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New Jersey Supreme Court "Plants the Seeds" for Increase in "Garden Variety" Emotional Distress Jury Awards

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Seyfarth Synopsis: *The New Jersey employers were dealt an "emotional" blow when the New Jersey Supreme Court, in Cuevas v. Wentworth Group, affirmed a trial court's denial of an employer's request for remittitur of the plaintiffs' emotional distress damages, and held that it is permissible for plaintiffs to recover exorbitant emotional distress damages under the Law Against Discrimination ("LAD") without putting forth an expert witness to corroborate their "garden variety" damages.*

Background

In *Cuevas*, the plaintiffs were brothers, Ramon and Jeffrey Cuevas, who worked as employees of defendant Wentworth Property Management Corporation ("Wentworth"). Plaintiffs alleged "that they were routinely subject to racially disparaging and humiliating remarks by Wentworth executives," and that their employment was terminated after they complained about the alleged discriminatory treatment. The plaintiffs thereafter filed an action against Wentworth, alleging various violations of the LAD.

After a jury trial, during which neither plaintiff offered any evidence of seeking medical treatment following their terminations, nor any expert testimony to validate their damages, plaintiffs were awarded $2.5 million, including $800,00 in emotional-distress damages to Ramon and $600,000 in emotional-distress damages to Jeffrey. The trial court denied Wentworth's motion for a remittitur of the emotional-distress damages on grounds that they were excessive as compared to similar case verdicts, and the Appellate Division affirmed. Wentworth appealed the Appellate Division's decision.

Decision

The Supreme Court affirmed the decision to deny Wentworth's motion for a remittitur. For one, the court was persuaded that "there is no neat formula" to assess emotional distress damages under the LAD, and that the "model jury instruction on emotional-distress damages in discrimination cases recognizes the inexact nature of calculating such damages." The Court noted further that the reduction of 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."

Here, plaintiffs testified about the anxiety they experienced as a result of the alleged harassment over several months, as well as the impact on their families. While the Court acknowledged that the award was on the higher end, it nonetheless held that it was not "so wide of the mark, so pervaded by a sense of wrongness, so manifestly unjust to sustain, that they shock the judicial conscious."

Finally, the Court also rejected the contention that a judge should apply their personal experience or comparative verdicts in deciding whether to grant a remittitur. While Court held that the Appellate Division must pay "some deference" to a trial judge's feel for the case, "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."

Outlook

The Supreme Court's decision in *Cuevas* opens employer's to greater exposure for "garden variety" emotional distress damages in LAD cases. In those cases where an employee seeks neither medical treatment nor expert testimony, employers should nonetheless consider obtaining additional discovery concerning alleged emotional distress damages and, perhaps, retaining its own expert given what "garden variety" can rise to in light of this decision.

If you would like further information, please contact your Seyfarth attorney, Howard M. Wexler at hwexler@seyfarth.com, or Samuel Sverdlov at ssverdlov@seyfarth.com.

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