# Driver discriminated against due to perceived disability: suit

**Type:** Verdict-Plaintiff

**Amount:** $6,851,743

**State:** Washington

**Venue:** Federal

**Court:** U.S. District Court, Western District, Seattle, WA

**Injury Type(s):**
- *mental/psychological* - anxiety; emotional distress

**Case Type:**
- *Civil Rights* - ADA
- *Employment* - Retaliation; Constructive Discharge; Disability Discrimination
- *Discrimination* - Perceived Disability

**Case Name:** David Goldstine v. FedEx Freight, Inc., No. 2:18-cv-01164-MJP

**Date:** November 16, 2020

**Plaintiff(s):**
- David Goldstine, (Male, 54 Years)

**Plaintiff Attorney(s):**
- Ada K. Wong; AKW Law, P.C.; Mountlake Terrace WA for David Goldstine
- Jordan T. Wada; AKW Law, P.C.; Mountlake Terrace WA for David Goldstine
- Beth A. Bloom; Bloom Law PLLC; Seattle WA for David Goldstine

**Plaintiff Expert (s):**
- Christina P. Tapia Ph.D.; Economics; Seattle, WA called by: Ada K. Wong, Jordan T. Wada, Beth A. Bloom

**Defendant(s):**
- FedEx Freight, Inc.

**Defense Attorney(s):**
- Medora A. Marisseau; Karr Tuttle Campbell; Seattle, WA for FedEx Freight, Inc.
- Donald H. Snook; FedEx Freight, Inc.; Memphis, TN for FedEx Freight, Inc.

**Facts:**

In August 2017, plaintiff David Goldstine, 54, quit his job as a delivery driver for FedEx Freight Inc., in Everett. Goldstine claimed that he endured disability discrimination to an extent that forced his resignation.

Goldstine sued FedEx. Goldstine alleged violations under the Americans with Disabilities Act and the Washington State Law Against Discrimination.

In 2015, FedEx had hired Goldstine as a road driver, in which he drove truck tractors pulling one or more semi-trailers. On April 6, 2017, while preparing to make a trip for FedEx, Goldstine inspected his trailer and discovered that the door was damaged in such a way that prevented the door from being closed. Goldstine claimed that he did not attempt to climb into the trailer, because of safety concerns and because he has limited range of motion in his right knee resulting from a past injury.

According to Goldstine, seizing on its belief that he was disabled, FedEx disqualified him from driving and wrongly asserted that federal certification standards justified this action. Goldstine voiced concerns that this was discrimination. He subsequently underwent another medical examination and received a new one-year medical certification, but he claimed that FedEx still refused to return him to work. He maintained that, because of his perceived disability, FedEx then left him on unpaid, involuntary leave for more than three months, refused to accept his valid medical certification and took no steps to find him any other work. Goldstine quit his job in August 2017, when he found other work.

Goldstine's counsel argued that FedEx's decision to disqualify Goldstine from driving based on his disability, its refusal to return him to work after he received a new valid medical certification and after he voiced concerns about discrimination, was based on illegal prejudice and stereotypes about people with disabilities.

The defense contended that Goldstine had not disclosed his limited knee motion at his earlier examination to be certified and that Goldstine believed the request to be recertified after the trailer-door incident was discriminatory on its face. According to the defense, a later examination of Goldstine's knee showed full range of motion, but Goldstine refused to return to work even after he was medically cleared to do so. The defense further argued that, in addressing Goldstine's circumstances, FedEx Freight did nothing more than comply with federally mandated procedures applicable to all of its drivers.

**Injury:**

Goldstine claimed that he was discriminated and retaliated against based on a perceived disability, resulting in his constructive discharge.

In January 2018, Goldstine accepted another trucking job with a different company. According to Goldstine, the job paid less than his FedEx job and did not offer the quality benefits that he had enjoyed at FedEx.

In September 2019, Goldstine was diagnosed with kidney cancer. Per Goldstine's counsel, Goldstine had no health insurance and could not afford surgery to remove the tumor, creating risk that his cancer would spread and shorten his life.

Goldstine testified about the varying emotions he felt, which consisted of betrayal, self-doubt, anxiety, humiliation, loss of trust in others and undermined dignity. He also testified about the fear and frustration that he experienced with having cancer and the inability undergo proper treatment, due to having no health insurance.

Goldstine sought to recover $129,278 in past lost wages and $477,456 in future lost wages, in addition to damages for emotional distress.

The defense maintained that Goldstine failed to mitigate his damages.

**Result:**

The jury found that FedEx violated the Washington State Law Against Discrimination and the Americans with Disabilities Act, and acted with malice or reckless indifference to Goldstine's rights against discrimination under the Americans with Disabilities Act. The jury determined that Goldstine's damages totaled $7,151,743. This was reduced by $300,000, which is the amount the jury found that Goldstine failed to mitigate his damages, for a net award of $6,851,743.

$5000000 Personal Injury: Punitive Exemplary Damages

$129278 Personal Injury: past economic loss

$1750000 Personal Injury: emotional harm

$272465 Personal Injury: future economic loss

$272465 Wrongful Death:

$272465 Wrongful Death:

## Trial Information:

| | |
|---|---|
| **Judge:** | Marsha J. Pechman |
| **Demand:** | $2,000,000 |
| **Offer:** | None |
| **Trial Length:** | 9 days |
| **Trial Deliberations:** | 2 days |
| **Editor's Comment:** | This report is based on information that was provided by plaintiff's counsel. Defense counsel did not respond to the reporter's phone calls. |
| **Writer** | Aaron Jenkins |

# Store supervisor claimed grocery chain engaged in retaliation

**Type:** Verdict-Plaintiff

**Amount:** $12,625,000

**State:** Washington

**Venue:** Federal

**Court:** U.S. District Court, Western District, Seattle, WA

**Case Type:**
- *Employment* - Retaliation; Gender Discrimination

**Case Name:** Kimberly Ann Johnson v. Albertsons, LLC, No. 2:18cv1678

**Date:** March 06, 2020

**Plaintiff(s):**
- Kimberly Johnson (Female, 53 Years)

**Plaintiff Attorney(s):**
- Jeffrey L. Needle; Law Office of Jeffrey L. Needle; Seattle WA for Kimberly Johnson
- Susan B. Mindenbergs; Law Office of Susan B. Mindenbergs; Seattle WA for Kimberly Johnson

**Defendant(s):**
- Albertsons, L.L.C.

**Defense Attorney(s):**
- David G. Hosenpud; Lane Powell PC; Portland, OR for Albertsons, L.L.C.
- Sean D. Jackson; Lane Powell PC; Seattle, WA for Albertsons, L.L.C.

**Facts:**

In April 2018, plaintiff Kimberley Johnson, 53, a store supervisor, was terminated from her position as a district manager for Albertsons, L.L.C., a grocery store chain, which cited poor performance as the reason for firing.

In 2016, Albertsons had merged with Safeway, another grocery store company, and the merged company operated under the Albertsons name. Johnson, who had worked for Albertsons for more than 30 years, remained in her capacity as a district manager for 20

stores throughout North Seattle and Everett. After the merger, Johnson and other former Albertsons managers reported to a new Safeway manager, under whom Johnson claimed that only five out of the 14 managers were women. Johnson further claimed that several of those women were fired or demoted within a year of the company merger. Between 2016 and the date of her termination, Johnson submitted internal emails and verbal complaints complaining of gender-based discrimination on the part of the manager to whom she reported. After the first emailed complaint in 2017, the stores that Johnson was responsible for received greatly increased revenue targets. Johnson's stores were unable to reach the targets and Johnson was placed on a probationary performance-improvement plan several months prior to her firing.

Johnson sued Albertsons. The lawsuit alleged that Albertsons had discriminated against Johnson based on her gender and had engaged in retaliatory action against her for her internal complaints.

Johnson testified that the stores she was in charge of had historically been poor performers and were not in good condition. She believed that the sales targets those stores had been assigned were unrealistic, unattainable and the result of retaliatory action against her for complaining about discrimination from her superiors. She further testified that her managers were Safeway employees prior to the merger and had wanted to find reason to fire her for her complaints.

Plaintiff's counsel contended that Albertsons set unrealistic targets and manipulated the sales data related to Johnson's stores to create reasons to terminate Johnson's employment. They argued that the entire division in which Johnson's stores were located missed their revenue targets by large margins, yet Johnson was the only employee at her tier within the company that was fired. They also contended that Albertsons' employees had discriminated against Johnson because she was a woman and their actions against her were retaliation for her complaints about her managers. They further argued that records showed that both of Johnson's managers had been internally counseled on their demeanor and behavior at the workplace.

Albertsons executives testified that they had artificially manipulated the revenue data and the numbers relating to Johnson's region.

A former Albertsons employee testified that the data manipulation had cost Johnson the equivalent of two whole employees between all her stores and that Johnson had been terminated based on that manipulation.

The defense contended that Albertsons had legitimate business reasons to fire Johnson. They argued that their internal revenue metrics showed that Johnson had not been good at her job and that her termination was in no way influenced by gender discrimination or retaliation. They also argued that the person who had made the decision to fire Johnson had not known that Johnson had complained. They further contended that Albertsons operated differently after its merger with Safeway and Johnson had not wanted to adapt to

the changes.

**Injury:** Johnson sought compensation for past and future lost wages and economic damages, noneconomic and emotional damages, and punitive damages.

The defense contended that they had not discriminated or retaliated against Johnson and thus were not liable for any of her damages. They argued that they made correct and proper decisions as a business in firing Johnson and therefore punitive damages should not be considered by the court.

**Result:** The jury found Albertsons liable for retaliating against Johnson and not liable for gender discrimination. It awarded $12,625,000.

**Kimberly Johnson**

$10,000,000 Personal Injury: Punitive Exemplary Damages

$375,000 Personal Injury: Past Lost Earnings Capability

$1,500,000 Personal Injury: FutureLostEarningsCapability

$750,000 Personal Injury: noneconomic damages

## Trial Information:

**Judge:** Richard A. Jones

**Trial Length:** 2 weeks

**Trial Deliberations:** 0

**Editor's Comment:** This report is based on information that was provided by plaintiff's counsel. Additional information was gleaned from an article that was published by the Federal Jury Verdict Reporter. Defense counsel did not respond to the reporter's phone calls.

**Writer** Erik Halberg

# Tractor driver alleged her report of harassment led to demotion

**Type:** Settlement

**Amount:** $95,000

**State:** Washington

**Venue:** Federal

**Court:** U.S. District Court for the Eastern District, WA

**Case Type:**
- *Civil Rights* - Title VII; Civil Rights Act of 1964
- *Employment* - Retaliation; Sexual Harassment; Workplace Harassment

**Case Name:** Equal Employment Opportunity Commission v. Stemilt Growers LLC and Stemilt Ag Services LLC, No. 2:17-cv-00210-TOR

**Date:** April 03, 2018

**Plaintiff(s):**
- Heidi Corona (Female, 30 Years)
- Equal Employment Opportunity Commission

**Plaintiff Attorney(s):**
- Carmen Flores; Equal Employment Opportunity Commission; Seattle WA for Equal Employment Opportunity Commission
- Blanca E. Rodriguez; Northwest Justice Project; Yakima WA for Heidi Corona
- Roberta L. Steele; Equal Employment Opportunity Commission; San Francisco CA for Equal Employment Opportunity Commission
- Alyson D. Gnam; Northwest Justice Project; Wenatchee WA for Heidi Corona

**Defendant(s):**
- Stemilt Growers LLC
- Stemilt Ag Services LLC

**Defense Attorney(s):**
- Michael A. Griffin; Jackson Lewis P.C.; Seattle, WA for Stemilt Growers LLC, Stemilt Ag Services LLC
- Sherry L. Talton; Jackson Lewis P.C.; Seattle, WA for Stemilt Growers LLC, Stemilt Ag Services LLC

**Facts:**

In October 2014, plaintiff-intervenor Heidi Corona, in her mid-30s, was reassigned to a sorting position in a warehouse for Stemilt Growers, LLC. She had worked for the company, which is the country's largest grower of organic tree fruit, as a tractor driver for more than three years in Quincy. She then transferred to the company's Wenatchee orchard as a tractor driver. She was the only female at the orchard in that position.

On Oct. 11, 2014, two days after Corona started working at the Wenatchee orchard under the direct supervision of the tractor crew supervisor, the supervisor allegedly began to subject her to offensive conduct. According to the Equal Employment Opportunity Commission, this included directing Corona to get in his truck and driving her to remote, isolated areas of the orchard, including an area where the supervisor told her people have sex; making comments about being a man with sexual needs; propositioning Corona for sex; offering Corona money in exchange for sex; attempting to kiss Corona; and making other lewd comments to her. Corona rebuffed the supervisor's advances.

According to EEOC, following the incidents, the supervisor assigned Corona to less desirable tasks unrelated to her duties as a tractor driver, such as picking up trash, and excluded her from the morning meetings with the other tractor drivers.

Corona complained to Stemilt's human resources manager and regional manager about the supervisor's alleged misconduct. The EEOC asserted that they accused Corona of sexually harassing the tractor crew supervisor. Corona was then reassigned from her position as a tractor driver to work at a warehouse as a sorter with a lower rate of pay. Corona left the company in March 2015.

The EEOC, acting in Corona's behalf, sued Stemilt Growers and its wholly owned subsidiary, Stemilt Ag Services LLC, alleging violations of Title VII of the Civil Rights of 1964 Act by failing to prevent and remedy sexual harassment and by retaliating against an employee who reported harassment.

Stemilt maintained that no such violations had occurred during Corona's tenure at the company.

**Injury:**

The EEOC sought to recover back pay and unspecified amounts in compensatory and punitive damages.

The EEOC further sought to have Stemilt institute anti-discrimination policies and provide training on employee rights under Title VII.

**Result:**

The parties settled for $95,000, prior to trial. Under a three-year consent decree, Stemilt will provide an anti-discrimination policy and annual training to all Stemilt Growers management and staff. The company agreed to institute complaint-handling procedures and to hold management and supervisors accountable for how they respond to these matters.

