

CLIENT ALERT

Novartis Hit with \$250M Punitive Damages Award in Largest Class Action Sex Discrimination Verdict

Not since the Texaco and Coca-Cola employment discrimination settlements has a case drawn as much attention from the business community as the recent jury verdict in *Velez v. Novartis Pharmaceuticals Corp.*, Case No. 04 Civ. 9194 (S.D.N.Y). On May 17, 2010, a jury awarded \$250 million in punitive damages alone to a class of 5,600 female sales employees, plus \$3.36 million in compensatory damages to the named plaintiffs based on claims of sex discrimination. This verdict dwarfs even the Texaco and Coca-Cola race discrimination settlements of \$176 million and \$192 million, respectively.

The named plaintiffs in *Velez* were nineteen current and former female employees in sales-related positions, who claimed that Novartis discriminated against them in violation of Title VII of the Civil Rights Act of 1964. At the heart of the case was testimony from women that female employees were routinely paid less than male counterparts and passed over for promotions in favor of less-qualified male co-workers. At trial, the women produced salary and promotion statistics that supported their case. Additionally, plaintiffs testified that the company subjected them to adverse treatment for taking pregnancy-related leaves and that pregnancy was unofficial grounds for removing an employee from the management track.

Plaintiffs' testimony also described an atmosphere that tolerated sexual harassment and a company culture hostile to women. Female sales representatives said that some of the doctors to whom they would pitch products expected something "on the side." Plaintiffs testified that some doctors groped and propositioned women in sales and that Novartis routinely ignored their complaints of sexual harassment. One of the former employees testified that she was raped by a doctor at a company event and later chastised by her supervisor for the attack and discouraged from reporting it.

Several of Novartis' witnesses admitted that managers who were found to have violated the company's "zero-tolerance" policy for discrimination had neither been terminated, nor demoted. The head of human resources testified that employees had received no training on how to file an internal discrimination complaint. Eight Novartis witnesses testified that there was a lack of women in management.

The jury in the U.S. District Court for the Southern District of New York ultimately found Novartis had engaged in a pattern of pay, promotion, and pregnancy discrimination against members of the class and awarded the \$250 million plus in damages noted above. Judge Colleen McMahon is still deciding on the plaintiffs' request for an additional \$37 million in back pay for the class members. Novartis disputes those claims and plans to appeal the verdict.

The punitive damages award in *Velez* certainly should serve as a cautionary reminder for employers in employment discrimination/harassment class actions. It is likely that corporate defendants will see inflated settlement demands from plaintiffs' attorneys relying on the possibility of large punitive damages awards.

This case underscores the importance of assessing and eliminating potential problems that may lead to legal vulnerability. We advise companies to assess and address their potential liability in *at least* the following areas:

- Human resources administrative processes;
- Official diversity-related policies and conformity of practices to the policies;
- Pay and promotion differentials;
- Effectiveness of internal complaint systems; and
- Workplace attitudes, behaviors, and conditions that could lead to discrimination, harassment, and hostile work environment claims.

Increasingly, employers are deciding to proactively and independently assess their own “diversity legal vulnerabilities” to such suits, identify problem areas early, effectively resolve them when they are uncovered, and avoid being the next front-page “diversity crisis” story.

The JL Corporate Diversity Counseling Group has assisted numerous Fortune 250 companies, including those without any obvious diversity problems, with legal vulnerability assessments or “diversity check-ups” designed to examine internal complaint processes, employment discrimination/retaliation/harassment/hostile work environment claims, human resources policies and practices, workforce demographic trends, and other indicators of looming complaints and lawsuits. By identifying and isolating potentially troublesome areas, employers can effectively remediate them, not only to avoid the Novartis result, but also to enhance their diversity programs, performance, and public profile—which can ultimately result in reducing the diversity “threat” and turning diversity and inclusion into “competitive advantages” as the company becomes known as an employer of choice.

For further information, please contact:



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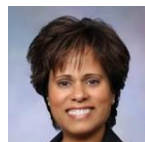
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Called “The Brains Behind Diversity Crisis Management,” by *DiversityInc* magazine, Weldon Latham has played a key role in resolving some of the most significant employment discrimination cases of our time. He has represented more than 40 *Fortune 200* clients, and regularly helps major corporations avoid diversity crises.



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