

Federal Jury Verdict Reporter

The Most Current and Complete Summary of Federal Jury Verdicts
(Merged in February 2007 with the Labor & Employment Verdict Reporter)

February 2007

Nationwide Federal Jury Verdict Coverage

3 FedJVR 2

****Important Notice****

The Labor & Employment Verdict has merged with the Federal Jury Verdict Reporter

Effective with the February 2007 issue, the Federal Jury Verdict Reporter and the Labor & Employment Verdict Reporter have merged operations. Subscriptions are unaffected by the merger.

Readers of the FedJVR will not notice the change, as the verdict coverage remains the same. Readers of the LEVR will receive the same verdict coverage, just in a different format. All the federal employment verdicts are sorted by category and easily identified in the Table of Contents.

As a final note, the verdicts are now organized by case type and not by jurisdiction. Thus the employment verdicts are grouped together, products liability are grouped together and so on.

If you have any questions about this merger, please contact us at 1-866-228-2447 or via e-mail at info@juryverdicts.net.

Verdict of the Month

Products Liability - A budding televangelist was killed in a Ford Explorer roll-over – his estate criticized the SUV's failure to have electronic stability control

Bourke v. Ford Motor Company, 2:03-136

Plaintiff: Michael D. Wiseman, *Wiseman & McIntyre*, Boston, MA and Donald E. Schyler, *Schyler & Associates*, Merrillville, IN

Defense: James M. Campbell and David M. Rodgers, *Campbell Campbell Edwards & Conroy*, Boston, MA and Kevin C. Schiferl and Karen M.R. Weber, *Locke Reynolds*, Indianapolis, IN

Verdict: Defense verdict on liability

Court: **Indiana Northern - Hammond**

Judge: Rudy Lozano

Date: 1-19-07

See Page 15

Notable Verdicts in The February 2007 Issue

Civil Rights - MA (Boston) - An airline passenger of Portugese descent was suspected falsely of being a Middle Eastern terrorist and forced to deplane - \$400,000 p. 4

Disability Discrimination - OH (Akron) - A trucker with just one leg (he had a prosthesis) was considered hired for a job until a pre-work physical revealed the amputation injury to the employer - Zero p. 5

Sexual Harassment - WI (Milwaukee) - A nursing home executive (a male) was harassed by his female boss - Zero p. 9

Maintenance Negligence - AR (Texarkana) - A soldier was electrocuted in a training accident and his estate sued a third-party contractor who worked for the Army - \$6,500,000 p. 11

Municipal Negligence - AZ (Phoenix) - A boater drowned in Lake Havasu and the death was blamed on C02 from boats that were permitted to idle too long - Zero p. 12

Products Liability - MD (Baltimore) - The plaintiff was badly burned when his 1984 suddenly emitted hot fluid through the ventilation ducts - Zero p. 15

FELA - MI (Grand Rapids) - Railman was injured when a jacked-up boxcar fell upon him - \$1,425,000 p. 17

Labor and Employment Verdicts began at page 5

Federal Jury Verdict Reporter February 2007 Table of Contents

Civil Rights (Non-Employment)

Civil Rights

<i>Garren v. Mize - AR Eastern - \$1,000</i>	p. 4
<i>Burke v. MA State Police - MA Boston - \$400,000</i>	p. 4
<i>Cerqueira v. American Airlines - MA Boston - \$400,000</i>	p. 4
<i>Thornton v. Goldendale Police - WA Eastern - Zero</i>	p. 5

Employment Verdicts

Disability Discrimination

<i>McMillen v. Fraley & Schilling - OH Northern - Zero</i>	p. 5
--	------

Employment Retaliation

<i>Heaton v. Weitz Co. - IA Northern - \$162,070</i>	p. 5
<i>Cobb v. Bayshore Management - MO Eastern - Zero</i>	p. 6
<i>Lubbes v. Olympic Forest Prod - Oregon - \$325,000</i>	p. 6
<i>Holmes v. T&R Painting - TX Western - Zero</i>	p. 6

