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## Massachusetts High Court Curtails Respondents' Jury Trial Rights For Chapter 151B Claims

Earlier today, the Massachusetts Supreme Judicial Court ("SJC") rejected employers' and other respondents' requests for the same right as complainants to determine when or whether employment discrimination claims will be heard by a jury. This decision, *Stonehill College v. Massachusetts Commission Against Discrimination*, was entered over a strenuous dissent by Justice Cowin, and with a concurring opinion by Justice Sosman that in many ways reads like a dissent.

As we reported in our December 2003 *Massachusetts Employment & Labor Law Report*, the SJC last October consolidated four cases involving different aspects of the right to a jury trial on employment discrimination claims under the Massachusetts Fair Employment Practices Act, Chapter 151B. The SJC expressly invited comments on the correctness of the Court's 1994 ruling in *Dalis v. Buyer Advertising, Inc.*, that the Massachusetts Declaration of Rights entitles complainants to a jury trial for claims of employment discrimination. The SJC also was expected to revisit and clarify many confusing procedural issues left open in *Lavelle v. Massachusetts Commission Against Discrimination*, a 1997 decision in which the SJC held that the Declaration of Rights applies equally to respondents to provide a jury trial right.

In today's decision, the SJC ruled that, while *Dalis* was correctly decided, the portion of *Lavelle* that recognized respondents' equal rights to have claims against them decided by a jury was not. The SJC based its ruling, in part, on its view that the choice appropriately should be left to the complainant to decide whether the case will be pursued through a public hearing before the MCAD or removed to court, as follows: A complainant initially must file the case at the MCAD within 300 days from the alleged discrimination. Thereafter, the complainant may leave the case at the MCAD or may elect to pursue the case in court at any time 90 days after filing but less than 3 years after the alleged discrimination (and before the MCAD's public hearing). If the complainant leaves the case before the MCAD, the case will be decided through an administrative hearing where neither the complainant nor the respondent has the right to a jury trial and judicial review of the MCAD's decision is limited to the record of the proceedings before the MCAD. Only if the complainant elects to pursue the case in court may the respondent – usually the employer – have the claims against it decided by a jury. Justice Cowin, the lone dissent, observed that the SJC's decision now empowers complainants unilaterally to extinguish respondents' access to a jury trial merely by choosing to proceed before the MCAD.

While the SJC also affirmed the MCAD's ability to award emotional distress damages, in a portion of the decision that may prove beneficial to respondents, the SJC limited the circumstances when emotional distress damages are available to complainants by ruling that "a finding of discrimination, or retaliation, by itself, is no longer sufficient to permit an inference of, or a presumption of, emotional distress." Instead, emotional distress damages must be proved by substantial evidence, according to the SJC's outline of guiding principles and factors, and the complainant must show a sufficient causal connection between the respondent's unlawful actions and the emotional distress. The SJC observed that in 2003, the Legislature armed the MCAD with the power to award civil administrative penalties to punish respondents determined to have engaged in unlawful discrimination, and emotional distress damages should not be considered a substitute for punitive damages.

Finally, of substantial concern to respondents who relied upon the jury trial rights announced in *Lavelle* in determining how to present their cases before the MCAD and the trial court, is the SJC's decision today to give its *Stonehill* rulings retroactive effect to all cases that are still open on direct review in the trial courts.

Seyfarth Shaw LLP will schedule a Breakfast Briefing in the near future to provide a more detailed evaluation of the SJC's *Stonehill* decision and the anticipated ramifications for respondents and complainants alike. If you have any questions or would like additional information, please contact your Seyfarth Shaw attorney.

