WALKUP, MELODIA, KELLY & ECHEVERRIA

FOCUS on torts

VOLUME X, NUMBER 1 SPRING 1996

Faulty Initiatives Threaten Citizens' Rights

Millionaires Try to Buy Liability Protection

Propositions 200, 201 and 202 on California's March 26th primary ballot threaten historic rights to representation in the civil justice system. The three initiatives, qualified through the efforts of a consortium of wealthy allies (Silicon Valley computer companies and their owners, out-of-state securities dealers, and high-paid political consultants) will foreclose the average citizen's right to use the courthouse for redress. The three pronged attack of Propositions 200, 201 and 202 involves giving insurance companies sole control over resolution of automobile liability claims, eliminating liability of stock market manipulators, and installing a system of pre-lawsuit evidence disclosure and fee limitations applicable only to claimants' attorneys (but not to insurers, large businesses or persons who can afford to pay an attorney by the hour).

Under Proposition 200, the "no-fault" initiative, drivers at fault for automobile accidents are not charged with liability. There is no accountability or responsibility. An injured victim seeks recovery from his or her own insurer under a system which guarantees that in the majority of cases the injured person will be left less than whole.

For example, assume the head of a household earning $70,000 per year is killed in an accident caused by a negligent driver. Assume further that the deceased had a remaining work-life expectancy of 10 years. Under our present fault-based system, the responsible party would be required to pay, at a minimum, the lost support ($700,000) which the heirs of the deceased would have received over the next ten years. However, under Proposition 200, the maximum the heirs can recover is $50,000. (§12802(3)) The unreimbursed actual loss to the surviving spouse or children under Proposition 200 is $650,000.

If the victim in the above example had been seriously injured but not killed, and was off work for six months (incurring a wage loss of $35,000) the most she could recover for her wage loss is $2,500 per month. (§12802(2)) Although the accident was not her fault, she will nonetheless sustain unreimbursed wage loss of $20,000.

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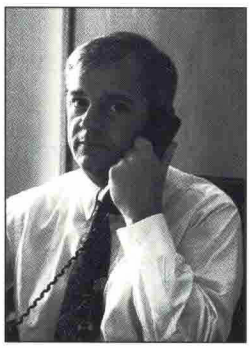
MIKE KELLY ELECTED PRESIDENT OF SFTLA

The over 700-member San Francisco Trial Lawyers Association has elected Mike Kelly as its 1996 President. Mike has been a member of SFTLA's Executive Board since 1990.



Mike's presidency is another in a long line of his achievements. Shortly after graduating from Hastings College of Law, Mike joined our firm and has tried cases in both state and federal court up and down our state. He has had some truly excellent results. His $5.76 million verdict in Los Angeles was highlighted in the last issue of Focus.

In addition to trying cases, Mike also teaches law to both law students and practitioners. Since 1981 he has taught at Hastings where he is an Associate Professor of Law. He has also made numerous presentations to legal groups such as the National Institute of Trial Advocacy, C.E.B., and the Litigation Section of the State Bar. Mike annually takes part in C.E.B.'s program on recent developments in tort law.

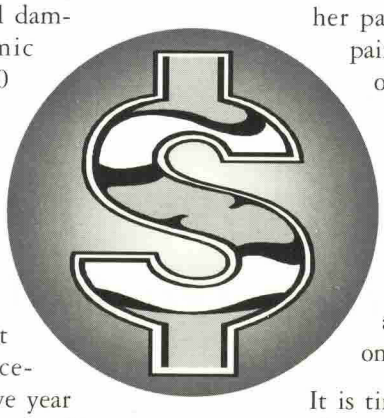
We salute Mike on his recent election. SFTLA has made an excellent choice.

MEDICAL MALPRACTICE CARRIERS MAKING MONEY

The 1994 annual statement of California's four doctor-owned medical malpractice insurance carriers again reflect healthy profits for all involved companies. According to a report in Professional Liability Newsletter (Vol. 25, No. 4) all of the doctor-owned malpractice carriers paid a dividend — with Norcal Mutual distributing a whopping $34,293,000 to its physician stockholders. Next in line was MIEC which distributed $19,000,000 in dividends to its physician stockholders.

For the years 1990 through 1994, the net income for each of the carriers (before dividends and/or taxes) has been quite healthy. (Norcal's average annual net income figures have exceeded 50 million dollars.) SCPIE (Southern California Physician's Insurance Exchange) has averaged over 35 million dollars a year in net income, and The Doctors' Company has averaged in excess of 32 million dollars per annum.

