

P O I N T :

# Justice Must Satisfy the Appearance of Justice—

## A 10-year Review of the Alabama Supreme Court's Treatment of Jury Verdicts in the Plaintiffs' Favor<sup>1</sup>

By Rhonda P. Chambers

### A day in the life of an appellate lawyer

is sometimes as lonely as it was for the Maytag repairman.<sup>2</sup> Fifteen years ago, appellate lawyers were shackled to the law library between the book stacks and volumes of a record on appeal waiting for the phone to ring. The supreme court clerk's office would call Friday morning to advise of the results in your case on appeal. Forever etched in my mind is, "This is Norma from the supreme court clerk's office calling on the case of ...." You would have to ask that the clerk's office fax a copy of the opinion if you wanted to see it before your mail was delivered Monday. The clerk's office could not fax the opinion until after 1 p.m.

Now, thanks to modern technology, we can work anywhere there is a computer. The record on appeal is available electronically. Every Friday at 10 a.m., like clockwork, I find myself reviewing all of the cases released by the Alabama Supreme Court. I get an email letting me know that

the cases have been released, and I can download directly to the link for the case release list. I can read the cases on my computer, phone or iPad from anywhere.

Because of this technology, it is not difficult to create charts to track the Alabama Supreme Court's treatment of plaintiffs' jury verdicts. This article is based upon a 10-year snapshot of the Alabama Supreme Court's treatment of plaintiffs' jury verdicts.

In the 1954 United States Supreme Court opinion, *Offutt v. United States*, 348 U.S. 11, 14 (1954), Mr. Justice Frankfurter stated that "justice must satisfy the appearance of justice." Chief Judge Howard T. Markey, the only person to have served as a sitting judge or by designation as a judge on all of the United States federal appellate courts, said that the "appearance of justice is today seen not as separate from, but as an integral part of justice itself.... It simply is not enough that justice be actually done. *It must be seen to have been done.*"<sup>3</sup> The question then is what do we see when we review the past 10 years of Alabama Supreme Court opinions?

## Affirming Judgments Entered on a Jury Verdict without An Opinion

*Ala. R. App. P. 53* was adopted in 1993. The Rule was an attempt to allow the civil appellate courts to dispose of cases in a much faster and more efficient manner and to reduce the number of opinions being written.<sup>4</sup> Rule 53(a) states that the supreme court or the court of civil appeals may affirm a judgment or order of a trial court without an opinion in one of six limited circumstances<sup>5</sup> and if the court determines that an opinion in the case would serve no significant precedential purpose. The Rule only provides for summary affirmances without an opinion. It does not provide for a summary reversal without an opinion.

An affirmance without an opinion is appropriate in certain circumstances. In many instances only a sufficiency-of-the-evidence question is involved, or an application of well-settled law—of importance to the parties but of no precedential value—and this kind of appeal may well lend itself to an affirmance without opinion. In other instances, the court may feel that the result below was proper but for the wrong reasons or for different reasons than those argued. In some cases, some or all members of the court may feel an appeal raises a troublesome legal issue of general interest but that the record on appeal is too confusing or inadequate to present the issue for a considered written opinion, and the court chooses to wait for another appeal. In such cases, if the result is nevertheless proper, affirmance without an opinion may be used.

When the supreme court or the court of civil appeals affirms a judgment without an opinion, in its order of affirmance, the court designates the case as a “no-opinion” case. Also, in its order of affirmance, the court cites section (a)(1) of Rule 53 and that subpart of section (a)(2) relied on in its decision to write no opinion. The reporter of decisions publishes all opinions of the supreme court and the court of civil appeals in the official reports of Alabama decisions, but the text of an order of affirmance in a “no-opinion” case is not published in the official reports. *Ala. R. App. P. 53(c)*.

If in a “No Opinion” case a justice writes a special opinion, however, either concurring with or dissenting from the action of the court, the reporter of decisions publishes that special opinion, along with a statement indicating the action to which the special opinion is addressed. An example of this is the medical malpractice case, *Springhill Hospital, Inc. v. Dixon*, 883 So. 2d 159 (Ala. 2003). In that case, a Mobile County jury returned a verdict of \$175,000 past compensatory damages, \$62,000 future compensatory damages and



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\$345,000 punitive damages against the hospital. The hospital appealed, and a per curiam court affirmed the case without an opinion. Justice See wrote a dissent in which Justice Brown and Justice Stuart joined. Because of the written dissent, the public was able to see the amount of the jury’s verdict.<sup>6</sup>

An affirmed no-opinion case has no precedential value and cannot be cited in arguments or briefs except for the purpose of establishing the application of the doctrine of law of the case, res judicata, collateral estoppel, double jeopardy or procedural bar. *Ala. R. App. P. 53(e)*. A recent case that was affirmed in a 9-0 decision without an opinion was *Lanier Health Services v. Coulter*, (Ms. 190716, Dec. 16, 2011). In that case, a Chambers County jury returned a \$1.75 million wrongful death verdict against the hospital. The only way the public knew about the appellate result in this case since it was affirmed without an opinion was because it was reported in the press. The newspaper reported that “it was the first appellate decision in Alabama upholding the legal principle that a hospital’s staff must go up the chain of command to obtain safe care when a doctor has failed to do so.”<sup>7</sup> This was a great result for the plaintiff in the case, but, unfortunately, since the court decided the case without a written opinion, this important legal principle does not have

any precedential value. It has been said that “[t]o the extent that the law is published, it is available to all; to the extent it is unpublished, it supplies only a private good.”<sup>8</sup>

## Importance of Written Opinions

Full, well-reasoned written opinions serve a variety of functions. They are informative as to the reasoning behind the court’s decision. They also educate the bar, the lower courts and the public at large. They provide guidance to the lower courts and also to lawyers on how to best counsel their clients. They can be used by attorneys to predict and plan what the court may decide. Furthermore, they help to ensure that the appellate court has made the correct decision. Finally, a well-reasoned opinion is one way to guarantee equal justice to the public and to satisfy the perception of justice. Without an adequate explanation, a dissatisfied litigant who receives an affirmance without an opinion may jump to the conclusion that the court did not write an opinion to conceal the rationale for its decision for some improper reason. There are concerns that an affirmance without an opinion practice does not treat everyone equally and fairly.

The court has indicated that it does not appreciate criticism about its no-opinion affirmances. For example, in *S.B. v. St. James*

Sch., 959 So. 2d 72 (Ala. 2006), the court originally affirmed the summary judgment without an opinion. The appellant filed an application for rehearing urging the court to change its mind and reverse the summary judgment. The appellant also complained about the court's Rule 53 affirmance without an opinion. The court denied the rehearing but stated in a written opinion:

This court originally affirmed the summary judgments of the trial court in the underlying case without an opinion. The decision to affirm the judgments of the trial court without an opinion was made because an opinion in this case would add little precedential value to the areas of the law discussed, and this court concluded, after reviewing the record and the contentions of the parties, that the trial court's judgment was entered without error of law. See Rule 53(a)(1) and (a)(2)(F), *Ala. R. App. P.* In addition, because of the sensitive nature of the facts of this case, this court did not want to subject the families involved to the further embarrassment and humiliation that might be brought about by a published opinion. However, counsel for the appellants strongly criticized this court in the applications for rehearing filed in these appeals for failing to issue a published opinion; therefore, this court has reconsidered its decision not to release a published opinion in this case, withdraws its no-opinion affirmance ... and substitutes the following opinion therefor.

