Federal Jury Verdict Reporter

The Most Current and Complete Summary of Federal Jury Verdicts

March 2006 **Nationwide Federal Jury Verdict Coverage** **2 FedJVR 3**

Notable Verdicts in The March 2006 Issue

Verdict of the Month

TRUCK LOADING NEGLIGENCE

Connecticut District - Bridgeport

Plaintiff, a truck driver, was left a paraplegic when while unloading a commercial truck, the heavy freight fell upon him because of a purportedly defective liftgate

Caption: *Pouliot v. Paul Arpin Van Lines*, 3:02-1302

Plaintiff: Michael A. Stratton and Michael L. Olt, *Stratton Faxon*, New Haven, CT and Roland F. Moots, Jr., *Moots Pellegrini Spillane & Mannion*, New Milford, CT

Defense: Harold J. Friedman and Karen Frink Wolf, *Friedman Gaythwaite Wolf & Leavitt*, Portland, ME

Verdict: $26,306,376 for plaintiff

Judge: Janet C. Hall

Date: January 20, 2005

New this Month
The FedJVR Online

Beginning this month, the Federal Jury Verdict Reporter has begun to link directly to significant documents from certain cases. Whenever you see the heading, **The FedJVR Online**, look for the web link to the particular document.

As we roll out this feature in the next several months, we hope to include more and more links to important documents, including significant orders, opinions, motions and jury instructions.

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Index by State

Uninsured Motorist/Bad Faith - An insurer was implicated not just for a UM count, but also for bad faith in forcing the plaintiff to litigate the claim

Maule v. GEICO, 3:03-183

Plaintiff: Jeffrey J. Barber, *Law Office of Steve Sims*, Anchorage, AK
Defense: Rebecca J. Hozubin, *Wilkerson Hozubin & Burke*, Anchorage, AK
Verdict: $50,000 for plaintiff on UIM claim
$7,500 on bad faith
Court: **Alaska - Anchorage**
Judge: John W. Sedwick
Date: 2-8-06

Teresa Maule was involved in a fender-bender on 8-20-01 – her vehicle was hit by an uninsured driver. From the scene, Maule then eight months pregnant, was taken to the ER. She was kept overnight for observation. A week later she delivered a healthy baby. Maule has continued to complain of soft-tissue whiplash symptoms.

Her insurer, GEICO, paid $10,000 of her medicals, also tendering another $20,000 for unspecified damages. While the policy limits were $50,000, GEICO would pay no more. It believed Maule had been fully and fairly compensated.

Maule disagreed and in this federal lawsuit, she sought both the extent of the UIM coverage, plus damages for purported bad faith by GEICO. That is instead of paying her claim, GEICO forced her to litigate. GEICO defended as above that the $30,000 received was all it owed.

Maule prevailed on the UM count and took medicals of $30,000, plus $20,000 more for non-economic damages. The UM portion of the verdict totaled $50,000 – a judgment less the underlying $30,000 was entered for her.

She also prevailed on the breach of implied promise of good faith and fair dealing count – damages of $7,500. This Alaska jury further rejected that GEICO's conduct was outrageous, thus exonerating it from an award of punitives. A consistent judgment reflected the verdict.

Disability Discrimination - A long-time letter carrier was fired after suffering an on-the-job injury that prevented him from delivering the mail – in this suit, the plaintiff alleged the USPS failed to accommodate him by providing a clerical position

Jacobs v. USPS, 2:99-1357

Plaintiff: Arlene M. Richardson, *Richardson Legal Center*, Hayneville, AL
Defense: R. Randolph Neeley, *Assistant U.S. Attorney*, Montgomery, AL and Kathie Lynn Janowicz, *USPS*, Memphis, TN
Verdict: Defense verdict on liability
Court: **Alabama Middle - Montgomery**
Judge: Myron H. Thompson
Date: 1-12-06

Tommy Jacobs started working in 1973 as a letter carrier for the USPS. In 1997 and while at work, he aggravated a pre-existing disc injury. The effect of this injury was to restrict him to light duty. He could no longer deliver the mail.

