

## Zimmer Sinks Ex-VP's Sex Bias Claims Over Severance Denial

By Rachel Stone

*Law360 (July 29, 2021, 7:34 PM EDT)* -- An Indiana federal court Thursday pulled the plug on a discrimination suit brought against Zimmer Biomet Holdings Inc. by a former executive, ruling that she hadn't shown she was forced to quit, or unlawfully denied severance because of her gender.

In his opinion and order dismissing former executive Robin Barney's suit, U.S. District Judge Jon E. DeGuilio found that Barney didn't offer evidence to back up her claims that she was forced to resign because of her gender.

"Ms. Barney alleges that she was forced to resign because she would not mislead investors or inappropriately fire her employees. But Ms. Barney provides no evidence to support her claim that she would have been fired had she failed to meet these requests," Judge DeGuilio said Thursday.

"And, even if Ms. Barney could support these allegations with sufficient evidence, she fails to provide any evidence connecting the constructive discharge to her gender," the opinion continued.

The Title VII and Equal Pay Act claims tossed Thursday were the only ones left standing after a judge twice trimmed her suit, in November 2018 and April 2020.

In weighing her claim under Title VII, the court took issue with Barney's argument that she did not need to show she was harassed because of her sex in order to prove the adverse employment action she claimed she faced was discriminatory.

To support her claim that she was constructively discharged under Title VII, she needed to show that the difficult working conditions were because of discrimination, Thursday's decision said.

And although Judge DeGuilio agreed Barney was under intense stress — citing her allegations that leadership pressured her to fire employees and lie to investors about the real reason behind a sales shortcoming — he concluded that stress wasn't gender-related.

"Instead, it seems that the pressure placed on Ms. Barney by Zimmer leadership was related more to her position as head of manufacturing than to her position as a woman," the opinion said.

The court also tossed her claim that Zimmer's denial of a substantial severance package after her departure from the company was discriminatory.

Though Barney had claimed that discrimination was at play because two male employees were granted hefty severance packages after they left the company, the court found Thursday that she had made an improper comparison.

"The problem with Ms. Barney's reliance on these two men as comparators is that they left their employment with Zimmer in a very different manner than she did," Judge DeGuilio wrote.

One of the male employees negotiated with Zimmer and delayed his resignation until he became eligible for post-employment payments, which Zimmer had claimed were different from severance, according to the opinion. The other male employee was eligible for severance because he was fired from the company immediately after he brought up his unhappiness in his role.

The Zimmer severance plan stated that employees who resign aren't eligible for severance benefits, according to the opinion.

This case began in August 2017, but has since taken a winding path through state and federal courts, and at one point was split into multiple suits before being consolidated back into one.

Barney's suit cited a U.S. Food and Drug Administration audit at the Warsaw, Indiana, production plant she oversaw. The investigation led to a partial shutdown at the facility, according to Barney's complaint.

As a result, Barney said, her boss asked her to pin problems that surfaced in the FDA audit on certain employees and fire them, constituting a false pretext and representation to the agency.

Barney's boss then asked her to "concoct a story" about the company's poor sales performance that quarter to allay investors' fears, she said.

Barney claimed she feared that she would be convicted of securities fraud and making false statements to the FDA if she followed her supervisor's orders. She tendered her resignation, she said, because she expected to lose her job for refusing to partake in what she saw as questionable business practices.

Counsel for both parties did not immediately respond to requests for comment Thursday.

A representative from Zimmer Biomet Holdings Inc. did not immediately respond to a request for comment Thursday.

Barney is represented by Annaveive Conklin and Kathleen DeLaney of DeLaney & DeLaney LLC.

Zimmer is represented by Dana Becker, Michael Banks and Troy Brown of Morgan Lewis & Bockius LLP, and by John LaDue and Stephen Judge of SouthBank Legal: LaDue Curran & Kuehn.

The case is Robin Barney v. Zimmer Biomet Holdings Inc., case number 3:17-cv-00616, in the U.S. District Court for the Northern District of Indiana.

--Editing by Leah Bennett.