WALKUP, MELODIA, KELLY & ECHEVERRIA

FOCUS on torts

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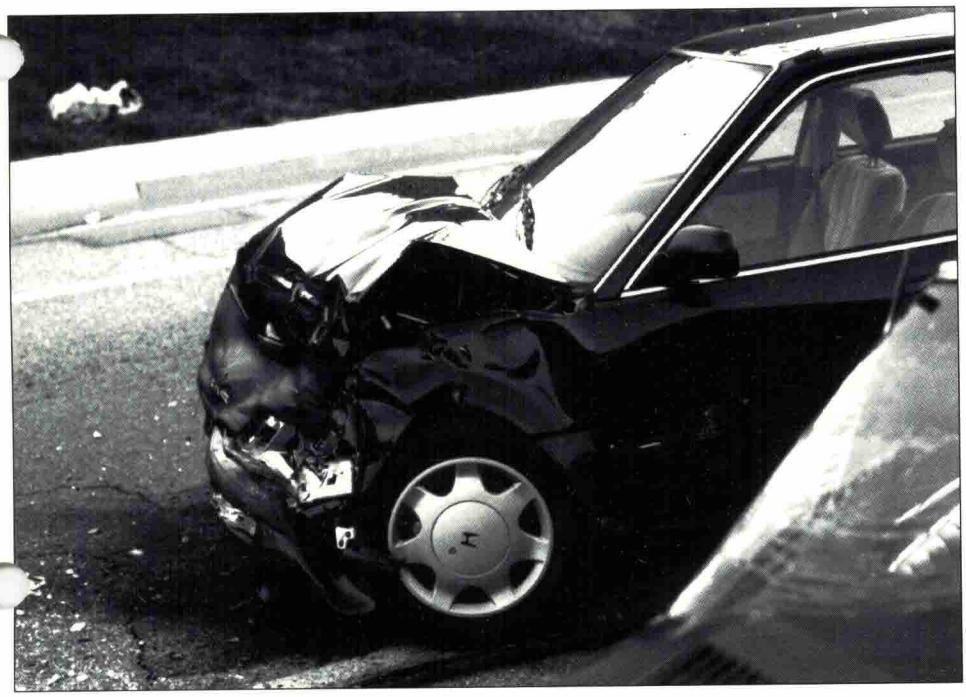
Firm Obtains $5.76 Million Crashworthiness Verdict



On July 11, 1991, Joe Johnston, a 43 year old father of two, was driving home from work on a route he had followed for more than eight years. He was driving his three-month-old Honda Civic. In the oncoming lanes, Marina Rodriguez, who was driving a 1977 Firebird, became confused by the lane striping and braked to a stop at an angle across the center line, directly into Mr. Johnston's path of travel. When the Firebird was nearly at rest, Mr. Johnston struck it broadside. Based on the physical evidence, including calculations of the crash deformation, Mr. Johnston's vehicle was determined to be traveling roughly 25-30 miles per hour at impact.

Given the low impact speed and the consequent physical damage, this was characterized as only a moderate collision. All of the Honda window and windshield glass remained intact and there was no significant deformation of the passenger compartment. Mr. Johnston, who was wearing his seatbelt, slammed his chest into the steering wheel, dramatically bending the wheel, tearing one of his lungs and rupturing

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"EXCESSIVE" PUNITIVE DAMAGE AWARDS — A FIGMENT OF THE IMAGINATION

Based upon reports in the popular press, it sometimes seems as though punitive damage awards are being returned on a fast and furious basis against American corporations. However, the great majority of punitive damage awards are never paid or affirmed on appeal. For example, the so-called "McDonald's Coffee" verdict was first slashed to $400,000 by the trial judge, and later settled for substantially less.

At the same time that trial and appellate courts are reducing or overturning punitive damage awards, tort reformers continue to bang the drum of the "litigation explosion" phenomena. Yet, according to a study prepared by the National Center for State Courts in Arlington, Virginia, tort filings have actually remained constant over the past eight years, and in fact, declined by 2 percent between 1990 and 1992.

Real world experience to the contrary, tort reform advocates insist that excessive jury verdicts and frivolous lawsuits continue to plague the civil justice system. In a recent study of 100 jury verdicts of one million dollars or more in compensatory and/or punitive damages published by the National Law Journal, 27 verdicts were set aside by trial court judges or reversed on appeal, 22 others were substantially reduced, and ten were brought against defendants whose assets or insurance coverages

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Bruce Walkup Remembered

Just as our last issue of Focus went to press, the founder and retired senior partner of our firm, Bruce Walkup, passed away. Mr. Walkup, one of the nation's premier personal injury lawyers, was widely lauded as a top-notch trial attorney dedicated to helping his clients. He was 80 years old.

Thorough preparation and scholarly demeanor — not courtroom flamboyance — enabled Bruce to persuade juries throughout the country to award substantial verdicts to his catastrophically injured clients. His reputation became national in 1973 when he obtained a $4 million verdict for a Marin County child injured in a schoolyard mishap at a time when seven-figure verdicts and settlements were rare in personal injury cases.

