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WALKUP TEAM OBTAINS \$4 MILLION VERDICT IN FATAL SAN FRANCISCO PEDESTRIAN CRASH

At approximately 5:15 a.m. on November 6, 2014, a Golden Gate Transit Bus on Route 54 was pulling out of the yard at Novato on its way to San Francisco. About that same time, Lori Helmer, a 52-year-old banker who had recently relocated to San Francisco from Minnesota, was getting ready for her morning run. Forty-five minutes later at roughly 6:00 a.m., Lori began to cross Lombard Street at its intersection with Van Ness. She entered the marked crosswalk on a green light with the "white walking man" sign illuminated.



When Lori was approximately halfway across

the intersection, the bus turned left from Lombard to head north on Van Ness. The driver's side of the bus collided with Lori when she was just past the median divider, still in the crosswalk. The impact knocked her to the ground and the rear wheels of the bus ran over her pelvis, causing fatal internal injuries. Lori died at San Francisco General Hospital two hours later.

Within hours the insurance company and risk management department of the Bridge District had a team of engineers and potential experts for the anticipated

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Firm Welcomes Two New Shareholders

We are proud to announce that Sara Peters and Conor Kelly have been elevated to shareholder status by unanimous vote of the management committee. Their legal writing skill and courtroom accomplishments have marked them as developing stars in the profession. Each has also shown tremendous empathy and compassion in representing clients who have sustained catastrophic injuries and disabilities.

Sara Peters came to our firm following a stellar career at Stanford University Law School. During her time at Stanford she competed in mock trial and served in leadership positions for several student organizations. After receiving her J.D. in 2008, she began working full-time

at Walkup. She was already in the courtroom assisting with exhibits and witness preparation on a six-week product liability trial when she received news that she had passed the California bar exam.

In the ensuing years, Sara has handled both local matters and high-profile national product liability litigation. She has successfully resolved seven and eight-figure cases involving plane crashes, dog bites, medical malpractice, municipal liability, propane explosions, and dangerous conditions of public property. She has tried to verdict civil rights, medical malpractice and motor vehicle cases.

Like many of our attorneys, Sara is invested



in the process of legal education. She serves as co-director of Stanford Law School's Trial Advocacy Program, is an assistant editor of the Rutter Group's Claims and Defenses Guide, is vice-chair of the BASF Barristers Litigation Committee, and is co-chair of SFTLA's education committee. She is beginning a second term with the Edward J. McFetridge Inn of Court. She is a co-founder

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WALKUP TEAM OBTAINS \$4 MILLION VERDICT IN FATAL S.F. PEDESTRIAN CRASH

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civil litigation on the scene. Bridge public relations personnel immediately began arguing that the pedestrian had done something “wrong,” had failed to see the bus, failed to react in time, or had otherwise acted inappropriately.

Over the course of the next two years Walkup attorneys Michael Kelly, Matthew Davis and Jeffrey Clause worked on discovery and trial preparation – unearthing internal bus regulations, driver safety manuals, video recordings from passing MUNI railway buses and adjacent stores and businesses. After two years of hearing the District claim the pedestrian was at fault, the Walkup trial team demonstrated in a two-week jury trial, presided over by San Francisco Superior Court Judge Richard Ulmer, that Lori Helmer had done nothing wrong.

On the contrary, Mike, Matt and Jeff dismantled the Bridge District’s claims that Lori had caused her own death by running into the side of the bus. At trial, they demonstrated through expert testimony, cross-examination of the Bridge District’s own witnesses, and Bridge District internal documents that the driver was exceeding the recommended speed limit, had an unobstructed view of the

crosswalk, and that, had he followed internal policies and procedures, Lori Helmer would never have been struck. In final argument, Mike argued that the jurors had an obligation to Ms. Helmer’s memory to speak the truth by finding that she was at all times acting as a reasonable person crossing on a green light, looking ahead (rather than behind her as the Bridge District urged she should have done), and dressed in appropriate running clothing including white shorts and a blue T-shirt.

At trial, Mike and Matt showed through the cross-examination of the Bridge District’s accident reconstruction and human factors experts that even though they had been on the scene 24 hours after the accident, and had been back to the scene on four different occasions in the ensuing two years, with unlimited access to internal Bridge District documents and to the bus involved in the collision, they had never been given the driver’s statement in which he admitted he was going three times the speed they estimated in their reconstruction. Additionally, the experts had never driven through the scene at the speed recommended by their client’s own safety manuals, nor had they been given videotapes taken at the time of “drive

throughs” done by Bridge District managers in the days following the tragedy.

