

# CALIFORNIA EMPLOYMENT LAWYERS ASSOCIATION

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JANUARY 1987

## **COSTA MESA WOMAN WINS 1/2 MILLION DOLLAR SETTLEMENT**

By: Stuart P. Jasper, Esq.

JOYCE J. SODERBERG, a 60-year old Costa Mesa resident, has won a half million dollar settlement of a federal age discrimination and invasion of privacy suit against restaurant chain Tiny Naylor's, Inc. and its former president Michael W. Guarnieri, it was disclosed Saturday.

Soderberg had been the Waitress Training Coordinator of Tiny Naylor's Inc. in charge of hiring and training waitresses for the 30 restaurant chain from 1978 until April, 1984, when she was fired at age 57.

Two weeks before she was fired, she was demoted to assistant night manager on the graveyard shift of the Tiny Naylor's store in Downey.

She was fired on the ostensible grounds that she allegedly had criticized the company and management. Soderberg, who is divorced and the mother of three children, denied the charges and said that she had complained only that she was having trouble sleeping because of the flu and being on the graveyard shift.

In pre-trial depositions, Tiny Naylor's store manager in Downey, Joe Brannon, testified that he secretly took Soderberg's confidential employment diary, photocopied it, and sent it to company supervisors and then president Michael W. Guarnieri, according to Soderberg's lawyer Stuart P. Jasper.

Guarnieri testified that he read entries in the diary critical of him and had the diary put in Soderberg's personnel file, Jasper said. The day the diary was received in Soderberg's personnel file, she was fired.

In September 1984, Soderberg filed a complaint in federal district court in Los Angeles. The case was later assigned to U.S. District Judge Terry J. Hatter, Jr. Trial was expected to be set for February, 1987.

## **CELA HOLDS FIRST MEETING, SETS OBJECTIVES**

By: Bill Crosby, Esq.

On November 8, 1986 CELA held its first meeting. The enthusiasm on the part of those who attended the meeting was encouraging. There was a general consensus that an alternative is needed to the Labor and Employment Law Section of the California State Bar. This is due to the predominance of management and defense attorneys who determine most of the programs and policies of this organization.

It was decided that the purpose of CELA is to provide an alternative, by providing a state-wide organization for attorneys primarily representing plaintiffs in employment termination and discrimination cases. Some of the ways in which CELA can serve its members, as discussed at the organizational meeting, are as follows:

1. By establishing a "network" for the exchange of practice tips, trial strategies and insights into defense tactics;
2. By increasing the "visibility" of the plaintiff's bar generally in connection with employment-related issues, through such efforts as "amicus" briefs, position papers on key legislative proposals, and State Bar Rules of Professional Conduct;
3. By establishing a liaison with related groups, such as CTLA and PELA, to coordinate lobbying efforts and otherwise work together in areas of common interest;
4. By publishing a newsletter;
5. By holding bimonthly meetings of the general membership;
6. By establishing a directory of members with information regarding specialties, to facilitate referrals.

Aside from the practical benefits to individual attorneys CELA is necessary to promote public consciousness of the need to remedy injustices to non-union, non-civil service employees (who make up over 80% of the American workforce). This can best be

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## STATE BAR HOLDS HEARINGS ON EX PARTE EMPLOYEE CONTACT

By: Kenneth A. Rivin

In December, 1986 in Los Angeles and San Francisco, the State Bar held hearings concerning Rule changes relating to an attorney's right to contact employees of a corporation. The new proposed rule, number 7-103, states in part:

### "COMMUNICATING WITH A REPRESENTED PARTY

(A) While representing a client, a member shall not communicate directly or indirectly about the subject of the representation with a party the member knows to be represented by another lawyer in the matter or with an employee of such party. Unless the member has the consent of the other lawyer."

The Discussion to the proposed Rule defines employee as "a person employed by the party at the time of the communication."

The State Bar recognizes that clarification of the rules regarding ex parte contacts is necessary because California courts have handed down contradictory rulings on this issue.

The controversial Los Angeles County Bar Association Ethics Committee Formal Opinion No. 410 is reportedly being revised. The opinion is among the most restrictive rules regarding ex parte employee contacts and has been under continuous attack by the plaintiffs' bar. Indications are that the Los Angeles County Bar is awaiting the final outcome of the State Bar deliberations.

Peter Laura, a CELA member, was among those who spoke in opposition to the limitation on contacts with current employees, stating that the ban would impede attorneys' abilities to properly investigate cases prior to filing. This is especially significant in light of the sanctions available for the filing of frivolous lawsuits.

CELA Executive Board member William Quackenbush is developing a proposal which will be submitted to the State Bar Subcommittee on behalf of CELA.

