

**Sexual Harassment - A female employee of a motorcycle dealership alleged she was sexually harassed by the owner which included sexual remarks, leering, touchings and invitation for an overnight trip in a quid pro quo for advancement with the company – a Knoxville jury found for the plaintiff on all counts and imposed punitive damages of \$4,000,000 that were later reduced to \$1.2 million to account for Tennessee’s tort reform scheme**

*Hindenburg v. Knoxville Harley-Davidson*, 198242-1

Plaintiff: Jason A. Lee, *Burrow Lee*, Nashville

Defense: Melissa B. Carrasco and

Penny A. Arning, *Egerton McAfee Armistead & Davis*, Knoxville

Verdict: \$4,172,132 for plaintiff

Court: **Knox (Chancery)**

Judge: John F. Weaver

Date: 2-18-22

Sarah Hindenburg started working in February of 2017 for Knoxville Harley-Davidson as a sales associate – she also helped out with the clothing store and the parts department. The motorcycle dealership actually operates as two companies, Knoxville Harley-Davidson and Knoxville Harley-Davidson West.

There would be fact disputes as to whether the two companies were actually separate. Hindenburg believed they were a single entity that was operated by their owner, Dile Brown. The companies argued they were separate. This would later be a fact issue at trial.

In any event Hindenburg alleged that Brown engaged in a long-standing pattern of sexual harassment. He made sexual remarks (he wondered if her pubic hair matched her hair color) and stared at her breasts. There were touchings and a discussion of adding a stripper pole. It was further alleged that Brown asked Hindenburg to clock out and join him for a sexual encounter.

The harassment (from Hindenburg’s perspective) grew more insidious and persistent in 2019. There was proof she made an internal complaint about the stripper pole incident. Nothing was done in response to that report.

Then moving forward to the key event in the case, Brown invited Hindenburg to his home for a discussion of her future with Harley-Davidson. Hindenburg recalled that Brown made sexual gestures (as if holding her breasts) and made an implied quid pro quo offer that if she allowed him to squeeze her breasts, he’d suggest her advancement to the dealer’s general manager. Hindenburg left disgusted and resigned two days later.

Hindenburg filed this lawsuit two weeks later. She first alleged a statutory Tennessee Human Rights Act claim that the above-described conduct represented quid pro quo sexual harassment and severe and pervasive sex discrimination. She also alleged constructive discharge. She sought backpay and compensatory damages if prevailing.

Hindenburg also alleged a common law Intentional Infliction of Emotional Distress (outrage) claim. The jury could award her both economic and non-economic damages on this claim. The jury could additionally impose punitive damages against Harley Davidson.

Harley-Davidson defended on several fronts. The first was to cite Brown’s version of events. [He was not sued individually.] Brown’s reply was simple enough – he denied everything. From his perspective there was no sexual harassment at all. Harley-Davidson also replied that even if true, Hindenburg’s claims were not severe and pervasive nor did they rise to a level high enough to justify outrage.

This case was tried before Chancellor John Weaver for five days. The jury first answered for

Hindenburg that the defendants (Harley-Davidson and Harley-Davidson West) were a single entity. Had the answer been no the jury would have considered claims against the individual defendants.

The jury then found for Hindenburg on the statutory Human Rights Act claim on quid pro quo, sexually hostile work environment and constructive discharge. It also rejected Harley-Davidson's defenses that, (1) the defendant exercised ordinary care to prevent harassment, and (2) Hindenburg failed to take advantage of corrective opportunities. The jury then moving to damages on the statutory claim, the plaintiff took \$21,132 in backpay plus \$100,000 more in compensatory damages.

The jury then moved to the state-law outrage claim. It found for Hindenburg and awarded her economic damages of \$100,000 and \$500,000 more for the non-economic variety. The jury additionally determined by a "clear and convincing" proof standard that the plaintiff was entitled to punitive damages. Then in a mini-punitive damages phase, the jury imposed punitive damages of \$4,000,000. The raw verdict for Hindenburg totaled \$4,721,132.

Chancellor Weaver entered a final judgment in the case five months later on 7-27-22. The judgment reduced the statutory compensatory damages to \$50,000 (because the number of the defendant's employees) from \$100,000. Similarly the punitive damages (on the outrage claim) were reduced to \$1.2 million representing the tort reform cap of double the compensatory damages. Thus the final judgment was \$1,871,132, the court adding attorney fees of \$172,945 that pushed the final judgment to \$2.044 million.

Harley-Davidson had moved for a new trial and/or remittitur before the final judgment was entered. It later filed a motion for a new trial after the entry of the judgment.

Harley-Davidson made several arguments in these motions. Among those arguments was that the quid pro quo was not fully proven because there was no explicit evidence Hindenburg would receive a promotion if she went on the overnight trip. A simple implication was inadequate the motion argued.

Harley-Davidson also diminished the purported sexual harassment and suggested it was just a few isolated and off-hand remarks, perhaps as few as eight over a two-year period. This was described as not being objectively severe and pervasive. The dealer also argued that Hindenburg wasn't offended either and noted she'd eaten with co-workers at Hooters and herself sometimes sent texts with curse words.

The defense also described the compensatory damages on the statutory and common-law claims as duplicative. Finally the punitive damages were described as so excessive as to violate Harley-Davidson's due process constitutional rights.

Hindenburg replied that the harassment was severe and that there were hundreds of events that occurred on a weekly basis during her two year employment tenure. The reply continued that the jury resolved these fact questions and reflected that society will no longer tolerate sexual harassment. The reply also responded to the notion Hindenburg had not suffered any emotional distress and pointed to her crying spells, depression, shame and interference with intimacy with her husband. Harley-Davidson's motions were pending at the time of this report.