Lori Helmer’s only heir was her son, John, a 21-year-old student at the University of Colorado. Lori was not providing John with any economic support the time of her death, and so the entirety of the claim was for the loss of his mother’s love, care, comfort, society and support. Prior to trial, the Bridge District made a settlement offer less than one-half of the ultimate verdict. That offer was rejected because it assumed substantial comparative fault on the part of Lori Helmer.

John and his mother were exceedingly close. They spoke almost every day. Lori and John’s father had divorced while John was a small child and his mother had in many ways acted as a single parent. She helped with advice, counsel, encouragement and love. She was his mentor, role model, coach, tutor, running buddy and best friend. The day before the fatality, they had spoken on the phone planning for John to come to San Francisco at Thanksgiving for a weeklong visit. The jury awarded \$4 million in non-economic damages, fully and fairly appraising the nature and extent of the loss, and rejecting the claims of comparative fault on the part of Lori Helmer. ▲

Firm Welcomes Two New Shareholders

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and an officer of the non-profit organization Attorneys Bettering the Community, which is aimed at helping those in need.

Sara lives in San Francisco’s Sunset District and is an avid bike commuter. She and her husband Andrew (who owns a busy SF design-build company), enjoy spending time with their three sons (3-year-old Asher, and 1-year-old twins Emmett and Corben). In their (mostly imaginary) spare time, they host a church group at their home, and enjoy running, biking, snowboarding, surfing, hiking, snorkeling, diving, brewing beer and international travel.

Conor Kelly came to the firm in 2009 after graduating cum laude from UC Hastings College of the Law. While at Hastings he received academic honors both for work

in the classroom and as a member of the Hastings Mock Trial Team.

Since joining the firm Conor has specialized in a wide variety of case types, most typically involving multi-defendant medical malpractice and product liability cases. He has been lead counsel in a number of transportation accident claims, including claims for negligence in the operation of tractor-trailers, box trucks, buses, passenger vans and municipal light rail vehicles.

Conor’s trial successes have included multiple seven-figure jury verdicts and one eight-figure verdict. He was nominated in 2014 for the San Francisco Trial Lawyers Association’s “Trial Lawyer of the Year” award after obtaining a \$38.6 million dollar verdict for a 19-year-old boy who suffered paralysis

when his doctors failed to timely diagnose and treat a basilar artery stroke.

Currently Conor represents clients in a variety of personal injury and wrongful death claims. He is part of the team of Walkup lawyers representing those who were injured, and the families of those who died, as a result of the Berkeley Library Gardens balcony collapse in June 2015. In addition to his work at Walkup, Conor is active in numerous professional groups including the Consumer Attorneys of California (CAOC), San Francisco Bar Association (BASF), the Edward McFetridge Inn of Court and San Francisco Trial Lawyers Association.

Conor lives in San Francisco with his wife, Tanis, and their 2-year-old daughter Brynn. When he is not focused on his cases, Conor enjoys outdoor activities with his family and cheering for the San Francisco Giants, the Golden State Warriors and the San Francisco 49ers. ▲

WALKUPDATES

Andrew McDevitt and his wife Kristen welcomed their second daughter, Sophia Elizabeth McDevitt, on October 8, 2016. Andrew was honored with the Outstanding Barrister Award from the Bar Association of San Francisco at its Annual Membership Luncheon in December 2016. Andrew gave a presentation on discovery at CAOC's annual Kaiser Seminar in October 2016... **Doris Cheng** served as program director for an advanced trial advocacy training program for the Legal Aid Advisory Authority of Trinidad. The three-day program trained 32 Trinidad and Tobago attorneys who represent indigent citizens. The program was funded by the U. S. Department of State through the National Center For State Courts (NCSC). In May Doris was featured on the cover of "USF Lawyer," the quarterly magazine published by the University of San Francisco Law School. In June Doris traveled to Boulder, Colorado, where she co-directed a NITA training program focused on the use of advocacy drills... **Mike Kelly** was selected for inclusion in the "Lawdragon 500 Leading Lawyers In America" publication for the fourth consecutive year. Mike was also chosen by U.S. News/Best Lawyers as the 2017 "Lawyer Of The Year" in the specialty of plaintiff's mass torts. In March Mike completed a two-year term on the Commission on the Future of California's Court System by appointment of Chief Justice Tani G. Cantil-Sakauye. Mike's participation on the civil court's subcommittee contributed to the Commission's recommendations for revising civil case tiers and stream-

