

# Federal Jury Verdict Reporter

The Most Current and Complete Summary of Federal Jury Verdicts

November 2005

Nationwide Federal Jury Verdict Coverage

1 FedJVR 2

## Notable Verdicts in This Issue

*The November issue contains 107 recent jury verdict with forty states represented.*

**Airport Negligence** - *Wyoming (Cheyenne)* - A helicopter crashed because of bad fuel - Defense verdict

**Defamation** - *Arizona (Phoenix)* - A state worker for the clean elections department was defamed when he opposed his boss's political activity - \$1,100,000

**Employment Retaliation** - *Massachusetts (Boston)* - Union cops retaliated against a female member when she alleged sexual harassment - \$2,232,501

**Entertainment Contract** - *Nevada (Las Vegas)* - Pop star Rod Stewart was made to repay an advance after he canceled a millennium eve show at the Rio casino - \$2,000,000

**Entertainment Contract** - *New York (Manhattan)* - Ashanti, an R&B star, was sued after she dumped her producer when she hit it big - Defense verdict

**False Advertising** - *Minnesota (Minneapolis)* - Makers of deer-attractant sprays squared off over claims that one product was more effective - \$4,799,438

**Marine Negligence** - *Massachusetts (Boston)* - A fishing trawler was lost, allegedly because of Coast Guard negligence in deterring other rescue boats - Defense verdict

**Medical Negligence** - *Kansas (Wichita)* - A surgeon removed plaintiff's healthy testicle - Defense verdict

**Medical Negligence** - *New Jersey (Camden)* - EMTs suffocated a non-compliant patient with a blanket who had attempted to bite them - Defense verdict

**Patent Infringement** - *Colorado (Denver)* - Patent regarding image-guided surgical devices - \$51,000,000

**Personal Injury (Diversity)** - *Montana (Billings)* - Plaintiff suffered a heart attack in his motel room and wasn't discovered for days - \$1,135,666

**Personal Injury (Diversity)** - *Tennessee (Memphis)* - A tourist fell at a historic Beale Street bar - \$18,000

**Products Liability** - *Arkansas (Jonesboro)* - A radiologist was killed when partially ejected from a Ford pick-up - Defense Verdict

**Products Liability** - *South Carolina (Charleston)* - One was killed and three injured in an Explorer crash - \$3,925,000

## Verdict of the Month

### INVASION OF PRIVACY

*Pennsylvania Western District - Pittsburgh*

**On the morning of 9-11, an apartment manager entered the apartment of a tenant of Middle Eastern descent – finding flight manuals and pictures of burning buildings, she called the FBI, who detained the tenant for several days – in fact the tenant was no terrorist but a radiologist who was out of town**

**Caption:** *Hussein v. The Meadows Apartments, 2:01-2381*

**Plaintiff:** Craig L. Fishman, *Tarasi Tarasi & Fishman*, Pittsburgh, PA

**Defense:** R. Eric Allen, *R.E. Hall & Associates*, Allentown, PA

**Verdict:** \$2,450,000 for plaintiff

**Judge:** Terrence F. McVerry

**Date:** September 22, 2005

**Products Liability** - *West Virginia (Martinsburg)* - A neophyte doctor sustained a brain injury in an Explorer roll-over crash - Defense verdict

**Sexual Harassment** - *Alabama (Birmingham)* - A legal secretary alleged she was harassed by her attorney boss - Defense verdict

**Sexual Harassment** - *Illinois (Peoria)* - A judicial clerk alleged she was sexually harassed by a sitting state court judge - Defense verdict

**Theft of Trade Secrets** - *Pennsylvania (Philadelphia)* - A Drexel professor took a sample nylon product of the defendant and shared it with a company in Taiwan - \$602,759

**Theft of Trade Secrets** - *Texas (Dallas)* - Directors of a class action settlement company left suddenly and took customers with them - \$4,155,333

**Trademark Infringement** - *Illinois (Chicago)* - Dispute over a plush toy named *Niles* - Defense verdict

**Wrongful Death** - *Alabama (Dothan)* - A plaintiff was killed in an intersection crash with a tractor-trailer - \$1,000,000

**Wrongful Death** - *Florida (Ft. Myers)* - Plaintiff struck a vehicle with a bat – he didn't realize it contained a cop, who exited the car and shot him dead - Defense verdict

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## Federal Jury Verdict Reporter

### November 2005 Table of Contents

*This preview only represents a portion of the complete issue*

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#### Civil Rights

**Due Process** - *Texas Western* - A teen alleged she was sexually abused by El Paso cops - Defense verdict

**Excessive Force** - *California Eastern* - A suspect alleged he was beaten during an arrest - Defense verdict

**Excessive Force** - *California Northern* - A tiny plaintiff was arrested during a domestic dispute - \$10,000

**Excessive Force** - *District of Columbia* - Breaking up a street party, D.C. police injured the plaintiffs - \$121,000

**Excessive Force** - *Illinois Central* - Plaintiff was beaten after she crossed a police line to reach her home - Defense verdict

**Excessive Force** - *Illinois Northern* - A Chicago cop beat a confession out of the plaintiff - \$265,000

**Excessive Force** - *Kansas* - A bar owner was arrested by cops who arrived to investigate a racial disturbance - Defense verdict

**Excessive Force** - *Michigan Eastern* - A homeless man was beaten by the police - \$20,000

**Excessive Force** - *Michigan Western* - Arrest made during an unusual domestic disturbance - Defense verdict

**Excessive Force** - *Minnesota* - Plaintiff was arrested in his front yard when he tried to go into his home - \$57,500

**Excessive Force** - *North Carolina Western* - In a case of mistaken identity, plaintiff was beaten - Defense verdict

**Excessive Force** - *Ohio Southern* - Plaintiffs were roughly arrested after burning trash on their farm - Defense verdict

**False Arrest** - *California Northern* - Co-ed arrested at a fraternity party - \$300,500

**False Arrest** - *California Northern* - Business owner involuntarily committed after suicide threat - Defense verdict

**False Arrest** - *Florida Middle* - Plaintiff was arrested for driving a car that looked like a police car - Defense verdict

**False Arrest** - *New York Northern* - A teenage girl was arrested at the movies after it was alleged she stole candy - Defense verdict

**False Arrest** - *Ohio Southern* - A driver's license worker was falsely accused of selling CDLs - \$350,000

**Housing Discrimination** - *Oklahoma Western* - A black family in an all-white neighborhood alleged harassment and discrimination - Defense verdict

**Prisoner's Rights** - *Kansas* - Muslim prisoner alleged retaliation because of his beliefs - Defense verdict

**Prisoner's Rights** - *Missouri Eastern* - Despite his conviction having been reversed on appeal, corrections officials refused to look at plaintiff's paperwork - \$10,600

**Prisoner's Rights** - *Missouri Eastern* - Plaintiff alleged he was targeted unfairly for urine tests - Defense verdict

