

Jury Awards \$266K to Berkeley Prof

The Recorder

[By Kate Moser](#)

September 30, 2009

SAN FRANCISCO — An Alameda County jury handed UC-Berkeley a mixed verdict last Friday in a discrimination trial that lasted nearly six weeks.

Nimachia Hernandez, a former professor in the ethnic studies department, had accused the university of discriminating against her for her disability and her Native American ancestry when it terminated her employment after a routine review of her work.

The jury came back 9-3 in front of Alameda County Superior Court Judge Winifred Smith, finding that the university hadn't discriminated against Hernandez, but that it had failed to engage in an interactive process to accommodate her and that it had retaliated against her for demanding reasonable accommodations.

Hernandez had argued that the university should have given her more time and ergonomic furniture to help her get her work done after she was injured first in an assault and then in a car accident. The jury awarded her \$176,347 in lost income and \$90,000 for emotional distress. Neither lawyer sounded particularly thrilled with the result.

"We were disappointed, but we respect the process," said defense counsel Michael Lucey of Gordon & Rees. "We continue to believe it was the right decision to go to trial and will consider our options on appeal."

Hernandez's lawyer, Daniel Siegel of Oakland's Siegel & Yee, was slightly more upbeat. "I'm certainly pleased that the jury agreed with us that Dr. Hernandez's rights were violated and that the university violated her rights," Siegel said. "I think that the amount of the verdict is reasonable in light of the evidence presented at trial, although I wish it had been greater."

According to the plaintiff's settlement conference statement, Hernandez asked for \$3.8 million in mediation at JAMS, while the university offered \$120,000. The university later offered to pay \$300,000 plus attorney's fees. Siegel said he was surprised that the jury found that the university hadn't failed to accommodate Hernandez, given that jurors also found that the university had delayed in responding to her requests for accommodation.

In an unusual twist, both sides were prepared to call lawyers to testify, though only one did. Anne Weills, another Siegel & Yee attorney, testified at trial about working to get her client the ergonomic furniture and other accommodations she requested. Lucey said his team elected to not call a UC in-house lawyer to testify about the accommodation discussions.

"We were concerned that the jurors would not pay attention to someone who was an advocate and not really a neutral party," Lucey said.