

\$13M UCLA Case Exposes Calif. Employment Litigation Flaws

By **Anthony Oncidi** (May 6, 2020, 4:23 PM EDT)

In *Pinter-Brown v. Regents of the University of California*,^[1] the California Court of Appeal's Second Appellate District recently reversed a blockbuster \$13 million judgment that was entered against UCLA in favor of one of its former professors of medicine, Dr. Lauren Pinter-Brown. Pinter-Brown went to trial against University of California, Los Angeles, on claims of gender and age discrimination and age harassment — the jury found in UCLA's favor on the age-related claims.



Anthony Oncidi

After almost three weeks of trial, the jury rendered a verdict of more than \$13 million in favor of Pinter-Brown, consisting of approximately \$3 million in past and future lost wages and \$10 million in past and future emotional distress damages. In reversing the judgment on multiple grounds, the appellate court determined that Los Angeles Superior Court Judge Michael Linfield committed a "series of grave errors" that were "cumulative and highly prejudicial" to UCLA and that evidenced "the trial court's inability to remain impartial."

The Pinter-Brown case perfectly exemplifies much of what's wrong with employment litigation today, especially in the state of California — the place where one in eight Americans lives. In fact, Pinter-Brown and cases like it explain why more and more employers are opting out of the civil litigation system entirely in favor of arbitration and why that stampede is unlikely to end anytime soon.

First, it is important to understand that plaintiff-side employment litigation in California is big business. Many plaintiffs lawyers demand a contingency fee of between 40% and 50% of the client's recovery — and on top of that many also claim 100% of the substantial attorney fees and costs that are awarded to a prevailing plaintiff under the state's Fair Employment and Housing Act,^[2] thus all but guaranteeing that they will pocket substantially more than their clients in cases that go the full distance through trial.

In the past few years, there has been an alarming number of huge single-plaintiff verdicts in California of which Pinter-Brown is just one more example. Some of the more notable recent verdicts include:

- \$58.25 million in *Mahim Khan v. Alki David Productions*: \$50 million in punitive damages and \$8.25 million in emotional distress damages. The plaintiff was a production assistant who claimed she had been sexually harassed and battered in the workplace.^[3]
- \$31 million in *Codie Rael v. Sybron Dental Specialties Inc.*: \$28 million in punitive damages and \$3 million in emotional distress damages. The plaintiff was a materials buyer for a dental supply

company who alleged age discrimination involving comments such as "you are outdated," "we need younger workers here," and "you are part of the old culture." [4]

- \$18.6 million in *Michael Tilkey v. Allstate Insurance Co.*: \$16 million in punitive damages and \$2.6 million in lost wages and emotional distress damages. The plaintiff was an insurance salesman who alleged wrongful termination and defamation. [5]
- \$17.4 million in *Pearl v. City of Los Angeles*: \$15 million in emotional distress damages and \$2.4 million in lost wages and benefits. The plaintiff was a city sanitation worker who claimed he was harassed because he was perceived to be gay. [6]
- \$16.6 million in *Rickey Moland v. McWane Inc.*: \$13.8 million in punitive damages and \$2.8 million in lost wages and emotional distress damages. The plaintiff was a manager of a manufacturing company who alleged wrongful termination and racial discrimination. [7]
- \$15.4 million in *Blanca Ramirez v. Jack in the Box Inc.*: \$10 million in punitive damages and \$5.4 million in lost wages and emotional distress damages. The plaintiff was a Jack in the Box employee who alleged disability and age discrimination (she had been called "grandma") and retaliation. [8]
- \$15.4 million in *T.J. Simers v. Los Angeles Times*: The total amount of the judgment was for emotional distress damages. The plaintiff was a former Los Angeles Times sports columnist who alleged age and disability discrimination. [9]
- \$8 million in *Jeanette Ortiz v. Chipotle Mexican Grill Inc.*: \$6 million in emotional distress damages and \$2 million in lost past and future earnings. The plaintiff was a manager at a Chipotle Mexican Grill restaurant who alleged wrongful termination and retaliation. [10]

The Pinter-Brown case is instructive because most of these high-verdict cases ended up settling before an appellate court had a chance to weigh in, so the Court of Appeal's insights about the trial are particularly revealing.

The purported evidence of discrimination in the case consisted more or less of the following: The plaintiff felt disrespected by a male doctor at UCLA who interrupted her on occasion, called her by her first name (rather than doctor), and who stood in front of her once in a menacing position.

In addition, she was told she was a diva and that she had the reputation of being an angry woman whom everyone hates. At least one senior female faculty member testified that the plaintiff had conceded that she did not believe the issues she was having at UCLA were gender-related.

Importantly, Pinter-Brown was not terminated by UCLA. She quit her employment and claimed at trial that she had been constructively discharged. She did not lose one day of work after leaving UCLA, and she accepted a new position at University of California, Irvine the very next day.

Based on this relatively unremarkable set of facts, a Los Angeles jury awarded Pinter-Brown \$13 million. UCLA may have expected to win — and there are some trial court judges who would have granted — summary judgment based on these facts. Although the trial court did summarily adjudicate the plaintiff's retaliation claim against her before the trial began, for some reason the judge allowed her to resurrect that claim in the middle of the trial before the case was submitted to the jury, which was, in

the words of the reviewing court, "an inexplicable error" and an ambush that was "manifestly unfair to UCLA."

