

# VERDICTS & SETTLEMENTS

ORLANDO MAKER OF MEDICAL PRODUCTS DEFENDS AGAINST AGE BIAS SUIT, CLAIMING THAT IT HAD TO FIRE OLDER SALESPEOPLE BECAUSE THEY HAD BECOME COMPLACENT

**Case:** DiJoseph v. Invivo Research Inc., U.S. District Court, Orlando, No. 6:99-CV-1450.

**Plaintiff attorneys:** Alenna K. Bolin and Constantine "Chris" Gekas of Gekas & Associates in Chicago.

**Defense attorneys:** Robert L. Norton, in Coral Gables; and Wayne L. Helsby and Mark L. Van Valkenburgh, both in Winter Park. All three are with Allen Norton & Blue, which is based in Coral Gables.

**Judge:** John Antoon II

**Details:** Invivo, an Orlando company that makes and markets medical equipment, replaced much of its approximately 30-member sales force in 1996 and 1997, while it prepared to introduce its latest electronic device, a patient monitor. Following the employees' dismissals, in June 1997 a class of five salespeople and territory managers, all more than 40 years old, filed Equal Employment Opportunity Commission charges alleging that they were victims of age discrimination. After obtaining EEOC approval, in November 1999 they filed suit.

**Plaintiffs' case:** The plaintiff attorneys could not be reached for comment.



Lawyers Robert L. Norton, left, and Wayne L. Helsby of Coral Gables-based Allen Norton & Blue represented an Orlando company in its successful defense of an age-bias suit.

**Defense case:** The company sought to show that the plaintiffs were fired for performance reasons, not because of age discrimination. While most of the plaintiffs had good past performance records, the company said, sales had dropped drastically over the year and a half prior to the layoffs. The company said

it let them go because it needed to improve its sales force to successfully launch a new patient monitor that would face substantial competition.

The company contended that the sales staff, earning more than \$100,000 on average, had become complacent because of the ease of selling a prior product,

the company's MRI patient monitor, which essentially had no competition.

But the plaintiffs, according to Van Valkenburgh, contended that sales of the MRI monitor were off because the salespeople had already saturated the market with that product. Plaintiffs also contended that sales of the newer device were slow because it was a bad product.

**Verdict:** After an eight-day trial, the jury deliberated for about four hours and found for the defense.

**Post-trial:** A motion for a new trial was denied. The plaintiffs filed a notice of intention to appeal.

— Tony Doris

ALIXA MONTERO