

# Wisconsin Court Of Appeals Snuffs Out Firefighter's Defamation Suit

By Steven Mandell and Natalie Harris

The Wisconsin Court of Appeals affirmed dismissal of former Milwaukee firefighter Aaron Marjala's defamation suit against Fox News, host Megyn Kelly and guest panelist Lee Armstrong arising from a *Kelly's Court* segment debating Marjala's decision to collect disability benefits while he was fit enough to compete as an Ironman triathlete. [Marjala v. Fox News Network LLC, Lee Armstrong, Megyn Kelly and Robert C. Whitaker](#), No. 2015AP1831, 2016 Wisc. App. LEXIS 805 (Wis. Ct. App. Dec. 20, 2016). (Marjala also named Milwaukee fire chief Robert Whitaker as a defendant based on statements Whitaker made in the separate story aired by a local Milwaukee TV station.)

## Background

As a young firefighter in 2008, Marjala banged his funny bone on the kitchen counter at the firehouse causing permanent—but admittedly minor—nerve damage. His injury qualified him to receive state duty-disability benefits, tax-free, for life. Marjala applied for—and began collecting—disability benefits in lieu of seeking light duty work outside the fire department.

Despite his injury, Marjala continued to participate in strenuous physical activities, including at least seven marathons and an Ironman triathlon, which involves biking, swimming, and running. Local Milwaukee Fox 6 reporter Bryan Polcyn interviewed Marjala in 2011 at an Ironman finish line during which Marjala admitted his injury was minor, but insisted he could no longer work as a firefighter.

Fox News' Megyn Kelly selected Marjala's story as a featured "case" on her mock-courtroom segment *Kelly's Court* during the [America Live program](#). Panelist Lee Armstrong argued that Marjala was exploiting his minor injury and should no longer receive duty disability money at the tax-payers' expense. Co-panelist Lis Wiehl defended Marjala, urging viewers to blame the state of Wisconsin—not Marjala—for failing to fix a flawed disability system. Marjala filed suit alleging that Kelly and Armstrong's comments in the *Kelly's Court* segment defamed him—suggesting that he was not truly disabled and was fraudulently collecting disability benefits.

In June 2015, the Milwaukee County Circuit Court granted the Fox News defendants' motion to dismiss Marjala's complaint, noting that Wisconsin's duty disability system is an issue of public importance and holding that in the context of the entire broadcast, "the

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**Kelly selected Marjala’s story as a featured “case” on her mock-courtroom segment Kelly’s Court. Click to view.**

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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.” Marjala appealed the dismissal.

### **Court of Appeals Decision**

On December 20, 2016 the Wisconsin Court of Appeals affirmed dismissal of Marjala’s complaint. The court noted the “mock trial or judicial debate” format of the *Kelly’s Court* segment and described the piece as a debate in which “Armstrong opposed Marjala’s collecting disability benefits while Wiehl spoke in support of Marjala” with Kelly rendering her legal “opinion” at the conclusion of the debate. The court was “satisfied that the program [was] simply a collection of opinion statements based on fully disclosed true or substantially true facts, making the opinions nonactionable.” Furthermore, the court held Marjala could not meet his burden of demonstrating the falsity of statements implying that he (1) claimed total disability because of hitting his funny bone and (2) was living off tax-free duty disability benefits to participate in marathons and triathlons.

*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.*