**Race Discrimination** - *Arizona* - Black themed store at a mall was treated unfairly - \$1,000,001

**Search and Seizure** - *Indiana Northern* - The police didn't get a warrant for a drug dealer's house - they just had it condemned and then searched it - Defense verdict

**Wrongful Death** - *Florida Middle* - Plaintiff attacked a car with a bat that contained a cop - the cop got out and fatally shot the plaintiff - Defense verdict

**Wrongful Death** - *Texas Southern* - Stopped for speeding, the plaintiff was shot by a constable - Defense verdict

#### Contract

**Entertainment** - *Nevada* - Rod Stewart had to return a \$2,000,000 advance when he missed a show - \$2,000,000

**Entertainment** - *New York Southern* - Ashanti was sued when after making it big, she dumped her producer - \$630,000

**Procurement of Breach** - *Tennessee Middle* - Contract to deliver gas interfered with - \$315,826 (Trebled)

**Shareholder Dispute** - *New Hampshire* - \$636,500

#### Employment

**Age Discrimination** - *Pennsylvania Eastern* - A Sears technician was let go because of his age - \$240,985

**Disability Discrimination** - *Georgia Northern* - Plaintiff was fired when she couldn't biometrically clock in for work with her hand - her hand was deformed - \$8,000

**Disability Discrimination** - *Tennessee Eastern* - Nursing student alleged dyslexia not accommodated - Defense verdict

**First Amendment** - *Connecticut* - City custodian fired after opposing the mayor publicly - \$12,700

**First Amendment** - *Connecticut* - Two sisters were retaliated against after supporting the mayor's opponent - Defense verdict

**First Amendment** - *Nebraska* - A bank clerk was fired for speaking out a school board meeting - Defense verdict

**FMLA** - *Alabama Northern* - High school teacher alleged she was fired for taking time off - \$150,000

**FMLA** - *Michigan Eastern* - A city librarian alleged she was forced out because of taking FMLA leave - Defense verdict

**FMLA** - *Oregon* - An insurance adjuster was fired when she took time off for depression - Defense verdict

**Gender Discrimination** - *Alabama Middle* - A bank teller alleged she was passed over illegally - Defense verdict

**Gender Discrimination** - *New Jersey* - Ramp worker at Federal Express alleged discrimination - Defense verdict

**Gender Discrimination** - *New York Western* - Equal pay violation alleged at EDS - Defense verdict

**Gender Discrimination** - *Ohio Southern* - An airline reservation employee alleged discrimination - Defense verdict

**Race Discrimination** - *Arkansas Eastern* - Five salesman at a car dealership alleged discrimination - Defense verdict

**Retaliation** - *California Northern* - Airline employee alleged she was fired for complaining of harassment - Defense verdict

**Retaliation** - *Indiana Northern* - Gate worker at a prison was retaliated against when she opposed suspicious contraband activity at the gate by co-workers - \$70,000

**Retaliation** - *Kansas* - A national account executive was fired when she alleged gender discrimination - Defense verdict

**Retaliation** - *Massachusetts* - A police union retaliated against a female cop who was sexually harassed - \$2,232,501

**Retaliation** - *Missouri Eastern* - A GM employee was retaliated against when she opposed smoking at work - Defense verdict

**Retaliation** - *Texas Eastern* - Hospital employee fired when she complained of harassment - Defense verdict

**Retaliation** - *Texas Western* - School system plumber was fired for filing an EEOC complaint - Defense verdict

**Sex Discrimination** - *Arkansas Eastern* - Lawyer plaintiff alleged demotion because of her gender - Defense verdict

**Sex Discrimination** - *Pennsylvania Middle* - A female state trooper alleged a ceiling on advancement - Defense verdict  
**Sexual Harassment** - *Alabama Northern* - Legal secretary harassed by her lawyer employer - Defense verdict  
**Sexual Harassment** - *Alabama Middle* - Female jail dispatcher harassed - \$250,157  
**Sexual Harassment** - *Florida Middle* - A female exterminator was harassed by co-workers - \$300,000  
**Sexual Harassment** - *Illinois Central* - A judicial secretary was harassed by a sitting state court judge - Defense verdict  
**Sexual Harassment** - *Illinois Northern* - A city worker alleged she was harassed - Defense verdict  
**Sexual Harassment** - *Maryland* - A male cable installer was harassed by his boss - Defense verdict  
**Whistleblower** - *Florida Middle* - A hospital administrator was demoted when he opposed hospital policy by publicly reporting abuse within the hospital - Defense verdict

## Medical Negligence

**EMT** - *New Jersey* - A combatant patient asphyxiated when EMTs placed a blanket on his head - Defense verdict  
**Ob-Gyn** - *Tennessee Western* - C-section error - Defense verdict  
**Surgery** - *Kansas* - Plaintiff's entire testicle was taken even though the mass was benign - Defense verdict

## Miscellaneous Federal Actions

**Fair Labor Act** - *Florida Middle* - Is a cafeteria worker a manager or not? - \$11,000  
**False Advertising** - *Minnesota* - Dispute over deer-attractant products - \$4,799,438  
**FELA** - *Train Negligence* - Wisconsin Eastern - A conductor was injured in a trainyard incident - \$510,000  
**Securities Fraud** - *Kansas* - A retired investor thought her investments were too risky - Defense verdict

## Miscellaneous Torts

**Defamation** - *Arizona* - State worker at the elections commission defamed by his boss - \$1,100,000  
**Invasion of Privacy** - *Pennsylvania Western* - A Muslim doctor's apartment was searched on 9-11-01 - \$2,450,000  
**Malicious Prosecution** - *Nebraska* - Plaintiff successfully sued her brother for sexual abuse, suing him again when he raised a meritless counterclaim in the first case - \$200,000  
**Theft of Trade Secrets** - *Pennsylvania Eastern* - A Drexel professor sent loaned nylon technology to a competitor in Taiwan - \$602,759  
**Theft of Trade Secrets** - *Texas Northern* - Employees of a class-action settlement company quit and went to a competitor - \$4,155,333  
**Tortious Interference** - *Colorado* - When a deal to sell went sour, the buyer filed a meritless suit to prevent any other sale by the seller - \$4,382,182

## Patent/Trademark

**Patent Infringement** - *Colorado* - Dispute regarding image-guided surgical devices - \$51,000,000  
**Patent Infringement** - *Massachusetts* - Treadmill technology allegedly infringed - \$2,500,000  
**Patent Infringement** - *Tennessee Eastern* - Glass manufacturer alleged infringement - For plaintiff  
**Trademark Infringement** - *Illinois Northern* - Dispute over a Beanie-Baby look-a-like toy - Defense verdict