While dividends and profits continue to rise for the doctor-owned insurance companies and their stockholders, injured victims of medical negligence remain trapped by the 1975 MICRA legislation imposing unfair and economically unjustified limitations in compensation for both economic and non-economic damages. In particular, the $250,000 general damage cap on non-economic damages, still in place 20 years after it was enacted, without any adjustment upward to reflect increases in the consumer price index or to take inflation into account, severely penalizes those who are most injured. Consider the scenario of the paralyzed five year old child who has no demonstrable economic loss (i.e., the defense proves that he/she is completely employable with the advent of the Americans With Disabilities Act). What clear thinking person could reasonably believe that $250,000 is proper compensation for a lifetime of paralysis? While the question begs the answer, California continues to adhere to this rule of social policy — one which has repeatedly been upheld by California's appellate Courts. What reasonable explanation can be provided to the brain damaged senior citizen, or retiree, or homemaker not employed outside the home, who cannot demonstrate economic loss, that his or her paralysis, brain damage or pain and suffering is "worth" only $250,000?



There is little question of the legislative influence of California's health care providers. All of the dividends and distributions generated through insurance savings can be spent on lobbying.

It is time for California's legislature, and its appellate courts, to take a hard look at whether or not a "malpractice crisis" of the kind which justified the 1975 MICRA amendments still exists. At a minimum, the general damage cap must be increased to reflect 20 years of inflation. California's health care consumers deserve no less. There is no reason for the rich to get richer while legitimate victims are forced to help underwrite the continued practice of bad medicine.

WALKUPDATES

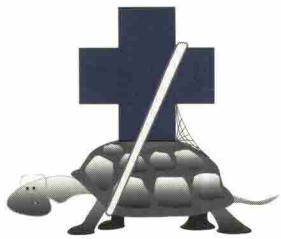
Daniel J. Kelly has been inducted as a Fellow in the International Academy of Trial Lawyers. Formed in 1954, membership in the academy consists of 600 Fellows from 40 different countries. We congratulate Dan on this very special honor...Ronald H. Wecht recently served as moderator for a CLE program dealing with evidence issues. The program, sponsored by the San Francisco Trial Lawyers Association drew rave reviews. Ron was also re-elected to the Board of Directors for SFTLA where he serves on the Education Committee, as well as the Expert Bank and Public Relations Committee...Cynthia Newton continues to serve as a legal assistance volunteer at the Glide Memorial Church Legal Clinic sponsored by San Francisco Trial Lawyers Association...Ken Facter has received an appointment as an Adjunct Professor of Law at McGeorge Law School in Sacramento.

SURPLUS, INVESTMENT INCOME AND NET INCOME GENERATED BY MEDICAL MALPRACTICE INSURANCE CARRIERS 1992-1994

ALL FIGURES ARE YEAR END

		MIEC	NORCAL MUTAL	The Doctors' Company
Assets	1992	221,891,300	605,238,976	720,413,815
	1993	226,528,937	621,885,084	763,112,270
	1994	230,300,263	612,424,947	763,149,177
Surplus	1992	88,615,297	158,869,659	182,214,104
	1993	91,195,234	172,447,517	190,214,716
	1994	100,909,577	198,669,407	205,546,913
Net Investment Income	1992	14,375,919	35,466,456	47,733,757
	1993	13,721,484	33,190,532	44,528,633
	1994	14,077,094	33,106,183	43,974,154
Net Income Before Dividends and/or Taxes Federal & Foreign	1992	26,140,784	50,978,615	42,355,214
	1993	17,424,781	51,278,005	23,440,817
	1994	29,695,319	65,406,929	23,457,382

SUPREME COURT TO DECIDE WHETHER KAISER DELAYS ARE PERMISSIBLE



For years, lawyers representing Kaiser members have wondered what was so speedy or expeditious about Kaiser's arbitration scheme. The California Supreme Court has now agreed to review the issue after an appellate court decided that Kaiser was entitled to disregard the "speedy arbitration" provisions of its plan.

On November 5, 1995, hearing was granted in Engalla v. Permanente Medical Group.

In Engalla, heirs of a deceased patient sued Kaiser claiming that it purposely delayed arbitration of the patient's claim until he died.

In the underlying case, the Kaiser member had claimed that Kaiser was negligent in failing to make a timely diagnosis of lung cancer. As soon as arbitration was demanded the claimant's attorney informed Kaiser of the fact that his client was terminally ill and requested that adjudication of the claim be expedited. The claimant died roughly five months after the demand for arbitration was made. By that date, the neutral arbitrator had just been selected. No arbitration date had been set.