Bruce was also involved in litigation following a number of highly publicized airline crashes, including the wreck of two planes in the Canary Islands that killed 581 people.

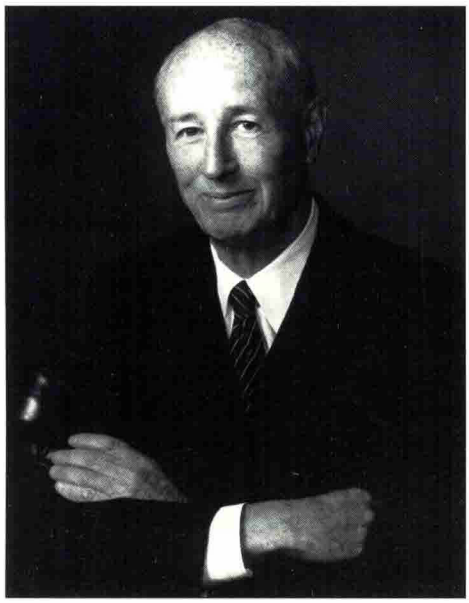
He was widely admired by his peers as a compassionate advocate for the underdog. "I'll listen to anybody's tale of woe," he once said. "I try to help them."

The grandson of a Nevada Methodist preacher, Walkup was born September 26, 1914, in Berkeley, graduated from the University of California at Berkeley, then finished first in the class of 1938 at Boalt Hall law school.

He worked briefly in Oakland, defending the Key System Transit, then joined the firm of Thelen, Marrin, Johnson & Bridges, representing Bechtel, Kaiser Steel and other corporations.

However, in 1959 he set out on his own, opening shop in a tiny room in the old Mills Building. Specializing in plaintiff's personal injury litigation, he then went on to establish our present firm.

"His admirers were as enthusiastic on the defense side as the plaintiff's side," a prominent San Francisco attorney told The San Francisco Examiner. "It's a pleasure to litigate with him. He fights fair and square. He is a lawyer's lawyer."



Walkup clung to two basic beliefs: "A deal is a deal, (and) nothing is too good for a friend."

He was a Fellow of the American College of Trial Lawyers, the International Academy of Trial Lawyers, and the International Society of Barristers. He was also a Diplomate of the American Board of Trial Advocates, which named him California's Trial Lawyer of the Year in 1969. And he was a founder and former president of the Inner Circle of Advocates.

In rating Walkup as one of the State's 10 most powerful lawyers, California Magazine in 1981 described him as "a real gentleman and the consummate trial lawyer." He was also listed in "The Best Lawyers in America" and "Who's Who in America."

Though retired from the active practice of law for nine years prior to his death, Bruce was regularly in the office, offering help and advice in his unique and understated way. His gentle spirit and good counsel will be missed by all who knew him, and the standard he set for those of us who practiced with him will serve generations of future clients well. Above all, Bruce demonstrated that superior results could be achieved while remaining polite and professional and displaying respect for opposing parties and counsel. The practice of law has lost a fine ambassador.

3 CHILD SEATS FAIL CONSUMER REPORTS CRASH TESTS

Century 590, Evenflo "On My Way" 206 and the Kolcraft Traveler 700 convertible seat for infants and small children could fail in a 30 mph crash, even if properly installed, according to Consumer Reports which judged all three to be "not acceptable" in its September 1995 issue.

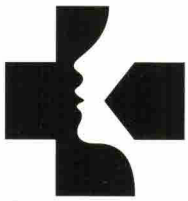
The laboratory hired by Consumer Reports to perform the tests secured each child seat to an automobile seat attached to a test sled. A dummy was strapped into the seat, and the sled simulated a 30 mph head-on crash into a fixed barrier. A high-speed camera recorded the action. After the crash, the integrity of the seat was examined.

The Consumer Reports crash test was tougher than that required by the government. Infant seats are generally tested with a 17-1/2 pound dummy, the size of a typical 6-month-old. Since infant seats are labeled for use with children up to 20 pounds (about the size of a 9-month-old), Consumer Reports specified that a dummy of that size should also be used.

In previous testing, the comfort and convenience of the Century 590 were highly rated by Consumer Reports, which "assumed that compliance with a federal standard assured its safety." But when Consumer Reports crash-tested the Century seat with its detachable base and the 9-month-old dummy, the carrier broke away from the base three out of four times. Its performance with a 6-month-old dummy was only "marginally acceptable," the magazine said. When used without its base, the 590 performed well with both dummy sizes.