## Personal Injury

**Airport Negligence** - *Wyoming* - A helicopter crashed because of a bad fuel mixture - Defense verdict

**Auto Negligence** - *Iowa Northern* - Plaintiff was rear-ended by a tractor-trailer - Defense verdict  
**Auto Negligence** - *Oregon* - Rear-end crash - Defense verdict  
**Auto Negligence** - *Virginia Western* - Turning crash involving a tractor-trailer - \$100,000  
**Industrial Negligence** - *Tennessee Middle* - Plaintiff suffered a respiratory injury at DuPont - \$3,174,627  
**Marine Negligence** - *Massachusetts* - A boat sank because of negligent rescue by the Coast Guard - Defense verdict  
**Motel Negligence** - *Montana* - Plaintiff suffered a stroke at a motel and blamed its staff for not finding him - \$1,135,666  
**Negligent Insurance Procurement** - *Kentucky Eastern* - Coverage was inadequate when a commercial building was destroyed by fire - Defense verdict  
**Negligent Security** - *Alabama Southern* - A Greyhound bus driver fought with a passenger - Defense verdict  
**Negligent Security** - *Mississippi Northern* - A Captain D's customer was left a quadriplegic when pushed down by a fish store employee - \$20,881,884  
**Premises Liability** - *Indiana Southern* - Plaintiff was hurt when a folding chair display fell on her - Defense verdict  
**Premises Liability** - *Michigan Eastern* - A customer at Lowe's was injured when a pipe fell on his head - Defense verdict  
**Premises Liability** - *New Jersey* - Grocery slip and fall resulted in multiple fractures - \$230,000  
**Premises Liability** - *Tennessee Western* - A tourist fell at a Beale Street bar in Memphis - \$18,000  
**Premises Liability** - *Texas Northern* - A battery struck plaintiff in the leg at a grocery - Defense verdict  
**Sexual Abuse** - *Idaho* - A teenage girl was abused by her stepfather - \$1,300,000  
**Truck Stop Negligence** - *Kentucky Eastern* - An truck stop employee's foot was run over by a backing truck - Mixed verdict  
**Wrongful Death** - *Alabama Middle* - Plaintiff killed in a crash with a tractor-trailer - \$1,000,000  
**Wrongful Death** - *Florida Middle* - Plaintiff attacked a car with a bat that contained a cop - the cop got out and fatally shot the plaintiff - Defense verdict  
**Wrongful Death** - *Texas Southern* - Stopped for speeding, the plaintiff was shot by a constable - Defense verdict

## Products Liability

**Ford Explorer** - *South Carolina* - One person was killed and three injured in a roll-over crash - \$3,925,000  
**Ford Explorer** - *West Virginia Northern* - A young doctor suffered a brain injury in a roll-over crash - Defense verdict  
**Ford Pick-Up** - *Arkansas Eastern* - Radiologist killed when partially ejected - Defense verdict  
**Ford Pick-Up** - *Louisiana Middle* - Wiper failure alleged led to a crash - Defense verdict  
**Industrial Machine** - *New York Eastern* - Plaintiff injured his hand when he put it inside a machine - Defense verdict  
**Lawnmower** - *Massachusetts* - Plaintiff lost his eye when a rock shot out from his lawnmower - \$550,000

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**Note** - The complete November issue, at fifty-six pages, has all of the complete 107 jury verdict reports.

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only reproduces a portion of the  
complete November issue.  
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[In some of the cases in this preview, we have not included the entire verdict report – see the November issue for all the verdict reports.]

## SEXUAL HARASSMENT

*Alabama Northern District - Birmingham*

**In a case of fact disputes, a legal secretary alleged she was sexually harassed by her boss, his physical touchings also amounting to battery**

**Caption:** *Grimes v. Southlaw et al*, 2:03-1401

**Plaintiff:** John C. Falkenberry, Birmingham, AL

**Defense:** Stewart G. Springer, *Springer Law Firm*, Birmingham, AL for Liddon  
Heather F. Lindsay, *Johnson Barton Proctor & Powell*, Birmingham for Southlaw, PC

**Verdict:** Defense verdict on liability

**Judge:** T. Michael Putnam

**Date:** September 23, 2005

*See the complete November 2005 Issue for all the details.*

## SEXUAL HARASSMENT

*Alabama Middle District - Montgomery*

**A female jail dispatcher in Eufaula alleged harassment and retaliation within the sheriff's office**

**Caption:** *Hunter v. Barbour County Sheriff*, 2:04-749

**Plaintiff:** Ann C. Robertson and Temple D. Trueblood,  
*Wiggins Childs Quinn & Pantanzis*, Birmingham  
and Bobbie S. Crook, Dothan, AL

**Defense:** C. Winston Sheehan, Jr. and Allison A. Ingram,  
*Ball Ball Matthews & Novak*, Montgomery, AL

**Verdict:** \$250,157 for plaintiff

**Judge:** Myron Thompson

**Date:** August 23, 2005

*See the complete November 2005 Issue for all the details.*

## WRONGFUL DEATH/TRUCK ACCIDENT

*Alabama Middle District - Dothan*

**Plaintiff was killed in a disputed red light crash with a tractor-trailer**

**Caption:** *Moon v. Werner Enterprises et al*, 1:04-0950

**Plaintiff:** Harry P. Hall, II and Elizabeth B. Glasgow, *Farmer Price Hornsby & Weatherford*, Dothan, AL

**Defense:** Edgar M. Elliott, IV, *Christian & Small*, Birmingham and J.E. Sawyer, Jr., Enterprise, AL

**Verdict:** \$1,000,000 for plaintiff

**Judge:** Mark E. Fuller

**Date:** September 9, 2005

**Facts:** There was a serious car versus tractor-trailer collision in Enterprise on 2-19-04. The plaintiff, Randy Moon, came to a red light on Rucker Boulevard at its intersection with Boll Weevil Circle. It turned green and Moon started forward.

In the intersection he was hit by a tractor trailer driven by Robert Waggoner for Werner Enterprises. While he wasn't speeding, the tractor-trailer still plowed into Moon's Jeep Cherokee. Moon's injuries were fatal and he died two days later.

His estate sued Werner Enterprises, implicating Waggoner for running the red light. The liability theory in this regard was simple – Moon came from a stop into the intersection with a green, only to be struck by Waggoner who was apparently trying to beat the light.

Werner Enterprises defended on several grounds. Waggoner first explained that when he last looked up, the light was just changing red as he passed into the intersection. Thus he took two positions that he argued were consistent, (1) the light didn't turn red until he was in the intersection, and (2) even if it was red, he was already in the intersection and Moon should have avoided him. Plaintiff countered that Waggoner disregarded the line of stopped traffic, the collision being an inevitable result of this poor decision.

**Injury:** Death (Truck Accident)

**Jury Instructions/Verdict:** The jury's verdict was for the Moon estate and it awarded an even "one million" in punitive damages. A judgment in that sum followed and Werner Enterprises paid it.

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## The Federal Jury Verdict Reporter

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The Federal Jury Verdict Reporter is the *only* publication in the country that presents reports on virtually every civil jury verdict tried in the federal system. The FedJVR's coverage isn't just complete – it's timely with all the details that matter. We focus on the parties, the facts, the causes of actions, the experts and results. Each report also includes a summary of post-trial motions and orders. [Several verdicts in this month's issue were set aside by JNOV.]

