Walkup, Shelby, Bastian, Melodia, Kelly & Echeverria

FOCUS ON TORTS

VOLUME VII, NUMBER 1 SPRING 1993

9-1-1 Case Results in 2.5 Million Dollar Verdict

The scene of the Quackenbush murder.

On December 8, 1992, a San Francisco perior Court jury returned one of the largest recorded verdicts in history for the death of an adult child in what came to be called the 911 Murder Case. **Rich Schoenberger** of our office represented the father of the deceased, Scott Quackenbush, in the three week Superior Court trial.

Scott's murder on September 29, 1990, came shortly after he had dialed 9-1-1 and reached a San Francisco Police Dispatcher. Though he reported that he needed help because someone was trying to break into his car, no one responded. Public outrage grew out of the City's failure to respond and multiple investigations of the 9-1-1 system were spawned.

Prior to the fatal assault, Scott had been at a San Francisco Giants game with a friend. He was driving his custom rebuilt 1967 Mustang which broke down on the way home. After flagging down a California State Automobile Association tow truck, Scott and his car were dropped off at a deserted Union 76 gas station in a particularly dangerous area of the City. In pretrial proceedings, summary judgment was granted in favor of the City and County immunizing them from liability in the case. At trial, the Quackenbush family was limited to recovery under a theory that the tow truck company (a contract station for CSAA) had not fulfilled its obligation to avoid putting stranded motorists in areas of danger.

Both the tow truck company and CSAA claimed that the area where Scott was left was safe. Indeed, the owner of the tow company testified that he had lived along San Bruno Avenue for fifteen years and felt the area was "perfectly safe." Such claims were flatly contradicted by neighborhood business owners, residents and police officers who testified to the dangerous reputation and character of the San Bruno corridor.

The jury assessed 80% of the fault to the assailants (earlier convicted of murder in Scott's death), 5% to the decedent, 5% to "others," and 10% to the tow truck company. The net verdict against the tow truck company and CSAA amounted to $250,000, five times the pretrial settlement offer of $50,000.

Prop. 51 Fallout

Adopted in 1986 and codified as Civil Code §1431.2, Proposition 51 (the "deep pocket" initiative), eliminated joint and several liability in tort cases in California. Instead, it created a new rule of several liability for general (non-economic) damages in direct proportion to an individual tortfeasor's fault. Joint and several liability continues in existence for economic losses, defined as "objectively verifiable monetary losses." In the *Quackenbush* trial, given the absence of any economic losses, the defense sought to lay all blame for Scott's death at the feet of "others" so as to reduce their share of blame to zero. Their efforts were unsuccessful, but illustrate a number of practical problems presented by the operation of Proposition 51.

Although initially named as a defendant in the case, the City and County of San Francisco obtained summary judgment against the plaintiff's claims during discovery. The stated ground for the City's lack of liability was that no special relationship existed between it and the victim so as to give rise to a duty. Notwithstanding this pretrial determination, the remaining defendants sought permission to argue responsibility of the City and County to the jury. Relying on *DaFonte v. Upright* (1992) 2 Cal.4th 593, the defense claimed that although the City had been found immune from liability, its fault, if any, should nevertheless have been the subject of the jury's determinations. The trial court disagreed, noting that *DaFonte* dealt with application of fault to *immune* parties, whereas here, the Court had specifically de-

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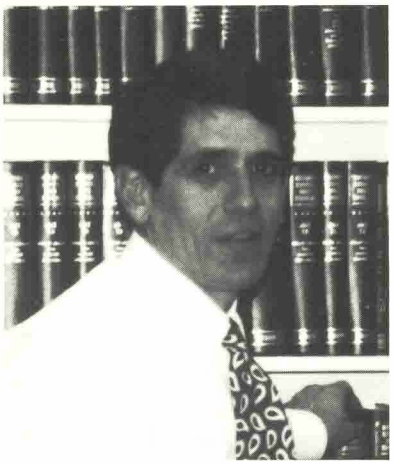
Dell ' Osso Named Shareholder; Link is now 'Of Counsel'



Daniel Dell'Osso

John Link

Oakland native, **Daniel Dell'Osso** has been named a shareholder in the firm effective January 1993. Born and raised in the East Bay, Dan graduated from Virginia Military Institute in 1975 with a commission in the United States Marine Corps. After earning a wealth of academic honors at VMI (including being named as Virginia's 1975 Rhodes Scholar Candidate), Dan began his career as a Lieutenant in the U.S. Marine Corps. He was awarded his wings as a naval aviator in May of 1977 and trained as an F-4 fighter pilot. After completing his active duty obligation in 1981, Dan remained affiliated with the Marine Air Reserves in Alameda until his squadron was decommissioned in September of 1992. Most recently, he was promoted to the rank of Lieutenant Colonel.

