■ DEFENSE VERDICT

Jury rules in favor of Deere & Company in benzene case

NEGLIGENCE

- **Venue:** Jackson County Circuit Court
- **Case Number/Date:** 1316-cv13192/June 30, 2016
- **Judge:** James F. Kanatzar
- **Plaintiff's Experts:** Stephen Petty, Dublin, Ohio (exposure assessment); Robert J. Harrison, San Francisco, California (medical causation); Navanshu Arora, Kansas City (medical causation)
- **Defendant's Experts:** David H. Garabrant, Ann Arbor, Michigan (epidemiology); Peter G. Shields, Columbus, Ohio (causation assessment, oncology, hematology); John W. Spencer, Columbia, Maryland (exposure assessment), David W Pyatt, Superior, Colorado (toxicology)
- **Caption:** Wade Wiederhold v. Deere & Company
- **Plaintiff's Attorneys:** Al Stewart, Lee Lesher and Stephanie Sherman of Allen Stewart, of Dallas; Lon Walters and Christin DiMartino, The Walters Law Firm, Kansas City
- **Defendant's Attorneys:** Matthew J. Fischer and Brian O. Watson, Riley Safer Holmes & Cancila, Chicago.

By Jessica Shumaker
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A Jackson County jury returned a verdict in favor of Deere & Company on claims that exposure to products under the John Deere brand were linked to a Lee's Summit man's cancer.

Nine of the 12 jurors found that Deere was not liable on counts of negligence, strict product liability for design defect and strict product liability for failure to warn.

The verdict on June 30 wrapped up a trial that began in the Jackson County Circuit Court in Independence on June 20.

The plaintiff in the case was Wade Wiederhold. He claimed his work as a mechanic for tractor dealers in the Kansas City area exposed him to paints, cleaning solvents and other products that contained benzene, a known carcinogen.

He also claimed that exposure led to his 2011 diagnosis of acute promyelocytic leukemia, a form of bone marrow cancer.

Deere's attorneys denied liability in opening statements of the trial, saying the company did not make any of the products itself, and also denied Wiederhold's exposure would have been sufficient to cause cancer.

Wiederhold asked the jury to consider damages in the range of $4 million to $6 million.

Matthew J. Fischer and Brian O. Watson of Riley Safer Holmes & Cancila in Chicago represented the defense. They declined to comment on the verdict.

Al Stewart of Allen Stewart in Dallas and Lon Walters and Christin DiMartino of The Walters Law Firm in Kansas City represented the plaintiff.

"Sometimes we win, sometimes we don't," Stewart said. "Wade is a great person and it is our honor to be his advocate."

The case initially included several other defendants who were dismissed prior to trial. They included Safety Kleen Corp., Safety Kleen Systems Inc., Illinois Tool Works Inc., Berryman Products Inc., Gold Eagle Co., The Sherwin-Williams Company, TIG Distributing Inc., MDI Products, LLC, Rust-Oleum Corp., O'Reilly Automotive Stores Inc., Ozark Kenworth Inc., and Valspar Corp.

The case is *Wade Wiederhold v. Deere & Company*, 1316-CV13192. MO

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Missouri Lawyers WEEKLY

EXPERTLY FOCUSED. WIDELY ACCLAIMED. 2016 STATE NEWS, PHOTOGRAPHY AND DESIGN WINNER

Readying to retire

Solo lawyers 45 and older should be thinking about succession planning, experts say

By Catherine Martin
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When Joseph Goff's son started law school, the elder Goff started thinking about succession planning with the idea that his soon-to-be lawyer son would take over his solo practice in Farmington.

All seemed to be going according to plan — Joseph Goff Jr. moved back to Farmington to work for his dad's civil trial practice after spending a year in the Missouri Attorney General's office.

But, Goff Jr. wasn't able to spend much time in the courtroom so he moved to the prosecutor's office to get that experience and planned to return to his dad's office.

Then, in 2015, Gov. Jay Nixon appointed Goff Jr. as a judge in St. Francois County.

"The plans worked out differently, but they worked out well for him," Goff Sr. said.

