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Judge Slashes $137M Bias Verdict Against Tesla Down to $15M

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By **Jeffrey Campolongo** | April 21, 2022

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While mega-billionaire Elon Musk sets his eyes on a hostile takeover of Twitter, his auto conglomerate, Tesla, continues to battle allegations of racial discrimination. As we discussed in October (https://www.law.com/thelegalintelligencer/2021/10/21/recent-racial-harassment-decisions-leave-employers-scurrying-on-defense/), a jury awarded Owen Diaz, who worked as an elevator operator at Tesla, $137 million in damages after he accused the company of ignoring racial abuse and discrimination. And in the blink of an eye, $137 million was slashed by nearly 90% to $15 million. U.S. District Judge William Orrick of the Northern District of California issued a ruling this week holding Tesla liable to Diaz but reduced the amount awarded to Diaz by jurors labeling it "excessive." See *Diaz v. Tesla,* 3:17-cv-06748-WHO (N.D. Ca. Apr. 13, 2022)

Racist Statements and Drawings

According to the opinion, Diaz began work at the Tesla factory in Fremont, California, on June 3, 2015. On his second day of work, Diaz first discovered the N-word scratched into a bathroom stall. Over the course of his employment, more racist bathroom graffiti was added and he encountered swastikas and the phrase "death to all [N-words]." Diaz also testified that "eight to 10" employees called him the N-word while he worked at Tesla.

Ramon Martinez was a Tesla supervisor. Diaz testified that Martinez told him to "go back to Africa," called him the N-word more than 30 times, called him "mayate," the Spanish equivalent of the N-word, and told him "I hate you [N-word]."

In January 2016, someone had drawn sketches of several ghosts and a "Pac-Man" figure on a surface near the elevators at which Diaz worked. Next to them, Martinez drew the sketch below—which appears to be a face with large lips and a bone in its hair—and wrote the word "Booo" underneath it.

Diaz testified that seeing the drawing made him feel like "somebody had kicked me." He was reminded of a Warner Brothers cartoon from his childhood that showed the picaninny character as a "buffoon" who was "running around chasing after fried chicken" and "saying 'mammy' and 'master' and stuff like that." Martinez testified that the figure was from a cartoon in his childhood called "Inki." The following picture from the "Caveman Inki" cartoon that Martinez was referencing was introduced into evidence.

The Verdict

On Oct. 4, 2021, the jury returned a verdict against Tesla. The jury, in special verdicts, found that: Tesla subjected Diaz to a racially hostile work environment, Tesla was a joint employer of Diaz, Diaz was subject to a hostile work environment caused by a supervisor, Diaz was subject to a hostile work environment caused by a non-immediate supervisor or co-worker, Tesla committed a civil rights violation in a contractual relationship, Tesla failed to take all reasonable steps necessary to prevent Diaz from being subject to racial harassment, and Tesla negligently supervised or negligently continued to employ Ramon Martinez and that action harmed Diaz. The jury awarded Diaz $4.5 million in past compensatory damages, $2.4 million in future compensatory damages, and $130 million in punitive damages. At the time, the verdict for Diaz was believed to be the largest verdict in an individual race discrimination in employment case.

It came as no surprise that Tesla sought to reduce the award. The U.S. Supreme Court has held that the Fifth Amendment's Due Process Clause prohibits punitive damages that are "grossly excessive." *State Farm Mutual Automobile Insurance v. Campbell*, 538 U.S. 408, 416 (2003). The court has said punitive damages should generally not exceed 10 times the amount of compensatory damages, and that even a ratio greater than 4:1 might be excessive. As a result, large awards handed down by impassioned juries are commonly reduced by trial judges or appeals courts.

Compensatory Damages reduced to $1.5M

In the opinion, the court explained why Diaz was entitled to a relatively large emotional distress damages award, labeling the N-word as "perhaps the most offensive and inflammatory racial slur in English, a word expressive of racial hatred and bigotry." Citing appellate decisions, the court declared that "no single act can more quickly alter the conditions of employment and create an abusive working environment, than the use of an unambiguously racial epithet such as 'n&%$er' by a supervisor in the presence of his subordinates." The court rejected Tesla's argument that this was an example of a garden variety emotional distress case.

The jury heard evidence that after the weeks and months of racist harassment, Diaz became withdrawn, sad, and fundamentally different. He testified that "some days I would just sit on my stairs and cry." He stopped eating, stopped sleeping, stopped having intimate relations with his wife, and withdrew from involvement in his child's life. On the issue of future emotional harm, the court noted that there was substantial evidence that Diaz's emotional harm was greatly reduced once he stopped working at Tesla. Diaz's step-daughter testified that after he left the Tesla facility he was "back to being" her old father.

Nevertheless, the court found the verdict to be excessive. Using analogous (though not identical) verdicts and facts from other cases, the court concluded that the maximum amount supportable by proof to make Diaz whole for his emotional harm was $1.5 million.

Punitive Damages Reduced to $13.5M

While the court found that the jury had a legally sufficient basis to make an award of punitive damages, the size of the award here was deemed unconstitutionally large. To determine whether an award of punitive damages is unconstitutionally large, a court should look to what the Supreme Court has set out as three "guideposts": the degree of reprehensibility of the defendant's misconduct; the disparity between the actual or potential harm suffered by the plaintiff and the punitive damages award; and the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases.

Putting the three guideposts together, the court concluded that a 9:1 ratio was most appropriate. Tesla's treatment of Diaz fell high on the reprehensibility scale because it was not a single isolated incident, it was repeated. The discriminatory slurs were constant. Tesla repeatedly failed to address complaints or addressed them with what the jury could have understood to be reckless disregard for Diaz's rights.

The court felt constrained, however, because of the large disparity between the punitive and compensatory damage awards. As the Supreme Court has explained, "few awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process." Because this is a discrimination case, and in light of the reprehensibility of the conduct, a ratio in the higher part of that range was more appropriate.

The court was cognizant of Tesla's reported net worth of $43.8 billion, as well as the primary purpose of punitive damages being deterrence. While the wealth of a defendant is an appropriate consideration, particularly corporate defendants, the court said Tesla's wealth would not justify an "otherwise "unconstitutional award.

Other Troubles for Tesla

Tesla has faced numerous allegations of racial discrimination and harassment at its Fremont plant. Tesla reportedly paid $1 million to another former employee, Melvin Berry, who said he was called the N-word by a supervisor. Earlier this year, Tesla was sued by the California Department of Fair Employment and Housing for operating what it described as a "racially segregated workplace." The state's case against Telsa describes a wide range of discriminatory behavior and harassment at the company's Fremont factory. The company currently faces a class-action lawsuit alleging racism at the same facility, as well.

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