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COVER STORY

Landmark verdict in age discrimination lawsuit



Daily Journal photo

Carney R. Shegerian of Shegerian & Associates Inc., counsel to embattled former L.A. Times sports columnist, T.J. Simers. Simers scores a \$7.13 million verdict in an age, disability discrimination and constructive termination suit.

By Matthew Blake
Daily Journal Staff Writer

A six-week age, disability discrimination and constructive termination jury trial pitting former Los Angeles Times sports columnist T.J. Simers against his old employer first drew attention for a literal all-star witness list including former Laker Dwight Howard and Clipper Chris Paul.

But while Howard, Paul and most other sports stars were never called, the trial might prove important for other reasons. Simers' win to the tune of \$7.13 million in a Superior Court verdict announced Wednesday is one of the largest California age discrimination payouts in recent history. *Simers v. Tribune Company et al.*, BC524471 (L.A. County Super. Ct., filed Feb. 18, 2014).

For single-plaintiff verdicts, the in is decisively eclipsed only by \$26 million a Los Angeles jury awarded Bobby Dean Nickel against former employer Staples in February 2014. Both Simers and Nickel were represented by Carney R. Shegerian at

Shegerian & Associates Inc.

Further, the plaintiff's win may serve notice to newspapers and other media seeking to push out high-priced, aging talent.

"The verdict is important to the media industry," said Kristen J. Nesbit, a partner at Fisher & Phillips LLP, who represents employers. "You need fresh perspective in media, but it shows you also need to be mindful that you bring along everyone who is part of your team."

Despite much-publicized buyouts at the Times and other newspapers, Simers' lawsuit is the only known age discrimination complaint against a print media entity, according to several employment lawyers.

J. Bernard Alexander, a plaintiff attorney at Alexander Krakow & Glick LLP and board member at the California Employment Lawyers Association, noted lawsuits with age complaints have been filed against broadcast media. But those cases, like one former Telemundo anchorwoman Vicky Gutierrez filed in 2012, more specifically claim

the plaintiff was pushed out for no longer being photogenic.

One semi-precedent to Simers was a massive Writers Guild of America class action filed against more than 40 major film studios, TV networks and talent agencies. That case settled in Los Angeles County Superior Court in 2010 for \$70 million awarded to a class of screenwriters 40-years-old and over.

A nationally recognized name by sports fans, Simers began at the Times in 1990 and was promoted to columnist in 2000.

Simers collapsed in March 2013 at the age of 62, from what was later diagnosed as complex migraine syndrome.

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Following conflicts with editors, Simers was relegated to a general assignment reporter position in August 2013 and left his \$234,000-a-year Times position in September 2013 for a \$190,000-a-year columnist spot with the Orange County Register.

Simers accepted a buyout at the Register in June 2014, announcing his retirement.

The jury awarded Simers \$2.13 million in economic damages, and \$5 million in non-economic losses, which was chocked up as emotional distress damages.

According to Shegerian, witnesses were able to convince the jury Simers "has suffered through advanced, major depression."

Simers did not, however, win any punitive damages, as jurors found The Times has vowed to appeal.

"Our editors acted to protect the integrity of the newspaper and to uphold fundamental principles of journalistic ethics," a newspaper spokeswoman stated on Thursday.

"We will continue to work through the legal system to resolve this matter."

Times lawyer Emilio G. Gonzales of Davis Wright Tremaine LLP declined to comment. Most age discrimination jury trials result in a favorable defense verdict,

Alexander noted, unless there are glaring facts on the plaintiff's side to prove what can be a less than overt claim.

One recent instance of that was a 2013 case, *Martha Aboulafría, et al. v. GACN*, in which four waitresses got a \$5.7 million jury award after they were fired from Cable's Restaurant in Woodland Hills. A plaintiff's lawyer in that case, Elizabeth Bradley of Rosen Saba LLP, recalled a situation in which waitresses were told they were laid off because the restaurant was losing money "while young, beautiful woman were being paraded in for interviews" and being solicited in ads on Craigslist.

The Simers case was arguably more complex. The plaintiff said he was systemically marginalized after suffering a stroke, because the paper did not want to pay future medical bills. But the Times maintained Simers behaved unethically when he allowed a Hollywood producer to tape a video for the newspaper's website of Howard shooting free throws.

Tracey A. Kennedy, a partner at Sheppard, Mullin, Richter & Hampton LLP, acknowledged it was a higher than usual payout likely based on its high profile, and that Simers was a highly paid, 23-year employee. The verdict could have hurt the Times more. Kennedy said it was significant the jury didn't ping the newspaper for punitive damages.