

Jury Rejects Sexual-Harassment Claims

Plaintiffs Settled With UC Regents, But Lost Against Surgeon

By Eron Ben-Yehuda

A prominent UCLA heart surgeon has won a defense verdict in a case alleging that he sexually harassed two former employees.

A Los Angeles Superior Court jury rejected claims that Dr. Gerald Buckberg, 68, created a hostile work environment by, among other things, telling crude sexual jokes, swatting one of the plaintiffs on the buttocks and rubbing up against the other when he visited her workstation. *Becker v. Buckberg*, BC291868 (Los Angeles Super. Ct., verdict March 4, 2004).

"To disprove allegations is so much tougher than making them," defense co-counsel Marc Smith says. "[But] Dr. Buckberg was vindicated."

Plaintiffs' attorney Cara L. Eisenberg says she'll appeal if post-trial motions aren't granted. Eisenberg says jurors misunderstood the verdict forms, which asked whether either Judith Becker, 47, or Amy Pape, 43, were subjected to unwanted harassing conduct "because she was a woman."

That confused jurors, because they apparently didn't think Buckberg treated men he worked with any better than he treated the two women, Eisenberg says.

"He was an equal-opportunity harasser," says Eisenberg of the Eisenberg Law Firm in Beverly Hills.

The jury believed its hands were bound by the verbiage in the forms, she says.

Smith disagrees, saying that the panel didn't consider Buckberg's treatment of men because that wasn't an issue in the case.

"That's the most ridiculous thing I've ever heard," Smith of Encino's Krane & Smith says.

UCLA investigated the women's claims and found probable cause to believe that Buckberg had harassed them sexually. The school postponed a disciplinary hearing until after the trial, but no new date has been set, Smith says.

Becker and Pape filed suit in March 2003. The University of California regents, named as co-defendants, settled before trial.

Buckberg runs a medical research lab at UCLA, where he's also a professor.

"In the world, he's in the top five of cardiothoracic surgeons," Smith says.



ROBERT LEVINS / Daily Journal

Defense attorneys Rosa Cumare and Marc Smith. "To disprove allegations is so much tougher than making them," Smith says.

Both Pape and Becker filed a grievance with their union against Buckberg on Jan. 4, 2002.

Pape transferred to another UCLA department a few weeks later. Becker stayed on until July, when she went on administrative leave. A few days before Becker left, Buckberg served her with a civil complaint alleging that she never paid him back for a \$20,000 loan. Becker alleged that the suit was in retaliation for her charges of sexual harassment and that the money he gave her was a gift.

Smith says Buckberg's relationship with the women soured after he criticized their work.

"It had nothing to do with sexual harassment," he says.

In the settlement reached with the regents, Pape received \$67,500 and Becker received

\$250,000 plus lifetime medical and dental benefits worth \$700,000, Eisenberg says.

Buckberg continued to fight.

After a three-week trial, a jury of seven women and five men denied Becker's request for \$1.25 million for emotional distress and \$157,000 for lost wages and Pape's request for \$250,000 for emotional distress.

But Buckberg didn't score a complete victory. The jury found that Buckberg had forgiven the \$20,000 loan to Becker.

Smith's co-counsel were Ann Penners Bergen of Krane & Smith and Rosa Cumare of Pasadena's Hamilton & Cumare.

The jury made the right decision, Smith says. A lot hung in the balance for Buckberg.

"The guy's career was on the line," Smith says.