

# VERDICTS & SETTLEMENTS

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## Lawsuit Caused Disability? Jury Says: Uh-Uh

**Type:** Malicious prosecution

**Verdict:** Directed verdict for defendants Rodolfo and Isabel Ramirez after both plaintiff and defendants rested. Unanimous jury verdict for defendant David Drexler.

**Case/Number:** Carole Sacks Allen v. David Drexler, Rodolfo Ramirez and Isabel Ramirez/BC 154430

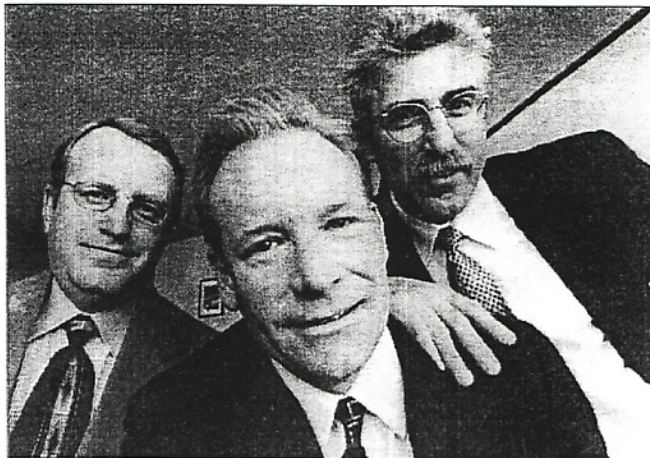
**Court/Date:** Los Angeles Superior Court, Central Civil West / Dec. 12, 1998

**Judge:** Sherrill D. Luke, Dept. 324, Central Civil West (long course)

**Attorneys:** Plaintiff — Nathan B. Hoffman, Lance Orloff (Daniels, Baratta & Fine, Century City). Defendants Rodolfo and Isabel Ramirez — Jonathan B. Cole, Jon D. Robinson Nemecek & Cole, Sherman Oaks). Defendant David Drexler — James J. Kjar (Reback Hulbert, McAndrews & Kjar, Manhattan Beach), Jonathan B. Cole, Jon D. Robinson (Nemecek & Cole, Sherman Oaks).

**Technical experts:** Plaintiff — Carl Keener (Baker, Silverberg & Keener), attorney; Daniel Wallace, M.D., rheumatologist; Andrew Wachtel, M.D., pulmonologist. Defendants — Charles Mazursky (Mazursky, Schwartz & Angelo), attorney; Peng Thun Fan, M.D., rheumatologist/immunologist; James L. High, M.D., psychiatrist.

**Facts:** In July 1992, Rodolfo Ramirez was involved in an industrial accident when a lid from a pressurized irrigation tank blew off in his face. As a result of this accident, Rodolfo Ramirez suffered severe head and face trauma including numerous fractures, brain injuries, loss of vision in one eye, loss of smell and loss of taste. While Ramirez was hospitalized, an individual named Mr. Uribe allegedly approached him and brought him to the Law Offices of Sheldon Sacks in Beverly Hills, which consisted of Sheldon Sacks and his daughter, Carole Sacks Allen. Ramirez and his wife, Isabel Ramirez, retained this law firm to pursue a product liability/premisses liability action on their behalf. Thereafter, Sacks and Allen purportedly mishandled the Ramirezes' case and failed to properly prepare it for trial. On Jan. 4, 1994, five days before the trial date, the attorneys allegedly exerted extreme pressure on the Ramirezes at the settlement conference to settle their case for a purportedly undervalued settlement, consisting of \$1,250 per month for 20 years. Allen contends that the settlement was not nominal and actually totaled \$400,000. The day after the settlement conference, the Ramirezes dismissed their counsel and substituted in David Drexler as their attorney. On the eve of trial, Drexler was able to obtain a 90 day continuance during which time he was not allowed to conduct any further discovery. Despite this restriction, Drexler obtained a jury verdict of \$1.9 million for his clients. The award was reduced to \$1.2 million because the jury found that Ramirez and his employer were comparatively negligent. In June 1994, after the conclusion of this action, the Ramirezes again retained Drexler to sue Sacks, Allen and their law firm for legal malpractice, fraud, intentional infliction of emotional distress, breach of fiduciary duty and breach of contract. Drexler opined that if the Ramirezes' previous counsel had provided them with adequate repre-



**Finding a Cure** — Wining lawyers Jon D. Robinson, James J. Kjar and Jonathan B. Cole, from left, say the jury saw through a claim that a lawsuit caused a lawyer to become disabled.

sentation, they would have secured a substantially greater judgment, which would not have been diminished by a comparative negligence offset. Allen was included as an individual defendant due to her alleged active participation in representing the Ramirezes and based on principles of actual or ostensible partnership. In July 1995, Allen filed a motion for summary judgment wherein she contended that she was only an employee and had no substantive involvement in the underlying premisses liability action. In August 1995, before the opposition to the motion for summary judgment was due, the Ramirezes voluntarily dismissed Allen, allegedly for tactical and economic reasons not bearing on the substantive merits of the case. The legal malpractice case against the remaining defendants was ultimately unsuccessful when the court granted Sacks' motion for summary judgment. The Court concluded that Drexler's handling of the case undercut the Ramirezes' claim for damages and that there was no causal nexus between the comparative negligence finding and Sacks' representation of the Ramirezes.