## Trial Information:

| | |
|---|---|
| **Editor's Comment:** | This report is based on information that was provided by the Equal Employment Opportunity Commission. Counsel for plaintiff-intervenor, Stemilt Growers LLC and Stemilt Ag Services LLC did not respond to the reporter's phone calls. |
| **Writer** | Aaron Jenkins |

# Boat salesman claimed he faced sexual threats at work

**Type:** Verdict-Plaintiff

**Amount:** $800,000

**State:** Washington

**Venue:** Federal

**Court:** U.S. District Court, Western District, Tacoma, WA

**Injury Type(s):**
- *mental/psychological* - anxiety; emotional distress

**Case Type:**
- *Civil Rights* - Title VII; Civil Rights Act of 1964
- *Employment* - Retaliation; Sexual Harassment; Workplace Harassment; Religious Discrimination
- *Discrimination* - Religion

**Case Name:** Kathryn A. Ellis, Chapter 7 Bankruptcy Trustree, for the Estate of Gregory Corliss v. Larson Motors Inc. d/b/a Larson Power Sports, Robert Larson Sr., Jennifer Larson, and Edwin Devi, No. 3:16-cv-05354-RBL

**Date:** March 08, 2018

**Plaintiff(s):**
- Gregory Corliss (Male, 50 Years)
- Kathryn A. Ellis

**Plaintiff Attorney(s):**
- Beverly G. Grant; Beverly Grant Law Firm, P.S.; University Place WA for Kathryn A. Ellis
- Elizabeth G. Lunde; Beverly Grant Law Firm, P.S.; University Place WA for Kathryn A. Ellis

**Defendant(s):**
- Edwin Devi
- Jennifer Larson
- Robert Larson Sr.
- Larson Motors Inc.

**Defense Attorney(s):**

- Gregory A. Hendershott; Davis Wright Tremaine LLP; Bellevue, WA for Larson Motors Inc., Robert Larson Sr., Jennifer Larson, Edwin Devi
- Matthew R. Jedreski; Davis Wright Tremaine LLP; Seattle, WA for Larson Motors Inc., Robert Larson Sr., Jennifer Larson, Edwin Devi

**Insurers:**

- Zurich North America

**Facts:**

On June 26, 2013, plaintiff Gregory Corliss, in his early 50s, was terminated from his job as a salesperson at a boat dealership owned by Larson Motors Inc., in Tacoma.

Corliss had worked at the dealership since the previous April. He asserted that, during his tenure, he was subjected to sexual harassment, religious discrimination and ultimately retaliation, which led to his termination.

According to Corliss, during his employee orientation, supervisor Edwin Devi showed him a scene from the 1973 film "Deliverance," in which one of the characters is sodomized. Corliss claimed that Devi told him the same would happen to him if he fell short in his selling boats. Devi allegedly repeatedly told Corliss to perform oral sex on him and repeatedly used a racial epithet, even though Corliss is white.

Corliss, a member of The Church of Christ of Latter-day Saints, had moved to Washington from Utah, and was in the midst of a divorce when he worked at Larson Motors. Corliss asserted that Devi teased him about being a polygamist and asked him how many wives he was divorcing, a reference to the Mormon Church's former practice of polygamy.

According to Corliss, Larson Motors perpetuated a frat-like work environment, wherein workers made crude jokes and played pranks on one another, including a game in which male workers ran around hitting one another in the crotch. Corliss asserted that he was struck in the genitals on one occasion.

On June 23, in response to Larson Motors' alleged misconduct, Corliss filed a complaint with the Equal Employment Opportunity Commission. He was fired three days later.

Corliss later filed for bankruptcy, and a trustee was appointed, who sued Larson Motors, Devi and company-owners Robert Larson Sr. and Jennifer Larson, alleging that Corliss was sexually harassed, religiously discriminated against and retaliated against in violation of Title VII of the Civil Rights of 1964 Act and the Washington State Law Against Discrimination.

Corliss recounted the alleged sexual harassment and religious discrimination he was subjected to during his brief tenure at Larson. Corliss' counsel argued that the defendants perpetuated a work environment of sexual innuendo, sexual harassment, religious discrimination and general debauchery.

Corliss' counsel cited the testimonies of former co-workers, who spoke about the frat-like atmosphere at the boat dealership. Counsel also noted that Robert Larson Jr. had admitted in testimony that he believed there was nothing wrong with the male employees hitting one another's crotches.

The defense counsel denied the allegations, and argued that Corliss had told different versions of his story throughout the litigation. According to the defense, Corliss himself had a foul mouth, a history of criminal harassment and he had never complained about the work environment.

Corliss had been terminated for performance reasons after multiple written warnings, the defense asserted.

According to the defense, the day before Corliss' termination, a customer submitted a written complaint that Corliss had been harassing him by text message. Corliss had also emailed the customer about a boat deal: "It is black and white, I'm sorry you don't understand.... You're the one who isn't going boating, I'll be boating tonight."

**Injury:** Corliss testified that he experienced anxiety and pressure to do well in his sales job, because he was going through a divorce and facing foreclosure of his house. He sought compensatory and punitive damages.

**Result:** The jury found that Corliss was subjected to a sexually hostile work environment. Jurors determined that he was not subjected to hostile work environment based on his religion and that he was not discriminated against based on his religion. The jury determined that Corliss was retaliated against for his filing of an EEOC complaint, but was not retaliated against for filing a workers' compensation claim. Corliss was determined to receive $800,000.

**Gregory Corliss**

$300,000 Personal Injury: Punitive Exemplary Damages

$500,000 Personal Injury: compensatory damages

## Trial Information:

**Judge:** Ronald B. Leighton

**Trial Length:** 8 days

**Editor's Comment:** This report is based on information that was provided by plaintiffs' and defense counsel.

**Writer** Aaron Jenkins

# Black mechanic claimed he had no choice but to quit

**Type:** Settlement

**Amount:** $160,000

**State:** Washington

**Venue:** Federal

**Court:** U.S. District Court, Western District, Seattle, WA

**Case Type:**
- *Discrimination* - Race
- *Civil Rights* - Title VII; Civil Rights Act of 1964
- *Employment* - Race Discrimination; Constructive Discharge

**Case Name:** Equal Employment Opportunity Commission v. Taylor Shellfish Co. Inc., No. 2:16-cv-01517-RAJ

**Date:** July 28, 2017

**Plaintiff(s):**
- Equal Employment Opportunity Commission

**Plaintiff Attorney(s):**
- John F. Stanley; Equal Employment Opportunity Commission; Seattle WA for Equal Employment Opportunity Commission
- Roberta Steele; Equal Employment Opportunity Commission; San Francisco CA for Equal Employment Opportunity Commission
- Teri L. Healy; Equal Employment Opportunity Commission; Seattle WA for Equal Employment Opportunity Commission

**Defendant(s):**
- Taylor Shellfish Co. Inc.

**Defense Attorney(s):**
- Stephanie L. Bloomfield; Gordon Thomas Honeywell, LLP; Tacoma, WA for Taylor Shellfish Co. Inc.

**Facts:**

On Feb. 24, 2014, claimant Jeremy Daniels, a mechanic at Taylor Shellfish, alleged that he was constructively discharged from his job in Bow. Daniels, who is black, had worked as a mechanic since July 2013. From his first week on the job, he faced demeaning comments and stereotypes about his race and was regularly called variations of "n****r" as well as "spook" and "boy," he claimed. His direct supervisor allegedly commented that his father used to run "your kind" out of town. When Daniels reported this behavior to management, the supervisor allegedly retaliated against him by assigning him less desirable jobs, publicly screaming profanities at him and writing him up for insubordination. Despite being notified of incidents, management failed to take any action and simply told Daniels to just get thicker skin and "put his head down and do what he was told," so that he felt he had no choice but to quit in order to escape the harassment, he claimed.

The Equal Employment Opportunity Commission sued Taylor Shellfish, alleging that it violated Title VII of the Civil Rights Act of 1964.

Taylor Shellfish maintained that Daniels never complained, and in fact it was Daniel's co-worker who reported the concerns and management took action and believed the problem had been addressed. The manager followed up with the co-worker involved, and he did not express any ongoing concerns.

According to Taylor Shellfish, Daniels was reprimanded some months later for disobeying instructions and operating a decommissioned forklift that he got stuck, and was standing on the roof of the lift creating a safety risk. According to Taylor Shellfish, when counseled about this conduct, Daniels decided to quit and asserted discrimination claims that he never raised during his employment. When management asked Daniels to remain employed and allow Taylor Shellfish to investigate and address his concerns, the employee declined, the company asserted.

**Injury:**

The EEOC sought to recover back pay and unspecified amounts in compensatory and punitive damages. The EEOC further sought to have Taylor Shellfish institute anti-discrimination policies and provide training on employee rights under Title VII.

Taylor Shellfish maintained that it had already instituted anti-discrimination policies and provided training to every employee and manager before the EEOC filed suit.

**Result:**

The parties settled for $160,000, after some initial discovery. Under a three-year consent decree, Taylor Shellfish agreed to implement new policies, conduct extensive training for employees and management, post an anti-discrimination notice at the workplace, and report compliance to the EEOC.

## Trial Information:

**Editor's Comment:** This report is based on information that was provided by the Equal Employment Opportunity Commission and defense counsel.

**Writer** Aaron Jenkins

# Engineer: Company's termination of me violated federal energy law

**Type:** Settlement

**Amount:** $4,100,000

**Actual Award:** $4,100,000

**State:** Washington

**Venue:** Federal

**Court:** U.S. District Court for the Eastern District, WA

**Injury Type(s):**
- *mental/psychological* - depression; emotional distress

**Case Type:**
- *Employment* - Retaliation; Whistleblower; Wrongful Termination

**Case Name:** Walter L. Tamosaitis, Ph.D. and Sandra B. Tamosaitis v. URS Inc., a Delaware corporation; URS Energy and Construction Inc., an Ohio corporation; U.S. Department of Energy; and URS Corp., No. 2:11-cv-05157-LRS

**Date:** August 12, 2015

**Plaintiff(s):**
- Sandra B. Tamosaitis (Female)
- Walter L. Tamosaitis, Ph.D. (Male, 60 Years)

**Plaintiff Attorney(s):**
- John P. Sheridan; Sheridan Law Firm, P.S.; Seattle WA for Sandra B. Tamosaitis, Walter L. Tamosaitis, Ph.D.

**Plaintiff Expert (s):**
- Paul A. Torelli Ph.D.; Economics; Seattle, WA called by: John P. Sheridan

**Defendant(s):**
- URS Inc.
- URS Corp.
- U.S. Department of Energy
- URS Energy and Construction Inc.

**Defense Attorney(s):**

- None reported for U.S. Department of Energy
- Matthew W. Daley; Witherspoon Kelley Davenport & Toole; Spokane, WA for URS Inc., URS Energy and Construction Inc., URS Corp.
- Timothy M. Lawlor; Witherspoon Kelley Davenport & Toole; Spokane, WA for URS Inc., URS Energy and Construction Inc., URS Corp.
- Matthew A. Mensik; Witherspoon Kelley Davenport & Toole; Spokane, WA for URS Inc., URS Energy and Construction Inc., URS Corp.

**Facts:**

In 2010, plaintiff Walter Tamosaitis, in his 60s, worked as lead engineer at the Hanford Waste Treatment Plant in Benton County.

The plant's purpose is to turn the toxic and radioactive sludge stored in the more than 100 tanks at Hanford, into glass rods, which can be safely stored. Tamosaitis and his research team, who were employed by URS Inc., were charged with trying to figure out how to keep the sludge mixed so it could be pumped into the plaint's processors, which were under construction.

URS and a contractor, both of whom were contracted by the U.S. Department of Energy (DOE), were reportedly to receive and split a $6 million bonus if the mixing issue was resolved by the end of July 2010. As the deadline approached, Tamosaitis reportedly opposed the contractor's claims that mixing issues regarding the sludge had been resolved. Within a few days after voicing his opposition, he was reportedly removed from his management position at Hanford, escorted off the property, and assigned to a basement office at URS, performing no meaningful work for 15 months. He was reportedly transferred to an above-ground office after testifying before Congress, but still he was reportedly given no meaningful work. In 2013, he was laid off due to "lack of work." Tamosaitis worked for URS of San Francisco for 44 years.

Tamosaitis sued URS and the DOE on whistleblower claims, retaliation, and wrongful termination under the U.S. Energy Reorganization Act (ERA).

The defense maintained that Tamosaitis was removed from the management position not due to any retaliatory conduct, but because his job was completed and he was needed to work in a different capacity.

**Injury:**

Tamosaitis sought to recover about $3.4 million in future, lost earnings. His expert in economics based the amount on Tamosaitis' future salaries (which included a promotion) had he not been terminated, and earnings from a consulting practice Tamosaitis had planned to open upon retirement.

Tamosaitis, who had not been able to find further employment, claimed that he experienced depression. He sought damages for past and future pain and suffering, and his wife sought damages for her claim for loss of consortium.

The defense argued that Tamosaitis' projected earnings loss was speculative.

**Result:**

A year prior to trial, Tamosaitis and URS settled for $4.1 million.

## Trial Information:

| | |
|---|---|
| **Judge:** | Lonny R. Suko |
| **Editor's Comment:** | This report is based on court documents and on information that was provided by plaintiffs' counsel. Defense counsel did not respond to the reporter's phone calls. The U.S. Department of Energy was not asked to contribute. |
| **Writer** | Aaron Jenkins |

# Conductor reported several signal-related safety concerns

**Type:** Verdict-Plaintiff

**Amount:** $1,250,000

**State:** Washington

**Venue:** Federal

**Court:** U.S. District Court, Western District, Tacoma, WA

**Injury Type(s):**
- *mental/psychological* - emotional distress

**Case Type:**
- *Employment* - Retaliation; Whistleblower; Workplace Harassment; Wrongful Termination

**Case Name:** Michael Elliott v. BNSF Railway Co., No. 3:14-cv-05054-RBL

**Date:** June 30, 2015

**Plaintiff(s):**
- Michael Elliott (Male, 50 Years)

**Plaintiff Attorney(s):**
- James Kelly Vucinovich; Rossi Vucinovich PC; Seattle WA for Michael Elliott
- Roy T.J. Stegena; Rossi Vucinovich PC; Seattle WA for Michael Elliott
- Sara Amies; Teller & Associates; Seattle WA for Michael Elliott
- Stephen A. Teller; Teller & Associates; Seattle WA for Michael Elliott

**Plaintiff Expert (s):**
- Jeffrey Opp; Economics; Castle Rock, CO called by: James Kelly Vucinovich, Roy T.J. Stegena, Sara Amies, Stephen A. Teller

**Defendant(s):**
- BNSF Railway Co.

**Defense Attorney(s):**

- Jennifer L. Willingham; BNSF Railway Co.; Fort Worth, TX for BNSF Railway Co.
- Kristin Beneski; Lane Powell PC; Seattle, WA for BNSF Railway Co.
- Tim D. Wackerbarth; Lane Powell PC; Seattle, WA for BNSF Railway Co.
- Wayne L. Robbins Jr.; BNSF Railway Co.; Fort Worth, TX for BNSF Railway Co.