A 1985 graduate of Golden Gate School of Law (where he served on the Law Review and Trial Advocacy Team), Dan joined our firm as a law clerk in his second year of law school and has remained with us ever since.

As an associate, Dan has been involved in all facets of our work, with special concentration in the areas of aviation, toxic tort and automobile design defect litigation. He participates annually as an instructor for the Practising Law Institute's Toxic Litigation Forum and has authored articles for various professional journals.

During his years as an associate, Dan obtained multiple noteworthy verdicts, settlements and arbitration awards. Foremost among these were the negotiated settlements in the I-880 Cypress Structure cases against the State of California and his work on behalf of victims of D.E.S. We congratulate Dan and look forward to his future work.

Simultaneous with Dan's elevation to shareholder status, **John D. Link** announced that effective January 1, 1993, he would change his status to become Of Counsel to the firm. A partner and shareholder in the firm since 1979, John's change in status was necessitated by the death of his father, requiring him to take a far more active role in the family's farming business in Nebraska. Because of the need for regular periodic visits to Nebraska, it has become impractical for John to work full-time in the preparation and trial of a full case load. Notwithstanding this change in status, John expects to be present in San Francisco for most of the year. A graduate of the University of Nebraska in Lincoln, John served as president of his senior class in law school. Afterwards, he served in the Judge Advocate General's Corps of the United States Army, including an extensive tour of duty in Vietnam. After discharge, he was employed as an Assistant United States Attorney for the Northern District of California. Since coming to the Walkup office in 1974, John's expertise has stretched across the full spectrum of personal injury litigation. In recent years he has concentrated more of his time and effort in the area of federal tort and medical negligence claims and has amassed an impressive track record of favorable verdicts and settlements.

John intends to continue his practice, albeit at a less intense level. He will also continue to act as an arbitrator and mediator in general personal injury and medical negligence claims.

Ford Seeks to Remedy Safety Hazard; GM Opposes Recall

Ford Motor Company has undertaken a nationwide media campaign to advertise the availability of rear seat three-point seat belt systems to retrofit older model vehicles. The ads, appearing in *Reader's Digest* as well as other national publications, advise consumers of a $20 rebate offer on rear seat three-point retrofit kits available for Ford and Lincoln Mercury cars manufactured between 1979 and 1989.

With the advent of mandatory seat belt use laws across the country, the incidence of abdominal and spinal injury from lap belt only systems has dramatically increased. Injury claims resulting from lap belt injuries have also increased. (In the last three years, our office has settled two wrongful death and three paraplegia cases involving rear seat passengers injured by their lap belts.)

While Ford has demonstrated unusual social responsibility with its ad campaign, GM has decided to stonewall cries for the recall of its 1973-1987 full size pickup trucks. Although two consumer groups have petitioned the government to open a defect investigation (the Center for Auto Safety and Public Citizen) GM has maintained that its full size pickups, both current and former models, meet the safety needs of all GM customers. The trucks in question, of which 7 to 10 million are estimated to be in use today, are equipped with fuel tanks mounted outside the frame rails of the vehicle and under the cab doors. Positioned in this way, they present a fire and explosion hazard because there is no frame member to protect the tanks from crush or rupture in side impact, side swipe or roll over collisions.

The Center for Auto Safety and Public Citizen estimate that 300 people have died in side-crash fires while riding in these trucks; 115 between 1981 and 1986 alone.

As with rear lap belt claims, members of our firm have investigated a number of GM saddle tank fire cases. Should associate counsel have questions about these cases, they are invited to call **Michael A. Kelly**, **Kevin Domecus** or **Dan Dell'Osso**. We will be glad to work with our associate counsel in the prosecution of these claims.