But the manifest unfairness had begun weeks before at the very beginning of the trial, when the judge decided to tell the prospective jurors assembled in his courtroom that "the arc of the moral universe is long," quoting Martin Luther King Jr., and that "if you are selected as a juror, your job will be to help bend that arc toward justice."

The judge then proceeded to give what can only be described as a multimedia civics lesson about invidious discrimination through the decades in which he showed the jurors a video and made solemn reference to civil rights leaders who had marched from Selma to Montgomery, Alabama, in the 1960s as well as Rosa Parks, Cesar Chavez, Harvey Milk, Atticus Finch, the internment of Japanese Americans during World War II, the passage of the 19th Amendment giving women the right to vote, and the advent of gay marriage.

As the judge concluded his remarks, he exhorted the prospective jurors: "[Y]ou as jurors in this case are going to become Dr. King. It's going to be your job to help bend that arc toward justice by rendering a verdict based on the law and the evidence that you are going to be hearing in this case."

Not surprisingly, counsel for UCLA immediately moved for a mistrial based upon the judge's remarks and requested that a new panel of jurors be assembled. The judge denied the motion, assuring UCLA that he gives the same presentation before all trials in his courtroom.

The appellate court reversed the judgment based not only on the trial judge's prejudicial remarks at the outset of the trial (which the court characterized as a "stirring call to action which stacked the deck against UCLA") but also because he allowed prejudicial and inapplicable me-too evidence into the case, which is "never appropriate to prove the employer's propensity to discriminate."

The me-too evidence took the form of multiple references during the trial to a written report (not involving the plaintiff) which documented alleged racial and ethnic bias (not gender bias) at UCLA. Although the trial court did not allow the report itself into evidence, it "abandoned its duty to ensure UCLA received a fair and impartial trial when it allowed the contents of the irrelevant and highly prejudicial [report] ... to come in through a series of leading questions by [the plaintiff's] attorney and the answers thereto."

The trial court also erred by allowing in evidence of administrative complaints of discrimination that had been filed against UCLA, which the appellate court described as a "laundry list of anonymous, undefined allegations of discrimination at UCLA [used] to convince the jury Dr. Pinter-Brown's own complaints were legitimate."

Once liability was (inevitably?) established given the trial court's numerous errors, UCLA was further ill served by the fact that California juries have free rein to award essentially unlimited emotional distress damages in employment discrimination, harassment and retaliation cases. While such damage awards are capped under federal law,[11] in California a skilled plaintiffs lawyer can convince a jury to award millions of dollars in emotional distress damages (untethered to any objective standard) to even a relatively unsympathetic plaintiff.

Under California law,[12] a medical malpractice plaintiff in California is limited to just \$250,000 in noneconomic losses to compensate for pain, suffering, inconvenience, physical impairment,

disfigurement and other nonpecuniary damage. So, interestingly, if the David Geffen School of Medicine at UCLA had caused physical impairment or disfigurement to the plaintiff had she been one of its patients (rather than having disrespected her in the workplace), the judgment would have been at least \$10 million lower!

The jury awarded Pinter-Brown millions for her alleged emotional distress damages. Unfortunately, the standard California jury form exacerbates the problem by coaxing the jury to award separate amounts for past and future emotional distress damages. In short, the jury can't help but infer from the two blank spaces on the form that while one amount for emotional distress damages is fine, two separate amounts are even better!

Most jurors oblige. Of course, how a jury can rationally determine the present value of the plaintiff's future emotional distress damages is anyone's guess.

Because it's a public entity, UCLA was shielded from punitive damages under California law.^[13] However, in the absence of that protection, had the jury found the employer discriminated against the plaintiff with malice, oppression or fraud, it could have doubled, tripled or quadrupled the \$13 million award, resulting in tens of millions of dollars in additional liability.

In view of the experience of the defendants in these recent cases and many others like them, why would any rational employer willingly subject itself to this system rather than the comparative predictability of the outcome of an arbitration proceeding? Increasingly, fewer companies doing business in California are prepared to do so.

And, although arbitration is no panacea, perhaps what Winston Churchill said about democracy applies — it's the worst system in the world, except for all the others.

Correction: A previous version of this article misstated UCLA's eligibility for punitive damages under California law. The error has been corrected.

Anthony J. Oncidi is a partner at Proskauer Rose LLP. He is chair of the firm's West Coast labor and employment department.

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[1] <https://www.courts.ca.gov/opinions/documents/B290086.PDF>.

[2] Cal. Gov't Code § 12965(b).

[3] Mahim Khan v. Alki David Productions, Los Angeles Superior Court (Dec. 2019).

[4] Codie Rael v. Sybron Dental Specialties, Los Angeles Superior Court (June 2018).

[5] Michael Tilkey v. Allstate Ins., San Diego Superior Court (July 2018).

[6] Pearl v. City of Los Angeles, Los Angeles Superior Court (June 2017).

[7] Rickey Moland v. McWane, Inc., Los Angeles Superior Court (July 2017).

[8] Blanca Ramirez v. Jack in the Box, Los Angeles Superior Court (June 2019).

[9] T.J. Simers v. Los Angeles Times, Los Angeles Superior Court (Aug. 2019).

[10] Jeanette Ortiz v. Chipotle Mexican Grill, Inc., Fresno Superior Court (May 2018).

[11] Title VII (42 U.S.C. § 1981a(b)(3)) caps the amount of "compensatory damages awarded ... for future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses, and the amount of punitive damages" to between \$50,000 and \$300,000, depending on the size of the employer.

[12] Cal. Civil Code § 3333.2.

[13] (Cal. Gov't Code Sec. 818).