
SUPREME COURT
OF THE
STATE OF CONNECTICUT

S.C. 18441

LUIS PATINO

v.

BIRKEN MANUFACTURING COMPANY

BRIEF OF *AMICI CURIAE*
CONNECTICUT EMPLOYMENT LAWYERS ASSOCIATION,
AFRICAN-AMERICAN AFFAIRS COMMISSION,
CENTER FOR DISABILITY RIGHTS,
CONNECTICUT ALLIANCE FOR BUSINESS OPPORTUNITIES,
CONNECTICUT HISPANIC BAR ASSOCIATION,
CONNECTICUT TRANSADVOCACY COALITION,
GAY & LESBIAN ADVOCATES & DEFENDERS,
PERMANENT COMMISSION ON THE STATUS OF WOMEN, AND
TRIANGLE COMMUNITY CENTER
IN SUPPORT OF PLAINTIFF-APPELLEE

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STATEMENT OF THE ISSUE

Whether the trial court properly determined that the jury's award of damages to the plaintiff was not excessive where the plaintiff had been subjected to ongoing and pervasive antigay slurs in the workplace?

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STATEMENT OF INTEREST OF THE AMICI CURIAE

Amicus Curiae Connecticut Employment Lawyers Association ("CELA") is the Connecticut chapter of the National Employment Lawyers Association ("NELA"). NELA is a national bar association of over 2,000 lawyers who regularly represent both public and private sector employees in employment-related disputes, including those involving violations of statutory and constitutional rights. CELA's membership is comprised of approximately one hundred attorneys in active practice in Connecticut. CELA attorneys have represented hundreds of individuals with complaints of discrimination and other employment issues before the federal and state courts. CELA and its members also help to ensure that employees with bona fide employment claims are provided access to the courts. CELA has also filed amicus briefs with this Court in other cases. CELA is committed to the development of expertise on the part of practitioners who represent clients with employment problems. CELA and its members have conducted, on their own, and in conjunction with other bar associations, numerous continuing legal education seminars on employment issues.

Amicus Curiae African-American Affairs Commission ("AAAC") is a semi-autonomous agency of the State of Connecticut established by the Legislature in 1997. The AAAC works to improve and promote the economic development, education, health and political well-being of the African-American community in the State of Connecticut. The AAAC accomplishes these goals through information sharing, promoting cultural awareness, community networking, and legislation. In addition, the AAAC advises the Governor on the State's policies concerning African-American communities and acts as a liaison with governmental entities.

Amicus Curiae Center for Disability Rights ("CDR"), based in West Haven, Connecticut, is part of a national independent living movement that promotes options for people with disabilities to achieve their potential and live independently, fully participate in the community, and exercise their rights as citizens. CDR advocates for people with

disabilities on a local, state, and national level, and provides services to individuals and families as well as technical assistance and community education to businesses, governmental entities, and members of the community.

Amicus Curiae Connecticut Alliance for Business Opportunities (“CABO”) is a state-wide lesbian, gay, bisexual, and transgender (LGBT) chamber of commerce. CABO’s mission is to create, identify, and enhance business opportunities for LGBT and LGBT-friendly organizations, thereby fostering a more inclusive and vibrant Connecticut economy. CABO and its members work together to promote equality in business and the workplace.

Amicus Curiae Connecticut Hispanic Bar Association (“CHBA”), founded in 1993, works to enhance the visibility of Hispanic lawyers and assists the public and private sectors in achieving diversity in their law firms and legal departments. Throughout its history, CHBA has been active in community service. It offers a mentoring program to Hispanic law, college, and high school students, in addition to a scholarship program for law students. CHBA advocates for diversity and equal treatment in the judicial system. In the past, CHBA attorneys have examined the treatment of racial and ethnic minorities in the court system and have advocated for the provision of interpreter services in Connecticut. CHBA is a member of the Lawyers Collaborative for Diversity.

Amicus Curiae Connecticut TransAdvocacy Coalition (“CTAC”) works to make Connecticut a safe and tolerant place for transgender and gender non-conforming individuals through education, advocacy, and activism. These goals are achieved through three mechanisms: (1) advocacy of public policy changes; (2) education and training to service providers, educators, students, and the general public; and (3) work within the transgender and gender non-conforming communities.

