



## **Districts of Kansas & Western Missouri**

### **Civil Jury Verdict Report**

**D. Kan. & W.D. Mo.**

**Issue 1 – November 2021**

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#### **UPCOMING FBA CHAPTER EVENTS:**

Fri., Nov. 12 at Noon: Brown Bag Lunch with Judge Counts  
WDMO KC, MO Courthouse  
Contact: Robert Calbi, [r.calbi@gmail.com](mailto:r.calbi@gmail.com)

Fri., Dec. 10 at Noon: Brown Bag Lunch with Judge O'Hara  
DKAN KC, KS Courthouse  
Contact: Robert Calbi, [r.calbi@gmail.com](mailto:r.calbi@gmail.com)

#### **NOVEMBER 2021 CIVIL VERDICT SUMMARY**

Parties: *Edward E. Blackorby v. BNSF Railway Co.*  
Case No.: 4:13-cv-00908-SRB Judge: Hon. Stephen R. Bough  
Location: KC, MO  
Attorneys: (P) – Charles Garella, Jeff Dingwall & Erica Mynarich  
(D) – Jaclyn Laferriere & Keith Goman

This was a second re-trial of a case alleging violations of the employee-protections provision of the Federal Railroad Safety Act ("FRSA"), 49 U.S.C. § 20109(a)(4), on remand from the U.S. Court of Appeals, Eighth Circuit. In the first trial, the jury returned a verdict for Mr. Blackorby in 2015, awarding him compensatory damages. The Eighth Circuit reversed and remanded the case to the U.S. District Court, finding that the jury instructions were flawed in that they expressly stated the plaintiff need not show the defendant acted

with a retaliatory animus. A second jury trial was then conducted on liability only, with the jury finding in BNSF's favor in 2018. The Eighth Circuit reversed and remanded based on an erroneous jury instruction. On this second re-trial, the jury found for Mr. Blackorby while also finding it was not proven that BNSF would have taken the same unfavorable personnel action against Mr. Blackorby regardless of his notifying BNSF of his work-related injury.

**Verdict:** For plaintiff (liability only trial).

Parties: *Watchous Enterprises, LLC v. Pacific Nat'l Capital, et al.*

Case No.: 6:16-cv-01432-DDC Judge: Hon. Daniel D. Crabtree

Location: Wichita

Attorneys: (P) – Shane Rosson, James Walker

In this action premised on the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961 *et seq.*, Watchous Enterprises engaged Pacific National Capital, LLC to act as a broker to find a lender or joint venture partner in conjunction with its oil and gas exploration business. Pacific connected Watchous with various individuals as potential lenders. Following collapse of the intended agreement, the potential lenders refused to return a \$175,000 deposit previously paid by Watchous in connection with executing a letter of intent. Watchous sued under RICO and state law theories of fraud and civil conspiracy. The trial proceeded against five defendant-individuals: William Mournes, Gordon Duval, Charles Elfstein, Mark Hasegawa & Mark Zouvas. The jury found against all five defendants on all counts, awarding the full amount of damages claimed plus assessments of punitive damages.

**Verdict:** For plaintiff. The jury found damages against each of the five defendants in the amounts of \$182,600 for the RICO & conspiracy claims and \$175,000 for the fraud claims, plus punitive damages as follows: \$1 million against Mournes and Elfstein, \$500,000 against Hasegawa and Zouvas & \$250,000 against Duval.

### **DID YOU KNOW?**

Congress subdivided the U.S. District Court for the District of Missouri into Eastern and Western Districts on March 3, 1857, primarily due to a substantial increase in the number of admiralty cases arising from traffic on the Mississippi River following an 1851 U.S. Supreme Court opinion extending federal admiralty jurisdiction to inland waterways. Litigants of matters arising in St. Louis found it inconvenient to travel to Jefferson City for trials, leading Congress to divide the District. At that time, the Hon. Robert William Wells was the sole Judge serving the District of Missouri. He was reassigned to the Western District.

*NOTE:* The Federal Bar Association Chapter for the Districts of Kansas and Western Missouri retains sole and complete responsibility for the content of this publication. For questions or comments about this publication, contact Blake Shuart via e-mail at [Blake.Shuart@huttonlaw.com](mailto:Blake.Shuart@huttonlaw.com).