Federal Jury Verdict Reporter

The Most Current and Complete Summary of Federal Jury Verdicts

February 2006 **Nationwide Federal Jury Verdict Coverage** **2 FedJVR 2**

Notable Verdicts in The February 2006 Issue

Verdict of the Month

RACE DISCRIMINATION

Pennsylvania Eastern District - Philadelphia

Four white school procurement administrators alleged race discrimination was behind a firing when a black woman took over the office – after the four plaintiffs prevailed and took nearly $3,000,000 in damages, the lead attorney for the school district (who is also black) remarked to jurors in a courthouse elevator that they were "crackers"

Caption: *Johnson et al v. School District of Philadelphia*, 2:04-4948

Plaintiff: Michael D. Homans and Lizanne V. Hoerst, *Flaster Greenberg*, Cherry Hill, NJ

Defense: Carl E. Singley, Richard S. Meyer, Heather A. Steinmiller and Michael J. Hanlon, *Blank Rome*, Philadelphia, PA

Verdict: $2,960,378 for plaintiffs

Judge: Harvey Bartle, III

Date: December 16, 2005

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EMPLOYMENT RETALIATION

Alabama Northern District - Birmingham

The manager of a furniture rental store was sacked after he refused to make an attempt to get out of grand jury service

Caption: *Cunningham v. Aaron Rents*, 2:04-386

Plaintiff: David R. Arendall, Stephanie S. Woodard & Allen D. Arnold, *Arendall & Associates*, Birmingham, AL

Defense: Steven M. Stasny, *Ford & Harrison*, Birmingham, AL

Verdict: $430,000 for plaintiff

Judge: William M. Acker, Jr.

Date: December 8, 2005

Facts: Leslie Cunningham started working in February of 1993 for Aaron Rents – the company rents furniture. By that summer, he was the general manager of his own store. Cunningham was thriving in the position.

That changed when he received a state court jury duty summons in September. Immediately he told his boss about it – the boss replied that Cunningham should make an effort to get out of the service as the fourth quarter is typically busy for Aaron Rents. Cunningham agreed to do what he could.

When Cunningham arrived at jury duty, he could not be excused – he was also selected to serve on a grand jury. His service would stretch three months – he would serve in that time for one week per month. He did so in October and November, his grand jury duty ending on 12-4-03.

The day after Christmas, Aaron Rents fired Cunningham. It cited performance problems at the store. Cunningham thought this was hogwash. He'd done well and the company's numbers proved it.

He filed this lawsuit alleging retaliation in violation of the Alabama Jury Duty Statute. Quite simply, he argued the company fired him for his service on the grand jury. Cunningham noted that he did well, the company's hostility only beginning when he failed to follow orders and find a way to be excused from jury duty. If prevailing, he sought compensatory and punitive damages.

Aaron Rents defended the case that it's decision to fire was not based solely on jury duty – instead it focused on performance. The company also counterclaimed for conversion. After the firing, an audit was performed and one computer came up missing. While there was no evidence of it, the company accused Cunningham of stealing it – the counterclaim did not advance to trial.

Jury Instructions/Verdict: Cunningham prevailed on the retaliation count and took lost wages of $30,000, plus $100,000 more for emotional distress. Punitives were $300,000, the verdict totaling $430,000. He has since sought an award of attorney fees.

Race Discrimination - Four white firefighters alleged they were passed over for promotion, the fire chief selecting a less-qualified black applicant

Stringfellow et al v. City of Mobile, 1:04-281

Plaintiff: Richard W. Fuquay and Edward L.D. Smith, Mobile, AL

Defense: Paul K. Carbo and Andrea L. McClellan, *The Atchison Firm*, Mobile, AL

Verdict: $540,000 for plaintiffs ($135,000 to each of four plaintiffs)

Court: **Alabama Southern - Mobile**, 12-9-05

Judge: Callie V.S. Grande

Date: 12-9-05

In 2003, there were four openings for promotion to District Chief within the Mobile Fire Department. The fire chief, Steve Dean, considered a list of ten applicants that was provided by the Personnel Board. Nine of ten applicants were white, the sole black applicant being Johnny Morris.