They ended up working out well for Goff Sr., too — his younger son, Jake Goff, opted to go to law school and plans to join

[SEE RETIREMENT ON PAGE 9]

When Joe Goff Jr. was appointed to the bench in St. Francois County, it left a question hanging in the air. Who would take over his father's Farmington law firm? His younger brother, Jacob Goff, after time spent in seminary school and traveling, opted to go to law school, and now plans to continue the practice. Pictured, from left, Joe Goff Jr., Joe Goff Sr., and Jacob Goff. Photo by Alyssa D. Dudley

Judge finds MHRA does not require 'fresh start'

By Scott Lauck
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Not many employment discrimination cases in Missouri state courts are resolved favorably for the defense on summary judgment, but a recent case in Ray County shows that sometime it can be done.

Dianna Price was fired from the Shirkey Nursing and Rehabilitation Center in Richmond on the day she returned to work from leave to treat her bipolar disorder. In her lawsuit, Price alleged that her employer had discriminated against her due to her mental disability and that she'd faced retaliation for taking medical leave, in violation of the Missouri Human Rights Act.

Typically, such employment disputes in state court head to a jury trial. As the Missouri Supreme Court put it in its landmark 2007 MHRA case, *Daugherty v. City of Maryland Heights*: "Summary judgment should seldom be used in employment discrimination cases, because such cases are inherently fact-based and often depend on inferences rather than on direct evidence."

[SEE MHRA ON PAGE 8]

Missouri Supreme Court cases so far this year are numerous and weighty

By Stephanie Maniscalco
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■ On Opinions

Stephanie Maniscalco

Fifty decisions in six months is newsworthy in itself, but in the first half of this year the Missouri Supreme Court's caseload has included such headliners as another piece to the puzzle that is the state's law on noneconomic damage caps, recognition of an action for negligent entrustment against a gun seller, and clarification of when a plaintiff can sue a fellow employee for a workplace injury.

In April, the high court relied on precedent to find that it is constitutional to limit damages when a health-care provider's actions result in a wrongful death. The 5-2 decision in *Dodson v. Ferrara* stands in contrast to the court's 2012 holding in *Watts v. Cox Medical Centers* that found statutory caps to be an unconstitutional violation of the right to trial by jury in medical malpractice cases that result in injury, rather than death. The majority reasoned that lawmakers can set limits for wrongful death cases because the wrongful death cause of action was created by statute as opposed to medical negligence, which arose under the common law.

The ongoing saga may be complicated by the passage last year of new caps with higher limits as well as the recent and as-yet unchallenged declaration that medical negligence will be considered a statutory cause of action.

Also in April, the Missouri Supreme Court ruled that a mother could proceed with her lawsuit against a pawn shop that sold a gun to her allegedly mentally ill daughter, who used the gun to kill her father. The court allowed a state law claim for negligent entrustment based on the mother's warning calls asking the store not to sell a gun to her unstable daughter. The decision in *Delana v. CED Sales Inc.* overruled a decision from the Missouri Court of Appeals and potentially paves the way for further tort actions against those who sell dangerous items.

Most recently, the high court held that to sue a

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FIRST HALF 2016

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Suit over student's rape at school returned to state court

By Scott Lauck
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A lawsuit alleging that a developmentally disabled girl was raped at a Kansas City school can proceed in state court, a federal appeals court ruled Thursday.

Although the Kansas City School District had argued that the lawsuit made claims under the federal Individuals with Disabilities Education Act, the 8th U.S Circuit Court of Appeals said the suit essentially makes common law claims that should be tried in state court. The court sent the case back to Jackson County Circuit Court, where it was initially filed.

The victim, identified as D.S. in court documents, was a special education student at Southwest Early College Campus. The suit alleges that in April 2014 a student raped her in an unused portion of the school. The suit also alleges that she'd been harassed and sexually assaulted by fellow students on several occasions.

D.S.'s mother, Katie Moore, brought a lawsuit on her behalf on claims of premises liability and negligence. The district, however, removed the suit to the U.S District Court for the Western District of Missouri, arguing that the suit "repackaged a federal IDEA claim" to avoid that law's procedural requirements. The federal court later dismissed the suit for having failed to exhaust the administrative procedures.

The 8th Circuit, however, noted that the suit never mentioned the IDEA or any federal statute. The school district's argument was "overstated" but "not completely without support," Judge William Jay Riley wrote for the panel, noting that the petition makes references to the plaintiff's individualized education program, which the IDEA mandates accommodate disabilities. On that basis, the court declined to award the plaintiff's attorneys' fees "for the detour through federal court.