On July 25, 1996, Allen filed a malicious prosecution action against the Ramirezes, her firm's former clients, as well as their attorney, Drexler. Allen alleged that the Ramirezes and Drexler sued her without probable cause, knowing that she was not a partner in the Law Offices of Sheldon Sacks and that she had no involvement in the Ramirezes' case. Further, Allen contended that she was voluntarily dismissed from the Ramirezes'

action because the Ramirezes and Drexler knew that they didn't have a viable theory of liability against her. Finally, Allen averred that as a result of the lawsuit filed against her, she suffered an exacerbation of her asthma and severe mental distress, which precipitated the onset of systemic lupus. The activation of the systemic lupus allegedly caused Allen to suffer brain damage and to be totally disabled from the practice of law.

**Contentions:** Plaintiff alleged that the Ramirezes and Drexler wrongfully sued her for legal malpractice without probable cause, despite their knowledge that she was not a partner in her father's law firm and that she was not actively involved in the Ramirezes' prior lawsuit. Further, plaintiff claimed that the court had previously ruled that her firm did not mishandle the Ramirezes' premisses liability/product liability suit. Additionally, plaintiff contended that she was voluntarily dismissed from the Ramirezes' action against her on the substantive merits and that she was on the verge of prevailing on a pending motion for summary judgment. Plaintiff asserted that as a result of the meritless lawsuit filed against her, she experienced aggravation of her asthma, severe mental distress and the activation of systemic lupus. Plaintiff further alleged that the lupus illness was completely debilitating, resulted in brain damage and totally disabled her from the practice of law.

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Defendants contended that Sacks, Allen and their firm were grossly negligent in their representation of the Ramirezes in the premises liability/product liability case and that their conduct allegedly amounted to fraud. Defendants further averred that there was extensive evidence indicating that plaintiff Allen had been actively involved in representing the Ramirezes. Moreover, defendants alleged that there were sufficient facts to conclude that Allen could be liable under the claims asserted against her in the legal malpractice action. Defendants also contended that Allen's dismissal from the legal malpractice suit was not a "favorable termination" sufficient to bolster a malicious prosecution claim because she was dismissed solely for economic and practical reasons not related to the substantive merits of the case. Finally, defendants alleged that there was no causal link between the legal malpractice lawsuit and plaintiff's lupus illness and related injuries. Defendants Rodolfo and Isabel Ramirez claimed that they relied on the advice of their attorney, Drexler.

**Damages:** Plaintiff sought damages in excess of \$2.5 million based on her alleged medical specials; attorneys' fees for the defense of the underlying case; loss of earnings based on total disability; general damages, including pain and suffering, stemming from the systemic lupus; and punitive damages. Plaintiff claimed medical damages in the amount of \$75,000, loss of earnings in the amount of \$2.5 million (with-drawn during trial) and attorneys' fees in the amount of \$85,000.

**Jury trial:** Length, eight weeks. Directed verdict for defendants Rodolfo and Isabel Ramirez. Defense verdict (for defendant Drexler; Poll, 12-1) for defendant Drexler on the disputed issue of whether Allen's dismissal from the prior lawsuit constituted a "favorable termination." Deliberation, two days.

**Settlement discussions:** In January 1997, plaintiff made a C.C.P. §998 demand for \$499,999. At the mediation in August 1998, Drexler's insurance company allegedly offered to pay \$235,000, to which Drexler refused to consent. In September 1998, defendant Drexler made a C.C.P. §998 offer of \$25,000.

**Expert testimony:** Plaintiffs legal expert, attorney Carl Keener, testified that Drexler did not have a reasonable basis upon which to file an action based on legal malpractice, fraud, intentional infliction of emotional distress, breach of fiduciary duty or breach of contract. Keener opined that these claims were baseless due to the lack of evidence indicating that Allen was actively involved in representing the Ramirezes or that she was a partner in her father's law firm. Plaintiffs medical expert, Dr. Wallace, testified that Allen suffered from systemic lupus, which condition was exacerbated by the stress she experienced from the legal malpractice action filed against her. Defendants' legal expert, attorney Charles Mazursky, testified that from a plaintiff lawyer's perspective, Drexler owed a duty to his clients to name both Sacks and Allen in the underlying legal malpractice action. Defendants' medical and psychiatric experts, Drs. Fan and High, respectively, testified that Allen's medical condition was not necessarily systemic lupus and that even if she did suffer from lupus, that the legal malpractice lawsuit did not cause it. Additionally, they testified that the plaintiff's medical records reflected that she had experienced a "flare", which signaled the onset of lupus, three months prior to the filing of the legal malpractice suit.

**Post-trial motions:** The plaintiff filed a notice of appeal on Feb. 8, 1998. Additionally, plaintiff filed a motion to tax costs, which is scheduled for hearing on April 1.

**Other information:** After plaintiff and defendants rested, the court granted defendants Ramirezes' motion for directed verdict. In its special verdict, the jury found in favor of defendant Drexler on the pivotal issue of whether Allen's dismissal from the prior action was a favorable termination for purposes of malicious prosecution. Based on defense counsel's post-verdict discussions with the jury, it is defense counsel's belief that the jury would have voted in favor of the defense on all of the other issues, including probable cause, malice, causation and damages.

—Diane Taylor