Initially the USPS found a clerical spot for Jacobs. However in 1998, it concluded that as he could not perform the essential functions of being a letter carrier – Jacobs was given two choices, (1) take disability or (2) be fired. He took the disability. The USPS explained its decision as there were no open spots at his pay grade in Montgomery.

Jacobs believed the firing represented disability discrimination in violation of the Rehabilitation Act. Particularly, he cited that the USPS could reasonably accommodate his disability, noting that for a time, he was placed in a clerical position. [At all times, he argued, vacant spots were open.] If prevailing, he sought both back pay and non-pecuniary damages. The USPS defended as above.

The plaintiff's Rehabilitation Act claim was rejected in Montgomery and there was no award of damages.

Civil Rights - Awaiting sentencing on a felony DUI conviction, the plaintiff alleged a jail deputy was indifferent to his request for medications – he later suffered seizures

Riley v. Tuscaloosa County Sheriff, 7:02-1821

Plaintiff: David Gespass, *Gespass & Johnson*, Birmingham, AL
Defense: Dennis Steverson, Tuscaloosa, AL
Verdict: Defense verdict on liability
Court: **Alabama Northern - Tuscaloosa**
Judge: U.W. Clemon
Date: 2-1-06

In November of 2000, Freddie Riley was an inmate at the Tuscaloosa County Jail – he was awaiting sentencing on a felony DUI conviction. To treat a seizure condition, Riley had a prescription for phenobarbital.

On 11-23-00, Riley asked for his medications. The jail supervisor, a deputy sheriff, Annette Wolff, told Riley she couldn't find his medications. She also refused to let him see a doctor.

Thereafter Riley suffered several seizures – Wolff still wouldn't transport him to a hospital, believing he was faking.

Because of Wolff's failure to act, Riley alleged he suffered two insults, (1) that he had seizures at all because his medication was denied, and (2) Wolff left him in a holding cell. This conduct formed the basis of a federal 8th Amendment claim. Wolff defended the case that when Riley showed signs of seizure, he was removed from the general population and taken to a holding cell. While there he was observed with no apparent sign of injury. Thus rather than the being indifferent to his medical needs, she responded and monitored an apparently minor condition.

This case was resolved by a federal jury in Tuscaloosa for the county – it rejected Riley's 8th Amendment claim and awarded no damages. A defense judgment followed. [Riley appeared at trial, having been transferred from a federal prison, apparently related to a different set of criminal charges.]

Race Discrimination - A black fast-food restaurant manager alleged she was let go because of her race – she cited remarks by restaurant bigwigs that it wanted to "whiten up" its work force

Burkette v. Hardee's, 2:02-403

Plaintiff: Gregory O. Wiggins and Kevin W. Jent, *Wiggins Childs Quinn & Pantazis*, Birmingham, AL
Defense: Robert S. Lamar, Jr. and Stephen D. Christie, *Lamar Miller Norris Haggard & Christie*, Birmingham, AL
Verdict: Defense verdict on liability
Court: **Alabama Middle - Montgomery**
Judge: Myron H. Thompson
Date: 1-19-06

Linda Burkette, who is black, started working in 1978 for a Hardee's franchise conglomerate in Montgomery. By 2000, she was a general manager, operating the Lower Wetumpka store. She did well in her job. In that year, the franchises were sold to a new owner.

Soon after, Burkette noticed another black manager was fired – Burkette was advised she was next on the list. She also cited proof that the company had a focus on having a store's racial makeup match that of the neighborhood where it was located. Even more insidious, Burkette recalled being told that Hardee's wanted to "whiten up" its workforce.

It was her belief the company did just that when it fired her in February of 2001. Thereafter she was immediately replaced by a white manager. Burkette took the position her firing was orchestrated in advance, her replacement being selected even before she was let go.

Hardee's denied race had anything to do with its decision. It noted more facts from February of 2001, beginning with a negative job evaluation – Burkette was so upset by this that she went on a medical leave. Then when released to work, she failed to respond to a call from her manager. Only then was she fired. As noted above, Burkette thought the explanation for the firing was phony, it having been concocted by Hardee's to mask its illegal motive.

