

FOCUS

on torts

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FIRM MEMBERS SELECTED TO LEAD NORCAL WILDFIRE LITIGATION

Wide swaths of Northern California were devastated last October when electrically ignited wildfires raged over six counties. The fires burned thousands of acres, destroyed nearly 9,000 structures and killed 44 people. They were the most destructive fires in state history and the deadliest in a century.

Early investigation pointed to PG&E electrical infrastructure, lines and equipment as the cause of the inferno. An investor-owned, for-profit, public utility with monopolistic powers that delivers natural gas and electricity to 5.2 million customers throughout the northern two-thirds of California, PG&E is responsible for ensuring that its lines,



equipment and service are safely maintained. Unfortunately, it has a long history of failing to protect public safety.

In the aftermath of this disaster, Walkup firm members joined the investigation into fire cause and origin, demanding that PG&E

preserve evidence at the ignition scenes. Building a five-firm consortium of experienced, aggressive and ethical civil litigation specialists, we worked to help victims with housing and safety issues, insurance claims, and rebuilding and relocation challenges. Through community meetings and town hall gatherings we shared our knowledge with fire survivors.

Once law firms began filing cases in multiple venues, it was clear that a streamlined process

for litigating in a single court would best serve victims. Petitions were filed with the Judicial Council seeking to have the cases consolidated. While some lawyers argued for Sonoma, Napa and Sacramento, we

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Jade Smith-Williams Joins Firm as New Associate

We are proud to welcome Jade Smith – Williams to the firm. Jade received her J.D. from UC Hastings in 2017 and her B.A. in Criminology from the University of California, Irvine.

During her time at Hastings, she worked as a law clerk in the Civil Rights Enforcement Division of the California Department of Justice and represented low-wage earners in the Individual Representation Clinic and Workers' Rights Clinic. Jade was a member of the Social

Justice Concentration program and successfully spearheaded a campaign that doubled the number of grants UC Hastings offered to law students pursuing public interest internships. She served as Senior Editor for the Hastings Law Journal and was on the Executive Board of the Black Law Students Association. She was selected as



a 2016 San Francisco Trial Lawyers Association Fellow. While in law school Jade received multiple awards for academic excellence and exemplary leadership including the Nancy Stuart Public Interest Award (2017), the Outstanding Contributions to the UC Hastings Community Award (2016-17), and back-to-back Public Interest Awards (2015-16 and 2016-17).

Following undergraduate school at UC Irvine, Jade signed to play professional basketball overseas fulfilling a childhood dream. After two seasons playing in Slovakia, she took the plunge and entered law school. She recalls

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WALKUPDATES

Rich Schoeberger served as a faculty member at the NITA Western Regional Trial skills program... **Spencer Pahlke** was awarded the Eddie Ohlbaum Professionalism Award by Stetson University for outstanding trial advocacy teaching and for the success of the trial advocacy program at Berkeley Law (which he runs)... **Mike Kelly** was an invited speaker at 360 Advocacy's "Go Big or Go Home" damages seminar at the Encore Hotel in Las Vegas. Mike also presented at Trial Guides' June seminar in San Francisco. Mike's presentation was titled "Using Rules of the Road in Openings and Closings." Mike was also honored with selection to the LawDragon 500 Leading Lawyers in America list for 2018-2019... In April **Doris Cheng** participated in a three day training of prosecutors in

Guyana as part of the U.S. State Department's commitment to supporting the rule of law in the Caribbean Basin. Doris also co-directed the NITA Drills program in June... **Jeffrey A. Clause** recently spoke as a guest lecturer on tort law at San Francisco State University, providing an overview of personal injury litigation, from initial client intake, to discovery, trial, and appeals. The class covered general negligence, premises liability, product liability, medical negligence, and government liability... **Khalidoun Baghdadi** served as co-moderator of a panel of state and federal trial judges at the ABA Emerging Issues Seminar on Product Liability Litigation. He also taught as a guest instructor at the Stanford Law School Trial Advocacy Program... **Valerie Rose** served as a panelist for the San Francisco Trial Lawyers noon-time lecture series on informal discovery tools... **Conor Kelly** was appointed as an Adjunct Professor at UC Hastings teaching Practical Civil Liti-

