



Districts of Kansas & Western Missouri

Civil Jury Verdict Report

D. Kan. & W.D. Mo.

Issue 5 – May 2022

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The Federal Bar Association provides practitioners in all practice areas a unique opportunity to socialize with colleagues and Judges in a professional setting while learning more about the federal courts. The FBA offers many opportunities to obtain CLE credits in both live and remote settings, free of charge for all registered members. To register, contact the Chapter's Membership Director: Abby McClellan at mcclellan@stuevesiegel.com or visit the FBA website at www.fedbar.org/membership.

UPCOMING FBA CHAPTER EVENTS:

June 14, 2022:

Social Event: This event, hosted by the Federal Bar Association, will be June 14 from 5:00-7:30 p.m. at Boulevard Brewing Company, 2501 Southwest Boulevard, KC, MO. Free wine, beer & hors d'oeuvres will be provided. Judge Counts, Judge James and other Judges from the District of Kansas and the Western District of Missouri will be present. This will be a great opportunity to meet & socialize with fellow attorneys and Judges. Please RSVP to Judge Teresa James at: ksd_james_chambers@ksd.uscourts.gov

July 7, 2022:

CLE from 1:00-2:00 p.m. (both remote and live attendance options available) CST: "Book Banning and the First Amendment." Presented in conjunction with the Kansas First Amendment Foundation; will reach a dual audience of attorneys and K-12 Civics Educators from around Kansas. Moderated by Eric Weslander, Esq.; Panelists to include Deborah Caldwell-Stone of the American Library Association's Office for Intellectual Freedom and a representative from ACLU of Missouri. Topics will include the landmark litigation arising out of the 1982 novel "Annie On My Mind." For information, including attendance options, please

visit the Chapter's website at:
<https://fedbarkanmo.org/upcoming-events>

August 10, 2022: CLE (available both live and via Webinar) from
Noon – 1:00 p.m. CST: *Implicit Bias & Diversity*
Presenters: Hon. Lajuana Counts, Dana Cutler &
Keith Cutler – contact Blake Shuart for more information at
Blake.Shuart@huttonlaw.com

MAY 2022 CIVIL VERDICT SUMMARY

Parties: *All Brands Distribution, LLC v. Vital Pharmaceuticals, Inc.*
Case No.: 6:18-cv-01354-EFM Judge: Hon. Eric F. Melgren
Location: D. Kan. (Wichita, KS)
Attorneys: (P) – Todd Shadid & Zachary Mack
(D) – Michael Crabb & Benjamin Friesen

Plaintiff ABD is a beverage distribution company in Kansas and brought this action against defendant VPX Pharmaceuticals, Inc., a producer of energy drinks incorporated in Florida. Plaintiff alleged breach of contract, promissory estoppel and unjust enrichment/ *quantum meruit*.

Verdict: For plaintiff. The jury found for plaintiff ABD on all three claims: breach of contract, promissory estoppel and unjust enrichment/ *quantum meruit*. The jury awarded damages as follows: (1) \$303,676 for lost margin for failure to price protect under an unjust enrichment theory; (2) \$93,670 for payment of slotting fees under a theory of breach of contract; (3) \$23,220.14 for shipping or freight charges under a breach of contract theory; (4) \$2,357 for golf tournament fees under a promissory estoppel theory; and (5) \$298,108 for buyout under an unjust enrichment theory. Total verdict for plaintiff: \$721,031.14.

Parties: *Lenexa 95 Partners, LLC v. KIN, Inc. f/k/a Kohl's Inc.*
Case No.: 2:20-cv-02367-JWB Judge: Hon. John W. Broomes
Location: D. Kan. (KC, KS)
Attorneys: (P) – David Ballew, Dustin Rucinski & John Duggan
(D) – Jason Bush, Joshua Langlois, Brendan McPherson & Brisa Wolfe

Defendant KIN (Kohl's) formerly operated a Kohl's Department Store near 95th Street and I-35 in Lenexa, Kansas. Kohl's leased the premises from plaintiff and its predecessors in interest. After the lease expired, plaintiff filed this lawsuit alleging Kohl's breached the lease agreement by failing to properly maintain and repair the premises and surrendering the premises in a deteriorated condition. Kohl's contended the premises were surrendered with only ordinary wear and tear.

Verdict: For plaintiff. The jury answered “Yes” to both of the following two questions: (1) “Do you find that Lenexa 95 has proven by a preponderance of the evidence that Kohl’s breached Section 29 of the Lease by failing to return the Leased Premises to Lenexa 95 in the same condition in which the Leased Premises were originally received from Landlord at the commencement of the Lease on August 12, 1994, except as repaired, rebuilt, restored, altered or added to as provided in, permitted by or required by any provision of the Lease, but with ordinary wear and tear excepted?”; and (2) “Do you find that Lenexa 95 has proven by a preponderance of the evidence that Kohl’s breach of the Lease directly caused damages to Lenexa 95?” The jury then proceeded to award damages as follows: (A) North Asphalt Parking Lot: \$12,680; (B) East Concrete Parking Lot: \$132,760; (C) South Concrete Parking Lot: \$146,248; (D) West Sidewalk: \$8,534; (E) Roof: \$0; (F) HVAC Units: \$5,000; (G) Carpeting: \$0. Total verdict for plaintiff: \$305,222.00.

Parties: *Karen Keil, Ashley Zieser, Lynnsey Betz & Tranady George v. Edward Bearden*
Case No.: 18-cv-06074; 18-cv-06079; 18-cv-06103; 19-cv-06161
Judge: Hon. Beth Phillips Location: W.D. Mo. (KC, MO)
Attorneys: (P) – Susan McGraugh, Jenifer Snow, John Ammann & Brendan Roediger
(D) – Nicolas Taulbee, Cara Harris & Abbie Rothermich

The four plaintiffs brought claims against defendant Bearden under § 1983, alleging Bearden violated their Eighth Amendment rights to be free from cruel and unusual punishment by sexually assaulting them when they were prisoners and he was a Corrections Officer at the Chillicothe Correctional Center, a women’s prison.

Verdict: The jury found for all four plaintiffs, awarding each plaintiff \$3.5 million in compensatory damages and \$1.5 million in punitive damages. Total aggregate verdict for the four plaintiffs: \$20 million.

DID YOU KNOW?

In accordance with 28 U.S.C. § 604(a)(2), each year the Administrative Office of the U.S. Courts is required to provide a report of statistical information on the caseload of the federal courts for the 12-month period ending March 31. For the year ending March 31, 2021, below are some key findings related to civil case activity in the U.S. District Courts:

- Civil filings increased 39% due to more than 190,000 multidistrict litigation cases filed in a single district related to the 3M Combat Arms earplugs – without these cases, civil filings would have fallen by 4%
- Contract actions increased by 9% as insurance cases increased by 22%
- Filings with the U.S. as defendant rose 21%; filings with the U.S. as a plaintiff decreased by 18%

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.