

MASSACHUSETTS LAWYERS WEEKLY

JULY 24, 2000

VERDICTS & SETTLEMENTS

Employment

Wrongful Termination — Race Discrimination —

Defense Verdict

Injuries alleged:

Emotional distress, back pay, lost benefits

Name of case:

Thomas v. Eastman Kodak Company

Court/case #:

U.S. District Court, No. 96 CV 10890

Tried before judge or jury:

Jury

Name of judge:

Robert E. Keeton

Amount of award:

\$0 (defense verdict)

Date:

June 2000

Highest offer:

\$0

Demand:

\$350,000

Attorney for plaintiff:

Withheld

Attorney for defendant:

Michael A. Fitzhugh, Fitzhugh & Associates, Boston

Other useful information:

The plaintiff, a long-term employee of the defendant company, alleged that she was wrongfully terminated due to racial discrimination.

When the defendant decided to downsize her division in 1993, the plaintiff, the only African-American in the company's Boston office, was one of two employees selected to be laid off.

The selections had been made by resorting to a formula that used scores from the last three years' performance evaluations. The plaintiff's low numerical score during those years resulted in her being selected for layoff, the defendant contended.

After pursuing a claim at the EEOC, which found no probable cause, the plaintiff brought suit and contended that the use of

the formula was a pretext.

Shortly before trial was to commence in 1998, the defense moved for summary judgment before the District Court. In her opposition, the plaintiff apparently abandoned her theory that the use of the formula was a pretext, and instead contended that her annual evaluation scores were unfairly low due to her supervisor's alleged racial animus.

The defense objected to the change in theory because all the offending evaluations were given outside of Title VII's limitations period. However, the District Court granted summary judgment because it deemed the plaintiff's evidence insufficient to go to trial. In passing, the District Court ruled that the plaintiff's new theory of liability was not time-barred, as the defense contended. The opinion is reported as *Myrtle Thomas v. Eastman Kodak Co.*, 18 F. Supp. 2d 129 (D. Mass. 1998). The plaintiff then appealed that ruling.

In reversing and remanding for trial, the 1st U.S. Circuit Court of Appeals' expansive opinion held that there was sufficient evidence to warrant a trial. The 1st Circuit also held the plaintiff's action was not time-barred because the unlawful employment practice was the layoff "in a derivative way." The decision is reported as *Myrtle Thomas v. Eastman Kodak Co.*, 183 F.3d 38 (1st Cir. 1999).

The defense petitioned the U.S. Supreme Court for a writ of certiorari based upon the limitations issue, contending that the plaintiff could not "reach back" and revive claims based upon those evaluations, all rendered prior to Title VII's limitation period. The writ was denied, ___ U.S. ___ 120 S.Ct. 1174 (2000), and the case then proceeded to trial.

Trial commenced June 4. The defendant argued that it had applied the formula used to select the plaintiff for layoff consistently to all eligible employees. It further contended that the plaintiff and her supervisor, who had purportedly rendered the discriminatory evaluations, had been on good terms when they were peers before the evaluator had become the plaintiff's supervisor. Also, the plaintiff never complained of any discrimination before her selection for layoff, according to the defendant.

After a week-long trial and seven hours of deliberations, the jury returned a verdict in favor of the defendant.