WALKUP, MELODIA, KELLY & ECHEVERRIA

FOCUS on torts

VOLUME VII, NUMBER II FALL 1993

ASSUMPTION OF RISK ISSUES UNRESOLVED

Less than a year ago the California Supreme Court decided two cases heralded as the definitive opinions on the defense of assumption of the risk. In Knight v. Jewett (1992) 3 Cal. 4th 296 and Ford v. Gouin (1992) 3 Cal. 4th 339, the Court recognized two kinds of assumption of risk. **Primary** assumption of the risk exists when the nature of the activity justifies the conclusion that the defendant does not owe a duty of care. Primary assumption of the risk is an absolute bar to tort recovery.

Secondary assumption of the risk was defined as existing when the defendant owes plaintiff a duty of care and breaches it, but the plaintiff knew or should have known of the danger and voluntarily encountered it. This brand of assumption of the risk does not eliminate recovery. It is a form of comparative fault.

Knight and Ford were cases involving sports activities (touch football and water skiing). Each held that plaintiffs were barred recovery via primary assumption of the risk (i.e., no duty owed). It has always been the law that if a defendant does not owe a duty of reasonable care, then the defendant cannot be liable for negligence. Knight and Ford simply attached the name "primary assumption of the risk" to this conclusion.

Except as applied to certain sports, the Supreme Court gave little aid in defining how the newly defined defenses are to apply. Both Knight and Ford were plurality decisions. As one Court of Appeal justice has noted, "there is a profound analytical schism" on this issue and "the Supreme Court could not be more sharply split on the fundamentals of the assumption of risk doctrine" (Hacker v. City of Glendale (1993) 16 Cal. App. 4th at 1429, 1430, dissenting opinion of Justice Johnson).

What has developed is a crazy quilt of appellate court decisions which are disturbing to anyone who believes that the web of the law, if not seamless, should at least be seemly. The following cases illustrate this:

1. Milwaukee Electric Tool v. Superior Court (1993) 15 Cal. App. 4th 547. Milwaukee Electric Tool is the first case to apply the assumption of risk in a strict liability setting. There, plaintiff was injured while using defendant's power tool and brought an action based on negligence, strict liability and breach of warranty. In deposition, plaintiff testified that he was aware of the problems with the product which had caused his injury and had encountered them before. The trial Court granted summary adjudication to the defendant on the negligence claim but denied summary adjudication on the strict liability and breach of warranty claims. Defendant appealed.

Applying Knight's duty analysis, the Court held that this was **secondary** assumption of

(Continued on page three)

Punitive Damages Constitutional

Corporate and insurance executives hoped the U.S. Supreme Court would rule punitive damages unconstitutional or establish a ratio of punitive to compensatory damages that passed constitutional muster, in deciding TXO Products v. Alliance Resources (1993) 113 S.Ct. 2711. Such hopes had been fueled by the Court's decision two years ago in Pacific Mutual Life v. Haslip (1991) 499 U.S. 1.

In Haslip, the Court suggested there might be some ratio of punitive to compensatory damages beyond which a punitive damage award would be unconstitutional. In TXO, the court upheld a punitive award of ten million dollars against an oil and gas developer in a slander of title claim despite actual damages of only $19,000. In upholding this award, some 526 times greater than the compensatory award, the court refused to draw a mathematical "bright line" between constitutional and unconstitutional damages for application in every case.

Writing for a plurality of the Court in TXO, Justice Stevens noted that because such awards are "the product of numerous, and sometime intangible factors" a single rule for all cases would be impractical. In their respective concurring and dissenting opinions, Justices

(Continued on page two)

JUDICIAL ARBITRATION: 10 TIPS FOR THE LITIGATOR

"Do not take arbitration lightly! " This was our advice in the Spring 1988 edition of *Focus* when we reported on the legislative increase in the judicial arbitration award limit from $25,000 to $50,000. We also predicted that this limit increase would dramatically affect our practice. Indeed, it has. Today, while fewer and fewer cases are tried, more and more are arbitrated. The arbitration hearing result (whether large, small or defense) has a substantial impact on the amount and ease of pre-trial settlement. With this in mind, we present 10 arbitration tips for the litigator — all designed to maximize the effectiveness of the arbitration hearing.

