

# Local restaurant wins \$1.8 million

## Arby's franchise raised fraud claim against national corporation

MOBILE — Shortly after noon Monday, a U.S. Federal District court jury awarded \$1,883,000 to Kitchens Foods, Inc. of Gulf Shores, in a federal fraud case brought against Arby's Inc. and Fred Bartliff, an Arby's employee.

The plaintiff was represented by Dick Bounds and Greg Breedlove of Cunningham, Bounds, Yance, Crowder and Brown, and Mike Youngpeter of the law firm Sirote Permutt.

Kitchens Foods, Inc., a family-owned food service business, filed the suit claiming misrepresentation and fraudulent concealment of information on the part of Arby's Inc. and their regional franchise manager.

"The Arby's representative told

our clients that an average Arby's franchise generated annual sales in the range of \$750,000 to \$1 million, and that the franchise our clients were considering opening in Gulf Shores would produce gross annual sales in excess of \$1 million, based on its projected location," said Bounds, who lives in Montrose. "This was later found not to be the truth. The defendants admitted at trial that the average gross annual sales for an Arby's franchise is only around \$500,000."

The defendants claimed that no discussion of projected gross income occurred prior to the sale of the Gulf Shores franchise.

To validate their claim of fraud, the plaintiff's attorneys presented testimony from four

Arby's franchise owners. Each owner relayed a similar story of misrepresentation and fraud with regards to the project gross annual sales for Arby's franchises.

Dr. Douglas Southard, a statistician and financial consultant, provided expert testimony that based on sales information obtained from Arby's Inc., after the filing of the law suit, there was approximately a one in 1,000 chance of the Gulf Shores franchise producing gross annual sales of \$1 million.

"Based on the testimony of the franchise owners and Dr. Southard's financial analysis, we presented what I believe to be overwhelming evidence that Arby's Inc. and its appointed represen-

tative, were guilty of misrepresentation and fraudulent concealment of information," said Greg Breedlove.

"I am pleased that the jury agreed with our arguments, and that they deemed it appropriate to award the Kitchens both compensatory and punitive damages."

The case was tried in Judge Virgil Pittman's courtroom.