

CALCULATING DAMAGES IN EMPLOYMENT LITIGATION

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I. INTRODUCTION

Employment litigation allows plaintiffs at least two sources for claims for emotional distress and punitive damages (which are part of compensatory damages). One source is capped and the other is not.¹ Prior to 1991, juries awarding prevailing plaintiffs who brought claims under either Title VII of the Civil Rights Act of 1964 or the Americans with Disabilities Act of 1990 damages based on economic losses only. With the enactment of the Civil Rights Act of 1991 (the “1991 Act”), employment discrimination cases allow prevailing victims a range of damages, from economic losses to compensatory² and punitive damages. Plaintiffs can also pursue damages under 42 U.S.C. § 1981, which are not capped. Substantial damages can be obtained.³

II. EMOTIONAL DISTRESS DAMAGES

A. WHAT IS EMOTIONAL DISTRESS?

“Emotional distress” is a commonly used phrase in and out of the employment law arena. The phrases “emotional distress,” “mental anguish,” and “mental distress” are often used synonymously in the employment discrimination law

¹ 42 U.S.C. § 1981 allows claims based on race and national origin, in which damages are not capped. 42 U.S.C. § 1981a(b) places caps on statutory claims not based on Section 1981.

² Some circuits have also recognized that compensatory and/or punitive damages are available under the anti-retaliation provisions of the Fair Labor Standards Act, 29 U.S.C. § 216(b). *See Moore v. Freeman*, 355 F.3d 558 (6th Cir. 2004)(allowing damages for mental and emotional distress under the FLSA). *See also, Travis v. Gary Community Health Center, Inc.*, 921 F.2d 108, 112 (7th Cir. 1990); *Broadus v. O.K. Indus., Inc.*, 238 F.3d 990, 992 (8th Cir. 2001); *Lambert v. Ackerly*, 180 F.3d 997, 1011 (9th Cir. 1999).

³ This paper does not address the tort law claims of intentional infliction of emotional distress or negligent infliction of emotional distress.

context. Plaintiffs in employment discrimination cases often allege that the employers' actions have caused them emotional distress or mental anguish and as a result the plaintiff has various symptoms.⁴ Symptoms of emotional distress range from the plaintiff being upset about the employment situation to symptoms of being troubled, being hurt, frequent crying, sleeplessness, nightmares, paranoia, loss of weight, sweating, hyperventilation, nausea, fear, panic attacks, headaches, worry about finances, marital stress, stress in relationship with a child, and beginning to smoke.

Courts and juries determine if the plaintiff presented sufficient evidence that the employers' behavior or actions caused the plaintiff's symptoms of emotional distress and therefore warrants awarding compensatory damages

B. EVIDENCE OF EMOTIONAL DISTRESS

The Supreme Court of the United States allows compensatory damages for emotional distress after specific evidence of actual harm is introduced. *See Carey v. Phipus*, 435 U.S. 247 (1978). Evidence of actual harm from emotional distress ranges from the employee testifying about the symptoms that the employment discrimination caused to the testimony of family members and/or co-workers that they witnessed the plaintiff's symptoms and behavior changes. Of course, psychiatrists can testify and give expert testimony, but many plaintiffs can not afford this expense and are limited to their personal testimony and/or the testimony of friends and family or free caregivers (such as a church counselor or minister).

In general, the federal courts have been unduly restrictive with respect to emotional distress awards. Often they have: 1) ignored the broad statutory definition of emotional distress damages,⁵ 2) treated the cap amounts as the maximum amounts a jury could award rather than the maximum that will be paid in light of the caps, and 3) ignored the fact that over a decade has passed since the caps were put into law, reflecting the value of money in 1991.

Evidence of emotional distress varies, but case law is the best indicator of what evidence leads to compensatory damages. The United States Supreme Court has not specifically addressed the evidence necessary to prove emotional distress in the employment discrimination context. The circuit courts sometimes compare evidence presented in previous cases and the emotional distress damages awarded in those cases to the evidence presented in the case before the court. Of course, this is a flawed approach, because (1) each case should depend on its own facts and evidence, (2) this nullifies the role of the jury, and (3) this minimizes awards by referring to

⁴ Technically, victims of employment discrimination can (and often do) suffer from emotional distress without displaying any symptoms. However, evidence of emotional distress often includes testimony regarding symptoms.