1. Outline Your Discovery Plan Early

Today cases may be arbitrated as soon as 5-6 months after the complaint is filed. Under fast-track, an arbitration determination conference is held no later than 3 months after filing of the at-issue memorandum. Some counties deem the status conference statement to be the at-issue memo, (e.g., San Francisco). C.C P. §1141.16 (a); CRC 1601 (c). The arbitrator must be appointed 30 days later. CRC 1605 (a).

Since discovery closes at arbitration (with some exceptions), you must formulate and serve discovery early. Consider using "person most knowledgeable" deposition notices with a document request to save time. See C.C.P. §2025 (d) (6). File motions to compel without delay.

2. Discovery Closes Before Arbitration

Discovery closes 15 days before the arbitration hearing (unless good cause is shown). CRC 1612. Discovery concerning experts (C.C.P. §2034) is exempt from this rule. C.C.P. §2024 and C.C.P. 1141.24. If you cannot complete discovery before the pre-arbitration cut-off, consider entering into a stipulation with opposing counsel that all or part of discovery remain open after the cutoff and/or after the hearing.

3. Know Your Arbitrator

The legislature has outlined basic qualifications for arbitrators. C.C.P. §1141.18 and CRC 1606. While the precise method of selection varies from county to county, most counties issue a list from which the parties disqualify names. Research the areas of practice (e.g., real estate, insurance defense, etc.), orientation (plaintiff or defense), experience, age, firm affiliations (past and present) and quirks of each proposed arbitrator.

4. Rule 1613 (b): Relaxed Rules of Evidence

Rule 1613 (b) allows any party to offer expert reports, medical records and bills, loss of income verification, property damage repair bills or estimates, police reports and other documents. Any such evidence may be presented if it is delivered to all opposing parties 20 days before the hearing. Written witness statements shall be received by the arbitrator if they are made under penalty of perjury, are delivered at least 20 days before the hearing and no party has within 10 days demanded that the witness be produced in person. CRC 1613 (2). These rules allow discovery short cuts that save time and money. Use them creatively to your advantage.

5. Be Prepared and Organized

No matter how simple your case, do not take for granted that your arbitrator will know the applicable law. Always prepare an arbitration brief Cite the vehicle code, jury instruction and/or case law which will provide the basis for you to prevail. While it is possible to rebound from a defense arbitration verdict, it is a challenge to be avoided.

6. Present a Full Damages Case

The arbitration award will serve as an impartial third party's evaluation of the case. Do everything you can to maximize the award. Clearly and completely itemize all special damages (medical bills, prescription costs, etc.). Explain your wage loss calculation. Pictures of injuries, witness statements, statements from employers confirming wage loss (admissible under CRC 1613 (b) (2)), and witness statements concerning general damages (i.e., non work-related limitations and disabilities), may prove invaluable.

7. Trial De Novo (C.C.P 1141.20 and CRC 1615 and 1616)

Within 30 days from the date the arbitrator files the award, either side may file and serve a request for trial de novo. CRC 1616 and C.C.P. 1141.20 (a). Pay attention to local rules on trial de novo. (Judges in Contra Costa County, for example, are fond of shortening the time for filing the request to 20 days.)

8. Effect of Arbitration Award at Trial

If the judgment at trial is not more favorable to the party requesting the trial than the arbitration award, the prevailing party is entitled to recover costs and fees set forth in C.C.P. 1141.21 (a). These include the arbitrator's fee, costs specified in C.C.P. 1033.5 and the reasonable costs of expert witnesses.

9. Consider Electing Arbitration

Litigators seldom elect arbitration. CRC 1600 (b). However, election may be a good idea in smaller cases. An important effect of election is that the award cannot exceed $50,000. (If the arbitrator awards more than $50,000 the award is reduced to $50,000). For this reason, election should be fully discussed with the client and authority to elect arbitration obtained in writing.