But, the court said, the references to her educational requirements were just there for context.

"The gravamen of the petition is a state law action for damages seeking redress for the brutal injuries D.S. suffered as the result of repeated sexual assault and rape while under Southwest's supervision," Riley wrote. Judges Duane Benton and James B. Loken concurred.

The case is *Moore v. Kansas City Public Schools et al.*, 15-2617.

Verdicts&Settlements

■ DEFENSE VERDICT

City not liable for Columbia recreation center fall

PREMISES LIABILITY ACTION

- **Venue:** Boone County Circuit Court
- **Case Number/Date:** 12BA-CV01306/March 17, 2016
- **Judge:** Gary Oxenhandler
- **Plaintiff's Experts:** Dr. Garth Russell, Columbia, (surgical specialties); Christopher Jansen, St. Louis, (engineering)
- **Defendant's Expert:** Michael Pratt, St. Louis, (architecture)
- **Last Pretrial Demand:** $55,000
- **Last Pretrial Offer:** $25,000
- **Caption:** Mary Ruth Pauley v. City of Columbia, Missouri
- **Plaintiff's Attorney:** Matthew Woods, Eng & Woods, Columbia
- **Defendant's Attorneys:** Debbie Champion and Dean Stark, Rynearson, Suess, Schnurbusch & Champion, St. Louis

Debbie Champion

Dean Stark

By David Baugher
Special to Missouri Lawyers Media

A Boone County jury has ruled the City of Columbia is not responsible for injuries to an elderly woman who fell after exiting the pool area of its recreational facility.

"The plaintiff went to the Athletic Recreation Center for water aerobics classes," said defense attorney Dean Stark who assisted Debbie Champion of Rynearson, Suess, Schnurbusch & Champion. "She went there every morning and they had classes on the hour."

However, during one visit, plaintiff Mary Ruth Pauley slipped while moving between two areas of the locker room which is divided between "wet" and "dry" sections.

"She said she was turning the corner from the wet area to the dry area and her feet slipped out from underneath her and she fell straight on her shoulder where she suffered her injury," he said.

Pauley suffered a shoulder fracture in the incident, and her attorney Matt Woods of Eng & Woods alleged a number of deficiencies at the facility, including that carpeting or mats should have been installed, that there was inadequate policing of the area for wet spots, and that the porcelain tile was not recommended for use in that environment.

He also said they had testimony from another individual who fell in the same area.

Still, he said he knew it would be difficult to prevail.

"Slip-and-fall cases are tough. Unless you have egregious evidence or some smoking gun of some sort, they are just tough cases to prove," he said.

Stark said that he countered the plaintiff's claims with expert testimony that the type of tile used was the appropriate standard for the industry and that mats or carpeting can actually do more harm than good since edges can curl creating a tripping hazard and bacteria or mold can accumulate within them.

"They cause more problems than they would solve," he said. "You just can't use them in the wet area of a locker room."

Stark said that staff policed the area after each class to look for problems and would take action if anyone brought a hazard to their attention.

He said the plaintiff admitted she was aware of water on the floor where she'd slipped and that she knew water sometimes pooled there. Woods said his elderly client's memory was inconsistent on this point and it was unclear whether she saw the water or not.

"The case was on file for four years due to various continuances, judge changes and recusals," he said, noting that his client's recollection and wording of the incident might have changed slightly over time.

There was also a dispute over signage. The defense claimed a sign mentioned the possibility of wet floors, and the plaintiff said the sign may not have been there at the time.

"It was unclear when the sign was put out and where it was put," Woods said.

Woods said the matter was an "uphill battle" to try to win but said the verdict wasn't unanimous and two jurors agreed with him.

"You've got a 75- to 85-year-old woman slipping in water in an aquatic bathroom," Woods said. "That's a tough case because it is constantly wet."

Stark said he felt the jury's decision was prompted by the plaintiff's admission about knowing water was on the floor and the testimony of his expert regarding floor coverings and tile.

"I think this was a case that turned purely on the issue of liability and I think that's why the jury came back with zero/zero fault," he said. "They didn't want to blame anybody for what is purely an accident."

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