⁵ 42 U.S.C. § 1981a(b)(3) states that compensatory damages include "future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other non-pecuniary losses."

cases that may have been decided years before when the dollar, inevitably, was worth more than at present. Further, this flawed approach allows evidence that was not before the jury to determine the outcome of damages. But in the spirit of comparison, the following are examples of cases in various circuit courts that have affirmed emotional distress damages awards based on the evidence presented.⁶

First Circuit

Horney v. Westfield Gage Company, Inc. 77 Fed.Appx. 24, 2003 WL 22326558 (1st. Cir. 2003)(not selected for publication) affirmed the award of \$250,000 in compensatory damages for emotional distress based on the plaintiff's claims of sexual harassment under Title VII and Massachusetts' anti-discrimination statute. Horney's psychiatrist described her symptoms of depression, sleep disturbances, withdrawal, nausea and vomiting and testified they resulted from harassment at work. *Id.* at **4. The court noted that substantial jury awards in other cases with similar evidence were also upheld. *Id.* (citing *Koster v. Trans World Airlines, Inc.* 118 F.3d 24, 34 (1st Cir. 1999)(awarding \$250,000 for emotional distress); *Westinghouse Elec. Supply Corp. v. Mass. Comm'n Against Discrimination*, 9 Mass. L. Rep. 661 (Mass. Super. Ct. 1999)(affirming a \$250,000 emotional distress award)).

Third Circuit

In *Hurley v. Atlantic City Police Dept.* 174 F. 3d 95 (3d Cir. 1999), the Third Circuit allowed emotional distress damages but noted unsurprisingly that damages for emotional distress in discrimination cases are limited and noted gratuitously that emotional distress damages typically are less than \$50,000. Hurley put on evidence that the sexual harassment that she endured caused her emotional distress that resulted in her taking extended sick leave from work. She also put on evidence that the harassment detrimentally affected her relationship with her husband and family. The district court remitted the jury award of \$575,000 in compensatory damages for emotional distress to \$175,000.

Fourth Circuit

The court of appeals in *Crowley et al. v. CCAIR, Incorporated* upheld awards of \$300,000 in compensatory damages to each of the two plaintiffs for their Title VII gender discrimination claims. 98 Fed.Appx. 930, 2004 WL 1000344 (4th Cir. 2004)(not selected for publication). Crowley and Staton both testified about the emotional distress that their terminations caused. *Id.* at 933. Crowley supported her emotional distress claim with her own testimony, plus testimony of her mother and one of her close friends, including testimony that the termination caused her family to lose health insurance, strained her marriage, humiliated her, and devastated her husband and four children. *Id.* Staton testified that the termination left her worried about finances and isolated. *Id.*

⁶ The cases presented are in no way intended to be an exhaustive list.

The Fourth Circuit affirmed a jury's award of \$50,000 in compensatory damages for emotional distress to an African-American hospital employee, who prevailed on her race discrimination and retaliation claims, under Title VII and Section 1981. *Bryant v. Aiken Regional Medical Centers, Inc.* 333 F. 3d 536 (4th Cir. 2003). Bryant testified that she felt angry, frustrated, and embarrassed by how the hospital treated her. She also suffered from headaches, insomnia, and nausea. The Fourth Circuit pointed out that the plaintiff's testimony, standing alone, can support award of compensatory damages for emotional distress Title VII or § 1981 cases, but plaintiff must establish that he or she suffered demonstrable emotional distress. Plaintiff must sufficiently articulate the effects and show a causal connection between the violation and the emotional distress.

Fifth Circuit

The Fifth Circuit has recognized that an employee's testimony can be enough to support compensatory damages for emotional distress. In *Williams v. Trader Publishing Co.*, 218 F.3d 481 (5th Cir. 2000), Williams testified that as a result of Trader discharging him he suffered severe emotional distress with symptoms of sleep loss, beginning to smoke and weight loss. The jury awarded \$100,000 in damages for emotional distress and the court affirmed.

In *Giles v. Gen. Elec. Co.* 245 F.3d 474, 488 (5th 2001), the Fifth Circuit enunciated two elements necessary for the plaintiff to recover emotional distress damages. The plaintiff has to first provide specific evidence to the nature and extent of the harm and second, the plaintiff can not merely make vague allegations. Mr. Giles testified that emotional distress caused him marital problems, trouble sleeping and headaches. His co-worker also testified regarding Giles' depression and discouragement after the Company's actions. The Fifth Circuit remitted the \$300,000 emotional distress award to \$150,000.