**Facts:**

In 2010, plaintiff Michael Elliott, 50s, worked as an engineer/conductor for BNSF Railway Co., where he worked since 1995.

Elliot claimed that he reported a number of potential signal-related safety concerns to BNSF over the course of several months during 2010; specifically, overgrown vegetation blocking the view of signal aspects and signal-system malfunctions.

On Jan. 14, 2011, allegedly after unsatisfactory responses by BNSF management to his safety complaints, Elliott reported his safety concerns to the Federal Railroad Administration. The safety concerns involved signal systems, signal visibility (vegetation), and train crew/dispatcher communications.

The administration reportedly initiated focus inspections in January and February 2011. As a result of its investigation, the administration found 357 track and signal system defects by BNSF. The administration also cited BNSF for one violation, which resulted in a $1,000 monetary fine.

Elliott alleged that, on March 3, 2011, his immediate supervisor staged and provoked an altercation with him after he was off duty for the day. As Elliott attempted to leave work, his manager followed him outside into the parking lot and jumped onto the hood of his car as Elliott was exiting the parking lot. The manager accused him of assault and pressed charges. (Elliott was acquitted of the charges in November 2011.)

On March 10, BNSF charged Elliott for allegedly failing to report the off-the-job occurrence relating to his licensure as a locomotive engineer. Elliott was terminated on April 25. He appealed the terminations to an independent, federal government arbitration panel, and his claims were denied as the termination was upheld.

Elliott sued BNSF under the Federal Railroad Safety Act for whistleblower retaliation. Elliott's counsel maintained that BNSF's false charges were pretext for his notifying the administration about the various safety issues BSNF failed to address.

According to BNSF, it charged Elliott with three rules violations: violation of the workplace violence policy for striking his supervisor with a car and then striking him physically; conduct giving rise a felony conviction; and failing to report that felony conviction. Elliott was terminated for violating all three rules.

BNSF maintained that its termination of Elliott was based solely on BNSF officials' determinations about his rules violations and that his so-called safety complaints were not even considered in the termination decisions. BNSF asserted that, even if the decision-makers had known about and considered Elliott's safety complaints, he would have been fired anyway.

According to BNSF, as a result of its investigation, the FRA found "defects" in the signal system by BNSF, only one of which led to a violation. That violation resulted in the minimum fine, which was not assessed until 2012. BNSF responded to the safety complaints as they came in, but BNSF's responses did not satisfy Elliott, maintained the company.

**Injury:** Elliott reportedly maintained part-time employment with his union. He sought $839,000 in lost earnings.

Elliott testified about the embarrassment and humiliation in losing his job the way he did and the stress in finding a way to earn a living. He sought to recover $250,000 to $300,000 in compensatory damages and $250,000 (the maximum amount allowed under the statute) in punitive damages.

**Result:** The jury found for Elliott on his retaliation claim under the Federal Rail Safety Act and he was awarded $1.25 million.

**Michael Elliott**

$250,000 Personal Injury: Punitive Exemplary Damages

$1,000,000 Personal Injury: compensatory damages

## Trial Information:

**Judge:** Ronald B. Leighton

**Demand:** $1.25 million

**Offer:** $40,000

**Trial Length:** 6 days

**Trial Deliberations:** 4 hours

**Jury Vote:** 8-0

**Jury Composition:** 3 male, 5 female

**Editor's Comment:** This report is based on court documents and on information that was provided by plaintiff's counsel and BNSF Railway Co.

**Writer** Aaron Jenkins

# Medical center retaliated against billing manager, plaintiff alleged

**Type:** Verdict-Plaintiff

**Amount:** $1,384,286

**State:** Washington

**Venue:** Federal

**Court:** U.S. District Court, Western District, Tacoma, WA

**Injury Type(s):**
- *mental/psychological* - anxiety; depression; emotional distress

**Case Type:**
- *Employment* - Retaliation; Whistleblower; Wrongful Termination
- *Government* - False Claims Act

**Case Name:** Lori Cook v. Harrison Medical Center, a Washington non-profit corporation, No. 3:13-cv-05986-BHS

**Date:** April 03, 2015

**Plaintiff(s):**
- Lori Cook (Female, 50 Years)

**Plaintiff Attorney(s):**
- Robert H. Fulton II; Fulton Law PLLC; Seattle WA for Lori Cook

**Plaintiff Expert (s):**
- Paul Torelli Ph.D.; Economics; Seattle, WA called by: Robert H. Fulton II

**Defendant(s):**
- Harrison Medical Center

**Defense Attorney(s):**
- Jeffrey A. James; Sebris Busto James; Bellevue, WA for Harrison Medical Center
- Megan E. Harry; Polsinelli PC; Denver, CO for Harrison Medical Center
- Sean R. Gallagher; Polsinelli PC; Denver, CO for Harrison Medical Center

**Facts:**

In October and November 2012, plaintiff Lori Cook, a billing manager in her mid-50s, for Harrison Medical Center, of Bremerton, began investigating irregularities in the company's billing. Cook had begun working at Harrison in April 2011.

The company contracted with a software company to prepare its Medicare billings. Cook claimed that the irregularities could have had Medicare fraud implications. One of the irregularities Cook reportedly found involved two overpayment reports.

On Nov. 7, after having reported her findings to Harrison's director, Cook met with the director and a human resources representative. At the meeting, the director informed Cook that the two overpayment reports were supposed to match, but one report stated an $80,000 balance and the other report stated a $48,000 balance.

According to Cook, the director accused her of committing Medicare fraud, and the director informed her that "this was a serious problem and that [Cook] had probably committed Medicare fraud."

At the end of the meeting, the director informed Cook that an internal investigation had been initiated, and that Cook was to be placed on immediate suspension.

In March 2012, Harrison completed its investigation and terminated Cook without pay for the period of suspension from November to March.

In May 2013, Cook sent a written request for information regarding the reason for her termination. On May 9, Harrison responded to Cook's letter and stated that an external audit was conducted on Harrison's billing practices. The audit concluded that "the billing manager lacked the analytical and cross functional expertise needed by a skilled and experienced billing manager."

According to court papers, Harrison stated that, because Cook was the billing manager, Harrison concluded that Cook did "not have the necessary skill set required to adequately perform the billing manager job duties and thus terminated [Cook's] employment."

Cook sued Harrison on claims of wrongful retaliatory termination in violation of state and federal law, violations under the U.S. False Claims Act, a claim for unpaid and willfully withheld wages.

According to Cook's counsel, Cook had 37 years of billing experience at other hospitals. In July 2011, after a three-month evaluation of her job, Harrison praised Cook's work performance and rewarded her with pay raises.

Cook's counsel asserted that, with regard to Medicare fraud, no fraud was actually committed either intentionally or accidentally.

The defense maintained that Cook did not engage in protected activity, and that any perceived billing irregularities did not amount to fraud.

**Injury:** Cook, who remained unemployed at trial, claimed that she sent more than 450 resumes to potential employers, following her termination. She claimed that since Harrison's owner primarily owned all medical facilities in the state, she felt she was being blacklisted.

Cook sought to recover $820,999 to $1,043,422 in past and future lost earnings.

According to Cook, over time she developed depression and anxiety that resulted in her treating with medication. She sought damages for past and future pain and suffering.

**Result:** The jury determined that Cook engaged in protected activity and that Harrison Medical Center knew that Cook was engaged in protected activity.

According to the jurors, Harrison Medical Center suspended and/or terminated Cook because she was engaged in protected activity. She was determined to receive $1,384,286.

**Lori Cook**

$222,547 Personal Injury: Past Lost Earnings Capability

$939,192 Personal Injury: FutureLostEarningsCapability

$222,547 Personal Injury: emotional distress

## Trial Information:

**Judge:** Benjamin H. Settle

**Trial Length:** 3 days

**Editor's Comment:** This report is based on court documents and on information that was provided by plaintiff's counsel. Defense counsel did not respond to the reporter's phone calls.

**Writer** Aaron Jenkins

# Mayor defamed, wrongfully terminated HR director: plaintiff

**Type:** Verdict-Plaintiff

**Amount:** $1,035,351

**State:** Washington

**Venue:** Federal

**Court:** U.S. District Court, Western District, Seattle, WA

**Injury Type(s):**
- *mental/psychological* - emotional distress

**Case Type:**
- *Employment* - Retaliation; Whistleblower; Wrongful Termination
- *Civil Rights* - 42 USC 1983
- *Intentional Torts* - Defamation

**Case Name:** Debi Humann v. City of Edmonds, a municipal corporation; Michael Cooper, in his individual and official capacities; and David Earling, in his individual and official capacities, No. 2:13-cv-00101-MJP

**Date:** October 14, 2014

**Plaintiff(s):**
- Debi Humann (Female)

**Plaintiff Attorney(s):**
- Beth Barrett Bloom; Frank, Freed, Subit & Thomas LLP; Seattle WA for Debi Humann
- Jillian M. Cutler; Frank, Freed, Subit & Thomas LLP; Seattle WA for Debi Humann

**Plaintiff Expert (s):**
- Robert Patton Ph.D.; Economics; Bellingham, WA called by: Beth Barrett Bloom, Jillian M. Cutler

**Defendant(s):**
- David Earling
- Michael Cooper
- City of Edmonds

**Defense Attorney(s):**

- Jayne L. Freeman; Keating, Bucklin & McCormack, Inc., P.S.; Seattle, WA for City of Edmonds, David Earling
- Jeremy W. Culumber; Keating, Bucklin & McCormack, Inc., P.S.; Seattle, WA for City of Edmonds, David Earling
- John T. Kugler; Turner Kugler Law, PLLC; Seattle, WA for Michael Cooper

**Facts:**

In 2008, plaintiff Debi Humann began working for the City of Edmonds as its director of human resources.

Humann alleged that during 2010 and 2011 she raised and/or relayed concerns about the compensation, hours worked, timesheets, and vacation and sick leave of Mayor Michael Cooper's frequently-absent executive assistant. Subsequently, concerns about the mayor's assistant's compensation and hours were also raised in newsstories by media outlets. The assistant reportedly complained to Cooper about Humann's interest in her work schedule, and Cooper allegedly directed Humann to desist from monitoring the assistant, who was reportedly not wholly satisfied by his response.

In approximately August 2011, the Washington State Auditor's Office began to investigate the assistant's compensation after receiving an anonymous tip (which Humann denied submitting). Humann cooperated with the investigation and provided information to the auditor on two occasions, in September. Soon after, the mayor terminated Humann's employment. At the same time, Cooper reportedly placed the assistant on paid administrative leave.

In conjunction with the firing, Cooper issued a statement via e-mail to members of the city council and the media: "Debi Humann is no longer employed by the City. This is not a decision that came lightly but a change was needed. The city's ability to function relies on a relationship between the Mayor and staff that is based on the highest level of trust and confidentiality. That level of trust has deteriorated to a place where I no longer had confidence in her ability to do the job and to work effectively with me. In order to have the public trust the city needs a committed staff that maintains the highest level of trust with the mayor and council."

Cooper reportedly gave a similar statement to the Seattle Times: "Over time there had been a series of events that just led to a breakdown in trust, and she couldn't work effectively as part of my team."

Humann then retained counsel, filed a whistleblower complaint pursuant to state law and the policies of the city, and issued a press release about her actions. The complaint and press release referred to the assistant's hours and compensation and alleged "improper payroll practices." The city launched an investigation into Humann's complaint as required by state law.

During the investigation, the election took place, and Cooper was defeated by David Earling. Before Earling took office, the city council of Edmunds voted to eliminate funding for the human resources director position in the next year, but left the final decision about staffing to the incoming mayor. After Earling took office, he reviewed the situation and decided to temporarily reinstate Humann for the remainder of the year and then lay her off at the beginning of 2012, purportedly in deference to the city council's elimination of the position.

In her suit against the city, Cooper, and Earling (who was dismissed from the case, prior to trial), Humann asserted claims of wrongful termination, defamation, retaliation, and violations of her First Amendment rights under the U.S. Constitution.

The defense maintained Humann's termination was not based on retaliatory measures as plaintiff claimed.

**Injury:** Humann sought to recover $133,351 in back pay and $551,383 in future economic damages. Plaintiff further sought to recover unspecified amounts in damages for alleged impairment of reputation and emotional distress from defamation.

The defense asserted that Humann was not entitled to any damages and that she suffered no impairment to her reputation.

**Result:** The jury found the City of Edmonds wrongfully terminated Humann in violation of public policy on Sept. 22, 2011; it wrongfully terminated plaintiff in violation of public policy when Earling laid her off Dec. 31, 2011; and the city retaliated against Humann in violation of the First Amendment when Earling laid her off Dec. 31, 2011. Jurors further determined Cooper's public statements defamed plaintiff. Humann was determined to receive $1,035,351.

**Debi Humann**

$250,000 Personal Injury: emotional distress from defamation

$135,351 Personal Injury: back pay (Jan. 1, 2012, to present)

$400,000 Personal Injury: future economic damages

$250,000 Personal Injury: impairment of reputation

## Trial Information:

**Judge:** Marsha J. Pechman

**Trial Length:** 11 days

**Editor's Comment:** This report is based on court documents and on information that was provided by plaintiff's counsel. Defense counsel did not respond to the reporter's phone calls.

