

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

v.

JPMORGAN CHASE BANK, N.A.,

Defendant.

ORDER

09-cv-528-slc

Having considered the parties' dueling submissions on damages instructions and verdict questions, *see* dks. 193 & 196, the court has taken something from each. First, the court sees no need for a verdict question on causation because the instructions and the compensatory damages verdict question clearly state the requirement of causation. The rest is for the parties to argue. To the same effect, the court sees no value at this time in an exacerbation instruction, but we can revisit this issue at the close of the evidence.

Next, for the sake of clarity, the court is willing to break out on the verdict form the question whether Chase Bank had implemented an affirmative action plan. This is new Question No. 3 on the damages special verdict form. The court does not intend to substitute Wing for Chase in Question No. 2 on punitive damages; as the EEOC points out, Chase is the defendant, not Wing, and the instructions make clear that Chase only can be held liable if Wing was acting within the scope of his employment.

The only wobbler is the dispute over whether to instruct the jury to consider Chase Bank's net worth when addressing punitive damages. This court has given this instruction in other trials, but not in a fact situation like this one. Although Chase Bank is large, the dispute

in this case is small: it revolves around one hiring decision by one manager in one branch. It would be unfair and misleading to define the ballpark for the jury's swing at punitive damages with an eleven-digit number. This is all the more true in light of the statutory cap on damages (which will not be shared with the jury). If the jury gets to Question No. 4 on the damages verdict, it will know enough about Chase Bank to award damages at or above the \$300,000 cap if that is the jury's wish. Providing the jury with information that might cause it to exceed the damages cap by several orders of magnitude might result in a more eye-catching EEOC press release, but embarrassing a corporate defendant in the media is not a stated goal of Title VII. We are not going there in this trial.

Attached for the parties' review are the final version of the voir dire questions, the final pretrial version all three sets of jury instructions and the two verdict forms. The court has reformatted the instructions slightly and trimmed some of the redundancies but has made no substantive changes beyond those flagged in the court's orders. Even so, there is no substitute for counsel carefully reading all of these documents to ensure that there are no unintentional miscommunications or misunderstandings on the eve of trial.

Entered this 23rd day of November, 2010.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge