

How should I prepare before filing a lawsuit?

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Most people that become plaintiffs in a civil suit do so for the first time in their lives. They are unsure what to expect and may underestimate the costs, risks, and time involved. They may think, "I was wronged, therefore I will eventually get the justice I deserve."

A recent publicized case in United States District Court in Boston is an example of what could happen in a civil case that may help a prospective plaintiff have a better idea of what can happen. Diaz v. Jiten Hotel Mgmt., Inc., No. 2008 cv 10143 (D. Mass. May 5, 2011). The plaintiff pursued a discrimination claim against a former employer for wrongful firing. Along the way, three of the claims were dropped. The defendant filed a motion for summary judgment, and persuaded the court to dismiss another claim. This left an age discrimination claim under both federal and state law. Diaz v. Jiten Hotel Mgmt., Inc., 762 F. Supp. 2d. 319 (D. Mass. 2011).

Before trial, the defendant made a settlement offer of \$75K, the plaintiff countered with \$100K. Then it appears the negotiations stopped and the defendant walked away from the bargaining table. The parties went to trial and the plaintiff won, but it was approximately an award of less than \$8K. The defendant appealed the verdict on various grounds, which is still pending. After the ruling, in a separate motion after the trial, the plaintiff's attorney who took the case on a contingency basis, asked the court to also award the plaintiff her attorney's fees. In doing so, she found an unsympathetic judge.

The law generally is that regardless of the amount of the award, when a statute provides the prevailing party to be awarded attorney's fees, the attorney is entitled to reasonable fees. See Farrier v. Hobby, 506 U.S. 103, 113 (1992). (Please understand that attorney fees are not normally awarded, but only when a statute that provides the same is involved.) To illustrate, if the plaintiff was awarded \$10,000 for basic damages, the attorney fees awarded could be \$100,000 provided they were reasonable.

In this case, the judge initially reduced the fees sought by 1/3 due to the claims that were dropped or dismissed. Then the judge did something unusual: he considered the facts pertaining to the settlement negotiations. Specifically, the judge (apparently by being informed by the defendant) found that the \$75K settlement offer made by the defendant was reasonable. He further decided that the attorney should not get more than what he would have if the settlement went through. The important part of the decision is that the judge considered the facts pertaining to the settlement and the amounts that would have been realized. In doing so, the judge lowered the amount of attorney's fees even more to the amount that would have been obtained in the settlement amount. Diaz v. Jiten Hotel Mgmt., Inc., No. 2008 cv 10143 (D. Mass. Nov. 8, 2011).

Some observations from this case that likely did not meet the plaintiff's expectations are in order. First, the plaintiff brought three claims and then dropped them, possibly because they were not as strong when subjected to adversarial scrutiny and/or upon further investigation and discovery. Second, one claim was dismissed by the court. Third, the defendant left the bargaining table after offering \$75K and getting a (seemingly reasonable considering the amount of the original offer) counteroffer of \$100K.

(One would think the parties could have reached settlement based on their level of interest in doing so that was evidenced by the amount of their respective offers .) Fourth, the jury awarded an amount much less than the plaintiff expected (I imagine). Fifth, attorney fees awarded were much less than what was expected, due in large part to the judge taking an unusual position by considering the facts pertaining to the settlement negotiations. Sixth, the failure of the plaintiff to accept the settlement offer, although possibly a bit lower than the plaintiff may have thought she could negotiate for, made a significant difference in the amount both the plaintiff and the plaintiff's lawyer may receive. Lastly, after a number of years of litigation and a jury trial, the case is still not over, but is on appeal.

One saving grace for the plaintiff is that if the decision is upheld, she has won. She will have a formal decision that states she was wronged. This may mean a great deal to her, but likely the case did not reap the rewards and was significantly more costly in many ways than was expected.

From the defendant's perspective it may not feel like a big victory. We do not know what the defendant has spent and expects to continue to pay in attorney's fees. The defendant corporation may feel like it has endured a significant financial penalty of its own in the form of its attorney's fees already. Also, it has a decision, although on appeal, finding that it broke the law that is public and will affect their reputation, especially concerning its employees. The executives that are responsible for the matter may feel like they have a mark on their professional resume, so to speak.

The lessons to be learned are many. Since this is written for prospective plaintiffs, we will mention a few take-aways from that perspective. First is to be emotionally, mentally, and financially prepared for the ups and downs and duration of litigation, and second, take reasonable offers very seriously. Overall, this is just one story that shows from whatever perspective one may have had in the case that man's justice is imperfect.

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