### *What's in this month's issue?* Q&A with the FedJVR

<b>Is it complete?</b>	<b>107</b> total verdicts
<b>Which states?</b>	<b>40</b> states represented
<b>When?</b>	Monthly (12 Issues a year)
<b>Products verdicts?</b>	<b>6</b> Products Liability Verdicts <b>2</b> Explorer Verdicts <b>1</b> Aviation Verdict
<b>Employment cases?</b>	<b>30</b> Employment Verdicts <b>6</b> Sexual Harassment Verdicts <b>2</b> Disability Discrimination <b>4</b> Gender Discrimination
<b>Civil Rights?</b>	<b>3</b> First Amendment/Expression <b>22</b> Police/Prison/Jail Verdicts
<b>Diversity Verdicts?</b>	<b>23</b> Personal Injury/Diversity <b>3</b> Medical Negligence Verdicts
<b>Trademark/Patent?</b>	<b>4</b> Trademark/Patent Verdicts <i>Also included are federal actions and miscellaneous torts</i>

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## DEFAMATION/EMPLOYMENT

*Arizona District - Phoenix*

**The deputy director at the state-operated Clean Elections Commission alleged he was defamed and fired after he opposed an apparently political decision by the commission's chairman to cover-up a gubernatorial candidate's non-compliance with commission filing requirements**

**Caption:** *Shaffer v. Citizens Clean Elections Commission*, 2:03-2344

**Plaintiff:** Richard J. Harris, Mesa, AZ and David C. Larkin, Tempe, AZ

**Defense:** Jay A. Zweig and Melissa R. Berren, *Gallagher & Kennedy*, Phoenix, AZ

**Verdict:** \$1,100,000 for plaintiff

**Judge:** Frederick J. Martone

**Date:** September 22, 2005

*See the complete November 2005 Issue for all the details.*

## RACE DISCRIMINATION

*Arizona District - Phoenix*

**The owner of an African-themed business in a Tempe mall alleged he was forced out of his lease because of his race – the jury awarded nominal damages of just \$1.00, but assessed punitives of \$1,000,000**

**Caption:** *Alozie v. Mills Corporation*, 2:02-2639

**Plaintiff:** Sabinus Megwa, *Megwa Law Office*, Phoenix, AZ

**Defense:** Shelton Freeman and Lisa Anne Smith, *DeConcini McDonald Yetwin & Lacy*, Phoenix, AZ

**Verdict:** \$100,001 for plaintiff

**Judge:** Susan R. Bolton

**Date:** August 19, 2005

*See the November 2005 Issue for all the details.*

## PRODUCTS LIABILITY

*Arkansas Eastern District - Jonesboro*

**A radiologist was killed in a pick-up truck crash, his estate criticizing a seat-belt failure that permitted him to be partially ejected, his head striking a tree**

**Caption:** *Saunders v. Ford Motor Co. et al*, 3:99-374

**Plaintiff:** Jeanette A. Robertson, *Robertson Law Firm*, Jonesboro, AR and William E. Maxwell, Jr., *Maxwell & Associates*, Canton, MI

**Defense:** Edwin L. Lowther, Jr. and Scott A. Irby, *Wright Lindsey & Jennings*, Little Rock, AR for Ford Motor Co.  
David R. Reed, *Lord Bissell & Brook*, Chicago, IL and G. Spence Fricke, *Barber McCaskill Jones & Hale*, Little Rock, AR for TRW Vehicle Safety

**Verdict:** Defense verdict on liability

**Judge:** Susan Webber Wright

**Date:** September 9, 2005

**Facts:** There was a tragic one-car crash on 7-3-93 on Hwy 49 near Fair Oaks, AR. Earnest Saunders, then age 39 and a radiologist, was a passenger in a 1988 Ford Ranger driven by his teenage son, Charles. [Charles was then just fifteen.] Either Charles fell asleep or a tire blew – in any event, he lost control and the pick-up careened off the highway.

It went down an embankment, striking a tree along the way. The passenger-side window was broken and the tree struck Saunders's head. It was pinched between the pick-up and the tree. The doctor sustained fatal injuries.

The estate blamed Saunders's death on a defective seat belt that permitted too much slack. The theory alleged that in the crash, the excessive slack permitted Saunders's head to be partially ejected. Had the seat belt held, it was argued, there would have been no injury, the tree not actually penetrating the cab of the pick-up. [Plaintiff relied on a MADYMO animation created by its expert, David Renfroe.] The estate targeted not just Ford, the manufacturer of the pick-up, but also TRW Vehicle Safety Systems, which designed the seat belt in conjunction with the automaker.

While represented separately, Ford and TRW were joined in their defense. It focused on several themes, (1) the crash was the fault of the teenage driver, (2) the seat belt held, as evidenced by bruises on plaintiff's chest, and (3) the horrendous crash was not survivable for Saunders regardless of the seat belt design, the tree penetrating the cab of the pick-up.

**Injury:** Death

### Experts:

*Plaintiff* Lonnie Tolbert, Economics  
James Lafferty, Seat Belt  
David Renfroe, Accident Reconstruction,  
Farmington, AR

*Defense* Gregory Miller, Rochester, MI (TRW)

Harry Smith, Biodynamics, San Antonio, TX  
Richard Studer, Auto Design, Nevada City, CA  
Murray Mackay, Crash Safety, Isle of Man, UK

**Jury Instructions/Verdict:** The verdict on liability exonerated the defendants and the Saunders estate took nothing. A defense judgment followed.

## CIVIL RIGHTS

*California Northern District - San Jose*

**While a San Jose jury valued the false arrest at a fraternity party of a co-ed at \$300,500, the trial judge later set aside the award, finding as a matter of law there was probable cause to arrest**

**Caption:** *Bushell-McIntyre v. City of San Jose*, 5:01-20191

**Plaintiff:** Jeffrey Kallis, *Kallis & Associates*, San Jose, CA

**Defense:** Robert B. Burchfield, *Assistant City Attorney*, San Jose, CA

**Verdict:** \$300,500 for plaintiff

**Judge:** James Ware

**Date:** February 22, 2005

*See the complete November 2005 Issue for all the details.*

## PATENT INFRINGEMENT

*Colorado District - Denver*

**Plaintiff prevailed in a patent dispute regarding image-guided surgical devices**

**Caption:** *Medtronic Navigation et al v. BrainLab AG*, 1:98-1072

**Plaintiff:** Vera M. Elson and Terrance P. McMahon, Palo Alto, CA and Christopher P. Bright and Daniel R. Foster, Irvine, CA, all of *McDermot Will & Emery*, and James E. Hartley, *Holland & Hart*, Denver, CO

**Defense:** Jay R. Campbell, Joshua M. Ryland and John J. Del Col, *Renner Otto Boisselle & Sklar*, Cleveland, OH and Thomas H. Shunk, *Baker & Hostetler*, Chicago, IL