lining procedures... **Rich Schoenberger** was appointed as the American College of Trial Lawyers Northern California State Committee's Liaison to the ACTL National Trial Competition, a three-day mock trial event involving 24 West Coast law schools. Rich continues to teach a mock trial class to eighth graders on a weekly basis through Marin City's "Bridge The Gap" college prep after school program. This summer, Rich will moderate a panel discussion on voir dire at the annual CAOC Lake Tahoe seminar... **Valerie Rose** spoke at Berkeley Law on the topic of "Oral Advocacy for L.L.M. Students." In April, Valerie participated in Bridgeport CLE's "What Makes Jurors Tick?" seminar. This summer, she will present at CAOC's "Women in the Law" program... **Sara Peters** will join Tim Hallahan and Judge Sallie

Kim as a co-director of the 2017 Stanford Law School Trial Advocacy course. Sara currently co-chairs the San Francisco Trial Lawyers Association's education committee, and is rotating back in for a second term as a "Barrister" with the San Francisco Edward McFetridge Inn of Court... **Spencer Pahlke** and his wife Tina Sessions are expecting their first child, a daughter, in July... **Khaldoun Baghdadi** was appointed to the Board of Directors of the Bar Association of San Francisco's Justice and Diversity Center (JDC). The JDC coordinates and oversees the provision of pro bono legal services to low-income citizens, and delivers educational programs that foster diversity in the legal profession... **Conor Kelly** spoke at the annual CAOC Donald Galine Travel Seminar in Hawaii on the topic of electronic evidence. He was also selected as a "Rising Star" by the Irish Legal 100 - a nationwide compilation of distinguished American legal professionals of Irish descent. Conor will be listed along with other honorees in the Irish Voice Newspaper... **Jeff Clause** was invited to speak at Vacaville High School to AP students who were preparing for their final Mock Trial Competition. Jeff gave presentations to the students on persuasive oral advocacy, compiling evidence, and on the effective preparation necessary before any public speaking engagement. Jeff also returned to his alma mater, Santa Clara University, to serve as a judge in the Honors Moot Court Competition... **Joseph Nicholson** married San Francisco attorney Sara Leung on May 25, 2017, at Olowalu, Maui, Hawaii. In lieu of traditional vows, the couple performed a duet of Stevie Wonder's "You Are the Sunshine of My Life." ▲



"You Are the Sunshine of My life" Maui wedding - Joseph Nicholson and Sara Leung performed a duet

Four Partners Selected to 2017 Super Lawyers "Top 100" List

The announcement of the 2017 Super Lawyers honors brought recognition to 12 of our attorneys, and special recognition to partners Rich Schoenberger, Khaldoun Baghdadi, and Doris Cheng who were selected to the "Top 100" list. Also receiving that honor was partner Mike Kelly who was voted by his peers to the "Top Ten" list for the fifth time.

Super Lawyers is a rating service of outstanding lawyers from more than 70 prac-



tice areas who have attained a high degree of peer recognition and professional achievement. The patented selection process includes independent research, peer nominations and peer evaluations. The mission of Super Lawyers is to bring visibility to those attorneys who exhibit excellence in practice.

Super Lawyers Magazine features the list and profiles of selected attorneys and is distributed to attorneys in the state or region and

the ABA-accredited law school libraries. Super Lawyers is also published as a special section in leading city and regional magazines across the country. Lawyers are selected to a Super Lawyers list in all 50 states and Washington, D.C.

Through the years the Walkup firm has consistently had 90% or more of its trial lawyers eligible for inclusion on one of the Super Lawyers lists.

This year's honorees will be featured in a special supplement to the August 2017 issue of San Francisco Magazine. ▲

Opioid Litigation Heats Up

A recent filing by an infant born with opioid addiction is the latest salvo in the national litigation against manufacturers of opioid drugs. Drugmakers are accused of unleashing an epidemic through deceptive marketing about the risks of addiction to painkillers. The lawsuit was filed by three district attorneys who represent parts of the east Tennessee mountains in Appalachia, which has been the epicenter of the prescription drug epidemic that has ravaged the country. It's among a growing number of lawsuits filed recently around the country against opioid drugmakers.

Tennessee has the second highest statewide opioid prescription rate in the country outside of West Virginia. The lawsuit names Purdue Pharma, maker of OxyContin; Mallinckrodt PLC, which manufactures and sells multiple painkillers; and Endo Health Solutions, which develops and sells several painkillers, including Opana.

