

Recent District Court Decision Provides for Molded Verdict to Offset Tax Consequences of Lump-Sum Award

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In a recent opinion that will increase the damage calculation in central New Jersey employment practice liability matters, Judge Stanley Chesler of the United States District Court for the District of New Jersey concluded that nine former Jersey City police officers were entitled to a molded verdict, enhancing the damages awarded in order to offset the adverse tax consequences of their \$2.7 million lump-sum economic loss award. Judge Chesler emphasized that since the plaintiffs prevailed under New Jersey's Law Against Discrimination (NJ LAD), which calls for a liberally construed, broad set of remedies, that such a verdict was required. Notably, no Third Circuit decision had ever addressed the taxation issues as the lynchpin of an argument to increase a lump-sum award under LAD. However, a case regarding the Americans With Disabilities Act provided precedential guidance supporting the remedy of additional sums to compensate the tax burden of a back pay award.

The case concerned an employment dispute between the plaintiffs and the City of Jersey City, its former major, Jerramiah Healy and its former police chief, Robert Troy. The matter had been consolidated for trial purposes and the jury awarded the named Plaintiff Montone \$276,834 and approximately \$1.9 million to the other eight plaintiffs. In its determination, the jury found that Montone's political affiliation and expression about a matter of public concern were substantial or motivating factors in Jersey City's decision not to make promotions from the 2003 - 2006 Lieutenant's list, and that the remaining plaintiffs were similarly situated. The award aimed to compensate for the income loss differential.

A plaintiff's expert estimated that the tax consequences for the nine plaintiffs totaled \$651,506. By contrast, the defendants did not submit an opposing expert report as to the appropriate calculation of a suitable offset award, nor did they depose the plaintiff's expert regarding the issue. Thus, Judge Chesler maintained that he would allow the defendants to depose the expert and present reply reports before determining the appropriate amount by which to mold the verdict. However, in the interim, he declared that the plaintiffs were entitled to prejudgment interest and granted an application for \$272,565.

It remains to be seen how the defendants and their experts will respond or whether this ruling will be appealed. We will provide updates as the events unfold.

If you have questions or would like additional information, please contact Robert G. Devine (deviner@whiteandwilliams.com; 856.317.3647), Michael W. Horner (hornerm@whiteandwilliams.com; 856.317.3658) or Clare Kealey (kealeyc@whiteandwilliams.com; 856.317.3678).

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