**Writer** Aaron Jenkins

# Man argued Mexican heritage behind discrimination at work

**Type:** Verdict-Mixed

**Amount:** $1,284,000

**State:** Washington

**Venue:** Federal

**Court:** U.S. District Court, Western District, Tacoma, WA

**Injury Type(s):**
- *mental/psychological* - anxiety; depression; post-traumatic stress disorder

**Case Type:**
- *Employment* - Retaliation; Workplace Harassment; Hostile Work Environment; National Origin Discrimination
- *Intentional Torts* - Conspiracy

**Case Name:** Rolando Hernandez v. Mark Tanninen and the City of Vancouver, No. 3:04-cv-05539-BHS

**Date:** April 29, 2014

**Plaintiff(s):**
- Rolando Hernandez (Male, 58 Years)

**Plaintiff Attorney(s):**
- Thomas S. Boothe; Thomas S. Boothe, Attorney at Law; Portland OR for Rolando Hernandez
- Judith A. Lonnquist; Law Offices of Judith A. Lonnquist; Seattle WA for Rolando Hernandez

**Plaintiff Expert (s):**

- Davis C. Clowers A.R.N.P.; Nurse Practitioner; Vancouver, WA called by: Thomas S. Boothe, Judith A. Lonnquist
- James Boehnlein M.D.; Psychiatry; Portland, OR called by: Thomas S. Boothe, Judith A. Lonnquist
- Penny E. Harrington; Human Resources Policies; Los Angeles, CA called by: Thomas S. Boothe, Judith A. Lonnquist
- Eugene Silberberg Ph.D.; Economics; Seattle, WA called by: Thomas S. Boothe, Judith A. Lonnquist
- Richard C. Langsen L.C.S.W.; Social Work; Clackamas, OR called by: Thomas S. Boothe, Judith A. Lonnquist

**Defendant(s):**

- Mark Tanninen
- City of Vancouver

**Defense Attorney(s):**

- Robert L. Christie; Christie Law Group PLLC; Seattle, WA for City of Vancouver, Mark Tanninen
- Ann E. Trivett; Christie Law Group PLLC; Seattle, WA for City of Vancouver, Mark Tanninen
- Thomas P. Miller; Christie Law Group PLLC; Seattle, WA for City of Vancouver, Mark Tanninen

**Defendant Expert(s):**

- David M. Corey Ph.D.; Psychology/Counseling; Portland, OR called by: for Robert L. Christie, Ann E. Trivett, Thomas P. Miller
- Michael Thorn; Automotive Maintenance & Repairs; Eugene, OR called by: for Robert L. Christie, Ann E. Trivett, Thomas P. Miller
- Stephen Grover Ph.D.; Economics; Portland, OR called by: for Robert L. Christie, Ann E. Trivett, Thomas P. Miller

**Facts:**

In June 1999, plaintiff Rolando Hernandez, 58, who is of Mexican heritage, was transferred from his position as a mechanic in the city of Vancouver's central-motor pool to a position as a mechanic of emergency vehicles in the fire shop. He had worked for the city since 1995.

Hernandez claimed that as soon as he began work in the fire shop, co-workers refused to talk to him, excluded him from activities, and otherwise gave him a cold shoulder. Additionally, he claimed that the differential treatment expanded to include work assignments, access to computers and telephones, and the degree of scrutiny. He claimed that the treatment continued for the next two years. He claimed that supervisor Mark Tanninen and a subsequent supervisor treated him differently and assigned him demeaning tasks.

According to Hernandez, a co-worker commented during his exit interview that he thought Hernandez was isolated and treated differently by the shop supervisor because Hernandez was Mexican. Hernandez claimed that he denied that it was because of his Mexican heritage until after three years in the shop, when he returned from vacation to find some of his tools vandalized. He claimed that when he complained that he now thought that the differential treatment was due to his heritage, the city retaliated by applying differential discipline and increased scrutiny.

In 2003, after Hernandez had a verbal altercation with a co-worker, the city demoted him

back to the operations center, where he was put on swing shift. In 2005, Hernandez was diagnosed with post-traumatic stress disorder; in 2007, he voluntarily left the position for a job in California.

Hernandez sued the city of Vancouver, claiming that it was liable for a hostile work environment under state and federal law and for retaliation under state law. Hernandez sued Tanninen for conspiracy, alleging that he conspired with a city official to prevent him from equal protection under the law by not cooperating with Hernandez's attorney.

Hernandez testified that in addition to the isolation and ostracism he experienced during his tenure with the city, a co-worker documented and kept notes on alleged mistakes Hernandez made. Hernandez claimed there were instances in which he was on a lunch break, and a supervisor would come in to scream at him, telling him to get back to work, before his break was over. He said that he later was told that co-workers used racial slurs when talking about Hernandez.

Hernandez's expert in human resources policies opined that the city's human resources department failed in its investigation of Hernandez's complaints. The expert said that the city, following the exit interview of the employee who discussed Hernandez's treatment, failed to connect the dots and observe the pattern of repeated harassment of Hernandez, in addition to its failure in disciplining the parties involved.

Defense counsel strenuously denied that any of the mechanics in the fire shop treated Hernandez differently because of his Mexican heritage or sabotaged his tools. They maintained that the problems in the fire shop stemmed from Hernandez's poor work performance and personality issues with others. The city further denied any racial animus by any of the other mechanics, Hernandez's supervisors, or the city officials who took part in Hernandez's discipline.

Defense counsel maintained that during his tenure with the city's fire shop, Hernandez committed multiple work errors that resulted in six written disciplinary reports.The city's expert in fire-apparatus repair discussed the seriousness of the alleged errors. Hernandez worked on various fire-emergency vehicles, including water-pump trucks. If a firefighter is responding to a fire and his water hose suddenly malfunctions, the safety repercussions would be immeasurable, concluded the expert.

The city's counsel asserted that the reason Hernandez was being reprimanded was because he was the only employee making said errors.

**Injury:**

Hernandez claimed that he began experiencing bouts of anxiety and depression during his six-month probationary period. In 2002, he began seeing a psychologist and was treated with counseling and medication. Hernandez also claimed that he experienced panic attacks, night sweats, night terrors and nightmares. He claimed that his emotional distress continued after his employment with the city; he would run into former co-workers at the grocery store, which would trigger panic attacks; this prompted him and his family to move to California, and later to Alaska, where, at the time of trial, he lived in a remote section outside of Palmer.

Hernandez's treating physicians and expert in psychiatry discussed the extent of Hernandez's post-traumatic stress disorder and attributed it to his work experience with the city. Hernandez's wife testified that he continues to experience emotional distress; there are times when she observes their bed is soaking wet and she assumes that it is spilled water, when in fact it is Hernandez's sweat. Hernandez sought to recover unspecified amounts in non-economic damages.

Hernandez's expert in economics calculated approximately $285,000 in back and front pay and loss of retirement benefits, based on a scenario wherein Hernandez remained with the city's fire shop until retirement.

The city's expert in psychology, who examined Hernandez for his fitness-for-duty exam in 2002, opined that Hernandez's anxiety and depression was "situational"; in other words, it was due to the stressors from the job itself, i.e., the intensity and the workload, and not from anything else.

The defense's expert in economics suggested that if Hernandez had remained at the fire shop for 5.67 years (a number based upon information from the U.S. Bureau of Labor Statistics and the average length of Hernandez's previous employment), his net damages would have been $32,634. If he had remained at the fire shop for eight years (when he left the operations center to move to California), his net damages would have been $56,248, concluded the expert.

**Result:**

The jury found that Hernandez was subjected to a hostile work environment and harassed because of his race and national origin, and that the city retaliated against him when he objected. Jurors found in favor of Tanninen, determining that he did not conspire with anyone to avoid participating in this litigation. The jury determined that Hernandez's damages totaled $1,284,000.

**Rolando Hernandez**

$284,000 Personal Injury: back and front pay

$1,000,000 Personal Injury: non-economic damages

## Trial Information:

| | |
|---|---|
| **Judge:** | Benjamin H. Settle |
| **Demand:** | None |
| **Offer:** | $75,000 (2006 offer of judgment) |
| **Trial Length:** | 11 days |
| **Trial Deliberations:** | 1 days |
| **Jury Vote:** | 8-0 |
| **Jury Composition:** | 6 male, 2 female |
| **Editor's Comment:** | This report is based on court documents and information that was provided by plaintiff's and defense counsel. |
| **Writer** | Aaron Jenkins |

# EEOC: Complaints of sexual harassment led to terminations

**Type:** Settlement

**Amount:** $650,000

**State:** Washington

**Venue:** Federal

**Court:** U.S. District Court for the Eastern District, WA

**Injury Type(s):**
- *mental/psychological* - emotional distress

**Case Type:**
- *Civil Rights* - Title VII
- *Employment* - Retaliation; Sexual Harassment; Constructive Discharge; Hostile Work Environment

**Case Name:** Equal Employment Opportunity Commission and Jane Doe, Magdalena Saldana, Maria Gomez, Ramiro Moran, and Leslie Silva v. National Food Corporation, No. 12-cv-00550

**Date:** May 15, 2013

**Plaintiff(s):**
- Jane Doe (Female, 30 Years)
- Maria Gomez (Female)
- Leslie Silva (Female)
- Ramiro Moran
- Magdalena Saldana (Female)
- Equal Employment Opportunity Commission

**Plaintiff Attorney(s):**

- Carmen Flores; Equal Employment Opportunity Commission; Seattle WA for Equal Employment Opportunity Commission
- William R. Tamayo; Equal Employment Opportunity Commission; San Francisco CA for Equal Employment Opportunity Commission
- Joachim Morrison; Columbia Legal Services; Wenatchee WA for Jane Doe, Magdalena Saldana, Maria Gomez, Ramiro Moran, Leslie Silva
- May R. Che; Equal Employment Opportunity Commission; Seattle WA for Equal Employment Opportunity Commission
- Jamal N. Whitehead; Equal Employment Opportunity Commission; Seattle WA for Equal Employment Opportunity Commission
- D. Ty Duhamel; Columbia Legal Services; Wenatchee WA for Jane Doe, Magdalena Saldana, Maria Gomez, Ramiro Moran, Leslie Silva
- Katrin E. Frank; McDonald Hoague & Bayless; Seattle WA for Jane Doe, Magdalena Saldana, Maria Gomez, Ramiro Moran, Leslie Silva

**Defendant(s):**

- Nnational Food Corp.

**Defense Attorney(s):**

- Michael Reiss; David, Wright & Tremaine; Seattle, WA for Nnational Food Corp.
- Sheehan Sullivan Weiss; Davis Wright Tremaine LLP; Seattle, WA for Nnational Food Corp.
- Joseph P. Hoag; Davis Wright Tremaine LLP; Seattle, WA for Nnational Food Corp.

**Facts:**

Beginning in 2003, intervening plaintiff "Jane Doe," a woman in her 30s, began working for an egg farm in Lind that was owned by National Food Corp., an Everett, Wash.-based company. According to Doe, she was subjected to a hostile work environment by the farm manager as she worked alone in a henhouse. She claimed that as a condition of her employment, the supervisor demanded sexual favors on a weekly basis, from 2003 to February 2010. She also claimed that the manager assigned her harder work, disciplined her unfairly, and eventually terminated her when she refused his sexual demands. Four other employees claimed that as a result of meetings with company management in July 2009 and February 2010 in which they complained about sexual harassment, among other things, they were fired or constructively discharged in retaliation for their complaints.

The Equal Employment Opportunity Commission, on behalf of the employees, sued National Food, alleging that the company violated Title VII of the Civil Rights Act of 1964. The employees also intervened as plaintiffs in their own names.

According to the EEOC, National Food was responsible for the hostile work environment and sexual harassment of the Doe plaintiff by the farm manager. The Doe plaintiff alleged that she was forced to endure the abuse from the manager due to having limited means to provide for her mother and daughter.

The EEOC also alleged that three of the four other intervening plaintiffs were terminated in retaliation for their complaints about the misconduct of the manager in July 2009. Constructive discharge was also alleged with regard to the fourth intervening plaintiff.

National Food denied all the allegations of wrongdoing made by the EEOC. Defense counsel admitted that there was a meeting in July 2009 between a company manager and employees, which included the intervening plaintiffs. They also admitted that issues related to the supervisor in question were discussed. However, they argued that the employees were all terminated for legitimate reasons.

**Injury:**

The plaintiffs sought compensation for past and future non-pecuniary losses resulting from the alleged unlawful treatment of them by National Food. These damages included emotional pain and suffering, loss of enjoyment of life, and humiliation. The EEOC also sought punitive damages for what it characterized as malicious and reckless conduct by the defendant.

The defense disputed the damages claimed by the EEOC.

**Result:**

The parties agreed to a four-year consent decree. The intervening plaintiffs would receive a total of $650,000, which they would split among themselves "as they see fit."The consent decree required that National Food produce and disseminate company policies in English and Spanish, including a corporate anti-harassment policy with mandatory training sessions. Also, a complaint box would be required at all company facilities, in a place accessible to employees that was not a supervisor's or manager's office. The company also agreed to set up a 1-800 hotline for employees to report instances of Title VII violations.The supervisor in question was fired, and the company agreed not to rehire him.