Under the Kaiser arbitration contract, each side "shall" designate a party arbitrator within 30 days of service of the claim, and more importantly, the two party arbitrators "shall" designate a third neutral arbitrator within 30 days thereafter. (The neutral generally has the power to set a hearing date, hear law and motion matters, etc.) The terms of the Health Plan Agreement make plain that a neutral is to be appointed within 60 days of the date a claim is filed.

Allegedly, the program was originally intended to be "equally fair to both parties." However, in Engalla, Kaiser argued that it was entitled to act "in its own business interests" in negotiating and administering the terms of its service agreement.

At the trial court level, the court refused to enforce the arbitration agreement and found fraud in its inducement and application. Among the evidence relied on was an independent statistical analysis of Kaiser-provided data which revealed that in only one percent of all Kaiser arbitrations is the neutral arbitrator appointed within the 60 day mandated period. In fact, on average, the neutral is not agreed upon for over 22 months. The data further revealed that it takes, on average, 863 days (approximately two years and five months) to reach a hearing date in a Kaiser arbitration.

On appeal, the First District reversed. It found there was insufficient evidence of fraud. It further held that statements made by Kaiser in the arbitration contract were not representations of fact, but rather "descriptions" of the rules and methods for arbitrator selection. The appellate court also refused to enforce representations in Kaiser's own literature regarding the efficiency and inexpensive nature of arbitration. The court held that regardless of how the claim was styled (whether "fraud," "breach of arbitration agreement," or "breach of covenant of good faith and fair dealing") all such issues could only be decided by an arbitrator, and the trial court had no jurisdiction to hear and rule on the matter. Finally, even if Kaiser had engaged in dilatory conduct, the appellate court felt that this fact in no way waived Kaiser's right to enforce the arbitration provision.

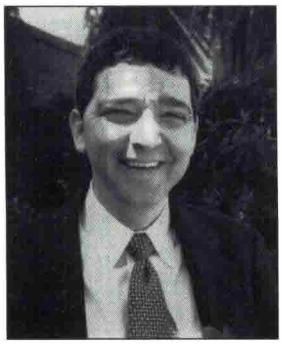
Kaiser's claim of speedy arbitration has been iterated and reiterated so often that it has come to have a veneer of superficial reason. The Supreme Court now has a chance to peek behind that veneer and see that in operation, Kaiser's arbitration plan is rife with delays.

Putting aside scholarly theorizing, the proof of any plan may be in the application. As applied, Kaiser's arbitration plan is at total variance with its stated goal and objectives. Hopefully, the Supreme Court will remedy that variance and promote early resolution of Kaiser claims.

NEW ASSOCIATE JOINS FIRM

We are pleased to welcome Ken Facter, M.D., J.D. to our firm.

Ken obtained his medical degree from U.C. Davis and followed this with surgical and emergency medicine residencies at Baylor University in Texas and the University of Arizona. A board certified emergency room physician, Ken practiced in this specialty area until 1990.



A 1995 Boalt Hall graduate, Ken's areas of special interest are in the fields of medical negligence and managed care. He has recently received an appointment as an Adjunct Professor at McGeorge School of Law in Sacramento, and frequently speaks to physician groups on the current revolution in managed health care.

Ken is a Diplomate of the National Board of Medical Examiners and has served as an Assistant Clinical Professor of Medicine at U.C. San Diego. His scholarly publications have appeared in the Journal of Emergency Medicine, the Pacific Coast Surgical Society, and the Annals of Emergency Medicine.

We expect Ken's special talents will be of great benefit to those clients we serve in the areas of medical negligence and first party health care bad faith claims.

Faulty Initiatives Threaten Citizens' Rights

Continued from front page

Where the injured person is out of work only one week, he or she recovers nothing for their lost wages. This is because (unlike the fault system which compensates fully for actual losses) under Proposition 200, there is no wage loss paid for the first week of time off. (§12811(b)) Moreover, wage loss is reimbursed only for 85% of the actual net loss.

For the unemployed, Proposition 200 does not recognize any compensation for pain, suffering, inconvenience, disfigurement, etc. This means that the homemaker, the retired person, the child and the unemployed have no claim when they are injured. Under laws that have existed for over 100 years, Californians have been entitled to recover the reasonable value of pain, suffering, disability and inconvenience from those who cause the wrong. Under Proposition 200, negligent persons owe absolutely nothing. Likewise, insurance companies owe absolutely nothing for pain and suffering because Proposition 200 eliminates any right to claim damage or loss for most pain and suffering (§12802).

