

Daily Journal

VERDICTS & SETTLEMENTS

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DISABILITY DISCRIMINATION Failure to Accommodate

Verdict: Defense

CASE/NUMBER: Gene Venegar
v. Community Hospital of San
Bernardino Inc., and Does 1-100,
inclusive / CIVDS1707026

COURT/DATE: San Bernardino
Superior / Dec. 1, 2022

JUDGE: Thomas S. Garza

ATTORNEYS:

Plaintiff - James Urbanic (Urbanic
& Associates)

Defendant - Yuk K. Law, Zachary
Schwake (Law & Brandmeyer
LLP)

EXPERTS:

Plaintiff - Nitanih Vangala M.D.
(Cardiology); Richard A. Ruiz
(Forensic economics)

Defendant - Daniel Wohlgelernter
M.D. (Cardiology)

FACTS: Plaintiff Gene Venegar
was a LVN (licensed vocational
nurse) working in the Behavioral
Health Unit of Community
Hospital of San Bernardino
beginning in 2002. Job duties
included the supervision of
mental health patients in the
unit's open-air smoking patios
during designated smoking
breaks for the patients. In
September 2014, plaintiff
requested and received the
accommodation to be away
from the smoking patios, unless
there was a case of emergency
affecting the safety of the patients
or staff. The accommodation
was granted based on plaintiff's
physician's certification that his
asthma condition and resulting
bronchospasms were exacerbated

by the exposure to second-hand
smoke.

Plaintiff resigned from his job
and took early retirement in
November 2018, contending
his health prevented him from
continuing to work. He was
66.5 years old at the time of his
resignation and retirement.

Plaintiff's sole remaining
claim at trial was the failure to
accommodate a disability. Other
FEHA claims, including the
punitive damages claim, were
summarily adjudicated and
dismissed by the court.

PLAINTIFF'S CONTENTIONS:
Plaintiff claimed his supervisors
and the hospital administrators
never complied with the
accommodation between
September 2014 and January
2017, when Behavioral Health
Unit patients were no longer
allowed to smoke. Plaintiff
contended that due to the
failure to accommodate between
September 2014 and January 2017
he was subjected to be exposed
to second-hand smoke, which
caused a complete blockage in his
left ascending coronary artery,
a "near" heart attack, and an
emergency procedure to place
a stent in his coronary artery in
February 2018.

DEFENDANT'S CONTENTIONS:
Defendant contended that
plaintiff was accommodated,
and that his alleged "near" heart
attack was not due to intermittent
or occasional second-hand
smoke exposure, but was due to
his uncontrolled hypertension,
hyperlipidemia and pre-diabetes,
and his anxiety and depression
were preexisting conditions from
family and financial stressors.

INJURIES: Plaintiff suffered
coronary artery blockage,
"near" heart attack, anxiety and
depression

DAMAGES: Plaintiff asked the
jury to award \$357,093 for past
lost wages and \$3,002,000 for
past and future noneconomic
damages.

SETTLEMENT DISCUSSIONS:
Defendant issued a CCP section
998 offer in the amount of
\$25,000.

RESULT: Defense verdict

FILING DATE: Apr. 17, 2017