959 So. 2d at 79.

Also, in the case of *Dennis v. Northcutt*, 923 So. 2d 275 (Ala. 2005), the court affirmed the trial court's summary judgment without an opinion. In his application for rehearing, the appellant made the following statement about the court's issuance of a no-opinion affirmance in the case:

A reasonable inference could be fairly drawn ... that this Court's decision to affirm the summary judgment entered in favor of [Northcutt] by the specially appointed acting circuit judge in this action ... with "NO OPINION" (without citing any controlling existing precedent) was due to this Court's unwillingness to embarrass the retired Chief Justice by reversing the second summary judgment entered by him in this action.

923 So. 2d at 278. The court stated that the appellant's assertion was erroneous. Nonetheless, the court withdrew its no-opinion affirmance, substituted a written opinion and denied the application for rehearing.

The federal appellate rules are dramatically different than Alabama's appellate rules in this regard. There is always a written opinion in every case. The issue is whether that written opinion is published. *Fed. R. App. P.* 32.1 is a fairly new appellate rule adopted effective January 1, 2007, addressing the citation of judicial opinions, orders, judgments or other written dispositions



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that have been designated by a federal court as “unpublished,” “not for publication,” “non-precedential,” “not precedent,” or the like. *Fed. R. App. P.* 32.1(a) states that “[a] court may not prohibit or restrict the citation of federal judicial opinions, orders, judgments, or other written dispositions that have been: (I) designated as ‘unpublished,’ ‘not for publication,’ ‘non-precedential,’ ‘not precedent,’ or the like; and (ii) issued on or after January 1, 2007.” *FED. R. APP. P.* 32.1(b) states that “[i]f a party cites a federal judicial opinion, order, judgment, or other written disposition that is not available in a publicly accessible electronic database, the party must file and serve a copy of that opinion, order, judgment, or disposition with the brief or other paper in which it is cited.”

The terms “unpublished” and “not for publication” are misnomers; while an opinion of a federal court of appeals may bear such a designation, these opinions can be found easily both on the Internet and in bound volumes. On the Internet, unpublished opinions are available not only from the subscription services offered by West and Lexis, but also on the website of each circuit. That is not true with the Alabama Supreme Court’s no-opinion affirmances.

Rule 32.1 is extremely limited. It does not require any court to issue an unpublished opinion or forbid any court from doing so. It does not dictate the circumstances under which a court may choose to designate an opinion as “unpublished” or specify the procedure that a court must follow in making that determination. It says nothing about what effect a court must give to one of its unpublished opinions or to the unpublished opinions of another court. Rule 32.1 addresses only the citation of federal judicial dispositions that have been designated as “unpublished” or “non-precedential”—whether or not those dispositions have been published in some way or are precedential in some sense.

The United States Supreme Court has commented several times on the procedure of not publishing opinions. *United States v. Edge Broadcasting Co.*, 509 U.S. 418 (1993), involved the broadcasting of commercials for lotteries where the Court reversed on First Amendment free-speech grounds. Incredibly, neither the district nor appellate court opinions were published. Justice White, writing for the majority, “deem[ed] it remarkable and unusual that although the Fourth Circuit Court of Appeals affirmed a judgment that an Act of Congress was unconstitutional as applied, the court found it appropriate to announce its judgment in an unpublished per curiam opinion.” *Id.* at 425, fn. 3. Similarly, Justice Stevens, in *County of Los Angeles v. Kling*, 474 U.S. 936, 937, n.1 (1985)(Stevens, J., dissenting), criticized the Ninth Circuit’s decision not to publish an opinion as “plainly wrong” and equated such a decision to “a rule spawning a body of secret law.”

The importance of a written opinion from the Alabama Supreme Court is evident by the inability to obtain certiorari



The importance of a written opinion from the Alabama Supreme Court is evident by the inability to obtain certiorari review in the United States Supreme Court if there is not a written opinion.

review in the United States Supreme Court if there is not a written opinion. It is a threshold procedural requirement for certiorari review that a federal question was presented to the state courts. *Yee v. Escondido*, 503 U.S. 519, 533 (1992). Obviously, the petitioner cannot meet that requirement if the state court has affirmed the judgment without writing an opinion. *Stembridge v. Georgia*, 343 U.S. 541, 547 (1952)(“Where the highest court of the state delivers no opinion and it appears that the judgment might have rested upon a nonfederal ground, this Court will not take jurisdiction to review the judgment.”). This was the argument made in opposition to the petition for writ of certiorari in the Alabama case of *Cline v. Ashland, Inc.*, 2006 U.S. Briefs 61280 7-8 (U.S. May 1, 2007)(“There is absolutely no mention of the federal due process issue in any of the concurrences or in the dissent to the no opinion affirmance of the Supreme Court of Alabama. Under the circumstances, Petitioner has failed to meet her burden of demonstrating that the question presented

in this Court was presented to the court below or that the court below actually decided the question.”). The Supreme Court denied certiorari. *Cline v. Ashland, Inc.*, 551 U.S. 1103 (2007).

The only Alabama no-opinion affirmance where the United States Supreme Court granted certiorari since the adoption of *Ala. R. App. P.* 53 in 1992 was the state franchise tax case of *South Cent. Bell Tel. Co. v. Ala.*, 526 U.S. 160 (U.S. 1999). In granting the petition for writ of certiorari and reversing the Alabama Supreme Court, the United States Supreme Court noted:

The Alabama Supreme Court affirmed the trial court by a vote of 5 to 4. The majority’s decision cited *Reynolds Metals* and a procedural rule regarding summary dispositions and simply said, “PER CURIAM. AFFIRMED. NO OPINION.” *South Central Bell v. Alabama*, 711 So. 2d 1005 (1998). One justice concurred specially to say that by requesting that their case be held in abeyance until *Reynolds Metals* was resolved, the *Bell* plaintiffs had agreed to be bound by [that case] (opinion of Maddox, J.). Three dissenters wrote that given the differences between this case and *Reynolds Metals* (e.g., different tax years, different plaintiffs), res judicata could not bind the *Bell* plaintiffs. 711 So. 2d at 1008 (opinion of See, J.). On the merits, the dissenters concluded that the franchise tax violated the Commerce Clause. One other justice dissented without opinion.