In *Thomas v. Texas Department of Criminal Justice*, 297 F.3d 361, 369 (5th 2002), Thomas cried at trial as she testified that the defendant's failure to promote her had caused her to feel like a failure, to feel isolated from her coworkers and to feel helpless. Thomas suffered from sleeplessness, nausea and depression. Other plaintiff witnesses corroborated the severe emotional distress she endured. Thomas was awarded \$30,000 for past emotional distress and \$75,000 for future emotional distress, after the court remitted the \$100,000 future emotional distress award.

In *Arnold v. United States Department of the Interior*, 213 F.3d 193, 195, fn.2 (5th Cir. 2000), the Fifth Circuit noted that the jury had awarded one successful race and gender discrimination claimant \$450,000, capped at \$300,000 pursuant to Title VII's limitation on damages. The Fifth Circuit has approved emotional distress awards of \$100,000 or more in several cases.⁷

⁷ *Thomas*, 297 F.3d at 369 (noting that six-figure awards were allowed in *Forsyth v. City of Dallas*, 91 F. 3d 769 (5th Cir. 1996), in *Rizzo v. Children's World Learning Ctrs., Inc.* 187 F.3d 680 (5th Cir.

Sixth Circuit

Moorer v. Baptist Memorial Health Care System, 2005 WL 323539 (6th Cir. 2005) affirms a substantial compensatory damages award for emotional distress. After a bench trial, the district court concluded that Baptist violated the ADA based on the theory that Baptist terminated Moorer after it regarded Moorer as disabled because he was an alcoholic. *Id.* at 6. The Sixth Circuit affirmed the \$250,000 award in compensatory damages for Moorer's emotional distress, plus \$17,732.72 in prejudgment interest. Although the court recognized that ADA and Title VII plaintiffs can prove emotional injury by testimony without medical support, Moorer, his wife, and his treating psychologist testified about how his termination led to Moorer's severe emotional distress. *Id.* at 13. The court found that Moorer put on sufficient evidence to justify the award. *Id.* at 14 (citing *Lilley v. BTM Corp.*, 958 F.2d 746, 754 (6th Cir.1992)(holding that \$350,000 mental anguish award for age discrimination was within the realm of other verdicts that have been upheld in similar cases); *Miller v. Alldata Corp.*, 14 Fed. Appx. 457, 467 (6th Cir. 2001) (affirming district court's denial of motion for remittitur of \$300,000 award for emotional distress where the plaintiff recovered only \$16,000 in economic damages for gender discrimination claim).

In *Turic v. Holland Hospitality, Inc.* 85 F.3d 1211 (6th Cir. 1996), Turic presented witnesses who testified that "she was extremely upset and frightened after being discharged, and that she ran from the meeting in tears." *Id.* Turic also testified that she suffered nightmares, weight loss during her pregnancy and excessive nervousness. Based on this evidence, the court found that compensatory damages of \$50,000 was not grossly excessive.

Seventh Circuit

The plaintiff in *Lust v. Sealy, Inc.*, 383 F.3d 580 (7th Cir. 2004) won a jury verdict awarding her \$100,000 in compensatory damages and \$1million in punitive damages. The district judge reduced the total damages to \$300,000 (\$27,000 for emotional distress and \$273,000 in punitive damages). The Court of Appeals upheld the \$27,000 in compensatory damages, but found that the maximum punitive damages that could have been reasonable was \$150,000 after comparing *Lust's* case to similar cases. *Id.* at 591.

Eighth Circuit

The plaintiff in *Rowe v. Hussman Corporation* brought her sexual harassment claim under Title VII and the Missouri Human Rights Act. 381 F.3d 775 (8th Cir. 2004). The court upheld the award of \$500,000 for Rowe's emotional distress. *Id.* The Eighth Circuit requires compensatory damages for emotional distress to be

1999) *aff'd on other grounds*, 213 F.3d 209 (5th Cir. en banc), in *Williams*, 218 F.3d 481 (5th Cir. 2000), in *Giles*, 245 F.3d 474 (5th Cir. 2001), and in *Salinas v. O'neill*, 286 F.3d 827 (5th Cir. 2002).

