Court Rules Plaintiffs' Attorneys Entitled to More Than Just Contingency Fee After Jury Awards Nominal Damages

By Daniel Schwartz on December 12th, 2011

Suppose you just defended against a discrimination and harassment lawsuit by two former female employees. The jury found that discrimination and harassment had occurred. But the jury awarded one employee only $1600 in economic damages and nothing for emotional distress. For the other employee, the jury did not award any damages.

Justice for all...including attorneys

Most employers would take that result in a heartbeat after jury trial.

Are the employees' attorneys entitled to attorneys fees? In the vast majority of cases, the answer is "yes"; an award of attorneys fees traditionally goes along with a finding of discrimination.

But how much? In one case, counsel for the employees sought fees around $160,000 (or about 100 times the actual award of damages). The trial court disagreed and relied on the one-third contingency provision in the engagement agreement between counsel and the plaintiffs. $533 if you're playing at home.

However, in a decision to be officially released on December 13th, the Connecticut Appellate Court overruled that decision and instructed the lower court to recalculate the attorneys fees. You can download the decision in Noel v. Ribbits here.

It turns out that the fee agreement between counsel and the employees had a bit more language that the trial court suggested. Specifically, the fee agreement states that:

In the event of a successful resolution of the case, I agree that my attorneys shall be compensated at the rate of one-third of the entire settlement or judgment I receive in connection with my claims or *an award of reasonable attorney's fees, whichever is greater.*

The court said that the lower court goofed by not considering this additional language:

In fashioning its award, the court did not consider the provision in the agreements for a reasonable award that might be greater than one based solely on the jury's award of damages. Because the court ignored that provision of the fee agreements, under which the plaintiffs clearly were pursuing their quests for fees, and *failed to assess the reasonableness of their claim for fees*, we must conclude that the court's award was improper.

In doing so, the court rejected the defendants' arguments that the fees should be commensurate with the nominal damages awarded. Rather the court said that various factors — adopted from the 12-factor test in Johnson v. Georgia Highway Express — should apply. The Appellate Court, in a footnote, refers readers to a decision a few years back (Ernest v. Deere & Co), that adopted this 12-factor test in Connecticut. Central to this determination is a look at the "reasonableness" of the claim for fees.

Are the attorneys out of the woods yet? No. It's hard to believe that a court will uphold fees 100 times greater than the actual damages. But it's a safe bet to suggest that the fees awarded will be more than $533 too.

For employers, this is yet another reminder that discrimination cases can be expensive. Even "victories" like the one above can turn into losses when attorneys fees are calculated.