526 U.S. at 164-165 (some citations omitted).

There are no statistics on the number of cases that have been affirmed without an opinion by the Alabama Supreme Court. Because the decisions are not published, there is no way to determine the statistics on cases affirmed without opinion. Thus, we cannot determine the number of plaintiffs’ jury verdicts that have been affirmed without an opinion. It appears, however, that the

use of Rule 53 no-opinion affirmances has increased significantly in the past 19 years.<sup>9</sup>

Why is it important to the plaintiff that the court is affirming jury verdicts without an opinion if the court is nonetheless upholding the verdict? A win is a win, right? It is because it simply is not enough that justice be actually done. It must be seen to have been done. What we can see is that over the past 10 years in which the court has written opinions addressing plaintiffs' jury verdicts, the court has reversed the verdicts more than 72 percent of the time. An opinion is a declaration of law which must be followed in subsequent cases. Inherent in every judicial decision is a declaration and interpretation of a general principle or rule of law. Because so many jury verdicts may have been affirmed without an opinion in the past 10 years, there have been few opinions with precedential value in the plaintiffs' favor. It undermines a fundamental principle of Anglo-American jurisprudence—the doctrine of stare decisis.

## Decline of Civil Jury Trials

A related development is that the number of civil jury trials is declining. Despite growing numbers of judges, pending cases and dispositions, the civil jury trial in Alabama is vanishing. There are many possible reasons for this, any number of which could be devoted to an entire article in and of itself. For many years, the Administrative Office of Courts (“AOC”) has published the Alabama Judicial System Annual Report, containing a description of the Alabama court system along with statistics on its operation based on data collected from court clerks throughout the state.<sup>10</sup> According to the AOC, there are 41 judicial circuits in Alabama and 144 trial judges.

**TABLE 1—Number of Civil Jury Trials and Dispositions, 2002-2011**

YEAR	JURY TRIALS	DISPOSITIONS
2002	677	49,651
2003	685	49,913
2004	597	49,432
2005	528	48,783
2006	507	47,018
2007	445	46,394
2008	461	49,365
2009	445	52,984
2010	414	51,270
2011	393	49,166
<b>TEN-YEAR TOTAL</b>	<b>5,152</b>	<b>493,976</b>

The AOC Annual Reports indicate that there were 677 civil jury trials in 2002. In 10 years, the number of jury trials has dwindled in 2011 to 393. Of the 49,651 cases disposed of in 2002, 1.4 percent of the 677 cases were decided by a jury trial. By 2011, the number of disposed cases had dropped to 49,166, but only 0.80 percent of the 393 cases were decided by a jury trial. That is a 42 percent decrease in 10 years. The 10-year total number of civil jury trials is 5,151. That amounts to an average of three and a half trials each year per judge.

## Alabama Supreme Court's Treatment of Plaintiffs' Jury Verdicts

Over the past decade, the Alabama Supreme Court has issued 146 written opinions reviewing plaintiffs' jury verdicts. In only 44 of the 146 cases did the jury's verdict survive on appeal.<sup>11</sup> One hundred and two of the plaintiffs' jury verdicts were reversed—a whopping 72 percent average over 10 years. There was never a year when there were more affirmances than reversals.

**TABLE 2—Alabama Supreme Court's Treatment of Plaintiffs' Jury Verdicts, 2002-2011**

YEAR	TOTAL WRITTEN OPINIONS—PLAINTIFFS'		
	JURY VERDICTS	AFFIRMED <sup>12</sup>	REVERSED <sup>13</sup>
2002	16	5	11
2003	29	10 <sup>14</sup>	19
2004	16	5	11 <sup>15</sup>
2005	18	1	17 <sup>16</sup>
2006	11	4	7
2007	12	4	8 <sup>17</sup>
2008	10	5	5 <sup>18</sup>
2009	14	5	9
2010	9	4	5 <sup>19</sup>
2011	11	1	10 <sup>20</sup>
<b>2002-2011</b>	<b>146</b>	<b>44</b>	<b>102</b>

The success rates for plaintiffs on appeal in 2002 and 2003 were comparably poor: in 2002 only five verdicts were affirmed<sup>21</sup> and 11 verdicts were reversed,<sup>23</sup> whereas in 2003, 10 verdicts were affirmed<sup>22</sup> and 19 verdicts were reversed.<sup>24</sup> In 2004, the court wrote 16 opinions, five of which affirmed the jury's verdict<sup>25</sup> and 11 of which reversed the jury's verdict.<sup>26</sup> The year 2005 was dreadful for jury verdicts. The court wrote 18 opinions. Only one jury verdict was affirmed<sup>27</sup> and 17 jury verdicts were reversed.<sup>28</sup> In 2006, four verdicts were affirmed<sup>29</sup> and eight verdicts were reversed.<sup>30</sup>

In 2007, 12 opinions were written. Four verdicts were affirmed<sup>31</sup> and eight verdicts were reversed.<sup>32</sup> The year 2008 was even. Five jury verdicts were affirmed<sup>33</sup> and five jury verdicts were reversed.<sup>34</sup> In 2009, five jury verdicts were affirmed<sup>35</sup> and nine jury verdicts were reversed.<sup>36</sup> In 2010, three jury verdicts were affirmed<sup>37</sup> and five jury verdicts were reversed.<sup>38</sup> The survival rate for jury verdicts was the worst in 2011. The court wrote 11 opinions and only one jury verdict was affirmed.<sup>39</sup> Ten of the 11 jury verdicts were reversed.<sup>40</sup> The year 2012 has started in the same manner as 2011 ended. Through June 22, 2012, the court has released three written opinions dealing with jury verdicts in the plaintiff's favor. One of the jury verdicts was affirmed,<sup>41</sup> and two of the jury verdicts were reversed.<sup>42</sup>