The preamble for the proposition suggests that it will "reduce the cost of auto insurance." Nothing in the proposition guarantees any reduction of premiums. (In the 15 states which have adopted no-fault at one time or another, it has uniformly failed to produce reductions in insurance premiums.) Many of the states who initially enacted no-fault systems, have now repealed or abolished them, including Connecticut, Georgia, South Carolina and Nevada..

Proposition 200 is so poorly written California's major automobile insurance providers are not even supporting it! Why then are millionaires in the semiconductor field supporting it? Because it fits with the over all attack to eliminate access to the civil justice system for anyone who is not rich.

Proposition 201, styled as the "Shareholder Litigation Reform Act" dramatically limits existing rights of defrauded shareholders. In addition to imposing a so-called "loser pays" attorney's fees provision, the statute requires shareholders participating in class actions (who have less than 5% ownership of stock) to post a bond within 30 days of filing in an amount equal to the estimated attorney's fees and costs to be incurred by the defendant. There is no reciprocal provision requiring defendants to post bonds guaranteeing that they will be able to satisfy any award for damages, costs or fees.

The statute also alters traditional CCP §998 liability. Again, the provision is one sided: it favors only the defendant. If a verdict is less than the amount of a 998, the plaintiff must pay the defendant's attorney's fees. Under this Proposition, prevailing shareholders in a valid case can end up paying the corporate defendant's attorney's fees even if they win: envision a case where the corporate defendant's attorney's fees (calculated at substantial hourly rates) exceed the amount of any recovery.

The defendant's legal costs are determined by the defendant. There is no test of "reasonableness." Defendants can inflate the estimate of expected legal costs, thereby compelling plaintiffs in meritorious cases to forego the action if they cannot post an adequate bond.

201 does nothing to further, protect or enhance shareholder's rights. It only protects corporations who are alleged to have violated the law.

Proposition 202 claims to limit contingent fees in cases where a lawyer settles the claim by "making a few phone calls." However, consumers have protection against excessive fees under present State Bar rules. More importantly, the proposition requires plaintiffs in any contingent fee action to provide to the defendant work-product protected investigation, all available special damage information, identification of all trial witnesses, and other information about any proposed case. There is no mirror image requirement for defendants to limit what they spend on attorneys or to reveal anything about their case.

202 favors only defendants and eliminates evidentiary protection for information presently protected by the historic work-product and attorney-client privileges. The aim of its backers is to "punish lawyers;" in fact, it punishes legitimate claimants who will have accessibility to legal help restricted or eliminated by fee restrictions which make representation in important cases (toxic torts, dangerous medical products, asbestos, breast implants, etc.) economically infeasible.

The best measure of who 200, 201 and 202 benefit, and who they penalize, is in their lists of endorsers. Every legitimate consumer advocacy group in the State of California opposes 200, 201 and 202. Opponents include Ralph Nader, the Congress of California Seniors, Consumers Union and the California Public Interest Research Group.

A recent editorial in the Los Angeles Times said it best:

"A group of studies by the National Center for State Courts...based on analysis of jury verdicts in 45 of the country's largest urban areas, including 9 in California — casts doubt on some of the claims made by tort reform advocates, particularly that runaway jury awards are common and that an explosion of injury litigation has occurred...."

"Law making by initiative is expensive and no substitute for carefully crafted legislation. Many California voters understandably are bewildered by the hyperbole and conflicting claims that have been substituted for serious scrutiny

Continued on page 5

WHO IS SUPPORTING THE INITIATIVES?

An analysis of the campaign finance reports for the last quarter of 1995 showed 52 total contributions for the pro-initiative team. The largest contributors included Maxim Integrated Products ($100,000); David Packard, Retired Chairman of Hewlett Packard ($100,000); Applied Materials ($100,000); Sun Micro Systems ($50,000); TransAmerica ($50,000); Scott D. Cook, Chairman of Intuit, Inc. ($50,000); and Informix Software, Inc. ($50,000).

In the initial reporting period for contributions, the heavy hitters included Tom Proulx, CEO of Intuit, Segate Technologies and Cadence Design Systems.

INNOVATIVE SETTLEMENT STRATEGIES AFTER PROPOSITION 51

You are handling a case against several defendants. Shortly before trial one defendant makes a settlement offer for less than the full value of the case. Should you accept the offer or proceed to trial against all defendants? If you settle, what effect will the settlement have on your clients' net recovery? How should you advise your client to proceed?

Before Civil Code §1431.2 (Proposition 51) was passed in June 1986, these questions were reasonably simple to answer. Proposition 51's effects on pre-trial settlements complicates this assessment.