A number of states and cities have filed against these and other drugmakers (including Teva Pharmaceuticals and Johnson & Johnson) to recoup the social costs of treating citizens addicted to painkillers.

West Virginia's case is particularly striking. It is the state hardest hit by the epidemic, suffering the highest rate of opioid overdose deaths in 2015. An investigation by the Charleston Gazette-Mail found that from 2007 to 2012, drug firms poured a total of 780 million painkillers into the state — which has a total population of about 1.8 million. Some of the numbers were even more absurd. The small town of Kermit has a population of 392, but a single pharmacy there received 9 million hydrocodone pills over two years from out-of-state drug companies.

Some distributors have already paid penalties. McKesson agreed to pay a \$150 million settlement to the Department of Justice for failing to report suspicious orders of pharmaceutical drugs, particularly opioids, and stopped sales of some distribution centers in multiple states. CVS, Walgreens, and Cardinal Health also paid fines for violations in the past several years.

Opioids are powerful painkillers that are highly addictive. Opioid dependence affects nearly 5 million people in the United States and leads to approximately 17,000



deaths annually. According to the CDC, rates of opioid overdose deaths jumped significantly, from 7.9 per 100,000 in 2013 to 9.0 per 100,000 in 2014, a 14% increase. Half of deaths due to drug overdose (22,000 per year) are related to prescription drugs.

Patients frequently relapse and present with intoxication. Symptoms vary according to level of intoxication. For mild to moderate intoxication, individuals may present with drowsiness, pupillary constriction, and slurred speech. For severe overdose, patients may experience respiratory depression, stupor, and coma. A severe overdose may be fatal.

Current guidelines recommend comprehensive treatment with pharmacological agents such as methadone, buprenorphine, or buprenorphine combined with naloxone as well as psychosocial therapy. ▲

Trump Proposal Resurrects Historic Republican Medical "Reforms"

Donald Trump's budget for Fiscal Year 2018 proposes a national medical malpractice overhaul "[to] reduce defensive medicine ... limit liability, reduce provider burden, promote evidence-based practices, and strengthen the physician-patient relationship." To achieve this alteration of individual patient's rights, the budget proposes:

- a cap on non-economic damage awards of \$250,000 regardless of injury severity
- allowing courts to modify attorney's fee arrangements
- permitting judges and jurors to hear evidence of the plaintiff's income from other sources

In addition to the obvious unfairness of punishing most harshly those who

have suffered the most (i.e. catastrophically injured and wrongful death victims) the proposed \$250,000 cap will produce a disturbing regressive effect. Most studies have shown that the cost of medical liability insurance is not affected by caps on recoverable non-economic damages, finding that almost all increases in this cost over the past thirty years have been brought about by inflation and the vagaries of the market. A decrease in the level of compensation for malpractice victims will not make it cheaper for doctors to purchase liability insurance.

The collateral source rule holds that a wrongdoer cannot benefit from payments a victim receives from other sources, such as insurance companies, government agencies, and private donors. It is the law

in every state. Those payments belong to the victim alone. Consequently, abolishing this rule transfers the victim's money to the wrongdoer.

The Trump plan also seeks to limit or eliminate common law jury trials by authorizing the Secretary of Health and Human Services "to provide guidance to States to create expert panels and administrative health care tribunals."

The "reforms" contemplated by the Trump administration do not contain any incentives to practice better or safer medicine, or to improve the quality of patient care. The reformers would be well served to redirect their attention from creating medical courts, limiting attorney fees and pushing evidence-based medicine to encouraging adequate care. ▲

LIBRARY GARDENS GENERAL CONTRACTOR LOSES LICENSE

The license of the prime contractor responsible for the safety of Berkeley's Library Gardens apartment complex was revoked by the Contractor's State Licensing Board (CSLB) on April 23, 2017. The contractor, Segue Construction, oversaw the construction of the building where five visiting Irish college students fell to their death, and seven others were injured, in June 2015. The license suspension was effective May 19. The license holders are unable to apply for reissuance or reinstatement of any licenses for the next five years, the maximum waiting period under governing law. Additionally, a spokesman for the CSLB made clear that any license reissuance or reinstatement application would not

be "automatic." "There is a criterion for rehabilitation which the Board considers when it receives an application for reissuance," said the Board's spokesperson.