**TABLE 3—Highest Jury Verdict Affirmed by Cause of Action and Highest Jury Verdict Reversed by Cause of Action**

YEAR	HIGHEST AFFIRMED—TYPE	HIGHEST REVERSED—TYPE
2002	\$6.25 million—negligence— <i>Hornaday Truck Line, Inc. v. Meadows</i> , 847 So. 2d 908 (Ala. 2002)	\$91 million (\$87.7 million compensatory and \$3.42 million punitive)—fraud and breach of contract— <i>Exxon Corp. v. Dept. of Conservation &amp; Natural Resources</i> , 859 So. 2d 1096 (Ala. 2002)
2003	\$6 million—wrongful death— <i>Mack Trucks v. Witherspoon</i> , 867 So. 2d 07 (Ala. 2003)	\$82 million (\$22 million compensatory and \$60 million punitive)—negligence and wantonness— <i>GMC v. Jernigan</i> , 883 So. 2d 646 (Ala. 2003)
2004	\$2,912,043—breach of contract— <i>Continental Casualty Co. v. Plantation Pipe</i> , 902 So. 2d 36 (Ala. 2004)	\$23.4 million (\$3.4 million compensatory and \$20 million punitive)—fraud— <i>Hunt Petroleum v. State</i> , 901 So. 2d 1 (Ala. 2004)
2005	\$765,920—medical malpractice— <i>Lloyd Noland Hospital v. Durham</i> , 906 So. 2d 157 (Ala. 2005)	\$5.5 million—fraud and breach of contract— <i>Alfa Life Ins. Co. v. Jackson</i> , 906 So. 2d 143 (Ala. 2005)
2006	\$350,000—fraud— <i>Cochran v. Ward</i> , 935 So. 2d 1169 (Ala. 2006)	\$27 million (\$19.5 million compensatory and \$7.5 million punitive)—breach of fiduciary duty— <i>Systrends v. Group 8760</i> , 959 So. 2d 1052 (Ala. 2006)
2007	\$8.9 million—breach of contract— <i>International Paper v. Madison Oslin, Inc.</i> , 985 So. 2d 879 (Ala. 2007)	\$3.6 billion (\$100 million compensatory and \$3.5 billion punitive)—breach of contract and fraud— <i>Exxon Mobil Corp. v. Alabama Dept. of Conservation</i> , 986 So. 2d 1093 (Ala. 2007)
2008	\$1.5 million—negligence and wantonness— <i>Southeastern Envtl. Infrastructure v. Rivers</i> , 12 So.3d 32 (Ala. 2008)	\$7.6 million (\$2.1 million compensatory and \$5.5 million punitive)—breach of contract, fraud and negligence— <i>Southland Bank v. A&amp;A Drywall</i> , 21 So.3d 1196 (Ala. 2008)
2009	\$750,000—breach of fiduciary duty— <i>Line v. Ventura</i> , 38 So. 3d 1 (Ala. 2009)	\$160 million (\$40 million compensatory and \$120 million punitive)—fraud and breach of contract— <i>SmithKline v. State</i> , 41 So.3d 15 (Ala. 2009)
2010	\$2 million—medical malpractice— <i>Miller v. Bailey</i> , 60 So.3d 857 (Ala. 2010)	\$1.65 million—negligence and wantonness— <i>Cheshire v. Putman</i> , 54 So.3d 336 (Ala. 2010)
2011	\$3 million—medical malpractice, assault and outrage— <i>O’Rear v. B.H.</i> , 69 So.3d 106 (Ala. 2011)	\$8.6 million (\$2.1 million compensatory and \$6.5 million punitive)—breach of contract and fraud— <i>GE Capital Aviation v. Pemco</i> , 2011 Ala. LEXIS 288 (Ala. 2011)
2012	\$2.15 million—medical malpractice— <i>Hrynkiw v. Trammell</i> , 2012 Ala. LEXIS 59 (Ala. 2012)	\$3.69 million—workers’ compensation outrage— <i>Attenta, Inc. v. Calhoun</i> , 2012 Ala. LEXIS 65 (Ala. 2012)

There have been 19 different justices serving on the Alabama Supreme Court over the past 10 years. In reviewing publicly available information, it is evident that in recent years that the

justices on the court are not writing as many opinions dealing with civil jury verdicts. For example, there were 29 written opinions in 2003 addressing plaintiffs’ jury verdicts, but only 11 in 2011.

The court lost one of its most prolific opinion writers in 2011 and lost another in 2012. Justice Champ Lyons retired in 2011. Over the past 10 years, he wrote 16 opinions that addressed jury verdicts in the plaintiffs’ favor. Justice Tom Woodall retired in 2012. He has written the most supreme court opinions in the past 10 years. He has written 23 opinions that addressed jury verdicts in the plaintiffs’ favor.

Also, over the past 10 years, there have been 18 per curiam opinions written dealing with jury verdicts. Twelve of those jury verdicts were reversed. Six of the jury verdicts were affirmed. The highest verdict that was affirmed in a per curiam opinion was the \$25 million wrongful death verdict in *Mack Trucks v. Witherspoon*, 867 So. 2d 307 (Ala. 2003) that was affirmed conditionally upon plaintiffs’ acceptance of a remittitur to \$6 million. The highest verdict that was reversed in a per curiam opinion was the \$4.2 billion verdict in *Exxon Corp. v. Dept of Conservation and Natural Resources*, 859 So. 2d 1096 (Ala. 2002) (\$87.7 million compensatory and \$3.42 billion punitive).

Over the past 10 years, 23 fraud jury verdicts were reversed (with two being affirmed), 26 negligence verdicts were reversed (with eight being affirmed), 11 medical malpractice verdicts were reversed (with nine being affirmed) and five retaliatory discharge verdicts were reversed (with only one being affirmed).

## Conclusion

“It is what it is.”<sup>43</sup> Unquestionably, some jury verdicts in the plaintiffs’ favor are due to be reversed, but some jury verdicts in the plaintiffs’ favor are due to be affirmed with a written opinion. We only know what we see, and based on a review of the last 10 years, it appears that the Alabama Supreme Court issues opinions to uphold plaintiffs’ jury verdicts in only one of every four cases that come before the court. | AL

## Endnotes

1. The analysis of the data collected and conclusions reached are solely those of the author, as are any errors made. The raw data is available on the author’s website, [www.taylorlawyers.com/articles](http://www.taylorlawyers.com/articles).
2. For those of you not old enough to remember, in the late 1960s, Maytag ran a commercial regarding the dependability of its appliances. The commercial showed the Maytag repairman lonely and waiting on the phone to ring.
3. Chief Judge Howard T. Markey, *The Delicate Dichotomies of Judicial Ethics*, 101 F.R.D. 373, 380 (1984)[emphasis added].
4. Court Comment on 1993 Adoption of *Ala. R. App. P.* 53.
5. The six circumstances are: (1) the judgment or order appealed from is based on findings of fact that are not clearly, plainly or palpably erroneous; (2) the evidence adequately supports the jury verdict on which the judgment or order is based; (3) in a nonjury case in which the judge has made no specific findings of fact, the evidence would support those findings that would have been necessary to support the judgment or order; (4) the order of an administrative agency is sufficiently supported by the evidence in the record; (5) the appeal is from a summary judgment, a judgment on the pleadings or a judgment based on a directed verdict, and that judgment is supported by the record; or (6) the court, after a

