

Punitive Damages of \$250 Million Awarded to Current and Former Employees in Gender Discrimination Lawsuit

May 21, 2010

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In a case in which over \$3 Million in compensatory damages already had been awarded to a group of 12 female former employees claiming gender discrimination, the same jury awarded \$250 Million in punitive damages to a class of 5600 female employees and former employees of Novartis Pharmaceutical Corporation for the same claims. *Velez v. Novartis Pharma. Corp., S.D.N.Y., No. 04-civ.9194, punitive damages verdict 5/19/10*. The case, filed as a class action in 2005 in the Southern District of New York, was a “sex plus” case, meaning that the gender discrimination was brought in tandem with related claims, such as pregnancy discrimination or family leave interference. The plaintiffs in the case against Novartis made claims based upon unequal pay, lack of promotion, and adverse treatment after pregnancy leave.

The number of “sex plus” cases has risen steadily over the past ten years, but the verdict and damages against Novartis has eclipsed previous verdicts. The claims against that company included a demand for monetary damages, along with a restructuring of Novartis’ pay and promotion practices. Novartis, which has been on a national “best companies for working mothers” list for over 10 years, defended against the claims by citing its policies and procedures, and by arguing that while 70 percent of its sales representatives are men, that disproportionality was not the result of discrimination.

After a six-week trial, a unanimous jury awarded \$3.3 Million as compensatory damages to the 12 named plaintiffs in the case, finding that the women had been treated differently than their male counterparts. Compensatory damages are damages for actual losses, but can include amounts for “pain and suffering,” as

well. Because that award opens the door for others in the 5600-member class to claim compensatory damages of their own, the total damages in this case could conceivably approach – and possibly exceed – \$1 Billion.

While there is a question regarding whether the jury’s verdict in the case will be upheld on appeal, the jury’s message should be received and understood by employers: claims of widespread discrimination – whether real or perceived – should be investigated, remedied, and kept from reoccurrence. This case comes at a time when the Obama Administration has taken an aggressive stance on an issue that it perceives to require that attention. Federal courts are responding to this attention, and have become more likely to grant class certification in cases that historically have been brought as single-plaintiff claims, or by small groups of employees. The 9th U.S. Circuit Court of Appeals recently ruled that a “gender plus” discrimination claim that could eventually involve as many as one million current and former female employees of Wal-Mart can go forward as a class action in federal court in California.

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