The long journey to a jury trial was interrupted – the trial court first granted summary judgment for Hardee's. Burkette appealed. The 11th Circuit reversed in a per curiam opinion, concluding Burkette had proven her prima facie case.

Back to trial, a first jury could not reach a verdict in August of 2005. Tried again, the verdict was for Hardee's that Burkette's race was not a substantial and motivating factor in the decision to fire her. That ended the deliberations and Burkette took nothing.

She has since moved for a new trial. She argued it was unfair to excuse the jury panel's only black juror (for personal reasons) and then not similarly exclude a white juror. Judge Thompson denied the motion, noting the black juror was a doctor whose practice would have been significantly inconvenienced by a trial delay. Then to the decision denying the motion, the court wrote that the juror was dismissed because of happenstance, race not having anything to do with it. When the record was reviewed, the time for a second appeal had not yet run.

The FedJVR Online:
See http://www.juryverdicts.net/AL-Burkette.pdf
for the court's opinion denying the motion for a new trial.

Race Discrimination - A probationary social worker alleged she was fired because of her race, citing a similarly situated white employee who was not sacked

Norris v. Jefferson Rehabilitation & Health Center, 2:04-3232

Plaintiff: Gregory O. Wiggins and Kevin W. Jent, *Wiggins Childs Quinn & Pantanzis*, Birmingham, AL
Defense: Charles S .Wagner and T.A. Lawson, II, *Assistant City Attorney*, Birmingham, AL
Verdict: Defense verdict on liability
Court: **Alabama Northern - Birmingham**
Judge: Inge P. Johnson
Date: 1-30-06

Mary Norris, who is black, was hired on 6-3-03 as a social worker for the Jefferson Rehabilitation and Health Center (JRHC). For the first twelve months of her employment, her job was considered probationary.

JRHC bigwigs believed her work was poor. A hearing was held on 5-13-04 (Norris was represented by counsel) and a decision was made to fire her. From the perspective of JRHC, it had everything to do with poor performance and the failure to improve.

Norris thought otherwise believing she was a victim of race discrimination. In this case, she posited a disparate treatment claim – she focused on a probationary white employee, who did poorly and was not fired. [Norris had no direct proof of discrimination.] JRHC denied race played a role in its decision, also diminishing the comparison to the alleged comparator.

The jury's verdict was for JRHC on the disparate treatment race-based claim and Norris took nothing.

Civil Rights - During the president's visit to Phoenix, a protester was roughed up by the police – this is the second recent verdict involving Arizona law enforcement arising out of this same presidential visit

Burnett v. Department of Public Safety, 2:03-1891

Plaintiff: Stephen G. Montoya, *Montoya Jimenez*, Phoenix, AZ
Defense: James B. Bowen, *Assistant Attorney General*, Phoenix, AZ
Verdict: $67,500 for plaintiff against Holley; Defense verdict for Bottoms and Pinnow
Court: **Arizona - Phoenix**
Judge: Lawrence O. Anderson
Date: 1-17-06

9-27-02 was a big day in Phoenix, AZ. President George Bush made a downtown appearance at the Civic Plaza. His presence led to a combination of two combustible entities: (1) an overwhelming force of police, and (2) protesters.

One protester that day was Diane Burnett. While crossing the street in a crosswalk, she was ordered by a policeman, Robert Holley, to return to the other side of the street. She did so. Moments later, Holley saw Burnett engaged in a conversation with a mounted officer.

It appeared to Holley that Burnett had waved her protest sign in the horse's face. He ordered her arrest, which was effectuated by John Bottoms and Jennifer Pinnow. The criminal case against Burnett did not hold up.

She turned the tables in this federal lawsuit and alleged false arrest against Holley, Bottoms and Pinnow. It was her position that at all times, she was engaged in lawful conduct. That included crossing the street in the crosswalk – then when she talked with the mounted officer, she didn't attack the horse – rather she used the sign to defend herself. Holley countered as

above that probable cause existed to arrest, Burnett having spooked the horse. Bottoms and Pinnow further defended that they just followed Holley's arrest order.

