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**Maryland Heights settled  
Daugherty for \$775,000**  
*City withheld amount in noted discrimination case for almost 4 months*

**By Angela Riley**  
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An employment lawsuit that set a new standard for summary judgment in discrimination cases was settled for \$775,000.

The city of Maryland Heights released the details of the settlement with former police officer Douglas Daugherty 15 weeks after Missouri Lawyers Media, which publishes this newspaper, made a Sunshine Law request for the settlement amounts.

The city had initially refused to disclose the figure saying that the settlement was confidential and

Daugherty had an expectation of privacy. But state law specifically requires government agencies to release information about what they pay on legal settlements. Such information is required by law to be released within three days.

The parties had settled the case on March 13 and Daugherty dismissed the lawsuit on April 2. The case was scheduled to go to trial on April 27 in St. Louis County Circuit Court.

The city denied any wrongdoing in the settlement. Attorney representing Maryland Heights James Foster, Jr., of McMahon Berger, said the settlement satisfied at least

four different sets of interest. Plaintiff attorney Kevin Dolley, of the Law Offices of Kevin Dolley, said they were ready to go to trial before they settled.

"We had the right client for trial," he said "That makes a big difference for someone to be able to try the case. The [settlement amount] is what it is because I think [the defense] realized that we were able to try the case."

Daugherty sued Maryland Heights in 2003 and alleged that he was wrongfully terminated from his position of police captain on the

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## DAUGHERTY: Court set standard at 'contributing factor'

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basis of age and disability. Daugherty was 59 when he was fired from force in 2002.

Daugherty joined the Maryland Heights Police Department in 1986. That same year, he was hurt on the job by a drunken driver. The injury kept him out of work for nearly a year but he returned to active duty and was promoted to captain in 1999. In 2000, he missed months of work after having back surgery for degenerative spine disease which was caused by his prior accident. His increased use of sick leave and violation of two leave policies were noted in his performance evaluation.

Daugherty was told that he was terminated because he failed to meet physical tasks required of front-line officers. He disputed the claims and argued there was no evidence showing he failed to complete the essential functions of his position as captain which was considered to be supervisory in nature.

St. Louis County Circuit Court Judge Bernhardt C. Drumm Jr. entered a summary judgment on Daugherty's discrimination claims in the city's favor.

The case on appeal established a new standard that a plaintiff must meet to survive summary judgment for discrimination claims.

The Missouri Supreme Court said in *Daugherty* that plaintiffs need only prove that the discrimination was a "contributing factor" in the employee's termination. Before *Daugherty*, plaintiffs had to prove that the discrimination was a motivating or determining factor.

The court said there were genuine issues of material fact concerning whether his termination was discriminatory. Daugherty presented evidence that the police Chief Thomas O'Connor, who is also his brother-in-law, said in a tape-recorded conversation that the city administrator had wanted to get rid of employees over the age of 55 because their

salaries were too costly to the city.

"[The decision] indicated that the Missouri courts are going to go their own way and interpret the Missouri Human Rights Act sometimes more favorably than Federal Law," said plaintiff attorney Mary Anne Sedey, of Sedey Harper, in a voicemail message left with a reporter.

"It indicated that summary judgment shouldn't be granted very often in these cases. When you're considering summary judgment, all the plaintiff has to show is that there is some evidence that the protected characteristic was a contributing factor in the decision."

But for Foster, the decision had a different impact.

"This case became an anomaly mid-stream when the Missouri Supreme Court suddenly changed the law of employment discrimination in Missouri that had been well established and consistent with the majority of other states as well as the federal courts for decades."

Foster was retained by the city and the city's insurance company Northland Insurance to represent the city. Howard Paperner, city attorney for Maryland Heights said Northland decided to hire outside counsel because the settlement demands involved amounts higher than the city's insurance policy limits. Foster declined to comment on the policy's limits.

Paperner had referred comments regarding the settlement to Foster.

The *Daugherty* case is one of the most significant employment law cases in Missouri since the decision in 2003 that gave employees suing for discrimination the right to have a jury trial in state court.

The decision also has impacted later cases. In March, the Supreme Court applied the same standard outlined in *Daugherty* to retaliation claims in *Cynthia Hill v. Ford Motor Company*.

The case is *Douglas Daugherty v. The City of Maryland Heights*, 2103CC-04611-01.