Employment Tort

<i>Horton v. 48th Judicial Dist - MI Eastern - \$3,000,000</i>	p. 7
---	------

Fair Labor Standards Act

<i>Jones v. Wash Depot - FL Southern - \$1,746</i>	p. 7
--	------

FMLA

<i>Kelly v. Harwick Standard - OH Northern - Zero</i>	p. 7
---	------

Gender Discrimination

<i>Drake v. Birmingham Bd. of Ed. - AL Northern - \$95,992</i>	p. 8
<i>Rolin v. Rose's Cantina - AL Northern - \$11,100</i>	p. 8
<i>Leggett v. Days Inn - GA Southern - \$5,000</i>	p. 8
<i>Randolph v. Carpenter Union - IN Southern - \$50,000</i>	p. 9

Race Discrimination

<i>Settles v. USPS - AR Eastern - Zero</i>	p. 9
--	------

Sexual Harassment

<i>Dunes v. Senior Residential Care - WI Eastern - Zero</i>	p. 9
---	------

Whistleblower Violation

<i>Barber v. MSD - KY Western - \$35,000</i>	p. 10
--	-------

Personal Injury/Tort

Auto Negligence

<i>Boyles v. Arrow Industries - PA Middle - \$60,001</i>	p. 10
--	-------

Bad Faith

<i>Cano v. Zurich American - Arizona - \$325,000</i>	p. 11
--	-------

Maintenance Negligence

<i>Marcum v. Shaw Group - AR Western - \$6,500,000</i>	p. 11
--	-------

Medical Negligence

<i>Morris v. Kumarasamy - Connecticut - Zero</i>	p. 11
--	-------

Municipal Negligence

<i>Heck v. City of Lake Havasu - Arizona - Zero</i>	p. 12
---	-------

Premises Liability

<i>Roth v. Harrah's Tunica - FL Southern - \$4,400</i>	p. 12
<i>D'Nelson v. Costco - NY Eastern - Zero</i>	p. 12
<i>Anderson v. Hooters - TN Eastern - \$48,500</i>	p. 13

Sexual Assault

<i>Devine v. Fults - TN Middle - \$6,500,000</i>	p. 13
--	-------

Truck Negligence

<i>Puckett v. Progress Rail - GA Southern - \$4,800,000</i>	p. 13
---	-------

Trucking Negligence

<i>Fulford v. Transport Service - LA Eastern - Zero</i>	p. 14
---	-------

Truck Maintenance Negligence

<i>Troutner v. Marten Transport - IN Northern - Zero</i>	p. 14
--	-------

Products Liability

<i>Bourke v. Ford - IN Northern - Zero</i>	p. 15
<i>Nentwig v. Williamette Industries - Kansas - Zero</i>	p. 15
<i>Drexler v. BMW - Maryland - Zero</i>	p. 15
<i>Moreland v. Ford - New Mexico - Zero</i>	p. 16

FELA/Jones Act

FELA

<i>Williams v. Amtrak - IL Southern - \$56,000</i>	p. 16
<i>Deitzel v. Springfield Terminal - MA Boston - \$1,322,800</i>	p. 16
<i>Booker v. CSX - MI Western - \$1,425,000</i>	p. 17
<i>Loomis v. Delaware & Hudson - PA Middle - \$600,000</i>	p. 17

Miscellaneous

Patent Infringement

<i>Freeman v. Gerber Products - Kansas - Zero</i>	p. 17
---	-------

Index by State

Alabama

Gender Discrimination - \$95,992 p. 8
 Gender Discrimination - \$11,100 p. 8

Arizona

Bad Faith - \$325,000 p. 11
 Municipal Negligence - Zero p. 12

Arkansas

Civil Rights - \$1.00 p. 4
 Race Discrimination - Zero p. 9
 Maintenance Negligence - \$6,500,000 p. 11

Connecticut

Medical Negligence - Zero p. 11

Florida

FLSA - \$1,746 p. 7
 Premises Liability - \$4,400 p. 12

Georgia

Gender Discrimination - \$5,000 p. 8
 Truck Negligence - \$4,800,000 p. 13
 Products Liability - Zero p. 14

