Walkup, Shelby, Bastian, Melodia, Kelly, Echeverria & Link

FOCUS ON TORTS

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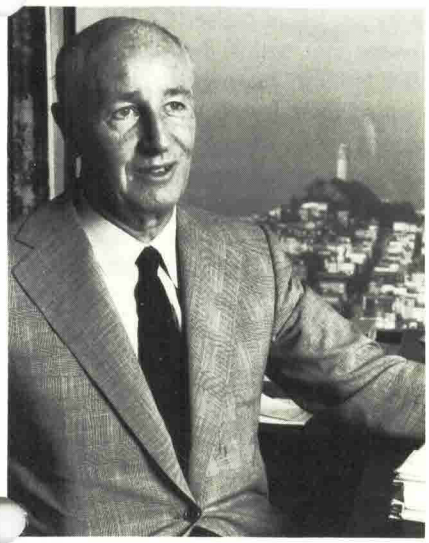
Bruce Walkup: A Career Distinguished by Success



Fifty years ago the firm's founder, Bruce Walkup, left a defense practice in Oakland to practice business law in San Francisco. Some five years later he decided on the field of plaintiffs' personal injury litigation. In 1959 he founded the present firm.

The career of Bruce Walkup has truly been an anthology of trial court accomplishments. His early courtroom successes did not go unnoticed by his peers. In 1969 he was named Trial Lawyer of the Year by the California Chapter of the American Board of Trial Advocates. His trial skills were also recognized by his election to membership in the prestigious American College of Trial Lawyers, the International Academy of Trial Lawyers and the International Society of Barristers. Rather than rest on those laurels, he went on to further distinguish himself as a trial lawyer.

In *Niles v. City of San Rafael*, 42 Cal.App.3d 230, he obtained over $4 million for a single injury which was then a world record. The award was affirmed on appeal. He also obtained a $3.5 million verdict in Los Angeles in *Terracciano v. I.T.T.* and a $2.6 million verdict in *Peeples v. Kawasaki*, which was tried in Oregon and was then the largest verdict in that State's history. All totaled, he tried 8 cases where the verdict exceeded a million dollars and settled well over 50 others that also exceeded a million dollars. Appropriately, he was elected President of The Inner Circle of Advocates, whose membership consists solely of attorneys who have had million dollar verdicts.

Notwithstanding his accomplishments in the law, he is most proud of the firm that bears his name. His example of preparation and professionalism has set the tone and path of the firm. All of us in the firm and countless clients and referring attorneys are thankful for the day that Bruce Walkup took up the mantle of plaintiffs' lawyer. He has worn that mantle with great distinction. Indeed, Professor Thomas F. Lambert, Jr., Editor-in-Chief of the Association of Trial Lawyers of America has written "I regard Bruce Walkup as having the best professional track record of any American advocate."

Quick Relief Obtained For Crane Victims

As reported in prior issues of *FOCUS*, our office had the privilege to represent multiple victims of the tower crane collapse that occurred at 600 California Street on November 28, 1989. Richard B. Goethals of this office acted as chairman of the plaintiffs' liaison committee, and in that capacity negotiated a settlement with a present cash value of $1.2 million on behalf of the widow and infant daughter of one of the iron workers killed at the work site. The decedent (a co-employee of the crane operator) was claimed to have been contributorily negligent by the defendants. The structured settlement negotiated by Rick on behalf of the widow and child included an immediate payment of $797,800, plus structured payments totalling $2,475,000.

Because the primary defendant in the case, The Erection Company, was inadequately insured, much of the post-incident discovery and investigation focused on identifying other solvent culpable defendants. Thus, the additional defendants included the general contractor and the structural steel contractor, as well as the crane manufacturer and its lessor. The latter defendants were alleged to bear responsibility under the doctrine of strict liability, while the former had responsibility under gerneral negligence principles as well as vicarious liability

See CRANE CRASH *page 4*

Supreme Court Clarifies Tolling Effect of MICRA's 90-day Letter Provisions

In *Woods v. Young* (1991) 53 Cal.3d 315, the California Supreme Court has finally resolved confusion over the tolling effect of sending a "90 Day Letter" pursuant to CCP §364. The Supreme Court held that the statute of limitations is extended a full 90 days if, **and only if**, the letter of intention to sue is served within the last 90 days of the limitations period. The extension is counted from the end of the period, not from the date that the notice is served.

