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## *Sasaki v. Class*

### **Mention Of Federal Statutory Cap On Non-Economic Damages During Closing Arguments By Plaintiff's Counsel Violated The Civil Rights Act Of 1991**

By Latina Burse

In this case of first impression, the United States Court of Appeals for the Fourth Circuit reversed and remanded the issue of damages on the basis of plaintiff's counsel's reference to the federal statutory non-economic damages cap during closing arguments. In *Sasaki v. Class*, 92 F.3d 232 (4th Cir. 1996), the court held that Congress intended to prohibit both judges and attorneys from mentioning the cap so juries would not be compelled to adjust the verdicts upward or downward to account for the caps.

Mee Sook Sasaki ("Sasaki") filed suit against her employer, JLW Produce, and its president, Robert Class ("Class"), alleging that Class sexually harassed her for several years in violation of 42 U.S.C. § 1981a (1994). Sasaki also alleged that Class assaulted and battered her in violation of Maryland law. During closing arguments, Sasaki's counsel argued that the jury could award Sasaki up to \$50,000 in compensatory damages for emotional pain, suffering, inconvenience, and mental anguish in her sexual harassment claim. Defense counsel's objection was overruled. Sasaki's counsel continued his argument by noting that state law permitted the jury to award Sasaki up to \$500,000 for each battery.

The jury returned a verdict in favor of Sasaki and awarded her \$61,250 for her sexual harassment claim, \$150,000 for her assault and

battery claims, and \$65,000 in punitive damages. The trial court, however, denied Sasaki's request for attorney's fees and costs because she received "generous" damage awards totaling \$276,250.

Class appealed on several grounds. First, Class argued that the trial court's erroneous permission of Sasaki's counsel to reference the federal statutory damages cap during closing arguments violated 42 U.S.C. § 1981a(c)(2). Second, Class argued that the trial judge improperly refused voir dire of prospective jurors to determine if any had experienced sexual harassment. Third, Class appealed several evidentiary and instructional errors. Sasaki cross-appealed contending that the trial judge abused his discretion when he denied her request for attorney's fees.

Sasaki asserted three defenses to Class's first argument. First, Sasaki argued that § 1981a(c)(2) pertained only to the judiciary because the statute specifically

stated that the "court" shall not inform the jury of the damages cap. *Sasaki*, 92 F.3d at 236. The court agreed that the statute specifically prohibited the court from making reference to the cap. The court held, however, that the statute's legislative history indicated that Congress intended to prohibit both judges and attorneys from informing the jury of the damages cap. *Id.* Specifically, Congress enacted the bill to ensure that the jury would not be pressured to adjust the damage awards upward or downward to account for the federal statutory damages cap. *Id.* Therefore, the court held, limiting this restriction to judges would, in effect, undermine congressional intent. *Id.*

Second, Sasaki argued Class opened the door to her counsel's statement during closing arguments when they portrayed her as a greedy person seeking millions of dollars. *Id.* The court disagreed and held that counsel's reference to the federal damages cap did not dispel the inference that she was greedy, inasmuch as Sasaki did ask the jury to award her millions of dollars on her state law claims. *Id.*

Finally, Sasaki argued, assuming *arguendo* that her counsel's statement was error, the error did not harm or prejudice Class pursuant to Rule 61 of the Federal Rules of Civil Procedure. *Id.* The court, however, held that counsel's reference to the federal damages cap

accomplished exactly what Congress intended to prevent. Namely, the reference pressured the jury to adjust their award to account for the damages cap. *Id.* at 237.

Essentially, the court found that counsel's closing argument was interpreted by the jury to award Sasaki more for her state law claim because of the federal damages cap. This finding was evidenced by the fact that the jury awarded Sasaki \$150,000 for the "lesser included state conduct and injury." *Id.* As a result, the court held that "when a jury's damages award itself indicates so strongly that the error substantially influenced the jury verdict, the error cannot be dismissed as harmless." *Id.*

For this reason, the court remanded on the issue of damages. *Id.* at 238. The court held, however, that Sasaki's counsel's reference to the federal statutory damages cap in no way affected the jury's findings that Class was liable and had acted willfully and maliciously. *Id.* Therefore, the jury's verdict on liability and the propriety of punitive damages was affirmed. *Id.*

Class's second argument on appeal was that the trial judge improperly denied Class the right to an unbiased jury by refusing to ask prospective jurors whether they had ever been sexually harassed in the workplace. The court determined, after reviewing all voir dire questions presented by the parties, that the trial court's voir dire "adequately covered the personal experiences . . . [of] the jurors . . . [and

therefore] it was unnecessary for the court to go to any great lengths to ensure that jurors revealed their potential prejudices." *Id.* at 240-41.

Class's third argument alleged that the trial court failed to elaborate its jury instructions to include the four factors, outlined in *Harris v. Forklift Sys. Inc.*, 510 U.S. 17 (1993), in determining whether Class's harassment created a hostile environment. The court held that the trial judge did not abuse its discretion for the "instructions construed as whole, and in light of the whole record, adequately informed the jury of the controlling legal principles without misleading or confusing the jury to the prejudice of the objecting party." *Id.* at 242. (quoting *Spell v. McDaniel*, 824 F.2d 1380 (4th Cir. 1987), *cert. denied*, 484 U.S. 1027 (1988)).

Sasaki's cross-appeal argued that the trial judge improperly refused to award her attorney's fees because of the generous award she received. The court agreed that a generous award on damages was not a proper rationale for the denial of attorney's fees. *Id.* at 243. Therefore, in addition to the issue of damages, the court remanded for reconsideration the appropriateness of attorney's fees in this case.

The ruling in *Sasaki v. Class* reflects the Fourth Circuit's attempt to interpret 42 U.S.C. § 1981a(c)(2) consistent with the public policy considerations exemplified in the legislative history of the statute. By remanding this

case for a new trial limited to the issues of damages and attorneys fees, the court's message is that juries must make determinations of damages solely by weighing the evidence. Furthermore, juries should not be compelled to adjust the verdicts upward or downward to account for the caps. Therefore, in order to avoid the expense of a new trial, attorneys should refrain from mentioning to the jury any limitations in awarding non-economic damages. Nothing in this case, however, seems to prevent attorneys from requesting a specific amount in damage awards.

