WALKUP, MELODIA, KELLY & ECHEVERRIA

FOCUS on torts

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17 MILLION DOLLAR VERDICT *WAKES UP HELMET INDUSTRY*

When Mason Goodloe urchased his Bell Oasis Pro bicycle helmet it came in a box which trumpeted the slogan "Courage For Your Head". Contrary to this tag line, the helmet offered little protection to those areas of the head where a rider needed it most. As a consequence, when Mr. Goodloe struck his head on a left-turning car in a foreseeable low-speed accident, the Oasis Pro failed to prevent serious nd life-altering injuries.

Much of the damage to the Oasis Pro worn by Mr. Goodloe was below an invisible "test line" shown in red on the above photo.

Mr. Goodloe's case against Bell Sports ultimately went to trial in Santa Clara County Superior Court. Walkup partners Michael A. Kelly and Richard H. Schoenberger obtained a $17,000,000 verdict on behalf of Goodloe and his wife, a verdict believed to be the largest ever returned against Bell Sports in a product liability suit. The jury unanimously found the Oasis Pro both negligently and defectively designed and a direct legal cause of Mr. Goodloe's permanent injuries.

The accident which changed Mr. Goodloe's life occurred on June 19, 1998. He was properly wearing his helmet and riding in a designated bicycle lane on Camden Avenue in San Jose when he collided with a left-turning Nissan Altima. The driver of that vehicle, defendant Tracy Garroutte, made a sudden turn directly in front of him. At impact, Mr. Goodloe was propelled onto the hood of her car, his left shoulder penetrating the windshield and the left side of his head striking the "A" pillar.

Post-accident analysis and reconstruction placed the impact speed at between 9 and 12 miles an hour, a velocity so modest that most people would assume no injury would result. However, because of the design of the Bell helmet, it failed to protect the most vulnerable area of a person's skull: the lateral temple bone.

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FIRM OBTAINS LARGEST VERDICT IN NEVADA HISTORY

On January 20, 1996, at approximately 6:30 a.m., an explosion and fire occurred at the temporary residence of Tim and Michelle Tinnin in Spring Creek, Nevada. In the explosion, Kayla, their daughter aged 4, was killed. Her parents and her 5-year-old brother, Joseph, were badly burned.

Nevada Division of Forestry Inspectors determined that the fire and explosion were the result of a liquid petroleum gas leak. The explosion happened when Tim attempted to light a stove-top burner. The subsequent fireball engulfed all four victims and completely destroyed the 8 x 26 foot travel trailer the family was using as a residence while they completed construction on a new home adjacent to the explosion site. The initial

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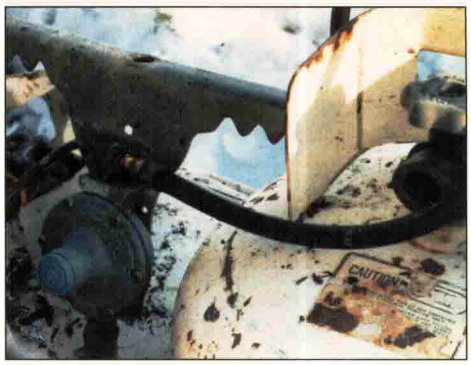


Investigators found the propane regulator valve unprotected from the elements.

FIRM OBTAINS LARGEST VERDICT IN NEVADA HISTORY

Continued from front page

explosion was so powerful that it blew one of the walls of the trailer 32 feet away.

According to official investigators, weather conditions prior to and during the night contributed to the ignition and spread of the fire. High winds and freezing temperatures allowed the fire to spread to the structure under construction and hampered firefighting activities. Firefighters described their fire streams and hoses as freezing up during use.

Investigation verified that the explosion was the result of escaped propane vapors into the trailer. Propane vapors, in a properly operating system, should not have been present in the trailer, and certainly not in the volume necessary to cause an explosion of this size, absent someone's negligence.

Walkup partner John Echeverria (who is licensed in both Nevada and California) working in association with Thomas Brennan of Durney & Brennan, undertook the representation of the Tinnin family.

After three difficult years of litigation, the case proceeded to trial in Elko, Nevada, against Western States Liquified Petroleum Company, who had installed the propane tank and had inspected and serviced the trailer's propane system. At trial, John proved that Western States' employees failed to re-enclose or protect the regulator on the Tinnin trailer after the tank was installed. This permitted the regulator vent to freeze on the night of January 20, 1996, causing the regulator to malfunction and the system to become overpressurized. Through expert testimony, the plaintiffs showed that the only explanation for the presence of propane vapors in the Tinnin trailer on the morning of January 20, 1996, in sufficient quantities to cause this kind of explosion to occur, was an overpressurization of the propane system due to the regulator vent freezing because it was not protected from the elements.

