



PMP Law Notes

Volume 2, Issue 1

4/18/11

100 Million Dollar Settlement Reached Against Michigan Department of Corrections

On July 15, 2009, Pitt, McGehee, Palmer, Rivers & Golden in a collaborative effort, reached a \$100 million dollar settlement in the *Neal, et al. vs. Michigan Department of Corrections, et al.* case. This class action lawsuit involved more than 500 female inmates who were victims of various degrees of sexual assault, including rapes, and harassment by male prison guards within the Michigan Department of Corrections. Michael Pitt, Cary McGehee and Peggy Pitt were part of a group of nine attorneys who litigated the case, which was filed in Washtenaw County Circuit Court.

The litigation went on for 13 years, during which the MDOC delayed the trials by filing interlocutory appeals. Ultimately, the MDOC was unsuccessful with its appeals and the case went to trial before Washtenaw Circuit Court Judge Timothy Connor. The first trial was in 2008. After three weeks of litigation, on Feb. 1, 2008, the jury returned a \$15.5 million verdict for the 10 Scott Correctional Facility plaintiffs. The decision stunned the defendants. "We had heard throughout earlier settlement discussion

that our clients were not going to present well, that there would be jury resentment to criminals who are asking for large sums of money based on situations where many of the women did not complain until it



was safe to do so, some years after the fact," Pitt said.

Eleven months later, eight more plaintiffs were awarded \$8.4 million for assaults that took place at Crane Correctional Facility in Coldwater, Michigan.

When calculated with interest, the jury verdicts totaled \$46.2 million.

The trial team, including Michael Pitt and Cary McGehee, were successful in proving to the jury that, while incarcerated within the Michigan Correctional Facilities, female inmates were sexually harassed, sexually assaulted and, in some instances, raped by male corrections officers, creating a sexual hostile prison environment, and that, members of the administration knew the women were in a hostile prison environment, that was pervasive, and that they failed to take appropriate and remedial action to prevent further harm to the women in violation of the Michigan Elliott-Larsen Civil Rights Act.

The \$100 million dollar settlement was the largest settlement of 2009 in Michigan.

UNITED STATES SUPREME COURT: LANDMARK RETALIATION RULING

On January 24, 2011, the United States Supreme Court decided the case of *Thompson v. North American Stainless, LP*. The plaintiff, Eric Thompson worked as a metallurgical engineer for the defendant, North American Stainless (NAS). Thompson's fiancée, Miriam Regaldo, also worked for NAS. In September 2002, Regaldo filed a charge of employment discrimination with the Equal Employment Opportunity Commission (EEOC), alleging that her supervisors had discriminated against her because of her gender. In February 2003, the EEOC notified the employer, NAS, that Regaldo

had filed a sex discrimination charge. Three weeks later, NAS fired Thompson.

Thompson filed suit in the United States District Court for the Eastern District of Kentucky, alleging that NAS terminated his employment in retaliation for his fiancée's EEOC charge. NAS defended the case by arguing that it terminated Thompson's employment due to poor performance and not because of Regaldo's filing.

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The District Court dismissed Thompson's complaint on the grounds that his relationship to Regaldo was the sole motivating factor in his termination and that this relationship was legally insufficient to support either a retaliation claim or a discrimination claim under Title VII.

The United States Court of Appeals for the Sixth Circuit, sitting *en banc*, held that "Title VII does not create a cause of action for third-party retaliation for persons who have not personally engaged in protected activity." *Thompson v. North American Stainless, LP*, 567 F.3d 804, 816 (6th Cir. 2009) (*en banc* opinion). The Sixth Circuit ruled that Thompson was not protected by Title VII because he did not "engag[e] in any statutorily protected activity, either on his own behalf or on behalf of [his fiancée]. *Id.* at 807-808.

The Supreme Court reversed the Sixth Circuit and Court held that Title VII protected Thompson from retaliation by his employer, even though his termination was motivated by the protected activity of his fiancée.

According to the Supreme Court, because a reasonable employee in Regaldo's position would have been dissuaded from engaging in protected activity if she knew that it would cause her fiancée to be fired, both Regaldo and Thompson were deemed to be protected by Title VII's anti-retaliation provisions.

In reaching this decision, the Supreme Court thought "it obvious that a reasonable worker might be dissuaded from engaging in protected activity if she knew that her fiancé would be fired." For employers, employees, attorneys and lower courts, the key to applying the *Thompson* decision will be to determine, on a case-by-case basis, what types of relationships will entitle employees to protection and what types of employer actions will expose employers to liability under Title VII.

Employees with potential "third-party" retaliation claims should be sure to contact attorneys with expertise in employment law for a detailed analysis and evaluation of their situation to determine whether the facts and evidence will support a Title VII retaliation claim in light of *Thompson*.

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