

As seen in the Star Ledger: \$2.26M Fraud Judgment Against Workers Shakes Labor Landscape

By: Greg Saitz, Star-Ledger Staff

Amanda Jaramillo spent nearly 30 years working at Melard Manufacturing in Passaic, much of the time around loud machines. Then, in late 2002, Melard closed. The Colombia native, who has been blind in one eye since childhood, and 111 others were laid off.

Many of the workers, including Jaramillo, filed workers' compensation claims, a fairly common occurrence after factory closings. What happened next, however, was anything but routine in the world of employment law. In 2004, Bath Unlimited, a Randolph company that does business as Melard, sued more than 80 workers and a law firm representing them. The racketeering suit, filed under the federal Racketeer Influenced and Corrupt Organizations Act, accused the group of conspiring to defraud Bath by making false injury claims. The law firm, Ginarte O'Dwyer Winograd and Laracuente, as well as its attorney Michael Policastro, reached a confidential settlement with Bath to resolve the lawsuit. But the workers, who attorneys said didn't understand what was happening, did nothing.

As a result, they now owe their former employer \$2.26 million. U.S. District Judge Stanley Chesler last week signed a default judgment against Jaramillo and 83 of her former co-workers, finding them jointly liable to repay Bath Unlimited's attorney fees, costs, compensatory damages -- even workers' compensation awards that two of the women obtained against the company.

The judgment has alarmed workers' rights attorneys, who say Bath Unlimited's aggressive posture in this case is virtually unheard of and signals a "frightening precedent" that can be used to quell legitimate employee injury claims. They said it also will make attorneys hesitant to take on workers' cases. "So these people who made \$16,000 or \$17,000 a year are now liable for a \$2.2 million judgment," said Gregory Jachts, a Paterson attorney appointed by the court to represent the employees in workers' compensation court. "They're not sophisticated people, they're not educated."

Masco, the parent company of Bath and maker of Peerless faucets and Behr paints, said in a statement that it "wholeheartedly" agreed with the federal court's decision.

"The worker's compensation system and its goal of compensating workers who suffer legitimate worker related injuries, is far too important to be subjected to abuse and fraud," the statement said. "We strongly believe that if an employee suffers a legitimate injury, appropriate compensation is due, but filing these kinds of fraudulent claims are an abuse of the court system and cannot be tolerated." Masco spokeswoman Kathleen Volks said the Michigan-based company, with \$12.8 billion in sales last year, was "looking at the next steps." She declined to elaborate.

Attorney Alan Zegas, who represented the Ginarte law firm and Policastro, who now works elsewhere, said the federal lawsuit created an ethical dilemma for his clients that prevented them from representing the laborers. "The Ginarte firm did whatever was in its power to do to protect the workers," Zegas said yesterday. The federal judgment also has created uncertainty in the state's workers' compensation court, where dozens of the employees' claims are pending. A Bath Unlimited attorney sent a letter to Jachts yesterday demanding that he drop the workers' claims based on the federal ruling. The only two workers' comp cases to go through a completed trial resulted in the former Melard employees being awarded \$21,624 and \$15,120 in disability payments. In one of the cases, Judge Beverly Karch found Keyla Rosa's pulmonary problems were partly attributable to her time at Melard.

"From her demeanor and candor, I am confident of her honesty and so I am confident that her complaints are real," the judge found, according to transcripts. Ultimately, the two workers' compensation awards figured in the \$2.2 million judgment against the Melard workers. Attorneys for Bath took the awards, tripled them as allowed by federal law and added the amounts to the total the workers now must repay. Any new workers' compensation awards could similarly be added to the judgment, attorneys said.

"It makes no sense whatsoever, but this is what happens when you have a one-sided proceeding," said Gary Adams, a Princeton attorney who represents injured workers and is vice president of the nonprofit New Jersey Advisory Council on Safety and Health. "The concern from our perspective is this is clearly an effort to discourage people from filing cases when their factories close down," Adams said.

Plant closings often result in significant workers' compensation claims, attorneys and others said, because laid-off employees are no longer concerned that they might be punished for raising the issue and because their injuries may affect their ability to obtain another job. In the case of Melard, more than 80 fired workers asserted that they suffered injuries from laboring at the factory, where they made plastic bathroom components and packaged other products. Workers in court described the Melard plant as a dusty, noisy place with no air conditioning and powerful fumes.

Jaramillo, now 65, testified at her ongoing workers' compensation trial last year that the noise from the nearby machines gave her headaches and made her dizzy. "Sometimes I would say, 'Please, take me out of here,' and they just say no," said Jaramillo, according to a transcript. She acknowledged that Melard offered her earplugs during the last couple of years there, but said they made her ears hurt more. The company claimed in its 2004 federal lawsuit that the Ginarte law firm and attorney Policastro encouraged workers angry at being fired to file claims, most of which were identical except for employees' personal information. According to the suit, the law firm directed workers to provide false information to doctors, and "virtually all" of the employees examined by physicians for Bath had no disabilities or none attributable to the company, the complaint charged. Ginarte and Policastro denied the allegations in court papers and tried unsuccessfully to have the federal case dismissed.

When asked about the judgment in an interview, Jaramillo said she doesn't have that kind of money. The divorced Clifton resident, who came to the U.S. in 1973, collects \$900 a month in Social Security disability payments and has \$750 in her bank account. Adams, from the advisory council on safety and health, said he is hoping to find a law firm or legal organization that can take on the workers' case in federal court. Requests to vacate default judgments must be filed within a year of the order.

"It's not yet a lost cause," Adams said. "There's still time to try to do something."

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If you have any questions about this article, or would like to discuss a workers' compensation case, please contact Mr. Adams at 1-800-432-LAWS