Western States claimed that it at all times complied with existing regulations and that it was not negligent. It disputed plaintiffs' theory that the cause of the propane vapors in the trailer was due to regulator malfunction because of freezing, yet its own expert admitted that the propane system was overpressured on the morning of the incident. While arguing that the cause was not vent freeze-over, it was unable to identify another cause for the explosion.

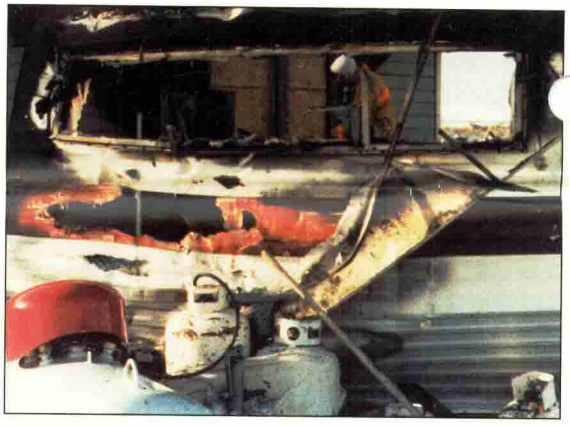
Firefighters combed through the post-fire debris looking for clues to the cause of the explosion.

The injuries sustained by the family were among the most serious we have ever seen. Tim suffered second and third degree burns to approximately 70% of his body, including his face, part of his chest, both arms, both legs and all of his back. His injuries required numerous surgeries to relieve pressure building up under his skin. Michelle suffered deep second and third degree burns to approximately 80% of her body, including her face and chest, back, both arms and both legs. Joseph was burned over roughly 60% of his body including both arms and both legs. Because of the extensive burns suffered by the surviving family members, it was necessary to sedate them into a coma to relieve their intense and excruciating pain.

At trial, the jury heard how Tim suffers from residual scarring, pain and has a permanent foot drop, making mobility difficult. The jury saw and heard of the extensive scarring to Michelle's arms, chest, back and face. She understandably remains concerned about her appearance. Because of an extended period of intubation, her voice has been altered, resulting in persistent hoarseness. She requires ongoing medical care for contracture removal and scar revision. The jury saw how Joseph's right arm and hand were so badly burned that he cannot extend the fingers of his right hand.

Prior to trial, plaintiffs made a policy limit demand to Western States for $2,000,000. National Farmers Union, the liability insurer for Western States, refused to pay this amount, and never offered more than $400,000. When plaintiffs' policy limit demand was rejected, they entered into a settlement agreement with the remaining defendants, agreeing t accept $750,000 in cash and proceed t trial against Western States. If plaintiffs failed to recover more than $3,750,000 from Western States, the settling defendants would pay an additional $3,000,000. If plaintiffs recovered more than $3,750,000, the co-defendants would owe no further obligation.

After hearing the evidence, the jury returned a unanimous verdict awarding the Tinnin family a total of $52,473,000. Western States' post-trial motions for Judgment NOV and new trial have been denied and judgment has been entered in the amount of $57,660,706, including costs and prejudgment interest. The verdict is the largest in the history of Elko County, and is believed to be the largest non-punitive damage personal injury award in Nevada history.



A frozen regulator valve on these over-pressurized propane tanks led to the tragedy.

FIRM WELCOMES NEW ASSOCIATE

We are pleased to welcome and introduce Jim W. Yu, who has joined our firm as an associate. Born in Japan and raised in Taiwan, Jim is a graduate of Georgetown Law School where he served on the *Environmental Law Review*. Jim attended Georgetown following four years at U.C. Berkeley where he graduated Magna Cum Laude with a degree in Latin American studies.

During undergraduate school, Jim helped finance his college education by working for the U.C. Berkeley Police Department, receiving three commendations in the process. After graduation, Jim worked for Berkeley's Office of Emergency Preparedness. That agency is dedicated to the promulgation of policies and procedures intended to minimize injury and death in the event of earthquakes, fires or other natural disasters.

While attending law school, Jim clerked for a major Washington, D.C. firm involved in vehicle stability cases against domestic auto manufacturers. Following graduation, Jim was involved in the litigation brought against Tosco Oil Co. for the 1999 Avon Refinery fire which killed four workers in Contra Costa County.

Jim has substantial experience in the fields of automobile products liability, toxic chemical exposure, workplace accidents, and police brutality claims.

In 1997, Jim was selected as National Volunteer of the Year by Alpha Sigma Phi Fraternity. He is fluent in Mandarin as well as Spanish. His personal interests include automobile mechanics, specifically auto design and safety issues. Jim spends a substantial amount of time doing volunteer work with non-profits and organizations benefiting the disabled.

We look forward to sharing Jim's special talents with our existing and future clients.

WALKUPDATES

Pictured below are firm members Khaldoun Baghdadi, Douglas Saeltzer, Cynthia Newton, Michael Recupero, and Doris Cheng with Jockey Kevin Radke, winner of the Walkup Law Office stakes aboard Excaro at our firm's annual soiree at Bay Meadows Racetrack in San Mateo, California. Doris, a former standout high school athlete, is shown holding Radke before tossing him in the air. A $2.00 wager brought her quite a windfall...speaking of Doris, she has been selected to serve on the Executive Committee of the University of San Francisco Inn of Court. She was also invited to serve as a faculty member at the 2000 USF Intensive Advocacy Program...Cynthia Newton spoke at CEB's Expert Witness program in October, and was a panelist for the CAOC Annual Convention in November on a panel dedicated to "Children and the Law"...Mike Recupero (in addition to spending time at the track) recently spent three days teaching for the National Institute of Trial Advocacy at its Western Regional Deposition Program. Cynthia and Mike have also received appointments as Adjunct Professors of Law at U.C. Hastings College of Law, where they will teach personal injury litigation, a one-semester intensive course for third year law students...John Echeverria and Michael Kelly have been selected for inclusion in the 2001 edition of *Best Lawyers in America*. John and Mike join Paul Melodia and Dan Kelly, who were selected for inclusion in this prestigious roster of the nation's finest attorneys for the fifth consecutive year. Our honorees are pictured in the photo below. Selection is based upon inquiry of over 14,000 attorneys, judges and other professionals. No other firm in northern California can boast of having four of its members listed among Amercia's Best...Mike Kelly has also been selected for membership on the Bar Association of San Francisco's Litigation Section Executive Committee...Rich Schoenberger acted as an instructor for NITA at its National Litigation Trial Skills Program in Boulder, Colorado. In addition to his teaching duties, Rich presented a model opening statement, which was so good he was asked to reprise it in October at San Diego where NITA held its Pacific Regional. Rich also recently chaired a San Francisco Trial Lawyers Association program on Demonstrative Evidence...Paul Melodia spoke to the American Society of Anesthesiologists at its annual convention. The topic on which Paul spoke was "What Happens When My Patient Gets a Lawyer?" Other panelists included expert medical witnesses and attorneys specializing in the defense of medical negligence claims...Ron Wecht was elected to serve on the Executive Committee for the Robert McGrath American Inn of Court. Ron has also been appointed to the Bar Association of San Francisco's section on Aviation and Space Law.

Selected for inclusion in The Best Lawyers in America. John Echeverria and Mike Kelly (standing in back) and Dan Kelly and Paul Melodia (seated in front).

From left to right: Khaldoun, Doug, Cynthia, Mike, Jockey Kevin Radke and Doris.

BRIDGESTONE/FIRESTONE SETTLES CLAIMS WHILE CONGRESS DEBATES TOUGHER REGULATIONS

Over 174 fatalities and 700 injuries have now been attributed to crashes resulting from Firestone tires, according to Federal investigators. The National Highway Traffic Safety Administration has received more than 1,500 reports of problems. Over 6,000 consumer complaints citing tread separations, blowouts and other problems have been reported to federal investigators.

Last July, Bridgestone/Firestone announced the recall of 6.5 million ATX, ATX II, and Wilderness AT tires because of safety concerns. The recall also affected tires in other countries. (In South America alone, government officials have claimed the tires are responsible for more than 40 deaths.) After months of hearings, blame is being focused not only on Ford and Firestone, but also on NHTSA. As a result, some legal commentators believe the agency may be infused with new powers and budget increases, to step up defect investigations and rule making.

The agency has requested that Congress give it the ability to levy unlimited civil penalties against companies which fail to alert it of possible safety defects. At present, the agency's power to fine is limited to $1,000 per violation.

