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Labor & Employment Newsletter

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Article of interest

***Diaz v. Jiten Hotel Management Inc.:* Court reduces attorney fee award based upon rejected settlement offer**

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On Nov. 8, 2011, United States District Court Judge William G. Young awarded attorneys fees and costs to the prevailing plaintiff, Carmen Llerenda Diaz, in an age discrimination action. While that result is not unusual, the particulars of the fee award are noteworthy.

Diaz sued Jiten Hotel Management Inc. alleging age discrimination. The original complaint identified six causes of action: federal age discrimination, state age discrimination, state civil rights violations, wrongful termination, intentional infliction of emotional distress and defamation. Diaz moved to voluntarily dismiss the claims for state civil rights violations, wrongful termination and defamation. Jiten successfully moved for summary judgment on Diaz's claim of intentional infliction of emotional distress. After a five-day trial on the remaining two counts of state and federal age discrimination, the jury found for Diaz on the state age discrimination claim, awarding \$7,650.00 in compensatory damages. The jury found for Jiten on the federal age discrimination claim.

In response to Diaz's request for an award of attorneys' fees, the court determined that Diaz was entitled to an award because she was a prevailing plaintiff and there were no special circumstances sufficient to deny a fee award. The court began by employing the lodestar approach to calculating an appropriate fee by multiplying the reasonable number of hours expended by a reasonable rate.

The court reduced the number of hours requested by Diaz's counsel for travel time. It determined that an attorney's time spent just travelling should be reduced by 50 percent unless the attorney is traveling and working at the same time. It also



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reduced the amount of time spent by counsel to seek relief from the court to attend a conflicting state court obligation. After reductions for travel and conflicts, the court reduced the total hours by two-thirds because four of the six original counts were dismissed. Although the plaintiff prevailed only on the state law age discrimination and lost the federal claim, the court chose not to sever them. The court accepted the requested (and uncontested) \$300 per hour rate as within the range of reasonable rates for experienced employment practitioners. The court calculated a lodestar fee award of \$44,766.

The court then considered both parties' requests to adjust the lodestar-calculated figure. The court rejected Diaz's request to increase it on the basis that the case had been hard-fought and heavily litigated. The court reasoned that the lodestar approach accounted for that reality. The court rejected Jiten's request to reduce the fee award because of the small compensatory award on the basis that the it had already made reductions in its lodestar calculation and because fee awards are designed to encourage those who seek to vindicate rights. The court also noted that in this case, the jury had found unlawful discrimination.

Jiten also raised the fact that it had offered \$75,000 to settle the case prior to trial. The court expressed concern over the fact that under a standard one-third contingent fee, the plaintiff would have received between \$40,000 and \$50,000 and counsel \$25,000, had that offer been accepted. As it played out, the plaintiff received \$7,650 and her lawyer stood to receive \$44,766. The court expressed concern that the availability of attorneys' fees for prevailing parties could create "dangerous pressures" on litigants and their attorneys. It expressed particular concern about the potentially perverse effect of discouraging settlement to reward attorneys at the expense of litigants. For these reasons, the court reduced the attorney fee from \$44,766 to \$25,000 -- the one-third fee the attorney would have received had the settlement offer been accepted.

The court noted that such a result promotes the "private ordering" of disputes. In the court's view, the amount reasonably compensated Diaz's counsel. The court believed the result strikes the balance between encouraging lawyers to take on cases to vindicate rights while at the same time preventing lawyers from discouraging possible settlements. The court noted that its decision was no reflection on Diaz's counsel's integrity. It simply noted that it found the \$75,000 offer to be reasonable. Most importantly, in the eyes of the court, the result achieves the purpose of preventing attorneys' fees awards from driving litigation.

It remains to be seen whether or not Young's reasoning or conclusion will be challenged. In the meantime, the decision raises the stakes for plaintiffs' lawyers who decline settlement offers that could be later deemed reasonable. It also may discourage lawyers from taking on cases with smaller damage amounts out of a fear that the size of the potential compensatory award will influence the fee ultimately awarded. It also shows how defense counsel can provide protection by making a reasonable offer to settle before trial. In either case, the difficulty remains the fact that the reasonableness of the offer will be judged in hindsight after the jury's award, which is often more difficult to predict.

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