Amicus Curiae Gay & Lesbian Advocates & Defenders (“GLAD”) was founded in 1978 and is a New England-wide legal organization that fights discrimination on the basis of sexual orientation, HIV status, and gender identity and expression through litigation, advocacy, and public education. Examples of GLAD’s litigation include marriage equality

(See, e.g., *Kerrigan v. Comm'r of Public Health*, 289 Conn. 135 (2008) and *Goodridge v. Dep't. of Pub. Health*, 798 N.E.2d 941 (2003)), the rights of people with HIV to nondiscrimination under the Americans with Disabilities Act (See, e.g., *Bragdon v. Abbott*, 524 U.S. 624 (1998)), and the right of transgender people to participate fully in society consistent with their gender identity (See, e.g., *Doe ex rel. Doe v. Yunits*, 2000 WL 33162199 (Mass. Super. 2000)).

Amicus Curiae Permanent Commission on the Status of Women ("PCSW") was established by the State Legislature in 1973. PCSW works to eliminate sex discrimination in Connecticut by informing leaders about the nature and scope of discrimination, serving as a liaison between government and private interest groups concerned with services for women, promoting consideration of women for governmental positions, and working with state agencies to access programs that affect women.

Amicus Curiae Triangle Community Center was created in 1990 and is a non-profit organization serving the LGBT community in greater Fairfield County. Its mission is to provide services that help strengthen the LGBT community's sense of identity, pride, and visibility by focusing on three strategic pillars: strengthening its voice, delivering education, and building community.

ARGUMENT¹

This appeal is this Court's first opportunity to address a claim for a remittitur of emotional distress damages in the context of discrimination or workplace harassment. Plaintiff Luis Patino was subjected to ongoing and pervasive antigay slurs at work, including "faggot," "fag," "homo," and other hateful epithets. The *amici* understand the profoundly damaging impact of prejudice. While this case involves a claim of sexual orientation discrimination, defendant's arguments in favor of remittitur commonly arise in many discrimination cases. As such, the amici believe that this appeal presents an important opportunity to highlight for the Court the similar harms experienced by many minority groups faced with discrimination on the basis of race, sex, sexual orientation, physical or mental disability, and other protected categories under Connecticut law.²

The plaintiff's testimony by itself justifies the jury award. The *amici* submit this brief to bring to the Court's attention: 1) the scientific literature demonstrating that incidents of discrimination can lead directly to mental and physical harm; and 2) the unique attributes of discrimination that account for its harmful effects. See Argument, Section I, *infra*. In seeking to remit emotional distress damages, defendants in this and other cases often trivialize plaintiffs' testimony as "subjective" and typically seek to attach great significance to the absence of certain testimony, including medical testimony or proof of a permanent injury or psychological condition. See Def. Br. pp. 27, 29-31. Such an approach ignores the true impact of events of discrimination. In determining whether the "damages awarded falls somewhere within the necessarily uncertain limits of fair and reasonable compensation," see *Carroll v. Allstate Insurance Co.*, 262 Conn. 433, 450 (2003), the scientific research on

¹ No counsel for any party to this matter wrote any part of this brief. No party or their counsel or any persons other than the amici curiae, their members, or counsel contributed to the cost of the preparation or submission of this brief.

² The amici strongly agree with the argument set forth in the Plaintiff's Brief that Mr. Patino's claim for sexual orientation discrimination under Conn. Gen. Stat. § 46a-81c encompasses a claim based upon a hostile work environment. In this brief, the amici focus on the damages issue in this appeal.

the harm of discrimination should inform the Court's assessment of the validity and strength of plaintiffs' testimony here and in other cases.³ Many courts in cases of reported and ignored discrimination have affirmed emotional distress damage awards in amounts similar or higher to the jury award here. See Argument, Section II, *infra*.

