

# PUBLICATION

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## Autozone's Predicament: A \$185 Million Punitive Damage Award

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The record \$185 million punitive damage award by a California jury in November 2014 against AutoZone has been widely reported. This huge verdict raises immediate questions: How did this happen? What circumstances led the jury to return a verdict in this amount? Will the verdict stand? The following facts and procedural history from the record of the California court may help in answering some of these questions.

The Plaintiff, Rosario Juarez, was hired as a Customer Service Representative for AutoZone in San Diego in December 2000. In April 2001, she was promoted to Parts Sales Manager, and then to Store Manager in October 2004. In November 2005, Juarez allegedly told her direct supervisor, the District Manager, that she was pregnant. Shortly thereafter, in December 2005, she was placed on a Performance Improvement Plan (PIP) and was later demoted in February 2006 back to Parts Sales Manager. During the months leading up to her demotion, Juarez alleged that her supervisor often pressured her to step down as Store Manager due to her pregnant condition, making statements such as "The job is too much for you in your condition," or "I don't think it's right for you to be under this kind of pressure in your condition." She further alleged that soon after telling her supervisor she was pregnant, he more than doubled the length of her "to-do list" items and placed her on an onerous PIP, which demanded unreasonable expectations. Juarez also produced evidence of discriminatory animus about women at AutoZone by her Regional Manager – one of the decision makers in her demotion (and termination, as discussed below).

In April 2006 Juarez filed a Charge of Discrimination with the California Department of Fair Employment and Housing (DFEH), which later issued her a right to sue notice. Juarez filed suit in January 2008 against AutoZone in state court in San Diego, which AutoZone removed to federal court. In her Complaint Juarez sued AutoZone on a number of claims, including gender/pregnancy discrimination, unequal pay, and wage and hour violations. Juarez alleged that AutoZone had a "glass ceiling" for female employees. When she was finally promoted, she alleged she was held to a different and higher standard as Store Manager than men, and that her supervisor harassed and treated her differently because of her gender and pregnancy. As Store Manager, a nonexempt position, Juarez claimed she was required to work numerous hours off the clock without pay. Her wage and unequal pay claims were later dismissed by the court.

During the pendency of her lawsuit, some \$400 was reported missing at the store. As a result Juarez was terminated for failing to follow proper monetary handling procedure. Juarez filed a new Charge of Discrimination with DFEH for gender/pregnancy discrimination and retaliation arising out of her termination. After receiving a right to sue notice, Juarez amended her Complaint to add these new claims. In a written order, according to the court, Juarez produced evidence that the cash handling investigation leading to her termination was a sham.

A pivotal point in the procedural history of the case occurred when Juarez moved again to amend her Complaint after the close of discovery, and after AutoZone had filed its Motion for Summary Judgment. In support of the Motion to Amend, which the Court granted, Juarez alleged recent discovery of new evidence learned from two jury trials just concluded against AutoZone in Sacramento. According to Juarez, in 2003 or 2004 a consent decree, which was imposed upon Chief Auto Parts for alleged discriminatory conduct that it had engaged in before it was acquired by AutoZone, came to an end. Allegedly, a former District Manager, who himself was a successful plaintiff against AutoZone in one of the two cases, claimed that he attended a

meeting in Sacramento when AutoZone's Western Division Vice President announced the end of the consent decree. This former District Manager alleged that Juarez's Regional Manager was present at this meeting, and that when the announcement was made, all in attendance celebrated. Allegedly, both the Vice President and the Regional Manager said to start "thinning out the women" in the company and "not to hire women;" and that the Regional Manager said "now we can start getting rid of the women we hired because of that lawsuit, and that women weren't worth a sh\_t to our business."

Another turning point in the case occurred when the district judge in November 2013 directed the parties to consider proceeding with a trial before a Magistrate Judge. The parties did consent, and eventually Magistrate Judge William V. Gallo was selected to try the case.