Century immediately retested its model 590 and announced that its new tests "continued to confirm" the seat's safety, contradicting Consumers Union, publisher of Consumer Reports. Century's testing used the heavier 20-pound dummy and was performed by the same laboratory used by the National Highway Traffic Safety Administration. The company said that in these 12 crash tests and in 200 previous tests, the seat has "never" detached from the base on impact. *Continued on page 3*

PHYSICIAN-PATIENT PRIVILEGE ERODED IN MEDICAL NEGLIGENCE CASES



Do you believe the filing of a personal injury suit is the equivalent of a complete waiver of the physician-patient privilege? For years the correct answer has been a resounding "no." The physician-patient privilege has always been construed liberally in favor of the patient to prevent physicians from voluntarily divulging privileged information. (Evidence Code §§ 994, 995; In Re: Lifschutz (1970) 2 Cal.3d 415.) In California, as well as most other jurisdictions, ex parte communications between defense counsel and a patient's treating physician have been held improper. (Torres v. Superior Court (1990) 221 Cal.App.3d 181.) The only circumstance under which a waiver occurs is the so-called "patient litigant exception" in Evidence Code § 996.

Tremendous importance has been placed on the right to privacy in California. Our courts have generally held that invasion of this legally protected interest may occur only after carefully balancing the right of privacy with the need for discovery. (Harris v. Superior Court (1992) 3 Cal.App.4th 661.)

In Province v. Center for Women's Health (1993) 20 Cal.App.4th 1673, an intermediate appellate court held that ex parte communication between defense counsel and a plaintiff's treating physician was forbidden. The Province court reasoned that without a deposition, there was no way of knowing whether an impermissible invasion of the plaintiff's rights was occurring. Courts of other states have also held that there is little advantage in allowing ex parte communications. (See, for example, Crist v. Moffatt (1990) 326 N.C. 326; Duquette v. Superior Court (1989) 161 Ariz. 269.)

Ex parte communications with defense counsel also potentially create legal problems for treating physicians. Such communications can result in a breach of the physician's fiduciary duty and jeopardize a continued physician-patient relationship.

In medical malpractice cases, it now appears that limited ex parte contact may be permissible. In Heller v. NorCal Mutual, the California Supreme Court immunized a doctor from liability for violating a patient's confidence. The case arose from a contact by NorCal Mutual Insurance (the defendant physician's carrier in a medical malpractice claim) with one of plaintiff's prior treating physicians. In an interview between NorCal's representative and the prior treating physician, that physician revealed confidential information regarding the plaintiff that he had received from her in the course of the doctor-patient relationship. Plaintiff claimed that because of this inappropriate disclosure, she was forced to settle her case against the defendant physician for less than it was worth.

The California Supreme Court, in a majority opinion authored by Justice Lucas, rejected plaintiff's claim that this ex parte disclosure violated the Confidentiality of Medical Information Act (Civil Code §56 et seq.). In so doing, Justice Lucas opined that in suing the subsequent physician for malpractice, plaintiff placed all her medical history in issue and gave up any reasonable expectation of privacy concerning any communications with her prior doctor.

Dissents were authored by both Justice Mosk and Justice Kennard. Justice Kennard, in particular, argued that a person who sues for medical malpractice should not be construed to have given up all reasonable expectation of privacy with respect to communications he or she may have with their doctors. Further, Justice Kennard pointed out that these facts did not provide an appropriate forum for determining the propriety of ex parte interviews between a defendant's insurer and a plaintiff's doctor.

In light of the Heller holding, it makes sense for plaintiff's counsel to now advise all clients that anything they say to their physicians may not be privileged. Such a warning historically has been reserved for communications to defense independent medical examiners. The Heller rule (like much of MICRA) now gives physicians and their attorneys a further advantage in the defense of medical negligence claims, and erects one more hurdle for injured persons to overcome when seeking recompense from careless health care providers.

CHILD SEATS, *continued*

Consumer Reports said the Kolcraft Traveler 700 failed in the forward-facing position with a 33-pound dummy, the size of a typical 3-year-old. Its buckle failed, releasing the harness and allowing the dummy to strike the overhead shield. The shield then broke away and the dummy was ejected or hanged from the straps. When tested in the rear-facing position with a 9-month-old dummy, the seat performed safely.

While concerned about Consumer Reports results, Kolcraft said its seat has successfully passed more than 100 independent tests and complied with the applicable government standards.

Consumer Reports said the Evenflo On My Way 206 infant seat worked well with the 9-month-old dummy when used with its detachable auto base. But without its base, the shell broke near one of the hookups for the vehicle safety belt, leaving one side of the carrier — with the dummy strapped inside — unsecured from the bench seat. In other tests, with both the 9- and 6-month dummies, the shell cracked but did not release the carrier or dummy.

On June 29, Evenflo recalled 200,000 of these safety seats. Affected seats have the name On My Way and bear numbers beginning with 206; they were manufactured between May 7, 1994, and May 31, 1995. The seat cracked during company testing. For information, call Evenflo (800) 225-3056.

Ricardo Martinez, administrator of the National Highway Traffic Safety Administration, said the agency was concerned that the crack could extend further into the structural area of the seat — and it's possible that a child in the seat could be cut or harmed by the edges of the crack. He urged parents to use this restraint only with the vehicle safety belt threaded through the detachable base until plastic inserts to be provided by the manufacturer are installed.

