



## Client Alert

December 2007

### Employer Faces \$2 Million Judgment For Mishandling Employee's Disability Accommodation Request

A recent decision of the California Court of Appeal, *Wysinger v. Automobile Club of Southern California*, illustrates the risks employers can face if they do not respond adequately to an employee's request to accommodate his or her disability. Guy Wysinger was the district manager of the Santa Barbara office of the Automobile Club of Southern California. He suffered from lupus, heart problems and arthritis. In the late 1990s, the Automobile Club decided to implement a new compensation plan, which Wysinger believed unfairly impacted older workers. He complained about the plan to the Equal Opportunity Employment Commission, alleging that it amounted to age discrimination.

Three years later, Wysinger sought the position of district manager of the Automobile Club's Ventura office, claiming the commute would be less difficult for him. When he did not receive the position, Wysinger filed suit against the Automobile Club, alleging that it had discriminated against him because of his age and his disability, had failed to accommodate his disability, and had retaliated against him because of his earlier complaint to the EEOC.

The jury rejected Wysinger's allegations that the Automobile Club had discriminated against Wysinger because of his age or disability, or that it had failed to accommodate his disability. Nonetheless, the jury found that the Automobile Club had "failed to engage in an interactive process regarding his disability" and had retaliated against him because of the age discrimination complaint he had filed years earlier. The jury found that Wysinger had suffered \$204,000 in economic losses and had suffered non-economic damages (i.e., emotional distress) in the amount of \$80,000. The jury also awarded one million dollars in punitive damages against the Automobile Club, which was three times the amount of the Automobile Club's net worth. In addition, the trial court ordered the Automobile Club to pay attorneys' fees to Wysinger in the amount of \$978,791.

The California Court of Appeal affirmed these awards. The appellate court found that, even though there was no evidence that the Automobile Club had failed to accommodate Wysinger's disability, it could still be held liable for failing to engage in an interactive dialogue with him concerning the accommodations that could be made available. The appellate court also found that the million dollar punitive damages award was reasonable, because it was "less than four times greater than the compensatory award." Finally, the appellate court upheld the award of nearly one million dollars in attorneys' fees, even though Wysinger had not prevailed on most of his claims.

The decision shows that responding properly to an employee's complaints and requests for accommodation matters just as much as avoiding discrimination. Although the Automobile Club did not discriminate against Wysinger or fail to accommodate his disability, it still faced substantial liability because of the way it handled Wysinger's complaints and requests.

*For further information regarding this case and its implications for business, please contact Russell I. Glazer, (310) 789-1216 or [rglazer@troygould.com](mailto:rglazer@troygould.com).*