Members who wish to comment on the proposed Rule can address their comments to the Commission for the Revision of the Rules of Professional Conduct, State Bar of California, Office of Professional Standards, 555 Franklin Street, San Francisco, CA 94102-4498.

## PRACTICE TIPS

By: Joseph Posner, Esq.

It has become an article of faith among many defense firms to take an immediate deposition of the plaintiff in employment cases, even before the answer or other pleading responsive to the complaint is filed. Often, these depositions may last for three or four or five days, even if not always consecutively. There is at least one article on the subject and I have heard privately that some defense lawyers believe that these long, draining depositions are a tactic to be used in order to beat down a plaintiff. Inexperienced plaintiff's counsel need to be able to counter this technique effectively.

One way to do this, of course, is to know deposition rules intimately. The second, and probably as important method, is to prepare the plaintiff thoroughly for his or her deposition before serving the summons and complaint in every case. Although this technique will take more time for both the lawyer and the client, its use has become invaluable in our office. Another defense purpose is to amass material for a summary judgment motion, which we find is made in most of the employment cases. It is necessary that the plaintiff understand all of the facts stated in the complaint and what some of the expected questions will be. In approaching this with the client, counsel can point out that the client's deposition is an effective rehearsal for ultimate testimony at trial.

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### CELA FIRST MEETING

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accomplished through an organization which has as its basic focus the improvement of the legal status of the employment interest.

Hopefully, through the contacts provided by active membership in CELA we can all improve our skills in litigating on behalf of our clients and articulating this message to the public. Your membership and active participation in CELA are vital to the success of this effort. Plan to attend the January membership meeting in San Francisco.

## 1985 JURY VERDICTS

WRONGFUL TERMINATION CASES (CALIFORNIA)

Compiled by William C. Quackenbush

The following is a list of every California wrongful termination case reported in "Jury Verdicts Weekly," decided during 1985.

<u>MONTH</u>	<u>PLAINTIFF</u>	<u>DEFENDANT</u>	<u>COURT</u>	<u>VERDICT</u>	
January	Lucille Ruby	Industrial Indemnity Co.	Sacramento Co.	\$ 475,000	
	Robert Smith	J.C. Penney Company	San Joaquin Co.	291,000	
	Frank McCullough	S&H Insurance Company	Los Angeles Co.	20,000,000*	
	Mary Curtis	Northwood Homes	Alameda Co.	20,116	
February	Donald Ketchu	Sears, Roebuck & Co.	Santa Clara Co.	200,000	
	Lucie Michail	Fluor Engineers, Inc.	San Mateo Co.	-0-	
	Richard McKenna	Montgomery Ward	Alameda Co.	86,710	
	David Nicolodi	Pepsi Cola San Joaquin	Stanislaus Co.	-0-	
	Clyde Hill	Zoological Society	San Diego Co.	605,000	
March	Joan Danielson	Bank of America	San Francisco Co.	-0-	
	Michael Knight	Curtis-Lindsay, Inc.	Santa Clara Co.	-0-	
	Carmen Ortiz	Bank of America	Sacramento (Fed.)	250,000	
April	G. Hesse	Air France	Los Angeles (Fed.)	719,736	
	Mary Nevin	Victoria Station	San Francisco Co.	75,000	
May	John Kee	Farmers Insurance	Alameda Co.	520,000	
	Gerald Martin	Farmers Insurance	Alameda Co.	210,300	
	Lloyd Hooper	Fort Howard Paper Co.	Los Angeles Co.	500,000	
	Dorothea Garrett	Hanjin Container Lines	Alameda Co.	20,000	
June	Tina Stegeman	Sears, Roebuck & Co.	Alameda Co.	1,000,000	
	John Dawson	United Air Lines	S.F. (Fed.)	162,419	
	Arthur Ringham	A.T. Kearney, Inc.	S.F. (Fed.)	399,277	
July	Henry Hinrichsen	Carl Karcher Enterprises	Sacramento Co.	15,000	
	Daryle Ambrose	U.S. Steel Corporation	S.F. (Fed.)	265,016	
	Tom Lambert	FMC Corporation	Santa Clara Co.	34,000	
	George Ponsock	K-Mart Corporation	Washoe Co.	443,120	
August	Charles Strebel	TRW Microwave	Santa Clara Co.	-0-	
	Weiser/Seidenberg	IMI Inc.	Orange Co.	1,824,000	
	Jeannie Buscaglia	Ford Aerospace	Santa Clara Co.	100,000	
	Chiubgwa Coffey	Bell Aerospace	Orange Co.	-0-	
	Joanne Parker	Children's Hospital	Orange Co.	85,000	
September	Celeste Azzinari	Jacobs, Rosenblatt	Santa Clara Co.	7,500	
	R. Hope, J. Pond	Shearson Hayden Stone	Santa Clara Co.	2,695,741	
	James Hinds	Magna Corporation	S.F. (Fed.)	-0-	
	Charles Garrett	Montgomery Ward	Sacramento Co.	2,337,000	
	Hettie Monroe	Great American Printing	Fresno (Fed.)	102,650	
	Doe Manocchi	American Medicorp	Los Angeles Co.	60,000	
	William Bryant	Brae Corporation	San Francisco Co.	464,464	
October	William Stephens	Coldwell Banker	San Francisco Co.	325,035	
	Charles Colley	Rancho Del Rey Golf Club	Merced Co.	129,417	
	Suzanne Adelson	Jewish Family Services	San Francisco Co.	120,000	
	November	John Buckner	United Air Lines	S.F. (Fed.)	-0-
	Joan Sasser	Levi Strauss & Company	San Francisco Co.	-0-	
	Margaret Kiernan	Tandy Corporation	Sacramento Co.	49,000	
December	John Murphy	Champion International	Shasta Co.	200,000	
	Juan Parra	Watsonville Canning Co.	Santa Cruz Co.	135,000	
	Lisec & Jagga	United Air Lines	Santa Cruz Co.	2,972,000	
	Joseph Hayes	Blue Cross	San Diego Co.	-0-	
	Paul Ganci	Air California	Orange Co.	175,000	
	Jess Angotti	Commercial Refrigeration	Los Angeles Co.	84,833	
	Katie Williams	Sunrise Leasing	Sacramento Co.	1,354	