WALKUPDATES

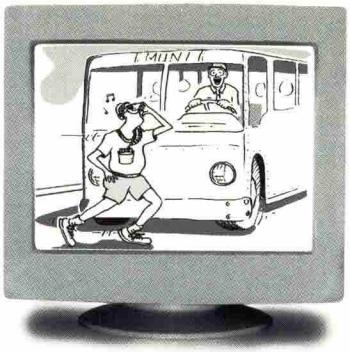
Cynthia F. Newton recently acted as a co-presenter for the National Business Institute's all day Evidence seminar program in San Francisco. In April, Cynthia spoke to the spring convention of the Consumer Attorneys of California. Her address (a part of the Premises Liability program) dealt with anticipating and diffusing common defenses in premises cases..Michael A. Kelly recently spent a week in Boulder, Colorado, participating as a faculty member for the National Institute of Trial Advocacy's (NITA) national skills training program. Mike has previously served as an instructor for NITA at both their Western and Pacific Regional Programs. Mike and Dan Dell'Osso will be addressing a subgroup of ATLA's product liability section in October regarding discovery and trial in automobile product liability claims. Speaking of Dan Dell'Osso, he addressed the National Convention of the American Trial Lawyers Association in New York City in July. Dan's presentation (accompanied by a written paper) dealt with analyzing and understanding computer re-creations and animation in complex product liability cases. Dan Kelly recently returned from La Costa, CA, where he attended the Board of Governors' meeting of the International Society of Barristers. Our newest associates, Erik Brunkal and Mike Recupero, recently spent two weeks in Denver, CO, at the regional NITA trial advocacy training program, honing their trial skills.

"EXCESSIVE" PUNITIVE DAMAGE AWARDS —

Continued from front page

were insufficient to cover the awards. While corporate America may dispute it, punitive damages are not intended to put companies out of business. Rather, the threat of punitive damages constitutes a powerful force for promoting safety. Large awards are few and far between. Without the threat of punitive damages, many manufacturers would simply conduct the type of cost benefit analysis Ford attempted in the infamous Pinto cases of the late 1970's. (See, for example, Grimshaw v. Ford Motor Company (1981) 119 CA 3d 757.)

COMPUTER ANIMATIONS: FAITHFUL RE-CREATIONS OR MISLEADING CARTOONS?



In our visually oriented society, seeing is often believing. For this reason, computer-generated evidence in the form of animations and simulations can be incredibly persuasive to jurors. More and more, attorneys need to understand the science of computer-generated evidence in order to properly present it or effectively attack its admission into evidence.

Animation is the type of computer-generated evidence most often encountered in the courtroom. An animation is a two or three-dimensional graphic image in motion.

There are three basic types of animations: tutorials, illustrations and simulations. Tutorials involve the use of animation to explain relevant topics in a case, such as the laws of physics, scientific phenomena or industry practices. Illustrations are often prepared at the direction of an expert, are not to scale, and are utilized to explain or illustrate an expert's conclusion or opinion. Simulations are animated

SEAT BELT RECALL AFFECTS OVER EIGHT MILLION CARS

Dr. Ricardo Martinez, Administrator of the National Highway Transportation Safety Association, recently announced a safety recall campaign to replace defective seat belts manufactured by Takata Corporation. The defect, involving possible buckle failure, affects nearly nine million cars and trucks sold by 11 Japanese and U.S. auto makers including Honda, Nissan, Mazada, Mitsubishi, Suzuki, Isuzu, General Motors and Daihatsu. The involved vehicles were manufactured between 1986 and 1991. NHTSA's investigation revealed that the buckle release buttons had broken and been rendered inoperable, creating a safety risk. William Boehley, the agency's associate administrator for safety assurance, stated that 90 to 95 percent of the affected vehicles are believed to be still on the road. U.V. light apparently decreases the strength of the plastic buckle release button, leading to an increased risk of pieces breaking off and jamming the internal locking mechanism.

If indeed the buckle becomes more brittle when exposed to U.V. light, passengers in the older vehicles may be at higher risk of seat belt failure

A Takata spokesman has recently confirmed that the problem was caused by defective plastic in the orange push button. A list of some of the vehicles which are being recalled is set out below:

Chrysler
1986-91 Colt
1990-91 Laser/Talon
1989-91 Summit

Isuzu
1990-91 Pickup
1991 Rodeo
1995 Stylus

Suzuki
1988-91 Samurai
1989-91 Sidekick

Nissan
1990-91 Infiniti Q45, M30
1987-88 Nissan 200SX
1988-91 Pathfinder

General Motors
1989-91 Geo Metro
1990-91 Geo Storm
1989-91 Geo Tracker

Subaru
1987-91 Justy
1988-90 Loyale

Honda
1986-91 Civic
1986-91 Honda Accord
1986-91 Honda Prelude
1986-90 Acura Legend

Mitsubishi
1990-91 Eclipse
1986-87, 89 Galant
1986-91 Mirage

re-enactments or reconstructions based upon the evidence in the case.