Since the present investigation was commenced, eight different bills have been introduced in Congress to address gaps in the current system and to strengthen the agency's ability to monitor and investigate motor vehicle safety. Senate Bill 3012, introduced by Senator Patrick Leahy, proposes to amend USC Title 18 to impose criminal and civil penalties for false statements concerning defects in motor vehicle products. Senate Bill 3059, introduced by Senator John McCain, would make it a federal crime to knowingly sell a defective vehicle that causes serious injury or death, and increase civil penalties to $15,000,000.

Although Firestone has announced the recall and replacement of 14.4 million tires, an additional 33 million tires have been identified by NHTSA as potentially defective. Firestone was requested to expand the scope of its recall to include all of the tire models which NHTSA found potentially defective, but the company refused.

Whether the Bush administration will support enhanced powers for NHTSA remains to be seen. In Texas, the new President developed a reputation as industry-friendly and regulation averse. His campaign platform included a pledge to limit product liability suits. Only time will tell if his anti-consumer leanings translate into less power for the agency.

Recently, Bridgestone/Firestone agreed to settle 26 lawsuits in Texas involving vehicle rollovers. A total of 78 claimants, including heirs of persons killed in rollovers as well as injured plaintiffs, were among those whose cases were resolved. All of the claims involved a Ford Explorer. Separate settlements had previously been negotiated with Ford.

In spite of the recall, accidents and injuries continue to occur. Most recently, the family of a former central California police chief, who was killed with his granddaughter when a Firestone tire blew out on his Ford Explorer, filed a lawsuit in central California.

We continue to represent victims of product defects, including consumers injured by the failure of vehicles to be crashworthy or to retain passenger compartment integrity during crashes. We also have experience in prosecuting tire defect claims, including compounding and design errors, tire and rim mismatch claims and tread separation cases against both domestic and foreign manufacturers. John Echeverria, Dan Kelly, Ron Wecht, Richard Schoenberger and Mike Kelly have all investigated or tried cases in this area and are available for review or consultation in connection with auto defect related claims.

Prop 213 General Damage Bar Extended to Pedestrians

The First District Court of Appeal has extended the bar against recovery of general damages to an uninsured pedestrian standing next to her car in a supermarket parking lot. Proposition 213, passed by the electorate in 1996, enacted Civil Code §3333.4. That code section bars the recovery of general (non-economic) damages by an uninsured motorist who is injured in "the operation or use of a motor vehicle."

In Harris v. Lammers 84 Cal.App.4th, 1072, the plaintiff was standing outside of her uninsured vehicle in the parking lot of a drug store in Crescent City. At the time she was injured, she was handing balloons to her children seated inside. The defendant pulled out of an adjacent parking space and struck the door through which the plaintiff was leaning.

The Court of Appeal opined that even though the plaintiff was outside her vehicle, she was "using" the car to transport her children and supplies. In the view of the court, the accident "arose out of" the use of the vehicle, thereby bringing it within the scope of §3333.4. At trial, the court entered a verdict in the amount of $21,244, composed of $9,244 in economic

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17 MILLION DOLLAR VERDICT WAKES UP HELMET INDUSTRY

Continued from front page

Mr. Goodloe's temple fractured, resulting in transsection of the middle meningeal artery and residual epidural bleeding. Scientific analysis of the helmet, conducted during the discovery phase of the litigation, confirmed that the geometry of the device failed to protect the thinnest and most vulnerable portion of a person's skull.

Evidence at trial demonstrated that this helmet, like many others, represents a serious public safety hazard. Though most purchasers believe that certified bike helmets are "safe" they know nothing about the design or testing, or the minimal level of safety required by industry-generated certification standards.

Touted as being in compliance with safety standards, consumers are unaware that such "standards" provide only a minimal level of impact protection and energy attenuation. Moreover, the standards do not require that the entire helmet absorb the required level of energy, only the portion above an invisible "test line" (some one to two inches above the lower lateral edge of the headgear) is required to meet industry and government guidelines. The point at which Mr. Goodloe struck his head was below the area required to be tested by these "standards" – as a result, it was not an area that the manufacturer ever tested or examined to determine energy attenuation – even though Bell knew it to be the area where the majority of injurious impacts occurred.

Scholarly treatises produced at trial showed that the majority of head impacts occur below this test line. In addition, the majority of injurious impacts are also concentrated in the front or temporal region.

