

# Missouri Lawyers WEEKLY

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## Manager with muscular dystrophy wins lawsuit over work demotion



Joseph K. Eischens



Randall W. Brown

By DAVID BAUGHER  
Special to Missouri Lawyers Media

An auto parts store manager who alleged he was demoted because of his muscular dystrophy won a \$2.2 million verdict on discrimination claims.

“He had some of the highest numbers in the entire 10-store district, but in November of 2010 they demoted him to a parts specialist position,” said Joseph K. Eischens, of

Thornberry, Eischens & Brown, who represented plaintiff Kurt Ellison. “It was our contention that his disability certainly played a part in that demotion. We didn’t have to prove that was the only reason, but it was a reason and the jury believed us.”

Eischens said Ellison started at O’Reilly Automotive Stores as an assistant manager in 1997, eventually acquiring a position as store manager at a location in late 2008.

“The significant point there is that evidence exists that a hiring manager or the district manager didn’t want to promote Kurt in the first place but they had a need,” he said. “The hiring manager talked to other folks who knew Kurt, so they promoted him.”

Eischens said that his client began having balance problems

and trouble walking at the time of his promotion due to his muscular dystrophy. He used leg braces to compensate for the problem.

Ellison was written up three times due to the physical appearance of the location he ran and because of managerial issues before ultimately being placed on probation. Eischens said the defense introduced employee witnesses who testified that morale was low and that muscular dystrophy had nothing to do with the decision.

Eischens countered with employees who said that his client was likable and helpful. He also said email exchanges among management mentioned Ellison’s illness and complained about balance issues and customers having trouble understanding him on the phone.

“HR even had a note that ad-

ressed ADA concerns,” he said. “It was on their mind.”

A Platte County jury returned a verdict for \$200,000 in compensatory damages and a \$2 million punitive figure. Eischens said the judgment had not yet been finalized and he was still waiting on the application for fees.

Eischens had conversations via email with jurors afterward.

“I think they just really liked my guy. I thought we put on a good case,” he said.

“Kurt certainly did not let his disability define him at all,” Eischens added. “He did his job as good as anybody else could have.”

Larry M. Schumaker, of the Schumaker Center for Employment Law, which represented the defendant, did not respond to requests for comment for this story. **MO**

### \$2.2 Million Verdict

#### MOTOR VEHICLE COLLISION

■ **Venue:** Platte County Circuit Court

■ **Case number/date:** 12AE-CV02409/May 15, 2014

■ **Judge:** James Van Amburg

■ **Last pretrial demand:** \$85,000

■ **Last pretrial offer:** \$25,000

■ **Caption:** Kurt D. Ellison v. O’Reilly Automotive Stores Inc.

■ **Plaintiff’s attorneys:** Joseph K. Eischens and Randall W. Brown, Thornberry, Eischens & Brown, Kansas City

■ **Defendant’s attorney:** Larry M. Schumaker, Schumaker Center for Employment Law, Kansas City