The verdict was mixed at trial. Burnett prevailed against Holley on the false arrest count, but both Bottoms and Pinnow were exonerated. Then to damages, Burnett took compensatory damages of $42,500, plus $25,000 more in punitives. The verdict totaled $67,500.

This is the second trial to result from this single presidential visit. As reported in 1 FedJVR 1 at page 8, the head of the Arizona ACLU was also arrested when she tried to the cross the street. A defense verdict was returned – Bottoms was also a defendant in that case.

Race Discrimination - A Native American utility employee alleged he was treated differently and subjected to greater scrutiny than white co-workers

Adakai v. Salt River Project Power District, 2:03-4

Plaintiff: Alona M. Gottfried, *Gillespie & Associates*, Phoenix, AZ and Tod F. Schleier, *Schleier Jellison & Schleier*, Phoenix, AZ

Defense: John J. Egbert, *Jennings Strouss & Salmon*, Phoenix, AZ

Verdict: Defense verdict on liability

Court: **Arizona - Phoenix**

Judge: Mary H. Murguia

Date: 2-10-06

Franklin Adakai started working in 1990 as a chemist for the Salt River Project Power District. During the course of his employment, Adakai, who is Native American, believed he was treated differently because of that status. That included a boss who allegedly said that Indians have a "you-owe-me attitude." Another remarked that plaintiff used his "Navaho-stuff" at work. Adakai *repeatedly* complained about it. [Salt River thought the complaints were repetitive, baseless and ultimately disruptive.]

His employment with Salt River ended on 7-24-01. The company explained its firing was because his chemical analysis was wrong. Adakai's disruptive attitude in filing complaint after complaint was also cited. Flatly the utility denied that Adakai's race or that retaliation played any role in its firing decision. Thus it was not the content of the complaints that bothered Salt River bigwigs, but rather their disruptive effect.

Adakai disagreed noting beyond the remarks above that he was subjected to closer scrutiny than white workers. It culminated with his ultimate firing – he noted in this regard that white workers with similar mistakes were not fired. Salt River defended as above and denied discrimination or retaliation.

The verdict was for Salt River on both the race and retaliation counts, Adakai taking nothing. A defense judgment followed.

SEXUAL HARASSMENT

Arizona District - Phoenix

A City of Phoenix water department employee was subjected to chronic sexual harassment – when she complained her boss did nothing

Caption: *Ortega-Guerin v. City of Phoenix*,

Plaintiff: Stephen G. Montoya, *Montoya Jimenez*, Phoenix, AZ

Defense: David Gaona and Nicole Seder Cantelme, *Gaona Law Firm*, Phoenix, AZ

Verdict: $1,225,002 for plaintiff

Judge: Mary H. Murguia

Date: December 22, 2006

Facts: Monica Ortega-Guerin was employed in 2002 by the City of Phoenix Water Department. She alleged in this lawsuit that a co-worker, Frank Peralta, subjected her to chronic verbal sexual harassment. When she complained to her boss, Frank Favela, nothing was done.

Because of the harassment, Ortega-Guerin suffered emotionally. Her hair fell out and she reported sleeplessness and depression. In this sexual harassment lawsuit, she sued both the city and the two individual actors.

The defendants denied any wrongdoing. At best, Peralta's conduct was described as non-sexual horseplay. While it may have been boorish, that did not rise to the level of a constitutional violation. Then when Ortega-Guerin complained, Favela's response was called reasonable.

Jury Instructions/Verdict: Ortega-Guerin prevailed on the harassment count against the city, Favela and Peralta. She took compensatory damages of $850,002, assessed $850,000 to the city and $1.00 each to the individual defendants. She also took punitive damages – they were assessed $350,000 and $25,000, respectively, to Favela and Peralta. The verdict totaled $1,225,002.

Post-Trial Motions: Pending is the city's motion for remittitur which has argued the verdict was excessive in light of plaintiff's complaints of emotional harm.