New Jersey Study Debunks Malpractice Myth
MICRA Truce Expires

A recently published academic paper from the Johnson Medical School of the New Jersey University of Medicine published in the November 1, 1992 issue of *Annals of Internal Medicine* explored the question of whether physicians lose medical malpractice cases despite providing acceptable care because of jury sympathy for severe injuries. The retrospective cohort study which covered 12,829 physicians over a 15 year period concluded that the severity of patient injury had little or nothing to do with case outcome. According to the authors: "Our findings suggest that unjustified payments are probably uncommon."

The authors explored the influence of physician care and the severity of patient injury on the malpractice process. Contrary to insurance company propaganda, the study suggested that physicians usually win cases in which care was deemed to meet community standards and that the severity of patient injury had little bearing on whether a physician loses a case. There was no evidence to support the chronic claim of health care providers' insurers that undeserving claimants are often unjustly enriched.

The study concluded that "in most malpractice cases where medical care was defensible, the plaintiff received no payment." The severity of patient injury had little influence on whether damages were received especially in cases that were decided by juries.

The results of the study are particularly topical this year. With the expiration of the "truce" between the California Medical Association and various consumer groups regarding MICRA, the CMA has formed a coalition of health care providers and tort reform groups to preserve MICRA in its entirety. It has also hired political consultants and public relations firms to advance its cause. As was the case when the MICRA limitations were enacted in 1975, all evidence supports the view that the "problem" is not lawsuits, but lax physician discipline. Moreover, recent statistical evidence refutes the argument that damage caps or periodic payments reduce malpractice premiums. According to the American Medical Association, the number of medical malpractice claims paid in 1989 was 30% lower nationwide than the number paid in 1985. Nonetheless, malpractice premiums have gone up.

Additionally, there is no evidence that suggests that there is any ongoing "malpractice crisis." A 1990 study by the Harvard Medical Practice Group demonstrated that only one of every eight cases where medical malpractice occurred resulted in lawsuits, and, less than 7% of victims actually received any compensation.

Doctors, not lawyers, are the cause of medical malpractice. A four year California study showed that in Los Angeles, 10% of all medical malpractice claims and 30% of all payments were caused by just .6% of practicing physicians. In similar studies, 3% of Florida doctors were found to account for 45% of all claims dollars, 1% of the physicians in Pennsylvania were responsible for 25% of the losses, and, 7.5% of the doctors in Texas accounted for 65% of all claims payments made there.

It is time to lift the artificial MICRA limitations and discipline incompetent and impaired physicians. The artificial protections of MICRA encourage and insulate practitioners of bad medicine. It is time to abrogate MICRA and beef up physician discipline.

Industry Study Demonstrates Insurer Inefficiency

According to the October 19, 1992 issue of *Business Insurance*, awards received by injured plaintiffs and their counsel comprise less than half (43%) of insured tort costs; defense and administrative costs consume the largest percentage of insured tort costs.

Author Sarah J. Hardy reports that as of 1991, 24 cents of each dollar spent on defense of tort claims went to insurance company administration. This was **more** than was paid out in economic losses to injured plaintiffs (22 cents for each dollar) or in awards for pain and suffering (21 cents of each dollar). In addition, the study cited by *Business Insurance* reflected that in spite of attacks on the contingent fee attorney system, hourly billing by insurance defense and general defense firms claimed **more** of each dollar than did sums paid to plaintiffs' attorneys.

According to the article, 42 cents of each dollar spent on tort claims is spent on insurer administrative, overhead, and defense costs. While claiming that tort costs were growing faster than the economy, the article neglected to point out that the problem was not run away juries, greedy plaintiffs' lawyers or illegitimate victims -- it is the failure of the insurance industry itself to keep its own house in order.

Retainer Agreements Must Include Insurance Disclosure

Effective January 1, 1993, Section 6147 of the California Business & Professions Code has been amended to require all California lawyers who represent clients on a contingency fee basis to have a written fee contract that provides, among other things, a statement indicating whether the attorney maintains errors and omissions insurance coverage applicable to the services to be rendered, as well as the amount of the policy limits of that coverage if the limits are less than $100,000 per occurrence and $300,000 per policy term. If a lawyer fails to comply with the statute, the fee agreement becomes voidable at the client's option. A suggested form of insurance disclosure is available from the State Bar. Correspondence should be directed to the State Bar of California, Attn: Fee Agreements, 100 Van Ness Avenue, 20th Floor, San Francisco, CA 94102-5238.

