

Federal Jury Verdict Reporter

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

April 2007

Nationwide Federal Jury Verdict Coverage

3 FedJVR 4

****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.

Notable Verdicts in The April 2007 Issue

Pregnancy Discrimination - KS (Kansas City) - A waitress was fired and told her pregnancy was high risk - \$51,900 p. 9

Race Discrimination - FL (Fort Myers) - A black insurance office manager alleged she was not given the support that white managers were provided - Zero p. 10

Medical Negligence - WY (Cheyenne) - An infant sustained a catastrophic birth injury and it was linked to the failure to monitor fetal strips - Zero p. 13

Pharmacy Negligence - IL (Chicago) - The Wal-Mart pharmacy failed to note plaintiff's allergy and permitted a prescription to be filled for a drug to which the plaintiff was allergic - \$500,000 p. 13

Ski Resort Negligence - MT (Helena) - A six-year old boy had his skull fracture when he was run over by a snowboarder in the lift area - Zero p. 14

Products Liability - NE (Omaha) - The plaintiff lost her eye when a missile-type home firework flew horizontally rather than vertically - Zero p. 15

Products Liability - NJ (Camden) - An elderly woman sustained a serious disc injury on a boogie board accident in the Atlantic Ocean - Zero p. 16

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Verdict of the Month

Products Liability - In an industrial setting, the plaintiff was fatally crushed by a backing Ford truck tractor – his estate alleged the tractor was defective in that it didn't have a back-up alarm or camera

Beville v. Ford Motor Company, 2:03-237

Plaintiff: Larry E. Coben, *Coben & Associates*, Scottsdale, AZ and Garrett J. Olexa, *Jennings Strouss & Salmon*, Phoenix, AZ

Defense: Paul Cereghini, Jill Goldsmith, Janell M. Adams and Iman Soliman, *Bowman & Brooke*, Phoenix, AZ

Verdict: Defense verdict on liability

Court: Arizona - Phoenix

Judge: Roslyn O. Silver

Date: 3-13-07

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career will be cut short. James was also hurt in the impact, but much less so than his wife, sustaining only soft-tissue injuries.

In this lawsuit, the Mick plaintiffs sought damages from Alside Trucking. The case, originally filed in the Northern District of Alabama, was venued to Chattanooga where it came to trial. Alside defended the case on damages and diminished the effect of the claimed injury, noting there are chiropractic tools that are low-impact.

Tried on damages, Cindy took a general award of \$820,889. Her husband took \$103,705 more, the combined family verdict totaling \$924,594. A consistent judgment followed.

Products Liability - In an industrial setting, the plaintiff was fatally crushed by a backing Ford truck tractor – his estate alleged the tractor was defective in that it didn't have a back-up alarm or camera

Beville v. Ford Motor Company, 2:03-237

Plaintiff: Larry E. Coben, *Coben & Associates*, Scottsdale, AZ and Garrett J. Olexa, *Jennings Strouss & Salmon*, Phoenix, AZ

Defense: Paul Cereghini, Jill Goldsmith, Janell M. Adams and Iman Soliman, *Bowman & Brooke*, Phoenix, AZ

Verdict: Defense verdict on liability

Court: Arizona - Phoenix

Judge: Roslyn O. Silver

Date: 3-13-07

There was an industrial accident in Casa Grande, AZ on 1-25-01. The plaintiff, Paul Beville, age 35, was on the job as the rental equipment manager at Bingham Equipment Company. He was then helping a co-worker unload a non-functioning front-end loader from a flat bed trailer with a forklift – the trailer was attached to a Ford tractor-trailer.

Beville directed that the truck be parked near a maintenance bay so that the loader could be more easily repaired. The co-worker moved the truck and backed it up several feet. As the truck backed up, it pinned Beville between the truck and the forklift. At the moment of impact, his back was to the truck. He was crushed to death.

His estate sued Ford Motor Company and alleged the truck-tractor was defective in that it lacked either a back-up alarm or a backing camera. Had it had either of those two devices, the fatal accident would have been avoided. Experts for the plaintiff included James Mundo, Design, Kenneth Laughery, Human Factors, Vaughn Adams, Safety Engineer and Larry Claus, Audiology.

Ford defended the case that this incident occurred because of a combination of fault by plaintiff and the co-worker. It denied the lack of an alarm or a camera represented a product defect. Ford's experts were Graeme Fowler, Accident Reconstruction, Phoenix, AZ, John Johnson, Engineer, Gresham, OR and John Trimble, Human Factors, Wood Dale, IL.

This death claim was tried to a federal jury in Phoenix. The verdict on the products count was for Ford and the estate took nothing.

Plaintiff has since moved for a new trial citing juror misconduct. Quite by chance, attorney Olexa ran into a juror post-trial in the courthouse parking lot. The juror explained the jury formulated its own seven liability questions, apart from the

instructions and the proof, then using the answers to those questions to reach its verdict. Plaintiff has sought an evidentiary hearing to learn the extent of this jury misadventure.

Products Liability - While checking his load on a refrigerated tractor, the plaintiff stepped on an outer engine hose – it squirted hot fluid on his leg, leaving him with a badly scalded leg

Walsh v. PACCAR, 1:04-10304

Plaintiff: Christopher S. Williams and John J. Heil, *Williams & Associates*, Boston, MA

Defense: James M. Campbell and Kathleen M. Guilfoyle, *Campbell Campbell Edwards & Conroy*, Boston, MA

Verdict: Defense verdict on liability

Court: Massachusetts - Boston

Judge: Marianne B. Bowler

Date: 3-8-07

Joseph Walsh was working as a trucker on 6-27-02, driving a 1988 Kenworth Tractor – it was manufactured by PACCAR. Walsh bought the truck second-hand in 1997. It had more than three million miles at the time. On the above date, Walsh stopped at a truck stop in Branford, CT, on his way from hauling a refrigerated load from Massachusetts to Florida.

He got out and began to check his load. To do so, he stood briefly on an exposed hose next to the fuel tank. He struck the hose as he climbed and a small hole was formed. Fluid shot from the hole and struck Walsh's foot. Initially it just hurt, but quickly Walsh realized he'd sustained a scalding injury to his foot. Reporting to a local ER, he was hospitalized for nearly twelve days in a burn unit. Walsh has continued to complain of pain and a disfiguring scar. He pursued this lawsuit against PACCAR, alleging the truck was defectively designed. It was his argument that the hose (it carried fluid to the diesel engine) should have been protected or some warning provided.

PACCAR defended that there was a large sticker on the hose that warned users "No Step." It also noted that the plaintiff, an experienced trucker, should have known not to step onto the hose.

The jury's verdict on the negligence count was for PACCAR and Walsh took nothing. A defense judgment was entered.

Products Liability - The plaintiff lost her eye when a home firework flew laterally and struck her – she blamed the importer (the fireworks were Chinese) for failing to warn of the hazard

Sherman v. Winco Fireworks, 8:04-300

Plaintiff: Michael F. Coyle, David J. Stubstad and Patrick S. Cooper, *Fraser Stryker*, Omaha, NE

Defense: Mark J. Daly and Marybeth Frankman, *Brashear & Ginn*, Omaha, NE

Verdict: Defense verdict on liability

Court: Nebraska - Omaha

Judge: Laurie Smith Camp

Date: 3-20-07

It was 7-3-02 and Margaret Sherman was at a birthday party for her grandson. Also at the party was her son-in-law who was setting off fireworks – he had purchased the fireworks from a parking lot retail store in Missouri, having been distributed there