

The LITIGATOR

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\$19 Million For Fired Worker *A jury says McKesson was wrong to get rid of a West Sacramento employee who had panic attacks.*

BY LORETTA KALB, BEE STAFF WRITER

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A former worker at McKesson Corp.'s West Sacramento distribution center has been awarded \$19 million by a jury that found she was unfairly fired because her panic disorder caused her to miss too much work. Charlene Roby, 57, formerly of Orangevale, was terminated after missing 10 days of work over 14 months, said her attorney, Christopher H. Whelan of Gold River. He said that amounted to discrimination and harassment against Roby because of her disability.

The Yolo County civil jury awarded Roby \$15 million in punitive damages and \$4 million in compensatory damages in decisions reached Friday and Monday. McKesson spokesman James Larkin said the San Francisco company was "extremely disappointed with the outcome of the case." "We do not believe that the verdicts are supported by the facts or the law," he added. "And the company intends to vigorously pursue all available legal remedies, including an appeal, if that is necessary."

Larkin said he could not discuss details of the case. The bulk of the compensatory award – or some \$2.7 million – was given on the basis of emotional distress. Of that amount, \$2.2 million was assessed against the Fortune 500 com-

pany, while another \$500,000 was awarded against Roby's immediate supervisor, who Whelan said was found to have harassed Roby.

"She was a 25-year employee whose performance was exemplary for 24 years," said Whelan. "She was affected by this mental condition, and they couldn't even cut her any slack for these absences." Whelan said the company penalized Roby, a liaison with customers, because of her disability, violating her protections under the Family Medical Leave Act, the California Family Medical Rights Act and the Fair Employment and Housing Act. The company's absenteeism policies, he said, were not consistently followed and not fully understood by workers at the site.

Roby, who moved to Grants Pass, Ore., after her April 2000 firing, said Tuesday that she suffered deep embarrassment on the job over her panic attacks, which brought offensive body odor. When she arrived for work, she said, she sometimes found "shampoos, deodorants, bath soaps, things like that on my desk." She would sweep those into a drawer, but "go into a head sweat."

"Her supervisor, Roby added, would bring pies or trinkets into the office for co-workers and exclude her." I wanted

to let it go," she said. "It was petty to me." But after Roby exhausted her six sick days and used four vacation days for illness, she was asked to resign or be fired, she said. Roby refused to resign and was terminated effective April 14, 2000, she said. "Now because of the whole thing, I'm agoraphobic (afraid of public places)," Roby said. "It's hard to deal with. It brings on the reaction, head sweats and shaking and ... I do self-mutilation. I've dug at my arms; I'm all scarred." Roby said she believed the company turned its back on her. "If it hadn't been for a few co-workers," she said, "I think (it) would have killed me."



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President's Message

By Margaret Doyle

SCA's annual Spring Reception was held on May 20th at the home of Allan Owen and Linda Whitney. I am proud to announce that SCA raised a total of \$6,000 for the Sacramento Food Bank.

Everyone who attended had a great time. There was lots of spirited bidding...!!! Again, thanks to all of you who donated to our auction.

I would like to thank Allan Owen, Linda Whitney, Jill Telfer, Paul Wagstaffe, Debbie Keller and the entire Board of Directors for their efforts in putting together this very worthwhile event.

Anyone interested in making a donation to the Sacramento Food Bank can contact me directly.

Our next Problem Solving Clinic will be held on June 24th at 5:30 at the Courthouse our speaker this month is Dr. Anthony Bellomo. He will be speaking on "Back Pain-Anatomy, Diagnosis & Cutting Edge Treatment." If you plan to attend, please make your reservations.

Travis Black will speak at our next Luncheon scheduled for June 25th at the Firehouse Restaurant.

Once again, SCA will be offering a seminar on LIENS this fall to update all of us on the changes that have taken place and what we can expect in the future. This will also be a lien workshop so bring your most troubling problems to our experts!

Have a great summer. Please let us know if there is a topic you would like us to consider.

Joe Fornasero,
Joe Marman,
Jack Vetter
and Allan Owen.



Allan Owen,
Hartley Hansen
and Honorable Darrell Lewis (Ret.)



Continued on page 6

Fletcher v. Davis

No. S114715 (Cal. June 10, 2004)

BY CHRISTOPHER KREEGER, ESQ., SCA BOARD MEMBER

Fletcher was retained by a client to defend a breach of lease lawsuit and file a counter lawsuit for conversion. Fletcher's client orally agreed to pay all fees and costs. In lieu of cash, his client agreed to grant Fletcher a lien on any judgment or settlement of the counter lawsuit, and client orally agreed to pay the difference if no judgement or settlement were obtained. Fletcher sent client a letter confirming the fee agreement. The original lawsuit against client was settled, and the client's counter suit went to trial, which ended in a mistrial. Client then discharged Fletcher and retained new counsel. Client's conversion claim was tried again, this time resulting in a judgment for \$504,000. The judgment proceeds were disbursed by the new attorney. The next day, the prior attorney, Fletcher, learned of the disbursement and filed suit against client and defendant in the conversion action, alleging they were on notice of his lien for fees and costs at the time they disbursed the judgment proceeds. The trial court ruled that no valid lien existed because, under rule 3-300, a client must consent in writing to an attorney's charging lien against the client's future recovery. The Trial Court sustained demurrers and dismissed the action on the grounds that Fletcher did not and could not plead facts showing the perfection of a lien on the client's judgment or that defendants had knowledge of such lien. The Court