Prior to this holding, four different Courts of Appeal had reached differing conclusions regarding the effect of sending a 90 day letter on the statute of limitations. CCP §364, enacted as part of MICRA in 1975, requires a plaintiff to provide a defendant with written notice of intention to sue at least 90 days prior to the commencement of a medical malpractice action. CCP §365 provides that while failure to comply with the above provision does not invalidate a subsequent proceeding, or affect jurisdiction, it may subject the prosecuting attorney to disciplinary action through the State Bar. CCP §364(d) provides that where notice of intent to sue is served within the last 90 days of the statute of limitations, the limitations period is "extended 90 days **from service of notice**". However, CCP §364(a) requires a waiting period of **at least** 90 days between the sending of a notice and the filing of an action. Hence, when applied literally, these two sections were in conflict. In an effort to resolve the problem some Courts of Appeal had relied on CCP §356, a non-MICRA tolling provision, which provides that "when commencement of an action is stayed by statutory prohibition, the time of prohibition is not part of the time limited for commencement of the action." The result was to generate at least one Court of Appeal decision where the sending of a §364 letter resulted in a 180 day tolling of the statute. [*Gomez v. Valley View Sanatorium* (1978) 87 Cal.App.3d 507]. In contrast, in *Braham v. Sorenson* (1981) 119 Cal.App.3d 367, the language of §§364 and 365 were construed so as to have their 90 day tolling periods run concurrently, with the result that the statute of limitations was extended by 90 days whenever an intent to sue letter was sent prior to the filing of suit.

In analyzing the multiple conflicting lower court cases, the Supreme Court rejected both *Braham* and *Gomez*. The court held that the peculiar provisions of MICRA were incompatible with the general tolling provisions of CCP §356, and ruled that the legislative intent of the 90 day waiting period (to encourage negotiated resolution) was best effectuated by construing the statute as tolling the limitations period for 90 days **only** when notice of intent to sue was served during the last 90 days of the limitations period. Hence, no tolling of the statute of limitations occurs when a 90 day intent to sue letter is served within the first nine months following the accrual of a cause of action.

CCP §340.5 provides that a plaintiff must commence his or her action within one year after the discovery of an inj and its negligent cause. CCP §364 provides that within that same one year period, plaintiff is required to serve a notice of intention to sue. Where that notice is sent earlier than the last 90 days of the year, it has no tolling effect on the statute of limitations. On the other hand, when it is sent within the last 90 days of the year, the holding in *Woods v. Young* provides that a 90 day extension of the statute of limitations is provided, giving the plaintiff one year plus 90 days within which to commence the action.

Insurer's Refusal To Disclose Policy Limits Prior to Suit Sanctioned by Second District

In a decision which will increase rather than reduce court congestion, the Second District Court of Appeal has held that an insurer is forbidden from disclosing its insured's liability policy limits prior to formal discovery absent specific authorization from the insured [*Griffith v. State Farm Insurance* 91 Daily Journal D.A.R. 5581 (1991)].

While acknowledging that disclosure of insurance limits is required during litigation [*Laddon v. Superior Court* (1959) 167 Cal.App.2d 391], as well as in collateral discovery proceedings to perpetuate testimony [*Superior Insurance v. Superior Court* (1951) 37 C.2d 749], the Court of Appeal held that Insurance Code §791, part of California's Insurance Information and Privacy Protection Act, prevents the disclosure of such "personal" or "privileged" information absent authorization of the insured. [Insurance Code §791.13(a)].

Though claiming to be "mindful of the realities of personal injury litigation," the Court of Appeal opinion ignores the fact that policy limit disclosure, prior to acceptance of a settlement offer, is often required to fully protect the rights of plaintiff. Further, such information may be required to assess whether acceptance of a particular settlement offer will fulfill the conditions precedent to later prosecution of an underinsured motorist claim or other derivative claim (i.e., subsequent medical negligence following an initial injury by an uninsured or underinsured defendant).