While the revocation was appropriate, necessary and welcome news to the victims and surviving family members of those who were killed, it is hoped that additional legislation will be forthcoming prohibiting secret settlements by contractors determined to have performed work in a substandard or negligent manner. In addition to license revocation, Segue's responsible managing officers for the period of 1992 through 2016 accepted responsibility for monetary penalties and for reimbursing the entirety of



the CSLB's investigative costs, estimated at nearly \$100,000.

The civil litigation arising from the tragedy has now been assigned a trial date in February 2018. The matter is venued in the Alameda County Superior Court Complex Litigation Department. Walkup shareholders Michael Kelly, Richard Schoenberger, Matthew Davis and Conor Kelly have primary responsibility for the prosecution of the claims. ▲

RECENT CONSUMER PRODUCT SAFETY RECALLS

Hoverboard LLC Recalls Self-Balancing Hoverboards Due to Fire Hazard

This recall involves Powerboard brand self-balancing scooters, commonly referred to as hoverboards. The hoverboards have two wheels at either end of a platform and are powered by lithium-ion battery packs. Included are Powerboard brand hoverboards model #PB-001 sold in green, blue, black, red, white,



chrome, gold chrome and pink, and can be identified by the POWERBOARD marking on the left side of the board. The lithium-ion battery packs in the self-balancing hoverboards can overheat, posing a risk of the products smoking, catching fire and/or exploding. There have been 27 reports of the self-balancing hoverboards overheating, sparking and smoking. Consumers should immediately stop using these recalled

products and contact Hoverboard LLC to exchange their hoverboard for a free UL-certified replacement.

Arctic Cat Recalls Snowmobiles Due to Impact Hazard

This recall involves all model year 2017 Arctic Cat 9000 Turbo snowmobiles and model year 2018 Arctic Cat 6000, 7000, 8000, and 9000 snowmobiles. The recalled snowmobiles were produced in a variety of color combinations. "Arctic Cat" is printed on the sides of the vehicle and on the back snow-flap area. The snowmobile drive clutch can fracture and fragments can escape the snowmobile shielding, posing an impact hazard. Consumers should immediately stop using the recalled snowmobiles and contact an Arctic Cat snowmobile dealer to schedule a free repair.

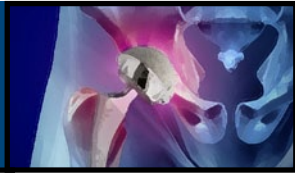


Pulse Performance Products Recalls Krusher Scooters Due to Fall Hazard

This recall involves Pulse Krusher Pro Free-style scooters with factory code 083WY, item number 164257 and date code 10-8-2016 or earlier. The factory code, item number and date code can be found on a label printed on the underside of the scooter deck. The 30-inch high scooters were sold in blue and have the words "PULSE PERFORMANCE PRODUCTS" printed on the down tube. The down tube can break, posing a fall hazard to the rider. The firm has received 15 reports of the down tube breaking. Consumers should immediately stop using the recalled scooters and contact Pulse Performance Products for a full refund. ▲

RECENT CASES

MED DEVICE LIABILITY



Andrews v. Johnson & Johnson

In Andrews v. Johnson & Johnson (U.S.D.C. No. Dist. Texas), Khaldoun Baghdadi participated on an MDL trial team, headed by Mark Lanier of Houston which obtained a verdict in excess of one billion dollars on behalf of six California plaintiffs who had received a Johnson & Johnson DePuy Pinnacle metal-on-metal hip device. After suffering prolonged exposure to metal ion wear, tissue damage and pain, the plaintiffs required painful revision surgery where the Pinnacle device was removed and replaced. The trial consumed nearly two months. Deliberations resulted in an award of punitive damages for each of the six plaintiffs, and to each of their spouses. Individual compensatory damage awards to each plaintiff ranged from \$4 to \$6 million dollars, and \$1 million to each spouse for loss of consortium. This was the third bellwether trial held in the consolidated multi-district litigation proceeding in the Northern District of Texas before the Honorable Ed Kinkeade. The jury's award of punitive damages was ultimately reduced by Judge Kinkeade consistent with limitations imposed by the United States Supreme Court. The Defendants have appealed the verdict. The DePuy Pinnacle MDL involves claims by approximately 8,500 plaintiffs from around the country. Given the Walkup firm's historic involvement in the ASR hip implant litigation, we are privileged to remain involved in the process of obtaining fair compensation for our metal-on-metal hip replacement clients.

TRUCKING LIABILITY



Traveler v. National Trucking Co.