**Verdict:** \$51,000,000 for plaintiff

**Judge:** Richard P. Matsch

**Date:** September 30, 2005

*See the complete November 2005 Issue for all the details.*

**FIRST AMENDMENT***Connecticut District - Hartford*

**A city custodian was fired after he published a letter accusing the Mayor of union-busting that might lead to labor violence – the city denied it was a speech issue, arguing the letter contained a threat of violence**

**Caption:** *Johnson v. City of Bridgeport*, 3:00-1556

**Plaintiff:** John R. Williams, New Haven

**Defense:** John R. Mitola and Russell D. Liskov,  
*Assistant City Attorney*, Bridgeport

**Verdict:** \$12,700 for plaintiff

**Judge:** Donna F. Martinez (Magistrate)

**Date:** August 3, 2005  
*See the complete November 2005 Issue for all the details.*

**AGE DISCRIMINATION-  
WHISTLEBLOWER VIOLATION***Florida Middle District - Jacksonville*

**A hospital administrator alleged he suffered reprisals when he reported abuse in the hospital's child care center as required by law – hospital policy, he thought, was contrary to Florida law in that it required abuse be reported to hospital bigwigs who would then decide if the authorities should be involved**

**Caption:** *Smith v. Memorial Hospital of Jacksonville*,  
3:03-754

**Plaintiff:** Scott Thomas Fortune, *Fortune Law Office*,  
Jacksonville, FL

**Defense:** Nancy L. Patterson, *Baker & Hostetler*,  
Houston, TX and James J. Dean,  
*Messer Caparello & Self*, Tallahassee, FL

**Verdict:** Defense verdict on liability

**Judge:** Henry Lee Adams, Jr.

**Date:** August 8, 2005  
*See the complete November 2005 Issue for all the details.*

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the complete November 2005 Issue which  
contained 107 verdicts.

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**CIVIL RIGHTS***Florida Middle District - Ft. Myers*

**Plaintiff was arrested and detained for several hours, a state trooper suspecting he was impersonating a police officer in a stolen trooper cruiser – in fact, the plaintiff was transporting the former police cruiser for his boss**

**Caption:** *Harris v. Florida Highway Patrol*, 2:03-657

**Plaintiff:** Gary Kollin, Plantation, FL

**Defense:** William O. Kratochvil, *George Hartz Lundeen  
Fulmer Johnston King & Stevens*, Fort Myers, FL

**Verdict:** Defense verdict on liability

**Judge:** Virginia M. Covington

**Date:** August 25, 2005  
*See the complete November 2005 Issue for all the details.*

**WRONGFUL DEATH***Florida Middle District - Ft. Myers*

**An intoxicated road-rage driver exited his van and approached a vehicle, breaking out the window with a steel pipe – this was a big mistake as the car contained off-duty sheriffs, one of whom exited the car and fatally shot the driver in the chest**

**Caption:** *Fitch v. Lee County Sheriff*, 2:03-465

**Plaintiff:** John D. Mallah, Edgewood, FL and William M.  
Powell, Cape Coral, FL

**Defense:** Richard A. Guiffreda, *Purdy Jolly Guiffreda &  
Barranco*, Fort Lauderdale, FL

**Verdict:** Defense verdict on liability

**Judge:** Douglas N. Frazier

**Date:** October 6, 2005  
*See the complete November 2005 Issue for all the details.*

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**SEXUAL ABUSE***Idaho District - Couer d'Alene*

Years after a teenage girl was abused by her stepfather, she sued him alleging a variety of sexual abuse counts – awarded \$1.3 million in damages, she may be able to collect, her stepfather having previously taken \$4.7 million in an injury lawsuit that left him a paraplegic

**Caption:** *Spain v. McMillan*, 2:04-280

**Plaintiff:** Mike D. Williams, Kevin J. Curtis and Kammi L. Mencke, *Winston & Cashatt*, Couer d'Alene, ID

**Defense:** Frederick G. Loats, Couer d'Alene, ID

**Verdict:** \$1,300,000 for plaintiff

**Judge:** James M. Fitzgerald

**Date:** October 6, 2005

**SEXUAL HARASSMENT***Illinois Central District - Peoria*

A judicial secretary alleged she was sexually harassed and stalked by a sitting circuit court judge – he denied everything

**Caption:** *Robinson v. Judge Sappington et al*, 1:04-1360

**Plaintiff:** Melissa M. McGrath, *Thomson & Weintraub*, Bloomington, IL

**Defense:** Karen L. McNaught and Terence J. Corrigan, *Assistant Attorneys General*, Springfield, IL and Diane M. Baron, *Clausen Miller*, Chicago, IL for Sappington  
John E. Cassidy, III, *Cassidy & Mueller*, Peoria, IL for Macon County

**Verdict:** Defense verdict on liability

**Judge:** Michael H. Mihm

**Date:** August 25, 2005

**TRADEMARK INFRINGEMENT***Illinois Northern District - Chicago*

Did Ty, Inc., the Beanie-Baby giant, infringe a smaller company's plush toy, an Egyptian-themed doll named *Niles*, when Ty introduced its own Egyptian Beanie Baby of the same name?

**Caption:** *Peaceable Planet v. Ty, Inc.*, 1:01-7350

**Plaintiff:** Charles W. Shifley, Marc C. Cooperman and Eric S. Maurer, *Banner & Witcoff*, Chicago, IL

**Defense:** Edward B. Ruff, III and Michael P. Turiello, *Pretzel & Stouffer*, Chicago, IL and James P. White, Laurie A. Haynie, J. Aron Carnahan and Louise T. Walsh, *Welsh & Katz*, Chicago, IL

**Verdict:** Defense verdict on liability

**Judge:** John W. Darrah

**Date:** September 30, 2005

**Facts:** Peaceable Planet is a small company in Georgia that makes plush toys. In the Spring of 1999, it introduced a new toy named *Niles*. *Niles* was a camel with an Egyptian theme. From the perspective of Peaceable Planet, *Niles* was a success. It sold some 3,200 units, mostly through limited advertising and trade shows.

The next Spring, an industry giant, Ty, Inc., the creator of Beanie Babies, introduced its own Egyptian-themed camel plush toy – Ty named its toy *Niles*. *Niles* was a big seller for Ty – nearly 2,000,000 units were moved.

In this David versus Goliath story, Peaceable Planet sued Ty, Inc. and alleged it had infringed its *Niles* trademark. It sought a reasonable royalty of \$450,000, plus lost profits of \$2.6 million – it also sought the imposition of punitives. Ty defended the case that there was no trademark to infringe – Peaceable Planet sold a tiny number of units, essentially having a market share that was too small to even be measured. Ty also defended that it came up with the name independently. The trial court agreed and granted Ty summary judgment.