The opinion does, however, make clear that once written authorization is secured from an insured, the carrier can disclose this information. For that reason, settlement correspondence including a demand for disclosure of insurance limits should now cite the *Griffith* opinion, and request that the carrier directly contact its insured and secure authority to disclose limits, in the hope that such disclosure will shortcut formal litigation and result in amicable settlement in an amount within the insured's coverage.

Dalkon Shield Update

More Victims Recover From Dalkon Shield Trust Fund

The Walkup Office continues to settle cases with the Dalkon Shield Claimants' Trust Fund on behalf of persons injured by the Dalkon Shield intrauterine device (IUD).

The following is a sampling of case results recently obtained by **Jeffrey Holl**:

Theresa B.'s Dalkon Shield was inserted in 1973 at the age of 21. Two and a half years later she was admitted to Valley Medical Center in Fresno with severe pelvic inflammatory disease. Exploratory surgery revealed a large tubo-ovarian abscess, requiring removal of the right fallopian tube. At the same time adhesions were removed from her left tube which had become adherent to the left ovary. Complaints of residual back pain and menstrual irregularity continued for a number of years. In 1983 additional surgery to remove adhesions was required. She was advised at the time to consider *in vitro* fertilization or adoption. In 1989, after unsuccessful *in vitro* attempts, Ms. B. and her husband adopted a baby girl. Her case was settled with the Trust for $164,557.

Laurel M. had a Dalkon Shield inserted in 1971 while she was a college student. Approximately one year later she was treated at the student health center for uterine infection and the Shield was removed. Unfortunately, the infection did not resolve and required further treatment on two occasions. In 1982, following a hysterosalpingogram, Ms. M. was advised that she was infertile because of bilateral blocked fallopian tubes. She and her husband have no children. Her case was resolved for $163,219.

Verla H. had a Dalkon Shield inserted in 1971 at the age of 30 by a physician in Southern California. Two years later, that same physician removed the Shield following diagnosis of severe pelvic infection. Five months after the Shield was removed, the infection had not cleared and a total abdominal hysterectomy was performed. Ms. H. has no children. Her case was settled for $126,067.

First Settlement Conferences Held

The Trust held its first ''settlement conferences'' last March for claimants who had rejected the Trust's offer of settlement. Jeff Holl represented one of our clients in these initial conferences. Held in San Francisco, these were the first of their type in the nation.

Unfortunately, they were not intended to be negotiating sessions, but instead were in the format of a monologue. The Trust's position is that the conference is their opportunity to explain their offer, while allowing the claimant to point out any errors in the Trust's evaluation.

The San Francisco conferences were considered a training session for employees of the Dalkon Shield Claimants' Trust, who will participate in similar conferences to be held in numerous cities across the United States.

It is unlikely that many cases will be resolved in this process. For most claimants, the ''settlement conference'' is simply another step in the process of reaching a final determination through the litigation process. The first binding arbitrations and trials in these matters will not likely be held until the end of 1991.

State of the Art Evidence Now Admissible in Strict Liability Suits

RECENT SUPREME COURT OPINION

As this issue of *Focus* went to press, the Supreme Court took another swipe at consumers' and victims' rights with its opinion in *Anderson v. Owens-Corning Fiberglas Corp.*, (1991) 53 C.3d 987. *Anderson* was an asbestos action wherein the plaintiff proceeded on theories of design defect (BAJI 9.00.5), and strict liability for failure to warn (9.00.7). At trial, the defendant offered state-of-the-art evidence on the failure to warn issue contending that the risks of asbestos were essentially ''unknowable,'' and neither the scientific community nor other manufacturers could have known enough to warn about the risks inherent in prolonged contact with the cancer causing fibers.