- review of the record and the contentions of the parties, concludes that the judgment or order was entered without an error of law. *Ala. R. App. P.* 53(a)(2).
6. The only affirmance without an opinion in a case involving a jury verdict that I have been personally involved in was in 2004. It was reported because Justice See dissented in part. In *SCJ Ala. Funeral Servs. v. Beauchamp*, 893 So. 2d 352 (Ala. 2004), the funeral home mishandled and misidentified plaintiffs' family member and another body. The other person's body was placed in plaintiffs' family member's casket and presented to the family for graveside viewing. A Jefferson County jury awarded \$275,000 in compensatory damages and \$1 million in punitive damages. Justice See dissented from the affirmance of the trial court's holding that the conduct of the funeral home satisfied the elements of the tort of outrage. He also dissented from the affirmance of the punitive damages award, which he considered to be excessive. The case is not included in the 2004 affirmed list because the dissent does not state the amount of the jury verdict.
  7. Russell Hubbard, *Alabama Supreme Court Upholds Wrongful Death Jury Award Against Hospital*, B'HAM NEWS, Feb. 18, 2012.
  8. Gilbert S. Merritt, *Judges on Judging: The Decision-Making Process in Federal Courts of Appeals*, 51 OHIO ST. L.J. 1385, 1392 (1990). *But see* Boyce F. Martin, Jr., *Judges on Judging: In Defense of Unpublished Opinions*, 60 OHIO ST. L.J. 177 (1999).
  9. A review of the Alabama Supreme Court's release list on March 9, 2012 showed that 11 cases were affirmed without an opinion. The court released only two written opinions. On April 6, 2012, the court's release list showed that 12 cases were affirmed without an opinion. On that day, the court released only three written opinions. Finally, on June 15, 2012, the court's release list showed that 11 cases were affirmed without an opinion and only two written opinions were released. Over this three-week period, a total of 41 civil cases were decided. Opinions were written in 17 percent of those cases.
  10. The annual reports are available on the Administrative Office of Court's website, [www.alacourt.gov/publications.aspx](http://www.alacourt.gov/publications.aspx).
  11. Also, in the interest of full disclosure, five of the 102 cases reversed in the past 10 years were either jury verdicts secured by my firm or cases where I was retained on appeal. Those cases are *Walmart v. Smitherman*, 872 So. 2d 833 (Ala. 2003)(reversing a \$100,000 jury verdict), *Alfa Life Ins. Co. v. Green*, 881 So. 2d 987 (Ala. 2003)(reversing a \$1.2 million jury verdict), *Alfa Life Ins. Co. v. Jackson*, 906 So. 2d 143 (Ala. 2005)(reversing a \$5.5 million jury verdict), *Prattville Memorial Chapel v. Parker*, 10 So.3d 546 (Ala. 2008)(reversing a \$1.05 million jury verdict), and *Southland Bank v. A&A Drywall*, 21 So.3d 1196 (Ala. 2008)(reversing a \$7.6 million jury verdict). I have not had a single jury verdict upheld on appeal in a written decision in the past 10 years.
  12. "Affirmed" refers to an upholding of the amount of the jury's verdict. In my survey, affirmed in part, reversed in part may fall in an affirmed category if the majority of the jury's verdict is upheld.
  13. "Reversed" means the supreme court eliminated the entire jury verdict amount, which may not be the same as the trial court judgment. It includes a ruling reversing the amount and remanding for further proceedings, as well as a ruling reversing and rendering the judgment. Also, in my survey reversed in part, affirmed in part may fall in a reversed category if the majority of the jury's verdict is reversed.
  14. Included in the affirmed list in 2003 is *Industrial Technologies, Inc. v. Jacobs Bank*, 872 So. 2d 819 (Ala. 2003). The jury returned a verdict of \$148,000 in compensatory damages and \$250,000 in punitive damages. The trial court vacated the punitive damage award. The supreme court affirmed the compensatory verdict and reversed and remanded the case for the trial court to reinstate the punitive damage award.
  15. Two cases that were reversed in part and affirmed in part are included in the reversed list in 2004. In *State Farm v. Nix*, 888 So. 2d 489 (Ala. 2004), the jury returned a \$15,325 compensatory and \$200,000 punitive damage award in the plaintiff's favor on his fraud and negligent failure to procure claims. The trial court remitted the punitive award to \$76,627. On appeal, the court affirmed the compensatory award and reversed and rendered the punitive award. In *Regions Bank v. Plott*, 897 So. 2d 239 (Ala. 2004), the court reversed and rendered the \$70,000 and \$15,000 compensatory damage awards in a husband's and wife's favor on a false-light claim. The court dismissed the bank's appeal on plaintiffs' intrusion on seclusion claim as moot.
  16. Included in the 2005 reversed list are three cases that were reversed in part and affirmed in part. The first is *Alfa Life Ins. Corp. v. Jackson*, 906 So. 2d 143 (Ala. 2005). The court reversed and rendered the \$5.5 million fraud verdict but remanded for a new trial on the breach of contract claim. The second case is *Morgan Keegan v. Cunningham*, 918 So. 2d 897 (Ala. 2005). In that case, the court affirmed a \$10,000 compensatory verdict but reversed a \$50,000 punitive verdict. The third case is *Southtrust v. Donely*, 925 So. 2d 934 (Ala. 2005). The court reversed the \$125,000 punitive damage award and affirmed the \$51,090 compensatory award.
  17. Included in the reversed list in 2007 is *Exxon Mobil Corp. v. Ala. Dept. of Conservation*, 986 So. 2d 1093 (Ala. 2007). In that case, the court affirmed the \$51,907,634 compensatory award for breach of contract but reversed the \$3.5 billion punitive award.
  18. Included in the reversed list in 2008 is *Prattville Memorial Chapel v. Parker*, 10 So.3d 546 (Ala. 2008). The court reversed and rendered the \$1.05 million fraud claim but affirmed the \$30,000 breach of contract claim.



