

# Balanced

## by Mary T. Rahmes

**Representing both employees and employers enables a formidable duo to maintain the delicate equilibrium between labor and management.**

Gary B. Ross and Andrew D. Morrison, 40-year-old partners who specialize in labor and employment law in Beverly Hills, successfully negotiated into the wee hours of the night to settle an unusually difficult cancer discrimination case for \$1.75 million. In *Beck v. Sybase Inc.*, (BC 173855), the jury unanimously awarded \$621,592 to Justin Beck, whose late wife, Vivian Beck, was fired from her job of six years after developing lymphoma. The defendant computer company purportedly eliminated Vivian's position as a senior district sales office manager two weeks after she returned from a month-long hospital stay for a stem cell transplant. After a four week trial, the jury came back with its verdict in just five hours.

Ross and Morrison, who co-tried the case, were concerned that the jury was coming back a little too quickly, but they were hopeful that the jury thought the case was compelling enough so they didn't need a lot of time. Fortunately that was the case. On the sixth anniversary of Ross & Morrison's partnership, the jury awarded "every penny of Vivian's \$21,592.12 in lost earnings, and every cent of the \$600,000.00 requested for her emotional distress," said Ross. The jury also unanimously and significantly made a finding of malice against Sybase, which paved the way for the next phase of the trial on punitive damages. Based upon the finding of malice, the jurors' comments that they were prepared to "award a substantial sum" in the punitive damage phase, and Sybase's net worth approaching \$500 million, the large computer company decided it was in everyone's best interest to settle, according to Ross.

After the verdict came in, trial judge Hon.

They are very proud of the fact that they customarily represent both sides. In doing so, they strive to maintain the equilibrium between workers and management. Ross maintains that "When workers are treated fairly, business benefits on all levels. What's good for labor is also good for management." They agree that "it's a delicate balance between the worker's right to a fair working environment and the company's right to manage its business," said Ross. Consequently, while they litigate on behalf of employees, they also defend companies against unwarranted claims.

One of their most notable accomplishments was representing the plaintiff employee in *Lazar v. Superior Court*, 12 Cal.4th 631 (1996), a landmark California Supreme Court decision which "changed the landscape of California employment law by expanding worker's rights. Prior to the Court's decision in *Lazar*, employee's rights had been severely limited under *Foley v. Interactive Data Corp.*, 47 Cal.3d 654 (1988) "While *Foley* was pro-employer, *Lazar* defined and limited the scope of *Foley* to the benefit of employees," Morrison said. Essentially, *Lazar* eliminated the doctrine of "*Foley* tort immunity and reaffirmed an employee's right to sue an employer for fraud and other common law tort theories," said Morrison, who argued the case before the Supreme Court.

William C. Quackenbush, senior partner of Quackenbush & Quackenbush of San Mateo, a 14 year employment litigator whose practice is limited to the exclusive representation of employees, wrote an amicus brief on behalf of California Employment Lawyers Association and in that capacity recalls working with Andrew Morrison on the case. "I was very impressed with his [Morrison's] enthusiasm, energy and skill in

Ernest M. Hiroshige says he told counsel "it's significant that it was unanimous" and encouraged them to discuss settlement. After two years of cumbersome and painful litigation, Ross says, they "wanted to send an important message to employers, and Mr. Beck needed closure on this phase of his life - he had suffered a lot." Ross added that "Sybase had a formidable defense which was hard to surmount."

The company maintained that Vivian was laid off as part of an ongoing reorganization, and established at trial that in addition to Vivian, Sybase let go 700 other workers. "Unlike other forms of employment discrimination such as race, gender, age and religion, discrimination based on medical condition is tricky and does not evoke the same visceral reaction," Ross said. "It's hard to convince the average juror that a manager could be despicable and mean-spirited enough to fire someone with a serious medical condition."

The keys to Ross and Morrison's success at trial were four-fold: 1) the videotaped deposition of Vivian Beck, which they took three-weeks before she died at age 48; 2) on cross examination they significantly undermined the credibility of the company's decision maker; 3) a Sybase internal "smoking gun" memo; and 4) while on the stand, a senior executive of Sybase conceded that Vivian should never have been fired, and would not have been fired under company policy, had the company known the true scenario which was uncovered during discovery.

Since graduating from law school, Ross and Morrison's respective careers have been devoted to business and labor litigation. Ross graduated from the University of Southern California School of Law in 1985 and immediately began working in Pettit & Martin's labor department. Thereafter, he joined Greenberg, Glusker, Fields, Claman & Machtinger as a business and labor litigation associate where he remained until 1989.

Morrison graduated from Loyola Marymount

advancing the argument to the Supreme Court. He was not at all intimidated by the process or by the Justices, he was very dynamic in his presentation, very thorough, he did an excellent job in arguing and produced a great result for all employees throughout the state. I think that's a good testimony to his skill at appellate advocacy, and just his overall enthusiasm and great skill in advancing the causes of employees," Quackenbush said.

Ross & Morrison's appellate practice has also included frequent challenges in the Court of Appeals on the ever-important issue of whether agreements to arbitrate workplace disputes are enforceable. As a result, the Courts have given definition to such agreements between employees and employers. Ross also serves as a professional neutral, and has been an American Arbitration Association panelist mediator since 1994. He is on their general panel and accepts labor and employment engagements.

Thomas P. Burke, managing partner of Brobeck, Phleger & Harrison, says that Ross and Morrison "are intelligent, aggressive, yet highly ethical - qualities that are sadly lacking in some attorneys these days." Burke, who specializes in labor law exclusively on behalf of employers, unions, and traditional labor and management relations, always sees them as potential adversaries. However, Burke has worked with Ross and Morrison in coordinating a common defense when Burke represented the defendant employer and Ross & Morrison represented the defendant employees. In employment disputes, it is not uncommon for the company and individual employees to be named in a suit, Burke explained. Although the two groups are often aligned, Burke says in some instances a conflict of interest arises, for example when the company seeks indemnification from the individual employees. In those circumstances, Burke has recommended Ross & Morrison as defense counsel for the employees. "They are excellent, first-rate lawyers and you always want top representation, especially where the employer and employees' interests are essentially

University in 1989, and in 1990 he became a business and employment litigation associate with Freshman, Marantz, Orlanski, Cooper & Xlein. It was there that Ross and Morrison's paths crossed. Ross had been working in the business and employment division since 1989. They both left the firm to form Ross & Morrison in March, 1993.

Since the firm's inception, Ross and Morrison try to handle all of their cases together. Their small, customized, labor litigation boutique allows them to be an aggressive team with an unwavering commitment to what they do, they said. They carefully select their cases which, for the most part, are evenly split between representing employees and employers.

compatible," Burke said. Burke has also referred employee disputes to Ross & Morrison "because he respects them, their abilities, and they are top in the field," he added.

Acting as advocates and neutrals are not Ross and Morrison's only roles. Somewhat surprisingly, they also offer counseling and training programs designed to apprise both labor and management of their workplace rights and remedies. Even though no litigation has commenced, they advise a number of entities, ranging from small business concerns to international, publicly traded companies with thousands of employees, regarding employment issues. Morrison maintains that "education of management is a key component of lawsuit avoidance. It is a way to ensure company productivity rather than embroilment in employee disputes, and is a means to assure compliance with the law which inures to everyone's benefit."

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