In Traveler v. National Trucking Co. (No. Cal. Sup. Ct. case no. confidential), Rich Schoenberger, who was associated to prepare and try this catastrophic injury case after initial attempts at resolution had failed, negotiated an \$11,000,000 pretrial recovery on behalf of a central coast motorist rendered quadriplegic in a head-on collision with a semi-truck and trailer. Before Rich's involvement, the case had been filed and managed by a skilled referring attorney who sought Walkup's assistance for trial. At the time of the collision the driver for a long-haul trucking firm suddenly crossed over a center median strip into oncoming traffic. His big rig flipped over on top of the plaintiff's passenger car. The defendant driver and his employer claimed that an unforeseeable and sudden medical emergency had caused the collision, thus absolving them of all liability. Rich and his co-counsel retained qualified experts in the fields of stroke neurology and radiology to dispute that there was no warning of the event. Discovery revealed that earlier in the day the driver had twice sat down to rest while loading his trailer because he had felt "dizzy." His past medical records revealed a history of uncontrolled

high blood pressure, high cholesterol, a poor diet, and a long smoking history. These facts combined to support the argument that the driver should have foreseen the potential for a cerebral-vascular event such as a TIA. The matter was concluded at mediation after expert disclosure and discovery were completed.

VEHICULAR NEGLIGENCE



Pedestrian v. Airport Shuttle Service

In Pedestrian v. Airport Shuttle Service (San Mateo Sup. Ct.), Rich Schoenberger and Doug Saeltzer negotiated a \$7 million recovery on behalf of a Bay Area pedestrian who was struck by a distracted airport shuttle bus driver. On New Year's Eve 2014 at approximately 4:30 p.m. the defendant driver was driving above the posted speed limit at 40 miles per hour on Airport Boulevard in South San Francisco. In-vehicle video shows her looking first at her cell phone and then at a large electronic tablet. External cameras on the bus show the plaintiff ahead of the bus, entering a marked crosswalk when his light turned green, and the driver's light turned red. Completely ignorant of road conditions, the driver remains focused on her electronic devices and strikes our client propelling him more than 100 feet in the air where he lands on the asphalt sustaining multiple fractures, internal organ damage and traumatic brain injury. The client's persistent and continuing investment in rehabilitation resulted in a remarkable recovery, but still left him with cognitive dysfunction and brain injury. This horrifying experience underscores the hazards associated with distracted driving. Appropriately, the shuttle driver was later convicted of a crime for her conduct, but the criminal conviction is of little benefit to the plaintiff who remains saddled with the harms and losses caused by the driver's negligence.

Disabled Citizen v. City and County of San Francisco

In Disabled Citizen v. City and County of San Francisco (S.F. Sup. Ct.), Matt Davis and Doug Saeltzer obtained a \$2,875,000 settlement on behalf of the surviving parents of a 37-year-old woman who was killed while crossing Market Street within a marked crosswalk. Due to a condition called osteogenesis imperfecta the decedent used a motorized wheelchair. Despite her medical condition, she was successful in her career and lived independently. At the time of her death she was commuting from her home in the East Bay to her job in San Francisco. A left turning vehicle being driven by an employee of the City and County of San Francisco struck her as she legally crossed at 7th and Market Streets. With only limited exception, left turns from 7th Street onto Market Street are prohibited. Doug and Matt alleged that the defendant did not fall into any of the exceptions to this rule. Defendant claimed that based on plaintiff's statements at the scene she entered with only three seconds remaining on the pedestrian flashing red hand countdown, and the City's driver actually entered the intersection prior to the decedent. The victim and her family fled Vietnam when she was an infant. The family was extremely close and the deceased spoke to her parents every day.

RECENT CASES

Athlete v. Commuter

In [Athlete v. Commuter](#) (Santa Clara Sup. Ct.), Jeffrey Clause achieved a substantial confidential settlement on behalf of a 21-year-old South Bay resident who sustained a Jones fracture to his right foot. The plaintiff was riding an electric skateboard in a marked bicycle lane when a car ran him down from behind and ran over his right foot. The driver of the car claimed she was distracted when she changed lanes to make a right turn. The plaintiff required surgery for the placement of a titanium screw to repair the fracture. Prior to the incident, the plaintiff was an extreme sportsman who engaged in competitive rock climbing and surfing. After his surgery, he underwent a long and painful recovery process that limited his ability to pursue his passions. The claim emphasized the devastating effect his injury had on his quality of life.