Johns Hopkins Study Stresses Need To Stop Propeller Injuries

A new study co-authored by experts from the Johns Hopkins School of Public Health and the Institute for Injury Reduction has underscored the need for industry and government policies leading to the design of non-injurious motorboat propellers.

The study, "Motorboat Propeller Injuries," was conducted by senior author Jon Vernick, a Hopkins research associate and seven co-authors. It is the first organized effort to examine the clinical and epidemiological aspects of propeller injuries as well as the available technology and politics of their prevention.

The author notes that "propeller guards have been developed and patented by private entrepreneurs for more than 35 years but no major marine manufacturer currently offers them for sale."

The report suggests aggressive action by government regulators, manufacturers and practitioners within the tort system to provide incentives and requirements for the provision of prop designs that reduce or eliminate injuries.

Through the years, our firm has had extensive experience in litigating aquatic injury claims of all types, including those resulting from dangerously designed hulls and props. Should counsel handling such claims wish to associate in their prosecution, or refer them outright, we would be more than happy to consult.

*WALKUP*DATES...

Mike and **Dan Kelly** are once again back on the C.L.E. circuit. Continuing a tradition of never appearing together in the same forum, Mike participated as a lecturer for C.E.B.'s Recent Developments in Torts program held in San Francisco, Sacramento and Yosemite during January and February. Simultaneously, Dan was imparting pearls of wit and wisdom as a panelist for The Rutter Group's annual "Personal Injury Update" programs in San Francisco and Lake Tahoe. Mike also returned to U.C. Hastings College of the Law in January to begin his eleventh year of teaching. By coincidence, his Personal Injury Litigation class will be using a text co-authored by Dan: *California Practice Guide - Personal Injury*...**George Shelby** has been named Western Regional Chair of the National Board of Directors of ABOTA (American Board of Trial Advocates)...**Ron Wecht** has been re-elected to membership on the San Francisco Trial Lawyers Board of Directors. Ron will chair the March 1993 Auto Liability Seminar co-sponsored by S.F.T.L.A. and the California Trial Lawyers Association...**Paul Melodia** recently was a guest speaker at a luncheon held at the Fairmont Hotel by the National Association of Structured Settlement Consultants. Paul spoke on issues of importance to plaintiffs and plaintiff's counsel in negotiating structured settlements.

Proposition 51

(Continued from page one)

cided that the City had *no duty* to the plaintiff. Under such circumstances, fault could not be apportioned to the City per Prop 51.

Notwithstanding the above, the Court (over plaintiff's objections) permitted the verdict form to go to the jury with a line permitting apportionment of fault to "all others," a catch-all phrase used to describe the universe of tort feasors who may have been responsible for Scott's death. The defendants did not identify any specific "others" at trial, did not submit any instructions as to duty or breach of such by "others," nor otherwise meet their burden of proof as to the fault of such "others." Nevertheless, the jury was permitted to assign 5% of the fault against persons for whom no evidence had been introduced to support a finding of fault.

The defense also sought to have the Court instruct the jury to weigh intentional fault differently than negligent fault in comparing the conduct of the assailants and the tow company. Whether intentional and negligent conduct should be weighed equally has been addressed in two reported decisions. In *Weidenfeller v. Star and Garter* (1991) 1 Cal.App.4th 1, the 6th District Court of Appeal ruled that a negligent defendant's percentage of fault must be reduced by including the fault of intentional wrongdoers. The Ninth Circuit Court of Appeals has reached the same result on different facts in *Martin v. United States of America* .

A final issue raised at trial dealt with a claim by CSAA that Proposition 51 abrogated the vicarious liability of an employer for non-economic damages. Just prior to trial this issue was resolved in *Miller v. Stouffer* (1992) 9 Cal.App.4th 70. The *Miller* Court made clear that Proposition 51 did not in any way affect vicarious liability or the Doctrine of Respondeat Superior.

