

# 'Unusual' HR expert key to \$2M Wal-Mart verdict

By Noah Schaffer

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The unusual presence of an expert witness in human-resource-department practices was part of the presentation that convinced a Berkshire County jury to award nearly \$2 million to a former Wal-Mart pharmacist who claimed she was paid less than her male counterparts and then fired in retaliation for complaining.

Plaintiff Cynthia Haddad worked for more than 10 years at the Pittsfield Wal-Mart. She complained that the retail giant laid her off after she asked to be paid the same as her male counterparts, including a bonus given to pharmacy managers. The company paid the bonus, then fired her two weeks later.

Wal-Mart said the pharmacist was laid off because she left the pharmacy unattended during a period in which an authorized prescription was written by a technician.

Richard E. Fradette of Manchester, N.H., who was co-counsel for the plaintiff, told Lawyers Weekly that besides important testimony from Haddad, the jury also heard from North Andover attorney Julie A. Moore, an employment consultant.

"She testified about how a corporation is supposed to adopt policies and procedures, and about communicating them to the workforce," said Fradette. "The defense had no expert on the issue of the standard of treatment when you adopt, enforce and communicate policies [to employees]."

"I don't know how often courts allow experts to testify about human resource issues," added



DAVID E. BELFORT  
Plaintiff's lawyer: \$1M  
in punitives 'conservative'

plaintiff co-counsel David E. Belfort of Cambridge. "We had a 60-90 minute voir dire on it."

An economist, a treating expert and a liability expert also testified for the plaintiffs. Belfort said the defense countered with its own liability expert, who admitted on cross examination that he had billed Wal-Mart \$12,000 for his services "for a dispute that was originally \$7,000."

The jury of eight women and four men aged 24 to 76 returned a verdict that included \$1,767 in past lost wages, \$95,000 in damages for improper termination of employment, \$125,000 for emotional distress, \$17,700 in financial damages, and \$733,000 in lost future wages — plus \$1 million for punitive damages.

"The punitive damage amount is an abundantly conservative number," said Belfort. "It was not laced with passion; it was not a runaway verdict. I bet this doesn't cause a blip on [Wal-Mart's] radar screen."

A national class-action lawsuit by female employees over alleged wage inequities is in the works but, as a professional employee, Haddad was not eligible to join the class.

Defense attorney George P. Kostakos of Boston declined to comment. Settlement talks never got anywhere because Haddad insisted on an apology, according to Fradette.

"It would have to have been a written public apology for the conduct against [Cynthia]," Fradette said. "That was a non-starter. Our demand could have been \$100,000 or \$100 million, but because we insisted on an apology, Wal-Mart would not discuss a settlement and never offered us a penny."

**Type of action:** Employment discrimination

**Injuries alleged:** Lost wages

**Name of case:** Haddad v. Wal-Mart Stores, Inc., et al.

**Court/case no.** Berkshire Superior Court, No. 05-00274

**Trial before judge or jury:** jury

**Name of judge:** John A. Agostini

**Amount of verdict:** \$1.97 million

**Date:** June 19, 2007

**Highest offer:** No offer made

**Most helpful experts:** Julie A. Moore, North Andover; Dr. Craig Moore, Northampton (for the plaintiffs)

**Attorneys:** David E. Belfort, Corrigan, Bennett & Belfort, Cambridge; Richard E. Fradette, Beliveau, Fradette, Doyle & Gallant, Manchester, N.H., (for the plaintiffs)

## Convicted murderer's new-trial bid denied

The Supreme Judicial Court upheld the first-degree murder conviction of a former Springfield man, according to The Springfield Republican.

David A. Morgan, 41, was found guilty by a Hampden Superior Court jury in the murder of Wayne C. Rowe, 28. Rowe was found floating near the shore of the Connecticut River in April 1999 in Agawam with a gunshot wound to his head.

In a decision written by Justice Roderick L. Ireland, the court said Morgan was implicated in the murder based on his conduct and statements he made to others before and after the victim's disappearance, the Republican reported.

In his appeal, Morgan said there was insufficient evidence to convict him. He sought a new trial or a reversal of his conviction.

Ireland conceded there was no physical evidence that linked Morgan to the murder, according to the Republican.

The 34-page decision is *Commonwealth v. Morgan*, Lawyers Weekly No. 10-111-07. The full text of the ruling can be found on our website, [www.masslawyersweekly.com](http://www.masslawyersweekly.com).

## Governor won't face reprimand over call

The State Ethics Commission has decided against reprimanding Gov. Deval L. Patrick for a telephone call he placed to a banker on behalf of the mortgage lender where he once served on the board of directors.

The commission notified the Massachusetts Republican Party of its decision in a letter which followed up on a complaint filed on March 7. The party alleged Patrick broke state ethics laws barring public officials from using improper influence.

Brian Dodge, executive director of the state GOP, said he was dismayed with the decision, in particular because the commission said the outcome stemmed from its review of "the information you furnished to this commission."

He noted the commission announced last month it was investigating a Boston city employee for an alleged violation of the same ethics rule.

In March, Patrick said he made a mistake on Feb. 20 by calling Citigroup's Robert Rubin on behalf of ACC Capital Holdings, at a time when ACC was seeking an infusion of cash from Citigroup.

Citigroup has business interests in Massachusetts, many of which are regulated by the state.

Patrick resigned from a \$360,000-a-year position on ACC's board of directors last May.

## Disability suit vs. college dismissed

A U.S. District Court jury found against a man with learning disabilities who sued Quinsigamond Community College, according to the Worcester Telegram & Gazette.

Tomas Desaro was dismissed from the QCC radiologic technology program last year because he had not passed several clinical competency examinations. Judge F. Dennis Saylor IV turned the case over to the jury on the fifth day of the trial.



SAYLOR

Desaro said he has attention deficit/hyperactivity disorder and learning disabilities. His lawyer, Carol J. King of Sharon, sued under the 1971 Rehabilitation Act and the 1990 Americans with Disabilities Act, the Telegram reported.

Desaro claimed that the community college failed to make reasonable allowances for his disabilities and retaliated against him. He also charged that an instructor mocked him.

The college contended that Desaro failed to prove that he is disabled under those federal laws and maintained that Desaro was not qualified to remain in the radiology program with or without accommodation for disabilities.

The college said Desaro failed to prove that he was dismissed because of a disability, that QCC failed to make reasonable accommodations for him or that it retaliated against him, according to the Telegram.

## Man attacks woman outside courthouse

A Worcester man was scheduled to be arraigned on charges of assaulting a 73-year-old woman in a wheelchair outside the Worcester County courthouse, knocking her to the pavement and snatching her purse, according to the Worcester Telegram & Gazette.

Jeremy Brown, 19, allegedly tipped over the woman's wheelchair and kept yanking at her handbag before pulling it free, according to police accounts.

The alleged robbery, which occurred shortly after 11 a.m. in the parking lot on the High-

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