A former Bell executive admitted on the stand that he and his company knew about such studies, and was familiar with the conclusions. He admitted that Bell's own studies were in accord. He stated that something less than 5% of impacts occurred at the crown of the helmet where the protection afforded by the helmet is greatest (because the amount of foam is thickest).

Not surprisingly, in the face of such evidence, the jury decided that Bell failed to meet reasonable consumer expectations in the design of this piece of safety equipment. Ironically, Bell designers conceded that the company could easily have manufactured a helmet which extended adequate thickness down below the so-called "test line" to the lateral edge. As a practical matter, making such a modification would have added no more than 20 grams of additional weight to the helmet, an increase of roughly one-half ounce. However, Bell alleged that adding any weight to a helmet would make it less aesthetically pleasing, and therefore, less appealing to consumers. The jury decided otherwise – in part because there is very little difference in the visual appearance of a helmet if additional foam is added.

Mason Goodloe's left shoulder crashed through the windshield of Defendant Garroutte's Nissan before his helmeted head struck the driver's side "A" pillar.

For years, helmeted cyclists injured in foreseeable accidents have been met with the claim that because their helmets comply with "standards," they cannot be defective. The applicable standards include ASTM (American Society for Testing and Materials) adopted in large measure by the Consumer Product Safety Act. Neither of these standards provides design restrictions, and in fact, both are advertised as "performance standards" intended to encourage innovation and improvement while setting only a baseline for safety. At trial, Bell's engineers agreed that such standards did not purport to cover all aspects of bicycle helmet safety or occupy all areas of testing and design. The chairman of the ASTM Helmet Committee (called by Bell as an expert) agreed that Standard F1447 did not limit testing, was not intended to restrict design innovation nor to limit the warnings or information given to a buyer. He grudgingly conceded that no standard prohibits a manufacturer from building a helmet that attenuates more energy than the minimum requirements.

In the retailers catalog for the 1996 product line (which included this Oasis Pro), Bell boasted: "We know of no safer bike helmet on the planet. There. We said it. Call the lawyers. Check it out. We're not worried. But wait, is that really important? Aren't all helmets 'safe enough?' Consider this: there's never been a legal judgment against Bell from one of our bike helmets."

That ad copy never made its way before the jury in this case. However, it is clear that all helmets are not "safe enough." Manufacturers have a responsibility to go above and beyond minimum standards. Now, Bell knows that.

Prop 213 *Continued from page four*

damages, and $12,000 in non-economic damages. The defendant appealed on the basis that the award of non-economic damages was barred.

In siding with the defendant, the First District held that because Harris was making an automobile insurance claim for damages, she came within the scope of Civil Code §3333.4. That section was intended to limit automobile insurance claims by uninsured motorists. The electorate wanted to ensure that uninsured motorists, who contribute nothing to the insurance pool, would be restricted in what they receive from it. (Hodges at page 115.) Here, the fact that the plaintiff was not driving at the time of the accident was found to be immaterial. Citing Cabral v. L.A. Metropolitan Transportation (1998) 66 Cal.App.4th 907, the court found that while Harris was not driving her Isuzu, she was clearly using it. They determined such use was sufficient to trigger the application of the penalty provisions of Civil Code §3333.4.

Recent Cases

Government Liability

Villanueva v. USA

In Villanueva v. USA (U.S. Military Claims Act), Ronald Wecht negotiated a settlement having a present cash value of $3,250,000 on behalf of a 3-year-old child who suffered anoxic brain damage as a result of delayed ambulance transport and medical response at Yokota Air Base in Japan.

The father, a career Air Force officer, was stationed with his family at the base. Plaintiffs claimed that after their young son experienced a cardiac arrest, defendants inordinately delayed in dispatching an ambulance to their quarters less than one kilometer away. Once at the home, plaintiffs claimed that the attendants were negligent in failing to have adequate equipment (including an automatic external defibrillator). After the child was transported to the emergency room, there was a negligent delay in defibrillating. Counsel for the U.S.A. contended that the response time of the emergency personnel, as well as the emergency room care, was within appropriate standards.

Because the claimed negligence occurred outside the geographical boundaries of the United States, an action under the Federal Tort Claims Act was not available. Plaintiffs' only recourse was through the Military Claims Act (10 U.S.C.S. §§2731) which covers administrative claims for injuries resulting from military activities outside of the United States. Under the Act, a trial is not permitted. Claims are pursued administratively with ultimate appeal to the Secretary of the Air Force. The settlement included both cash and annuity. A medical needs trust with an initial corpus of $350,000, supported by periodic payments in the amount of $12,580 per month, for life, was also established. In addition, $1,300,000 in cash was paid. The trust will provide a stipend of $8,030 per month, increasing at 3.5% per year, through age 18.