supported by “competent evidence of a genuine injury, and a plaintiff’s own testimony can carry this burden.” *Id.* at 783 (citing *Kucia v. Southeast Arkansas Community Action Corp.*, 284 F.3d 944, 947 (8th Cir. 2002)). Rowe testified that the sexual harassment she endured by her co-worker caused fear, panic attacks, nausea, headaches, sweating, and hyperventilation. *Id.* Rowe’s treating psychologist also testified about her prognosis and condition. *Id.* The Eighth Circuit has upheld substantial compensatory damage awards in other cases. *Id.* (referring to *Eich v. Board of Regents for Cent. Missouri State University*, 350 F.2d 598, 600 (8th Cir. 2003)(reinstating a \$200,000 compensatory damages award); *Madison v. IBP, Inc.* 330 F.3d 1051, 1054 (8th Cir. 2003)(affirming \$266,750 award in emotional distress damages); *Warren v. Prejean*, 301 F.3d 893, 899 (8th Cir. 2002)(\$150,000 in compensatory damages).

Ninth Circuit

The Ninth Circuit in *Zhang v. American Gem Seafoods, Inc.* 339 F.3d 1020 , 1040 (9th Cir. 2003) allowed Zhang’s testimony alone to substantiate the jury’s award of emotional distress damages. For Zhang’s Section 1981 claims, the jury awarded \$360,000 in compensatory damages (with \$223,255 for emotional distress) and \$2.6 million in punitive damages. Mr. Zhang testimony that he was “troubled,” “hurt,” and “could not believe” the Company’s actions were enough for the Ninth Circuit to affirm the damages awards.⁸

Tenth Circuit

The plaintiff in *Smith v. Northwest Financial Acceptance, Inc.* 129 F.3d 1408 (10th Cir. 1997), put on evidence that she suffered from nausea, migraines, humiliation, degradation, loss of self-respect, sleeplessness, consumption of sleeping pills, frequent crying, loss of a loan officer career, and stress in Plaintiff’s relationship with her daughter, as a result of the Company’s actions. At least two of Plaintiff’s co-workers testified that she was hurt, visibly shaken, and on the verge of tears. The Tenth Circuit affirmed the \$200,000 award of emotional distress damages.⁹

III. PUNITIVE DAMAGES¹⁰

In *Kolstad v. American Dental Ass’n*, 527 U.S. 526, 530 (1999), the United States Supreme Court held that a plaintiff needs to show that the defendant engaged in intentional discrimination “with malice or with reckless indifference to the federally protected rights of an aggrieved individual” in order to obtain punitive damages. (quoting 42 U.S.C. § 1981a(b)(1)(1994)). While the Court rejected the

⁸ See also, *Passantino v. Johnson & Johnson Consumer Prods.* 212 F.3d 493 (9th Cir.2000) (affirming a compensatory damages award for emotional distress in a sex discrimination and retaliation case.)

⁹ See also, *Fitzgerald v. Mountain States Tel. and Tel. Co.* 68 F.3d 1257 (10th Cir. 1995).

¹⁰ See “Punitive Damages in Actions For Violations of Title VII of the Civil Rights Act of 1964,” Jeffrey Scot Fowler, 150 A.L.R. FED. 601 (2004)(collecting cases in each circuit which involve punitive damages under Title VII of the Civil Rights Act of 1964, as amended).

decisions of various courts of appeal by emphasizing that plaintiffs did not have to show an egregious act separate from the defendant's culpable mind state, it modified agency principles that allowed employees to attribute the discriminatory practices of and agent employee to their employer. "An employer may not be vicariously liable for the discriminatory employment decisions of managerial agents where these decisions are contrary to the employer's good faith efforts to comply with Title VII." *Id.* at 545.

The Kolstad Standard Applied

The district court in *Deffenbaugh-Williams v. Wal-Mart Stores, Inc.* granted the defendant judgment as a matter of law on the issue of punitive damages after the jury awarded \$100,000 in punitive damages. 188 F. 3d 278 (5th Cir. 1999). Before the decision in *Kolstad*, the Fifth Circuit ordered remitter of the punitive damages to \$75,000. After the Supreme Court decided *Kolstad*, the Fifth Circuit allowed the parties to brief the effect of *Kolstad*. On remand, the court of appeals allowed the jury's punitive damages verdict to stand and reinstated the remitter, which reduced the \$100,000 punitive damages award to \$75,000. *Id.* at 286. *See also Rubinstein v. Adm'r of the Tulane Educ. Fund*, 218 F.3d 392 (5th Cir. 2000)(affirming the lower court's punitive damages award).