I. DISCRIMINATION AND WORKPLACE HARASSMENT CAUSE SUBSTANTIAL HARM.

A. Scientific Studies Demonstrate the Profoundly Harmful Impact of Discrimination and Harassment.

Substantial scientific literature demonstrates that discrimination and stigmatization result in negative psychological, psychosocial, and physiological effects. One study observed that "[t]he evidence supports the outcome that direct encounters with discriminatory events contribute to negative health outcomes."⁴ Another reviewer, assessing evidence pertaining to a range of minority groups, concluded that discrimination and stigmatization "have been shown to lead to greater vulnerability to depressive distress and anxiety and perhaps to higher rates of some psychiatric disorders."⁵

The health impact of discrimination has been sufficiently severe to warrant the attention of the Surgeon General. Reviewing the research literature addressing sexual orientation discrimination, the Surgeon General has concluded that the stigmatization of "homosexual behavior, identity, and relationships ... [is] associated with psychological distress for homosexual persons and may have a negative impact on mental health,

³ Amici recognize, of course, that each case must be evaluated based on an individual plaintiff's testimony and the evidence at trial. The impact of discrimination can vary based on socio-demographic factors, psychological and behavioral factors, and coping responses. See Rodney Clark et al., *Racism as a Stressor for African Americans*, *American Psychologist*, Vol. 54, No. 10, 805, 806 (1999) (hereinafter "Clark 1999").

⁴ See Jules P. Harrell et al., *Physiological Responses to Racism and Discrimination: An Assessment of the Evidence*, *American Journal of Public Health*, Vol. 93, No. 2, 243, 243 (2003) (hereinafter "Harrell 2003").

⁵ Vickie M. Mays & Susan D. Cochran, *Mental Health Correlates of Perceived Discrimination Among Lesbian, Gay, and Bisexual Adults in the United States*, *American Journal of Public Health*, Vol. 91, No. 11, 1869, 1869 (2001) (hereinafter "Mays 2001").

including a greater incidence of depression and suicide, lower self-acceptance and a greater likelihood of hiding sexual orientation.”⁶ Indeed, the constant antigay slurs aimed at Mr. Patino are a manifestation of this stigmatization. The Surgeon General has similarly emphasized that “racism and discrimination are clearly stressful events ... [that] adversely affect health and mental health” and has noted that “studies link the experience of racism to poorer mental and physical health.”⁷

Research on sexual orientation discrimination has found that, “stigma, prejudice and discrimination create a hostile and stressful social environment that causes mental health problems” and “leads LGB persons to experience alienation, lack of integration within the community, and problems with self-acceptance.”⁸ Of particular relevance to this case, a 1999 study examining “heterosexism” as a minority stress in the workplace concluded that heterosexism at work led to “higher levels of psychological distress and health-related problems, as well as decreased satisfaction with several aspects of [people’s] jobs.”⁹

Similarly, a 2009 study examined the effect of “heterosexist hassles,” defined as “comments or behaviors that reflect or communicate hostile, denigrating, or stigmatizing attitudes and beliefs about lesbians, gay men, or bisexuals that are embedded in people’s everyday lives,” including “jokes, expressions of stereotypes and insults, threats of

⁶ David Satcher, M.D., Ph.D., U.S. Surgeon General, *The Surgeon General’s Call to Action to Promote Sexual Health and Responsible Sexual Behavior* (July 9, 2001) available at <http://www.surgeongeneral.gov/library/sexualhealth/call.htm>.

⁷ U.S. Department of Health and Human Services, *Mental Health: Culture, Race, and Ethnicity, A Supplement to Mental Health: A Report of the Surgeon General* at 38 (2001) available at <http://mentalhealth.samhsa.gov/cre/toc.asp> (hereinafter “DHHS 2001”).

⁸ Ilan H. Meyer, *Prejudice, Social Stress, and Mental Health in Lesbian, Gay, and Bisexual Populations: Conceptual Issues and Research Evidence*, *Psychological Bulletin*, Vol. 129, No. 5, 674, 674, 679 (2003) (hereinafter “Meyer 2003”). Meyer’s groundbreaking 1995 study found that experiences of anti-gay discrimination in 741 gay men in New York City were linked to higher scores on measures of psychological distress. See Ilan H. Meyer, *Minority Stress and Mental Health in Gay Men*, *Journal of Social Behavior*, Vol. 36, No. 1, 38, 38 (1995).