## Trial Information:

| | |
|---|---|
| **Judge:** | Thomas O. Rice |
| **Editor's Comment:** | This report is based on information that was provided by plaintiffs' counsel. Defense counsel did not respond to the reporter's phone calls. |
| **Writer** | Kirk Maltais |

# Asian police chief claimed firing was based on race

**Type:** Verdict-Plaintiff

**Amount:** $2,012,944

**State:** Washington

**Venue:** Federal

**Court:** U.S. District Court, Western District, Seattle, WA

**Injury Type(s):**
- *mental/psychological* - emotional distress

**Case Type:**
- *Employment* - Retaliation; Race Discrimination; Hostile Work Environment; National Origin Discrimination
- *Civil Rights* - 42 USC 1981; 42 USC 1983
- *Constitutional Law* - Due Process; Fourteenth Amendment

**Case Name:** Jeffrey Chen v. City of Medina, a public agency and Washington noncharter code city; Donna Hanson, in her official and individual capacities; Bret Jordan, in his official and individual capacities; John Does 1-3; and Jane Does, 1-3, in their official and individual capacities, No. 2:11-cv-02119-TSZ

**Date:** March 26, 2013

**Plaintiff(s):**
- Jeffrey Chen (Male, 50 Years)

**Plaintiff Attorney(s):**
- Marianne K. Jones; Jones Law Group PLLC; Bellevue WA for Jeffrey Chen
- Mona K. McPhee; Jones Law Group PLLC; Bellevue WA for Jeffrey Chen

**Plaintiff Expert (s):**
- Norman Stamper; Police Ethics; Seattle, WA called by: Marianne K. Jones, Mona K. McPhee
- Robert W. Moss Ph.D.; Economics; Seattle, WA called by: Marianne K. Jones, Mona K. McPhee
- Wilson Edward Reed; Race/Racial Discrimination; Seattle, WA called by: Marianne K. Jones, Mona K. McPhee
- Marcella Fleming Reed; Human Resources Policies; Mill Creek, WA called by: Marianne K. Jones, Mona K. McPhee

**Defendant(s):**

- Bret Jordan
- Donna Hanson
- City of Medina

**Defense Attorney(s):**

- Suzanne Kelly Michael; Michael & Alexander PLLC; Seattle, WA for City of Medina, Donna Hanson, Bret Jordan
- Stephanie R. Alexander; Michael & Alexander PLLC; Seattle, WA for City of Medina, Donna Hanson, Bret Jordan

**Defendant Expert(s):**

- John Turner; Police Practices & Procedures; Mountlake Terrace, WA called by: for Suzanne Kelly Michael, Stephanie R. Alexander
- Paula Barron; Human Resources Policies; Portland, OR called by: for Suzanne Kelly Michael, Stephanie R. Alexander
- Gerald M. Rosen Ph.D.; Psychology/Counseling; Seattle, WA called by: for Suzanne Kelly Michael, Stephanie R. Alexander

**Insurers:**

- Washington Cities Insurance Authority

**Facts:**

From June 1, 2001, to April 27, 2011, plaintiff Jeffrey Chen, 50, a Chinese-American, was employed by the Medina Police Department. He was originally hired as a captain and promoted to the rank of chief of police in February 2004. He maintained the rank until his termination.

Chen alleged that he experienced racial and national-origin discrimination by city personnel, including City Manager Donna Hanson. Due to the hostile work environment, he was forced to submit his resignation in December 2010, only to rescind it shortly thereafter. Hanson subsequently put him on administrative leave, and was formally terminated on April 27, 2011, he claimed.

According to Chen, Hanson collaborated with the investigators and branded Chen as untruthful and dishonest with the intention of disciplining and terminating him. Chen claimed that Hanson's decision against Chen was based on her personal, subjective belief about whether Chen was truthful, and that subjective belief reportedly grew out of Hanson's prejudice toward Chen's race and national origin.

Chen sued the city, Hanson and Mayor Bret Jordan, asserting state and federal claims of discrimination and charges of violation to his civil and constitutional rights pursuant to the First and Fourteenth Amendments. Jordan was dismissed by summary judgment prior to trial.

Chen claimed that throughout his tenure with the city he was repeatedly subjected to racially insensitive remarks. Chen said city employees were permitted to say "You can never trust a smiling Chinaman," and Chen was referred to as a "regular Charlie Chan." According to Chen, Hanson once allegedly said "I thought Chinese people were more patient than this"; during Thanksgiving, she reportedly asked him, "Do you people eat turkey? What I mean is, do you people celebrate Thanksgiving?"

Chen's attorney maintained that Hanson's behavior toward Chen was fueled by her discrimination. Two months after she became Chen's supervisor, Hanson started a performance evaluation that included a supposed complaint that he was never informed of,

Another incident involved Hanson denying overtime after he had worked extra hours during a storm, in which Chen stayed at his post for four consecutive days. Chen's attorney asserted that the city council had to intervene and approve Chen's request for overtime pay, he claimed.

Chen's retained expert in minority affairs testified that Hanson permitting employees to refer to Chen as a "regular Charlie Chan," and allowing them to say "You can never trust a smiling Chinaman," show her disrespect for the culture and Chen as a human being.

The defense maintained that Chen's termination was based on valid, non-discriminatory reasons. The defense cited multiple reasons that the city appropriately ended Chen's employment: the investigations done at the request of Hanson revealed that Chen reportedly lied about Hanson threatening to fire him; Chen reportedly lied to an investigator about accessing the city's email-archive system; he allegedly stole his personnel file; and Chen purchased allegedly unauthorized items, i.e., two jackets, an iPod, tennis shoes, and knives.

Chen's retained expert in police ethics said Chen, as police chief, had authority to spend the $2 million police budget. The expert stated it was pretext for the city to criticize Chen for purchasing iPods to monitor the city cameras from remote locations, jackets for uniforms, knives for emergency preparedness, and tennis shoes for participants in the American Lung Association.

The defense did not call its retained experts in police ethics and human resources to testify.

**Injury:**

Chen claimed that his reputation was destroyed and the city's actions prevented him from attaining employment. Since his termination, he has applied to over 1,300 jobs -- positions of chief of police in other municipalities to a bank security officer earning $12 per hour -- and that he has been denied each one. This has caused severe financial strain on his family (he is divorced and father of four), said Chen, so much so that he has gone on welfare for the past year after his unemployment compensation expired.

Chen's expert in police experts said that the effect of the false allegations of dishonesty, inappropriate expenditures, and theft of items (even if proven to be false) will continue to negatively impact Chen's ability to obtain employment, particularly in the field that he is trained as a police officer.

According to the expert, Chen lost his certification status, has to compete with men half his age to be employable, and regardless of whether he is able to prove the allegations the city alleged are false, there will always be the information out there and speculation. He may never work again as a result, concluded the expert.

Chen sought to recover amounts of $237,944 in back pay and $1.65 million in front pay, and unspecified amounts in non-economic damages for emotional distress, and punitive damages against Hanson.

The defense retained an expert in psychology, but chose not to call the expert at trial.

**Result:** **POST-TRIAL:** Chen was afforded the opportunity to request reinstatement to his position as police chief and forego the award for front pay. He declined to bring the motion because the city reportedly would not remove Hanson from her position as city manager. Chen was awarded post-judgment interest at the federal rate, and was denied prejudgment interest. The court reduced the award on the three federal claims in the amount of front pay, but entered judgment by stipulation of all the parties on the higher amount awarded by the jury, which was on the state law claim under the Washington Law Against Discrimination. Chen's post-trial motions for attorney fees and tax consequences are pending.

**Jeffrey Chen**

$25,000 Personal Injury: Punitive Exemplary Damages

$237,944 Personal Injury: back pay

$1,650,000 Personal Injury: front pay

$100,000 Personal Injury: emotional distress

## Trial Information:

**Judge:** Thomas S. Zilly

**Demand:** $25,000 plus six months of pay and benefits, totalling just under an amount of $100,000

**Trial Length:** 11 days

**Trial Deliberations:** 1 days

**Jury Composition:** 4 male, 4 female

**Editor's Comment:** This report is based information that was provided by plaintiff's counsel. Defense counsel did not respond to the reporter's phone calls.

**Writer** Aaron Jenkins

# CFO claimed firing due to retaliation for whistleblowing

**Type:** Settlement

**Amount:** $3,940,000

**State:** Washington

**Venue:** Federal

**Court:** U.S. District Court, Western District, Seattle, WA

**Case Type:**
- *Employment* - Whistleblower; Wrongful Termination
- *Government* - False Claims Act

**Case Name:** United States of America, ex rel. Richard J. Klein v. Omeros Corp., a Washington corporation, and Gregory Demopulos, an individual, No. 2:09-cv-01342-JCC

**Date:** November 01, 2012

**Plaintiff(s):**
- Richard J. Klein (Male)
- United States of America

**Plaintiff Attorney(s):**
- Thomas A. Lemly; Davis Wright Tremaine; Seattle WA for Richard J. Klein
- Kathryn S. Rosen; Davis Wright Tremaine; Seattle WA for Richard J. Klein
- Harry J. F. Korrell; Davis Wright Tremaine; Seattle WA for Richard J. Klein
- Minh P. Ngo; Davis Wright Tremaine; Seattle WA for Richard J. Klein
- Cassandra L. Kennan; Davis Wright Tremaine; Seattle WA for Richard J. Klein

**Defendant(s):**
- Omeros Corp.
- Gregory Demopulos

**Defense Attorney(s):**

- Aaron M. Paul; Hogan Lovells US LLP; Denver, CO for Omeros Corp., Gregory Demopulos
- William F. Cronin; Corr Cronin Michelson Baumgardner & Preece LLP; Seattle, WA for Omeros Corp., Gregory Demopulos
- Molly A. Malouf; Corr Cronin Michelson Baumgardner & Preece LLP; Seattle, WA for Omeros Corp., Gregory Demopulos
- Sarah E. Tilstra; Corr Cronin Michelson Baumgardner & Preece LLP; Seattle, WA for Omeros Corp., Gregory Demopulos
- Michael C. Theis; Hogan Lovells US LLP; Denver, CO for Omeros Corp., Gregory Demopulos

**Insurers:**

- Carolina Casualty Insurance Co.

**Facts:**

On Jan. 29, 2009, plaintiff Richard Klein was terminated as chief financial officer for Omeros Corp., a Seattle-based drug developer.

In court papers, Klein alleged that his termination resulted from his filing a whistleblower complaint to the audit committee of the Omeros board of directors. According to Klein, he reported to the committee that several scientists employed by Omeros had been instructed by senior management to submit substantial and false time-keeping records to a National Institutes of Health (NIH) grant research program, when in fact they had been working on other research projects. Klein claimed that Omeros fired him to prevent him from conducting a more extensive investigation that he requested several weeks before his termination, and as a result of his findings of false time-keeping on NIH grants, in an attempt to allegedly hide the magnitude of Omeros' alleged fraud against the federal government.

In court papers, Klein claimed that he uncovered substantial additional evidence whereby Omero made a number of misleading and false or fraudulent statements to the NIH in order to have such false and fraudulent services paid for and/or approved by the U.S. government.

Klein sued Omeros and CEO Gregory Demopulos, asserting claims of wrongful termination and violation of the Federal False Claims Act.

Omeros denied that its termination of Klein's employment was retaliatory. In court papers, the defense maintained that several days before his whistle blow, Klein had received a negative performance review, and Omeros believed that it had well-documented good cause to terminate him, including for his performance. Omeros cited in court documents that the facts gathered by an independent investigation demonstrated that Omeros underbilled -- not overbilled -- the NIH in connection with the federal grant. According to the defense, the NIH officials who reviewed the matter acknowledged in 2009 that Omeros had satisfactorily addressed it. The U.S. government also declined to intervene in Klein's case following a separate investigation of his claims. The defense further maintained that NIH recently awarded Omeros a new grant in support of the company's research.

**Injury:** In his complaint, Klein sought to recover damages for lost pay, future wages and benefits; double damages for back pay for alleged violation of the Federal False Claims Act and Washington state wage statutes; and damages for impaired future earning capacity.

**Result:** The parties settled for an amount of $3.94 million three days prior to trial. As a result, Klein dismissed all his charges, including his Federal False Claims Act claim. (The U.S. government and the NIH have reserved their rights to seek restitution and other remedies from Omeros and Demopulos. Omeros' insurer, Carolina Casualty Insurance Co., agreed to reimburse Omeros for the settlement funds subject to a reservation of rights in the context of ongoing litigation between Omeros and Carolina Casualty, including a claim by Omeros of bad-faith defense.)

## Trial Information:

**Judge:** John C. Coughenour

**Editor's Comment:** This report is based on court documents and information that was provided by plaintiff's and defense counsel.

**Writer** Aaron Jenkins

# Cops' excessive force led to mentally ill man's death: mom

**Type:** Mediated Settlement

**Amount:** $1,670,000

**Actual Award:** $1,670,000

**State:** Washington

**Venue:** Federal

**Court:** U.S. District Court for the Eastern District, WA

**Injury Type(s):**
- *leg*
- *head*
- *other* - death; unconsciousness
- *cardiac* - cardiopulmonary/respiratory arrest
- *pulmonary/respiratory* - respiratory; respiratory arrest; respiratory distress

**Case Type:**
- *Wrongful Death*
- *Civil Rights* - 42 USC 1983
- *Government* - Excessive Force

**Case Name:** Estate of Otto Zehm, deceased, Genevieve Mann, personal representative; and Ann Zehm, in her personal capacity v. City of Spokane, Jim Nicks, Karl Thompson, Steven Braun, Zack Dahle, Erin Raleigh, Dan Torok, Ron Voeller, Jason Uberaga and Theresa Ferguson, each in their personal and representative capacities, No. 2:09-cv-00080-LRS

**Date:** May 22, 2012

**Plaintiff(s):**
- Ann Zehm (Female, 70 Years)
- Estate of Otto Zehm (Male, 36 Years)

**Plaintiff Attorney(s):**
- Jeffry K. Finer; Jeffry K. Finer, PS; Spokane WA for Estate of Otto Zehm, Ann Zehm
- Breean Lawrence Beggs; Paukert & Troppmann, PLLC; Spokane WA for Estate of Otto Zehm, Ann Zehm
- Genevieve Mann; Powell Kuznetz & Parker PS; Spokane WA for Estate of Otto Zehm, Ann Zehm

**Defendant(s):**

- Dan Torok
- Jim Nicks
- Zack Dahle
- Ron Voeller
- Erin Raleigh
- Steven Braun
- Jason Uberaga
- Karl Thompson
- City of Spokane
- Theresa Ferguson

**Defense Attorney(s):**

- Stewart A. Estes; Keating, Bucklin and McCormack, Inc., P.S.; Seattle, WA for City of Spokane, Jim Nicks, Karl Thompson, Steven Braun, Zack Dahle, Erin Raleigh, Dan Torok, Ron Voeller, Jason Uberaga, Theresa Ferguson
- Salvatore J. Faggiano; Spokane City Attorney's Office; Spokane, WA for City of Spokane, Jim Nicks, Karl Thompson, Steven Braun, Zack Dahle, Erin Raleigh, Dan Torok, Ron Voeller, Jason Uberaga, Theresa Ferguson
- Carl J. Oreskovich; Etter, McMahon, Lamberson, Clary & Oreskovich, P.C.; Spokane, WA for City of Spokane, Jim Nicks, Karl Thompson, Steven Braun, Zack Dahle, Erin Raleigh, Dan Torok, Ron Voeller, Jason Uberaga, Theresa Ferguson
- Theodore J. Angelis; K&L Gates; Seattle, WA for City of Spokane, Jim Nicks, Karl Thompson, Steven Braun, Zack Dahle, Erin Raleigh, Dan Torok, Ron Voeller, Jason Uberaga, Theresa Ferguson
- Kjirstin J. Graham; K&L Gates; Spokane, WA for City of Spokane, Jim Nicks, Karl Thompson, Steven Braun, Zack Dahle, Erin Raleigh, Dan Torok, Ron Voeller, Jason Uberaga, Theresa Ferguson

**Insurers:**

- AIG

**Facts:**

On March 18, 2006, plaintiff's decedent Otto Zehm, 36, a part-time janitor who was mentally disabled, was shopping at a Zip Trip convenience store at 1721 N. Division St., in Spokane.