The central issue before the court was whether state-of-the-art evidence, or ''knowability'' of dangerousness, is relevant or admissible in a strict liability case premised upon failure to warn. The lower court in *Anderson* had ruled such evidence inadmissible, relying on a historic analysis which recognized that the state of mind or reasonableness of conduct of a manufacturer is irrelevant in a strict liability context. The contrary view, embodied in *Vermeulen v. Superior Court* (1988) 204 Cal.App.3d 1192, held that state-of-the-art evidence may be relevant to the question of knowability, and for that reason, should be admissible.

In deciding *Anderson*, the Supreme Court held that *Vermeulen* stated the correct rule. Writing for the majority, Justice Panelli rejected arguments that his holding emasculated failure to warn as a theory of strict liability. ''How can one warn of something that is unknowable?'' asked Panelli in the majority opinion.

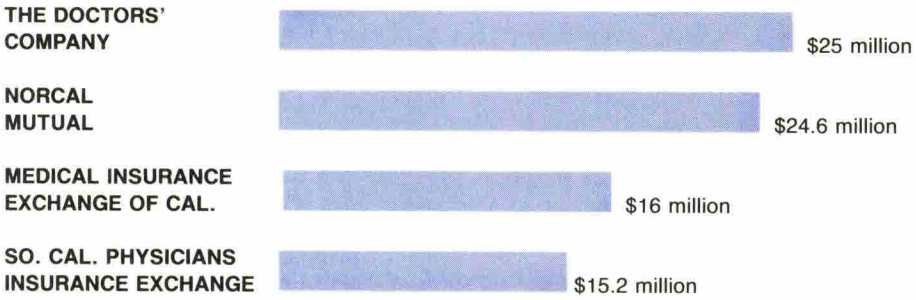
The decision continues the Lucas court's contraction of victims' rights. It follows on the heels of their opinion in *Brown v. Superior Court* (1988) 44 C.3d 1049 which held that manufacturers and sellers of prescription drugs are not liable in strict liability under a design defect theory, and may be held responsible only in negligence; and then only for failing to warn of ''knowable'' risks. Though the *Brown* opinion emphasized that it was a ''narrow public policy exception'' for prescription drugs, the majority opinion in *Anderson* alleges that *Brown's* logic is not limited to drugs.

The Supreme Court did stop short of completely eliminating failure to warn as theory of strict liability. In acknowledging that strict liability does not concern itself with due care or reasonableness, the court held that strict liabilty for failure to warn does continue to exist, pointing out that in strict liability the reasonableness of the defendant's failure to warn is immaterial. Whether or not a decision to warn of certain risks is reasonable or unreasonable is therefore irrelevant under the court's newly crafted rule. A manufacturer will be held liable if it fails to give warning of dangers that were known to the scientific community at the

See FAILURE TO WARN *page 4*

Doctors' Malpractice Insurance Carriers Pay Dividends

Somewhat like the alarums of Henny Penny, the doom and gloom preached by California's four doctor-owned medical malpractice insurance carriers has proven somewhat illusory. With cash reserves and earnings up and damage awards capped, the sky is definitely not falling; in fact, it appears to be raining "Pennies from Heaven." According to *Professional Liability Newsletter* each carrier paid a dividend in 1990: The Doctors' Company, $25 million; Norcal, $24.6 million; Medical Insurance Exchange of California, $16 million; Southern California Physicians Insurance Exchange, $15.2 million for a total of $80 million. As any physician will tell you, $80 million is nothing to sneeze about.



DIVIDENDS PAID IN 1990

New Ways to Bury Evidence

Tired of getting hurt by your expert at trial? So, too, were the lawyers in *Kohan v. Cohan*, (1991) 229 Cal.App.3d 967 who, in preparation for a breach of contract trial, designated Musa Sabi as their Iranian law expert in an expert witness exchange. The naming of Mr. Sabi, who had been dead for two years, was an innovative method of avoiding potentially harmful discovery. Whether or not prepared, he was clearly impervious to damaging admissions and unfounded opinions.

In deposing a dead expert there appears to be little reason to hold back in your questioning, as it is likely that most courts will consider the witness unavailable (Evidence Code §240) and allow the use of his deposition at trial. If proper lighting is possible, videotaping may also be interesting. Getting a court reporter can be difficult as the swearing in process is often cumbersome.