Dean conducted interviews and made his selection. He promoted three white applicants as well as Morris. The decision to hire the white applicants was not at issue in this case – the promotion of Morris would be challenged.

Four white fire department employees, Melvin Stringfellow, Stanley Vinson, Kenneth Tillman and Onrie Brown, all of whom were ranked higher than Morris by the Personnel Board, alleged they were victims of reverse race discrimination. Dean's preference to promote a black applicant clouded his judgment, permitting the less qualified, less highly-ranked and less experienced Morris to be promoted.

The plaintiffs' theory alleged both direct and circumstantial proof. The direct proof came from a fire captain who recalled a conversation with Dean – in it Dean told her he wanted to promote a black applicant. Tying to circumstantial proof, plaintiffs developed that Dean was apparently cowed by black city council members who wanted a minority promoted.

In characterizing their case, plaintiffs argued that while Dean didn't have an evil motive, he was weak and should have stood up to the interference by the council. If the plaintiffs prevailed, they sought lost wages and emotional distress damages.

The fire department defended the hiring decision and explained race had nothing to do with it. Dean, the ultimate decision-maker, had specific explanations for why he rejected the plaintiffs and instead picked Morris. Part of that analysis by Dean focused on the fact that he didn't just consider the Personnel Board ranking and test scores (Morris wouldn't have been selected if he did), but rather a broad spectrum of factors including demeanor and the ability to handle difficult tasks – Dean's relied on his subjective evaluations of the applicants and concluded Morris should be promoted. The fire department conceded that even if this decision was misguided or wrong, race had nothing to do with it.

Mobile also defended the notion that all four plaintiffs could prevail at trial - at issue in this case was just one promotion. Definitionally, even if the city was motivated by race and Morris was illegally hired, only one of the plaintiffs could have been promoted anyway.

All four plaintiffs prevailed at trial on the discrimination claim and took identical damages – $10,000 for lost wages and $125,000 for emotional distress. The individual verdict for each plaintiff was $135,000 – the combined four awards totaled $540,000. When reviewed by the AJVR, post-trial motions had not yet been filed. It is expected that the government will repeat arguments that all four plaintiffs couldn't take awards when there was only one that could have been promoted.

Breach of Warranty - Plaintiff's dream RV turned out to be a lemon – they prevailed on revocation, also taking consequential damages

Bray v. Monaco Coach Corporation, 4:03-363

Plaintiff: Marshall Meyers, *Krohn & Moss*, Phoenix, AZ
Defense: William M. Shattuck, *Quarles & Brady Streich Long*, Phoenix, AZ
Verdict: $36,900 for plaintiff plus revocation (Judgment for $229,677 plus the verdict)
Court: **Arizona - Phoenix**
Judge: David C. Bury
Date: 11-18-05

Julius and Florence Bray, two seniors in their 80's, sought to spend their golden years in an RV. They purchased a Monaco "Camelot" RV from the Monaco Coach Corporation. They paid $229,000 for their new dream home. Rather than a dream, their RV was a lemon.

In the first eleven months, they made 64 repair visits. That included two cross-country repair odysseys to the company's manufacturing facilities in Indiana and Oregon. Nothing worked.

Essentially the Brays were left with what they described as a $229,000 backyard ornament. They sued Monaco and sought to revoke the sale of the RV. Plaintiffs also sought consequential damages. Monaco defended the case and denied the contentions.

This jury found for the Brays on revocation and awarded them consequential damages of $36,900. The judgment for the plaintiffs included the verdict, plus $229,677 for the RV.

Premises Liability - Plaintiff slipped at the bowling alley on lane conditioner that had leaked onto the approach area

Mesirow v. Leiserv, Inc., 2:04-2052

Plaintiff: Trevor H. Chait, *Gallagher & Kennedy*, Phoenix, AZ
Defense: Raymond Cusack and Timothy Medcoff, *Quarles & Brady Streich Lang*, Phoenix, AZ
Verdict: Defense verdict on liability
Court: **Arizona - Phoenix**
Judge: Robert C. Broomfield
Date: 12-9-05

Charles Mesirow was bowling on 11-29-02 at Leiserv. As he approached the lane, Mesirow slipped and fell. He blamed his fall on lane conditioner that leaked into the approach area.

