

pathologist, and the physicians' insurer after they failed to timely diagnose Jurinko's cancer. The insurer appointed one attorney for both doctors, despite a conflict of interest, and later refused to settle even though the dermatologist and the insurer's claims adjusters recommended it. A jury found for plaintiffs against the dermatologist, and he assigned his rights to a bad faith claim to plaintiffs. The jury in that trial awarded plaintiffs \$6.25 million in punitive damages and approximately \$1.66 million in compensatory damages, a ratio of more than 3:1. The federal trial court ruled the ratio was not unconstitutionally excessive.

Reducing the punitive damages award, the Third Circuit first acknowledged that there was sufficient evidence for the jury to find that defendant's conduct was outrageous. Courts must look to three "guideposts" when determining whether an award is grossly excessive: (1) the degree of reprehensibility, (2) the disparity between the harm suffered by plaintiff and the punitive damages award, and (3) the difference between the award and civil penalties imposed in similar circumstances. Finding only a moderate degree of reprehensibility, the court said that while defendant's actions left the dermatologist financially vulnerable, it did not exhibit reckless disregard for the safety of others.

The court next cited U.S. Supreme Court holdings that when compensatory damages are substantial, a lesser ratio is desirable. Moreover, the court said, if the injury involves noneconomic harm that is difficult to determine, a larger ratio might be necessary. Here, however, the dermatologist suffered only economic harm, and the compensatory award was substantial. Additionally, the court found, although defendant's actions were egregious, they were not "particularly egregious" and do not seem aimed at victimizing the doctor. Other courts have used a 1:1 ratio in similar cases, the court noted.

Finding that the disparity between civil penalties and the award is great in this case, the court reduced the punitive damages to reflect a 1:1 ratio.

EMPLOYMENT LAW

Female university coaches harassed after complaining of gender inequality: Title IX retaliation: Lost income: Emotional distress: Settlement.

Flood v. Bd. of Trustees of Fla. Gulf Coast U., U.S. Dist. Ct., M.D. Fla., No. 2:08-cv-00030, Oct. 15, 2008.

Flood, 51, and Vaughn, 46, both females, were the head coaches for the women's volleyball and golf teams,

respectively, at a university. Both were hired to develop their sports programs so the school would be more competitive in college sports. In volleyball, Flood led the team to the university's best win-loss record. When the university's sports moved to a higher division, the team was "fast-tracked" for postseason play, where it won the conference title in its first year. Her performance reviews for several years were very favorable. Likewise, under Vaughn's coaching, the golf team became ranked third in the nation for its division, and her performance reviews described her as "outstanding."

During this time, Flood and Vaughn began requesting that the school market their sports as strenuously as it did the male sports teams and that they be granted additional funds to hire assistants and raise salaries. Male part-time coaches were allegedly offered additional duties to make them full-time, but no opportunities were presented to Flood or Vaughn. Additionally, Flood was not provided an office for several months, even though several male assistant coaches had offices, and Vaughn was the only head coach moved to a trailer when three new male coaches were hired. Coaches who did not complain of gender inequality were allegedly given office equipment that Flood and Vaughn did not receive and were paid higher salaries. Male coaches also were allegedly given multiyear contracts, while female coaches were employed on a year-to-year basis.

The women complained to the athletic director, who rebuffed them and once allegedly said "If you don't like it here, you can get the hell out." Flood, Vaughn, and the university's other two female coaches wrote a letter to the school's former interim athletic director, detailing their concerns. The letter was forwarded to the school's president, who ordered an internal audit but sent an e-mail to the entire faculty and staff and all of the student leaders, saying that the claims were "unsubstantiated." The next month, Flood was given a performance review appraisal of "below expectations."

Flood was placed on probation and later administrative leave, and the university launched several investigations without notifying her of the charges. This included an allegation "involving student welfare," in which she was accused of tugging on a student's shirt during practice. The investigation was allegedly conducted without speaking to Flood or the student, who said she did not take offense at the incident. The same year, Flood was named "Coach of the Year" by the school's volleyball conference. After several months on leave, Flood, who had earned \$52,000 annually, was terminated. She claimed an unspecified amount in lost income.

Vaughn was rated as "marginally meets expectations" even though the evaluator had never attended one of her practices, team meetings, or tournaments. The athletic

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director allegedly ignored and ostracized her. Vaughn eventually resigned. She did not claim lost income.

When the media began questioning the university about the allegations and its internal audit, the school released Flood's and Vaughn's personnel files, including the allegedly false performance reviews, to the public. It also released the "investigative reports" regarding Flood, giving her only a one-hour conference to rebut the charges. Both women suffered emotional distress and damage to their reputation.

Flood and Vaughn sued the university, alleging that they were subjected to a hostile workplace in retaliation for complaining about gender inequality in violation of Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681 et seq. Plaintiffs also alleged defamation for releasing false information to the public.

Defendant contended Flood was fired for legitimate reasons, including what it claimed was an inappropriate relationship with a student manager. Defendant also argued Vaughn left to pursue other opportunities.

The parties settled before trial for \$3.4 million, including about \$2.97 million for Flood and \$435,000 for Vaughn.

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Female brokers earn less, given fewer accounts: Sex discrimination: Economic losses: Settlement.

Amochaev v. Citigroup Global Mkts., Inc., U.S. Dist. Ct., N.D. Cal., No. 3:05-cv-01298, Aug. 13, 2008.

Amochaev, Orlando, Varner, and So were all female financial advisers at a large, national brokerage firm. The firm had a history of discriminating against female advisers, which included a 1997 settlement in a sex discrimination class action suit. Despite its agreement in that settlement to change its policies, the firm allegedly continued the discrimination by making past performance a primary criterion for achieving business opportunities and compensation. Because the past discrimination allegedly led to females earning substantially less than males, receiving fewer assets to manage, and not being given opportunities to partner with other brokers, the past-performance criterion gave a "cumulative advantage" to male advisers. Female advisers thus had lower production rates, resulting in fewer advancement opportunities and consistently lower earnings. Further, managers, who were often male, had wide discretion to allocate or distribute accounts, allegedly

allowing gender stereotypes to prevail.

The four female advisers each complained to the company's human resources department about the firm's discriminatory actions—which included repeatedly distributing accounts to male advisers who had equal or less experience, denying female advisers appropriate sales support, and moving them to less desirable offices or the "bull pen" without moving similarly situated males. The company allegedly retaliated against them by threatening to take accounts away and informing male coworkers of their complaints, among other actions. So, who is of Filipino origin, was allegedly also denied opportunities given to nonminority employees with equal or less experience. The women eventually resigned due to the hostile atmosphere, losing valuable stock option awards.

Amochaev, Orlando, Varner, and So, individually and on behalf of all similarly situated female advisers, sued the brokerage firm, alleging it intentionally maintains policies that lock in, perpetuate, and increase sex discrimination in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e et seq., and California civil rights laws. So also alleged race discrimination under Title VII.

Defendant contended female employees are not treated differently than male employees. It also unsuccessfully argued that New York is the proper venue for the dispute because the 1997 settlement originated there, and plaintiffs allege that defendant is not following the terms of that settlement.

The parties reached a pretrial settlement of \$33 million plus interest. Defendant also agreed to institute several antidiscrimination measures, including distribution of a nondiscrimination policy, mandatory training, appointment of an industrial psychologist to review the compensation system, appointment of an independent diversity monitor, and a diversity component in the branch manager compensation system.

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Documents in this case are available through the Court Documents section in the back of this issue.