Peaceable Planet appealed. Judge Posner at the Seventh Circuit wrote the opinion that reversed, *Peaceable Planet v. Ty, Inc.*, 362 F.3d 986 (7<sup>th</sup> Cir. 2004). Posner wrote that this was a rare reverse passing off case, the plaintiff alleging the defendant had passed the plaintiff's product off as its own. [The usual passing off case is when the defendant tries to pass off its products as the plaintiffs.] That aside, Posner reasoned that *Niles* was not such a rare name that it could not be protected – he further explained that any protection to Peaceable Planet would not deprive any Saharan camels of their rights. [The opinion is an excellent read.] The matter returned for a jury trial.

**Experts:**

*Plaintiff* Brian Daniel, Intellectual Property Valuation  
Chicago, IL

*Defense* Deborah Jay, Consumer Research, San Francisco  
Thomas DuPont, Consumer Research,  
Kinnelon, NJ

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**Jury Instructions/Verdict:** The verdict was for Ty that it had not infringed the *Niles* trademark. Having so found, Peaceable Planet took nothing. The jury deliberated four hours.

## MEDICAL NEGLIGENCE

*Kansas District - Wichita*

**A surgeon removed a testicle that had a suspicious mass – the plaintiff thought the removal was unnecessary when it turned out the mass was benign**

**Caption:** *Horacek v. Doolittle*, 6:03-1286

**Plaintiff:** Donald S. Anderson, Wichita, KS

**Defense:** Michael R. O’Neal, *Gilliland & Hayes*, Hutchinson, KS

**Verdict:** Defense verdict on liability

**Judge:** Wesley E. Brown

**Date:** August 16, 2005

## SEXUAL HARASSMENT, ET AL.

*Maryland District - Baltimore*

**A satellite television installer alleged reverse sexual harassment, his female boss making repeated advances – when he rebuffed her, it was argued that she retaliated**

**Caption:** *Broccoli v. Echostar Communications*, 1:03-3447

**Plaintiff:** Jerald J. Oppel and Carla N. Bailey, *Ober Kaler Grimes & Shiver*, Baltimore, MD

**Defense:** Robert R. Niccolini and Elena D. Marcuss, *McGuireWoods*, Baltimore, MD

**Verdict:** Mixed Verdict – For plaintiff on tortious interference and contract counts; For defense on sexual harassment

**Judge:** Andre M. Davis

**Date:** March 30, 2005

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## PATENT INFRINGEMENT

*Massachusetts District - Boston*

**A small gym owner alleged a large treadmill company stole his technology and incorporated it in their products without paying a royalty**

**Caption:** *Colassi v. Cybex International*, 1:02-11909

**Plaintiff:** Kathleen B. Carr, *Edwards & Angell*, Boston, MA and Timothy J. Haller, Paul K. Vickery and Frederick C. Laney, *Niro Scavone Haller & Niro*, Chicago, IL

**Defense:** Peter T. Cobrin, David J. Sheehan, David J. DeLorenzi and Michael Cukor, *Gibbons Del Deo Dolan Griffinger & Vecchione*, New York, NY

**Verdict:** \$2,500,000 for plaintiff

**Judge:** Rya W. Zobel

**Date:** August 26, 2005

**Facts:** In 1995, Gary Colassi, the operator of a World Gym in Norton, MA, had what he thought was an innovative technology improvement for treadmills. Colassi's idea incorporated a flexible treadmill deck that reduced shock and wear to the treadmill and the user.

That year he pitched the idea to a large treadmill manufacturer, Cybex International. [Colassi didn't patent it until 1996.] Cybex passed and indicated it was not interested. In 1997, Cybex introduced a new line of treadmills that featured its exclusive Stableflex design. The company made millions with its design.

Colassi believed Cybex had infringed his patent with its Stableflex design – it was essentially the same design he had presented to them in 1995. He filed this lawsuit and sought a reasonable royalty. The court's instructions limited that royalty from sales going forward from September of 2000 – Cybex's sales in that period were \$80,000,000.

Cybex defended the case on several grounds including that (1) its design was different, rejecting Colassi's ideas, and (2) it was developed internally. Plaintiff resisted that notion, arguing that while Cybex claimed to have invented the design in 1993, it lacked any documents or prototypes.

### Experts:

*Plaintiff* Daniel Campau, Design, Ada, MI

*Defense* Timothy Harrigan, Design, Franklin MA

**Jury Instructions/Verdict:** After a five day trial in Boston, Colassi prevailed on the infringement count regarding all eleven claimed models. Then to damages, he took a royalty of \$2,500,000, which represented 3% of Cybex's \$80,000,000 in sales since September of 2000. The jury could not reach a verdict on willfulness and thus there was no award of punitives. [The defense offer of judgment before trial was for \$200,000.]

**Post-Trial Motions:** Colassi has since sought a permanent injunction and pre-judgment interest.

**PRODUCTS LIABILITY***Massachusetts District - Boston***While mowing his lawn, plaintiff lost an eye when his Sears Craftsman rotary lawnmower ejected a rock****Caption:** *Limos v. Electrolux Home Products*, 1:03-12238**Plaintiff:** Paul A. Gargano and Sean M. Beagan,  
*Gargano & Associates*, Cambridge, MA**Defense:** Michael S. Appel, *Sugarman Rogers Barshak & Cohen*, Boston, MA**Verdict:** \$550,000 for plaintiff**Judge:** Nancy Gertner**Date:** September 14, 2005  
*See the complete November 2005 Issue for all the details.***FALSE ADVERTISING/LANHAM ACT***Minnesota District - Minneapolis***The makers of deer-hunting scents squared off over alleged false advertising claims made about the defendant's "Still Steamin' Doe Urine" product****Caption:** *Wildlife Research Center v. Robinson Outdoors*, 0:02-2773**Plaintiff:** Clifford S. Anderson and J.D. Jackson,  
*Dorsey & Whitney*, Minneapolis, MN**Defense:** Michael C. Mahoney and Thomas A. Foster,  
*Mahoney & Foster*, Wayzata, MI**Verdict:** \$4,799,438 for plaintiff**Judge:** David S. Doty**Date:** September 13, 2005  
*See the complete November 2005 Issue for all the details.***NEGLIGENT TRAINING (Retail Store)***Mississippi Northern District - Oxford***At a fast food restaurant, the manager told a quarreling employee and a customer to take it outside – the employee pushed the plaintiff who fell and was left a quadriplegic****Caption:** *Foradori v. Captain D's*, 1:03-669**Plaintiff:** Joseph C. Langston and R.H. Burress,  
*The Langston Law Firm*, Booneville, MS**Defense:** L. Bradley Dillard, *Mitchell McNutt & Sams*,  
Tupelo, MS, Bradley F. Hathaway, *Campbell DeLong*,  
Greenville, MS and William Anderson, III, *Anderson Razor & Partners*, Chicago, IL**Verdict:** \$20,881,884 for plaintiff**Judge:** Michael P. Mills**Date:** October 11, 2005  
*See the complete November 2005 Issue for all the details.***MOTEL NEGLIGENCE***Montana District - Billings***A patron at a motel near Yellowstone National Park suffered a stroke while in his room – not found for three days, he blamed motel staff for not checking on him****Caption:** *Wojtowicz v. Best Western Lupine Inn*, 1:03-52**Plaintiff:** Lawrence B. Cozzens, *Cozzens Harman Warren Harris & Odegaard*, Billings, MT**Defense:** James R. Halverson, *Halverson & Gilbert*,  
Billings, MT**Verdict:** \$1,135,666 for plaintiff less 50% comparative fault**Judge:** Richard F. Cebull**Date:** September 29, 2005**Facts:** Jeffrey Wojtowicz, then age 37 and a mail carrier from Holland, MA, visited Yellowstone National Park in June of

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2000. On 6-4-00, he spent the night at the Best Western Lupine Inn. Wojtowicz was alone. While in his room and taking a shower, Wojtowicz sustained a stroke. It left him paralyzed on his right side.