Detoy v. CCSF

In Detoy v. City and County of San Francisco, et al.(U.S. D.C. No. Dist. No. C-99-3072 CRB) Ronald H. Wecht and Khaldoun Baghdadi negotiated a settlement in the amount of $505,000 on behalf of the mother of a 17-year-old girl shot and killed by a San Francisco Police Officer as he was attempting to apprehend a suspected felon.

Plaintiff contended that the police officer wrongly fired at the car in which her daughter was riding because the officer was not in any physical danger from the vehicle, and that he shot his weapon for the sole reason of attempting to stop the vehicle from fleeing. Defendant contended that the auto was attempting to run over the officer, and that he was in immediate danger of being injured and feared for his life at the time he fired.

Plaintiff argued that the City was subject to liability because it had not properly trained the offending officer, had inadequately disciplined him for previous unauthorized uses of force, and because the policies and practices of the City with regard to firing at vehicles were inadequate.

At the time of the settlement, the case was pending in U.S. District Court. A summary judgment motion made by defendants had been denied, and a notice of appeal had been filed. The settlement was subsequently approved by both the Police Commission and the Board of Supervisors.

Premises Liability

Husband & Wife v. Landscape Contractors

In Husband & Wife v. Landscape Contractors (Riverside Co., confidential settlement) Michael Kelly and Michael J. Recupero recovered $775,000 on behalf of two senior citizens, and their 6-year-old grandson, who were injured when a 45-foot palm tree fell onto their car as they drove on Highway 111 near Palm Desert. The tree, planted as part of a landscaping project adjacent to the roadway, fell after workers dug earth from around its base in preparation for moving it to another location. Unknown to the crew carrying out the excavation, the tree had originally been planted at a depth too shallow for its height. This initial negligence, coupled with a failure to stabilize the tree in preparation for moving, caused it to fall. The 76-year-old husband sustained a fracture of the C2 vertebra, which went on to a non-union. It was not susceptible to operative management because of its location. The unhealed fracture left him vulnerable to future harm. His wife sustained a compression fracture of the thoracic spine. The couple's grandson sustained facial lacerations from flying glass.

Defendants disputed the nature and extent of injuries, and alleged that the incident was a product of unusually high winds (as opposed to unsafe work practices). Defendants included the general contractor, landscape contractor, and tree removal subcontractor. No written contract for tree planting, removal or relocation existed. The settlement was reached at the mandatory judicial settlement conference, two weeks prior to trial, after two earlier mediations had been unsuccessful.

McDonald v. TPM Properties

In McDonald v. TPM Properties (S.F. Sup. Ct. No. 305951) Cynthia F. Newton obtained a $335,000 recovery on behalf of a 26-year-old man who sustained a severely dislocated knee and a ruptured popliteal artery with resulting compartment syndrome, when he fell from a chair while painting a unit in the building in which he resided. The building owner and manager had hired the plaintiff to paint the vacant unit and provided equipment to him, including a defective ladder. Because the ladder would not safely support him, plaintiff was forced to use a chair to paint the ceiling. While painting, the chair gave way.

The action was brought against the building owner and manager as uninsured employers (Labor Code §3706) because they failed to secure worker's compensation insurance to cover injuries for casual employees. As uninsured employers, plaintiff alleged the defendants breached a non-delegable duty to provide him with safe equipment.

Defendants argued that they were not statutory employers as defined in the Labor Code, and that the Labor Code presumtion of negligence was inapplicable. They also argued that they were

Recent Cases

not negligent because the ladder which plaintiff chose not to use was safe.

The owner's general liability carrier initially declined coverage, citing an exclusion in its policy for injuries to employees. After Cumis counsel appeared for the defendants and challenged the denial of coverage, the liability carrier agreed to provide indemnification. The case was settled on the first day of trial.

Vehicular Negligence

Motorist v. Christiansen

In Motorist v. Christiansen (S.F. Sup. Ct. No. 993833) Doris Cheng obtained a $190,000 settlement on behalf of a 47-year-old man who sustained a ruptured lumbar disc in an automobile collision in San Francisco. As a result of the collision, plaintiff required a laminectomy and continued to have persistent numbness in his lower extremities even after surgery.

