

## THE NATIONAL LAW JOURNAL

MONDAY, FEBRUARY 19, 2001

# Big gets bigger

*The National Law Journal's annual survey of the year's largest jury verdicts finds juries in a generous mood.*

## VERDICTS THE BIG NUMBERS OF 2000

### A 68-year-old says: 'Don't mess with me'

CASE TYPE: *employment, age discrimination*

CASE: *Fredrickson v. Olsten Health Services Inc.,*

*No. 98CV1937 (Mahoning Co., Ohio, Ct. C.P.)*

PLAINTIFF'S ATTORNEYS: *Ellen S. Simon and Ann Marie*

*Ahern of Cleveland's The Simon Law Firm*

DEFENSE ATTORNEYS: *Jack Kluznik and Warren Rosman*

*of Cleveland's Weston Hurd Fallon Paisley & Howley*

JURY VERDICT: *\$30.675 million*

DONNA FREDRICKSON had been working at Olsten Health Services for more than 13 years in 1997, "when the company started looking at reducing costs," said plaintiffs' attorney Ellen S. Simon. Ms. Fredrickson, then 68, managed the company's Youngstown, Ohio, branch at the time. The company "decided to merge the offices in Warren and Youngstown," neighboring cities in Ohio. Olsten eliminated Ms. Fredrickson's position and named the Warren manager, who was 46, manager of the merged branch.

Ms. Fredrickson asked to be given another job in the company, but "she was given no options," Ms. Simon said. Other Olsten employees also had their jobs eliminated at this time, she said, but at the same time Olsten was "restructuring other positions and new positions were being created," Ms. Simon said. "Younger women were given new positions that Donna Fredrickson was qualified to hold, but she was forced

into retirement."

By the time her employment was terminated in September 1997, Ms. Simon said, Ms. Fredrickson was making nearly \$50,000 per year. After her dismissal, "she was not able to get work and eventually took a job selling clothes at a department store for \$9 an hour." In 1998, Ms. Fredrickson sued Olsten Health Services and its then-parent Olsten Corp., charging age discrimination. But, Ms. Simon pointed out, the discrimination "was not that the manager who got the job was younger, but that Ms. Fredrickson was not transferred or given one of these newly created positions, even though younger, less-qualified people were."

The defendants denied any discrimination, contending that the Warren branch manager was better qualified and that Ms. Fredrickson was not qualified for other positions at the company as well, Ms. Simon said. The plaintiff countered, she added, "that this was a very large company that could have found a place for Donna but did not want her because of her age."

On Nov. 22, a Youngstown jury awarded Ms. Fredrick \$30.675 million, including \$30 million in punitives. This portion of the judgment is not subject to statutory caps because the action was filed in state court in Ohio, rather than federal court, noted Ms. Simon. Before trial, she added, the plaintiff had offered to settle the case for \$300,000. The top offer from the defense was \$200,000, she said. Post-trial motions are pending.

BY MARGARET CRONIN FISK