10. Consider Binding Arbitration

Uncontrollable clients (plaintiff or defense) and incorrigible or inexperienced opposing counsel are two situations where judicial arbitration may not resolve the case. Predictably, trial de novo and fruitless settlement discussions follow the award. In these cases, consider binding arbitration by written stipulation. It should identify the rules(s) of evidence to be applied at the hearing, any high and low parameters (and whether such will be disclosed to the arbitrator), name of the arbitrator, arbitrator's fee and who will pay it. The stipulation should be signed by all counsel, responsible claims people and clients.

Punitive Damages Constitutional

(Continued from page one)

Kennedy and Scalia voice different opinions about the ultimate effect of the TXO holding.

Justice Kennedy disagreed with an analysis that focuses exclusively on the "reasonableness of the amount." Instead, he opined that any amount of punitive damages should be unconstitutional where it is not based on a rational concern for deterrence or retribution; because here TXO acted with malice, he concurred in the result. Justice Scalia, on the other hand, was somewhat more cynical, suggesting that the TXO holding will let the court dispose of the numerous due process challenges to punitive damages now before it by observing that the awards in those cases are"no worse than TXO."

Petty Theft Arrest Results In Substantial Verdict

A Contra Costa County jury recently returned a substantial compensatory and punitive damage verdict against HomeClub, in a case tried by **Ron Wecht** on behalf of falsely arrested customer of the San Pablo store. The plaintiff went to the store to buy blades for his electric saw. He was arrested, detained and beaten by store security personnel who alleged that he had stolen two saw blades with a retail value of six dollars.

Discovery indicated that the guards involved had not undergone training mandated by corporate policy. In fact, training records produced for the guards proved to be phony, having been generated several months after the lawsuit was filed.

According to HomeClub policy, security guards were expected to make a certain number of arrests each month. The guards were subject to discipline, including possible loss of employment, if shoppers were stopped and merchandise was not recovered from them.

From the outset, Ron focused on HomeClub's emphasis on catching people and making arrests rather than preventing theft. Clearly, the jurors were outraged by this attitude.

Surprisingly, the defendant security guards cross-complained against the plaintiff, claiming that he had battered them and caused them severe emotional distress. The cross-complaint also included a count for slander: the guards alleging that plaintiff's protests to the effect that his arrest was "illegal" slandered them.

Ultimately, the jury determined that there had not been probable cause to detain the plaintiff and that the corporate defendant, acting thorough its employees, was responsible for both battery and false imprisonment. The jurors also felt that there had been insufficient and improper training of the security guards. Compensatory damages were assessed in the amount of $175,000, including $65,000 for loss of consortium. (Not surprisingly, there was no recovery on the guards' cross-complaints.)

Because the jury also made a finding of clear and convincing evidence of oppression or malice, a second trial on punitive damages was ordered. A confidential settlement of the punitive damage aspect of the case was reached at the outset of that trial.

Should any of our associate counsel be handling cases where there are significant injuries flowing from false imprisonment, battery or intentional infliction of emotional distress in a wrongful detention context, they should feel free to call Ron Wecht. He will be happy to share his thoughts and trial strategy with you.

Assumption Of Risk Issues Remain Unresolved

(Continued from page one)

the risk because the defendant owed a duty to provide defect-free products. In light of defendant's duty, the secondary assumption of the risk defense was to be treated as comparative fault with the result that the case was not appropriate for summary judgment.

2. Neighbarger v. Irwin (1993) 14 Cal. App. 4th 1721 (Review granted). In an expansion of the assumption of the risk doctrine outside of the recreational setting, Justice Lillie of the Second District Court of Appeal concluded that the application of the "Firemans' Rule" operates as primary assumption of the risk to bar a plaintiff's claim. In Neighbarger, the plaintiff was a petroleum refinery worker with special training in fire fighting. Part of his job required him to respond to emergencies and to participate in the fire brigade. On the day he was injured, a pressure valve began venting highly volatile naphtha. Believing that water vapor was being released, he assisted other workers in turning off the valve when an explosion occurred. In holding that the Firemans' Rule was a form of primary assumption of the risk, Justice Lillie noted that the rule is based on a belief that a person who creates a risk by negligently starting a fire owes no duty to a person employed specially for the purposes of encountering that risk. This absence of duty in her view is consistent with primary assumption of risk and acts as a complete bar to any claim. The Supreme Court has recently granted review of this case.