gation. The course, geared to 2L and 3L students, emphasized practical skills and techniques helpful to new lawyers beginning careers in civil litigation. Conor was also invited to chair a CLE panel on behalf of the Bar Association of San Francisco relating to the effective use of CCP section 998 offers to compromise... **Joseph Nicholson** spoke at SFTLA's 'Beyond the Driver' CLE discussing legal issues and litigation strategy against transportation companies like Uber and Lyft... **Sara Peters** is serving as a guest lecturer at Stanford Law School, co-directing the Stanford Law School Trial Advocacy program along with Judge Sallie Kim (N.D. Cal.) and Tim Hallahan (who developed the program). She also now serves as co-chair of the SFTLA Education Committee, and continues as an editor of The Rutter Guide Medical Malpractice treatise... **Doug Saeltzer** has been elected to statewide office (Secretary) for the Consumer Attorneys of California. ▲

Medical Product Recalls

The FDA recently announced a recall of Terumo Heating and Cooling Systems to allow for revised cleaning instructions to help reduce the risk of infections to patients. The recall is part of an ongoing investigation of potential nontuberculous mycobacteria (NTM) infections associated with heater-cooler devices. The first reported infections arising from contaminated heater-cooler devices were linked to the Stockert 3T heater-cooler devices, manufactured by LivaNova Deutschland GmbH and Sorin USA, Inc. (Our firm is investigating and prosecuting Stockert 3T cases. Counsel wishing further information should contact Khalidoun Baghdadi.) In October 2016, the Centers for Disease Control and Prevention (CDC) noted that a number of patients had been diagnosed with invasive, antibiotic-resistant *Mycobacterium chimaera* infections. The patients had undergone open-chest surgeries where the Stockert 3T heater-coolers were used. An investigation traced the source of the infection to one of the manufacturing sites.

Drugmaker Allergan has recalled packs of its birth control pills in the United States after it was discovered that four placebo pills were placed out of order in the Taytulla packs. A physician report revealed the first four days of Taytulla's 6x28 physician sample packs featured four maroon placebo pills instead of pink active

capsules. The recall affects nearly 170,000 birth control packs which expire in May 2019 (Lot #5620706). The first 24 days of the Taytulla birth control treatment is normally supposed to carry pink ethinyl estradiol in the first 24 pills. The last four capsules colored maroon, are supposed to function as placebos. The order is critical since the ethinyl estradiol minimizes the likelihood of pregnancy in the first 24 days. Reversing the order leaves women unknowingly at risk for an unintended pregnancy.

Medtronic has issued an urgent medical device recall letter to physicians regarding the potential for loss of high voltage and anti-tachycardia pacing therapy in EnTrust and Escudo implantable cardioverter defibrillators (ICDs) as they near elective replacement indicator (ERI) voltage. Under certain circumstances, the device may display an immediate End of Life (EOL) Observation with no prior ERI alert. Though no ERI alert is triggered, there may not be enough remaining battery capacity to charge the high voltage circuits, leading to a loss of high voltage and anti-tachycardia pacing therapy. Physicians are alerted to a replacement protocol depending on device condition and current charging capacity. ▲

Jade Smith-Williams Joins Firm as New Associate

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that "Lawyers were revered in my Oakland community because there was so much need. I remember hearing the saying 'You'll never need a lawyer if you just become a lawyer.'" The #BlackLivesMatter movement solidified her decision to enter and complete law school.

From Jade's perspective, her professional basketball career has given her great insight into being a successful lawyer. "As an athlete you learn how to set concrete goals, develop an action plan to meet those goals, execute that plan, and reflect on the process and outcome. Basketball forces you to get over your mistakes in seconds. Trial lawyers must also

have a short-term memory when things do not go their way. The other team is not going to pass up an open 3-pointer after they steal the ball from you. Similarly, opposing counsel is not going to pass up an opportunity to capitalize on your misfortunes. The quicker trial lawyers can identify implications of a mistake or bad ruling, the better they can neutralize the impact and recover. As I transition from the basketball court to the courtroom, I carry with me the resiliency my mother instilled, and the fortitude basketball imprinted on me."

We look forward to having Jade on the Walkup team for many years to come. ▲

Library Gardens Litigation Concluded

Following more than two years of litigation involving 14 different original defendants, a final settlement was reached against all defendants in the litigation arising out of the fourth floor balcony collapse that occurred on June 16, 2015, at the Library Gardens apartment complex in Berkeley, California. The balcony collapse occurred during a birthday celebration for a visiting student and resulted in six deaths and serious injuries to seven other persons. The terms of the settlements are confidential.