Designating a dead expert can have grave consequences given the *Kohan* court's upholding of sanctions against the lawyers who were simply trying to best serve their client's interest.

Failure to Warn

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time the product was manufactured or distributed without regard to the reasonableness or unreasonableness of the decision to warn.

As would be expected, the majority opinion drew sharp dissent from Justice Mosk, the author of the opinion in *Brown*. Mosk accused the majority of stretching the holding and analysis in *Brown* "beyond all recognition" by citing the opinion for precedent in litigation involving products other than prescription drugs when no such precedential effect had been intended. "The majority makes the narrow exception swallow up fundamental law" argued Mosk.

Crane Crash

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under the peculiar risk of harm doctrine.

We were pleased to obtain relief for the multiple clients we represented as a result of the crane collapse tragedy. Especially gratifying was the fact that the claims were resolved and the funds distributed to our clients before the building was even completed.

We invite our associate counsel to contact us if they have questions regarding association or referral of cases arising out of work-place accidents. Our firm members have extensive experience in discovery and trial of third party liability claims arising out of industrial accidents. Because prompt investigation of such claims is critical we urge our associate counsel to contact us early on in the prosecution of such claims if they are contemplating association with, or referral to, our firm.

Walkupdates . . .

George Shelby has been elected to the National Board of Directors of the American Board of Trial Advocacy (ABOTA) ... **Daniel J. Kelly** is presently serving as Secretary of ABOTA'S San Francisco Chapter. In October, Dan will join Judges Daniel Hanlon and Jack Tenner in a Rutter Group program on settlement of personal injury cases... **Dan Dell'Osso** has been selected for promotion to Lt. Col. of the United States Marine Corps Reserve. He is currently serving as Executive Officer, Marine Attack Squadron 133, flying the A-4 Attack Jet aircraft ... In May, **Michael A. Kelly** participated as a panelist for a State Bar sponsored C.L.E. program entitled "Everything You Need to Know About Depositions." In addition, from June 17 through 24, Mike served as an instructor at the National Institute for Trial Advocacy's Western Regional summer program at Boalt Hall.... **Richard B. Goethals'** article entitled "Handling a Construction Accident Case"will appear in an upcoming issue of *Workplace Injury Reporter*, published by the Association of Trial Lawyers of America.

RECENT CASES

PREMISES LIABILITY

Lhormer v. Pacific Heights Bar & Grill

In *Lhormer v. Pacific Heights Bar & Grill*, (San Francisco Sup. Ct. No. 908841), **Kevin L. Domecus** negotiated a settlement of $350,000 on behalf of a thirty-year-old business consultant who suffered a lacerated cornea when he was struck in the eye by a piece of glass while sitting at the bar at the defendant restaurant. The injury occurred after the bartender dropped a glass saucer, which caused a small shard to strike the plaintiff's eye.

The plaintiff underwent three corrective surgeries, including a corneal transplant and a laser capsulotomy. He has recovered approximately ninety-five percent of his pre-accident visual acuity, ough he has some problems with glare.

Milat v. City and County of San Francisco

In *Milat v. City and County of San Francisco* (San Francisco Sup. Ct. No. 873546) **Dan Kelly** negotiated a $310,000 settlement in a trip and fall case. Plaintiff, a secretary, sustained multiple fractures of her left hand when she fell while crossing the street in the marked crosswalk area. Road resurfacing was going on in the area and resulted in a deep rut or defect in the crosswalk.

As a result of her fractures, plaintiff developed reflex sympathetic dystrophy of the left hand which prevented her from doing her usual work as a secretary.

Stone v. Fry's Food Store, et al.

In *Stone v. Fry's Food Store* (Solano Co. Ct. No. 95874), **Athia Newton** negotiated a settlement on behalf of a 50-year-old home health care nurse, who suffered a soft tissue lumbar injury when she slipped in water at defendant's store. Defendant contended that the water on the floor was left by a janitor negligently operating an automatic mopping machine. The janitorial service claimed that the water was a result of the store's leaky freezer case.