Each type of animation involves varying degrees of complexity and computer science. Each also represents a different combination of mathematics, software, programming, and operator manipulation. The animator has great discretion in exercising control over the finished product. The animator may approach the task as an artist, as a mathematician, as an expert in reconstruction, or simply as a technician. The artist animator fills in many of the "blanks" based on his or her experience. The mathematician animator, on the other hand, creates a mathematical model which may be subjected to objective analysis and tested for accuracy.

Every animator uses a different program or mathematical model to achieve the result desired. In so doing, each makes choices as to light, color, and rate of motion.

Once the animation is generated within the computer, it must be downloaded onto a video. VCRs typically reproduce images at 30 frames per second, while computers often generate images at 35 frames per second. This transfer in itself can easily affect the authenticity of a simulation or re-creation.

The introduction of computer-generated evidence always requires the testimony of the creator regarding the foundational issues of animation science and technique. Testimony regarding the type and manipulation of the hardware and software should also be required. In addition, all data which forms the basis for the animation must be identified. Whenever possible, counsel should seek to obtain an actual copy of the program the animator has used (often claimed to be proprietary), for independent assessment and analysis. Finally, it is important to verify the source, accuracy and method of input of any source data.

As laptop computers become more powerful and easier to operate, more and more experts are generating animations. Counsel should be careful not to accept animations at face value. Too often the animation represented to be "a reconstruction" has as much to do with reality as a Bugs Bunny cartoon.

Members of our firm have had significant experience in presenting and defending against computer-generated animation evidence. Should associate or referring counsel find themselves in a case where our expertise in this area would be of benefit, we welcome their inquiries.

Crash Verdict - *Continued from front page*

his spleen. Both of Johnston's lungs collapsed within minutes, resulting in a cardiac arrest. By the time ambulance personnel transported him to the nearest hospital, he had already suffered irreversible anoxic brain damage.

For the next 22 months, Mr. Johnston remained in a vegetative state. Victoria, his wife of 20 years, visited him daily, performing many routine nursing duties. Despite the excellent medical and supportive care, Mr. Johnston died on May 1, 1993.

Walkup attorneys Michael Kelly and Daniel Dell'Osso represented Victoria Johnston and her children. Mike and Dan knew that the Honda had performed in an aberrant fashion, as a new vehicle (3,000 miles) should be expected to protect its operator from significant injuries in a collision of this magnitude. The 1991 Honda was manufactured with a passive/active passenger restraint system. As designed, the seatbelt incorporated a motorized shoulder harness and manual lapbelt. It was uncertain whether or not Mr. Johnston was wearing both components of his restraint system at the time of the collision. As a practical matter, the use or non-use of the lapbelt was irrelevant, as governing motor vehicle safety standards require that the shoulder component alone be capable of preventing significant injuries to the head, chest and legs in a 30 mile per hour barrier collision. In short, based on their experience with other passenger-restraint and auto defect claims, Dan and Mike were convinced that this Honda was not crashworthy.

On July 6, 1995, after six days of deliberation, a Los Angeles jury agreed. They awarded Victoria Johnston and her children $4 million in non-economic damages and $1,769,000 in economic damages, apportioning 99 percent of the injury and loss to Honda.

Honda had vigorously defended the case, arguing that the vehicle was not defective and also that Mr. Johnston's injuries were the result of a rare underlying pulmonary condition that stemmed from a childhood illness. Honda marshalled experts in seatbelt design, accident reconstruction and biomechanics. The defense attorneys introduced statistical evidence indicating that the Honda Civic, when compared with "peer" vehicles, was as safe or safer than most cars on the road. They also argued that the steering wheel deformation was caused by impact from the decedent's legs and not from his chest. Honda was so confident in these defenses that they refused to make any settlement offer at any stage of the case.

The jury rejected Honda's theories. They instead accepted the testimony of independent witnesses and plaintiffs' retained experts, who demonstrated that this should not have been a fatal accident. Dan and Mike were able to demonstrate that the seat track of the Honda failed in the collision, permitting the seat to move forward so that the shoulder harness restraint components of the seatbelts were compromised. They also showed that this accident should never have resulted in anything other than minor injuries. The jury's acceptance of this argument was reflected in the apportionment of responsibility.

The verdict, one of the largest in California history in a "crashworthiness" case, is the third case tried by the Walkup firm involving passenger restraint issues. (Earlier cases, tried in California and Oregon, involved Chevrolet and Chrysler.)

We are currently handling cases involving seat track failure, air bag deployment, seatbelt design and fuel system integrity. Attorneys with similar cases, or who are evaluating potential claims involving crashworthiness issues, should feel free to contact Mike Kelly, Dan Dell'Osso or Ron Wecht of our office.

