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DAILY REPORT

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Plaintiff's lawyer Edward Buckley said the Jocks & Jills case involved "some of the ugliest facts I've ever seen."

On replay, sports bar hit with \$2.25M verdict

FEDERAL JURY FINDS Jocks & Jills, chairman liable for sexual and racial harassment

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A FEDERAL JURY has found Atlanta-based Jocks & Jills Restaurants and its chairman and controlling shareholder liable for \$2.25 million for engaging in vulgar and humiliating sexual and racial harassment of the sports bar chain's highest-ranking female manager.

The verdict returned Wednesday follows six years of litigation in which former Jocks & Jills controller Tracey Tomczyk first lost her discrimination suit in U.S. District Court in Atlanta only to have it revived last August by a panel of the 11th U.S. Circuit Court of Appeals, which also ordered a new trial in the case.

On Wednesday, after bifurcated trials that lasted a total of 11 days, a jury of four men and four women found Jocks & Jills' board chairman Joseph Rollins personally liable for \$250,000 in compensatory damages and \$750,000 in punitive damages for intentional infliction of emotional harm. It also found Jocks & Jills Restaurants liable for a total of \$300,000 in compensatory damages and \$950,000 in punitive damages for intentional infliction of emotional harm and for negligently retaining Rollins, knowing that he posed "a risk of harm to others."

Rollins also owns and operates the Atlanta accounting firm

On replay, Jocks & Jills hit with \$2.25M verdict in harassment case

Rollins & Associates.

On Thursday, Rollins' attorney, Cary S. King of King & Slater, said that Rollins "absolutely denies" making the comments that Tomczyk claims he addressed to her. King also vowed to appeal, saying, "We believe this is one step in what will continue to be a long, legal process. We think the verdict was grossly incorrect."

The plaintiff's attorney, Edward D. Buckley III of Atlanta's Buckley & Klein, said the verdict will not be subject to the states \$250,000 cap on damages, which currently applies only to noneconomic damages in medical malpractice cases.

Buckley, who tried the case with a legal team that included his law partner, Daniel M. Klein, and associates Dena G. George and Monica L. Garcia, said his client's case involved "some of the ugliest facts I've ever seen."

Tomczyk, who is white, first began working for Jocks & Jills in 1990 as a daytime manager, waitress and part-time bookkeeper at what was then a stand-alone Midtown restaurant. She rose through the ranks as the restaurant evolved into a corporation until she was named controller, Buckley said.

Rollins, according to Buckley, began what became a pattern of verbal abuse after learning in 1997 of Tomczyk's relationship, after the controller met a black man—to whom she is now engaged—at a Jocks & Jills promotion event.

Buckley said Rollins' comments ranged from "Tracey's gone black. She'll never go back," to graphic, statements about her physical attributes and her romantic relationship with a black man.

"They portrayed racial stereotypes concerning African-Americans," Buckley said. "They were designed, we believe, to place her in an extremely vulgar light to her other managers as well as board members and shareholders and to portray her engaging in acts that were vulgar sexual acts. It was verbal abuse."

"We asked the jury to send a message to Mr. Rollins and Jocks & Jills that this was beyond the bounds of decency and utterly intolerable in a civilized society. ... It's not the kind of stuff that a man should say to a woman under any circumstances."

Buckley said that Rollins' hostile comments culminated in a management meeting on June 14, 1999, when Rollins

informed Tomczyk that she should resolve her problems with a subordinate by engaging in oral sex with him because "it's got to be better" than Tomczyk's ongoing romantic relationship with a black man.

Tomczyk walked out of the meeting, Buckley said, and she was fired later that day.

Tomczyk filed suit against Rollins and Jocks & Jills Restaurants in December 2000. The case was assigned to U.S. District Judge J. Owen Forrester, now a senior judge.

Prior to the first trial, Forrester granted summary judgment to the defendants on Tomczyk's claims that she was discriminated against and harassed on racial grounds and that Rollins had created a racially hostile working environment.

"If Rollins' comments were critical of [Tomczyk] for violating some taboo prohibiting white women from having a sexual relationship with an African-American male, the court might find that Rollins' comments were based on [Tomczyk's] race," Forrester wrote. "However, Rollins' comments are not of that character. Rather, Rollins conveyed his opinions about the relative quality of [Tomczyk's] experiences."

Those "experiences" to which Forrester alluded were crudely described sex acts.

The case went to trial in the summer of 2004, during which the judge also issued a directed verdict for the defendants concerning Tomczyk's allegations that she had been fired in retaliation for complaining about Rollins' crude comments and boorish behavior and that he had intentionally inflicted emotional distress.

Instead, Forrester ruled that Rollins fired Tomczyk because she had instituted pay raises for herself and two other managers without Rollins' written approval in violation of a company directive.

"No reasonable juror could draw an inference from these circumstances that [Tomczyk] was fired because she was opposing unlawful practices," Forrester wrote. "To the contrary, if [Tomczyk's] testimony is to be believed, she had been complaining about inappropriate behavior for nine years and had never been fired until June 14, 1999, the day the pay issue came to a head."

The 2004 jury concluded that the controller was subjected to sexually offensive acts and comments at Jocks and Jills, that her work place was hostile and abusive and that the acts and statements Rollins had directed at her were clearly unwelcome, if not dangerous. But the jury also determined that intimidation, ridicule and insults directed

at Tomczyk were not severe or pervasive enough to warrant damages, according to court rulings in the long-running case.

Tomczyk appealed, and, last August an 11th U.S. Circuit panel of judges Edward E. Carnes, Charles R. Wilson and William H. Pryor, remanded the case for a new trial. In doing so, the panel disagreed sharply with Forrester's decision to toss out racial discrimination claims.

"The evidence proved a slew of vulgar and harassing comments that continued over a period of years established genuine issues of material fact exist concerning whether the harassment [Tomczyk] was based on race, specifically the race of the man with whom she was romantically involved," the per curiam opinion said.

"A reasonable jury could have concluded that Rollins' comments were about that interracial relationship, and the harassment based on that interracial relationship is forbidden" by federal law, the decision also said.

The judges also determined that Forrester had should have sent Tomczyk's retaliation claims to the jury. The panel noted that Tomczyk had argued that Rollins had used racial slurs to describe her and also provided evidence that Rollins found interracial relationships repulsive.

Noting that Tomczyk had claimed that, despite the company's written policies, Rollins had not always required that raises be given only with his written approval and that at least one other manager had done so with impunity, the appellate panel determined that there was a genuine issue of fact regarding Tomczyk's retaliation claims that should have gone to the jury.

In its opinion, the appellate panel reminded the parties in the case that the panel had, during oral arguments, suggested "there were problems with the positions and arguments on both sides of the appeal and that under the circumstances it would be better if they settled their case."

The panel also issued a separate order directing Rollins, Jocks & Jills and Tomczyk to participate in mediation, which the panel acknowledged in its August order ultimately failed.

However, the appellate ruling stated, "In sending the case back for another trial, we remind the parties that it is never too late to settle."

The appellate decision was *Tomczyk v. Jocks & Jills*, No. 1:00-CV-3417 (N.D. GA). The case at the district court was *Tomczyk v. Jocks & Jills*, No. 05-10744 (11th U.S. Circuit). 