Civil Code §1431.2(a) abolished joint and several liability for non-economic harm and provides that in an action for personal injury or wrongful death:

"Each defendant shall be liable only for the amount of non-economic damages allocated to that defendant in direct proportion to that defendant's percentage of fault..."

This language conflicts with Code of Civil Procedure §877 to the extent §877 provides that the liability of a non-settling defendant is reduced by the amount paid by that defendant.

In Espinoza v. Machonga (1992) 9 Cal.App.4th 268, the Fifth District resolved this conflict. Espinoza held that no defendant is ever obligated to pay another's non-economic damages. Accordingly, a non-settling defendant is not entitled to any equitable offset for non-economic damages.

In order to invoke the rule, pretrial settlement funds must be allocated between non-economic and economic damages. If the allocation is not made by the settling parties when the case is settled, the funds are divided on the same ratio as that reflected in the jury verdict. (Greathouse v. Amcord, Inc., infra.)

The Espinoza rule operates as follows:

Assume two defendants: 'A' and 'B'. The jury returns a verdict of $100,000 ($75,000 in non-economic and $25,000 in economic damages). The jury found A 10% liable, B 80% liable and plaintiff 10% comparatively negligent.

Given this apportionment of fault and non-economic versus economic damages, B's gross liability is $82,500 [$22,500 in economic damages ($25,000 minus plaintiff's 10% comparative fault) plus $60,000 in non-economic damage (80% proportionate share)].

Now, assume that A had settled with the plaintiff before trial for $20,000. How is B's post-verdict exposure affected?

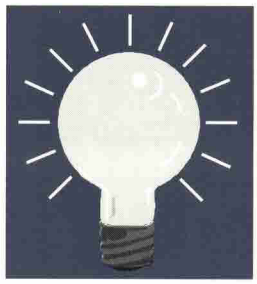
First, calculate the offset to which B is entitled. The Espinoza rule dictates that the offset is equal to the ratio of economic to non-economic damages. Using our example, the ratio is $25,000/$100,000 or 25%. 25 percent of $20,000 is $5,000. This is the total offset B receives.

To calculate the amount owed by B, subtract the offset from B's total liability imposed by the jury calculated above ($82,500) yielding a final result of $77,500.

B owes plaintiff $77,500. A has already paid $20,000. Thus, plaintiff's total recovery from all defendants is $97,500, despite the fact that the jury's award reflected a total recovery of only $90,000 ($100,000 minus 10% comparative negligence).

This formula has been explicitly approved. See, e.g., Hoch v. Allied Signal Inc. (1994) 24 Cal.App.4th 48; Conrad v. Ball Corp. (1994) 24 Cal.App.4th 439. The non-settling defendant is entitled to an offset calculated in this manner even if the settling defendant is found by the trier of fact not to be liable. Poire v. C.L. Peck/Jones Bros. Const. Co., Inc. (1995) 39 Cal.App.4th 1832.

The example above assumes that the $20,000 in settlement monies was not allocated between economic and non-economic damages. By adjusting the allocation one can further enhance the client's recovery.



For example, because defendants who proceed to trial do not receive an offset for funds attributed to non-economic damages, pre-trial settlement funds allocated to those damages result in no offset. There is also no offset for any portion of pre-trial settlement funds which are designated for pre-judgment interest or fees and costs, since these items are not damages. See, Regan Roofing v. Superior Court (1994) 21 Cal.App.4th 1685.

Any allocation must be discussed with the settling defendant and approved in a motion for good faith settlement. The parties' allocation of settlement proceeds is committed to the sound discretion of the trial court. See Erreca's v. Superior Court (1993) 19 Cal.App.4th 1475, citing Tech-Built, Inc. v. Woodward - Clyde & Assoc. (1985) 38 Cal.3d 488, 499-500.

An allocation recited in settlement documents which is not approved by the court before trial is not binding on the court where the jury renders a verdict apportioning fault as between settling and non-settling defendants differently than as recited in the settlement agreement. See, Greathouse v. Amcord, Inc. (1995) 35 Cal.App.4th 831.

Continued from page 4

of the tort liability system's strengths and weaknesses."

There is no litigation explosion. There is only a desire for the rich to protect themselves.

Attorneys who represent consumers have an obligation to let the facts be known. Yes votes on Propositions 200, 201 and 202 will not hurt lawyers as much as they will hurt the average ordinary citizens of California who, having been tricked and confused by a slick media campaign, will have voted away historically protected rights without obtaining any benefit in return.

RECENT CASES

MEDICAL NEGLIGENCE

Doe v. Medical Center

In Doe v. Medical Center, Kevin L. Domecus obtained a cash and annuity settlement with a present cash value of $1,000,000 for a nursing student who suffered brain damage as a result of an intubation error during emergency room treatment of an asthma attack.