In the fall, Mesirow sustained a ruptured quadriceps tendon. He later underwent two repair surgeries. In this lawsuit, he alleged Leiserv negligently maintained the lane. Leiserv defended and denied fault.

The verdict on liability was for Leiserv and Mesirow took nothing. A defense judgment followed.

Civil Rights - The police arrested an out-of-town contractor on a DUI charge – an officer then went to tell the man's father of the arrest and to retrieve the vehicle – when the officer did so, he performed a warrantless search of the father's motel room

Finley v. City of Rogers, 5:05-5029

Plaintiff: Doug Norwood, *Norwood & Norwood*, Rogers, AR
Defense: Ben Lipscomb, *Rogers City Attorney*, Rogers, AR
Verdict: $15,000 for plaintiff
Court: **Arkansas Western - Fayetteville**
Judge: Jimm Larry Hendren
Date: 11-28-05

In February of 2000, Jimmy Finley, a concrete contractor, was in Rogers, AR on a construction project. Finley, age 68, has been in the business for fifty years and had no criminal record. He was staying at the Town & Country Motel – his son was also working on the project. Important to this case, his son was charged with a DUI.

John Fry, a Rogers police officer, came to Finley's motel room to take Finley to pick up their vehicle to avoid a tow charge. It was late at night and Fry woke Finley up. Fry then proceeded to undertake a warrantless search of the motel room. That included looking in the bathroom and opening a suitcase. Fry found nothing, the search lasting just three minutes.

In this federal lawsuit, Finley alleged the search was unconstitutional. He sought an award of compensatory and punitive damages. Fry for his part, couldn't remember if he engaged in the search or not – in any event, Fry postured that he was just trying to help Finley and take him to his car. The government also argued that in any event, there was no arrest, this impermissible search representing a "no harm, no foul" circumstance.

Finley prevailed on a count that asked the jury if the search was unconstitutional. He then took compensatory damages of $10,000, plus $5,000 more in punitives. The verdict totaled $15,000.

The government moved for JNOV relief and argued the verdict was excessive, the search lasting just three minutes. Finley countered that Fry was an experienced cop who acted with reckless disregard in invading his room. The motion was denied.

Truck Negligence - Plaintiff, traveling in his Dodge Viper, was rear-ended by a trucker in construction traffic

Walton et al v. Rollout Express, 4:04-1402

Plaintiff: Wm. Gary Holt, *Gary Eubanks & Associates*, Little Rock, AR
Defense: John Payne, *Huckabay Munson Rowlett & Moore*, Little Rock, AR
Verdict: Defense verdict on liability
Court: **Arkansas Eastern - Little Rock**
Judge: J. Leon Holmes
Date: 12-15-05

On 6-25-04, Donald Walton traveled on I-30 in Saline County, AR – Donna Mobley was a passenger with him. As he proceeded in a construction zone, he slowed down. This was no easy task for Walton – he was driving a Dodge Viper.

A moment later he was rear-ended by Ronald Knight, driving a tractor-trailer for Rollout Express. Knight would later explain he looked away from the road a minute – when he looked back, there was no time to stop.

Both Walton and Mobley were hurt and they sued Knight and

his employer. Walton also wanted $82,000 for damage to his Dodge Viper. Knight defended the case that he acted reasonably, implicating plaintiff's sudden stop.

The verdict on liability was for the trucking firm and the plaintiffs took nothing. A defense judgment followed.

BAD FAITH

California Central District - Los Angeles

Plaintiff alleged the handling of an earthquake property damage claim was bungled, her insurer relying on a fraudulent adjustor (who never looked at her property) to deny her claim

Caption: *Smith v. Allstate*, 2:98-8929

Plaintiff: Norman J. Watkins, Orange, CA and Ruth Segal, Los Angeles, CA, both of *Lynberg & Watkins*

Defense: Gregory M. MacGregor and R. Timothy O'Connor, *MacGregor & Berthel*, Woodland Hills, CA

Verdict: Defense verdict on liability

Judge: Edward F. Shea

Date: September 19, 2005

Facts: Violet Smith, since deceased, lived in Santa Ana in 1994. Her home was damaged by the Northridge earthquake that struck in January of that year. An Allstate insured, she made a claim for property damage. Allstate sent an architect/engineer to evaluate the damage – the report concluded Smith's home had suffered $7,700 of damage.

