

Federal Jury Verdict Reporter

The Most Current and Complete Summary of Federal Jury Verdicts

May 2009

Nationwide Federal Jury Verdict Coverage

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- First Amendment** - *Massachusetts* - A police detective was fired for his failure to support preferred political candidates - \$164,200 p. 8
- Products Liability** - *Colorado* - A teenager suffered a catastrophic spinal injury in a roll-over crash involving a Mercury Cougar - \$18,030,000 p. 13
- Products Liability** - *IA Northern* - An employee at a popcorn plant alleged he suffered Popcorn Lung because of his exposure to a butter-flavoring chemical - \$7,550,000 p. 14
- Race Discrimination** - *Kansas* - Black patrons at a Denny's alleged they were denied service - Zero p. 5
- Religious Discrimination** - *FL Middle* - A member of an obscure religion (Nuwaubianism) alleged her employer (a Subway shop) discriminated against her when it fired her for wearing a religiously prescribed nose ring at work - Zero p. 9
- Truck Negligence** - *FL Middle* - The plaintiff was killed when he crashed into a tractor-trailer that was backing across a highway - \$2,950,000 p. 13

Verdict of the Month

Medical Negligence - A prominent lawyer and a founder of the modern tort reform movement became a plaintiff when a Mayo Clinic pathologist misdiagnosed him with pancreatic cancer – the lawyer underwent an unnecessary invasive procedure that has left him with serious physical and emotional injuries

Kaplan v. Mayo Clinic, 0:07-3630

Plaintiff: James F.B. Daniels, *McDowell Rice Smith & Buchanan*, Kansas City, MO, Thomas J. Ward, *Ward & Ward*, Washington, D.C., Mark Johnson, *Greene Espel*, Minneapolis, MN and Robert A. Stein, Minnetonka, MN

Defense: Heather M. McCann and William R. Stoeri, *Dorsey & Whitney*, Minneapolis, MN and Joshua Murphy, *Mayo Clinic Legal*, Rochester, MN

Verdict: Defense verdict on liability

Federal: Minnesota - Minneapolis

Judge: John R. Tunheim

Date: 4-15-09

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movement in America. Against this backdrop, the self-described dynamic Kaplan received a devastating diagnosis in July of 2003 – Kansas City doctors believed he had pancreatic cancer.

Kaplan sought the best care he could and the slides were sent to the Mayo Clinic in Rochester, MN. A Mayo Clinic pathologist, Dr. Lawrence Burgart, spent ten minutes reviewing Kaplan's slides. He concluded that Kaplan had pancreatic cancer. With that diagnosis, there was one surgery that could extend Kaplan's life, even if only for a few months. Known as a Whipple resection, it is highly invasive and there is abundant scholarship that even questions if the procedure causes more harm than good.

Kaplan took his chances and the surgery was performed. Only after the surgery was complete did it become clear that Kaplan didn't have pancreatic cancer. He had only pancreatitis, the Whipple resection making that condition even worse. Kaplan has since described that the unnecessary surgery, which flowed back to the misdiagnosis by Burgart, has left him debilitated and a broken man. In this lawsuit, he sued Burgart and his employer, alleging negligence regarding the diagnosis. An identified expert for the lawyer was Dr. Barry Shmookler, Pathology.

Burgart defended the case and first noted that his diagnosis was the same as was given to him by the doctors in Kansas City. Then to that diagnosis, he postured that while it was wrong, his pathological diagnosis was still consistent with the standard of care.

The jury's verdict on liability was for Burgart that he had not violated the standard of care and having so found, Kaplan took nothing. The plaintiff has since moved for a new trial, citing some 11 errors committed at trial. The motion is pending.

