

Friday, March 18, 2005

Lawy

[Try 3 Free](#) | [Subscriber Services](#) | [Our Newspapers](#) | [Other Products](#) | [Advertise](#) | [Help](#)

From the September 20, 2004 Virginia Lawyers Weekly.

**DISCUSS** Story  
 on our Forum

Order a **REPRINT**  
 of this Story

## Verdicts & Settlements In-Depth

# Title VII Plaintiff Recovers, No FMLA Leave Notice Given

By **Brent Baldwin**

A federal jury in Alexandria has awarded \$2.2 million to a sales manager who was terminated during her pregnancy leave.

At the core of the suit was the Family Medical Leave Act, and whether her employer, which was acquired by a national builder, had been given proper notice of her FMLA leave. That issue had the lawyers arguing the impact of the U.S. Supreme Court's 2002 decision in *Ragsdale v. Wolverine World Wide, Inc.*, 535 U.S. 81.

### ADVERTISEMENT



**Get client newsletters tailored to your practice areas!**

[Click here for more information.](#)

After reductions by the judge for statutory caps and disallowing double recovery damages, the plaintiff realized a verdict of \$675,000. A petition for attorneys' fees and costs petition has been filed, requesting \$300,000 in costs.

Elaine Charlson Bredehoff tried the case, along with Kathleen Z. Quill of Reston.

### VERDICT REPORT

#### FMLA issue

According to the V&S report filed by Bredehoff, after Washington Homes was acquired by the New Jersey-headquartered KHM Enterprises, Inc., the new owners held a benefits meeting where they revealed that they did not offer a maternity leave. Instead, they noted that they carried excellent short-term disability that paid a total of six months' leave, based upon the pay listed in the employee's prior W-2.

The plaintiff sales manager became pregnant in the spring of 2001, and after verifying her

benefits and having documents signed by supervisors and the president of her division, she left for her six-month paid maternity leave. She had \$89,000 worth of commissions outstanding.

Six weeks later, KHM stopped the pay and asked the plaintiff to pay back what had been previously paid to her, then told her she was no longer receiving benefits and would have to repay them, according to the V&S report.

Company officials later told her that an employee had left suddenly and she would need to return immediately to work. When she protested to management and did not return, she was terminated for being "recalcitrant, difficult, uncooperative and obstinate."

At its core, Bredehoft noted, the case involved implementation of the FMLA, which says public agencies or companies that employ more than 50 people must allow 12 weeks of unpaid vacation every year for childbirth and serious health conditions.

During this period, employers must continue to pay health benefits of the employee during the leave and afterward, the employee must be restored to the same or an equivalent position.

In *Ragsdale*, the Supreme Court held any leave taken by an employee does not count as FMLA leave unless the employer designates it as such. Under FMLA regulations, the employer must inform the employee in writing.

"It was unique or unusual in this case to have the six months disability in writing and then have the company turn around and say, that's not what we meant," Bredehoft said.

Bredehoft explained that she was able to convince the jury that her client was unaware she was being limited to FMLA leave. "They didn't tell our client until a week and half before they terminated her," she said.

"When my client complained to her employers she suffered discriminatory action and was disciplined," said Bredehoft.

During the trial, Bredehoft said she provided the jury with copies of internal company memos that appeared to have been altered to change or reverse the company's original position.

Bredehoft said she also used the testimony of another CSM employee who had given birth a day after Scott. That woman testified that she was treated in the same manner, that she was provided six-month leave in writing and then told in the 12th week that her FMLA leave had expired (which was never previously mentioned to her). The second woman had been forced to return to work and repay \$24,000 in short-term disability payments.

Defense attorney Kevin C. McCormick said his client was disappointed in the outcome, in part because they wanted the plaintiff to come back.

"It's frustrating because my client did everything they could to bring her back," he said.

In light of *Ragsdale*, the plaintiff has the burden of showing some prejudice from the fact that she was not notified of FMLA leave being in effect.

"This case was very similar to [*Ragsdale*] and we raised the issue in summary judgment, and feel that's when it should have been pitched," McCormick added.

\* \* \*

## VERDICT REPORT

[NOTE: The following information was provided by the counsel for the winning party and represents the attorney's characterization of the case.]

The defendant, Washington Homes, hired the plaintiff in this case, Samantha Scott, in November 2000 as a Community Sales Manager ("CSM") in the Virginia sales department. Washington Homes engages in the sale of new homes. In January 2001, Washington Homes was acquired by K. Hovnanian Enterprises Inc., a national builder with its corporate offices located in Red Bank, N.J. At the benefits meeting held by Hovnanian for the newly acquired company employees, K. Hovnanian represented that it did not have a maternity leave, but instead had an excellent short term disability plan that paid six months' leave, based upon the prior W-2.