However as her deductible was $11,000, Allstate denied the claim. Smith, who had lived in the home for 54 years, relied on and accepted the report. She settled her claim for nothing.

Smith later learned there were problems with the assessment of her property. It turned out the architect/engineer (LeAndre Davis) that Allstate had relied upon (in this case and in many others) was actually a fraud. He had never even looked at her property. Davis appeared at this bad faith trial from prison.

In this lawsuit, Smith alleged breach of contract and bad faith by Allstate – it was her position the insurer knew of Davis's illicit conduct and silently ratified it. This case first came to trial in 2000. Smith prevailed on contract and took $20,000. The court excluded proof of bad faith.

Smith appealed and the 9th Circuit reversed on that basis. The case then returned to trial in the fall of 2005. Allstate defended the merits of the bad faith claim explaining that it acted reasonably – it was as duped as Smith was by the phony reports generated by Davis.

Jury Instructions/Verdict: The verdict was for Allstate on Smith's bad faith claim and no damages were awarded.

Civil Rights - When plaintiff reached in to turn off his car after a cop complained the music was too loud, the cop proceeded to arrest him for DUI, beating him in the process – a friend came to help and he was beaten too

Helena et al v. San Francisco Police, 4:04-260

Plaintiff: Kenneth N. Frucht, San Francisco, CA

Defense: Jennifer E. Choi, *Deputy City Attorney*, San Francisco, CA

Verdict: $10,000 for Helena; Defense verdict on damages for Tziu

Court: **California Northern - Oakland**

Judge: Claudia Wilken

Date: 12-16-05

On the evening of 3-7-03, Alfonso Helena, returned home from his work at a dry dock and parked his car on 21st Street near Coronado Park. After having a few drinks at home, he returned to his car. He played soccer with friends at the park and drank beer. Helena also turned up the radio in his parked car. Joining Helena at the scene was a teenage friend, Daniel Tziu.

Just after midnight, a call came into the San Francisco Police reporting loud music. Two cops, Joseph Salazar and Kyle Ching, responded to the disturbance. Salazar asked who owned the car. Helena answered it was him. Helena then proceeded to turn down the music by shutting off the car.

As he did so, Salazar informed him he was under arrest for DUI. Helena tried to explain that he wasn't driving. At this juncture, Salazar slammed him against the car and placed him under arrest. The officer also searched the car. Then at the police station, Helena alleged he was further abused – Salazar twisted his finger and put his shoe on his neck.

From these facts, Helena alleged that Salazar committed three constitutional torts, (1) excessive force, (2) false arrest and (3) unreasonable search and seizure. If prevailing, he sought compensatory and punitive damages.

Back to the scene of the arrest, as Salazar jumped on Helena, Tziu moved in to help his friend. As he did, Ching put him in a choke hold and arrested him. Tziu also sued the police, alleging Ching had engaged in excessive force and falsely arrested him. He too sought compensatory and punitive damages.

The police defended this case and pointed to fact disputes. It noted in responding to the loud music call that the Helena vehicle was parked on a street that is a dividing line for gang activity. Then to the scene and when told to disperse, Helena didn't and instead replied, "I'm fucked up." Only then was he arrested for public intoxication. Any abuse was denied. Similarly, the minor Tziu was arrested when he wouldn't disperse – he was taken to a nearby station and released to his mother.

The verdict was mixed. Helena prevailed against Salazar on both excessive force and false arrest. The cop prevailed on the search claim. Then to damages, Helena took $5,000 each for compensatory and punitive damages.

Tziu lost on excessive force but prevailed on false arrest against Ching. However the jury went on to reject damages. A consistent judgment reflected the mixed result.