Auto Negligence - Three plaintiffs complained of a soft-tissue injury after a rear-end crash – one took minimal damages, the claims of the other two being rejected on causation

Robinson et al v. Brewer, 4:03-1017

Plaintiff: Lori A. Mosby, *The Mosby Law Firm*, Little Rock, AR

Defense: Jeffrey W. Puryear, *Womack Landis Phelps McNeill & McDaniel*, Jonesboro, AR

Verdict: $1,150 for Robinson; Defense verdict on damages for Krystal and Catrina

Court: **Arkansas Eastern - Little Rock**

Judge: Rodney S. Webb

Date: 11-18-05

Three plaintiffs were injured in a 9-8-03 car wreck on I-30 in Arkansas. In a construction zone, Luckie Brewer crashed into a vehicle containing Rosetta Robinson, Krystal Williams and Catrina Williams. Fault was no issue. All three plaintiffs claimed soft-tissue injuries. Brewer defended that the collision was too minor to cause injury.

Tried on damages only, the claims of both Catrina and Krystal were rejected. Robinson took $1,150. A consistent judgment followed.

Plaintiffs sought JNOV relief, arguing the verdict was inconsistent with the proof of injury. The motion was denied. Plaintiff's counsel was also hit with a sanction of $400 for failing to be prepared for a final pre-trial conference.

FIRST AMENDMENT

California Northern District - San Jose

Circus protesters alleged an arena management company and the city of San Jose, CA conspired to deprive their First Amendment rights and arrest them falsely

Caption: *Cuviello et al v. HP Pavilion Management et al*, 5:04-82

Plaintiff: G. Whitney Leigh, *Gonzalez & Leigh*, San Francisco, CA

Defense: Michael J. Dodson, *Assistant City Attorney*, San Jose, CA for City of San Jose
Frank R. Ubhaus, *Berliner Cohen*, San Jose, CA for HP Pavilion Management

Verdict: $4,800 for plaintiffs assessed against HP Pavilion only; City of San Jose prevailed

Judge: James Ware

Date: January 19, 2006

Facts: The Ringling Brothers Circus came to San Jose in September of 2003. It was to be housed at the HP Pavilion, an arena operated by a management company with the same name. HP Pavilion was concerned, even before the circus arrived, about ne'er do well animal rights protesters who had previously objected to the circus's treatment of animals.

In an attempt to nip it in the bud, HP Pavilion officials had an 8-28-03 meeting to deal with the problem. A plan was conceived. HP Pavilion would arrest any protesters that showed up – the San Jose police would then take custody of the protesters.

The key event in this case occurred on 9-3-03. The circus was in the process of conducting an open house in the arena parking lot. While tickets were issued and purportedly required, all but two visitors were admitted without their tickets being checked. [There were some fifty other protesters in the area, but their conduct was not implicated in this matter.]

HP Pavilion did enforce the ticket policy as to two protesters, Joseph Cuviello and Denize Bolbol. Both had been handing out anti-circus pamphlets in the open-air parking lot. When the protesters indicated they didn't have a ticket and refused to leave, an HP Pavilion employee made a citizen's arrest. The San Jose police were called and both Cuviello and Bolbol were taken into custody on trespassing charges.

This civil rights suit followed, Cuviello and Bolbol raising two claims: (1) HP Pavilion and San Jose conspired to deprive their First Amendment rights, and (2) that they were falsely arrested. [The second count advanced against HP Pavilion only – the court granted a judgment as a matter of law for the plaintiffs, the jury only considering damages in this regard.] On the conspiracy claim, plaintiffs alleged the illegal conduct resulted from a joint enterprise by the arena and San Jose to deprive their rights.

San Jose flatly denied the allegations. HP Pavilion also defended that it acted reasonably to expel the protesters – it noted that Cuviello and Bolbol didn't have tickets and when asked to move to the sidewalk, they refused. [Plaintiffs countered the open-air parking lot was a public forum and they were excluded not because they didn't have tickets, but rather because of the content of their speech.]

Jury Instructions/Verdict: The jury's first verdict form exonerated San Jose – it found the conduct was not committed by a city official. The jury went on to find for the plaintiffs on the free speech claim. Both took $1,200.

Then to false arrest, a judgment as a matter of law having been granted, the plaintiffs again took $1,200 each. The combined verdict for Cuviello and Bolbol totaled $4,800.