Settlement was reached in the amount of $100,000 with each defendant contributing 50%.

INSURANCE COVERAGE

Estate of Wright v. Prudential Insurance Co.

In *Estate of Wright v. Prudential Insurance Co.*, **Michael A. Kelly** compelled payment of proceeds of a mortgage life insurance policy to the beneficiary and housemate of a San Franciscan who died of heart failure after being diagnosed with AIDS. The carrier had denied coverage, alleging that the deceased purposefully concealed knowledge of his HIV infection when he filled out the policy application eleven months before his death. The plaintiff contended that the insurer's questions regarding the applicant's medical history were overly broad, ambiguous and answered in good faith. The defendant paid off the entire proceeds plus interest in the amount of $98,000.

MEDICAL MALPRACTICE

Jane and John Doe v. Doe M.D. Doe Radiology Group and Doe Hospital

In *Jane and John Doe v. Doe M.D., Doe Radiology Group and Doe Hospital,* **Mary E. Driscoll and Paul V. Melodia** negotiated a settlement valued at $815,000 in a medical malpractice case which converted to a wrongful death action three weeks before the trial date.

The 39-year-old decedent underwent a routine barium enema in September 1988. The radiologist, who provided exclusive services to the co-defendant hospital, read the x-ray as negative. No further diagnostic evaluation occurred during the next two years and the decedent enjoyed apparent good health. In July 1990 she developed abdominal pain and underwent a series of tests which led to the diagnosis of terminal colon cancer. The primary site was determined to be a small polyp which was evident on the 1988 barium enema.

Plaintiffs contended that the physician negligently failed to identify the presence of the polyp and that, had it been identified, further evaluation and surgery would have occurred.

The decedent was chairperson of the economics department at a local college.

John Doe v. Doe Hospital

In *John Doe v. Doe Hospital*, **Paul V. Melodia** obtained a structured settlement worth $1,100,000 on behalf of an infant who suffered a birth injury resulting in persistent respiratory problems. By his first birthday, the child required a tracheostomy and must now be fed through a tube in his stomach to avoid aspiration in the lungs. Thus far, the tracheostomy has not been reversed and may be permanent. He has also suffered frequent pulmonary difficulties.

Over the past two years, around-the-clock nursing care and numerous hospitalizations have resulted in costs of between $200,000 and $300,000 per year. There is wide discrepancy of opinion regarding the child's life expectancy. The defendant's expert estimated a life expectancy of five years, while the plaintiff's pulmonologist stated he could live fifty years or longer.

Although the plaintiff currently enjoys unlimited medical coverage through his mother's health insurance program, the mother's employer has contemplated placing limits on the major medical. The settlement allows for an immediate cash payment of $455,267, guaranteed monthly payments over the next five years, and unguaranteed payments thereafter.

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PRODUCT LIABILITY

Washtock v. General Motors, et al.

In *Washtock v. General Motors, et al.* (Sacramento Sup. Ct. No. 505544) **Dan Dell'Osso** obtained an award of $97,000, reduced by 20%, against an auto manufacturer and dealership for injuries sustained in a single vehicle accident. The plaintiff alleged that the defendants were responsible for the front passenger side seat belt being inoperable. Plaintiff further contended that the dealership did not properly repair the seat belt when the problem was brought to its attention. The defendants alleged that: (1) the seat belt was not defective; (2) the repair was made in a timely fashion; and (3) the plaintiff was at fault for riding in a vehicle knowing that the front passenger side seat belt did not work.

Defendant's motion for summary judgment based upon reasonable implied assumption of the risk was denied allowing the matter to proceed to arbitration.

Huynh v. Basic Tool & Supply, et al.

In *Huynh v. Basic Tool & Supply* (Alameda Co. Sup. Ct. No. 620196-2) **Rick Goethals** negotiated a structured settlement on behalf of a 28-year-old man who suffered the amputation of three fingers when his glove was caught by the drill bit in the milling machine he was operating. Plaintiff alleged the machine should have been designed with dual start buttons to prevent the operator from leaving either hand near the drill bit during operation.