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19. Included in the reversed list in 2010 is *Ross v. Rosen-Rager*, 67 So.3d 29 (Ala. 2010). In that case, the jury returned a \$30,000 compensatory damage award and a \$350,000 punitive damage award in a trespass and ejection action.
20. Included in the reversed list in 2011 is *Stephens v. Fines Recycling*, 2011 Ala. LEXIS 226 (Ala. 2011). In that case, the jury returned a \$438,855 net verdict in the plaintiff's favor. The appeal from the jury verdict was dismissed because it was from a non-final judgment.
21. Jury verdicts affirmed in 2002 were: *Lathan Roof America, Inc. v. Hairston*, 828 So. 2d 262 (Ala. 2002)(\$500,000); *National Ins. Assoc. v. Sockwell*, 829 So. 2d 111 (Ala. 2002)(\$201,000 compensatory and \$600,000 punitive); *Liberty Nat'l Life Ins. Co. v. Daugherty*, 840 So. 2d 152 (Ala. 2002)(\$300,000); *Hornady Truck Line, Inc. v. Meadows*, 847 So. 2d 908 (Ala. 2002)(\$6.25 million); *Byrd, Inc. v. Bentley*, 850 So. 2d 232 (Ala. 2002)(\$1.35 million).
22. Jury verdicts reversed in 2002 were: *Lincoln Log Home Enter., Inc. v. Autrey*, 836 So. 2d 804 (Ala. 2002)(\$505,000 compensatory and \$600,000 punitive); *City of Birmingham v. Sutherland*, 834 So. 2d 755 (Ala. 2002)(\$115,000); *H.R.H. Metals, Inc. v. Miller*, 833 So. 2d 18 (Ala. 2002)(\$6.6 million); *State Farm Fire & Casualty Co. v. Shady Grove Baptist Church*, 838 So. 2d 1039 (Ala. 2002)(\$128,800); *Jim Walter Homes, Inc. v. Nicholas*, 843 So. 2d 133 (Ala. 2002)(\$50,000 compensatory and \$50,000 punitive); *Serra Chevrolet, Inc. v. Edwards Chevrolet, Inc.*, 850 So. 2d 259 (Ala. 2002)(\$9 million and attorney's fees of \$2.83 million); *Johnson v. Stewart*, 854 So. 2d 544 (Ala. 2002)(\$1 dollar compensatory and \$1 million punitive; trial court remitted punitive to \$500,000); *Wood v. Phillips*, 849 So. 2d 951 (Ala. 2002)[jury verdict amount not disclosed]; *Alabama Power Co. v. Aldridge*, 854 So. 2d 554 (Ala. 2002)(\$250,000 compensatory and \$250,000 punitive); *Exxon Corp. v. Dep't of Conservation and Natural Resources*, 859 So. 2d 1096 (Ala. 2002)(\$87.7 million compensatory and \$3.42 billion punitive); *Parsons v. Aaron*, 849 So. 2d 932 (Ala. 2002)(\$107,000 compensatory and \$60,000 punitive).
23. Jury verdicts affirmed in 2003 were: *Mitchell v. Folmar & Associates*, 854 So. 2d 1115 (Ala. 2003)(\$51,918 compensatory and \$103,836 punitive); *Mack Trucks v. Witherspoon*, 867 So. 2d 307 (Ala. 2003)(\$25 million; affirmed conditionally upon acceptance of remittitur to \$6 million); *Industrial Technologies, Inc. v. Jacobs Bank*, 872 So. 2d 819 (Ala. 2003)(\$148,000 compensatory and \$250,000 punitive; trial court vacated punitive; affirmed in part and reversed and remanded for reinstatement of punitive award); *Winter Int'l Corp. v. Common Sense*, 863 So. 2d 1088 (Ala. 2003)(\$375,565); *Springhill Hospital v. Dixon*, 883 So. 2d 159 (Ala. 2003)(\$175,000 past compensatory, \$62,000 future compensatory and \$345,000 punitive; affirmed without opinion but with dissent by Justice See); *Akins Funeral Home v. Miller*, 878 So. 2d 267 (Ala. 2003)(\$200,000 compensatory and \$150,000 punitive); *Southern Pine Elec. Coop. v. Birch*, 878 So. 2d 1120 (Ala. 2003)(\$20,000 compensatory and \$75,000 punitive); *Mobile Infirmary v. Hodgen*, 884 So. 2d 801 (Ala. 2003)(\$0 compensatory and \$2.25 million punitive; affirmed conditionally upon acceptance of remittitur to \$1.5 million); *Harrelson v. R.J.*, 882 So. 2d 317 (Ala. 2003)(\$15,000 compensatory and \$75,000 punitive); *Shiv-Ram v. McCaleb*, 892 So. 2d 299 (Ala. 2003)(\$176,572 compensatory and \$500,000 punitive).
