

# Ex-Firefighter's Defamation Claim Extinguished

## "Kelly's Court" Segment on Disability Recipient Protected Opinion

By Steven Mandell and Natalie Harris

Former Milwaukee firefighter Aaron Marjala swam, biked, and ran himself into the center of a controversy about the Wisconsin state duty disability system. That system provides publicly funded lifetime benefits to firefighters who suffer permanent work-related injuries and can no longer perform their duties. At the age of 28, Marjala began collecting duty disability benefits for a permanent—but minor—elbow injury he suffered on the job. While the injury left him unable to lift ladders or tie rope knots, he continued to participate in vigorous physical activities including marathons, waterskiing, snow skiing and an Ironman triathlon.

Fox News picked-up Marjala's story from a piece broadcast on the local Milwaukee news and put it "on the docket" of *Kelly's Court* during the *America Live* program. The *Kelly's Court* segment is [available here](#).

*Kelly's Court* is a segment that features a mock-courtroom format with host and "judge" Megyn Kelly presiding over guest panelists who debate opposing sides of hot issues ripped from the headlines. This *Kelly's Court* segment focused on who should be held accountable when able-bodied individuals collect disability payments on the taxpayers' dime. On one side of the debate, New York attorney Lee Armstrong argued that healthy individuals—like Marjala—who choose to collect benefits when they are able to work bear some culpability for exploiting the system. In response, Fox News legal analyst Lis Wiehl defended Marjala, urging viewers not to blame him, but rather the broken system and the state of Wisconsin.

At the opening of the segment, Megyn Kelly declared *Kelly's Court* "in session" describing Aaron Marjala as the "Ironman too injured to fight fires" after he "banged his funny bone on a countertop in a kitchen at a Milwaukee firehouse." Kelly reported that Marjala sought a light duty job with the fire department, but with no positions available, the department gave him a choice—apply for duty disability or find another job. She explained that Marjala opted to apply for disability and doctors certified him permanently disabled, "opening the door to \$50,000 in disability payments, tax free." Kelly remarked that despite collecting benefits, "Marjala was able-bodied enough to run seven marathons and an Ironman triathlon," and introduced footage

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of Marjala being interviewed at a race finish line, acknowledging that he was only 15% paralyzed in his elbow area and suffered only “minor limitations.”

As the debate ensued, Armstrong remarked that there were other firefighters who were “genuinely injured, really hurt” but that Marjala appeared “sheepish” when describing his injuries during his television interview. Armstrong asserted that Marjala had “exploited his supposed injury” and suggested that there should “be an investigation” because “this guy should no longer get this money.” In response, Lis Wiehl reminded viewers that Marjala did request a desk job with the department and argued that “you really can’t say that he scammed the system.” Wiehl emphasized that independent doctors—not Marjala himself—declared him permanently disabled, likely because disability law requires doctors to consider activities a person cannot do, rather than what they can do. She cast the scenario as a classic failure of government bureaucracy.



Throughout the segment, Armstrong, Kelly and Wiehl smirked, snickered, lobbed sarcastic zings and shouted over each other to make their points. “Judge” Kelly ultimately sided with Armstrong, wondering aloud why Marjala should “be excused from the fraud.” Flanked by a gavel and the scales of justice, Kelly issued her opinion, concluding that “people [are] taking advantage of the system and it’s wrong.”

Marjala filed a defamation lawsuit in the circuit court of Milwaukee County against Fox News, Lee Armstrong and Megyn Kelly alleging that statements in the *Kelly’s Court* segment “falsely communicated to viewers that Marjala was not really injured at all, that Marjala deserved scorn and ridicule for even applying for disability status, that Marjala collected disability instead of working, even though he is physically able, and that Marjala had committed a crime.” (Marjala also named fire chief Robert Whitaker as a defendant based on statements Whitaker made in the separate story aired by the local Fox affiliate.)

Marjala specifically objected to several statements, including Megyn Kelly’s characterization of his ulnar nerve injury as “hitting his funny bone” and her assertion that he was “going to get this money for life, tax free” without mentioning that future earnings would

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be set off from his benefits. He also alleged that Megyn Kelly’s rhetorical question accused him of committing fraud.

The Fox News defendants moved to dismiss Marjala’s complaint arguing that the subject statements were either true or non-actionable opinion. The Honorable Judge Jeffrey Conen heard arguments and [issued an oral ruling from the bench on June 29, 2015](#). The court stressed that “the statements must be considered in light of the overall context in which they were made,” and noted that the segment topic—Wisconsin’s duty disability system—is an issue of public importance. Based on the “passionate, flippant nature” of *Kelly’s Court*, Judge Conen concluded that “a viewer would not understand the segment to be hard news,” and could independently judge for themselves “whether the defendants’ opinions and comments were reasonable and make up their own mind about the duty disability system and Mr. Marjala’s receipt of the benefits.”

Finally, while the court acknowledged that the facts did not flatter Marjala, the segment did disclose “the full factual background about his injury and about the receipt of duty disability” upon which Armstrong and Kelly based their opinions. The court ultimately dismissed Marjala’s complaint with prejudice, finding that “the statements do not imply that Mr. Marjala lied about his injury or that he has committed a crime, rather the defendants’ comments called into question Mr. Marjala’s moral decision to accept benefits which he’s legally entitled [to] even though he’s capable of performing coun[tless] other jobs.”

*Steven P. Mandell and Natalie A. Harris of Mandell Menkes LLC, Chicago, IL represented Fox News Network LLC, Lee Armstrong and Megyn Kelly. Aaron Marjala was represented by Michael Hart and Craig Powell of Kohler & Hart, S.C., Milwaukee, WI. Fire Chief Robert Whitaker was represented by Bradley Matthiesen and Timothy Pagel of Matthiesen, Wickert & Lehrer, S.C., Hartford, WI and Peter Farb of Law Offices of Thomas P. Stilp, Milwaukee, WI.*

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