The defendant alleged contributory negligence and that, because the machine was operated by computers to perform complicated programs, the standards pertaining to punch presses should not have applied. The plaintiff noted that the machine was doing a punch press-type operation requiring frequent replacement of parts at the time of the accident.

The settlement included an immediate payment of $297,777 and guaranteed future payments over the next thirty years, bringing the total value of the settlement to $735,000.

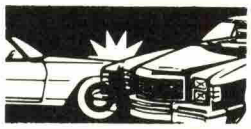
McLaren v. Container Products, Inc., et al.

In *McLaren v. Container Products* (Alameda Co. Sup. Ct. No. 622978-8), **John Echeverria** and **Richard Schoenberger** recently negotiated a settlement in the amount of $230,000 on behalf of a 47-year-old Danville man who was injured while cutting a 55-gallon barrel with an acetylene torch. His injuries included severe burns to his face and arms and a tibia-fibula fracture requiring three operations.

The barrel which exploded was supplied by defendant, a drum manufacturing company that from time to time sold unused barrels or rejects to the co-defendant, a steel shearing company that used the cut barrels to store small pieces of steel. Plaintiff alleged that all defendants were negligent for allowing a 55-gallon barrel containing residue methyl ethyl ketone, a flammable solvent, to be stored with the group of reject barrels.

Defendants contended that plaintiff was comparatively negligent given the presence of a warning on the barrel that its contents were flammable.

Plaintiff suffered a wage loss of about $45,000 and incurred medical bills totalling approximately $30,000. The case settled one week prior to trial.



VEHICULAR NEGLIGENCE

Haake v. VanSpanckeren

In *Haake v. VanSpanckeren* (Monterey Sup. Ct. No. 89413), a $515,000 policy limit settlement was obtained by **Michael A. Kelly** on behalf of a 42-year-old bicyclist who was struck from behind while riding on the southbound roadway edge of Highway 1 near Monterey. The defendant, who was operating a motor home, contended that he was unable to avoid plaintiff because of the narrow roadway lanes at the point of the accident, and the steady flow of oncoming traffic which prevented him from moving to his left. Plaintiff was struck in the head by the passenger side mirror of the defendant's motor home, causing him to lose his balance and crash to the ground striking his head. Plaintiff's injuries included a frontal skull fracture with subdural hemato and residual subtle cognitive disability. As of the date of t settlement plaintiff had returned to work, though personality problems and mood swings persisted. Total special damages, medical expense and wage loss were approximately $45,000.

Gonzales v. County of Contra Costa, et al.

In *Gonzales v. County of Contra Costa, et al.* (Contra Costa Co. Sup. Ct. No. 291317) **John Echeverria** negotiated a structured settlement worth $375,000 on behalf of a seven-year-old boy who was injured in an auto-pedestrian collision on his way home from school. The plaintiff was run over in a marked crosswalk and suffered a mid-shaft tibia-fibula fracture of his right leg. He has already undergone several operations, including muscle and bone grafts, and faces further surgical procedures to fully straighten his leg.

The defendants contended that plaintiff was fully responsibl for the accident by darting out in front of the truck that hit h The defendant driver paid his $250,000 policy limits the week before trial. The defendant county paid $125,000 toward the settlement after paintiff produced evidence that supported the conclusion that it should have known that the intersection was dangerous to elementary school children attempting to cross it.

Howard v. Budget Rent-A-Car

In *Howard v. Budget Rent-A-Car* (S.F. Sup. Ct. No. 901051), **Kevin L. Domecus** obtained a $280,000 settlement on behalf of a sixty-six-year-old security guard who suffered a knee injury when he was pinned between two cars while working in a parking lot. The plaintiff was required to check the trunks of all vehicles leaving the Budget lot, and one of the defendant's employees rolled a car into the back of the plaintiff's legs at approximately two miles per hour.

The plaintiff suffered a non-displaced fracture of the left tibia and bruises to both knees. While there was no structural damage to either knee joint, the plaintiff contended that his prolonged disability significantly aggravated a pre-existing degenerative condition in the left knee, requiring a knee joint replacement. Mr. Howard did not return to work after the accident.