RECENT CASES

MEDICAL NEGLIGENCE

Addison v. Doe Doctor and Hospital

In Addison v. Doe Doctor and Hospital (Sonoma Co. Sup. Ct. No. 205082), Richard H. Schoenberger obtained a $180,000 settlement on behalf of a 62 year old woman who was admitted to the defendant hospital for a left knee arthroscopy and underwent bilateral knee surgeries because of confusion on the part of the hospital and treating orthopedic surgeon. Plaintiff's right knee had previously been asymptomatic. The unnecessary surgery altered the physiology of the healthy knee joint and set it on a downhill course. Defendants alleged that pathology was noted in the good knee intraoperatively and that plaintiff would have required surgery in the future. However, plaintiff was able to prove that the defendants would likely bear the burden of proof on this causation issue, as otherwise they would gain an advantage from the lack of proof inherent in the situation that they wrongfully created. Although a knee arthroscopy is traditionally thought of as a minor procedure, the egregiousness of the defendant's conduct, combined with a bad result, precipitated settlement shortly before trial.

Owen P. v. Doe Hospital and Physicians

In Owen P. v. Doe Hospital and Physicians (Ala.Sup.Ct. No. 717660-1) Michael A. Kelly concluded a medical negligence claim on behalf of an 8 year old boy who sustained significant brain injury when indolent spinal meningitis was not diagnosed prior to his discharge from the defendant hospital's nursery in the three days following birth. Plaintiff contended that the child presented with generalized signs and symptoms suggestive of some infectious process which required a work-up. Such a work-up would have revealed the disease and permitted treatment. Defendants claimed that the child manifested none of the typical signs of meningitis because he was without arching of the back, temperature elevation, or loss of appetite. The minor plaintiff, though functional, suffers from mild social and intellectual disability. He has a borderline low IQ and will likely require special schooling and supervision the balance of his life. The judicially supervised settlement provided for both cash and annuity payments to guarantee that the child's present needs (special school, occupational therapy, etc.) and future needs (including a supervised living situation as an adult) will be met. The settlement was contributed to by the defendant hospital and the child's pediatrician, both of whom shared responsibility for the failed diagnosis.

Anderson v. Lodi Memorial Hospital

In Anderson v. Lodi Memorial Hospital et al., Paul V. Melodia obtained a $450,000 verdict on behalf of the husband and two young children of Regina Anderson, who died of complications of pneumonia on December 19, 1991. Mrs. Anderson had been seen in the Lodi Memorial Hospital Emergency Room on December 8, 1991, and was sent home with a diagnosis of flu. She returned to the hospital three days later, but her condition was so severely compromised that she died eight days later despite aggressive care. The plaintiff contended that the decedent's vital signs and fever required more diagnostic testing at the time of the initial emergency room visit. The defense experts testified that the emergency room physician's management was entirely within the standard of care and that earlier treatment would not have made a difference in the outcome. The jury deliberated one day after a six day trial. The jury awarded non-economic damages of $250,000 and economic losses of $200,000. The economic losses were primarily for the loss of household services, as there was no loss of income.

Parents v. Medical Defendants

In Parents v. Medical Defendants (confidential settlement), Kevin L. Domecus negotiated a $500,000 cash settlement on behalf of parents whose child was stillborn because of a medication error during labor and delivery. The mother had undergone two prior cesarean sections, but planned to deliver this child vaginally. After she was admitted to the defendant hospital to induce labor, she received an overdose of prostaglandin, which caused a uterine rupture that asphyxiated th baby. The mother was sterilized during the emergency cesarean section and also suffered cosmetic scarring and nerve damage. The plaintiffs' claims included their personal emotional distress, the husband's loss of consortium, and the mother's lost income.

Larson v. Doe Dentist

In Larson v. Doe Dentist (confidential settlement) Jeffrey P. Holl negotiated a structured settlement with a present cash value of $307,000 on behalf of a young woman who sought routine removal of her wisdom teeth and ended up with permanent disabling myofascial pain syndrome. Although one of the teeth was impacted, the defendant, a general dentist, attempted to remove it under local anesthesia. When it became apparent that he could not complete the procedure, the defendant abandoned the extraction. Instead of then referring the plaintiff to an oral surgeon, he sent her home, despite knowing that a substantial portion of the tooth remained in the plaintiff's jaw, putting her at risk for infection and potential nerve injury. Plaintiff claimed $15,000 i future medical care. The settlement included an annuity payable over 30 years, as well as a medical trust fund to cover the cost of future treatment.

PRODUCT LIABILITY

Gilman v. Stokes Ladders, Inc., et al.

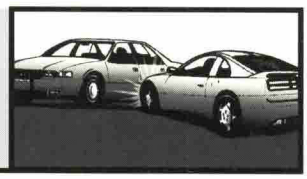
In Gilman v. Stokes Ladders, Inc., et al. (Marin Co. Sup. Ct. No. 158294), Richard H. Schoenberger obtained a $290,000 settlement on behalf of a 51 year old dentist who fractured his right wrist when the ladder he was using to prune a climbing bougainvillea collapsed under him. The slope of the cement driveway immediately adjacent to the area of the injury was unsafe for a traditional four-legged ladder as not all four legs could rest securely on the surface simultaneously. Accordingly, plaintiff purchased a three-legged orchard ladder for the job. Discovery proved that the manufacturer of the orchard ladder knew

that members of the public had been severely injured when using the ladder on hard urban surfaces and that the ladder itself contained no safety device(s) to prevent the third leg from slipping. Defendants claimed that plaintiff was negligent for using a three-legged ladder on a sloped concrete surface. As a result of plaintiff's wrist injury, he was forced to sell his successful dental practice and faces a probable wrist fusion. Medical bills totalled approximately $25,000. Plaintiff's wage loss was highly disputed by the defense.

