

# Federal Jury Verdict Reporter

The Most Current and Complete Summary of Federal Jury Verdicts

July 2009

Nationwide Federal Jury Verdict Coverage

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## *Notable Verdicts in The July 2009 Issue*

**Employment Retaliation** - *AL Northern* - A part-time dispatcher for a local sheriff alleged she suffered retaliation when she complained of harassment - \$1,435,400 p. 5

**Fair Housing** - *VA Western* - A black family alleged their landlord harassed them because of their race - \$250,000 p. 4

**Federal Wiretapping Violation** - *New Jersey* - Restaurant managers unlawfully accessed a Myspace group that criticized restaurant operations - \$3,403 p. 13

**Pizza Delivery Negligence** - *FL Middle* - A deliveryman with a history of a DUI and 20 speeding tickets crashed into the plaintiff - Zero p. 11

**Premises Liability** - *PA Middle* - Walking into a Wal-Mart bathroom, the plaintiff slipped and fell – a janitor had been mopping and didn't place a placard - \$1,288,674 p. 12

**Products Liability** - *TX Eastern* - The plaintiff was badly hurt in a roll-over crash and alleged his ejection and injuries were related to a failed seat belt buckle - Zero p. 14

**Sexual Harassment** - *Arizona* - A female employee at an Autozone store was consistently harassed - \$65,000 p. 7

## *Verdict of the Month*

**Copyright Infringement** - A consortium of record companies sued a Minnesota single mother and alleged she unlawfully downloaded 24 copyrighted songs – a Minneapolis jury agreed and ordered the woman to pay the plaintiffs \$80,000 per song for a total of \$1.92 million  
*Capitol Records et al v. Thomas-Rasset, 0:06-1497*

**Plaintiff:** Timothy M. Reynolds and Andrew B. Mohraz, *Holme Roberts & Owen*, Denver, CO and Felicia J. Boyd, *Faegre & Benson*, Minneapolis, MN

**Defense:** K.A.D. Camara and Joe Sibley, *Camara & Sibley*, Houston, TX and Garrett Blanchfield, Jr., *Reinhardt Wendorf & Blanchfield*, St. Paul, MN

**Verdict:** \$1,920,000 for plaintiffs

**Federal:** Minnesota- Minneapolis

**Judge:** Michael J. Davis

**Date:** 6-18-09

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him that Zamorano had not suffered any damages. A defense judgment was entered.

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**Interference with Contract - A sign company alleged a competitor stole a key account and acted maliciously – a federal jury assessed \$2.62 million in punitives**

*Cummings Incorporated v. Blair Sign Co.*, 3:06-890

**Plaintiff:** Robert E. Boston, Robb S. Harvey, Derek W. Edwards and Rhonda S. Kinslow, *Waller Lansden*, Nashville, TN

**Defense:** Thomas J. Dement, II and J. Paul Brewer, *Leitner Williams Dooley & Napolitan*, Nashville, TN

**Verdict:** \$3,526,236 for plaintiff

**Federal:** Tennessee Middle - Nashville

**Judge:** Aleta Trauger

**Date:** 6-3-09

Cummings Incorporated is a Nashville, TN based company that manufactures signs. It received a contract from BP to update BP's signage across the United States. To fulfill that order, Cummings relied in part on an agreement with a competitor, Altoona, PA-based Blair Sign Company. In 2005, Blair Sign bigwigs visited a Cummings manufacturing facility in Dothan, AL to study how Cummings was preparing the signs. Cummings and Blair Sign had been close for years – Blair Sign's principal, Donald Devorris, had entered a consulting contract in 1992 to provide services to Cummings.

The trouble started when BP ended its contract with Cummings – besides the lost profits of that ongoing business, Cummings was left with some \$425,000 in signs it couldn't sell. Just as significantly, BP gave the new contract to . . . Blair Sign Company.

The litigation started in Pennsylvania. Devorris sued Cummings to enforce the consulting contract, Cummings having ceased to pay him after BP took away its business. The second suit was filed in Tennessee, Cummings alleging a breach of the non-compete agreement and intentional interference with the BP contract against Blair Sign. The actions were consolidated into a single case that proceeded in Nashville.

