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Fifth Circuit Establishes Limit on Recovery of Damages in Discrimination Cases Where Multiple Claims are Pleaded

By Lionel M. Schooler

RECOVERY OF DAMAGES IN DISCRIMINATION CASES. In 1991, the Congress enacted a new statute -- 42 U.S.C. §1981a -- designed to overrule certain restrictive rulings by the United States Supreme Court. The Congress included in that law the right of a claimant to recover not only backpay, but also compensatory and punitive damages for elements of damages such as mental anguish, pain and suffering, and future pecuniary or non-pecuniary losses, when suing for violation of Title VII of the 1964 Civil Rights Act (which prohibits discrimination on the basis of race, color, national origin, religion, or gender, and which also prohibits retaliation), or for violation of the Americans with Disabilities Act.

STATUTORY CAP ON RECOVERY OF DAMAGES. As part of a legislative compromise, the Congress also included in this new law a "cap" on the recovery of such damages, whether compensatory or punitive damages, based upon the size of the workforce of the employer being sued. The cap established was \$50,000 for employers with fewer than 101 employees, \$100,000 for employers with fewer than 201 employees, \$200,000 for employers with fewer than 501 employees, and \$300,000 for employers with more than 500 employees.

LIMIT ON THE RECOVERY OF DAMAGES. Before July 11, 2011, the United States Court of Appeals for the Fifth Circuit had never ruled upon one question about the statutory cap -- whether it applied to each claim of discrimination brought by a claimant, or applied overall to the claimant regardless of the number of discrimination claims filed. In *Black v. Pan American Laboratories, L.L.C.*, the Fifth Circuit addressed this question, ruling that the statutory cap is coextensive, not cumulative. It therefore held that the employee was only entitled to recover damages up to the applicable statutory cap in that case (\$200,000), rather than damages up to the statutory cap for each of her discrimination claims.

BACKGROUND FACTS. Carleen Black worked as a sales representative for her employer, Pamlab, a pharmaceutical company. She ultimately filed three claims against the company, one for gender discrimination in the assignment of her sales quota, one for gender discrimination over her termination of employment, and one for retaliation because of her being fired for complaining about certain discriminatory activities.

At the conclusion of a jury trial, Ms. Black prevailed on all three of her claims and, as a result, the jury awarded her (among other items of relief) \$200,000 in damages for *each* of her three statutory claims. The trial court reduced the amount of her damage award to \$200,000 total when entering judgment.

FIFTH CIRCUIT REVIEW OF THE JUDGMENT. On appeal, the Fifth Circuit first found ample evidence to support the jury's determination that Ms. Black had been the victim of sex discrimination, and that her gender was a motivating factor in the decision to terminate her employment. It then noted that the amount of the damages (\$200,000) for a violation should also be upheld.

Turning to the retaliation claim on which Ms. Black also prevailed, the Fifth Circuit stated that a guiding principle of applicable law in discrimination cases is that a claimant is not entitled to a "double recovery." It rejected her argument that the statutory cap should be applied "per claim" because she had suffered "two different kinds of harms," one resulting from discrimination and one resulting from retaliation.

WORDING OF 42 U.S.C. §1981A PRECLUDES "PER CLAIM" RECOVERY. In reaching this result, the Court specifically noted the wording of 42 U.S.C. §1981a(b)(3), which states that the amount of compensatory damages and the amount of punitive damages "awarded under this section shall not exceed, *for each complaining party*," the statutory cap identified above. On this basis, the Court determined that the plain language of the statute dictates applying the statutory cap on a "per party" basis, aligning itself with other federal courts of appeals that had decided the issue similarly. The Fifth Circuit therefore affirmed the lower court ruling curtailing Ms. Black's recovery of damages to one unitary cap of \$200,000.00.

CONCLUSION. The Fifth Circuit's decision in *Black v. Pan American Laboratories* clarifies an area of the law that had proved troubling for courts and litigants alike, especially when crafting appropriate jury instructions or submitting appropriate proposed findings to a court to ensure the entry of a proper result. If you have any questions about this e-Alert, please contact **Lionel M. Schooler** at 713.752.4516 or lschooler@jw.com.

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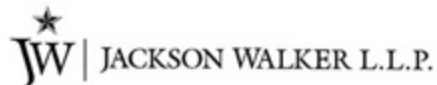
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