24. The jury verdicts reversed in 2003 were: *ATS, Inc. v. Beddingfield*, 878 So. 2d 1131 (Ala. 2003)(\$9.5 million compensatory and \$15 million punitive); *Walmart v. Smitherman*, 872 So. 2d 833 (Ala. 2003)(\$100,000); *Butler v. Town of Argo*, 871 So. 2d 1 (Ala. 2003)(\$375,000 compensatory and \$125,000 punitive); *AL Great So. R.R. v. Johnson*, 874 So. 2d 517 (Ala. 2003)(\$750,000); *Waddell & Reed v. United Investors Life Ins. Co.*, 875 So. 2d 1143 (Ala. 2003)(\$50 million); *Petty-Fitzmaurice v. Steen*, 871 So. 2d 771 (Ala. 2003)(\$3.43 million); *Tyson Foods v. McCollum*, 881 So. 2d 976 (Ala. 2003)[verdict amount unspecified]; *Alfa Life Ins. Co. v. Green*, 881 So. 2d 987 (Ala. 2003)(\$300,000 compensatory and \$3 million punitive; trial court remitted punitive to \$900,000); *Eagle Products v. Glasscock*, 822 So. 2d 280 (Ala. 2003)(\$506,000); *Ex parte Bender Shipbuilding*, 879 So. 2d 577 (Ala. 2003)(\$40,000); *East Al. Behavioral Med. Ctr. v. Chancey*, 883 So. 2d 162 (Ala. 2003)(\$1 million compensatory and \$495,000 punitive); *LaFarge Bldg. Materials v. Stribling*, 880 So. 2d 415 (Ala. 2003)(\$500,000 compensatory and \$1.5 million punitive); *John Deere Const. v. England*, 883 So. 2d 173 (Ala. 2003)(\$289,000 compensatory and \$1.5 million punitive; trial court remitted punitive to \$867,000); *Coca-Cola Bottling v. Hollander*, 885 So. 2d 125 (Ala. 2003)(\$150,000 compensatory and \$250,000 punitive); *Conference America v. Telecommunications Coop. Network*, 885 So. 2d 772 (Ala. 2003)(\$1,007,499); *GMC v. Jernigan*, 883 So. 2d 646 (Ala. 2003)(\$22 million compensatory and \$100 million punitive; trial court remitted punitive to \$60 million); *Dolgenercorp, Inc. v. Hall*, 890 So. 2d 98 (Ala. 2003)(\$100,000); *DCH Healthcare v. Duckworth*, 883 So. 2d 1214 (Ala. 2003)(\$350,000); *Breaux v. Thurston*, 888 So. 2d 1208 (Ala. 2003)(\$300,000).
25. The jury verdicts affirmed in 2004 were: *Thompson Properties v. Birmingham Hide & Tallow*, 897 So. 2d 248 (Ala. 2004)(\$194,000); *George H. Lanier Mem'l Hosp. v. Andrews*, 901 So. 2d 714 (Ala. 2004)(\$200,000); *Continental Casualty Co. v. Plantation Pipe*, 902 So. 2d 36 (Ala. 2004)(\$2,912,043); *Flint Construction v. Hall*, 904 So. 2d 236 (Ala. 2004)(\$400,000 compensatory and \$200,000 punitive); *Patterson v. Liberty Nat'l Life Ins. Co.*, 903 So. 2d 769 (Ala. 2004)(\$50,000).
26. The jury verdicts reversed in 2004 were: *Liberty Nat'l Life Ins. Co. v. Ingram*, 887 So. 2d 222 (Ala. 2004)(\$200,000 compensatory and \$3 million punitive; remitted by trial court to \$60,000 compensatory and \$180,000 punitive); *Delta Health Group v. Stafford*, 887 So. 2d 887 (Ala. 2004)(\$200,000 compensatory and \$200,000 punitive); *Hunt Petroleum v. State*, 901 So. 2d 1 (Ala. 2004)(\$3.4 million compensatory and \$20 million punitive); *Brackin v. Trimmer Law Firm*, 897 So. 2d 207 (Ala. 2004)(\$800,000 compensatory and \$200,000 punitive); *New Addition Club v. Vaughn*, 903 So. 2d 68 (Ala. 2004)(\$240,000); *Tom's Foods v. Carn*, 896 So. 2d 443 (Ala. 2004)(\$500,000 compensatory and \$4 million punitive; trial court remitted punitive to \$750,000); *Alabama Power Co. v. Moore*, 899 So. 2d 975 (Ala. 2004)(\$1 million compensatory and \$2 million punitive); *Nationwide Mutual Ins. v. Pabon*, 903 So. 2d 759 (Ala. 2004)(\$365,300; trial court remitted to \$294,135); *Houseman v. Garrett*, 902 So. 2d 670 (Ala. 2004)(\$200,000); *State Farm v. Nix*, 888 So. 2d 489 (Ala. 2004)(\$215,325); *Regions Bank v. Plott*, 897 So. 2d 239 (Ala. 2004)(\$85,000).
27. The only case affirmed in 2005 was *Lloyd Noland Hospital v. Durham*, 906 So. 2d 157 (Ala. 2005)(\$765,920).
28. The cases reversed in 2005 were: *Alfa Life Ins. Corp. v. Jackson*, 906 So. 2d 143 (Ala. 2005)(\$5.5 million; reduced by supreme court to \$400,000 on original submission; reduced to \$30,000 on rehearing); *Ferguson v. Baptist Health System*, 910 So. 2d 85 (Ala. 2005)(\$1 million); *Keibler-Thompson v. Steading*, 907 So. 2d 435 (Ala. 2005)(\$500,000); *Riscorp v. Norman*, 915 So. 2d 1142 (Ala. 2005)(\$3 million); *City of Mobile v. Cooks*, 915 So. 2d 29 (Ala. 2005)(\$32,500); *Fox Alarm Co. v. Wadsworth*, 913 So. 2d 1070 (Ala. 2005)(\$200,000); *Tenn Tom Building v. Olen Nicholas & Copeland*, 908 So. 2d 230 (Ala. 2005)(\$518,000); *Webb Wheel v. Harvey*, 922 So. 2d 865 (Ala. 2005)(\$480,000); *Parker Building v. Lightsey*, 925 So. 2d 927 (Ala. 2005)(\$1.6 million); *AmSouth v. Tice*, 923 So. 2d 1060 (Ala. 2005)(\$342,206); *Southtrust v. Donely*, 925 So. 2d 934 (Ala. 2005)(\$176,090); *Black v. Comer*, 920 So. 2d 1083 (Ala. 2005)(\$176,090).