3. Handelman v. Mammoth (1993) 15 Cal. App. 4th 820 (decertified). In Handelman, a recreational activity (snow skiing) case, where one would expect primary assumption of the risk to apply, the Third District refused to do so. Plaintiff was injured when he slid over a cliff and struck a rock outcropping. Plaintiff's complaint, based on negligence, alleged that the design of the ski trail had a funneling effect. In reversing the trial court's grant of summary judgment, Justice Puglia wrote that the issue was whether the risks resulting in the alleged funneling effect were inherent in the sport or whether they constituted inordinate dangers. Because the complaint alleged that the slope was inordinately dangerous, and because the defendant failed to establish that the inordinately dangerous slope represented a risk inherent in the sport, the grant of summary judgment was reversed. Justice Puglia focused on the subjective state of knowledge of the plaintiff relative to the risk, something the Supreme Court deemed irrelevant in Knight and Ford. Thus, the Supreme Court decertified the opinion in Handelman.

4. Hacker v. City of Glendale (1993) 16 Cal. App. 4th 1419. Hacker represents the latest of the recent assumption of the risk cases. Like the cases discussed before, it does little to clear the fog. In Hacker the Second District held that a claim by the heirs of a tree trimmer electrocuted while removing branches from around power lines was barred by primary assumption of the risk The Court focused on the issue of whether the defendant owed a duty to protect the tree trimmer from the risk of electrocution. Finding that no duty existed, summary judgment was affirmed. Justice Johnson dissented, as he did in Neighbarger. In his dissent, he described the analytical schism which has arisen in the assumption of the risk area; specifically, whether the inquiry should be on a victim's subjective state of mind or on the defendant's duty.

Knight and Ford can hardly be the Supreme Court's alpha and omega on the subject of assumption of the risk. Until the Court further clarifies this issue, the rest of the judiciary must fitfully struggle with the doctrine and its application. Unfortunately, counsel and litigants will be left wondering how to proceed until the Supreme Court gives further guidance to the appellate judiciary and trial courts.

WALKUPDATES

Cynthia Newton was a panelist for C.E.B.'s programs on Judicial Arbitration in Santa Clara, San Francisco and Sacramento. Cynthia addressed procedural and substantive issues, as well as the impact of local and state trial court delay reduction rules... **Michael Kelly** was a panelist for the National Institute of Trial Advocacy's conferences in San Francisco and San Diego this summer. In addition, Mike is currently serving as Treasurer for the San Francisco Trial Lawyers' Association... **Daniel Dell'Osso** recently participated in a San Francisco Trial Lawyers' Association seminar on damages. Dan's topic focused on maximizing damages for an "unappealing" plaintiff. Dan was also in attendance at the recent ATLA Convention here, participating as a member of the Attorneys' Information Exchange Group sub-section meetings. Both Mike Kelly and Dan are members of the group... **Dan Kelly** was recently elected to serve on the Board of Governors of the International Society of Barristers at the group's board meeting in Canada. Dan has also served as an organizer of the ABOTA - Edward McFetridge Inn of Court sponsored MCLE seminar to be held in San Francisco in September... **Kevin Domecus**, completing his 15th year as manager of the "Mighty Mouthpiece Softball Team," brought the team to the championship game of the San Francisco Lawyers League before falling 12-8 to a squad from Heller, Erhman, White & McAuliffe. The Mouthpiece last won a Lawyers League championship in 1976. They might have done it again had not their regular pitcher, Bob Ford (of Oakland's Larson & Burnham), decided to go on vacation the week of the championship game.

