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## **Wrongful Termination**

Age Discrimination

VERDICT: \$734,383.

CASE/NUMBER: Charles Pennington and Willie Sims v. Clayton Industries / CV?O12266FMC.

COURT/DATE: USDC Central / July

JUDGE: Hon. Florence-Marie Cooper.

ATTORNEYS: Plaintiff - Mark Weidmann (Law Offices of Mark Weidmann, Los Angeles).

Defendant - Jon D. Meer, Eric Beene (Piper, Rudnick, LLP, Los Angeles).

TECHNICAL EXPERTS: Plaintiff - Brian Kleiner, human resources, Fullerton; Joyce Elaine Pickersgill, economist, Fullerton.

Defendant - Michael D. Ward, economist, Santa Monica.

MEDICAL, EXPERTS: Plaintiff - Franklin C. Milgrim, M.D., psychiatrist, Beverly Hills.

Defendant - Francine B. Kulick. Ph.D., psychologist, Santa Monica.

FACTS: The plaintiffs, Charles Pennington and Willie Sims, were laid off or terminated from their employment at the defendant Clayton Industries after working there for 42 years and 35 years respectively. Plaintiff Charles Pennington was 61 years old at the time of his termination and plaintiff .William Sims was 59 when he was terminated.

PLAINTIFF CONTENTIONS: The plaintiffs contended that they were chosen for layoff or termination on account of their age, race and disability. They also alleged harassment and retaliation.

They contended that they were better qualified, more skilled and more flexible than younger employees who were retained in similar positions. The plaintiffs also contended that younger employees were hired to replace them. and that they were essentially retired early by the defendants because of their age.

DEFENDANT CONTENTIONS: The defendant employer asserted that the plaintiffs were chosen for layoff as part of a downsizing due to decreased business. The defendant asserted that the plaintiffs, along with younger employees, were included in the layoff because they were objectively less skilled and less productive than the employees who were retained.

The defendant argued that age was not a factor in the decision to lay off the plaintiffs and that the average age of its employees increased after the reduction of force.

INJURIES: Depression.

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**DAMAGES:** Loss of wages since the plaintiffs were unable to obtain alternative employment.

**TRIAL JURY:** Length three weeks; Deliberation one day.

**SETTLEMENT DISCUSSIONS:** Mediator Marc Rudy proposed a settlement which both the plaintiffs and defendant were unwilling to accept. The plaintiffs demanded \$1.7 million to settle prior to trial.

**OTHER INFORMATION:** The Court granted a partial summary judgment for the defendant on the claims of race and disability discrimination, race and disability harassment, and retaliation. The court, however, found that there was a triable case of age discrimination.

The jury found that the defendants were guilty of age discrimination in violation of state and federal law and public policy.

Plaintiff Pennington was awarded \$164,478 in lost wages, medical expenses and emotional distress; \$140,040 in front pay, minus \$35,010 for failure to mitigate, plus \$87,500 in punitive damages.

Plaintiff Sims was awarded \$207,968 in lost wages, medical expenses and emotional distress plus \$18,875 in front pay minus \$31,968 for failure to mitigate, plus \$87,500 in punitive damages.

The plaintiffs will also be pursuing attorney fees and costs. The defendant has made a post trial motion for the judge to reconsider her award of front pay, which was decided by the judge, rather than the jury. The award of "front pay" is an amount of future damages (lost wages) after trial.

The defendant contends that front pay was inappropriately awarded because the plaintiffs each testified that they were unable to work for reasons not caused by the defendant and, in any event, the jury determined that the plaintiffs failed to mitigate their damages.

The defendant will also be pursuing other post trial motions after the Court enters judgment.