For several days, he lay wedged between the bed and the wall – finally he was able to move on 6-8-00. He banged on a wall and was heard, help soon arriving. Wojtowicz has since complained of permanent limitations, including a limp and spasms in his arm. His career as a mail carrier is finished.

In this diversity lawsuit, Wojtowicz sued the LuPine Inn and alleged negligence by motel staff in failing to check on him – he was critical of its apparent policy to leave guests alone, the motel owner explaining patrons sometimes go on extended drug or drinking binges that require privacy.

Had motel staff intervened, it was argued even a day later, the disabling effects of the stroke would have been lessened. A treating neurologist, Dr. Patrick Cahill, Billings, MT, indicated that if treated within 24 hours, Wojtowicz would have been 50% better.

The LuPine Inn defended the case and raised several fact disputes. First it cited that on 6-5-00, the motel owner called Wojtowicz who said he was extending his stay. Then to the several days when the room was ignored, the LuPine Inn cited that there was a *Do Not Disturb* sign placed. [Wojtowicz contested both these allegations.] Plaintiff's own comparative fault was implicated – the motel noted that in the hours before the stroke, he had numbness in his right arm, but did not seek treatment.

**Injury:** Stroke untreated for several days

**Jury Instructions/Verdict:** The verdict was mixed on liability, the jury assessing 50% to both parties. Wojtowicz was then awarded \$1.36 million in damages, the verdict totaling \$567,833 after a reduction for comparative fault. The case was deliberated for five hours following a four-day trial.

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## ENTERTAINMENT CONTRACT

*Nevada District - Las Vegas*

**A Las Vegas casino sued pop superstar Rod Stewart for a \$2,000,000 advance it made on a New Year's Eve concert appearance – Stewart had to cancel the show because of a cancer diagnosis**

**Caption:** *Rio Properties v. Rod Stewart*, 01:04-459

**Plaintiff:** Steve Morris, Kristina Pickering and Denise Barton, *Morris Pickering & Peterson*, Las Vegas, NV

**Defense:** Louis "Skip" Miller and Kerry Garvis Wright, *Christensen Miller Fink Jacobs Glaser Weil & Shapiro*, Los Angeles, CA and John Mowbray, *Morse & Mowbray*, Las Vegas, NV

**Verdict:** \$2,000,000 for plaintiff

**Judge:** Larry Hicks

**Date:** September 7, 2005

## FALSE ARREST

*Ohio Southern District - Columbus*

**On the flimsiest of evidence and relying on a physical description that didn't match and a different name, a state trooper arrested a driver's license bureau worker for selling CDLs under the table**

**Caption:** *Black-Hosang v. Ohio State Police*, 2:01-623

**Plaintiff:** Rex H. Elliott and Charles H. Cooper, *Cooper & Elliott*, Columbus, OH

**Defense:** Tomi L. Dorris, *Assistant Attorney General*, Columbus, OH

**Verdict:** \$350,000 for plaintiff

**Judge:** James L. Graham

**Date:** August 30, 2005

*See the complete November 2005 Issue for all the details.*

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**FMLA - An insurance adjustor took time off to treat for depression after a suicide attempt – within months of returning, she was fired**

*Bond v. State Farm*, 1:03:1039

**Plaintiff:** Judy D. Snyder and Katelyn S. Oldham, Portland, OR

**Defense:** Clay D. Creps and Seth H. Row, *Bullivant Houser Bailey*, Portland, OR

**Verdict:** Defense verdict on liability

**Court:** Oregon - Portland

**Judge:** Dennis J. Hubel (Magistrate)

**Date:** 8-10-05

*See the complete November 2005 Issue for all the details.*

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## PRODUCTS LIABILITY

*South Carolina District - Charleston*

**One person was killed and three injured in an Explorer roll-over case**

**Caption:** *Hayward v. Ford Motor Co.*, 9:02-3878

**Plaintiff:** J. Edward Bell, III and William W. Watkins, *Bell Law Firm*, Georgetown, SC, Kevin R. Dean and Rhett D. Klok, *Motley Rice*, Mt. Pleasant, SC, John O'Leary, Columbia, SC and Thomas E. Creaney, Pittsburgh, PA

**Defense:** D. Alan Thomas, G. Gordon Sproule and David L. Brown, *Huie Fernambucq & Stewart*, Birmingham, AL and Elbert S. Dorn and Nicholas W. Gladd, *Turner Padgett Graham & Laney*, Columbia, SC

**Verdict:** \$3,925,000 for four plaintiffs  
\$3,250,000 for Hayward Estate  
\$270,000 for Burdette  
\$400,000 for Leurie

\$5,000 for Wilson

**Judge:** P. Michael Duffy

**Date:** October 13, 2005

*See the complete November 2005 Issue for all the details.*

## INDUSTRIAL NEGLIGENCE

*Tennessee Middle District - Nashville*

**A manufacturer admitted fault for an industrial exposure that left a contractor with a respiratory injury**

**Caption:** *Lawrence v. E.I. Dupont De Nemours*, 3:04-115

**Plaintiff:** William B. Hawkins and Kenneth J. Jones, Jr.,  
*The Jones Law Firm*, Nashville, TN

**Defense:** J. Michael Brown and James B. Johnson,  
*Stites & Harbison*, Nashville, TN

**Verdict:** \$3,174,627 for plaintiff

**Judge:** Aleta A. Trauger

**Date:** 8-25-05

*See the complete November 2005 Issue for all the details.*

## THEFT OF TRADE SECRETS

*Texas Northern District - Dallas*

**A class-action settlement company alleged two employees left and took its trade secrets and customers to a competitor**