Pictured above are members of the Mighty Mouthpiece Softball Team who lost this year's championship game to Heller, 12-8. From left to right (kneeling): Mike Kelly, Hal Stone, Jim Taggart, Ron Wecht, Mark Zanobini; (standing): Dan Dell'Osso, Jim Ratzer, Kevin Domecus, Mike Clark, Steve Dal Porto, Steve Roberts, Kevin Murphy, Rich Schoenberger and Rich Diestel.

Demonstrating once again how easily the need for modern technology can be eliminated by manual labor are (left to right), Tom McHugh, Dan Myers, Sean Rose, Dale Betterton and seated, Lara Orsi and Teresa Lee. Standing poised before the tools of the trade are our summer associates for 1993.

NHTSA Calls For Child Seat Warnings

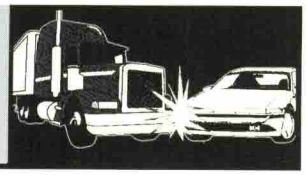
The National Highway Traffic & Safety Administration has proposed that rear-facing child car seats not be used in seating positions equipped with air bags. According to NHTSA, such seats in the front passenger seat of cars equipped with air bags pose a potential safety risk to children. To deploy fast enough to protect adults, air bags inflate with enough force to cause serious head and chest injuries to children in rear-facing car seats. NHTSA has proposed an amendment to the Federal Motor Vehicle Safety Standard requiring that printed instructions be supplied with car seats to warn against incompatibility of use in seating positions equipped with air bags.

NHTSA has also recently released its list of automobiles recalled for safety defects during the first part of 1993. Included on the list are over 900,000 vehicles from more than twenty manufacturers.

Interested parties can get current information regarding safety recall campaigns or on the recall history of a particular make or model of car, truck, motorcycle or child safety seat by calling NHTSA's Auto Safety Hot Line at (800) 424-9393. The hot line can also be used to report safety problems.

RECENT CASES

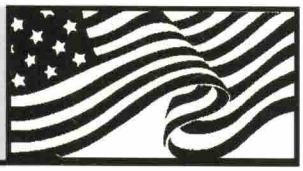
VEHICULAR NEGLIGENCE



McLaughlin v. Darcy & Harty Construction

In McLaughlin v. Darcy & Harty Construction (San Francisco Superior Court No. 945321), **Rick Goethals** obtained a $255,000 settlement on behalf of a 27-year-old pedestrian crossing Franklin Street in San Francisco when she was struck by a dump truck that was backing up toward men and other equipment digging up the street. Defendant contended that because one lane was closed by orange cones, plaintiff should not have crossed the street in mid-block, and she should have seen and heard the truck moving backward with its warning bell sounding. Plaintiff claimed the dump truck was stopped when she started across the street and she was required to only look to her left (away from the dump truck) because traffic on Franklin Street is one way. Plaintiff suffered multiple rib fractures, a fracture of one lumbar vertebra, facial nerve injury and multiple bruises and abrasions. She incurred $23,000 in medical bills and a $5,000 wage loss.

GOVERNMENT LIABILITY



Boles v. CCSF

In Boles v. CCSF (San Francisco Superior Court N. 914053), **Daniel Dell'Osso** obtained a $185,000 settlement on behalf of a 70-year-old woman who fell while disembarking from a Municipal Railway light rail vehicle. Plaintiff claimed that the rear passenger doors on the train malfunctioned, striking her as she was stepping down, thereby causing her to fall. The City denied liability, claiming that there was nothing wrong with the door. During discovery, plaintiff was able to demonstrate that there were prior problems with the so-called "sensitive edge" on the door, suggesting it did not retract as it should have when it struck the plaintiff's shoulder. Plaintiff sustained a fractured hip which required surgical repair. Special damages totaled $55,000.

MEDICAL NEGLIGENCE

Doe v. Medicus Medical Group

In Doe v. Medicus Medical Group, **Kevin L. Domecus** obtained a $490,000 settlement on behalf of a 34-year-old man who suffered permanent neurologic damage as a result of an untreated epidural hematoma. The settlement included a loss of consortium claim. The plaintiff had reported to the hospital emergency room with complaints of a headache and inability to move his legs. The emergency room doctor felt that the neurological exam was normal, decided that the plaintiff's symptoms were due to hysteria and ordered no imaging studies. After being given a powerful narcotic for pain relief, the plaintiff was released and sent home.