Construction of the Library Gardens apartment complex began in 2005 and ended by early 2007. The City of Berkeley issued a certificate of occupancy for the complex in January 2007. In June 2007, after construction was complete, a BlackRock entity purchased the complex from the builder. A Greystar entity began managing the complex in October 2008.

Design defects and construction flaws attributable to the complex's designers,



builders and material makers allowed water to penetrate the enclosed interior of the cantilevered balcony adjacent to Unit 405 of the complex. As a result wood rot developed in the balcony's wooden support structure, which was concealed from view, enclosed by an unventilated stucco soffit. Neither the property owner nor manager discovered the rot during various periodic inspections of the property. The victims were in no way responsible for what happened, and no claims of comparative fault were asserted.

Following the tragedy, California enacted legislative changes relating to balcony construction and certification. In addition, BlackRock and Greystar adopted policies and procedures regarding the scope and frequency of balcony inspections on the properties that they own or manage. As part of the final resolution the parties also agreed to work to promote greater awareness of balcony safety issues and to take appropriate actions to prevent future tragedies of this nature.

Five of the deceased, and all seven of the injured victims, were Irish citizens who were enrolled in leading universities in their native country. They were spending the summer of 2015 working in the Bay Area pursuant to cultural exchange visas issued by the United States Department of State. Walkup Melodia represented the seven injured survivors and five of the bereaved families. The litigation team was spearheaded by shareholders Michael A. Kelly, Richard Schoenberger, Matthew Davis and Conor Kelly. ▲

FIRM MEMBERS SELECTED TO LEAD NORCAL WILDFIRE LITIGATION

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urged the court to move all the cases to the Superior Court in PG&E's home county, San Francisco. Ultimately our request was granted, and coordination trial judge Judge Curtis Karnow signed a case management order appointing Mike Kelly and Khaldoun Baghdadi of our firm as co-lead counsel and co-liaison counsel, respectively, for the plaintiffs. The selection was based in part on our firm's six-decade history of obtaining compensation for those injured by utilities.

Cal Fire recently issued its first reports identifying the causes in sixteen of the fires. In every report, it concluded that PG&E power lines or equipment were the cause of each of those fires. We expect consistent findings on the remaining fires soon. Cal Fire referred

reports in some of the fires to local district attorneys for potential criminal prosecution against PG&E.

PG&E has shown no interest in settlement or resolution - preferring to delay the cases, lobby for liability law changes in Sacramento, and blanket the airwaves with positive public relations propaganda. Through its public relations machine and Sacramento lobbying firms, PG&E has threatened bankruptcy, obscured the public record, and sought to fundamentally change constitutional property rights of Californians.

We are not only engaged with PG&E in court, but also at the state capitol where PG&E is actively lobbying state legislators to change or eliminate inverse condemnation rights. Frustrated fire survivors are demanding that legislators hold PG&E responsible

and have organized through coalitions like Up from the Ashes.

Depositions are now underway, as is the disclosure of internal corporate documents and physical evidence collected by PG&E and Cal Fire investigators. For our firm, this is a passionate and personal fight. Firm attorneys and staff, as well as their families, were touched by these preventable fires, suffering damage and destruction of homes and property in Sonoma and Napa.

For those who lost homes and possessions in the NorCal fires and are seeking representation against PG&E, we stand ready to help. Led by partners Michael Kelly and Khaldoun Baghdadi, associates Andrew McDevitt and Max Schuver, together with Jasleen Singh and Owen Stephens, we have assembled a team focused on obtaining justice for those impacted by the fires. Referring attorneys and co-counsel should contact any member of the team to explore how we can help. ▲

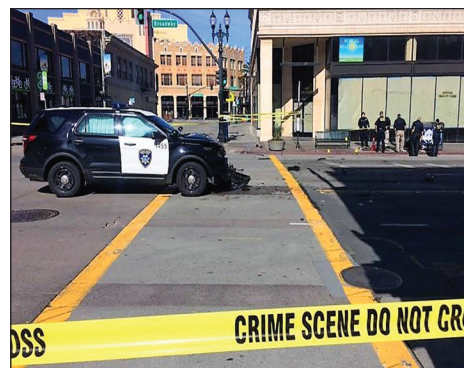
RECORD SETTLEMENT OBTAINED AGAINST CITY OF OAKLAND

Richard Schoenberger and Douglas Saeltzer recently obtained what is believed to be the largest pre-trial settlement paid to an individual personal injury plaintiff by the City of Oakland. Rich and Doug's client was a 34-year-old motorcyclist who was lawfully in an intersection when he was broadsided by a marked Oakland Police Department vehicle. At the time of the collision the police vehicle was responding to a call "Code 3" with its lights and siren activated. Investigation and formal discovery identified a surveillance camera from a local business showing that the officer never stopped before entering the intersection. A download of the data from the police cruiser showed the police SUV entered the intersection at a speed much higher than the officer admitted in his accident reports. The plain-

tiff proceeded into the intersection with a green light.