⁹ Craig R. Waldo, *Working in a Majority Context: A Structural Model of Heterosexism as a Minority Stress in the Workplace*, *Journal of Counseling Psychology*, Vol. 46, No. 2, 218, 229 (1999).

violence, exclusion from conversation or events, hostile treatment, and fear of having one's sexual orientation revealed."¹⁰ The authors noted research findings that "the more individuals reported encountering heterosexism, the more likely they were to report psychological distress in the form of depression, lower self-esteem, anxiety, social isolation, fear of being assaulted, and changes in behavior to avoid encountering future prejudice."¹¹ A 2003 study noted that gay men and lesbians face "stressors that are unique to their sexual orientation" and found that "gay-related stress contribute[s] independently to depressive symptoms."¹² And a 2001 study reported a "relatively robust association between experiences of discrimination and indicators of psychiatric morbidity" and concluded that "discrimination has harmful mental effects for sexual minorities."¹³ These studies are consistent with the distress, anger, humiliation and depressive feelings experienced by Mr. Patino, who endured relentless antigay hostility.

Similar to the evidence of the harm from antigay behavior, studies demonstrate the mental and physical harm from racism. A 2007 literature review of the "direct evidence of the health and mental health effects of racism and discrimination" in diverse samples found that "incidents of racism are associated with lower levels of physical health and psychological well-being."¹⁴ A 1999 study observed that psychological stress responses following perceptions of racism include "anger, paranoia, anxiety, helplessness-

¹⁰ Janet K. Swim et al., *Daily Experiences with Heterosexism: Relations Between Heterosexist Hassles and Psychological Well-Being*, *Journal of Social and Clinical Psychology*, Vol. 28, No. 2, 597, 598 (2009).

¹¹ *Id.* at 600.

¹² Robin J. Lewis et al., *Stressors for Gay Men and Lesbians: Life Stress, Gay-Related Stress, Stigma Consciousness, and Depressive Symptoms*, *Journal of Social and Clinical Psychology*, Vol. 22, No. 6, 716, 716, 725 (2003).

¹³ Mays 2001 at 1874.

¹⁴ Robert T. Carter, *Racism and Psychological and Emotional Injury: Recognizing and Assessing Race-Based Traumatic Stress*, *The Counseling Psychologist*, Vol. 35, No.1, 13, 41, 58 (2007) (hereinafter "Carter 2007"); see also Thema Bryant-Davis & Carlota Ocampo, *Racist Incident-Based Trauma*, *The Counseling Psychologist*, Vol. 33, No. 4, 479, 483 (2005) ("Perceived racist incidents result in negative psychological, psychosocial, and physiological effects") (hereinafter "Bryant-Davis 2005").

hopelessness, frustration, resentment, and fear,” all responses that negatively affect mental health.¹⁵ Similarly, a 1997 study of African-Americans found “perceived discrimination” to be associated with psychological distress, lower well-being, self-reported ill health, and number of days confined to bed.¹⁶ Addressing the workplace context, a 1994 study concluded that minority employees who experience higher levels of workplace prejudice and discrimination have been shown to report more psychosomatic health problems than those who did not have such experiences.¹⁷ A 1987 study of Hispanic women found a positive association between reports of discrimination and harmful psychological distress.¹⁸ And two studies have also found that perceived discrimination was highly related to depressive symptoms among adults of Mexican origin and among Asians.¹⁹ Moreover, experiences with racism have been linked to hypertension among African Americans.²⁰

¹⁵ Clark 1999 at 811.

¹⁶ David R. Williams et al., *Racial Differences in Physical and Mental Health: Socio-economic Status, Stress and Discrimination*, *Journal of Health Psychology*, Vol. 2, No. 3, 335, 342-43 (1997). “Perceived racism” is the term used by researchers in reference to the self-reports of individuals about being the targets of discrimination or racism. The term is not meant to imply that racism did not take place. See DHHS 2001 at 38.