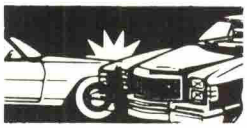
NHTSA Data Confronts Roll-Over Problems

Following extensive research, testing and public testimony, the National Highway Traffic Safety Administration has finally revealed a plan for reducing automobile roll-over accidents. As part of its plan, NHTSA intends to promulgate vehicle stability and crashworthiness requirements. According to Marion C. Blakey, NHTSA's administrator, roll-over crashes kill over 9,000 people every year and injure 52,000 more.

NHTSA intends to promulgate rules relating to interior roof padding to reduce head injuries and improved door latch regulations and window glazing requirements to reduce ejections.

Also in the area of crashworthiness, NHTSA released its new car assessment program tests for 1992. All of the vehicles equipped with air bags provided adequate and often superior head injury protection to drivers. In cars with dual air bags, passengers also benefited. This was not the case for many of the non-air bag equipped vehicles. They were equipped with only automatic, motorized or manual safety belts. When subjected to the 35 mile per hour frontal fixed barrier crash tests under the NCAP protocol, the two worst performing vehicles were the Chevrolet Astro Van and Hyundai Elantra Sedan. The HIC (head injury criteria) numbers for the Astro Van driver were 2065, and for the passenger 1815. In the Elantra, the driver and passenger HIC numbers were 1345 and 1240 respectively. HIC's above 1000 indicate the possibility of serious injury; numbers below 1000 indicate such injury is unlikely.

RECENT CASES



VEHICULAR NEGLIGENCE

Knight v. Avis

In *Knight v. Avis* (San Mateo Superior Court No. 334944), **Rick Goethals** obtained a binding arbitration award in the amount of $472,000 on behalf of a 50-year-old man injured in a rear-end auto accident. Following the accident, plaintiff claimed total and permanent disability as the result of chronic neck pain. As of the time of the arbitration, plaintiff had undergone two neck surgeries, but continued with unremitting neck pain requiring regular use of narcotic pain relievers. He claimed a substantial wage loss by reason of his disability, notwithstanding the fact that he was unemployed at the time of the accident. Defendants contended that plaintiff was not injured significantly in the accident and that his chronic neck pain, as well as the need for surgery, was the product of pre-existing degenerative neck disease. Pre-accident x-rays confirmed the existence of extensive degeneration. Defendants agreed to binding arbitration as part of a "high-low" agreement." The pre-arbitration settlement offer was $75,000. The award included $63,000 to plaintiff's wife in compensation for her loss of consortium claim.

McIlvain, Rodems, and Rosenbaum v. Dullea

In *McIlvain, et al. v. Dullea* (San Francisco Superior Court No. 940-403), **Jeff Holl** obtained settlements on behalf of three plaintiffs injured in a vehicle accident. The plaintiffs were proceeding north on Larkin at Grove Street in San Francisco when the defendant ran a red light and struck them. None of the plaintiffs were belted. Mr. McIlvain sustained a severe forehead laceration from hitting the windshield and a dislocated jaw which required open reduction. Anne Rodems sustained a hairline fracture of the right wrist, and Stephanie Rosenbaum suffered lacerations of the knee and right eye. Treatment for all plaintiffs was at San Francisco General Hospital. Mr. McIlvain's case settled for $95,000; Ms. Rodems' case for $12,500 and Ms. Rosenbaum's case for $11,500.

GOVERNMENT LIABILITY

Kent v. CCSF

In *Kent v. CCSF* (San Francisco Superior Court No. 927114), **Mike Kelly** negotiated a cash and structured settlement having a present cash value of $590,000 on behalf of a 67-year-old San Francisco public relations specialist. Plaintiff was involved in accidents in December of 1989 and February of 1990 in which he was struck by Muni Railway buses while walking as a pedestrian. Plaintiff claimed a closed head injury and cognitive impairment as a result of the successive accidents. The City claimed that there was no evidence plaintiff was struck by a bus in the first accident. Moreover, it claimed that any head injury or cognitive impairment plaintiff demonstrated was the product of the aging process and unrelated sociological factors. Under the terms of the settlement all of plaintiff's post-accident medical bills were paid, a lump sum cash payment was made and an annuity was established to provide for all of plaintiff's future needs.

