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## CALIFORNIA SUPREME COURT ORDERS NEW TRIAL IN EMPLOYMENT CASE

(*Lane v. Hughes Aircraft Co.*)

The Washington Legal Foundation (WLF) scored a victory last week when the California Supreme Court vacated an unprecedented \$17 million compensatory and punitive damages award in an employment discrimination case, and ordered the court of appeal to remand the case for a new trial. The court of appeal had originally rejected the ruling of the trial court that Hughes Aircraft Company did not discriminate in this case, or at least deserved a new jury trial. The court of appeal then ignored a subsequent California Supreme Court decision in this case to apply the proper legal standard in reviewing the trial court's original ruling, and left a modified verdict intact. The company was forced to appeal the case yet again to the Supreme Court, which issued its recent ruling in the company's favor.

In *Lane v. Hughes Aircraft Co.*, an African-American manager sued Hughes Aircraft after he quit his job complaining that he deserved a certain promotion. The second plaintiff, who was white and a supervisor of the African-American manager, also resigned from the company complaining that he was retaliated against by Hughes. He took a better-paying position in another aerospace company. Both plaintiffs had received regular pay raises and promotions at Hughes, and other managers, five white and two Asian-Americans, did not receive scheduled promotions.

Nevertheless, a jury originally awarded an astronomical award of \$89 million against Hughes Aircraft Co. The court of appeal rejected the trial court's order in favor of Hughes or in the alternative, for a new trial, but reduced the award to \$17 million, an amount which was still by far unprecedented in employment law for two plaintiffs, even by California standards. In its brief, WLF argued that the California Supreme Court should reverse the court of appeal and reinstate the trial court's order; otherwise, free enterprise will be increasingly subject to the "lottery-like" system of civil justice.

In particular, WLF argued that the trial court, which heard all of the evidence, properly served as a "thirteenth juror" in ordering a new trial under California law. The trial court had set aside the emotional distress awards and lifetime pay awards in light of the weak evidence of liability, improper conduct by plaintiffs' counsel, and the unprecedented punitive damages awarded by the jury.

WLF also took issue with an argument made by the NAACP Legal Defense and Educational Fund that trial courts have little discretion in reviewing jury awards; that argument was based on federal cases under the Seventh Amendment's right to a jury trial, as opposed to California law which gives more discretion to trial judges to review jury awards.

The plaintiffs' trial lawyers improperly infused the jury with passion and prejudice against Hughes Aircraft Company by comparing the company to the Ku Klux Klan; to Al Campanis, whom the Dodgers terminated for stating that blacks are represented in the management of professional baseball to the extent of their abilities; and to sweatshops that exploit illegal aliens, all culminating in plaintiffs' counsel sobbing during his closing argument.

WLF also argued that the punitive damages award violated Hughes' due process rights as enunciated by the U.S. Supreme Court in *BMW v. Gore*, a major case in which WLF also participated. The Supreme Court stated in *Gore* that punitive damages would be unconstitutionally excessive if they are not proportional to the harm suffered by the plaintiff and if they far exceed any amount justified by the state's interest in punishment and deterrence. Applying those principles to this case, WLF demonstrated that the trial court was correct in setting aside the unprecedented punitive damages award of the jury.

In its decision, the California Supreme Court noted that the trial court "described in detail why the evidence was insufficient to support the damage award" both with respect to the compensatory and punitive damages awards. The Court further noted that the "evidence could have supported a verdict in Hughes's favor on all causes of action" and that the plaintiffs' case was largely supported by circumstantial evidence based on statistics and subjective impressions. Accordingly, the court of appeal failed to give the trial court the proper deference it deserved when it ordered a new trial in this case. In a concurring opinion, Justice Brown would limit punitive damage awards to no more than three times actual damages in order to assure that juries do not impose excessive punitive damage awards.

WLF's brief was drafted with the *pro bono* assistance of Samuel D. Walker and N. Christopher Hardee of the Washington, D.C. law firm of Wiley, Rein & Fielding.

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