The plaintiff, a longtime asthmatic, had previously been hospitalized and intubated on numerous occasions. On the date of the incident, she went to the emergency room with severe breathing problems. The attending physician intubated her, but recognized several minutes later that she was not being properly oxygenated. By the time the situation was corrected, the plaintiff had suffered substantial damage.

The plaintiff is able to care for herself, but cannot work. She was approximately one year away from obtaining her degree as a registered nurse. The defense argued that any projection of nursing earnings was highly speculative, particularly given the plaintiff's work, health, and education history.

The settlement also included resolution of a companion loss of consortium claim.

Parlette v. Kaiser Foundation Hospital

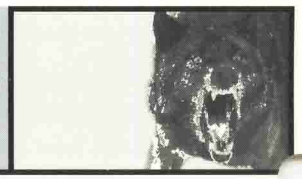
Plaintiffs in this matter were the decedent's wife and two adult children. The decedent, age 68, was a retired college professor. He underwent his second coronary bypass surgery at Kaiser's San Francisco facility. His first bypass surgery took place 13 years before the subject surgery. Plaintiffs contended that the 1994 bypass surgery was technically flawed. The saphenous vein graft was intended to run from one branch of the right coronary artery to another branch of that artery. Instead, the distal anastomosis was to a lateral cardiac vein. The effect of this was to deprive the distal right coronary artery of circulation, resulting in a fatal myocardial infarction on the fifth post operative day.

Kaiser contended that the progressive nature of the underlying heart disease severely curtailed decedent's life expectancy. The matter was settled by Dan Kelly for the MICRA limit of $250,000.

Anne R., a minor, et al. v. Kevin Lester, M.D.

In Anne R., a minor, et al. v. Kevin Lester, M.D. (Fresno Co. Sup.Ct. No. 429548-1) Michael A. Kelly and Cynthia F. Newton obtained a $550,000 verdict on behalf of a 14 year old girl who suffered transection of her peroneal nerve while undergoing tibial pinning. At the age of 6, plaintiff suffered bilateral femur fractures. To reduce (realign) the fractured femurs, the treating orthopedist elected to apply traction. Tibial pins were to be placed to facilitate traction. In placing one tibial pin the surgeon drilled through the child's peroneal nerve. The case was first tried in 1993 and a defense verdict resulted. A new trial was granted and upheld on appeal. At the recent re-trial the defense contended that this injury occurred in a demonstrable percentage of cases independent of any breach of the standard of care. Plaintiff's experts testified that the injury occurred only if the standard of care was violated. There were no out-of-pocket economic damages. A CCP §998 Offer of Compromise filed in 1991 resulted in plaintiff recovering an additional $140,000 in interest, costs and experts' fees. While a motion to reduce the verdict and/or periodicize its amount per CCP §667.7 was pending, a combination cash and annuity settlement was agreed upon.

PREMISES LIABILITY



Ann B. v. Mogannam

In Ann B. v. Mogannam (S.F. Sup.Ct. No. 966922) Michael J. Recupero negotiated a $225,000 settlement on behalf of a 47-year-old postal worker bitten by a dog while on the job. At the time of the incident, plaintiff was on her regular mail route. She was invited to say "good-bye" to the defendant's dog, a 14-year-old ailing collie named Muffin. Shortly after plaintiff entered the defendant's home, the dog bit plaintiff's right hand. Liability was premised upon BAJI 6.67. As a result of the bite, plaintiff developed a severe infection in the first and second digits of her right (major) hand. The residual septic and orthopedic complications required three surgeries, an external compass-hinge fixator, and a regimen of intravenous antibiotics administered at home. Plaintiff suffered a residual loss of grip strength, restriction in the motion of the fingers of her right hand and permanent scarring. Special damages included medical bills of roughly $32,000 and wage loss for a period of six months of lost work time.

Barbu v.Golden Way Development

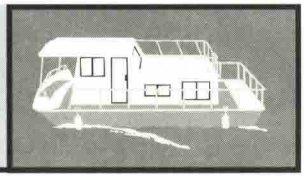
In Barbu v.Golden Way Development (S.F. Sup. Ct. No. 963853) Richard Schoenberger and Cynthia F. Newton obtained a $430,000 settlement on behalf of plaintiff, a 64 year-old employment counselor, who suffered serious injuries when she fell down the central stairway of the apartment building where she lived. Plaintiff contended that defendants (landowner and landlord) were negligent in that the stairway, because of its narrow landing, steep grade, and lack of a handrail was dangerous. Plaintiff further contended that the door, which was outfitted with an improperly installed and malfunctioning door closer was difficult to close and that these conditions contributed to plaintiff losing her balance and falling.