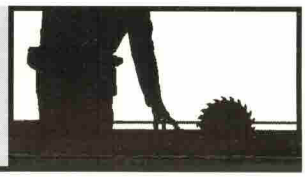
Approximately six hours later, the plaintiff's paralysis had worsened and he was taken by ambulance to another hospital. A CT scan demonstrated the hematoma, and the plaintiff underwent emergency surgery. He initially was completely paralyzed, but eventually recovered sufficiently to return to work. His residual problems include left-sided weakness that precludes running or any other strenuous activities.

The plaintiff's experts were prepared to testify that the initial neurologic work-up was incomplete and below the standard of care. The defense argued that the plaintiff was evidencing signs of hysteria and that his ultimate recovery could not have been better even with earlier intervention.

Ortiz v. Roe Hospital

In Ortiz v. Roe Hospital (Kings County Superior Court), the plaintiff, a 42-year-old Hispanic mother of three, presented for the care and delivery of her fourth child to the defendants. At that time she requested that a tubal ligation be performed when the baby was born. Two hours prior to performance of the cesarean section for delivery of her fourth child, a nurse employed by one of the defendants had plaintiff sign a surgical consent form for the performance of the tubal ligation. Although the defendants could not recall the exact sequence of events in deposition, it appeared that once in the delivery room someone realized that a special sterilization consent form required by the state had not been signed. A tubal ligation was therefore not performed, but the plaintiff was not told of this and left the hospital believing she had been sterilized. Within six months she was again pregnant. Her fifth child was born normal and healthy. **Mary Elliot** concluded this "wrongful life" case by way of settlement in the amount of $60,000.

PRODUCT LIABILITY



Kipke v. Shopsmith, et al.

In Kipke v. Shopsmith, et al. (San Mateo Co. Superior Court No. 347282). **Michael A Kelly** and **Cynthia F. Newton** negotiated a $425,000 cash settlement on behalf of a 37-year-old journeyman carpenter injured during a home wood working accident. Plaintiff was operating a Shopsmith Mark IV table saw when he caught his left hand in its blade underneath the table surface.

The maker of the saw, Magna America Corp., was defunct. Suit was brought against its successor (Shopsmith Corp.) contending it was strictly liable as a successor corporation to the manufacturer who built and sold the saw in the 1960's. (Plaintiff purchased the saw at an estate sale.) Plaintiff also contended that Shopsmith was negligent for failing to recommend a lower blade guard and/or to warn of the risk of under-the-table injury. Medical bills were approximately $75,000. Plaintiff is expected to return to construction in a managerial position. The case was settled before Shopsmith's motion for summary adjudication of the successor liability issue was heard.

RECENT CASES

Norris v. Home Depot & Keller Ladders

In Norris v. Home Depot & Keller Ladders (Alameda Superior Court No. 668571-5), **Daniel Dell'Osso** obtained a settlement of $86,500 on behalf of a 46-year-old man who fractured his heel when the ladder he had purchased from the defendants slipped out from under him. Plaintiff contended that the ladder was defective because its as-designed rubber non-skid feet were not properly attached. As a result, they would come off during normal use. Defendants claimed they had copied the design from a competitor, the design was problem free and denied any defect, claiming instead that the accident was the result of misuse. Both plaintiffs' and defendants' experts verified that Mr. Norris had positioned the ladder in accordance with the manufacturer's instructions. The expert also agreed that the ladder was exceedingly unstable when the rubber non-skid feet were not in place.

Following open reduction and internal fixation, plaintiff's heel fracture healed without complication. Plaintiff's medical bills were just over $13,000. Total wage loss was $9,000. Keller's offer prior to trial call was $50,000.