Cummings alleged that Blair Sign engaged in secret negotiations with BP to steal its business – Blair Sign was using, Cummings thought, the information it learned about the business from Cummings to in turn hijack that business away. If the plaintiff prevailed, it sought both compensatory and punitive damages. [Cummings had also sued BP – that claim was settled in September of 2007.]

Blair Sign defended that the plaintiff's claim had no merit and was nothing more than retaliation for the original Devorris lawsuit in Pennsylvania. To the merits, Blair Sign explained that it had a long-term relationship with BP (to 2001), Cummings only entering the BP game by acquiring another company in 2003. Ultimately, Blair Sign acquired the BP business not because of any interference, but rather because of poor performance by Cummings. Devorris also advanced a counterclaim for unpaid commission fees – he sought some \$333,000. Cummings denied any breach of the agreement.

The verdict was for Cummings on the breach of non-compete, the jury awarding it \$370,750. Similarly, the plaintiff prevailed on intentional interference with a business relationship – damages on this count were \$535,486. The jury assessed \$2,620,000 more in punitives, the verdict totaling \$3,526,236. Finally the Devorris counterclaim was rejected. A consistent judgment reflected the verdict.

**Medical Negligence - A bus driver for a hockey team began to suffer signs of a stroke and was taken to a Fargo, ND hospital – a hospital nurse was blamed for missing signs of the stroke, its effects being made worse because of that delay**

*Montgomery v. MeritCare Hospital*, 3:08-1

**Plaintiff:** Roger B. Sundling and Alvin O. Boucher, Grand Forks, ND

**Defense:** Robert J. Udland, *Vogel Law Firm*, Fargo, ND

**Verdict:** Defense verdict on liability

**Federal:** North Dakota - Fargo

**Judge:** Karen K. Klein

**Date:** 6-24-09

Dennis Montgomery was driving a bus on 1-7-06 for the Moorhead, MN hockey team. As he piloted the bus, he began to suffer shortness of breath. Montgomery was taken to the ER at MeritCare Hospital in Fargo, ND. Admitted to the hospital, he was assigned to an ICU unit.

Montgomery was evaluated overnight by an ICU nurse, Joni Schumacher. Her notations through the evening (Montgomery had arrived at 1:45 a.m.) indicated his condition was normal. By the morning and after a shift change, it was clear Montgomery was suffering significant deficits secondary to a stroke. He is now permanently disabled and confined to a wheelchair.

Montgomery believed that Schumacher erred in evaluating his condition in the ICU – instead of doing regular neurological assessments, Montgomery alleged that she was surfing the internet. Because of her error (essentially ignoring her patient), Montgomery missed a window of time for an anti-stroke tPA drug therapy. The hospital defended the care of its nurse, explaining that (1) she properly monitored Montgomery, and (2) his present condition was a function of the stroke, not Schumacher's care.

The jury's verdict on liability was for the hospital and Montgomery took nothing. The court entered a consistent judgment.

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**Patent Fraud - Shareholders proceeding both individually and as a class alleged the purchaser of a patent engaged in a civil conspiracy with a company officer to fraudulently transfer a patent**

*Boynton et al v. Headwaters*, 1:02-1111

**Plaintiff:** Jeffrey A. Greene, Nashville, TN, Greg Oakley, *Small Soaper & Oakley*, Nashville, TN and Robert D. Geringer, Beverly Hills, CA

**Defense:** Alan L. Sullivan, James D. Gardner and Katherine A. Carreau, *Snell & Wilmer*, Salt Lake City, UT and Leo M. Bearman, Jr., *Baker Donelson Bearman Caldwell & Berkowitz*, Memphis, TN

**Verdict:** \$21,425,000 for plaintiffs

**Federal:** Tennessee Western - Jackson

**Judge:** Jon Phipps McCalla

**Date:** 6-19-09

This complex case began in the late 1980s when a company named Adtech began to attract investors. Its principal was James Davison and the company's claim to fame was its coal agglomeration technology. That technology was patented in the so-called 629 patent.

In 1991 Adtech was dissolved and some years later, Davison started a new firm. In 1998 that new firm sold the 629 patent to a company known as Headwaters Incorporated. When the shareholders learned of the sale (there were nine named plaintiffs,

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