(\*Trial judge reduced this to \$10,000,000.)

1985 JURY VERDICTS

CALIFORNIA WRONGFUL TERMINATION CASES

Compiled by William C. Quackenbush

The following is a list of every 1985 California wrongful termination case involving an employee with 20 years or more service, as reported in "Jury Verdicts Weekly" through the May 9, 1986 issue.

<u>PLAINTIFF</u>	<u>DEFENDANT</u>	<u>YRS.</u>	<u>JURY VERDICT (AWARD TO PLAINTIFF)</u>		
			<u>COMPENSATORY*</u>	<u>PUNITIVES</u>	<u>TOTAL</u>
Jess Angotti	Commercial Refrigeration	37	\$84,833	-0-	\$84,833
John Dawson	United Air Lines	32	96,419	\$66,000	162,419
Gerald Martin	Farmers Insurance	24	110,300	100,000	210,300
William Stephens	Coldwell Banker	30	125,034	200,000	325,034
Arthur Ringham	A.T. Kearney, Inc.	23	198,980	200,297	399,277
Lucille Ruby	Industrial Indemnity	25	225,000	250,000	475,000
Lloyd Hooper	Fort. Howard Paper	20	324,000	176,000	500,000
Clyde Hill	Zoological Society	20	550,000	(pending)	550,000+
G. Hesse	Air France	25	319,736	400,000	719,736
Charles Garrett	Montgomery Ward	20	337,000	2,000,000	2,337,000
John Buckner	United Air Lines	21	(Plaintiff received \$0; layoff by UAL)		

FIRST NORTHERN CALIFORNIA CELA MEETING

On <sup>February</sup> ~~January~~ 21, 1987 at 10:00 a.m. CELA will hold its first Northern California membership meeting. It will be held at the Embassy Suites Hotel, located near the San Francisco Airport. The address is 150 Anza Boulevard, Burlingame, California. If you wish further information, you may contact either William Quackenbush, at (415)345-3525, or Bill Crosby at (714)553-1411. There will be a \$30.00 charge to attend and lunch will be furnished. Please make your reservations as soon as possible by contacting either William Quackenbush or Bill Crosby.

CELA NEWSLETTER STAFF

Editors: Fred M. Blum, Esq. and Susan J. Hartley, Esq.

IF YOU HAVE ANY SUGGESTIONS REGARDING THE CONTENT OF THIS NEWSLETTER, OR WISH TO SUBMIT ARTICLES FOR PUBLICATION, YOU CAN DO SO BY WRITING TO THE NEWSLETTER AT 3250 WILSHIRE BOULEVARD, SUITE 1750, LOS ANGELES, CALIFORNIA 90010.

JOIN CELA

If you are active in the employment law area and do primarily plaintiff's work and you wish to become a member of CELA and continue to receive this Newsletter, along with the other numerous benefits, just send your \$50.00 annual membership fee to CELA, 18200 Von Karman Avenue, Suite 820, Irvine, California 92715. Please include your full name, firm name, mailing address and telephone number.

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Suite 820  
Irvine, California 92715