CIVIL RIGHTS

Bacaylan v. Agnews State Hospital

In Bacaylan v. Agnews State Hospital (U.S.D.C. No. C-92 3221 FMS), **Richard H. Schoenberger** obtained a $240,000 settlement on behalf of the parents of a 29-year-old disabled resident of Agnews Developmental Center, a state run facility in San Jose. JoJo Bacaylan died from stab wounds and blunt abdominal trauma inflicted by a psychiatric tech who was later convicted of aggravated manslaughter.

Investigation into the case revealed a systematic pattern of abuse preceding JoJo's death, including incompetent hiring practices, poor reporting of unexplained severe injuries and a multitude of civil rights violations.

After the parents of JoJo retained counsel, an investigation was launched and significant policy and procedure changes were instituted at Agnews to prevent future abuse of the mentally and physically disabled. As part of the settlement, the defendant agreed to submit a letter of apology to JoJo's parents. Mr. and Mrs. Bacaylan contributed a portion of their settlement to Protection Advocacy, Inc., a non-profit watchdog Group instrumental in successfully uncovering the abuse.

We are available for consultation. association and/or referral in all types of personal injury matters. Additionally. if there is a particular subject you would like to see discussed in future issues of ***Focus on Torts*** please contact Michael Kelly or Lisa LaRue.

WALKUP, MELODIA, KELLY, & ECHEVERRIA
650 California Street, San Francisco, CA 94108
(415) 981-7210

PREMESIS LIABILITY

Plies v. City and County of San Francisco, et al.

In Plies v. City and County of San Francisco and Scoma's Restaurant, Inc. (San Francisco Superior Court No.933964), **Michael A. Kelly** negotiated a $350,000 cash settlement on behalf of a 53-year-old woman who was injured when she fell through a hole in the pier outside of Scoma's Restaurant. Plaintiff went to her vehicle (which had been valet parked) to deposit shopping bags prior to having dinner. It was backed into its parking space directly over a rotted /missing piece of decking. Plaintiff went to the back of the vehicle, opened the tailgate, took a step back and fell directly through the pier onto a rotted and protruding piling in the bay.

The City and County of San Francisco, through its Port Commission, had the responsibility for maintenance of the pier. At the time of the accident, Scoma's was in possession of the site of the fall pursuant to its written lease with the City and County. Plaintiff suffered a severe comminuted fracture of the left femur, multiple puncture wounds, extensive bruising of both legs and major bruising and contusions in the area of the right thigh and shoulder. Her medical bills were approximately $57,000.

McLaughlin v. Safeway

In McLaughlin v. Safeway (Sonoma County No. 199149), **John Echeverria** and **Richard H. Schoenberger** obtained a $300,000 settlement on behalf of a 51-year-old marketing executive who tripped and fell over a plastic bundle strap negligently discarded on the main shopping floor at the Rohnert Park Safeway Store. Both direct and circumstantial evidence supported the conclusion that Safeway employees had negligently created the hazardous condition by dropping the magazine strap while stocking magazines on the store's racks. Following the fall, employees of Safeway threw the strap away, thus expanding the plaintiff's causes of action to include spoliation of evidence.

Plaintiff suffered bilateral fractures of the elbows, a lumbar disc herniation and a partial tear of the rotator cuff of the right shoulder. Her medical bills approached $40,000 and her wage loss exceeded $30,000. Settlement was achieved three weeks before trial.

Purtell v. Fessler, et al.

In Purtell v. Fessler, et al (Santa Clara County Superior Court No. 715925), **Cynthia F. Newton** obtained a $65,000 settlement on behalf of a 20-year-old Santa Clara University student who was struck by a bottle rocket launched from a dormitory window. Plaintiff suffered minor facial burns, a mild high frequency hearing loss and tinnitus in her left ear. Her medical bills totaled $517.00.

The defendants (also students) were defended under a reservation of rights through their parents' homeowners policies. Each defendant denied having any role in the launching of the rocket. Plaintiffs motion to amend the complaint to allege punitive damages was granted on the ground that defendant had acted with reckless disregard of the safety of others. The case was settled on the eve of arbitration.