Liability in the case was highly disputed. The accident happened in San Francisco's Sunset District. Plaintiff was driving east on Judah Street. The defendant was traveling south on 21st Avenue. As the defendant attempted to cross Judah, his view of the plaintiff's vehicle was obscured by a stopped Municipal Railway LRV. Notwithstanding this vision obstruction, the defendant darted out beyond the stopped train, colliding with plaintiff's vehicle. Both parties claimed the right of way. Defendant alleged that the accident was the product of plaintiff's excessive speed, and that but for the plaintiff's negligence, the accident could have been avoided. Defendant also claimed that plaintiff's post-accident symptoms were due to underlying pathology as opposed to an acute disc herniation. Plaintiff, in turn, argued that defendant was careless in driving past the front of the stopped light rail vehicle when he could not see oncoming traffic.

Medical bills were $59,000. The case was settled on the first day of trial just prior to jury selection.

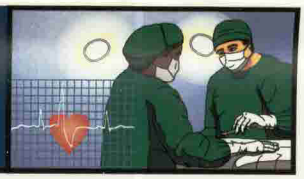
Doe v. Doe

In Doe v. Doe (S.F. Sup.Ct., confidential settlement), Paul V. Melodia obtained a $650,000 settlement for a 30-year-old male who suffered a closed head injury in a single vehicle rollover accident. After the defendant driver lost control of his vehicle (a convertible) while driving in the Sierras, it left the highway and rolled multiple times down a steep grade. The plaintiff passenger was airlifted to Washoe Medical Center in Reno, where an epidural hematoma was evacuated. The plaintiff also suffered collapsed lungs, fractured ribs and an eye injury. After his acute medical care and rehabilitation, he was able to return to work within five months. Total economic damages, medical and wage, were $151,000. Settlement was reached after the commencement of litigation and an initial round of depositions. A cause for the defendant driver's loss of control was never identified.

McG. v. Golden Gate Bridge

In McG. v. Golden Gate Bridge, et al. (S.F. Sup. Ct. No. 305217) Doug Saeltzer negotiated a $300,000 settlement on behalf of a 47-year-old man who suffered bilateral tibial plateau fractures in a head-on accident. Defendant #1 veered across a double yellow line, running head-on into plaintiff as a result of swerving to avoid striking the rear of a Golden Gate Transit bus which had merged into his lane from a bus stop. At the time of the accident, Defendant #1 was on his lunch break. His employer (Defendant #2) denied coverage on the basis that the driver was not in the course and scope of employment. Defendant #1's private insurance carrier denied coverage on the basis that he was in the course and scope of employment, for which an exclusion existed in the policy. Plaintiff claimed that the primary cause of the accident was the operator of the Golden Gate Transit bus who cut off the car which struck him. The case settled shortly after the employer's motion for summary judgment seeking a determination that Defendant #1 was an independent contractor was denied.

Medical Negligence



Tammy F. v. Kaiser Foundation Health Plan

In Tammy F. v. Kaiser Foundation Health Plan (mandatory arbitration) Kevin L. Domecus and Michael A. Kelly obtained a mediated settlement, one day before the commencement of arbitration, on behalf of a child who suffered profound injuries when her mother's uterus ruptured at the site of a previous myomectomy (surgery to remove a fibroid in the uterine wall).

Two weeks prior to the baby's emergent delivery, the child's mother was hospitalized in pre-term labor. After being medicated and released, she was advised to observe strict bed rest and communicate with Kaiser's Pre-Term Birth Prevention Project. At 10:00 p.m. the evening before delivery, the parents called the maternity department to report painful contractions. Without determining the onset, frequency, characteristics or location of the pain suffered by the mother, an on-duty advice nurse advised the mother to take an additional dose of her anti-contraction medication and call if her conditioned worsened. Eight hours later, the mother awoke in severe pain. Her husband called 9-1-1. She was taken to a local hospital where the child was delivered by emergency C-section at 32 weeks gestation.

Claimants contended that Kaiser's employees were negligent in failing to obtain and record essential information the night prior to delivery, and in failing to order the mother to the hospital at the time of the phone call. Respondent contended that the advice nurse acted within the applicable standard of care, and that the advice she gave to the parents was appropriate. Respondents also contended that even if the mother had been hospitalized the night before, she would likely have sustained a ruptured uterus in the hospital, with the same devastating outcome to the child.