After applying *Kolstad*, the Tenth Circuit reversed a directed verdict for the defendant that had dismissed the plaintiff's punitive damages claim. *Knowlton v. Teltrust Phones, Inc.* 189 F.3d 1177 (10th Cir. 1999). The lower court found that the plaintiff had failed to prove actual malice or reckless indifference. *Id.* But, the court of appeals found that the defendant's liability for punitive damages was a jury issue. *Id.* at 1187-88. *See also EEOC v. Wal-Mart Stores, Inc.* 1999 WL 1032963 (10th Cir. 1999). In *Cadena v. The Pacesetter Corp.* addressed the issue of what constitutes good faith compliance with Title VII. 224 F. 3d 1203 (10th Cir. 2000). The defendant argued that maintaining a sexual harassment policy was enough to show good faith. *Id.* But, the Tenth Circuit found that even if a defendant "maintains on paper a strong non-discrimination policy and makes good faith efforts to educate its employees about that policy and Title VII, a plaintiff may still recover punitive damages if she demonstrates the employer failed to adequately address Title VII violations of which it was aware." *Id.* at 1210, 1216 (affirming the award of \$300,000 in compensatory and punitive damages).

Several circuits have applied the *Kolstad* standard to uphold jury awards of punitive damages in employment discrimination cases. *See Lowery v. Circuit City Stores, Inc.* 206 F.3d (4th Cir. 2000); *EEOC v. EMC Corp. of Massachusetts* 2000 WL 191819 (6th Cir. 2000); *Ogden v. Wax Works, Inc.* 214 F.3d 999 (8th Cir. 2000); *Otting v. J.C. Penney Co.* 223 F.3d 704 (8th Cir. 2000); *EEOC v. W & O, Inc.* 213 F.3d 600 (11th Cir. 2000).

IV. HOW PLAINTIFFS CAN MAXIMIZE DAMAGES

A. Pre-trial

- Preparation for Depositions
- Talk to Plaintiff and Family Members

B. At Trial

1. Conduct Voir Dire on Damages
2. Deal with Emotional Distress and Punitive Damages in Opening Statement
3. Put on Emotional Distress Evidence
 - Testimony of lay witnesses
 - Testimony of medical experts
 - Testimony of the plaintiff: Practice with the plaintiff the Do's and the Do Nots. For example, do not have the plaintiff say, "I felt bad," but do allow the plaintiff to explain in detail their symptoms and why they are here and why they pursued the case.
4. Put on Punitive Damage Evidence
 - Net worth of the defendant
 - Monthly net income of the defendant
 - Malicious acts of the defendant
 - Involvement of top company officials in the wrongful conduct
 - Lack or remorse
 - Pattern of misconduct
 - Continued misconduct
5. Make Strong Jury Argument, Using Stories and Examples, to Persuade the Jury to Award Meaningful Damages
 - a. Ask the jury questions like these:

- How many dollars would you trade a good or average day for, if the day you get for the money is one that you spend in depression and mental pain, where your enjoyment of life is gone and you do not see it returning?
 - What is the value of life, liberty and the pursuit of happiness?
 - What is the value of happiness?
 - What is the price for unhappiness?
 - How much money would it take for you to voluntarily go through the worst experience of your life?
 - How much would someone have to pay you for the right to spit in your face?
- b. List, slowly, each and every symptom of mental anguish on which you have evidence.
 - c. List each witness who gave testimony about mental anguish.
 - d. Ask the jury to be fair, awarding neither too much nor too little for the pain and suffering the plaintiff has experienced because the Employer broke the law.
 - e. Explain that actual damages are what you can see, but mental anguish damages are inside her soul and heart.
 - f. Do some math in front of the jury. Example: 365 days per year x 24 hours per day x \$5 per hour x 20 years = \$865,000.
 - g. Use examples to assist juries with the math for punitive damages. To punish child with a \$10 per week allowance, you might take away \$5 dollars. If a giant corporation has net income of \$50 million per week, punishment might require punitive damages of \$25 million. The top bosses at this company have to get the message. This is a job for this jury.