of Appeals reversed holding that Fletcher's lien did not have to be in writing to be valid, and that Fletcher did not have to obtain a judgment as to the existence and amount of the lien to obtain a judgment as to the existence and amount of the lien before asserting a lien on the client's recovery. The California Supreme Court granted review, reversed and agreed with the Trial Court. The Supreme Court felt that Fletcher's "charging lien" (for fees in costs) was a "security interest" in the proceeds of the litigation, which was "adverse" to his client. As such, as attorney an attorney who secures payment of hourly fees by acquiring a charging lien against a client's future judgment or recovery has acquired an interest that is adverse to the client, and so must comply with the requirements of rule 3-300. Fletcher failed to comply with the rule. Accordingly, Fletcher's lien may not be enforced in this proceeding. The Supreme Court went on to say that "were we to hold otherwise, we would, in effect, be both countenancing and contributing to a violation of a rule we formally approved in order to protect the public and to promote respect and confidence in the legal profession. Such a result would be untenable as well as inconsistent with the policy considerations that animated the adoption of rule 3-300.



Calendar of Events ...

(Sacramento Consumer Attorney's Upcoming Activities)

TUESDAY, JULY 13, 2004

Q&A Luncheon

Time: 12 Noon • Location: Mexico 70 (6601 Folsom Blvd.)

SCA Members Only

THURSDAY, JULY 22, 2004

SCA Problem Solving Clinic • "Discovery in the Typical Auto Case" • Speaker: *TBD*

Time: 5:30 to 7 p.m. • Sacramento Courthouse

FRIDAY, JULY 23, 2004

SCA Luncheon • "TBD" • Speaker: *TBD*

Time: 12 Noon • Firehouse Restaurant

TUESDAY, AUGUST 10, 2004

Q&A Luncheon

Time: 12 Noon • Location: Mexico 70 (6601 Folsom Blvd.)

SCA Members Only

THURSDAY, AUGUST 26, 2004

SCA Problem Solving Clinic • "TBD" • Speaker: *TBD*

Time: 5:30 to 7 p.m. • Sacramento Courthouse

FRIDAY, AUGUST 27, 2004

SCA Luncheon • "TBD" • Speaker: *TBD*

Time: 12 Noon • Firehouse Restaurant

TUESDAY, SEPTEMBER 14, 2004

Q&A Luncheon

Time: 12 Noon • Location: Mexico 70 (6601 Folsom Blvd.)

SCA Members Only

THURSDAY, SEPTEMBER 23, 2004

SCA Problem Solving Clinic • "TBD" • Speaker: *TBD*

Time: 5:30 to 7 p.m. • Sacramento Courthouse

FRIDAY, SEPTEMBER 24, 2004

SCA Luncheon • "TBD" • Speaker: *TBD*

Time: 12 Noon • Firehouse Restaurant

SATURDAY, OCTOBER TBA, 2004

SCA Problem Solving Clinic • "Liens Update" • Speaker: *TBD*

Time: 5:30 to 7 p.m. • TBD

TUESDAY, OCTOBER 12, 2004

Q&A Luncheon

Time: 12 Noon • Location: Mexico 70 (6601 Folsom Blvd.)

SCA Members Only

TUESDAY, OCTOBER 28, 2004

SCA Problem Solving Clinic • "Managing a Solo Practice"

Speaker: *Jack Vetter, Esq.*

Time: 5:30 to 7 p.m. • Sacramento Courthouse

For reservations or more information on any of these events, contact Debbie at 451-2366

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Litigator Q&A

JUNE 8, 2004

Topics at the June Q&A lunch included: 1) evaluating an unusual Wrongful Death case of an adult son who had no contact with his parents for fifteen years before, 2) an erudite analysis of a difficult hearsay question central to a serious injury case, 3) a discussion of strategies to obtain settlement money above the policy limit from the defendant personally, 4) a surprising revelation that all present had at one time or another been approached by cappers, and 5) a quick review of the State Bar's position on lien ethics.

Come join us on the second Tuesday of the month [July 13, August 10, September 14, etc.] at noon at Mexico 70 just East of 65th Street on Folsom Blvd. No reservation, no materials, no MCLE, no non-members. Just bring an issue or question and get supportive, considered, opinions and related experiences from a bunch of other attorneys.



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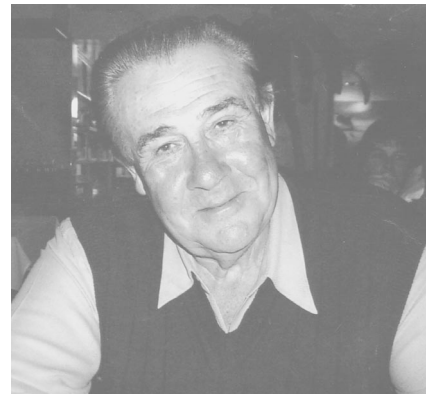


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President's Message - SCA Spring Reception

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*Margaret Doyle and
Mark Swartz.*



*Representative from the
Sacramento Food Bank,
Margaret Doyle and Paul and
Jennifer Wagstaffe.*

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