¹⁷ Kimberly T. Schneider et al., *An Examination of the Nature and Correlates of Ethnic Harassment Experiences in Multiple Contexts*, *Journal of Applied Psychology*, Vol. 85, No. 1, 3, 4 (2000) (citing K. James, *Social Identity, Work Stress, and Minority Workers’ Health, in Job Stress in a Changing Workforce: Investigating Gender, Diversity, and Family issues* 127-46 (G.P. Keita & J.J. Hurrell, Jr. eds., 1994)).

¹⁸ Hortensia Amaro et al., *Family and Work Predictors of Psychological Well-Being Among Hispanic Women Professionals*, *Psychology of Women Quarterly*, Vol. 11, No. 4, 505, 505 (1987).

¹⁹ B.K. Finch et al., *Perceived Discrimination and Depression Among Mexican-Origin Adults in California*, *Journal of Health and Social Behavior*, Vol. 41, No. 3, 295, 295 (2000); S. Noh et al., *Perceived Racial Discrimination, Depression and Coping. A Study of Southeast Asian Refugees in Canada*, *Journal of Health and Social Behavior*, Vol. 40, No. 3, 193, 193 (1999).

²⁰ DHHS 2001 at 38. See also Rebecca Din-Dzietham et al., *Perceived Stress Following Race-Based Discrimination at Work is Associated with Hypertension in African-Americans: The Metro Atlanta Heart Disease Study, 1994-2001*, *Social Science and Medicine*, Vol. 58, No. 3, 449, 449 (2004) (A study of stress from racism at work found that the likelihood of hypertension significantly increased with higher levels of perceived stress from racism).

Research on sex-based discrimination and sexual harassment demonstrates similar harms. One study concluded that “sexual harassment can result in devastating emotional, psychological, and even health consequences for those victimized.”²¹ A meta-analysis of forty-nine primary studies on workplace sexual harassment with a total sample size of 89,383 individuals concluded that “sexual harassment experiences are negatively associated with job-related outcomes, psychological health, and physical health conditions.”²² The authors noted that the psychological impact of sexual harassment includes “a number of stress-related symptoms, such as lowered self-esteem and increased depression” and observed that sexual “harassment victims are likely to have similar psychological symptoms to those who experience traumatic events.”²³ In addition, sexual harassment has led to physiological changes such as suppressed immune functioning and heightened inflammation which have caused “diseases of adaptation” such as headaches, gastrointestinal disorders, sleep disturbance, and sapped health conditions.²⁴ Beyond sexual harassment, research has found that exposure to more general manifestations of sexism can also have an impact on psychological wellbeing.²⁵

²¹ Steven H. Lopez et al., *Power, Status, and Abuse at Work: General and Sexual Harassment Compared*, *The Sociological Quarterly*, Vol. 50, No. 1, 3, 6 (2009).

²² Darius K-S. Chan et al., *Examining the Job-Related, Psychological, and Physical Outcomes of Workplace Sexual Harassment: A Meta-Analytic Review*, *Psychology of Women Quarterly*, Vol. 32, No. 4, 362, 362 (2008).

²³ *Id.* at 362-63.

²⁴ *Id.* at 363. See also Kathleen M. Rospenda et al., *Is Workplace Harassment Hazardous to Your Health?*, *Journal of Business and Psychology*, Vol. 20, No.1, 95, 98 (2005) (describing studies indicating that sexual harassment was related to physiological measures of cardiac and vascular reactivity and increased self-reported health conditions).

²⁵ See, e.g., Janet K. Swim et al., *Everyday Sexism: Evidence for Its Incidence, Nature, and Psychological Impact from Three Daily Diary Studies*, *Journal of Social Issues*, Vol. 57, No.1, 31 (2001) (sexist incidents affected women’s psychological well-being and increased feelings of anger, depression, and decreased self-esteem).

