service of the summonses and complaint on both defendants via certified mail at 1535 Warrior Road in Birmingham. The certified-mail receipts were subsequently returned bearing illegible signatures. After their failure to appear in the circuit court and respond to the complaint, the trial court entered a default judgment against both defendants. Johnson and Johnson Realty then jointly moved to set aside the default judgment, averring that they had never received service of process, but the trial court denied their motion. On appeal, Johnson asserted that 1535 Warrior Road was not the proper address for service because Johnson Realty no longer did business at that address. The Court disagreed, noting that the corporate records maintained by the secretary of state provided 1535 Warrior Road as the address of Johnson Realty's registered agent. Proper service, however, also requires service on the proper person. It was undisputed before the trial court that the signatures on the certified-mail receipts were illegible, and neither party attempted to identify to whom those signatures belonged. Citing a prior Court of Appeals decision, the Halls argued that the return receipts presumptively established proper service and that Johnson and Johnson Realty bore the burden of proving otherwise. The Court disagreed, stating that the only presumption created is that the process was properly mailed and delivered to 1535 Warrior Road -- not that the proper person was served. The Court overruled *Seymore v. Taylor*, 716 So. 2d 1216 (Ala. Civ. App. 1997), to the extent it is inconsistent with this holding. Because there was no evidence to establish that the service was properly made on Johnson or Johnson Realty, the trial court did not have personal jurisdiction over either defendant, and the Court therefore reversed the default judgment and remanded the case.

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Cambria v. Worldwide Custom Materials, No. 2070855. Plaintiff sued defendants in a Minnesota court seeking to recover a debt. The Minnesota court entered a default judgment when the defendants failed to answer the complaint or otherwise defend the action. Pursuant to the Uniform Enforcement of Foreign Judgments Act, plaintiff domesticated the judgment by filing a "Notice of Filing Foreign Judgment" in Circuit Court in Alabama. Defendants moved to set aside the domesticated Minnesota judgment on the ground that the Minnesota court lacked personal jurisdiction because defendants had not been served in the Minnesota action. The trial court entered an order to set aside the Minnesota judgment. Plaintiff appealed the order to the Alabama Court of Civil Appeals. The Court found that plaintiff's authentication and filing of the foreign judgment with the trial court created a rebuttable presumption that the Minnesota court had jurisdiction to enter the judgment and the burden of producing evidence to rebut the presumption shifted to the defendants. The Court reversed the trial court holding that the defendants produced no evidence to rebut this presumption, and therefore the trial court erred in setting aside the Minnesota judgment.

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