Silicon Valley Executive v. Regional Clinic

In [Silicon Valley Executive v. Regional Clinic](#) (confidential case number), Michael Kelly and Sara Peters successfully resolved a medical negligence / failure to diagnose case on behalf of a 32-year-old Silicon Valley communications and marketing executive in the amount of \$7,500,000. The plaintiff, his wife and young son had recently relocated to Silicon Valley. Out of the blue he began having daily headaches, sometimes associated with dizziness. He had no previous history of headaches. He visited the local clinic where he was reassured that his symptoms were likely due to changes in blood pressure. No brain imaging (which would have shown a resectable lesion) was carried out. Four months later, the aneurysm ruptured and proceeded to bleed into the plaintiff's brain, causing irreparable harm. Emergency surgery saved the client's life but residual cognitive impairment altered both his personality and his ability to function. Mike and Sara were able to demonstrate that the client's earning capacity was unique in the Silicon Valley market and that based upon sums earned by his peers, and probable future promotions, his lifetime earnings loss would be in excess of \$10,000,000. General damages were limited to the MICRA cap on pain and suffering in the total amount of \$250,000.

Patient v. Regents

In [Patient v. Regents](#) (Sacto. Sup. Ct.), Andrew McDevitt and Christian Jagusch represented a 46-year-old woman who developed stage 4 cancer after a one-year delay in treatment. In June of 2014, the patient discovered a lump in her left breast. Pathology results of a biopsy were inconclusive. Soon thereafter, the patient switched to the defendant's health care system. In September of 2014, she followed up with a surgical oncologist employed by U.C. Davis, who excised the lump. The pathology results revealed angiosarcoma, an aggressive soft tissue cancer. Defendant claimed that her primary care physician at U.C. Davis conveyed the results to her. The patient denied being told about the cancer by any of her doctors. She claimed that she did not learn about the malignant mass until more than one year later when she changed

health insurers. By then, the mass had doubled in size, and she developed metastatic disease. Defendant retained a renowned surgical oncologist, who opined that there was no breach in the standard of care and that plaintiff had an incurable form of cancer which would not have benefitted from earlier treatment. Andrew and Christian proceeded to trial alleging the defendant's failure to inform plaintiff of her diagnosis 13 months earlier fell below the standard of care and caused her to suffer and sustain a diminution in her life expectancy and earnings. After jury selection, the case settled for \$900,000.

Rural Patient v. Emergency Group

In [Rural Patient v. Emergency Group](#) (Sonoma Sup. Ct.), Valerie Rose successfully concluded a wrongful death case on behalf of the surviving husband and two children of a 46-year-old Sonoma County woman who died from a systemic infection secondary to an infected IUD. The decedent became ill shortly before Christmas 2014. Three days later, she visited a local emergency room and reported symptoms consistent with a severe infection, including abdominal cramps, body aches, chills, and a history of fever. Although in the ER for over five hours, hospital staff only recorded her temperature twice - once when she arrived (it was normal), and once right before she was discharged home at which time she had spiked a fever to 102.3 degrees. Knowing that her temperature was abnormal, the ER doctor nonetheless failed to evaluate or document her remaining vital signs. Instead, he entered an incorrect diagnosis of degenerating fibroids and sent her home. An OB/GYN specialist was available in the hospital, but the ER doctor made no attempt to obtain a consultation. The OB/GYN later testified that had she been consulted she would have hospitalized the decedent. The defendant moved for summary judgment on the issue of causation. Valerie obtained an opposing opinion from a highly qualified Stanford infectious disease specialist that the decedent would more likely than not have survived if she had been hospitalized on the date of her emergency room visit. The motion was withdrawn after this declaration was filed. The case settled at a private mediation for \$1,000,000 shortly thereafter.

Service Technician v. Sacramento Clinic

In [Service Technician v. Sacramento Clinic](#) (court and case no. confidential), Conor Kelly obtained a \$2.75 million settlement on behalf of a 55-year-old municipality manager. The plaintiff suffered vision loss as a result of delayed treatment of a benign tumor. He originally presented to the defendant on June 7, 2015, complaining of severe headache. Imaging scans diagnosed with a large pituitary tumor compressing the optic nerve. Conor produced expert testimony that the plaintiff should have been immediately admitted and emergently seen by a neurosurgeon. Instead the patient was scheduled to see a neurosurgeon in two weeks and discharged with pain medication. Twelve hours following discharge, the patient called the hospital advice line complaining of continued pain. Stronger pain medication was ordered. The following day, the patient returned back to the defendant's clinic complaining of blurred vision. By the time surgery was performed, it was too late to save the patient's vision. The defendant denied liability and argued that the patient's symptoms escalated at an uncommon and unexpected pace. The largest damages item was the plaintiff's total loss of income. Conor produced lay and expert testimony supporting the claim that he was unable to work in any capacity because of his vision loss.