Finally, there is a lack of research on disability-based harassment. Researchers have concluded, however, that the psychological impact of such discrimination would be similar to sex-based harassment.²⁶

B. Unique Attributes of Group-Based Discrimination Account for its Harmful Effects.

Many life events lead to emotional distress, but unique attributes of discrimination and harassment account for their exceptionally harmful impact. First, such events “strike the core of one’s selfhood.”²⁷ The psychological effect of racism is an “attack on the ego identity” and “self worth” of group members that can “undermine the importance of their very existence.”²⁸ Similarly, “sexual orientation is so integral an aspect of one’s identity,”²⁹ sexual stigma undermines “self-acceptance.”³⁰

Second, the injurious impact of racist incidents or the antigay slurs in this case does not occur in isolation. These incidents are manifestations of cultural ideologies of

²⁶ Jerome J. Holzbauer & Norman L. Berven, *Disability Harassment: A New Term for a Long-Standing Problem*, *Journal of Counseling & Development*, Vol. 74, No. 5, 478, 478 (1996).

²⁷ See Bryant-Davis 2005 at 480. Racism is “a belief in the inferiority of a person caused by prejudice against their ethnic group, phenotypic characteristics, or purported biological nature.” *Id.* Herek has characterized homophobia or antigay prejudice as “sexual stigma” which he describes as “the negative regard, inferior status, and relative powerlessness that society collectively accords anyone associated with nonheterosexual behaviors, identity, relationships, or communities.” Gregory M. Herek et al., *Internalized Stigma Among Sexual Minority Adults: Insights From a Social Psychological Perspective*, *Journal of Counseling Psychology*, Vol. 56, No. 1, 32, 33 (2009) (hereinafter “Herek 2009”).

²⁸ David R. Williams & Ruth Williams-Morris, *Racism and Mental Health: The African American Experience*, *Ethnicity & Health*, Vol. 5, No. 3/4, 243, 255 (2000) (hereinafter “Williams 2000”).

²⁹ *Kerrigan v. Comm’r of Public Health*, 289 Conn. 135, 186 (2008) (quoting *In re Marriage Cases*, 183 P.3d 384, 442 (2008)).

³⁰ Meyer 2003 at 679.

inferiority.³¹ They are both a reminder and reinforcement of society's systemic inequality and intolerance.

Third, specific incidents of workplace harassment must be considered in the context of the cumulative effect of broad social discrimination. As one commentator noted, "a pattern of racist events forms across the life domains of minority citizens. This pervasive pattern requires ongoing coping and expenditures of psychic energy."³² Indeed, "it is likely that, at the point at which people encounter these individual forms of racism, other racist institutional and cultural forces already have encroached on their lives."³³ Similarly, "substantial numbers of sexual minority adults have been the target of harassment and abuse because of their sexual orientation."³⁴ A 2005 survey indicated that 49% of lesbian, gay and bisexual adults had experienced verbal abuse.³⁵

Fourth, race-based, antigay or other forms of prejudice are especially pernicious because negative societal attitudes, as expressed by the taunts and slurs experienced by the plaintiff here, can be internalized by the individual leading to psychological harm.³⁶ Studies demonstrate that internalized homophobia is a significant correlate of mental health

³¹ See Mays 2001 at 1874 ("As with race/ethnicity, the discrimination and stigma accompanying sexual orientation are rooted in political, economic, and ideologic structures."); Kerrigan at 178 (noting "our culture's long-standing intolerance of intimate homosexual conduct"); Herek 2009 at 32 ("even as U.S. society has become increasingly accepting of them, sexual minority individuals continue to experience considerable discrimination and hostility"); Bryant-Davis 2005 at 480 ("Racism is an ideology....[and] can be systemic and pervasive"); and Carter 2007 at 13 ("Racial stratification and systemic racism have been and continue to be endemic and ingrained in all aspects of American life.").

³² Bryant-Davis 2005 at 483.

³³ Harrell 2003 at 243.

³⁴ Gregory M. Herek, *Confronting Sexual Stigma and Prejudice: Theory and Practice*, Journal of Social Issues, Vol. 63, No. 4, 905, 908-09 (2007).