Doe v. Roe Equipment Co.

In Doe v. Roe Equipment Co. (Orange Co.) Cynthia F. Newton obtained an $82,500 settlement on behalf of a 43-year-old T-5 quadriplegic who suffered a herniated cervical disc when he fell from his self-operated wheelchair lift. The lift, which had been installed on his handicap-equipped van, permitted the operator's wheelchair to roll forward as he sought to enter the vehicle. Plaintiff contended the lift was defectively designed because it lacked appropriate locking mechanisms and safety barriers to prevent wheelchairs from rolling off the platform during loading. The defendant manufacturer contended that the plaintiff himself made an error in boarding the lift so that the wheelchair was beyond the locking pins installed in the platform, and that this error was the sole cause of the accident. Medical bills were nominal (no surgery was involved) and the plaintiff, who was previously disabled, suffered no demonstrable wage loss. The case settled on the eve of trial.

VEHICULAR NEGLIGENCE



Sigel v. Gresham

In Sigel v. Gresham, Contra Costa County Superior Court Number C93-01230, Paul V. Melodia obtained a binding arbitration award of $1,047,674 on behalf of a physician who was injured in an automobile accident in Danville. Liability was not contested. The plaintiff suffered a herniated disc in his thoracic spine. He was off work entirely for six months, and returned to full time work within a year of the date of the accident. He continues to suffer from residual pain in his leg, mid-back soreness, and sleeping difficulties. The past economic losses were approximately $400,000. The plaintiff claimed substantial future losses due to his inability to work on an on call basis for his medical group, and this claim was vigorously disputed by the defendant. Mrs. Sigel was awarded $25,000 for her loss of consortium claim.

Poston v. Bay Pool Chlor, Inc.

In Poston v. Bay Pool Chlor, Inc. (Alameda Co. Sup. Ct. no. H-171829-0), Richard H. Schoenberger obtained a $250,000 settlement on behalf of a 62 year old appliance store owner who suffered a closed head injury when his head struck the interior of his car in an auto accident. The plaintiff claimed that the injury produced a significant decline in his intellectual and cognitive functioning which was noticeable to co-workers and close friends. Defendants contended that any deficiency in intellectual functioning was the result of a combination of plaintiff's advanced age and his social habits. Plaintiff suffered no lacerations, bruises or other signs of obvious head trauma. All post-accident diagnostic tests, including CT scans and an MRI, were negative. Medical bills were $10,000 and no wage loss was claimed. The case was resolved at mediation two weeks prior to trial.

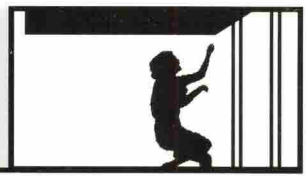
Nancy M. v. East Bay Connection

In Nancy M. v. East Bay Connection (Co.Co.Co. Sup. Ct. No. C94-03313) Michael A. Kelly obtained a $900,000 settlement on behalf of an East Bay woman seriously injured when her 1992 Volvo was broadsided by defendant's airport taxi van. Defendant initially claimed that plaintiff had run a red light, but independent witnesses testified otherwise. Plaintiff's injuries included severe neurologic insult which left her unconscious for 12 days following the accident. In addition, she suffered fractures of the pelvis, ribs and extremities. By the time of the settlement conference plaintiff had recovered substantially, and the defendant contended that she would not have significant residual neurologic or orthopedic problems in the future. Plaintiff's medical bills totalled approximately $250,000. Plaintiff also claimed a wage loss (she was self-employed) which was highly disputed by the defense. The case settled as part of the Contra Costa County EASE program.

Ahmed v. Gold State Services

In Ahmed v. Gold State Services, et al. (Santa Clara Sup.Ct. No. 735158), Paul V. Melodia obtained a $600,000 settlement on behalf of the parents of a 15-year-old boy who died after being struck while riding his bicycle. The child was killed when a moving van operated by Gold State Services, made a right hand turn at the intersection of Blossom Hill Road and Lean Avenue in San Jose. The child had been riding his bicycle on the sidewalk and was attempting to cross at or near the cross-walk. There was conflicting witness testimony concerning the color of the light and which road the boy intended to cross. The truck driver claimed not to have seen the bicyclist before the collision. The boy had lived in San Jose for two years with his mother (a Pakistani political refugee) so that he could attend school, while his father remained in Pakistan. Following her son's death, his mother returned the child's body to Pakistan and was unable to return to the United States.