Scott became pregnant in the spring of 2001, and departed on leave beginning Dec. 17, 2001. All of K. Hovnanian's discussions with Scott prior to her departure for maternity leave were consistent with the six months' paid maternity leave, plus commissions. K. Hovnanian put in writing, signed by Scott's chain of command, that Scott was going out on short term disability and expected to return in six months. While Scott was on leave, K. Hovnanian started to honor its promise of six months with pay, but then stopped the pay, then asked for Scott to pay it back because they had changed their policy, then told her she was no longer receiving benefits and would have to pay for them, and then told her she needed to come back suddenly, prior to the six months because she had used up her FMLA leave (which until this time, K. Hovnanian had never mentioned applied to Scott). After Scott wrote letters and e-mails attempting to resolve the problems and complaining of discrimination, and after she did not return to work on the date demanded, Scott was terminated. The regional vice president of human resources for K. Hovnanian testified that he terminated Scott's relationship because she was "recalcitrant, difficult, uncooperative and obstinate" in writing letters to the president of K. Hovnanian complaining of the discriminatory and retaliatory treatment, and in not accepting the request for repayment of her disability payments and returning to work immediately, prior to the six-month leave.

K. Hovnanian contended that it had a business need for Scott's return because another community sales manager had left K. Hovnanian suddenly, and Scott was the only person who could take her place. It was established at trial that K. Hovnanian requested Scott to return before it even knew the community sales manager was leaving.

Scott had nearly \$90,000 in earned commissions that K. Hovnanian refused to pay, although it was established that K. Hovnanian paid a male community sales manager commissions a few months later when he departed.

Another CSM who gave birth the day after Scott testified under subpoena that she was treated in the same manner, but returned to work because she had no choice, because she was the primary income source, her husband was self-employed and she could not afford to lose her job. She also had been provided the six-month paid leave in writing, but was told in the 12th week that her FMLA leave had expired (also never previously mentioned to her) and she would lose her job if she did not return. She was forced to pay back nearly \$24,000 in short-term disability payments.

The \$2.2 million includes \$700,000 in punitive damages under Title VII, \$200,000 in liquidated damages under FMLA, and \$1.3 million in compensatory damages, awarded under Title VII, FMLA and constructive fraud. Post trial motions are pending, including requesting the reductions for statutory caps. An attorneys' fees and costs petition has been filed, requesting approximately \$300,000 in fees and costs.

**Type of Action:** Title VII pregnancy and retaliation; FMLA interference and retaliation; and constructive fraud.

**Type of Injuries:** Lost income, benefits, emotional distress and inconvenience, punitive and liquidated damages

**Name of Case:** Scott v. Washington Homes, Inc. and K. Hovnanian Enterprises, Inc.

**Court/Case Number:** Originally filed in Fairfax County Circuit Court; removed to the U.S. District Court for the Eastern District of Virginia, Alexandria Division; Civil Action No. 03-1435-A

**Judge or Jury:** Jury

**Name of Judge:** Gerald Bruce Lee

**Special Damages:** Lost commissions, income, benefits, lost opportunities, interest

**Awarded or Settled:** Awarded

**Amount:** \$2.2 million verdict, reduced to \$675,000; \$350,000 awarded in attorney's fees and costs

**Plaintiff's Attorneys:** Elaine Charlson Bredehoft and Kathleen Z. Quill, Reston

[4-T-113]

© 2004 Lawyers Weekly Inc., All Rights Reserved.

**DISCUSS** Story  
on our Forum

Order a **REPRINT**  
of this Story



**TECHNOLOGY IN THE LAW FIRM 2004**  
Special Supplement to Lawyers Weekly

[User Agreement For Subscriber-Only Online Benefits](#) | [Help](#) | [Our Privacy Policy](#)  
Send any questions or comments to [comments@lawyersweekly.com](mailto:comments@lawyersweekly.com)

**Customer Service:** 1-800-451-9998 **Technical Support:** 1-800-444-5297 ext. 8156  
© Copyright 2005 Lawyers Weekly, Inc. All Rights Reserved



Lawyers Weekly does not use spyware; however, we link to a number of other sites and do not take responsibility for any spyware they use.

This site is best viewed with Internet Explorer 6 ([click here to download](#)) or Netscape 7 ([click here to download](#))

68.230.191.122/5.93