Indiana

Gender Discrimination - \$50,000 p. 9
 Truck Maintenance Negligence - Zero p. 14
 Products Liability - Zero p. 15

Illinois

FELA - \$56,000 p. 16

Iowa

Employment Retaliation - \$162,070 p. 5

Kansas

Products Liability - Zero p. 15
 Patent Infringement - Zero p. 17

Kentucky

Whistleblower Violation - \$35,000 p. 10

Louisiana

Trucking Negligence - Zero p. 14

Maryland

Products Liability - Zero p. 15

Massachusetts

Civil Rights - \$400,000 p. 4
 Civil Rights - \$400,000 p. 4
 FELA - \$1,322,800 p. 16

Michigan

Employment Tort - \$3,000,000 p. 7
 FELA - \$1,425,000 p. 17

Missouri

Employment Retaliation - Zero p. 6

New Mexico

Products Liability - Zero p. 16

New York

Premises Liability - Zero p. 12

Ohio

Disability Discrimination - Zero p. 5
 FMLA - Zero p. 7

Oregon

Employment Retaliation - \$325,000 p. 6

Pennsylvania

Auto Negligence - \$60,001 p. 10
 FELA - \$600,000 p. 17

Tennessee

Premises Liability - \$48,500 p. 13
 Sexual Assault - \$8,500,000 p. 13

Texas

Employment Retaliation - Zero p. 6

Washington

Civil Rights - Zero p. 5

Wisconsin

Sexual Harassment - Zero p. 9

Civil Rights - The plaintiff alleged the police entered his home and searched without consent – while inside they found a meth lab, a criminal prosecution being stalled after that evidence was suppressed – the plaintiff then sued the task force in this civil rights lawsuit

Garren v. Mize, 4:05-912

Plaintiff: James F. Swindoll, Little Rock, AR

Defense: Jeremy M. McNabb, *Rainwater Holt & Sexton*, Little Rock, AR

Verdict: \$1.00 for plaintiff

Court: Arkansas Eastern - Little Rock

Judge: Susan W. Wright

Date: 1-17-07

In May of 2003, the Conway Regional Drug Task Force received a tip that a meth lab was being operated at the residence of Arthur Garren. A variety of Task Force police officers descended on Garren's home. They began a search which confirmed the tip was correct – Garren was cooking meth.

However the airtight criminal case against him was derailed when a state court judge excluded the evidence found in the search. That judge ruled that as the officers, in securing consent for the search, did not advise Garren that he could say no, the search was then unlawful. It was also noted that when the police asked for consent and it was purportedly given, guns were pointed at Garren.

Garren then sued the Task Force in federal court alleging a civil rights violation in improperly searching his residence. Quite simply, he never consented to the search. The police raised a fact dispute and countered that they had secured plaintiff's consent before searching.

The verdict was for the plaintiff on the civil rights count, but the jury elected to award him just a single dollar in damages.

Civil Rights - Even though DNA evidence excluded the plaintiff as a suspect, a state trooper still arrested the plaintiff and charged him with brutally murdering his sister-in-law's mother

Burke v. Massachusetts State Police, 1:00-10376

Plaintiff: Robert S. Sinsheimer, Boston, MA

Defense: Joseph P. Kittredge, *Rafanelli & Kittredge*, Acton, MA

Verdict: \$400,000 for plaintiff

Court: Massachusetts - Boston

Judge: George A. O'Toole, Jr.

Date: 12-11-06

On 12-1-98, the body of the elderly Irene Kennedy was found in a park in Walpole, MA. She had been brutally beaten to death. The police began their investigation and focused on Edmund Burke, age 56 – Kennedy was his sister-in-law's mother.

Stephen McDonald of the Massachusetts State Police took bite impressions from Burke – an expert told McDonald they matched the wounds on Kennedy's body. A DNA swab was also taken. There would be fact disputes about the timing of the results of that test and this would be critical to this case.