According to the plaintiffs' pretrial memorandum, officer Karl Thompson of the City of Spokane Police Department entered the store after a 911 call was made describing an unknown male (matching Zehm's physical characteristics) removing money from a woman's ATM account. Thompson identified Zehm and accelerated his pace toward him, drawing his police baton from his left side and passing the baton to his right hand. Plaintiffs' counsel claimed that the officer had no evidence that Zehm was armed or dangerous when he drew the baton and accelerated toward Zehm. They asserted that according to store surveillance, Thompson can be seen raising his baton shoulder level or higher in preparation to strike Zehm after Zehm had selected a plastic soda bottle with his back to the officer.

According to court documents, as Zehm is seen in surveillance video backpedaling away from Thompson's charge and raised baton. Zehm then raised his hands to protect his face and head. Thompson struck Zehm's leg with the baton, intending that the pain of the blow would bring Zehm to the ground. A struggle followed during which Thompson deployed his Taser against Zehm and struck Zehm with his baton more than a dozen times, delivered from an overhead swing downward onto Zehm. Officer Steven Braun then

entered the store from the south door and ran to where Thompson was allegedly attacking Zehm. Within minutes of Braun's arrival, Officers Erin Raleigh, Ron Voeller, Jason Uberaga, Zack Dahle and Dan Torok came to the scene and assisted one another to restrain Zehm's arms behind his back. Zehm's legs were restrained as well. Officers attached the leg restraint to the wrist restraint per Spokane police custom and policy.

Plaintiffs' counsel claimed that contrary to policy, Zehm was positioned on his stomach for the next 13 of 16 minutes during which time he ceased to struggle. Videos taken from the store's surveillance cameras show that Zehm's feet were periodically pinned back by an officer who was positioned at Zehm's knees, thus increasing the pressure on Zehm's diaphragm, counsel contended

Officers notified the City of Spokane Fire Department that Zehm had been tasered and a team had responded to the scene to remove the barbed taser darts from Zehm's abdomen. Raleigh requested the medical responders to provide a medical mask to cover Zehm's mouth. (A firefighter's notes reflected that the police officer was concerned that Zehm "might" spit and that the mask was to reduce the health risk of pathogens or bites, according to court documents.) A non-rebreather mask was given to Raleigh, who placed it over Zehm's nose and mouth and secured the mask with straps behind Zehm's head.

Plaintiff's' counsel claimed that the mask was not connected to oxygen; air was only available through a nickel-sized hole in the mask. The hole, however, can be blocked or occluded by clothing or any surface coming into contact with the mask. The officers did not seek advice from the fire department team on the use of the mask as a spit barrier, counsel claimed.

According to plaintiffs' counsel, while restrained facedown with one or more officers placing their weight on his neck, shoulders, abdomen and hips during his struggle with the officers, Zehm's ability to breathe was already compromised. They contended that his risk for heightened anxiety, suffocation and/or cardio-pulmonary arrest was increased by the placement of the unconnected non-rebreather mask over Zehm's face as the mask can, when improperly used, cause carbon dioxide to build up in the volume trapped against the wearer's face, resulting in acidosis or other disorder, and elevating the risk of serious harm or death. Zehm ceased breathing while in a four-point restraint on his stomach with the non-rebreather mask over his mouth and nose. Once they noticed that Zehm had stopped breathing, officers asked the fire department team to return inside the Zip Trip and examine Zehm. The fire department team was unable to revive him and he was transported by ambulance to the hospital, where he died on March 20.

Zehm's mother, individually and on behalf of her son's estate, and Genevieve Mann sued the officers and the City of Spokane for wrongful death and negligence. (During a criminal trial four months before the parties settled in this suit, Thompson was found guilty of excessive force and obstruction.)In plaintiffs' court papers, plaintiffs' counsel argued that the attack by Thompson was not in compliance with department training and written policy regarding the use of weapons against passively resisting suspects; Thompson's baton assault was not a proper response to Zehm's indications of passive resistance under departmental written policy or the Fourth and/or First Amendments; and Thompson, by his preemptive and unlawful attack, created the risk that Zehm would lawfully defend himself. Counsel argued that Thompson knew or should have known that the settled law, called the "danger creation" doctrine, holds officers liable for their unreasonable acts as well as for the natural consequences of those acts. According to

counsel, Zehm reasonably defended himself from excessive force as permitted under state law, struggling to ward off Thompson's baton blows and regain his feet. Zehm's self-defense, lawful under well-established state law governing the limits of legitimate police use of force, merely resulted in Thompson's further escalation of force in retaliation. Plaintiffs' counsel argued that Thompson's use of deadly force -- i.e., allegedly striking Zehm in the head with his police baton -- was unjustified by the officer's experience and training and under the facts and circumstances known to the officer at the time.

The defendants denied the allegations. Defense counsel argued that Zehm had refused lawful orders to "drop the pop bottle," that in refusing to abide the lawful command, he presented the officer with a high risk of assault, which privileged the officer to preempt with his baton. The defendants denied that the baton strikes were to the head, denied that they were excessive, and denied that Zehm was suffocated. They maintained that Zehm was suffering from "excited delirium."

Plaintiffs' counsel argued that Zehm's behavior prior to being assaulted was odd but not manifesting the extremes of excited delirium. If the officers believed excited delirium was present, they were trained to move such subjects promptly to their sides to reduce the risk of sudden death, counsel maintained. They further argued that the 13 minutes that Zehm was hogtied contributed to his death.

**Injury:**

Upon arriving at the hospital, Zehm was put on life support where he remained until the ventilator was removed, at which time he died shortly thereafter. "[I]t is likely . . . that restraint itself placed the decedent at risk for cardio-pulmonary arrest," according to the medical examiner who deemed Zehm's death as homicide under Washington law.

Zehm's mother sought to recover $120,000 in future wage loss on behalf of her son.

**Result:**

The plaintiffs settled with the City of Spokane for $1.67 million prior to trial. In addition, the city agreed to spend more than $300,000 to train all patrol officers in how to be more effective in interacting with the mentally ill and to revise the city's use of force policy. The mayor also delivered a written apology to Zehm's mother, and the city named a park pavilion for Otto Zehm with a remembrance plaque.

## Trial Information:

**Judge:** Michael R. Hogan

**Trial Length:** 2 days

**Editor's Comment:** This report is based on court documents and information that was provided by plaintiff's counsel. Defense counsel did not respond to the reporter's phone calls.

**Writer** Aaron Jenkins

# Black manager alleged bias in low salary, adverse treatment

**Type:** Verdict-Defendant

**Amount:** $0

**State:** Washington

**Venue:** Federal

**Court:** U.S. District Court, Western District, Tacoma, WA

**Injury Type(s):**
- *mental/psychological* - emotional distress

**Case Type:**
- *Employment* - Retaliation; Negligent Retention; Race Discrimination; Disability Discrimination
- *Worker/Workplace Negligence* - Negligent Hiring; Negligent Supervision

**Case Name:** Triphonia Howard v. State of Washington, the Department of Social & Health Services and Charles Hunter, individually and in his official capacities, No. 3:04-cv-05474

**Date:** February 10, 2009

**Plaintiff(s):**
- Triphonia Howard (Male)

**Plaintiff Attorney(s):**
- Judith A. Lonnquist; Law Offices of Judith A. Lonnquist; Seattle WA for Triphonia Howard
- Mitchell Alan Riese; Law Offices of Judith A. Lonnquist; Seattle WA for Triphonia Howard

**Plaintiff Expert (s):**
- Peter H. Nickerson Ph.D.; Economics; Seattle, WA called by: Judith A. Lonnquist, Mitchell Alan Riese,

**Defendant(s):**
- Charles Hunter
- State of Washington
- Department of Social & Health Services

**Defense Attorney(s):**

- Andrew L. Logerwell; Attorney General's Office; Olympia, WA for State of Washington, Department of Social & Health Services, Charles Hunter
- Marie Colleen Clarke; Attorney General's Office; Olympia, WA for State of Washington, Department of Social & Health Services, Charles Hunter
- Rob McKenna; Attorney General's Office; Olympia, WA for State of Washington, Department of Social & Health Services, Charles Hunter

**Facts:**

In 1998, plaintiff Triphonia Howard began working for the Washington Department of Social and Health Services (DSHS) as the forms and records manager.

In September 2002, he reportedly discovered that he was earning less than other employees in comparable positions. Concerned that this was related to the fact that he was the only black, mid-level, managerial supervisor in his division, Howard complained to the director of the division, Charles Hunter, also a black man.

Instead of correcting the disparity, Howard claimed, Hunter subjected him to adverse treatment. For example, Howard stated that his supervisor gave him a negative performance evaluation, which Hunter would not correct, and Howard's position was eventually cut due to a force reduction in February 2003.

Howard was the only member of his division to receive the reduction in force notice, he said. He claimed that he tried to move into another position that would have allowed him to continue to receive his salary, but DSHS and Hunter refused to place him in that position. Instead, the only job offered to him was one that paid about $9,000 per year less than he previously earned. Howard claimed that Hunter withdrew an offer to retain Howard's existing salary in the vacant position after Howard complained that he was entitled to a raise to compensate him for his racially discriminatory salary as forms and records manager.

In October 2003, Howard found a job elsewhere paying $1,500 less than his forms and records manager position.

Howard was not only the sole black manager in his division, but he was also the only manager classified as disabled, he said. He claimed that the elimination of his position was determined by DSHS's Division of Access and Equal Opportunity to be an "adverse impact to African-Americans and people with disabilities" in July 2003.

In addition to losing the pay and benefits associated with his higher position, Howard claimed that he later found out that the agency failed to pay him a team incentive award to which he was entitled due to a project he successfully managed which created significant savings for the agency.

Howard sued the state, DSHS and Hunter, alleging racial and disability discrimination, encouragement or aid in the violations of the anti-discrimination laws, and retaliation when he complained about the unfair employment practices, all in violation of various federal and state laws.

The agency was liable for negligently supervising, retaining and hiring employees who were causing emotional distress among the workforce, Howard said. Furthermore, the failure to pay Howard his incentive award amounted to a breach of contract and promissory estoppel, according to the plaintiff.

The state, DSHS and Hunter answered together with a denial of any wrongdoing or liability. Specifically, they denied that Howard was subjected to a racially discriminatory salary or that he ever complained about his salary in the context of race. The defendants denied that Howard was subjected to any retaliatory or other unlawful treatment. They argued that six positions affecting minority and white employees were eliminated in February 2003 due to ongoing state budget concerns.

Prior cuts had occurred in 2001 and 2003. Hunter alleged that he offered Howard the only remaining vacancy in the division in lieu of a formal reduction in force, and offered to retain Howard's existing salary. However, instead of accepting the offer, Howard demanded a raise which Hunter said he could not recommend, given the ongoing layoffs. According to the defendants, Howard elected to pursue his formal reduction in force options, which resulted in his placement in the position paying $9,000 a year less.

The defendants argued that Howard contributed to his own damages, that they were entitled to qualified immunity, that they acted for legitimate, non-discriminatory and non-retaliatory reasons, and that Howard's breach of contract and promissory estoppel claims failed as a matter of law.

At the summary judgment phase, Howard abandoned his race and disability discrimination claims, as well as his claims of negligent supervision, retention and hiring.

The defendants prevailed in their motion for summary judgment in March 2006 on all remaining claims. However, in November 2007 the Ninth Circuit Court of Appeals remanded for trial a portion of the plaintiff's Title VII and state retaliation claims. Specifically, the remaining issues for jury consideration were whether the plaintiff engaged in protected activity (opposition to racially discriminatory salary) and whether the defendants retaliated (alleged withdrawal of a salary retention offer).

**Injury:** Howard sought damages for past and future lost wages and benefits, physical and emotional distress, humiliation, stress, and expenses for medical and psychological treatment, plus punitive damages. He also requested that the agency reinstate him to his prior position.

**Result:** The jury returned a verdict in favor of the defendants, finding that neither DSHS nor Hunter retaliated against Howard for his alleged engagement in a protected activity.