Defendants contended that the door and stairway were not dangerous, had been used without incident by many persons in the past (including plaintiff) and that plaintiff herself caused the accident. Defendant's resident manager testified at deposition that both she and fire department

RECENT CASES

officials had unsuccessfully urged the landowner to fix the door and stairway before the accident. Plaintiff's medical expenses totalled $87,000. The case resolved after the depositions of the parties were completed.

RECREATIONAL INJURIES

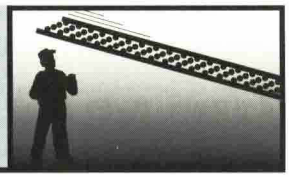


Presser v. Lassen View

In Presser v. Lassen View, a one million dollar settlement was obtained by Ron Wecht on behalf of a 9-year-old girl and her 17-year-old sister for injuries sustained by the 9-year-old in a boating accident which occurred on August 6, 1993. The 9-year-old plaintiff, Jamie Presser was riding on the front of a pontoon boat which her mother had rented from Lassen View Resorts on Lake Almanor. Jamie fell off of the platform at the front of the boat and was trapped between the pontoons as the boat passed over her. The propellers of the outboard motor lacerated her chest and abdomen and virtually amputated her left leg at the thigh, leaving the leg attached by only a piece of skin.

Jamie's 17-year-old sister and her cousin dove into the water to rescue her. Jamie was taken back to the dock where she was met by paramedics and a medical evacuation helicopter which took her to a hospital in Chico. The leg was reattached, and after many surgeries, Jamie has a viable leg although with severe limitation in strength and motion. The case has been partially settled with the insurance carrier which provided coverage to the resort where the boat was rented and to Jamie's mother as the operator of the boat. $25,000.00 of the settlement was allocated to the Dillon v. Legg case of Jamie's sister. The mother agreed to give up any potential recovery against the resort for her Dillon v. Legg case in order to increase the allocation to the girls. The case continues against the manufacturer of the boat for failing to provide adequate warning of the dangers of riding on the platform at the front of the boat.

INDUSTRIAL INJURIES



Anderson v. Watkins Aircraft Support Products, Inc.

In Anderson v. Watkins Aircraft Support Products, Inc., et al. (El Dorado Co. Sup. Ct. No. PV92-0598) John Echeverria and Cynthia F. Newton obtained a $780,000 settlement on behalf of the heirs of a 31-year-old UPS worker killed when an 800-pound conveyor section fell on him. Plaintiffs were decedent's parents, his wife of six days and her child by a previous marriage. The conveyor fell when a clevis pin (which connected the conveyor's frame to a hydraulic cylinder which raised and lowered it) became dislodged as plaintiff and two co-workers were attempting to lower the conveyer to load freight.

Plaintiffs contended that the conveyor was defectively designed because it lacked a counterweight which would have prevented it from falling once the pin was removed. Since the clevis pin was easily removable the risk of serious injury or death caused by the conveyor falling was foreseeable. The defense contended that the accident was caused solely by the decedent's conduct in removing the pin, or by UPS's negligence in failing to train decedent.

The conveyor manufacturer, hydraulic cylinder manufacturer and the equipment installer all contributed to the settlement. As part of the settlement, the workers compensation carrier waived its lien of $150,000 and also contributed additional funds to the settlement.

Anonymous Plaintiff v. Red and White Company

In Anonymous Plaintiff v. Red and White Company (San Mateo Superior Court), Kevin L. Domecus obtained a cash and annuity settlement with a present cash value of $425,000 on behalf of a sixty-two-year-old truck driver who suffered a crushing soft tissue injury to his right leg in an industrial accident.

The plaintiff was employed by a firm which delivered large rolls of paper for the defendant paper manufacturer. On the date of the accident, one of the defendant's employees dropped a 500 pound roll of paper from a forklift while loading the plaintiff's truck, landing on plaintiff's shin.

Plaintiff contended that the defendant's employee was poorly trained and had negligently loaded and secured the roll. The defense contended that the plaintiff should not have been standing in the path of the forklift.

The plaintiff suffered a severe tissue bruise which eventually became massively infected. He required two surgeries to clear the infection and close the wound, and was left with a significant cosmetic deformity. Economic losses totalled approximately $110,000. The settlement included a compromise of the workers' compensation claim. The plaintiff is now back to work as a truck driver, and has no significant functional disability.