³⁵ *Id.*

³⁶ See DHHS 2001 at 39. See also Herek 2009 at 34 ("the internalization of negative societal attitudes (i.e., self-stigma) is a major source of stress for minority individuals.").

including depression and anxiety symptoms, substance use disorders, and suicidal ideation.³⁷ Similarly, the Surgeon General has observed that “[r]acial stereotypes and negative images can be internalized, denigrating individuals’ self-worth and adversely affecting their social and psychological functioning.”³⁸

II. CLAIMS FOR DISCRIMINATION AND WORKPLACE HARASSMENT WARRANT SUBSTANTIAL AWARDS.

Some courts have specifically commented that instances of discrimination and harassment justify substantial awards. For example, in *Broome v. Biondi*, 17 F.Supp.2d 211, 224 (S.D.N.Y. 1997), the Court, upholding an award of \$230,000 in emotional distress damages for racial discrimination in housing, observed that courts have “recognized the severe mental trauma associated with unlawful discrimination and have upheld large compensatory awards.” The Court noted that “even a single instance of discrimination can warrant significant emotional distress damage awards,” and concluded that “the genuine emotional pain associated with such discrimination should not be devalued by unreasonably low compensatory damage awards.” *Id.* at 226. The Court specifically criticized reliance on the lack of tangible injury as a primary reason for reducing compensatory damages. *Id.* at 224. In *Burrell v. Yale University*, 2004 WL 3049083, at *9 (Conn. Super. 2004), the Superior Court remitted damages in a nondiscrimination case and observed that “an act of bigotry,” in contrast, “might justify a high award for emotional distress alone.” Similarly, in *Schanzer v. United Technologies Corp.*, 120 F.Supp.2d 200, 219-220 (2000), a case relied upon extensively by the defendant here (Def. Br. pp. 27-30), the Court remitted damages, but noted that the case did not involve “workplace mistreatment or humiliation.”

³⁷ Meyer 2003 at 682.

³⁸ DHHS 2001 at 39; See also Williams 2000 at 256 (“Internalized racism was also positively related to psychological distress.”).

Consistent with the harm discussed in the scientific literature, it is not unusual in discrimination or hostile work environment cases for courts to uphold non-economic damages of \$100,000 or higher even without expert testimony. See, e.g., *Monteagudo v. Asociacion de Empleados del Estado Libre Asociado de Puerto Rico*, 554 F.3d 164, 175 (1st Cir. 2009)(\$300,000 in sexual harassment case based on testimony that plaintiff felt “like a piece of meat,” was depressed and could not sleep); *Cross v. New York City Transit Authority*, 417 F.3d 241, 259 (2nd Cir. 2005)(\$50,000 in age discrimination case based on plaintiff’s testimony of “humiliation, anger ...frustration” and “anxiety” while noting awards of up to \$125,000 could be supported by similar facts); *Meacham v. Knolls Atomic Power Laboratory*, 381 F.3d 56, 78 (2nd Cir. 2004)(\$125,000 for mental anguish in age discrimination suit even “without discussion of protracted suffering, truly egregious conduct, or medical treatment”); *Zhang v. American Gem Seafoods Inc.*, 339 F.3d 1020, 1040-41 (9th Cir. 2003)(testimony about harm to “dignity and reputation” “more than sufficient to support” a range of \$123,155 to \$223,155 in emotional distress damages); *Miller v. Alldata Corp.*, 14 Fed.Appx. 457, 466, 467 (6th Cir. 2001)(\$300,000 for gender discrimination where plaintiff testified that she was “a wreck,” had difficulty sleeping and stomach problems); *Bullen v. Chaffinch*, 336 F.Supp.2d 342, 355 (D.Del. 2004)(\$150,000 for police officers denied promotion because “racial discrimination is vicious, destructive, and debilitating” and plaintiffs’ descriptions of their own humiliation, stress, and depression established that they had suffered emotional distress)(quoting *Evans v. Port Authority of New York and New Jersey*, 273 F.3d 346, 354 (3rd Cir. 2001)); *Perez-Dixon v. Bridgeport*, 2008 WL 4043662 (Conn. Super. 2008)(upholding \$500,000 award of non-economic damages for racial discrimination and retaliation).

CONCLUSION

For the foregoing reasons, the judgment below should be affirmed.

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