After having three magistrate judges, two presiding district judges, six unsuccessful court-ordered settlement conferences before another magistrate judge, numerous motions, hearings and trial settings, and after 6 1/2 years of hard-fought litigation, trial began before Judge Gallo on November 3, 2014. The liability phase of the trial lasted nine days; and the punitive damage phase one day. The jury awarded Juarez lost earnings of \$393,757.52; front pay of \$228,959.00; and emotional distress damages of \$250,00.00 – all totaling \$872,719.52. Punitive damages were awarded in the amount of \$185 million, a record-breaking sum for an employment case.

AutoZone immediately filed a Motion for Judgment as a Matter of Law regarding the sufficiency of the evidence concerning the punitive damage award. According to the court, to be liable for punitive damages, Juarez had to prove by clear and convincing evidence that certain specified conduct was committed with malice, oppression or fraud by officers, directors or managing agents of AutoZone. If this specified conduct was committed by others within AutoZone who did not fit within the meaning of officer, director or managing agent, even if proven by clear and convincing evidence, then AutoZone would not be liable for punitive damages. AutoZone argued that Juarez presented no evidence, let alone clear and convincing evidence, that any of its officers, directors or managing agents engaged in the prohibited conduct. A managing agent is one who exercises substantial independent authority and judgment in his corporate decisions, making sure that his decisions ultimately determine corporate policy. The court found that no actual witness or employee mentioned in the case met this definition. Thus, the court found that the conduct of the Regional Manager, District Manager and Vice President was not enough. However, in a disturbing ruling for employers, the court found that AutoZoner Relations (the company's employee relations department) qualified as an officer, director or managing agent. According to the court, it was involved in the decision to demote and then terminate Juarez, and the evidence demonstrated that it committed, authorized and ratified all actions of the Company; and most, if not all, personnel decisions were directed to AutoZoner Relations, which provided advice and counsel, if not actually making the hiring/firing and other decisions. The court found that the evidence indicated that AutoZoner Relations spoke on behalf of the Company in responding to the DFEH Charge of Discrimination filed by Juarez. Notably, the Regional Human Resource Manager and Regional Manager consulted with and received recommendations from AutoZoner Relations making the decision to demote Juarez. The court found a jury could find by clear and convincing evidence that AutoZoner Relations was an officer, director or managing agent, even though no one individual with AutoZoner Relations was specially identified as being involved in the personnel decision affecting Juarez; and that it committed, authorized and/or ratified the actions of certain AutoZone employees' conduct in the case.

After the jury returned its verdict on the liability phase of the trial, as the jury was leaving the courtroom, one of the eight jurors approached Juarez, put her arm around her, and spoke to her. At the hearing on this incident, the juror admitted this conduct, and said that she was an empathetic person: "I just saw her crying . . . ." The juror was concerned that Juarez would be getting a large amount of money and that she might need some guidance on what to do with the money: "I felt like I wanted to make a connection." This juror was removed, meaning that seven jurors determined the punitive damages.

Also, during the hearing on this incident, one of Juarez's attorneys allegedly made contact with this juror outside the courtroom in the hall as the lawyers inside were addressing the court. Allegedly, two witnesses observed this conduct. Compounding these allegations, after the verdict was returned on the punitive damage award, as the jurors were again leaving the courtroom, Juarez's counsel's law clerk allegedly advised the jurors not to talk with defense counsel about the verdict, implying that they would seek information to attack the jury verdict. She then allegedly invited the jury to a cocktail party at the nearby Westin hotel. AutoZone is seeking sanctions concerning this conduct, and it has moved for a mistrial. The court held an evidentiary hearing on November 25, 2014. The court directed the parties to brief certain issues, including the standard of proof to be employed in a motion for mistrial based upon attorney conduct. A hearing on these issues and AutoZone's other pretrial motions is set for February 11, 2015.

So, will the jury's verdict stand? There is no doubt that AutoZone will appeal, if it is unsuccessful on its motions before the trial court. While AutoZone has potential arguments that attack the verdict as a whole (or separately the liability verdict), the punitive damage verdict to comply with the law will likely be substantially reduced, if not eliminated. It will also be interesting to see how the appellate court addresses Magistrate Judge Gallo's ruling on AutoZone's liability for punitive damages.