BREACH OF CONTRACT

Colorado District - Denver

An HVAC franchisee alleged his franchise was unfairly terminated – after an $18 million verdict in 2000 was reversed on appeal, the matter was tried again, this time the plaintiff taking just $4.78 million

Caption: *Haynes Trane Service v. The Trane Co.*, 1:95-1700

Plaintiff: J. Lawrence Hamil and Charles Hecht, *Hamil Hecht*, Denver, CO

Defense: Daniel M. Reilly, Larry S. Pozner, Kent C. Modesitt and Michael A. Rollin, *Hoffman Reilly & Pozner*, Denver, CO

Verdict: $4,780,000 for plaintiff

Judge: Richard P. Matsch

Date: December 7, 2005

Facts: Frederick Haynes of Denver first acquired a franchise from the Trane Company (an HVAC manufacturer) in 1968. Until 1995, he operated as Haynes Trane Service Company of Colorado. On 7-8-95 and after providing thirty days notice, Trane terminated his franchise. It cited fraud by him in the claimback process – Trane alleged he falsified documents to receive higher than merited rebates.

Haynes sued and alleged breach of contract by Trane, it having improperly terminated the agreement without cause. A nuanced theory, he alleged the contract right was created by equitable estoppel. That is while it wasn't in the agreement, Trane promised not to terminate him without cause and he relied on that promise.

Then to the termination in 1995, Haynes explained the claimback fraud was traceable not to him, but rather to a rogue employee. Beyond the contract claim, Haynes also alleged Trane had not acted in good faith in performing the contract.

The case was first tried in 2000. Haynes and the franchise company prevailed on both contract and bad faith, taking a verdict of $18,000,000. Trane appealed. In a non-published opinion in 2002, the 10th Circuit reversed. Judge VanBebber wrote it was error to submit the good faith and fair dealing count to the jury. He reversed for a new trial on the contract count only.

Trane defended back at the trial court and denied the equitable estoppel contract claim – it argued that doctrine could not be used to insert a provision into the contract that didn't exist. Then to the termination, Trane postured there was cause, pointing to the claimback fraud. It also presented a counterclaim for fraud by Haynes related to overpayments made in the claimback program.

Jury Instructions/Verdict: This case was tried for fifteen days. Haynes prevailed on his contract claim that he had been terminated without cause. He took damages of $4.78 million. The jury also found for Trane on its counterclaim alleging Haynes committed fraud in submitting claims. [This counterclaim didn't lead to damages – the amount of the fraud will be determined later, but is expected to be between $350,000 and $850,000. A month post-trial, no judgment had been entered.

Ed. Note - The foreman of the jury turned out to be a blogger. A researcher for a writer on the Columbine tragedy, the blogger wrote about the trial in some detail. He didn't mince his words in describing counsel.

The blogger described plaintiff's counsel as a "lousy-ass lawyer" who droned on monotonously. By contrast, he thought Pozner for the defense was excellent. See the blog at: http://www.mikeditto.com/archives/trials_over

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Civil Rights - While serving a search warrant on plaintiff's son who had been arrested in a federal case, the plaintiff (a doctor in her 90's), alleged U.S. Marshals illegally searched her home which doubled as a medical office

Van Eck v. U.S. Marshal Service, 3:03-1232

Plaintiff: Norman A. Pattis, Bethany, CT

Defense: John B. Hughes, *Assistant United States Attorney*, New Haven, CT

Verdict: Defense verdict on liability

Court: **Connecticut - New Haven**

Judge: Ellen Bree Burns

Date: 10-20-05

This case started with a federal Department of Transportation investigation into a bus service operated by Jan Van Eck. It led to Jan's arrest. Subsequent to the arrest, a search warrant was issued for Jan's residence. At the time, Jan lived with his mother, Gertrude Van Eck. At the time, Van Eck was 90 and still a practicing physician. She ran her medical office out of her home.

Three U.S. Marshals, Jeffrey Cimhosky, Carla Vaginini and Thomas Galluci, descended to serve the warrant. In the course of searching for evidence against Jan, they rifled through Van Eck's medical records that were stored in her basement office. Van Eck thought this represented an unconstitutional search.

She sued the agents in federal court and sought compensatory and punitive damages. The Marshals defended the case that the search was consensual and that they only looked for records related to the son.

Van Eck also presented an injury claim, alleging she'd been assaulted during the search. However proceeding pro se at the time, she failed to timely file a Federal Tort Claims Act notice. That claim was dismissed, only her constitutional claims being timely filed.

The verdict was for the Marshals and Van Eck took nothing. A defense judgment followed and Van Eck has appealed.