The minor was diagnosed with periventricular leukomalacia. She later developed infantile spasms and cerebral palsy. At the time of settlement, the child was 3-1/2 years of age. The settlement, with a present cash value of $1,000,000, was composed of both an initial cash payment and guaranteed future annuity payments to offset the cost of future medical, therapy, labora-

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RECENT CASES

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tory and attendant care. A special needs trust was established in connection with the settlement to preserve future public benefit entitlement.

Patients v. Major HMO

In Patients v. Major HMO (confidential settlement), Paul V. Melodia obtained a combination cash and annuity settlement having a present cash value of $3,200,000 on behalf of a 49-year-old man and his wife.

The patient developed a cardiac tamponade four days after undergoing open heart surgery. The problem was neither timely diagnosed nor treated, and cardiopulmonary arrest ensued. By the time he was resuscitated, the plaintiff had sustained severe anoxic brain damage. As a result of injury to the brain, he suffers from spastic quadriparesis, cortical blindness, dysarthria, cognitive impairment, loss of bowel and bladder control, and dysphagia. Because of impaired swallowing, and the risk of aspiration pneumonia, he must be fed through a gastrostomy tube. After one year in a residential care facility, the plaintiff was discharged home to the care of his family (spouse and siblings) who, despite limited financial resources, sacrificed to provide quality home care and round-the-clock nursing. Under the terms of the agreed-upon settlement, an annuity (having a present cash value of $1,632,000) was funded to provide $15,000 per month, for life, increasing by 4.5% per annum, to offset the cost of attendant and nursing care. In addition, $1,563,000 was paid in cash. Under the settlement, Mrs. Doe compromised her loss of consortium claim, and all of the heirs agreed to settle any future wrongful death rights.

Patient v. UCSF Stanford Healthcare

In Patient v. UCSF Stanford Healthcare (S.F.Sup.Ct. No. 304587) Michael Recupero negotiated resolution of a medical negligence claim on behalf of a 47-year-old woman who suffered an anaphylactic reaction to antibiotics administered for a hand infection which had previously been misdiagnosed and improperly treated by one of the defendant's satellite clinics. As a result of the reaction, her vital organs ceased to function with resulting cessation of blood flow to her extremities. Ultimately she suffered amputation of the tips of her fingers on one hand and her toes.

Plaintiff claimed that when she initially presented to the defendant's clinic in Half Moon Bay, the on-call physician failed to appreciate the seriousness of the infection. Plaintiff alleged that appropriate treatment required immediate referral to a hand surgeon for extensive incision and drainage. Instead, defendant's physician prescribed an insufficient dose of a broad-spectrum antibiotic and performed an ineffective lancing of the area.

Defendant argued that there is no liability for unanticipated or unforeseen allergic reactions to drugs, and further, that its clinic physician behaved within the standard of care. It also alleged that referral to a specialist on the day in question would have resulted in administration of the very same antibiotic which caused the reaction.

Plaintiff's experts were prepared to testify that had plaintiff been treated appropriately, an antibiotic other than penicillin would have been given, and an appropriate infection and drainage would have resolved the infectious abscess. Plaintiff sustained no out-of-pocket wage loss, and medical bills were paid by private insurance, a fact that would have been admissible at trial under the provisions of MICRA.

PRODUCT LIABILITY

Sheldon v. Huish Detergents

In Sheldon v. Huish Detergents (Marin Co. Sup. Ct. No. CV993392), Doug Saeltzer recovered $170,000 on behalf of a 52-year-old woman who sustained severe chemical burns on her knees from a floor cleaning solution manufactured by the defendant. Plaintiff was using the chemical to clean floors when she inadvertently knelt in the liquid. She sustained full thickness burns on both knees, resulting in permanent scarring and residual lower leg swelling. She claimed that the defendant was negligent per se for violating the labeling requirements of Health & Safety Code §108200, which requires manufacturers to provide a clear statement of hazards of their products. Discovery revealed that the defendant had notice of at least seven prior claims where the product had resulted in burns to the knees or lower legs of consumers. While the label stated "Danger – Corrosive" it did not specifically warn of the foreseeable risk of chemical burning secondary to skin contact. Defendant claimed that its label complied with all appropriate Federal and State statutes, and defended on the basis that the plaintiff should have known better than to kneel in the product. Defendant also claimed that plaintiff failed to mitigate her damages by delaying medical treatment for 24 hours.

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. Visit us on the web at www.walkuplawoffice.com.

WALKUP, MELODIA, KELLY & ECHEVERRIA

650 California Street, San Francisco, CA 94108

(415) 981-7210 Fax (415) 391-6965