Anson v. USA

In *Anson v. USA*, **Mike Kelly** negotiated settlement of a medical malpractice claim under the Federal Tort Claims Act arising from negligently performed brain surgery at Tripler Army Hospital in Honolulu, Hawaii. The plaintiff, a United States Coast Guard retiree, and a resident of the South Pacific island of Palau, sought V.A. treatment for a cerebral aneurysm at Tripler in June of 1988. Intraoperatively, the surgeon clipped the middle cerebral artery with the result that the plaintiff sustained right-sided paralysis and cognitive impairment. Plaintiff claimed the surgery was negligently performed. The USA claimed that the surgery was carried out in a standard manner and that the resulting complication was an inherent risk of the procedure. The government also claimed that unrelated health problems significantly compromised the plaintiff's life expectancy. Under the settlement, the USA agreed to pay $475,000 in cash and to fund an annuity providing plaintiff with guaranteed payments of $2,562 per month, increasing 3% compounded annually.

AVIATION ACCIDENTS

Roe v. Doe Defendants

In *Roe v. Doe Defendants*, **George Shelby** and **Ralph Bastian** obtained a two million dollar settlement on behalf of the surviving spouse and minor child of a 31-year-old Coast Guard Lieutenant who was killed after the commercial helicopter in which he was riding crashed into unmarked utility lines in early 1992. Under the terms of the settlement the parties' identities are to remain confidential. At the time of his death, the deceased was earning approximately $47,000 per year. Under the terms of the settlement both the carrier and utility contributed substantially. The settlement was reached after several days of negotiations before Ret. Judge Raul Ramirez of Sacramento.

MEDICAL NEGLIGENCE

Jane Doe, a Minor, v. Doe Hospital

In *Jane Doe, Minor, v. Doe Hospital* (San Francisco Superior Court), a three-month old female child was hospitalized for respiratory problems. Her physician ordered a prescription for theophylline. A nurse mistakenly gave the infant an adult dose of the drug, resulting in an unwitnessed cardio-respiratory arrest. The minor plaintiff was resuscitated but sustained severe brain damage which left her with spastic quadriparesis and cortical blindness. Resolution of the case was accomplished by **Daniel J. Kelly** at a judicially supervised settlement conference. The settlement terms included an initial cash payment of $950,000 and the funding of an annuity paying the child $8,000 per month for her life, guaranteed for a minimum of five years. The estimated cost of the settlement was $2,000,000.

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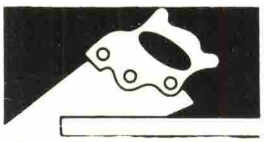
Pecson v. Doe, M.D.

In *Pecson v. Doe*, M.D., **Rick Goethals** negotiated a cash and structured settlement on behalf of a 57-year-old insulin dependent diabetic who claimed permanent neurologic injury as the result of anesthetic malpractice during cataract surgery. Plaintiff claimed that during the procedure he was not properly ventilated and a pulse oximeter was not used to measure his blood oxygenation. As a result, he became bradycardic and hypotensive. Resuscitation efforts were delayed and it was claimed permanent neurologic injury resulted. The defendant claimed that plaintiff's prior history of multiple heart attacks, hypertension and insulin-dependent diabetes were responsible for the claimed neurologic injuries. The settlement, having a present cash value of $561,000, consisted of a $200,000 cash payment and the purchase of an annuity which will pay the plaintiff $6,000 per month for the balance of his life.

Kennedy v. Southern Inyo Hospital

Rick Goethals negotiated a $345,000 settlement on behalf of a 59-year-old woman whose injuries from an auto accident were exacerbated by the failure of a staff radiologist to accurately interpret post-accident x-rays in *Kennedy v. Southern Inyo Hospital* (Inyo County Superior Court No. 17417). Plaintiff claimed that the radiologist on duty failed to recognize a ruptured bowel. Because of the error, treatment was delayed until widespread peritonitis had developed and the patient's condition had become critical. Plaintiff claimed the delayed diagnosis necessitated over four months of hospitalization and the placement of a permanent ileostomy. Medical bill recovery was foreclosed by MICRA. The settlement included roughly $27,800 in out-of-pocket unreimbursed special damage and an award of roughly $15,000 in compensation of her spouse's nursing services.