**Caption:** *Navigant Consulting v. Wilkinson et al*,

**Plaintiff:** Michael P. Lynn, Cody L. Towns and Todd J. Harlow,  
*Lynn Tillotson & Pinker*, Dallas, TX

**Defense:** Shannon D. Norris and J. David Apple,  
*Apple & Norris*, Coppell, TX

**Verdict:** \$4,155,333 for plaintiff

**Judge:** Jane J. Doyle

**Date:** August 9, 2005

*See the complete November 2005 Issue for all the details.*

## PRODUCTS LIABILITY

*Washington Western District - Tacoma*

**Just one week after buying a new stepladder, it collapsed under the plaintiff as he was cleaning his RV – in the fall he sustained a shattered heel**

**Caption:** *Burdett v. Louisville Ladder*, 3:04-5088

**Plaintiff:** Thomas J. West, *Krilich LaPorte West & Lockner*, Tacoma, WA

**Defense:** Timothy G. O'Neill and Nathan K. Davis, *Snell & Wilmer*, Denver, CO and David D. Swartling and Kasey D. Huebner, *Mills Myers Swartling*, Seattle, WA

**Verdict:** Defense verdict on liability

**Judge:** Robert J. Bryan

**Date:** September 9, 2005

*See the complete November 2005 Issue for all the details.*

## PRODUCTS LIABILITY

*West Virginia Northern District - Martinsburg*

**Having just finished osteopathic school, the plaintiff was relocating from Pennsylvania to Georgia when while traveling through West Virginia, her 1996 Ford Explorer rolled over – after suffering catastrophic injuries in the crash, she criticized the Explorer's stability, seat belt tensioner and roof strength in this federal lawsuit**

**Caption:** *Shatz v. Ford Motor Co.*, 3:01-47

**Plaintiff:** Marvin W. Masters and Christopher L. Brinkley,  
*Masters Law Firm*, Charleston, WV and Scott S. Segal,  
*Segal Law Firm*, Charleston, WV

**Defense:** D. Alan Thomas and Thomas E. Bazemore, III,  
*Huie Fernambucq & Stewart*, Birmingham, AL and Andrew B. Cooke,  
*Flaherty Sensabaugh & Bonasso*, Charleston, WV

**Verdict:** Defense verdict on causation

**Judge:** Frederick P. Stamp, Jr.

**Date:** September 7, 2005

**Facts:** On 6-29-99, Sylvia Shatz, then age 34, was relocating from Philadelphia to Atlanta. She traveled through I-81 in West Virginia. She drove a 1996 Ford Explorer. Shatz, who had just finished training to be an osteopath, had been following her husband, Andrew, who was driving ahead of her. As Shatz passed a slower car, it suddenly veered into her path.

She steered to avoid the car and lost control of the Explorer. It rolled over three times. While Shatz was properly belted, the Explorer still suffered serious roof damage. Shatz was badly hurt sustaining multiple injuries including, (1) a serious head injury, (2) a skull fracture and degloving injury, (3) multi-level disc fractures, and (4) a broken arm and collarbone.

Shatz's most persistent injury has been a brain injury. It has effectively ended her vocational dream of becoming a family practitioner. Her medical bills were \$300,000 and she sought \$3.013 million for her wage claim.

In this lawsuit, Shatz and her husband sued the Ford Motor Company alleging both strict liability design and negligence

counts. She implicated the Explorer in several regards, (1) stability, (2) the seat belt restraint's failure to have a pre-tensioner, and (3) the roof strength.

Ford defended the case that the Explorer was very safe, representing the state of the art in SUV design. It also noted its own extensive testing and that the Explorer met federal standards. Then to Shatz's serious injuries, Ford blamed (1) the catastrophic crash itself, and (2) plaintiff's own negligence in steering out of control. Had she been more attentive and simply hit the brakes, there would have been no crash.

**Injury:** Brain injury; Disc fracture; Broken Collarbone

**Experts:**

*Plaintiff* Nicholas Perrone, Vehicle Stability  
William Muzzy, Seat Belt Design  
Mickey Gilbert, Stability  
Joseph Burton, Engineer  
Donald Friedman, Engineer

*Defense* Lee Carr, Stability  
William Wecker, Statistics  
Edward Moffat, Engineer

**Jury Instructions/Verdict:** This jury considered two questions as it deliberated: (1) Was the Explorer defective in that it was not reasonably safe?, and (2) Was it negligently manufactured? The verdict was mixed, the jury answering no to the first and yes to the second.

That didn't end the inquiry, Ford then prevailing when the jury concluded the negligent manufacture had not proximately caused the crash. Having so found, the panel did not reach plaintiff's duties, apportionment or damages.

As it deliberated the case, the jury had asked the court for a definition of probable cause in layman's term. Judge Stamp refused.

**Post-Trial Motions:** In a blockbuster motion, Shatz has alleged that post-trial conduct by Ford's lawyers has hopelessly compromised the verdict's integrity. Shatz cited that an associate with the *Huie Fernambucq & Stewart* firm entered the jury room and took papers from the juror's notebook. The entire process, it was argued, was affronted by this taint of the juror's confidentiality. Because the integrity of the system had been compromised, there could be no fair remedy except the ordering of a new trial on all issues. [All the aforementioned conduct occurred *after* the verdict had been delivered – it was discovered by a suspicious law clerk to another judge who found the attorney in the jury room.]

In responding to the motion, a Huie Fernambucq associate conceded that he had entered the jury room. However he didn't think there was any problem with it, noting that when he did, the verdict had already been returned and the jury dismissed from service.

Judge Stamp has apparently taken the matter seriously and scheduled a hearing to get to the bottom of *Jury-Note-Gate*. While the order is not in the file, Stamp apparently gave an oral order from the bench directing Ford to pay plaintiff's costs associated with responding to the *Jury-Note-Gate*. Shatz's motion for a new trial remains pending.

## AGE DISCRIMINATION

*Wisconsin Eastern District - Milwaukee*

### A manufacturer blamed a lay-off on a slump in orders – the plaintiff thought it was age discrimination

**Caption:** *Lyons v. Hader-Seitz*, 2:03-645

**Plaintiff:** J. Kenyatta Riley, *Riley Law Offices*, Milwaukee, WI

**Defense:** Thomas W. Scrivner and Elizabeth M. Drew, *Michael Best & Friedrich*, Milwaukee, WI

**Verdict:** Defense verdict on liability

**Judge:** Aaron E. Goodstein

**Date:** August 25, 2005  
*See the complete November 2005 Issue for all the details.*

## AIRPORT NEGLIGENCE

*Wyoming District - Cheyenne*

### A helicopter crash resulting in both personal injury and property damage, was blamed on defective fuel that contained too much water

**Caption:** *Rhoads v. Laramie Regional Airport*, 2:04-324

**Plaintiff:** William White, *Byrnie Kiely & White*, Denver, CO and Ryan J. Schwartz, *Hathaway & Kunz*, Cheyenne, WY

**Defense:** Kermit C. Brown and Matthew F.G. Castano, *Brown & Hiser*, Laramie, WY and Peter T. Kirchen, *Kern & Wooley*, Los Angeles, CA

**Verdict:** Defense verdict on liability

**Judge:** William F. Downes

**Date:** September 23, 2005

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