

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

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,

Plaintiff,

v.

JPMORGAN CHASE BANK, N.A.,

Defendant.

JURY INSTRUCTIONS
ON DAMAGES

09-cv-528-slc

DAMAGES

Now that you have heard the evidence and the arguments on the issue of damages, I will give you the instructions that will govern your deliberations in the jury room for this final phase of the trial. Again, it is my job to decide what rules of law apply to the case and to explain those rules to you. It is your job to follow the rules, even if you disagree with them or don't understand the reasons for them. You must follow all of the rules; you may not follow some and ignore others. All of the jury instructions that I gave you earlier in this case still apply to your deliberations and you may rely on them during this phase of the trial.

Special Verdict Form on Damages

The damages portion of this case is being submitted to you in the form of a special verdict consisting of 4 questions. *{Court reads the verdict form}* Please note that you are to answer Question No. 3 only if you answer “Yes” to Question No. 2 and you are to answer Question No. 4 only if you answer “Yes” to Question No. 3.

In answering the questions, you should consider only the evidence that has been received at this trial. Your decision on each question must be unanimous. Your deliberations will be secret. You will never have to explain your verdict to anyone. If

you have formed any idea that I have an opinion about this phase of the case, disregard that idea. It is your job, not mine, to decide how to answer the questions on damages.

Compensatory Damages

Question No. 1 asks about compensatory damages. Plaintiff EEOC has the burden of convincing you, by the preponderance of the evidence, both that Lisa McCurty was injured or damaged by defendant Chase Bank's unlawful conduct and the amount of these damages.

The EEOC does not need to produce evidence that is as exact as the evidence needed to support findings on other questions in the verdict. Determining damages involves the consideration of many different factors that cannot be measured precisely. In determining the damages you must base your answer on evidence that reasonably supports your determination of damages under all of the circumstances of the case. You should award as damages the amount of money that you find fairly and reasonably compensates Lisa McCurty for any injuries caused by Chase Bank. Compensatory damages can include compensation for emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life and other non-monetary losses.

In assessing any compensatory damages, you should not include any amounts for lost wages and benefits. The court will calculate any damages for past or future lost wages and benefits. You may award compensatory damages only for injuries that the plaintiff has proved by a preponderance of evidence were caused by the defendant Chase Bank's wrongful conduct. The damages that you award must be fair compensation—no more and no less.

Do not measure damages by what the lawyers ask for in their arguments. Their opinions as to what damages should be awarded should not influence you unless their opinions are supported by the evidence. It is your job to determine the amount of the damages sustained from the evidence you have seen and heard. Examine that evidence

carefully and impartially. Do not add to the damage award or subtract anything from it because of sympathy to one side or because of hostility to one side. Do not make any deductions because of a doubt in your minds about the liability of any of the parties.

Punitive Damages

Questions No. 2 through No. 4 ask about punitive damages, which you may award in addition to compensatory damages. You are not required to make any award of punitive damages, but you may do so if you think it is proper under the circumstances to make such an award as an example or punishment to deter the defendant and others from offending in a similar manner in the future.

Before you can award punitive damages against defendant Chase Bank, plaintiff EEOC must prove by a preponderance of the evidence that defendant Chase Bank's managerial employee, Evan Wing, acted within the scope of his employment and in reckless disregard of Lisa McCurty's federally protected right to be free from race discrimination and to be free from sex (that is, pregnancy) discrimination. Mr. Wing acted in reckless disregard of Ms. McCurty's rights if Mr. Wing knew that his reasons for not promoting Ms. McCurty into the October 2008 SSA position may violate laws against race or pregnancy discrimination.

You should not, however, award punitive damages if Chase Bank proves that it made a good faith effort to implement an anti-discrimination policy.

If you find that punitive damages are appropriate, then you must use sound reason in setting the amount of those damages. Punitive damages, if any, should be in an amount sufficient to fulfill the purposes that I have described to you, but should not reflect bias, prejudice, or sympathy toward or against either party.

In determining the amount of any punitive damages, you should consider the following factors:

- the reprehensibility of Chase Bank's conduct;
- the impact of Chase Bank's conduct on Ms. McCurty;
- the relationship between Ms. McCurty and Chase Bank;
- the likelihood that Chase Bank would repeat the conduct if an award of punitive damages is not made;
- the relationship of any award of punitive damages to the amount of actual harm Ms. McCurty suffered.