## Trial Information:

**Judge:** Ronald B. Leighton

**Trial Length:** 5 days

**Jury Vote:** Unanimous

**Post Trial:** The defendants were awarded a little bit more than $2,000 in costs.

**Writer** Katie Pasek

# Questioning police department got ex-HR director fired, he said

**Type:** Settlement

**Amount:** $321,000

**State:** Washington

**Venue:** Federal

**Court:** U.S. District Court, Western District, Tacoma, WA

**Injury Type(s):**
- *mental/psychological* - emotional distress

**Case Type:**
- *Defamation* - False Light
- *Employment* - Retaliation; Race Discrimination; Wrongful Termination
- *Privacy* - Breach of Privacy
- *Constitutional Law* - Freedom of Speech

**Case Name:** Nancy G. Knudsen, as personal representative for the estate of Phillip (Phil) S. Knudsen v. City of Tacoma, a municipal corporation under the laws of the state of Washington; James L. Walton, in his individual capacity; City of Tacoma Council Person Kevin Phelps, in his individual capacity; former City of Tacoma Council Person Sharon McGavick, in her individual capacity; Rick Talbert, City of Tacoma council person in his individual capacity; and former City Attorney for the City of Tacoma Robin Jenkinson, in her individual capacity, No. 3:04-cv-05850

**Date:** May 28, 2008

**Plaintiff(s):**
- Phillip S. Knudsen (deceased) (Male)

**Plaintiff Attorney(s):**
- Paul Alexander Lindenmuth; Law Offices of Ben F. Barcus & Associates, PLLC; Tacoma WA for Phillip S. Knudsen (deceased)

**Defendant(s):**

- Kevin Phelps
- Rick Talbert
- City of Tacoma
- James L. Walton
- Robin Jenkinson
- Sharon McGavick

**Defense Attorney(s):**

- Elizabeth A. Pauli; Acting City Attorney; Tacoma, WA for City of Tacoma, James L. Walton, Kevin Phelps, Sharon McGavick, Rick Talbert, Robin Jenkinson
- Stephanie L. Bloomfield; Gordon, Thomas, Honeywell, Malanca, Peterson & Daheim, LLP; Tacoma, WA for City of Tacoma, James L. Walton, Kevin Phelps, Sharon McGavick, Rick Talbert, Robin Jenkinson
- D. Michael Reilly; Lane Powell, PC; Seattle, WA for City of Tacoma, James L. Walton, Kevin Phelps, Sharon McGavick, Rick Talbert, Robin Jenkinson
- Jean P. Homan; City attorney's office; Tacoma, WA for City of Tacoma, James L. Walton, Kevin Phelps, Sharon McGavick, Rick Talbert, Robin Jenkinson

**Facts:**

In 1999, plaintiff's decedent Phillip S. Knudsen began working for the city of Tacoma, Wash., as its human resources director. His tenure with the city was marked by a particularly traumatic and highly publicized event.

Police Chief David Brame began to go through a divorce with his wife, Crystal Brame. Details of the couple's divorce documents became public through media coverage and hearsay. The allegations included domestic abuse, David's use of his service weapon to threaten Crystal, and David's improper handling of his service weapon in a household with children.

The Brames' story came to a climax when David used his service weapon to shoot Crystal and then commit suicide on April 26, 2003, in a mall parking lot. Their two children were in a vehicle nearby and witnessed the event. Crystal initially survived, but died later of wounds she sustained.

Knudsen said that he had concerns about David when he emerged as an internal candidate for the police chief position. Knudsen claimed that David had holes in his record that Knudsen found troubling. Knudsen's concerns were reportedly ignored when he expressed them to city officials and members of the Tacoma City Council, and the city hired David above other candidates against Knudsen's advice.

Knudsen said that city officials and Tacoma City Council members ignored his advice when the news of the divorce and David's alleged misuse of a firearm broke. Knudsen claimed that he recommended that the city place the police chief on administrative leave and confiscate his badge and firearm. Instead, he said, city officials and council members concluded that the divorce was a private matter that did not require the city's attention.

Investigations and a lawsuit on behalf of the Brames' children and Crystal's estate followed the murder-suicide. Knudsen was called to give statements or testimony several times regarding his role in the events. Knudsen said that he refused to lie about the meetings he had with city officials, and that he openly revealed the unheeded advice that he offered prior to the tragic event.

The city reached a settlement with the Brames' estate and the children for $12 million

The Brame affair was not the only situation in which Knudsen said that he had a conflict with other city officials. The city underwent a $50 million renovation to its computer system in 2002, and Knudsen said that he raised concerns about too little oversight. Two city managers silenced him, Knudsen claimed, due to a concern that the city maintain the appearance that "all was well within the city of Tacoma."

On June 24, 2004, the city fired Knudsen. In addition, Knudsen said that city officials publicly stigmatized him by calling him a liar and accusing him of leaking information to the media.

Knudsen's termination was not only personal, it was also racial, he claimed. Knudsen, who was white, said that the black city manager told Knudsen that he intended to hire people who looked like the city manager. Knudsen's replacement was black.

Knudsen filed a lawsuit in the U.S. District Court for the Western District of Washington against the city and several officials. The individuals he named as defendants included city manager James Walton, Tacoma City Council Members Kevin Phelps and Rick Talbert, former City Council Member Sharon McGavick, and former City Attorney Robin Jenkinson.

Knudsen alleged that the city and its representatives violated his First Amendment rights by firing him for engaging in protected speech, violated public policy when he was fired for refusing to engage in perjury, discriminated against him on the basis of his race, defamed him, invaded his privacy by placing him in a false light, and engaged in a civil conspiracy against him.

The defendants answered together and denied the allegations. By way of affirmative defenses, they argued that no causal connection existed between their alleged acts and Knudsen's damages, that they acted in good faith, that they enjoyed absolute or qualified privilege and immunity, that Knudsen failed to mitigate his damages, that Knudsen caused or contributed to his own damages, that they acted to correct any discriminatory behavior promptly, and that their statements about Knudsen were true and not defamatory.

The defendants argued that Knudsen's termination was for legitimate reasons unrelated to the Brame tragedy. These reasons included Knudsen's changing of a grade on a civil service test and his attempt to appoint an ally to an interviewing panel.

The court granted a summary judgment motion and dismissed the First Amendment, race discrimination and wrongful discharge claims in December 2005. The court of appeals reversed and remanded the judgment. Ultimately, only the First Amendment claim remained.

In August 2005, Knudsen died. His wife, Nancy Knudsen, carried on the lawsuit as the representative of his estate.

**Injury:** Not only did Knudsen lose the pay and benefits associated with his job, his lawyers claimed, but he also suffered damage to his reputation, personal humiliation and emotional distress.

Knudsen's counsel sought damages from the city and its representatives, individually, for past and future lost wages and benefits, damage to Knudsen's reputation, personal humiliation, pain and suffering, loss of enjoyment of life, and emotional distress. He also claimed that he was entitled to punitive damages.

**Result:** Knudsen's widow reached a settlement agreement with the defendants, whereby they agreed to pay $321,000 for a dismissal of the claims.

## Trial Information:

**Judge:** Benjamin H. Settle



**Writer** Katie Pasek

# I was fired after complaining of racial intolerance: black officer

**Type:** Verdict-Plaintiff

**Amount:** $96,000

**Actual Award:** $96,000

**State:** Washington

**Venue:** Federal

**Court:** U.S. District Court for the Eastern District, WA

**Injury Type(s):**
- *mental/psychological* - emotional distress

**Case Type:**
- *Government* - Police; Sovereign Immunity
- *Discrimination* - Race; Title VII
- *Civil Rights* - Title VII; 42 USC 1983
- *Employment* - Retaliation; Race Discrimination; Wrongful Termination
- *Worker/Workplace Negligence* - Negligent Hiring; Negligent Supervision

**Case Name:** Bryan Jacobson v. Washington State University, a State Agency; the State of Washington; and Steven J. Hansen, a Married Man and his Marital Community Property, No. CV-05-0092

**Date:** March 26, 2007

**Plaintiff(s):**
- Bryan Jacobson (Male)

**Plaintiff Attorney(s):**
- Patrick Joseph Kirby; Campbell, Bissell & Kirby, PLLC; Spokane WA for Bryan Jacobson

**Defendant(s):**
- Steven J. Hansen
- State of Washington
- Washington State University

**Defense Attorney(s):**

- Robert M. McKenna; Attorney General's Office; Spokane, WA for Washington State University, State of Washington, Steven J. Hansen
- Holly Ann Vance; Attorney General's Office; Spokane, WA for Washington State University, State of Washington, Steven J. Hansen
- Dannette W. Allen; Attorney General's Office; Spokane, WA for Washington State University, State of Washington, Steven J. Hansen
- Lisa Leann Sutton; Attorney General's Office; Olympia, WA for Washington State University, State of Washington, Steven J. Hansen

**Facts:**

On May 18, 2004, plaintiff Bryan Jacobson, a black man, was terminated from his position as a police officer with the Washington State University Police Department. He began his tenure with WSU on April 27, 1990.

After being hired, Jacobson was passed up for a position on the department's SWAT team in Pullman, Wash. He filed a lawsuit in Whitman County Superior Court against WSU, alleging race discrimination and retaliation. He was the only black member of the department.

On March 13, 2001, Jacobson and WSU reached a settlement. As part of the agreement, WSU agreed that Steven J. Hansen, the director and chief of the department, would work with Jacobson to identify experts to lead 40 hours of diversity training for the department. Jacobson said that Hansen stalled, rejected his proposed experts and refused to recommend any himself.

Instead of working with Jacobson to improve racial tolerance, Jacobson said that Hansen terminated him. The official reason cited was that Jacobson had bought $26,646.34 of personal items on his corporate credit card, which technically was issued to him for work-related travel only.

According to Jacobson, he paid for the personal charges himself, and the alleged misuse of the card was a technicality. The restriction was poorly defined and communicated, he said, and others in his position had used their cards in a similar manner with much less severe disciplinary actions.

Jacobson alleged that Hansen fired him out of retaliation for his earlier complaints.

Jacobson presented a wrongful termination complaint to the Personnel Appeals Board, which concluded that he did violate policy through his use of the card, but that Hansen's discipline of him was too severe in light of the actions taken against other employees.

Jacobson then sued WSU, the state of Washington and Hansen, alleging that they retaliated against him and wrongfully terminated him in violation of Title VII, 42 USC § 2000 and state law, and that their restriction of his right to free speech amounted to a violation of 42 USC § 1983. WSU was also negligent in its hiring and supervision of Hansen, Jacobson alleged.

WSU, the state and Hansen answered together and denied the allegations of wrongdoing and deprivation of Jacobson's rights. They terminated him and otherwise acted for legitimate reasons, they argued by way of affirmative defense. They also claimed that they were entitled to absolute or qualified immunity.

Through summary judgment, the defense reduced the claims to retaliation and common law outrage. By the time the case proceeded to trial before a jury, the outrage claim was dismissed, and Hansen was dismissed as a defendant.

**Injury:**

Jacobson claimed that WSU and Hansen's actions were outrageous and inflicted emotional distress on him. He sought damages for lost wages and benefits, emotional distress, mental anguish, embarrassment, humiliation, and attorney fees and costs. He also claimed punitive damages were warranted, based on the § 1983 claim.

**Result:** The jury returned a verdict in favor of Jacobson, awarding him $96,000 for past lost wages and benefits. The jury declined to award Jacobson any damages for future lost wages and benefits.

**Bryan Jacobson**

$96,000 Personal Injury: past lost wages and benefits

## Trial Information:

**Judge:** Fred Van Sickle

**Writer** Katie Pasek

# Car salesman charged employer with discrimination

**Type:** Verdict-Plaintiff

**Amount:** $1,029,001

**Actual Award:** $1,029,001

**State:** Washington

**Venue:** Federal

**Court:** U.S. District Court, Western District, Tacoma, WA

**Case Type:**
- *Employment* - Retaliation; Constructive Discharge
- *Discrimination* - Religion
- *Contracts* - Breach of Contract

**Case Name:** David Cole v. Jim Stirling Motors Inc. and Does 1-10, inclusive, No. 05-5287 RJB

**Date:** September 25, 2006

**Plaintiff(s):**
- David Cole (Male)

**Plaintiff Attorney(s):**
- Martin C. Dolan; Dolan Griggs; Portland OR for David Cole
- Alan A. Lave; Law Offices of Alan A. Lave; Portland OR for David Cole
- Mary Anne Betker; ; Washougal WA for David Cole

**Defendant(s):**
- Jim Stirling Motors

**Defense Attorney(s):**
- Dan'l W. Bridges; Law Offices of Dan'l W. Bridges; Bellevue, WA for Jim Stirling Motors

**Facts:**

David Cole, age not given, began working as a salesperson for Jim Stirling Motors in 1997. He left briefly in 2000, but came back in June 2001 as a manager/closer/trainer. He considered the new position a promotion.

Cole was a Jehovah's Witness. He claimed he endured harassment on the basis of his

religion from his co-workers. The harassment increased substantially in 2003 when the company hired a new manager, Lonni Reed, Cole asserted.

According to Cole, Reed stated to other employees that he disliked the religion, and he wanted to get rid of Cole or get him kicked out of his church. Reed and others made disparaging remarks to Cole about his religion, Cole claimed, and they made him decorate the facility with Christmas decorations, despite the fact that they knew he did not believe in Christmas.

Cole succeeded in his management position, he said. Nevertheless, the company demoted him shortly after Reed took over as a manager. Cole appealed directly to one of the owners of the company, and the owner told him to "work it out."

During the meeting with Reed, Cole behaved in a manner that Reed considered insubordinate. With ownership's approval, Reed fired Cole.

After his termination in December 2003, Cole alleged his former co-workers telling others that he was fired for embezzlement. Not only did the company and its employees fire him for his religious beliefs, he alleged, but they defamed him after he left and damaged his reputation.

After receiving a "right to sue" letter from the EEOC, Cole filed a religious discrimination and retaliation lawsuit against Jim Stirling Motors pursuant to 28 U.S.C. § 1343 in the U.S. District Court for the Western District of Washington.

He alleged the company demoted and terminated him because he was a Jehovah's Witness, retaliated against him through demotion and termination when he complained of religious harassment and poor working conditions, and defamed him by making false statements to members of the community. Furthermore, Cole alleged the dealership breached his written and verbal employment contracts.

Jim Stirling Motors generally denied any wrongdoing and submitted the affirmative defenses of failure to mitigate damages, unclean hands, laches and that the allegedly defamatory statements were true.

The company filed a counterclaim against Cole, alleging the plaintiff embezzled money by abusing a General Motors bonus program when he worked in his management position.

Furthermore, the company alleged Cole kept a database of customers and sent a mailer to those customers after his termination and subsequent employment at another dealership. The mailer contained disparaging language about Jim Stirling Motors, the company alleged.

The company alleged Cole's actions constituted theft, embezzlement, unjust enrichment, fraud and intentional interference with the dealership's reasonable business expectations. The dealership sought an injunction against Cole preventing him from interfering with its business further, as well as unspecified damages, attorney fees and costs.

In pretrial documents, Cole argued he followed the bonus program's standard protocol. Regarding the interference with business relations claim, he argued, Jim Stirling Motors

could not maintain this claim, because it could not establish the resultant damages.

**Injury:** In addition to a permanent injunction prohibiting further discriminatory behavior, Cole claimed damages for unspecified non-pecuniary losses, punitive damages, lost wages and benefits, and attorney fees and costs.

**Result:** During the trial, U.S. District Judge Robert Bryan dismissed the company's counterclaims against Cole. A jury deliberated only on Cole's religious discrimination claim and returned a verdict in his favor Sept. 25, 2006.

**David Cole**

$750,000 Personal Injury: Punitive Exemplary Damages

$79,000 Personal Injury: Past Lost Earnings Capability

$1 Personal Injury: FutureLostEarningsCapability

$200,000 Personal Injury: mental, emotional and physical pain & suffering

## Trial Information:

**Judge:** Robert J. Bryan

**Writer** Katie Pasek

# Losing candidate for sheriff claimed dirty tricks by incumbent

**Type:** Verdict-Plaintiff

**Amount:** $4,250

**State:** Washington

**Venue:** Federal

**Court:** U.S. District Court, Western District, Tacoma, WA

**Case Type:**
- *First Amendment*
- *Employment* - Retaliation
- *Intentional Torts* - Defamation

**Case Name:** Glenn Quantz v. Gary Edwards, Neil McClanahan, Ray Hansen, Dan Kimball, Brad Watkins, Paul Counts, Thurston County and William Kenny, No. C04-5737rjb

**Date:** March 07, 2006

**Plaintiff(s):**
- Glenn Quantz (Male, 40 Years)

**Plaintiff Attorney(s):**
- J. D. Smith; Gordon, Thomas, Honeywell, Malanca, Peterson & Daheim LLP; Tacoma WA for Glenn Quantz

**Defendant(s):**
- Ray Hansen
- Dan Kimball
- Paul Counts
- Brad Watkins
- Gary Edwards
- William Kenny
- Neil McClanahan
- Thurston County

**Defense Attorney(s):**
- Colleen Kinerk; Cable, Langenbach, Kinerk & Bauer; Seattle, WA for Gary Edwards, Dan Kimball
- W. Dale Kamerrer; Law, Lyman, Daniel, Kamerrer & Bogdanovich, P.S.; Olympia, WA for Gary Edwards, Dan Kimball, Thurston County, William Kenny

**Insurers:**

- Washington Counties Risk Pool

**Facts:**

In 2002, plaintiff Glenn Quantz, 40s, a detective in the Thurston Sheriff's Office, ran against four-time incumbent Gary Edwards for the position of sheriff. During the election, the sheriff's office received information suggesting that Quantz had been convicted of a crime and lied about it on his application to join the police force. The department held off on investigating the matter until after the election, which Quantz lost. However, during the election, the allegations against him were leaked to the media by the sheriff, Quantz claimed. and after the election Quantz was reassigned to the sexual offenders' registration unit.

Claiming that his First Amendment rights were violated, that he was retaliated against for campaigning for sheriff and that he was defamed in an effort to damage his campaign, Quantz sued Edwards, Officers Neil McClanahan, Ray Hansen, Dan Kimball, Brad Watkins, Paul Counts and William Kenny, and Thurston County. In response to motions for summary judgments, Quantz dismissed his claims against McClanahan, Hansen, Watkins and Counts. Summary judgment motions were also filed on behalf of Kenny and the county, contending that there was no evidence that either defendant had participated in any act that was damaging to Quantz and Judge Robert Bryan granted the motions.

This report is on the second trial in this case. The first trial ended in a mistrial after defense counsel argued that Quantz's lawyer had made comments in his opening statement that were inappropriate given the limited scope of the trial and that the comments may have been prejudicial.

Quantz's lawyer contended that Edwards retaliated against his client by holding off on the investigation until after the election. Quantz had pled guilty and been convicted of a theft charge at 19 and had served time, but it was a deferred sentence and was later erased after he had served time, probation and continued to show good behavior. The investigation concluded that the claims against him were unfounded.

Plaintiff argued that once the public knew of the accusations against Quantz, his reputation and campaign were tarnished. Plaintiff contended that if the investigation had been done immediately, his name would have been cleared. Plaintiff contended that the choice to hold the investigation was a deliberate attempt to tarnish Quantz's campaign.

Plaintiff counsel contended that Kimball retaliated against Quantz by transferring him to a less desirable position and also violated his freedom of speech by ordering him to not discuss his reassignment with the press.

The defense contended that Edwards acted on the advice of McClanahan, who was undersheriff and handled personnel decisions. McClanahan had suggested that if the offices investigated the claims during the election, it might appear to be retaliation and it could compromise the integrity of the investigation. Defense counsel argued that when the decision was made, the public was not aware of the situation and that Edwards decided as he did because it seemed like the correct administrative decision.

On the retaliation claim, defense counsel moved for judgement as matter of law, arguing that the evidence was not sufficient to prove that Kimball's actions had anything to do with Quantz's candidacy. Judge Bryan ruled in favor of the motion.

**Injury:** Quantz lost the election and was forced to suffer humiliation and fear of losing his jobs while waiting for the investigation to commence, he claimed. His lawyer argued that Edwards decision was made with reckless disregard for Quantz's constitutional right to run for sheriff and that it was accompanied with ill will and spite and meant to ruin Quantz campaign.

Quantz's sought unspecified damages for emotional distress and punitive damages.

**Result:** The jury found for Quantz and awarded him $4,250 for his emotional distress but no punitive damages.

POST-TRIAL:

On May 5, 2006, Judge Robert J. Bryan overruled the jury's finding that Edwards had qualified immunity, as sheriff, against the allegation that he violated Quantz's free speech rights. The judge also found there was no evidence that the sheriff delayed an internal investigation into discrepancies on Quantz's original employment application as an act of retaliation. Bryan ordered Quantz' legal team to pay about $14,799 in legal fees incurred by Thurston County.

## Trial Information:

**Judge:** Robert J. Bryan

**Demand:** Confidential

**Offer:** Confidential

**Trial Length:** 5 days

**Trial Deliberations:** 7.5 hours

**Jury Vote:** 8-0

**Editor's Comment:** Plaintiff counsel did not respond to two phone calls or a faxed draft of this report.

**Writer** Michael Hill

# State attoney claimed she was scapegoated for missed appeal

**Type:** Settlement

**Amount:** $325,000

**State:** Washington

**Venue:** Federal

**Court:** U.S. District Court, Western District, Seattle, WA

**Case Type:**
- *Civil Rights* - Title VII; 42 USC 1983
- *Employment* - Retaliation; Wrongful Termination; Disability Discrimination

**Case Name:** Janet L. Capps v. State of Washington et al., No. 2:03-CV-01688-TSZ

**Date:** July 02, 2004

**Plaintiff(s):**
- Janet L. Capps (Female, 40 Years)

**Plaintiff Attorney(s):**
- Suzanne J. Thomas; Law Offices of Suzanne J. Thomas; Seattle WA for Janet L. Capps
- Timothy C. Milios; Law Office of Timothy C. Milios; Seattle WA for Janet L. Capps

**Defendant(s):**
- State of Washington

**Defense Attorney(s):**
- Michael C. Bolasina; Stafford Frey Cooper; Seattle, WA for State of Washington
- Anne Melani Bremner; Stafford Frey Cooper; Seattle, WA for State of Washington

**Facts:**

On July 1, 2000, plaintiff Janet Capps, was terminated from her position as an assistant attorney general for the state of Washington.

The underlying case, tried in 2000, involved three developmentally disabled men who claimed that they were sexually abused in an adult family home licensed by the state. The plaintiffs in that case were awarded $17.8 million. At the time, it was the largest tort judgment against the state.

The attorney general's office vowed to appeal, but failed to timely file. The verdict was entered on March 23, 2000.

Capps, one of the four state attorneys who worked on the trial, was accused of misplacing or concealing a notice of entry that had been sent to her by opposing counsel. Her complaint alleged that a notice of entry was recorded as being delivered to another state attorney on the case and Capps denied ever having seen it. Capps was also not assigned to the appeal team, and had been given other cases.

During an interview with superiors, Capps disclosed that she had attention deficit disorder (ADD). While she did not know if it played a role in the missed deadline, she mentioned it out of a sense of duty for full disclosure, she claimed. On June 1, in an attempt to salvage an appeal, the state asked Capps to sign a declaration to the court, but she refused to sign it, claiming that it was not accurate and made her look negligent. Capps was then placed on "administrative review," where she would continue to work on other cases. She claimed that her work responsibilities were slowly taken away from her.

Capps claimed that for some unknown reason, she was then asked to undergo an independent medical exam and to submit her medical information, which she refused to do. She then sought legal advice which, she claimed, resulted in her being accused of knowingly hiding the notice of entry. She was fired weeks later.

Capps sued under Title VII of the Civil Rights Act, claiming that the reduction in her workload was a response to her perceived disability, and under 42 USC 1983, claiming that she was fired as a scapegoat for the office and for not submitting to a medical exam.

**Injury:**

Capps claimed that she was fired from a job paying approximately $70,000 a year in violation of Title VII and her civil rights. She sought damages for wage loss.

**Result:**

The parties settled, with the state agreeing to pay Capps $325,000 and give her a full-time non-legal job with the Office of Archeology and Historic Preservation paying $50,000 a year.

## Trial Information:

**Judge:** Thomas S. Zilly

**Writer** Dave Venino

# Three blacks claimed 45 incidents of mistreatment

**Type:** Verdict-Mixed

**Amount:** $35,000

**State:** Washington

**Venue:** Federal

**Court:** U.S. District Court, Western District, Tacoma, WA

**Case Type:**
- *Civil Rights* - 42 USC 1983; Police as Defendant
- *Government* - Excessive Force
- *Discrimination* - Racial Profiling
- *Intentional Torts* - False Arrest and Malicious Prosecution

**Case Name:** Cory Thomas, Muhahhad Alexander, and Abdullah Ali v. The City of Tacoma, et al., No. C01-5138

**Date:** May 23, 2003

**Plaintiff(s):**
- Cory Thomas (Male, 20 Years)
- Abdullah Ali (Male, 50 Years)
- Muhammad Alexander (Male, 20 Years)

**Plaintiff Attorney(s):**
- Lembhard G. Howell; Law Offices of Lembhard G. Howell; Seattle WA for Cory Thomas, Abdullah Ali, Muhammad Alexander
- Mark E. Koontz; Law Offices of Lembhard G. Howell; Seattle WA for Cory Thomas, Abdullah Ali, Muhammad Alexander

**Plaintiff Expert (s):**
- Chief D. P. Van Blaricom M.P.A.; Police Practices & Procedures; Bellevue, WA called by: Lembhard G. Howell, Mark E. Koontz
- Timothy Perry; Police Practices & Procedures; Seattle, WA called by: Lembhard G. Howell, Mark E. Koontz

**Defendant(s):**

- David Peck
- Robert Luke
- Daniel Grant
- Robert Baker
- Steve O'Keefe
- City of Tacoma
- Nathan Clammer
- Ronald Tennyson
- Michael Rowbottom

**Defense Attorney(s):**

- Shelley M. Kerslake; City attorney's office; Tacoma, WA for Ronald Tennyson, Nathan Clammer, Robert Luke, David Peck, Steve O'Keefe, Robert Baker, Daniel Grant, Michael Rowbottom, City of Tacoma
- Jean P. Homan; City attorney's office; Tacoma, WA for Ronald Tennyson, Nathan Clammer, Robert Luke, David Peck, Steve O'Keefe, Robert Baker, Daniel Grant, Michael Rowbottom, City of Tacoma

**Defendant Expert(s):**

- W. Kenneth Katsaris; Police Practices & Procedures; Tallahassee, FL called by: for Shelley M. Kerslake, Jean P. Homan

**Facts:**

Plaintiffs Cory Thomas, a truck driver in his 20s; his uncle, Abdullah Ali, unemployed and in his 50s; and his cousin, Muhammad Alexander, a temp worker in his 20s, claimed that they were the victims of police misconduct over a period spanning more than two years.

The first incident involved Thomas and officer Robert Baker. Thomas alleged that Baker used excessive force in a traffic stop. The final incident involved Thomas and officer Ronald Tennyson, who arrested Thomas for reckless driving after Thomas allegedly tried to run his police car off the road. The most serious incident, according to the plaintiffs, was when Baker arrested Alexander for assaulting a police officer, a charge that was later dismissed.

The plaintiffs sued the city of Tacoma, Wash., and numerous police officers, alleging that they were targeted by the police because they were African-American and as retaliation for earlier complaints of police mistreatment. Their claims included assault, excessive force, false arrest and malicious prosecution.

The plaintiffs' claims originally covered 45 incidents, and named 25 individual police defendants. Nine of these incidents eventually went before the jury, only one of which involved Ali.

The defense denied any misconduct in each of the incidents, and contended that the plaintiffs had intentionally orchestrated and instigated incidents with the police for the purposes of a lawsuit.

**Injury:** Thomas sought lost wages resulting from the incident with Tennyson. He claimed that Tennyson had reported him to his employer, a temp agency, and as a result the agency did not hire him in the future.

Alexander also sought lost wages, claiming that his arrest led to a felony conviction for jumping bail which, he claimed, would limit his future employment opportunities.

Damages claimed prior to the suit totaled $11 million; at trial, plaintiffs' counsel asked for $150,000 in compensatory damages and $100,000 in punitives for the Alexander-Baker incident, and another $128,000 for for all the other alleged incidents.

**Result:** The jury found in the defendants' favor on everything but the encounter between Thomas and Tennyson. They awarded Thomas $35,000.

**Cory Thomas**

$20,000 Personal Injury: Punitive Exemplary Damages

$15,000 Personal Injury: compensatory damages

## Trial Information:

**Judge:** Ronald B. Leighton

**Offer:** $0

**Trial Length:** 4 weeks

**Trial Deliberations:** 3 days

**Jury Composition:** 6 male, 3 female; 9 white

**Post Trial:** The defense and plaintiffs have filed motions seeking fees and costs, which are pending. The plaintiffs have also filed for a new trial on the Alexander-Baker incident, which is pending.

**Writer** Joe Dessereau