Patent Infringement - The manufacturer of LED lights that simulate neon alleged a competitor willfully infringed its patents

iLight Technologies v. Fallon Luminous Products, 2:06-25

Plaintiff: Timothy Vezeau, *Katten Muchin Roseman*, Chicago, IL and Stephen H. Price and Melissa C. Hunter, Nashville, TN and William C. Ferrell and John W. Scruton, Louisville, KY the previous four all of *Stites & Harbison*

Defense: Brandy R. McMillion, Chicago, IL, C. Mark Kittredge, Phoenix, AZ and Douglas L. Sawyer, Denver, CO, all of *Perkins Coie* and Samuel D. Lipshie and Jonathan D. Rose, both of *Bradley Arant Boult Cummings*, Nashville, TN

Verdict: \$2,000,000 for plaintiff

Federal: Tennessee Middle - Cookeville

Judge: William J. Haynes, Jr.

Date: 4-30-09

iLight Technologies manufactures light emitting diodes (LEDs) that simulate neon lights. This case involved three patents owned by iLight Technologies. It alleged in this lawsuit that a competitor, Fallon Luminous Products, willfully infringed its patents even after notice was given of the infringement. Particularly, iLight Technologies cited proof that despite this notice, the greedy Fallon had continued to import infringing products from China.

Fallon defended that there was no infringement, its products having different technical properties. It also thought the China and greed talk by iLight Technologies was just a distraction from the real issue, that issue being that iLight Technologies sought to

shut down a competitor with a superior product.

iLight Technologies prevailed at trial on all three infringement counts, the jury also finding Fallon's conduct was willful. This jury valued the plaintiff's damages at \$2,000,000.

In the court's judgment, the damages were increased to \$3,000,000 (because of the willfulness finding), the jury also awarding pre and post-judgment interest and ordering injunctive relief.

Quarry Operation Negligence - A motorist crashed his car when he slid out of control while passing a rock quarry – the motorist blamed the slick roadway on the accumulation of limestone dust from the quarry

Beal v. LaFarge North America, 4:07-296

Plaintiff: J. Mark Kell, *Lampkin Kell Fagras Linson Custer & Buehler*, St. Peters, MO

Defense: James V. O'Brien, *Lewis Rice & Fingersh*, St. Louis, MO

Verdict: Defense verdict on liability

Federal: Missouri Eastern - St. Louis

Judge: Henry E. Autrey

Date: 4-3-09

Charles Beal was on his way to work on 11-8-05 and traveled on Highway J. As he passed a rock quarry operated by LaFarge North America, he lost control of his car. It flipped and Beal sustained injuries.

Beal sued LaFarge North America and alleged negligence by it in permitting slick limestone dust to accumulate on the roadway. It became especially hazardous when it became wet. LaFarge North America defended that Beal wrecked not because of the condition of the road, but rather because of his excessive speed in entering an S-curve in the roadway.

While the construction of the instructions and the verdict itself are unclear (those are considered secret by the St. Louis courts), it apparently was for LaFarge North America on liability, Beal taking nothing.

Pay Phone Negligence - A Wal-Mart shopper was injured when a wooden casing surrounding a pay phone fell upon her

Moore v. Wal-Mart et al, 07-5

Plaintiff: Arnold D. Lee and John Hughes, *Lee-Hughes Attorneys*, Greenville, MS

Defense: Robert Virden, *Campbell DeLong Hagwood & Wade*, Greenville, MS for Wal-Mart

Leo J. Carmody, *Robinson Biggs Ingram Solop & Farris*, Oxford, MS for Public Pay Phone Company

Verdict: Defense verdict on liability

Federal: Mississippi Northern - Oxford

Judge: Michael P. Mills

Date: 4-8-09

Willie Moore was a patron on 4-22-06 at a Wal-Mart store in Indianola, MS. While in the store, the wooden casing around a pay phone fell upon her left foot. Moore sued Wal-Mart and alleged negligence regarding the maintenance of the casing. She cited proof that it had been in a poor condition for more than a week, yet Wal-Mart did nothing.

Before the case could come to trial, Moore died of other causes. Her estate continued the case. Wal-Mart defended and denied there was any proof it knew the wooden casing was

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