

Verdicts & Settlements

\$5 million assault-battery civil suit rejected

'Preponderance of the evidence' standard is used by jury to decide

Defendant Jacob Trakhtenberg was initially convicted of three counts of second-degree criminal sexual conduct on Feb. 3, 2006, after a bench trial in Oakland County Circuit Court (case 2005-203484-FH). He was sentenced to three terms in prison of four-15 years on each count.

The alleged victim was 8 years old at the time and Trakhtenberg's biological daughter. She was residing with her mother after the Trakhtenbergs divorced and was spending alternate weekends with her father. It was during these parenting sessions that the daughter accused her father of sexually assaulting her on three separate occasions.

Jacob Trakhtenberg alleged his court-appointed attorney in the criminal case advised him to waive a jury trial and allow the case to be tried as a bench trial. The trial lasted one hour, with no witnesses called by the court-appointed attorney.

Three days later he was served with a civic summons and complaint alleging assault and battery, resulting of the criminal sexual conduct counts for which he was convicted; intentional infliction of emotional distress; and fraudulent transfer of assets to avoid an anticipated judgment, which alleged Trakhtenberg had transferred all of his property to another family member to avoid an anticipated judgment from the criminal sexual conduct convictions.

The trial judge in the civil case ruled that the criminal sexual conduct convictions would be admissible as evidence pursuant to the case of *Imperial Kosher Catering v. The Travelers Company*. He also allowed into testimony the fact that the Court of Appeals affirmed the criminal conviction and that the Supreme Court refused leave — facts that were objected to by his defense counsel

The plaintiff's attorney stressed to the jurors that the criminal case concluded "beyond a reasonable doubt" that the defendant committed the exact elements that the jurors in the civil case had to decide using the "preponderance of the evidence" standard.

Plaintiff's counsel further stressed that not only had the matter been decided by a trial court, it also had been addressed by two higher courts, and the defendant was still in prison; therefore there was no issue for the jurors to decide other than the amount of damages to award the victim.

The chief interviewer from CARE House (Child Abuse and Neglect Council of Oakland County) was the only individual to ever interview the alleged victim. In the civil trial, she testified to statements made by the alleged victim that were actually never made, confirming that she replaced the alleged victim's words with her own words.

The jurors unanimously decided after 28 minutes to return a no cause of action verdict on the case.

Type of action: Civil assault and battery relating to sexual assault, intentional infliction of emotional distress, fraudulent