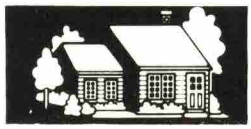
WORK PLACE INJURIES

Laughton v. GSI

In *Laughton v. GSI* (Contra Costa Superior Court No. C-90-04150), **John Echeverria** and **Richard Schoenberger** obtained a $450,000 settlement on behalf of a 32-year-old paper mill employee injured when a 35 pound man hole cover fell 18 feet, landing on his head, causing a depressed skull fracture. After surgery and referral to specialists, plaintiff's condition improved to where he was able to begin full-time employment within one year of the accident. Defendants claimed that the sole proximate cause of the accident was the fault of plaintiff's employer for, among other things, not providing a helmet nor properly maintaining equipment, thereby relieving the defendant of liability per *Dafonte v. Upright* (1992) 2 Cal.4th 593.

McCalmon v. J.R. Roberts

Daniel Dell'Osso recently obtained a $100,000 cash settlement in *McCalmon v. J.R. Roberts* (Solano Superior Court No. 94737). Prosecuted under the peculiar risk of harm theory, the case involved plaintiff's claim that the general contractor at an excavation site had provided plaintiff with the wrong equipment to lift and move heavy metal trench plates. The contractor claimed that plaintiff had misused the equipment, and that the particular chain which failed (permitting a large steel plate to drop on plaintiff's foot and amputate three of his toes) had been intended for work other than trench plate moving. The defendant also claimed that as an experienced excavator, the plaintiff should have known better than to stand in close proximity to the load during a lifting operation. The settlement represented new money paid over and above $65,000 in worker's compensation benefits previously received. Plaintiff also retained the right to worker's compensation medical benefits for two years following the settlement.



PREMISES LIABILITY

Doe v. Roe Foundation

In *Doe v. Roe Foundation,* **Kevin L. Domecus** obtained a $400,000 settlement on behalf of a 20-year-old schizophrenic man who suffered multiple injuries in a failed suicide attempt. On the date of the accident the plaintiff walked away from defendant's group home in Santa Rosa and shortly afterward ran in front of a car on a busy thoroughfare. It was claimed that defendant's counselors negligently permitted the plaintiff to leave the facility unchecked and without supervision. The defendant contended that on earlier occasions plaintiff had left the house without incident, and further that he had been neither depressed nor suicidal prior to the date of inj Plaintiff suffered permanent injuries to his knee and arm as well as cognitive deficits secondary to a closed head injury.

Kronenberg v. Ewald

In *Kronenberg v. Ewald* (San Francisco Superior Court No. 994-525), **Jeff Holl** negotiated an $85,000 cash settlement on behalf of a woman who fell down the exterior stairs of her rented home in San Francisco. The stairs violated local building codes in that they lacked a proper handrail, the rise and run of the steps was uneven, and, the particular step that plaintiff fell from had a negative slope. The plaintiff fell while attempting to open the front door with her two young children on the step in front of her. She suffered a subdural hematoma and soft tissue neck and back injuries. Medical expenses were $9,000. Subsequent to the fall the landlord installed proper handrails at the property.

MEDICAL PRODUCT LIABILITY

Paul V. Melodia and **Cynthia F. Newton** have recently concluded eight L-Tryptophan cases with Japanese manufacturer Showa Denko. The settlement for these victims of EMS (eosinophilia myalgia syndrome) have included reimbursement for past and future medical expenses and wage loss and substantial non-economic damages. Plaintiffs with EMS suffer from a variety of ailments including pulmonary difficulties, muscle spasm, skin disorders, hair loss, chronic fatigue and neurocognitive deficits. The plaintiffs (the vast majority of whom are women) took the synthetically manufactured amino acid as a natural alternative to prescription and over-the-counter sleep aids and anti-depressants.

The eight cases recently settled were venued in San Francisco, San Mateo, Sacramento and the Northern district Federal Court. Several cases were resolved on the eve of trial; multiple additional claims remain to be tried or settled.

Paul and Cynthia are available to consult on any L-Tryptophan cases our associate counsel may be prosecuting.