Two days after the murder and relying on the bite-mark evidence, McDonald arrested Burke and charged him with murder. The results of the DNA test excluded Burke as the

suspect. A month after his arrest, the charges were dropped. Another suspect was later apprehended and convicted in the murder.

Burke then sued McDonald alleging the trooper lacked probable cause to arrest. The heart of his case alleged that McDonald knew before the arrest about the exculpatory DNA test. Then making the arrest, the theory went, McDonald acted arrogantly and excluded the exculpatory evidence, focusing only on the less reliable bite-mark evidence.

McDonald defended the case and raised a fact dispute. That is, he didn't know until after the arrest that the DNA evidence excluded Burke. Once this became known, Burke was released, his confinement being short. Thus the defendant postured that he acted reasonably in arresting Burke.

This jury in Boston answered that Burke was arrested without probable cause. It elected to award him damages of \$400,000. A judgment in that sum followed. The trial court had originally granted summary judgment, that ruling being reversed on appeal.

Civil Rights - An American citizen of Portugese descent, who apparently looked to be of Middle Eastern origin, was ordered removed from an American Airlines flight by the pilot because he suspiciously went to the bathroom, fell asleep in his chair and was seated next to (but had no other connection) two other men of Middle Eastern origin

Cerqueira v. American Airlines, 1:05-11652

Plaintiff: David S. Godkin, *Birnbaum & Godkin*, Boston, MA and Michael T. Fitzpatrick, *Public Citizen Litigation Group*, Washington, D.C.

Defense: Michael A. Fitzhugh, *Fitzhugh Parker & Alvaro*, Boston, MA

Verdict: \$400,000 for plaintiff

Court: Massachusetts - Boston

Judge: William G. Young

Date: 1-12-07

John Cerqueira, age 39 and of Miami, FL, boarded an American Airlines flight on 12-28-03 – the flight was heading from Boston (Cerqueira was raised in Fall River) to Fort Lauderdale from Logan International. Cerqueira, while a native of Portugal, is a U.S. citizen. In appearance, Cerqueira is dark-complected and has dark hair.

Boarding the flight alone, Cerqueira took his seat. Before the plane took off, he went to the bathroom. Returning to his seat, he briefly turned on his computer. Turning it back off, Cerqueira fell asleep in his seat.

Minutes later he was awakened by the flight crew and escorted off the plane by police officers. Two other men sitting next to Cerqueira were also removed. Those two men were Israeli citizens and were traveling together. Cerqueira was interrogated for several hours, the police determining if he was a terrorist.

Cerqueira was not. The flight crew had suspected him and the Israeli passengers because of reports from passengers that they had conversed in a foreign language, wished other passengers a Happy New Year and then made an exceptionally long bathroom visit. This was coupled with their general Middle Eastern appearance. In the post-911 world, this was enough to arise the suspicion of the plane's captain (John Ehlers) and he ordered their removal.

After Cerqueira was cleared by the police, he attempted to be seated on another American Airlines flight. The airline refused. This lawsuit followed, Cerqueira alleging he was improperly singled out and removed from the flight simply because he looked like he might be Middle Eastern. Besides his appearance, the theory went, there was nothing suspicious about him. If prevailing against American Airlines, the jury could award both compensatory and punitive damages. A frightened Cerqueira has since complained of post-traumatic stress.

American Airlines defended the case that it acted reasonably in ordering that Cerqueira be removed. It noted (1) the long bathroom break, (2) his presence with the two other men, and (3) his strange reaction to exit row instructions. In any event, the airline also suggested that Cerqueira had suffered little if any real duress.

The jury's verdict was for Cerqueira on the civil rights count and he took \$130,000 in compensatory damages, plus \$270,000 more in punitives. The verdict totaled \$400,000.

