‘Garden Variety’ Emotional Distress Damages in Employment Matters to ‘Bloom’ in New Jersey

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The specific facts presented to the jury will determine whether an award of “garden variety” emotional distress damages is reasonable, the New Jersey Supreme Court has held in an employment discrimination case brought under the New Jersey Law Against Discrimination (“LAD”). *Cuevas v. Wentworth Group*, A-30-14 (Sept. 19, 2016).

Plaintiffs bringing “garden variety” emotional distress claims may support their claims with their own testimony or that of their friends and family, rather than offer expert or treating doctor testimony.

The Court also ruled that past precedent in other cases (“comparative-verdict methodology”) and the trial judge’s own experience are no longer relevant considerations in a post-trial application to reduce the award.

The new standard likely will make it harder to reduce a jury’s award for emotional distress and will encourage pre-trial discovery activities by companies challenging plaintiffs’ alleged symptoms or feelings of emotional distress.

Background

The plaintiffs, Ramon and Jeffrey Cuevas, two brothers of Hispanic descent, worked for Wentworth Property Management. Ramon was terminated four days after making an internal complaint about discrimination. Jeffrey was terminated a month after complaining of lack of process and fairness in his brother’s termination.

The plaintiffs sued Wentworth, Wentworth’s parent company, and one of their managers under the New Jersey LAD for racial discrimination, a hostile work environment, and retaliatory firings. They alleged they were routinely subjected to remarks that invoked racially demeaning stereotypes, some remarks occurring at senior executive meetings.

Lower Court Decisions

The plaintiffs did not offer any expert testimony, and they admitted they did not seek medical treatment. Their testimony related feelings of being beaten down, despondent, and depressed; the impact the workplace conduct and terminations had on their individual family relationships; and fears for their financial livelihood and reputation.

The jury found in favor of the plaintiffs and awarded back pay, front pay, punitive damages, and emotional distress damages. The emotional distress damages totaled $1.4 million ($600,000 to Jeffrey and $800,000 to Ramon).

The defendants asked the trial court to remit or reduce the emotional distress damages awards (saying they were excessive when viewed with “comparable” case verdicts) or to order a new trial. The trial judge denied the request. She distinguished the defendants’ “comparable” case verdicts and made specific findings that the jury’s attention to the trial permitted them to “observe both plaintiffs and assess their credibility.” Moreover, the judge declined to rely on her own experience as was permitted under prior rulings of the state high court. The appellate court affirmed the emotional distress damages awards.

New Standard

The New Jersey Supreme Court accepted the case to determine whether the trial court properly denied the defendants’ post-trial application to reduce the jury’s emotional distress awards. The Court

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determined that denial was proper.

The Court noted the power to reduce a jury award must be exercised with "great restraint" because "in our constitutional system of civil justice, the jury — not a judge — is charged with the responsibility of deciding the civil claim and the quantum of damages to be awarded a plaintiff." Accordingly, an award of emotional distress damages "is cloaked with the 'presumption of correctness,'" overcome only by clear and convincing evidence the award is a miscarriage of justice.

The Court found the plaintiffs had detailed a nine-month period of racial harassment and hostility carried out by, and in the presence of, the highest ranking officers of the company. The plaintiffs were subjected to crude and degrading remarks that stereotyped them and their heritage, as well as remarks that cast them in an inferior light and made them feel they were judged by their appearance and race, rather than by their talents and skills. They further testified they felt "chopped down day by day…, helpless, and despondent and exhausted." They also testified about anxiety over financial security, professional reputation, and supporting their family, a loss of self-confidence, and how humiliating it was to be fired several weeks before Christmas. Based on the trial record, the Court found, "[A]lthough these awards are probably on the high end, like the trial court and the appellate division, we cannot say that they are so 'wide of the mark,' so 'pervaded by a sense of wrongness,' so 'manifestly unjust to sustain,' that they shock the judicial conscious."

Further, the Court concluded, "[A] trial judge's reliance on her personal experience as a practicing attorney or jurist in deciding a remitter motion is not a sound or workable approach." Likewise, "the comparison of supposedly similar verdicts to assess whether a particular damages award is excessive is ultimately a futile experience that should be abandoned. Rather, courts should focus their attention on the record of the case at issue in determining whether a damages award is so grossly excessive that it falls outside of the wide range of acceptable outcomes."

Strategies

The "garden-variety" emotional distress claim may no longer be limited to nominal damages or constrained by case precedent in "comparable" cases or even the trial judge's own experience on the value of such damages. Rather, it is the record before the jury that will support the jury's award and control any post-trial motion for remitter. Specifically, "a thorough analysis of the case itself; of the witnesses' testimony; of the nature, extent, and duration of the plaintiff's injuries; and of the impact of those injuries on the plaintiff's life" that will yield the best record on which to decide a remitter motion.

This new standard encourages more discovery activities over a plaintiff's alleged symptoms or feelings of emotional distress. It will be necessary to produce at trial a record that offers the jury a counterview of the source or impact of the alleged emotional distress. Strategies to consider include:

- An emphasis in deposition on the alleged symptoms and feelings of distress, embarrassment, humiliation, depression, and the like.
- Medical authorizations and subpoena(es) to treating medical personnel to explore stressors that may help explain the plaintiff's trial testimony as to emotional distress damages.
- Retention of psychological expert(s) to test the plaintiff's testimony for other stressors or exaggeration for the alleged emotional distress.

Companies must plan carefully and thoughtfully given the new landscape which may be ripe for a bumper crop in "garden-variety" distress claims.

Please contact Jackson Lewis to discuss this case and other workplace developments.

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