

Predicting What's Probable

You are an attorney in small law firm, litigating plaintiff's personal injury and employment cases. You are scheduled to go to trial in what you believe to be a very strong sexual harassment and gender discrimination case for your client, a 32 year old former stock broker at a small but wealthy stock brokerage firm. While the defense somewhat disputes the frequency and wording of the harassment, they admit that your client was the target of sexual comments from her branch manager, who transferred into that position six months after your client completed her broker trainee program. You are confident that your client's testimony will be credible. It is supported by several other witnesses. The branch manager enjoyed calling her a "blonde hussey," and continually asked "Are you getting enough from your boyfriend? Remember, I could top it off." He would summon her to his office, close the door and leer at her while talking about office decoration. He would whistle as he walked toward her work area and say: "Is blondie home. I'm coming for you." She took to hiding under her desk when she heard his whistle. He berated her at office meetings if "blondie didn't make her numbers" for the month.

Your client will testify that she became distracted and depressed. She hesitated to go to the branch manager for advice about the brokerage business. After three years, your client states that she was forced out, told she had to "pack up her desk" if her monthly numbers didn't improve by 25%. She left the office and never came back because, on the day the next monthly numbers came out (and she hadn't achieved the increase), the branch manager stuck his tongue out and said: "Well well well - blondie didn't make the numbers. But I bet blondie does other things VERY well."

The defense agrees that the branch manager's behavior was inexcusable and, after the plaintiff and a number of other women left, the branch manager was terminated. However, the defense maintains that the plaintiff did not alert the company of the branch manager's behavior until after two years of alleged harassment, which was six months before she left. The H.R. department immediately investigated by interviewing the branch manager, his assistant, and the other employees. While the other employees noted that the manager teased your client a bit more than the others, they said your client didn't seem to mind and that he was rough on everyone - insulting "fat men" and "baby face boys", etc.

Your client states that the company is liable because it was aware of the situation long before her formal complaint to Human Resources. Nearly from the beginning, she had complained to her friend, Assistant Division Manager, detailing the harassment and how much it upset her. He just told her not to let it get her down. He never reported it "up the chain," and as he had an obligation to do under the company's policies.

On the damages front, you believe you can establish that your client had been "on path" to produce as many revenues and thus to earn as much as at least the *second* 20% tier of brokers - \$80,000 - \$120,000 over the next five years, and averaging \$200,000 - \$250,000 thereafter. Second tier numbers are conservative because your client's scores and evaluation coming out of the training program put her in the top tier. If a jury would find she had been in the top tier, her average earnings would be \$120,000 - \$200,00 for the next 5 years, and \$250,00 - \$600,00 for

the 10 years after that. Her early revenues as a broker, in the first six months after the training program, did put her in the top tier. Her production dropped off when the harassment started in earnest, and slipped steadily thereafter. While the manager was very busy thinking of comments for her, he never gave her advice, introduced her to potential clients, invited her to golf outings, or provided funds for marketing/educational seminars for future clients as he did for other brokers. Walk-ins and the accounts from other retiring brokers were mainly directed to male brokers and never to your client.

Your client has found other work selling mortgage insurance, but her annual earnings are in the \$40,000 to \$50,000 range and are unlikely to exceed \$100,000 a year over the next decade. If she would have been in the second tier, you calculate your client's projected lost earnings at a minimum of \$350,000 over the next five years, and \$2 million over the next ten years. In addition, you are seeking punitive damages of at least double the base amount. (If a jury finds she would have been in the top tier, the total damages number could climb to the \$10 million range).

You are very confident of this case. You seem to be "on top of" your trial game. Last month, you tried a very serious personal injury case in Kentucky, and brought back a verdict of \$6,000,000, including \$3,000,000 in punitive damages. This was at least 50% more than you had predicted on the case.

This sexual harassment and gender discrimination case will be tried in Federal District court in Ohio. You have never had a plaintiff who will make a better witness. And you KNOW the defendant's now former division chief will make a terrible witness, as will his assistant, who still works for the company.

Please turn in this bottom portion, with your answers to Toni McGuire before 9:00 a.m. on the FIRST workshop day.

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Your Name: _____

1. What is the likelihood that your client will prevail on liability? _____%
2. If so, what do you think the jury award will be, including punitive damages? \$_____.
3. Assume that the defense has approached you about negotiating a settlement. What is the lowest settlement number you would recommend to your client? \$_____