PREMISES LIABILITY



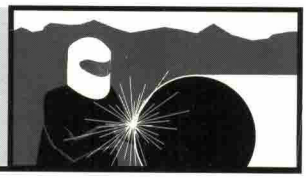
Russell v. Ent

In Russell v. Ent (Ala. Co.Sup.Ct. No. 695983-6) Cynthia F. Newton obtained a $100,000 settlement on behalf of a college student who fell 3-1/2 stories down an empty elevator shaft after the 1910 vintage elevator she was riding stalled between floors. While attempting to get out of the elevator (together with all of the other passengers) she fell between the carriage and the wall of the shaft, 30 feet to the ground below. Both the owner of the building and elevator maintenance company claimed that plaintiff and the other passengers were contributorily at fault for trying to exit the elevator. In addition, defendants contended that plaintiff was intoxicated at the time of her fall (as evidenced by initial hospital admission blood work). Plaintiff suffered multiple frac-

RECENT CASES

tures which resolved without significant sequelae. The case settled on the first day of trial, just prior to jury selection.

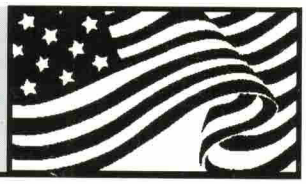
INDUSTRIAL INJURIES



Doe v. Anonymous Construction Company

In Doe v. Anonymous Construction Company (confidential settlement), Kevin L. Domecus negotiated an $867,000 settlement on behalf of a welder who suffered a serious back injury while working in a trench on a large construction project in San Jose. The plaintiff was hurt when he was struck in the back by a 150 pound piece of compacted clay which fell from a poorly excavated overhead waterpipe. He suffered five lumbar compression fractures, and was unable to return to his occupation as a welder. The defendants contended that the trench was properly excavated, that the plaintiff should not have been walking beneath the overhead lines, and could be retrained for a comparable earning occupation within two years.

GOVERNMENT LIABILITY



Bermudez v. City & County of San Francisco

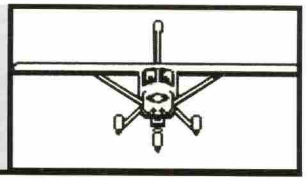
In Bermudez v. City & County of San Francisco (S.F. Sup. Ct. No. 962417), Jeffrey P. Holl obtained a $200,000 settlement on behalf of the heirs of an 87-year-old man who died after being struck by a Muni LRV. The Muni vehicle struck Mr. Bermudez while he was walking to church. The operator had no explanation for not seeing Mr. Bermudez, although he claimed that he visually "scanned" the area before accelerating through the intersection. Mr. Bermudez was survived by his 65 year old wife and two adult children.

RECREATIONAL INJURIES

Roper v. Sierra Ski Ranch

Roper v. Sierra Ski Ranch, U.S.D.C. No. CV-S-93-1881 (Sacramento). In April of 1993 Karen Roper, her only son, nine-year-old Michael Roper, Lester Giles, and his only son, fourteen-year-old Philip Giles, traveled together from the United Kingdom to the United States for a ski vacation at Sierra Ski Ranch. In the early afternoon of April 4, 1993, Mr. Giles, Michael, Philip and Ms. Roper boarded the "Sling Shot" ski lift, designed and manufactured by defendant Lift Engineering. Michael and Philip were together in a chair. Ms. Roper and Mr. Giles followed them in a separate chair. As the boy's chair reached tower 18, it collided with a stalled chair ahead of it. Because of the collision, the boys and their chair fell 35 feet to the snow below. Investigation revealed that the studs used to hold a sheave on the tower sheared off, causing the sheave to fall. Mr. Giles and Ms. Roper witnessed their sons' fall. Emotional distress claims based on Dillon v. Legg were presented on behalf of both parents. Michael Roper suffered massive head injuries, a collapsed right lung, and cardio-pulmonary arrest. After numerous efforts to resuscitate him failed, Michael was pronounced dead. Philip Giles survived the fall. He suffered a left renal contusion and a non-displaced trochlear fracture of the left humerus. Daniel J. Kelly settled the claims shortly before trial as follows: wrongful death of Michael Roper, age 9, $825,000; emotional distress claim of Karen Roper, $750,000; injury claim of Philip Giles, $150,000; and emotional distress claim of Lester Giles, $100,000. The total settlement was $1,825,000.

AVIATION INJURIES



Parents v. Doe

In Parents v. Doe, Ron Wecht obtained a $512,500 settlement on behalf of the parents of a 20 year-old woman who disappeared in a private aircraft piloted by her fiancé. On December 6,1992, the decedent, her fiancé and two friends left Santa Barbara in a single engine airplane bound for Palo Alto. The airplane disappeared and was never found. The case was based upon the pilot's poor judgment in attempting the flight in the face of adverse weather. The decedent was the youngest of three children. She was a graduate of Stanford University, and was working as a business systems analyst in Palo Alto. The plaintiffs were divorced. The decedent's mother was partially financially dependent upon her daughter, and traveled with her frequently.

We are available for association and/or referral in all types of personal injury matters. Fees are shared with referring counsel in accord with Rule of Professional Conduct 2-200. 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.

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