V. EMPLOYER TACTICS AND PLAINTIFF'S PRIVACY RIGHTS

The majority of circuits recognize that the employee's testimony is sufficient to warrant awarding compensatory damages based on emotional distress. But, when faced with plaintiffs in discrimination cases that claim emotional distress, employers attempt to discredit plaintiffs' testimony and the testimony of any other witnesses or experts. Plaintiffs should be sufficiently prepared at trial to go into specific details regarding the harm caused by the Company and the extent the harm caused to Plaintiff, both personally and professionally. Evidence on any and all symptoms, including mood swings, crying, physical sickness, paranoia, sleeplessness, and vomiting, should be put on to combat the defendant's attempts to discredit plaintiff

At trial, plaintiff attorneys must specifically question the plaintiff about how the employers' actions made them feel and how the employment situation changed their mental state. Diaries and notes should be utilized, if available, to remind the plaintiff of his or her mental state.

At trial, employer's generally attempt to minimize emotional distress testimony through limited cross examination and dismissive comments during closing argument. Often employers will argue that Plaintiff has failed to put on evidence of an expert or psychiatrist.¹¹ Although many plaintiff's cannot afford the services provided by psychiatrist, psychologist, or other professional counselors, the testimony of a mental health professional can be essential in obtaining and/or increasing emotional distress damages. Employers may also call their own non-treating psychiatrist or psychologist to testify that in her opinion the plaintiff suffered no or minimal mental anguish as a result of any conduct by the employer.

Employers will also question the plaintiff's allegations by asserting that his or her testimony is uncorroborated. Co-workers, family members, spouses and mental health professionals can be used to corroborate plaintiff's story. These individual's corroborative testimony regarding their observations of the changes in plaintiff's mental state and physical health add credibility for the jury and for the appellate record.

Employers will usually appeal and seek remitters of substantial jury awards of compensatory damages. The district court record should make it clear that plaintiff put on evidence and testimony regarding emotional distress. Generally, great deference is shown to jury damage awards ratified by the district court, but the appellate court reviews a "cold record" without the emotion or atmosphere of the trial. The more specific and descriptive the evidential record, the better for the plaintiff on appeal.

Employers usually defend punitive damage claims by asserting they did nothing illegal, but moreover that they acted in good faith and/or that the top officials

¹¹ This is despite the fact that courts have established that the plaintiff's testimony alone is sufficient to warrant emotional distress damages.

were uninvolved. A defendant employer who is small in size or in financial distress would point out its limited resources to minimize punitive damages. Beyond that, most employers stay away from arguing how little it would take to make them comply with the law, probably because (1) this argument is silly and (2) this argument smacks of “I did not do it, but if you find I’m lying about that, it won’t take much money to make me change my ways.”

Opposing Defendant’s Motion for Mental Examination

Many times when plaintiffs allege emotional distress or mental anguish damages, employers will attempt to obtain plaintiff’s entire medical record. This is an invasion of plaintiff’s privacy and should be fought because more often than not, plaintiff’s entire medical record is irrelevant. Courts have recognized the potential for abuse in allowing defendant’s access to medical records.¹²

Rule 35 allows a party to request a court order to compel an examination if there is showing that (1) the mental (or physical) condition is in controversy and (2) there is good cause to support the request.

VI. CONCLUSION

The 1991 Act caps damages at \$300,000. Emotional distress and punitive damages can be awarded as part of this capped amount. Emotional distress and punitive damages in employment discrimination cases, not surprisingly, depend on the facts of each case. Circuit courts sometimes compare awards allowed in previous cases and determine the proper remedy in the case before the court. Plaintiffs should be prepared to present as much specific evidence as possible to lend credibility to their allegations. Proving what cannot be seen is possible in employment discrimination cases, the key is presenting credible and preferably corroborated evidence.

¹² See *Burrell v. Crown Central Petroleum, Inc.*, 177 F.R.D. 376, 384 (E.D. Tex. 1997) (finding that “tremendous potential for abuse exists when a defendant has unfettered access to a plaintiff’s medical records” and declining to order the plaintiffs to sign release of medical records authorizations). See also, *Fritsch v. City of Chula Vista*, 196 F.R.D. 562, 570 (S.D. Calif. 1999); *Vasconcellos v. Cybex Int’l, Inc.*, 962 F.Supp. 701, 708 (D. My.1997); *Gatewood v. Stone Container Corp.*, 170 F.R.D. 455 (S.D. Iowa 1996);