

New Jersey District Court Judge Discard's Jury's \$50 Million Punitive Damage Award to Age Discrimination Plaintiff

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About a year ago, [we published an article on the firm's LaborSphere blog](#) about a \$51.4 million jury award to a former Lockheed Martin employee who alleged age discrimination when he was let go as part of a company-wide reduction in force ("RIF"). At the time of the verdict, press coverage speculated that the multimillion dollar verdict was roughly five times more than any prior award, throughout the country, in a single-plaintiff discrimination case. Recently, U.S. District Court Judge Renee Bumb tossed out the \$50 million punitive damages award because the plaintiff failed to show that Lockheed Martin's upper management was involved in or indifferent to the discriminatory conduct.

By way of background, in the case *Braden v. Lockheed Martin*, plaintiff alleged that he was discriminated against on the basis of his age in violation of the Age Discrimination in Employment Act ("ADEA") and the New Jersey Law Against Discrimination ("NJLAD"). To support his allegations, plaintiff alleged, among other things, that he was selected for layoff while two significantly younger employees, who held his same job title, were retained by the company, and therefore age must have been the difference in the decision to select him. In rebuttal, Lockheed Martin claimed that the younger employees were only the same as plaintiff in title and name and cited to the fact that they held more responsible positions, and had more valuable skill sets than plaintiff had. Plaintiff also alleged that his supervisor

informed plaintiff that he was directed to give plaintiff a low evaluation because plaintiff was at the company for too long and needed to go. Both plaintiff's supervisor and the alleged comment maker denied during trial that this comment was ever made.

At the end of a four-day trial, the jury found that Lockheed Martin discriminated against Braden on the basis of his age. After finding Lockheed Martin liable, the jury awarded Braden \$520,000 for lost wages and benefits, \$520,000 in liquidated damages under the ADEA, \$520,000 for emotional distress, and \$50 million in punitive damages under the NJLAD.

Following the verdict, and in addition to other post-trial relief, Lockheed Martin sought a new trial on the jury's \$50 million dollar punitive damages award pursuant to Fed R. Civ. P. 59. Specifically, Lockheed Martin argued that it was entitled to a new trial because the jury's verdict on punitive damages was against the weight of the evidence.

Under the NJLAD, to receive punitive damages, a plaintiff must not only establish discrimination, but must also prove, by clear and convincing evidence, (1) actual participation in or willful indifference to the wrongful conduct on the part of upper management and (2) that the offending conduct was especially egregious. The Court instructed the jury that in order to award Braden punitive damages, among other things, it had to determine first that "at least one of Lockheed Martin Corporation's 'upper management' employees actually participated in, or was willfully indifferent to, the wrongful conduct." The jury was further instructed that this required them to find that a member of Lockheed Martin's upper management "knew about the wrongful conduct" and either "engaged in affirmative acts to accomplish [it] or "chose to disregard or ignore it, rather than stop it."

Plaintiff identified a Vice President with the company as the member of Lockheed Martin's upper management as whom the jury should focus its inquiry on. However, Lockheed Martin argued that the jury's decision on the issue of "actual participation" or "willful indifferent" of "upper management" was so contrary to the weight of the evidence that allowing it to stand would be a miscarriage of justice. Notably, the Court agreed.

Indeed, the Court determined that Plaintiff offered no evidence of the Vice President's involvement in planning the RIF other than the fact that his name was listed on the title slide of the RIF analysis presentation. The Court decided that standing alone, the name on the title slide of the presentation was not clear and convincing evidence of "active participation" in or "willful indifference" to discrimination. Accordingly, the Court held that the weight of the evidence on the issue clearly favored Lockheed Martin, that the jury's verdict shocked the Court's conscience, and that allowing it to stand would constitute a miscarriage of justice. As a result, the Court vacated the jury's punitive damage award and ordered a new trial on punitive damages.

While Judge Bumb's decision is definitely good news for employers, claiming a victory at this point would be premature in light of the fact that a retrial on punitive damages was ordered and Lockheed Martin has filed an appeal in the Third Circuit.

A review of the case reminds us of some important takeaways for employers:

- When implementing RIFs, employers should test the decision-making process by ensuring that the decision-making criteria is objective and as uniform as possible.
- The decision-making process should also be contemporaneously documented to establish a written record, as memories will fade.
- Employers should update employee job titles and job descriptions to accurately reflect the work that employees are performing.
- Employers should regularly conduct vigorous antiharassment training for managers in order to mitigate against stray remarks occurring in the work place and to demonstrate that the employer does not act in reckless disregard for discrimination laws if an employee makes a senseless comment.

The case is *Robert Braden v. Lockheed Martin Corp.*, Case 1:14-cv-04215 RMB-JS (D.N.J. 2014).

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