Civil Rights - After going to the police station to report being verbally accosted by a policeman, the plaintiff was then approached and threatened at home

Thornton v. Goldendale Police, 2:02-3025

Plaintiff: George A. Kolin, Washougal, WA

Defense: G. Scott Beyer and Kirk A. Ehliis, *Menke Jackson Beyer Elofson Ehliis & Harper*, Yakima, WA

Verdict: Defense verdict on liability

Court: Washington Eastern - Yakima

Judge: Michael W. Leavitt

Date: 10-27-06

On 2-27-98, Gregory Thornton appeared in person to make a complaint of mistreatment by the Goldendale (WA) police. [Thornton was the former police chief and had a history of acrimony with some officers.] Later that day and while working in his garage, Thornton saw approaching city officers, David Hill, Patrick Kaley and Kenneth Berry. Their guns were drawn.

Fearing a retaliatory ambush, Thornton retreated into his home. A standoff ensued. Ultimately Thornton came out and faced a variety of criminal charges related to the standoff. He was acquitted.

Thereafter Thornton sued the Goldendale Police alleging a civil rights violation regarding his arrest and prosecution. That is at all times, he acted reasonably to protect himself. The genesis of the retaliation, Thornton thought, was that in 1997, he'd released a report that was highly critical of Hill.

The police defended with a different set of facts. They countered that when learning of Thornton's citizen complaint, they simply went to learn more of the facts. Approaching the home, it was the aggressive Thornton who came at them with a weapon. Their arrest and prosecution then was proper.

This case was resolved for the police defendants, Thornton taking nothing. A defense judgment followed and Thornton has appealed.

Disability Discrimination - A trucker who had lost his leg in an earlier accident and now had a prosthesis was set to be hired for a new job until his employer learned of the amputation

McMillen v. Fraley & Schilling, 1:05-1169

Plaintiff: Alan J. Goodman, Cleveland, OH

Defense: Lisa A. Kainec and Thomas E. Green, *Kastner Westman & Wilkins*, Akron, OH

Verdict: Defense verdict on liability

Court: Ohio Northern - Akron

Judge: Donald C. Nugent

Date: 10-30-06

Clayton McMillen, a truck driver by trade, was involved in a serious accident in 2002. It led to an above-the-knee amputation. He was fitted with a prosthesis and by March of 2004, he was again looking for work. McMillen applied for a job with a trucking firm, Fraley & Schilling.

The interview went well and McMillen was set to be hired. That is until Fraley & Schilling learned of the prosthesis during a pre-hire physical. The offer was rescinded. McMillen then sued alleging the failure to hire represented disability discrimination – quite simply, he had the job until the defendant learned of the amputation.

Fraley & Schilling defended the case and denied discrimination played any role. Instead it elected not to hire McMillen because it learned during the physical that he suffered from a sleep disorder. Plaintiff thought the sleep disorder excuse was just a pretext.

The verdict in Akron was for the employer and McMillen took nothing. A defense judgment was entered.

Employment Retaliation - An ironworker foreman of Spanish origin alleged he was demoted after complaining of being called a "Spic"

Heaton v. Weitz Co., 1:05-102

Plaintiff: Amy L. Reasner, *Lynch Dallas*, Cedar Rapids, IA

Defense: Gene R. LaSuer and Sharon K. Malheiro, *Davis Brown Koehn Shors & Roberts*, Des Moines, IA

Verdict: \$162,070 for plaintiff

Court: Iowa Northern - Cedar Rapids

Judge: Linda R. Reade

Date: 11-29-06

Edward Heaton was hired in October of 2000 as a journeyman ironworker for the Weitz Company. In January of 2003, he was promoted to a foreman position. Just four months later, a co-worker referred to Heaton as a "Spic." Heaton, who is of Spanish origin, took umbrage and reported the remark.

Thereafter a pattern of harassment and retaliation commenced. It culminated with Heaton being demoted back to the position of journeyman. These facts formed the basis of this retaliation lawsuit, Heaton alleging he was demoted because he complained about the slur.

Weitz denied there had been retaliation. Namely and raising fact disputes, it postured there was no demotion and could not have been as Heaton was never promoted in the first place.

The jury first answered that Heaton was demoted and further that it represented retaliation. He then took compensatory damages of \$137,070, plus \$25,000 more in punitives. The