- 2005)](\$150,000); *City of Crossville v. Haynes*, 925 So. 2d 944 (Ala. 2005)](\$550,000; remitted by trial court to \$100,000); *State Farm v. Williams*, 926 So. 2d 1008 (Ala. 2005)](\$94,600); *Freightliner v. Whatley Contract Carriers*, 932 So. 2d 883 (Ala. 2005)](\$440,000 compensatory and \$750,000 punitive); *Zanaty v. Williams*, 935 So. 2d 1163 (Ala. 2005)](\$104,000); *Morgan Keegan v. Cunningham*, 918 So. 2d 897 (Ala. 2005)](\$60,000).
29. The only four cases affirmed in 2006 were: *Boles v. Parris*, 952 So. 2d 364 (Ala. 1006)](\$1.275 million); *Cochran v. Ward*, 935 So. 2d 1169 (Ala. 2006)](\$350,000); *Tolar Construction v. Kean Electric*, 944 So. 2d 138 (Ala. 2006)](\$88,000); *Ex parte Howell Engineering & Surveying, Inc.*, 981 So. 2d 413 (Ala. 2006)](\$618,634).
30. The cases reversed in 2006 were: *Bailey v. Faulkner*, 940 So. 2d 247 (Ala. 2006)](\$1.6 million); *Ware v. Timmons*, 954 So. 2d 545 (Ala. 2006)](\$13.7 million); *Davis v. Hanson Aggregates SE*, 952 So. 2d 330 (Ala. 2006)](unknown amount of jury verdict); *State Farm v. Alexander*, 950 So. 2d 267 (Ala. 2006)](\$200,000); *Beiersdoerfer v. Hilb, Rogal & Hamilton*, 953 So. 2d 1196 (Ala. 2006)](\$1.25 million); *Systrends v. Group 8760*, 959 So. 2d 1052 (Ala. 2006)](\$19.5 million and \$7.55 million); *Jones Food Co. v. Shipman*, 981 So. 2d 355 (Ala. 2006)](\$300,000).
31. The cases affirmed in 2007 were: *Mobile Infirmary v. Tyler*, 981 So. 2d 1077 (Ala. 2007)](\$5.5 million); *International Paper v. Madison Oslin, Inc.*, 985 So. 2d 879 (Ala. 2007)](\$8.9 million); *Jimmy Day Plumbing & Heating, Inc. v. Smith*, 964 So. 2d 1 (Ala. 2007)](\$1.5 million); *Kult v. Kelly*, 987 So. 2d 551 (Ala. 2007)](\$100,000).
32. The cases reversed in 2007 were: *Edwards v. Allied Home Mortgage Capital*, 962 So. 2d 194 (Ala. 2007)](\$513,972); *City of Birmingham v. Brown*, 969 So. 2d 910 (Ala. 2007)](\$100,000); *Price v. Ragland*, 966 So. 2d 246 (Ala. 2007)](\$400,000 compensatory and \$700,000 punitive; trial court remitted punitive award to \$0); *H&S Homes v. McDonald*, 978 So. 2d 692 (Ala. 2007)](\$40,000 compensatory and \$400,000 punitive); *Long v. Wade*, 980 So. 2d 378 (Ala. 2007)](\$3.85 million); *Exxon Mobil v. Ala. Dept. of Conservation*, 986 So. 2d 1093 (Ala. 2007)](\$100 million compensatory and \$11.8 billion punitive; trial court remitted punitive to \$3.5 billion); *Blue Circle Cement v. Phillips*, 989 So. 2d 1025 (Ala. 2007)](\$200,000 compensatory and \$2 million punitive; trial court remitted punitive to \$800,000); *Carraway Methodist v. Wise*, 986 So. 2d 387 (Ala. 2007)](\$2 million).
33. The cases affirmed in 2008 were: *Slack v. Stream*, 988 So. 2d 516 (Ala. 2008)](\$210,000 compensatory and \$450,000 punitive); *Baldwin Co. Elec. Membership Coop. v. City of Fairhope*, 999 So. 2d 448 (Ala. 2008)](\$295,945); *Classroomdirect.com v. Draphix*, 992 So. 2d 692 (Ala. 2008)](\$444,758); *Southeastern Envtl. Infrastructure v. Rivers*, 12 So.3d 32 (Ala. 2008)](\$1.1 million compensatory and \$400,000 punitive); *Choksi v. Shah*, 8 So.3d 288 (Ala. 2008)](\$910,729).
34. The cases reversed in 2008 were: *Springhill Hospital v. Larrimore*, 5 So.3d 513 (Ala. 2008)](\$4 million); *AmerUs Life v. Smith*, 5 So.3d 1200 (Ala. 2008)](\$2.5 million compensatory and \$4 million punitive); *City of Birmingham v. Major*, 9 So.3d 470 (Ala. 2008)](\$500,000); *Prattville Memorial Chapel v. Parker*, 10 So.3d 546 (Ala. 2008)](\$80,000 compensatory and \$1 million punitive); *Southland Bank v. A&A Drywall*, 21 So.3d 1196 (Ala. 2008)](\$2.1 million compensatory and \$5.5 million punitive).
35. The cases affirmed in 2009 were: *Line v. Ventura*, 38 So.3d 1 (Ala. 2009)](\$200,000 compensatory and \$550,000 punitive); *Black v. Comer*, 38 So.3d 16 (Ala. 2009)](\$350,000); *Quore v. Bradford Bldg.*, 25 So.3d 1136 (Ala. 2009)](\$196,937); *Crews v. McLing*, 38 So.3d 688 (Ala. 2009)](\$67,235); *Sverdrup v. Robinson*, 36 So.3d 34 (Ala. 2009)](\$78,000).
36. The cases reversed in 2009 were: *Crutcher v. Williams*, 12 So.3d 631 (Ala. 2009)](\$145,000); *Mobile Gas Corp. v. Robinson*, 20 So.3d 770 (Ala. 2009)](\$3.45 million); *Cooks Pest Control v. Rebar*, 28 So.3d 716 (Ala. 2009)](\$100,000 compensatory and \$3 million punitive; punitive reduced by trial court to \$500,000); *Dolgencorp, Inc. v. Taylor*, 28 So.3d 737 (Ala. 2009)](\$255,000); *Mobile OB-GYN v. Baggett*, 25 So.3d 1129 (Ala. 2009)](\$5 million); *Smith v. Wachovia Bank*, 33 So.3d 1191 (Ala. 2009)](\$668,779); *Novartis v. State*, 41 So.3d 15 (Ala. 2009)](\$33.25 million); *AstraZeneca, LP v. State*, 41 So.3d 15 (Ala. 2009)](\$40 million compensatory and \$175 million punitive; punitive award reduced by trial court to \$120 million); *SmithKline v. State*, 41 So.3d 15 (Ala. 2009)](\$33.25 million); *Smith v. Wachovia Bank*, 33 So.3d 1191 (Ala. 2009)](\$668,779).
37. The cases affirmed in 2010 were: *Arthur v. Bolen*, 41 So.3d 745 (Ala. 2010)](\$150,000); *CSX Transportation v. Miller*, 46 So.3d 434 (Ala. 2010)](\$450,000); *Miller v. Bailey*, 60 So.3d 857 (Ala. 2010)](\$2 million).
38. The cases reversed in 2010 were: *G.U.B.MK Constructors v. Garner*, 44 So.3d 479 (Ala. 2010)](\$525,000); *Hartford Ins. v. Reed*, 57 So.3d 742 (Ala. 2010)](\$729,052); *Cheshire v. Putman*, 54 So.3d 336 (Ala. 2010)](\$150,000 compensatory and \$1.5 million punitive); *Galaxy Cable v. Davis*, 58 So.3d 93 (Ala. 2010)](\$30,000 compensatory and \$120,000 punitive); *Ross v. Rosen-Rager*, 67 So.3d 29 (Ala. 2010)](\$13,343 compensatory and \$350,000 punitive); *Jones Express, Inc. v. Jackson*, 86 So.3d 298 (Ala. 2010)](on rehearing *ex mero motu*: \$600,000 compensatory and \$100,000 punitive).
39. The only jury verdict affirmed in 2011 was *O'Rear v. B.H.*, 69 So.3d 106 (Ala. 2011)](\$1 million compensatory and \$2 million punitive). It was a medical malpractice, outrage and assault case against an uninsured doctor.
40. The cases reversed in 2011 were: *Health Care Authority for Baptist Health v. Davis*, (Ms. 1090084, 2011 Ala. LEXIS 17, Jan. 14, 2011)](Ala. 2011)](\$3 million)](pending on rehearing); *Ford Motor Co. v. Duckett*, 70 So.3d 1177 (Ala. 2011)](\$8.5 million); *Norfolk So. Ry. v. Johnson*, 75 So.3d 624 (Ala. 2011)](\$1.5 million compensatory and \$3 million punitive); *Federal Credit, Inc. v. Fuller*, 72 So.3d 5 (Ala. 2011)](\$25,000 compensatory and \$35,000 punitive); *Nationwide Mutual Ins. Co. v. J-Mar S Machine Pump*, 73 So.3d 1248 (Ala. 2011)](\$416,466); *Crestview Funeral Home v. Gilmer*, 79 So.3d 585 (Ala. 2011)](\$416,466); *Lafarge North America v. Nord*, 86 So.3d 326 (Ala. 2011)](\$125,000 compensatory and \$75,000 punitive); *Stephens v. Fines Recycling*, 84 So.3d 867 (Ala. 2011)](\$438,855 net); *Springhill Hospitals v. Critopoulos*, (Ms. 1090946, 2011 Ala. LEXIS 194, Nov. 10, 2011)](Ala. 2011)](\$300,000); *GE Capital Aviation v. Pemco*, (Ms. 1090350, 2011 Ala. LEXIS 228, Dec. 12, 2011)](\$2.14 million compensatory and \$6.5 million punitive). The court also reversed and rendered a \$500,000 verdict (\$380,000 compensatory and \$120,000 punitive) that was entered in the plaintiff's favor in a fraud case that was tried nonjury in *Lawson v. Harris Culinary Enterprises, LLC*, 83 So.3d 483 (Ala. 2011).
41. *Hryniw v. Trammell*, 2012 Ala. LEXIS 59 (Ala. 2012)](\$2.15 million medical malpractice).
42. *Heisz v. Galt Industries, Inc.*, 2012 Ala. LEXIS 2 (Ala. 2012)](Heisz for \$54,684 on a contract claim, Galt for \$720,678 on contract and fraud claims and Plath for \$48,893 on contract and fraud claims); *Attenta, Inc. v. Calhoun*, 2012 Ala. LEXIS 65 (Ala. 2012)](\$3.69 million).
43. Phrase meaning that a circumstance should be accepted at face value. In other words, right, wrong or indifferent, this is the situation.