The case highlighted the danger to the public that is created when police officers disobey traffic signals while responding "Code 3." While the California Vehicle Code exempts police officers from complying with the vehicle code when in "Code 3" status, an internal Oakland Police Department policy produced during discovery required all officers to come to a complete stop before entering an intersection against a red light. The policy arose from a growing awareness that allowing first responders to violate the rules of the road presented far more risk to the public than any benefit obtained from arriving on the scene of a crime or offense a fraction of a minute sooner.

The case also illustrates the importance



of quickly identifying and obtaining all potential video evidence from surrounding homes and businesses as well as what may have been recorded on police department vehicle-mounted and body cameras. Critical video evidence obtained from these sources was used to rebut the testimony of the police officer whose testimony about the collision facts was not accurate. As a result of the collision the client, Mr. Van Fleet, suffered a below-the-knee left leg amputation, a fractured pelvis, a fracture in his lumbar spine and a fractured shoulder. The amount recovered by Rich and Doug was \$12,000,000. [▲](#)

WALKUP ROCKS ANNUAL CHARITY CONCERT

Move over Led Zeppelin, U2 and Red Hot Chili Peppers, Magnum PI is in the house. On April 19, 2018, Walkup Law Firm's future Rock and Roll Hall of Fame nominee made its debut performance at the Sixth Annual Law Rocks Charity Concert in San Francisco, raising thousands of dollars for a Bay Area non-profit, Bay Area Youth EMT. Law Rocks is a non-profit which hosts "Battle of the Bands" style concerts in major cities around the world, inviting lawyers and affiliated legal professionals to perform in support of local charities. Net proceeds from the events are donated to promote youth music education.

Magnum PI is fronted by lead vocalist Justin Chou, a Walkup associate, with fellow associate Joseph Nicholson on guitar. Paralegal Brian Robbins keeps things moving on bass guitar and friend Dino Adani sits in on percussion. The San Francisco Law Rocks concert took place at The Chapel in the Mission, an award-winning music venue in the City. Magnum PI opened the evening with a well-

received set of blistering classic rock numbers that was scored highly by the judges.

The group started as a collaboration between Justin, a former musical theater performer, and Joe, a lifelong guitar player. The group settled on the Magnum PI moniker to reflect both Walkup's reputation as a premier personal injury litigation firm and its unique six-decade history of top quality results for clients.

Bay Area Youth EMT is based in Oakland and since 2002 has helped disadvantaged inner city youth earn firefighting and EMT training at highly reduced cost. With the goal of increasing diversity among first responders it provides training in collaboration with Merritt College and the Oakland and Alameda Fire Departments. Magnum PI chose Bay Area Youth



EMT after being impressed by its vision of hope and perseverance, its emphasis on community awareness, and its commitment to helping young people find a way out of poverty and unemployment. (See <https://www.inthered-film.org/>)

Though the band did not take home the top prize on this first time out, they remain committed to using music to bring positivity and support to the Bay Area community under the Walkup banner. [▲](#)

Autonomous Driving Fatalities Raise Safety Questions

Since a Peninsula man was killed when his Tesla Model X slammed into a concrete barrier on southbound Highway 101 in Mountain View, Tesla's autopilot system has been under review. The highly publicized self-driving feature had veered towards the same freeway barrier several times previously. Following this collision, other Tesla drivers confirmed the overall unreliability of the auto-

pilot system near similar dividers – including videos posted by at least one Tesla owner who drove the same stretch of roadway, experiencing unwanted autopilot steering to the left toward the divider.

Publicly reported data from the vehicle log confirmed that the autopilot system was engaged at the time of the collision, begging the question of whether it is safe to navigate in true autopilot mode – can the technology be trusted? Assuming the autopilot technology works correctly, why would a correctly functioning car steer itself into a divider? If it is not always safe to operate a Tesla in autopilot, should this feature even exist? If it is not always safe, isn't this a recipe for more tragedies?



