

Daily Journal

FEBRUARY 3, 2021

TOP VERDICTS

THE LARGEST & MOST SIGNIFICANT VERDICTS AND APPELLATE REVERSALS IN CALIFORNIA IN 2020

TOP APPELLATE REVERSALS

Judd v. Weinstein

Widespread outrage over Harvey Weinstein's predations of vulnerable women kindled the #MeToo campaign and showed that powerful men who exploit their clout sexually are no longer immune from criminal sanction. Yet a federal trial judge in 2018 hesitated to apply California's statute prohibiting sexual harassment in business, service or professional relationships to the case of Ashley Judd's civil claims against the Hollywood producer.

To reverse the judge's view on appeal and expand the scope of the statute became a novel test of the law that was critically significant, said Theane D. Evangelis, a member of the Gibson Dunn team representing Judd. "It was incredibly important because in bringing the case in the first place Ashley Judd's goal was to help all victims of sexual harassment. She wanted this to be a win for everyone." The statute in question was California Civil Code section 51.9, which at the time prohibited sexual harassment in business, service or professional relationships. Lawmakers in 2019 amended it to cover relationships involving movie directors and producers.

Judd learned that Weinstein had retaliated against her for rejecting his advances by casting doubt on her professionalism to director Peter Jackson, sabotaging her prospective role in The Lord of the Rings movie trilogy. She sued for defamation, interference with prospective economic advantage, sexual harassment and violation of California's Unfair Competition Law.

U.S. District Judge Philip S. Gutierrez of Los Angeles let go forward Judd's claims for defamation, interference with prospective economic advantage and the UCL violations, but dismissed her sexual harassment claim. Gutierrez granted permission for an appeal of the dismissal, stating that whether section 51.9 "applied to sexual harassment committed by a producer against an actor was an issue of first impression."

case **INFO**

Revival of sexual harassment claim
9th U.S. Circuit Court of Appeals
Judge Mary H. Murguia

Appellant's Lawyers: Gibson, Dunn & Crutcher LLP, Theodore J. Boutrous Jr., Theane D. Evangelis, Michael H. Dore, Lauren M. Blas, Marissa B. Moshell, Sameera Ripley

Appellee's attorneys: Kupferstein Manuel LLP, Phyllis Kupferstein

"Judge Gutierrez grappled with the question and was thoughtful about it," said Michael H. Dore of the Gibson Dunn team. "He concluded that at the time anything bearing on employee relationships was outside of the statute."

After briefing and oral argument, a unanimous circuit panel found that the statute even before it was amended "plainly encompassed" Judd's relationship with Weinstein, which "consisted of an inherent



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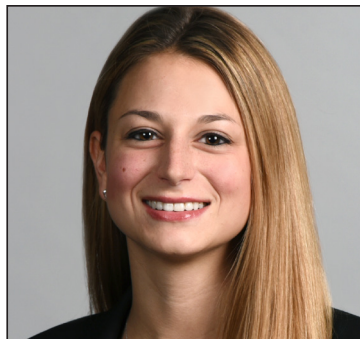
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power imbalance wherein Weinstein was uniquely situated to exercise coercion or leverage over Judd by virtue of his professional position and influence as a top producer in Hollywood." *Judd v. Weinstein*, 19-55499 (9th Cir., op. filed July 29, 2020).

Weinstein's lawyer, Phyllis Kupfer-

stein of Kupferstein Manuel LLP, did not respond to a message seeking comment. She argued to the panel that the statute did not cover film producers until it was amended.

Judd's sexual harassment claims, along with her other causes of action, are back before the district court.

— John Roemer