Brantley v. Arco

In Brantley v. Arco (L.A. Co. Sup. Ct. No. BC 097 204) John Echeverria and Richard H. Schoenberger obtained a $1,250,000 settlement on behalf of a 40-year-old welder who suffered a severe crushing and eventual amputation of part of his hand during a well-head removal in Yemen. The well-head is located at the top of a well through which drill bits and other equipment pass. The well-head weighed approximately 1,000 pounds and, unbeknownst to plaintiff, was under 300,000 pounds of tension.

As plaintiff cut the iron casing around the well-head with an acetylene torch, the 300,000 pounds of tension was suddenly released and the well-head snapped down onto his hand.

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RECENT CASES

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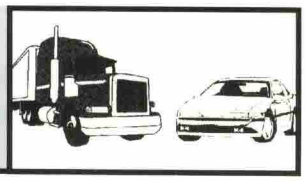
Plaintiff alleged that Arco failed to provide him with a reasonably safe place to work and more importantly, failed to warn of dangers that were not obvious. Arco alleged that plaintiff lacked jurisdiction as to its Yemeni subsidiary and that, even assuming jurisdiction, plaintiff was 100% comparatively negligent and/or Arco's special employee at the time he was injured. The case settled immediately before jury selection.

VEHICULAR NEGLIGENCE



Noralee G. v. State Farm Insurance

In Noralee G. v. State Farm Insurance (Uninsured Motorist Arb) Michael A. Kelly negotiated a policy limit $1,100,000 settlement on behalf of a 65-year-old woman injured in a moderate speed collision in St. Joseph, Missouri. The plaintiff, a resident of the San Francisco Peninsula, suffered from pre-existing osteoporosis and peripheral vascular disease at the time of the accident. These underlying conditions complicated her recovery from a laceration/ hematoma of her distal tibia and a fracture of her right (major) humerus. Her underlying vascular disease and cardiac instability required that surgical reduction and fixation of the humeral fracture be postponed four months. This delay, as well as the plaintiff's osteoporosis, resulted in a non-union.

Plaintiff claimed a residual inability to use her right arm in any meaningful way. Defendant contended that the great bulk of plaintiff's complaints were not accident-related but were the product of underlying pre-existing health problems and disabilities.

Past medical specials were $200,649. Plaintiff claimed an additional $130,000 in future attendant care which was highly disputed.

Chen v. Frost

In Chen v. Frost (Alameda Co. Sup. Ct. No. V-008543-2), Jeffrey Holl obtained a $350,000 settlement on behalf of the elderly parents of a 24-year-old unmarried immigrant. The decedent had legally emigrated from China in 1991 and worked as a waitress while going to school. Her parents had moved to the United States just eleven days before her death. The accident occurred while she was westbound in the fast lane of Highway 580 in Castro Valley. A loaded flat bed truck pulled from the center divide construction area (where a new BART line is being built) into the fast lane at only 20 m.p.h. The decedent attempted to avoid the accident but was unable to do so and was killed instantly. The settlement was paid by the defendant truck driver, BART, and the State of California.

Mickelson v. Tom Martin Logging

In Mickelson v. Tom Martin Logging (Tuolumne Co. Sup. Ct. No. CV-039540) Jeff Holl obtained a $190,000 settlement on behalf of the three adult heirs of a 74-year-old woman who was killed when the vehicle in which she was a front seat passenger struck a logging truck. The decedent, who lived in Connecticut, was visiting friends in the Sonora area when the accident happened. The deceased, together with two elderly friends, were southbound on Highway 49 when a logging truck pulled from a side road directly into their path. She died as a result of major abdominal trauma. At the time of the accident, she had a shoulder harness but no lap belt on.

Beverly C. v. Trans Western Express

In Beverly C. v. Trans Western Express (U.S.D.C., Nor. Dist. No. C 95-01946), Erik Brunkal obtained a $41,500 settlement at mediation on behalf of Beverly C. who suffered a mild heart attack when she lost control of her vehicle after colliding with defendant's tractor/trailer, sending her across the median and into oncoming lanes of I-5. Plaintiff contended defendant's driver struck her while changing lanes in a failed attempt to pass. Defendant contended plaintiff inattentively veered in front of its truck, causing the collision. Plaintiff reported to the Emergency Room that evening with CPK levels over 300, indicating a mild cardiac event. She was admitted for observation and testing. The treating physician described her injury as resulting in minor, but permanent damage to her heart. Plaintiff was positive for several cardiac risk factors which complicated the issues of causation and damages. An unrelated post-accident episode of congestive heart failure limited her general damage claim to one year.

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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