RECENT CASES

GOVERNMENT LIABILITY



Disabled Student v. South Bay School District

In Disabled Student v. South Bay School District (Santa Clara Sup. Ct.), Michael Kelly and Spencer Pahlke resolved a negligent supervision claim on behalf of a wheelchair-bound high school senior. Notwithstanding his disability, the plaintiff sought to be involved as fully as possible in high school activities. While participating in cross-country practice in his wheelchair, the plaintiff became separated from the team as they ran through city streets. Passing through an intersection roughly one mile from campus, he was struck by a motorist who did not see him. In discovery, Mike and Spencer established the cross-country coach had misled his supervisors about the extent of the plaintiff's participation, and more importantly, they showed that neither the district nor the high school had done anything to evaluate how to safely accommodate the plaintiff's disability while incorporating his participation in school activities. The school district moved for summary judgment based upon primary assumption of risk and a waiver signed by the student's parents. In opposition, Mike and Spencer retained experts in the fields of school supervision and disability rights, and successfully demonstrated that a triable issue of fact existed regarding whether or not the school was grossly negligent in its management of the plaintiff's disabilities. Following denial of the summary judgment motion, the case settled at mediation for \$2,975,000.

Minor v. City Camps

In Minor v. City Camps (No. Cal. Sup. Ct.), Douglas Saeltzer and Matthew Davis obtained a global \$1,500,000 recovery on behalf of a disabled 7-year-old child injured at one of the defendant's summer programs. The injury occurred when a camp counselor was pushing the young plaintiff in her wheelchair during a game of duck-duck-goose. The wheelchair tipped over, causing the child to strike her head on the ground. She sued the municipality alleging the camp counselor was negligent. The defendant denied any liability, asserted a written waiver as a complete defense and filed a cross-complaint against plaintiff's parents. The defendants further alleged that the minor plaintiff had fully recovered from her head injury and was doing well in school at her expected grade level. The case involved five law and motion matters, including a motion for summary adjudication affirmatively brought to eliminate the City's ability to assert waiver as an affirmative defense. Over 20 depositions were taken in the case. The case resolved following two mediations.

Victim v. State of California

In Victim v. State of California (Santa Clara Sup. Ct.), Sara Peters and Justin Chou negotiated a settlement in the amount of \$899,000 on behalf of a displaced person who was struck by a Caltrans tractor/loader during the cleanout of a homeless encampment adjacent to Highway 280 near San Jose. During an encampment cleanout in 2015, California CHP and Caltrans personnel failed to do a thor-

ough job of ensuring that all the site's residents had been removed before they drove a heavy tractor/loader through the area to remove the makeshift shelters and debris. In the process of the operation, the bucket of the tractor/loader picked up the client who was asleep under a canvas sheet. The bucket of the loader shattered both of her hips, her sacrum, and also caused facial injuries. Initially, the State claimed that the plaintiff had not been sleeping-but instead had run back to the encampment while the cleanout was ongoing. Sara and Justin proved through non-party witnesses that this claim was false. The case was resolved at mediation following the completion of discovery.

CYCLING INJURY



Road Cyclist v. Minivan

In Road Cyclist v. Minivan (Tuolumne Sup. Ct.), Jeffrey A. Clause recovered \$500,000 on behalf of a 26-year-old bicyclist who sustained multiple fractures when he was struck by an oncoming car in a head-on collision. The injured plaintiff was riding his bicycle with three friends on a rural road. As the group began navigating a downhill right turn the defendant's car came around the corner at an unsafe speed driving on the wrong side of the road. The injured plaintiff, who was the lead cyclist in the group, did not have sufficient time to avoid the collision and crashed into the side of the defendant's minivan. He was airlifted by helicopter to a regional trauma center. His injuries included a concussion, hand fractures, internal derangement of his knee and severe road rash. Because the defendant motor vehicle operator had inadequate liability insurance coverage, Jeff identified and made claims upon the family primary and excess uninsured motorist policies which covered the cyclist because he was a relative of the named insured (his father), living in his parents' home. Of the \$500,000 recovered, uninsured motorist coverage paid \$450,000 of the settlement. ▲

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.



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