Meanwhile, in the same week of this Tesla collision, Arizona Governor Doug Ducey sent Uber Technologies Inc. a strongly worded letter after the death of a pedestrian who was struck by a driverless SUV. In the letter addressed to Uber Chief Executive, Ducey said video of the collision released by police in Tempe “raises many questions about the ability of Uber to continue testing in Arizona. Improving public safety has always been the emphasis of Arizona’s approach to autonomous vehicle testing, and my expectation is that public safety is also the top priority for all who operate this technology in the state of Arizona.” In a statement posted to the Twitter account of Uber’s Communications Team, the company also pointed out that it had

suspended testing of all self-driving vehicles in the four cities where it had been underway: San Francisco, Pittsburgh, Phoenix and Toronto.

The video released by police shows the Uber vehicle, a 2017 Volvo XC90 SUV that was operating in autonomous mode, striking and killing Elaine Herzberg, 49, as she crossed the street walking her bicycle. The SUV did not slow down or alter its course to avoid her.

An engineering analysis of the collision shows that the Uber vehicle was travelling northbound on Mill Avenue. Using still frames from the onboard vehicle video and Google Street View showing the dimensions of the roadway, it was determined that the pedestrian walked approximately 40 feet before being hit. Taking a normal walking speed (generally estimated at 3 mph) the pedestrian was in the roadway for at least nine seconds before being hit. This is an extremely long period of time. In most accident reconstruction scenarios, experts testify that an alert driver needs only 1½ seconds to perceive and react to danger by stopping. Here, there was more than enough time for an attentive human driver to perceive and react to the pedestrian, but the vehicle never “saw” her.

The notion that an ordinary human being could have avoided this accident whereas the radar and lidar of this vehicle failed to see, perceive and avoid this tragedy, raises serious safety questions – especially for all of those who claim that driverless systems are ready for implementation.

The National Transportation Safety Board is investigating both fatal incidents. ▲

Who Will Protect Our Fellow Citizens If Not Us?

Recently, the Department of Justice quietly closed its Office on Access to Justice, creating a new hurdle for every American who cares about ensuring equal justice under the law. The Office on Access to Justice opened in 2010, and was an unprecedented effort by the Justice Department to ensure that our legal system was a system of justice in actuality, not just in name.

In the civil justice system, people’s lives are impacted every day. People lose their homes, families, savings, food, medical care — even their emotional and physical safety and security — because they cannot afford legal representation. Fifty million Americans qualify for federally-funded civil legal aid, yet more than half

of those who seek help are turned away. The Office on Access to Justice, using its high-profile perch within the federal government, pulled together stakeholders to facilitate local efforts in setting an agenda for reform. It demonstrated that solid leadership could bring about results to improve people’s lives.

In publicly identifying civil justice system reform as essential to fairness in our legal system, it sent a powerful message. It spurred recognition that unjust outcomes in eviction and foreclosure disputes, debt collection cases, and family violence battles, all undercut society. The office also convened a landmark gathering of social science researchers which

built a storehouse of knowledge of access to justice research.

When citizens cannot rely on the justice system to protect their most basic rights, they lose faith in public institutions. As members of the bar we are duty bound to uphold and defend the principle that greater access restores trust in our justice system. We appeal to our co-counsel, referring attorneys and opposing counsel to support programs that promote access to justice in our community. In this unprecedented time of criticism of our courts and jurists by the executive branch, the bar must use its assets, advocacy and constitutional principles to insist on justice for all. ▲

RECENT CASES

PRODUCT LIABILITY



Heirs v. Equipment Rental Center

In Heirs v. Equipment Rental Center (No. Cal. Sup. Ct.), Doris Cheng and Andrew McDevitt represented the wife and adult children of a retired husband and father who died after being thrown from a rented mini-tractor. Following an unwitnessed rollover, the machine was found overturned with its loader arms fully extended. The decedent was assisting one of his children in excavating a home storm water drainage pit. The decedent visited a local equipment rental facility to obtain a mini-excavator for the project. The rental yard selected the piece of equipment for the job. The machine's manufacturer originally designed the machine as a walk-behind device, adding a stand-on option years later. The stand-on platform allowed the operator to "ride" on the machine but triggered the risk of ejection. While using the excavator to dig out the drainage pit, the machine pitched forward and catapulted the decedent into the pit causing fatal head injuries. Plaintiffs alleged that the device, when equipped with a platform, was defective. Defendants denied fault and instead blamed the decedent, alleging misuse and failure to follow instructions. Two weeks prior to trial, after extensive discovery and following three sessions of mediation and a judicially supervised settlement conference, a global seven figure confidential settlement was reached.

