

**EMPLOYMENT**

Race Discrimination — Civil Rights — ADA — Disability Discrimination

**Mechanic subjected to hostile work environment, suit claimed****VERDICT** \$176,000

**CASE** Barry Ware v. JKM Equipment, Inc. and John K. Mitzel,  
No. 30-2015-00827210-CU-WT-CJC

**COURT** Superior Court of Orange County, Orange

**JUDGE** Nathan R. Scott

**DATE** 10/24/2017

**PLAINTIFF**

**ATTORNEY(S)** Geoffrey C. Lyon (lead), Lyon Law PC,  
Los Angeles, CA  
Christopher L. Garcia, Lyon Law PC,  
Los Angeles, CA

**DEFENSE**

**ATTORNEY(S)** Eduardo M. Madrid, Madrid Law Firm,  
Chino, CA  
Erica L. Madrid, Madrid Law Firm,  
Chino, CA

**FACTS & ALLEGATIONS** In 2015, plaintiff Barry Ware, 53, a black mechanic, was hired by JKM Equipment Inc., a heavy equipment rental company, to perform maintenance on its earth moving machines that were leased out to a general contractor. During the course of the job, Ware and the company owner, John Mitzel, who is white, exchanged texts. However, in June 2015, Ware injured his knee, but he allegedly was not able to take time off from work. He then walked off the job in October 2015, after an operator of the general contractor claimed that JKM Equipment and Mitzel referred to Ware by using the offensive "n" word. Ware claimed that, thereafter, many of the conversations, text messages and emails between him and defendants were racially offensive and rose to the level of creating a hostile work environment. He also claimed that he learned that when he was hired, he was misclassified as an independent contractor.

Ware sued JKM Equipment Inc. and John Mitzel. Ware initially alleged that the defendants' actions constituted racial and disability discrimination, whistleblower retaliation, constructive termination, failure to determine and make reasonable accommodation for a disability, improper classification as an independent contractor, intentional infliction of emotional distress, negligent infliction of emotional distress, defamation, and invasion of privacy.

Defense counsel moved for nonsuit, which was granted as to the claims of racial discrimination; disability discrimination; failure to engage in a timely, good faith, interactive process to determine reasonable accommodation for a disability;

and failure to make reasonable accommodations for a disability. In addition, prior to the case being submitted to the jury, Ware withdrew his claims of wrongful constructive termination, defamation, and invasion of privacy. Thus, the only claims that continued to the jury were regarding an alleged hostile work environment/racial discrimination, intentional infliction of emotional distress, and violations of the Americans with Disabilities Act.

Defense counsel contended that Ware was hired as an independent contractor and that Mitzel and Ware developed a friendship, in which they laughed, joked and shared stories about themselves. Counsel also contended that Mitzel would text and email jokes that he believed Ware would find humorous and that Mitzel never knew there was a problem because Ware never complained to him about any of the subject matter. In addition, defense counsel argued that the rumor about the company or Mitzel using the "n" word was false and that when Ware heard the rumor, he became very angry, felt betrayed, and walked off the job.

**INJURIES/DAMAGES** *aggravation of pre-existing condition; depression; emotional distress; knee*

Ware contended that he sustained an aggravation of a pre-existing right knee injury by the defendants' delaying his request for time off from work and that the defendants would not allow him to go to the doctor. He also claimed that the defendants made him postpone his arthroscopic surgery, which further aggravated his knee condition.

Ware alleged that he suffered from emotional distress as a result of the events at JKM Equipment. Specifically, he alleged that he suffered from depression as a result of the harassment and discrimination at the company, causing him to seek extensive mental health counseling.

Thus, Ware claimed that he suffered \$190,000 in past lost earnings, \$1.5 million in future lost earnings, and \$480,000 in punitive damages. However, at trial, his counsel asked the jury to award between \$600,000 and \$700,000 in compensatory damages, and between \$640,000 and \$1.12 million in punitive damages. (According to defense counsel, plaintiff's counsel asked the jury to award punitive damages of three to five times the compensatory damages award.)

Defense counsel argued that Ware attempted to blame the defendants for an exacerbation of an alleged knee injury that did not occur on the job and that Ware admitted that he injured his knee at home while playing basketball and falling on a trailer hitch. Counsel also argued that the claim that Ware aggravated his knee due to a delay in undergoing arthroscopic surgery was not supported by any medical evidence and that both the plaintiff's and defense's orthopedic experts agreed that Ware was suffering from arthritis. In addition, defense counsel contended that Ware would take off from work for all his medical appointments and then invoice the defendants for that time.

Thus, defense counsel asked the jury to award zero damages.

**RESULT** The jury found in favor of Ware on the causes of action of hostile work environment, failure to prevent racial

harassment, and negligent infliction of emotional distress. However, it found in favor of the defendants on the causes of action of racial discrimination, disability discrimination, and intentional infliction of emotional distress. The jury further found that Ware was an independent contractor, and not an employee of JKM Equipment. In addition, the jury assigned no contributory/comparative negligence. Thus, the jury awarded Ware \$176,000 in total damages jointly and severally against the defendants.



**BARRY WARE**    \$60,000 economic damages  
                       \$100,000 non-economic damages  
                       \$16,000 punitive damages  
                       \$176,000

**DEMAND**        \$4.5 million  
**OFFER**            None

**TRIAL DETAILS**    Jury Vote: 9-3

**PLAINTIFF**  
**EXPERT(S)**        Jeffrey Gates, M.D., orthopedic surgery,  
                           Orange, CA  
                           Timothy Lanning, M.A., economics,  
                           Santa Ana, CA  
                           Hung Q. Le, M.D., psychiatry, Corona, CA  
                           Sharon D. Tanghal, L.C.S.W., psychology/  
                           counseling, Chino, CA



**DEFENSE**  
**EXPERT(S)**        Steven R. Graboff, M.D., orthopedic surgery,  
                           Huntington Beach, CA  
                           Nadim N. Karim, Ph.D., psychology/  
                           counseling, Los Angeles, CA  
                           Venita J. McMorris, M.A., economics,  
                           Sherman Oaks, CA

**EDITOR'S NOTE** This report is based on information that was provided by plaintiff's and defense counsel.

-Priya Idiculla