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**Juliet F. Brudney**

# Sufferers of age bias find hope in settlement

**I** HOPE OTHERS GOING through an age discrimination lawsuit can draw encouragement from my experience and stay with it," says Quincy resident Edward Harnett. The reward for his perseverance: a \$1.7 million win this year, one of the highest awards in an age discrimination suit in the state. Harnett launched his battle against his former employer, CSA Financial Corp. in Boston, in June 1992 with a complaint to the Mass. Commission Against Discrimination. In the complaint, he blamed age discrimination for his dismissal as vice president that May after 22 years with the company. He was 62. The time line for events that followed his complaint comes close to a best-case scenario of what to expect.

MCAD found "probable cause" for his complaint in March 1994. He filed suit in state court that June, retained Robert Berluti of Berluti & McLaughlin, a Boston law firm, to represent him. A Suffolk Superior Court jury in August 1995 awarded him \$1.2 million.

The employer's motion to overturn the verdict and Harnett's motions for attorney fees and multiple damages were not resolved in an April 1996 Appeals Court mediation conference. Both sides filed briefs with the Appeals Court in July 1996. The court's decision for Harnett came down in November 1997. The employer's appeal to the state Supreme Judicial Court was denied in January. Harnett's \$1.7 million award includes attorney fees and interest.

"Age discrimination is not lessening," said Berluti in a recent interview. "The economy is strong, but downsizings still go on, and they're after the higher-paid. Harnett was the only person to be fired at the time, also the only one over 40,

but we didn't view his case as a piece of cake. There was a smoking gun, an excerpt from hand-written notes by CSA's president stating that this approach for Ed, who has been with CSA for 20-plus years, will fit in well with our plans to develop other and younger people. The jury bought it.

"Age discrimination cases are fact-intensive," Berluti said. "The jurors decide who's telling the truth, the employer or the employee. You must win their hearts. They're also very time-consuming. For example, you must collect affidavits, pretrial. The appeal process is less onerous, moves slowly but not that slowly."

Berluti represents employers as well as employees in discrimination cases. Like most lawyers, his focus is on firing, not hiring. "I rarely get cases of hiring. They're much more difficult to prove. Employers are more truthful to applicants about age drawbacks and often add 'I'll deny it if you say I said it.' What persuades jurors is someone who's been with the company a long time and then gets ousted."

A recently published article for employers by Berluti is of interest to employees, too. The High Stakes of Age Discrimination for High Tech - A Guide to Avoiding Liability appears in the April 13 Mass. High Tech, a weekly subscription-only newspaper. "The high-tech industry," Berluti states, "often values workers with advanced skills over workers who have more years of experience. . . . It attracts younger and more recently trained workers who also have lower salary expectations. . . . It is often tempting for these companies to let older workers go."

The article focuses on how technology-based companies can remain competitive without resorting to age discrimination. A reprint is available by mailing a \$3 check or money order for handling to Berluti & McLaughlin, One Beacon St., Boston, MA 02108 (617-557-3030).