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Nuclear Winter: The Post-Verdict Battle in Employment Cases

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As we have previously reported here and here, "nuclear" verdicts from California juries in employment discrimination and harassment cases have become increasingly common over the past few years. Although these massive verdicts garner a lot of attention, they are only part of the story after the verdict comes in.

For many successful plaintiffs, the journey to collect these awards is fraught with numerous delays and obstacles, and the "victorious" employee's final recovery may be only a fraction of the original judgment—if anything at all. Several key factors contribute to this outcome:

- **Post-Trial Reductions**: Large awards (especially single-plaintiff verdicts exceeding $10 million) may be reduced after the trial by the judge, an appellate court, or in post-trial settlement negotiations (let's call that amount the "Judgment").
- **Attorneys' Fees**: Plaintiffs' lawyers usually take up to 50% of the Judgment as their contingency fee, and there may be additional lawyers and law firms on the plaintiff's side who also seek to get paid their "fair share."
- **Litigation Costs**: If they're not otherwise reimbursed, certain litigation expenses—such as deposition costs, expert witness fees, court filing fees, jury and

witness fees, etc.—are all deducted from the plaintiff's share of the Judgment.

- **Taxation**: At least a portion if not all of the Judgment may be taxed in the very highest state and federal tax brackets, resulting in a total tax bill from Uncle Sam and his state counterparts of close to 50%.

So, it is not uncommon for a successful plaintiff to pocket less than 25% of the Judgment. But that's not the end of the challenges!

After all these reductions have been applied, some plaintiffs have difficulty *collecting* the Judgment or any part of it from the defendant—a task that can be even more difficult than winning the case itself. A recent *Wall Street Journal* investigation highlights the collection struggles of several plaintiffs who had won seven and eight-figure judgments in employment cases involving sexual harassment, sexual assault, and whistleblower retaliation. The defendants in some of these cases apparently have successfully evaded collection efforts by living abroad and using sophisticated financial tactics to shield and transfer assets.

For example, one plaintiff interviewed in the article said she has recovered *none* of the $8.4 million verdict she obtained after a nearly decade-long legal battle that included two successive jury trials. The article quotes her: "No one knows that I'm not a multimillionaire and that I don't have a dollar to my name." Other plaintiffs recovered small amounts, but only after turning to collections firms to locate and seize the defendant's assets. These collections firms in turn charge a percentage of whatever assets they manage to find, which, on top of the fees already owed to plaintiff's trial counsel, further diminishes the employee's final share.

These experiences underscore a harsh reality: Even an eye-popping, multimillion-dollar jury verdict may not buy a new Rolls Royce and a house in the hills after all is said and done!

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