Toddler v. Safety Seat

In Toddler v. Safety Seat (confidential settlement), Khaldoun Baghdadi and Andrew McDevitt represented a five-year-old girl who sustained a spinal cord injury when an intoxicated driver swerved head-on into the car in which she was riding. The defendant driver was driving with a suspended license. At the time of the crash, plaintiff was seated in a child booster seat that lacked a back or belt-guide – referred to as a "backless" booster. Khaldoun and Andrew alleged that the design of the child restraint was defective because it allowed the child's torso to "roll out" over the shoulder portion of the belt during a frontal impact, and thereby exposing her spine to a dangerous combination of stretching and shearing forces. The manufacturer focused on the bad conduct of the drunk driver, emphasizing that its seat had passed all government crash testing regulations and argued that no car seat could prevent serious injuries with an impact of this severity. After expert discovery, a seven figure confidential settlement for the minor plaintiff was achieved.

VEHICULAR NEGLIGENCE



Kim v. Zarour

In Kim v. Zarour, et. al. (San Mateo Sup. Ct. CIV-527935), Michael Kelly, Richard Schoenberger and Conor Kelly obtained a \$5.4 million jury verdict on behalf of the spouse and children of John Kim, a retired restaurant owner who died following a multi-vehicle col-

lision on Interstate 101. The Kims' car was rear-ended while in the slow lane by a tourist exiting SFO. Their car then traveled across three lanes of traffic where it was T-boned by a SuperShuttle van. Mr. Kim was fatally injured. Mrs. Kim was in the car with her husband and suffered serious injuries. At trial, the tourist conceded fault for the initial collision but argued that she was not liable for the death because the violence of the second collision caused all of the injuries. The SuperShuttle driver argued that there was no time for him to avoid the collision. Our team established through lay and expert witnesses that both defendants were negligent causes of the accident. Using the "blackbox" data from the SuperShuttle, they showed that the SuperShuttle driver was driving in excess of the posted speed limit and that he failed to respond in a timely manner to slowing traffic conditions. After a three week trial, the jury returned a verdict of \$5.4 million in favor of the plaintiffs. The verdict was more than three times the defendants' final pre-trial settlement offer.

Cyclist v. Colliding Defendants

In Cyclist v. Colliding Defendants (No. Cal. Sup. Ct.), Matthew Davis and Spencer Pahlke obtained a settlement in excess of \$6,000,000 on behalf of a badly injured bicyclist who was struck head-on after a collision between a food delivery vehicle and a taxi cab. The initial accident occurred at a busy SOMA intersection when the food delivery driver jumped the change in his red light to green. At the same time, a taxi driver approaching from the east, traveling 15 miles per hour over the speed limit to catch the last seconds of a stale yellow, violently broadsided the delivery car. Post-impact the taxi careened toward the plaintiff, who was stopped, sitting atop his bicycle waiting for his light to turn green. The force of the impact threw the plaintiff to the ground and launched his bike over a nearby fence. Our client suffered blunt force trauma to the head causing a traumatic brain injury. Previously liked and likeable, and interested in literature, art, and music, after his brain injury the plaintiff suffered personality changes and became disagreeable. Many friends testified at length about the considerable before-and-after changes observed. The recovery was in the full amount of the available policy limits of all defendants.

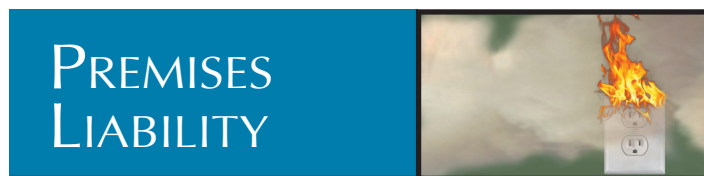
Survivors v. Parking Valet Co.

In Survivors v. Parking Valet Co. (No. Cal. Sup. Ct.), Douglas Saeltzer and Spencer Pahlke negotiated a \$6 million policy limits settlement in a wrongful death claim arising from a traffic collision along the San Francisco Embarcadero. Plaintiffs husband and wife were in San Francisco to watch a Giants game. At a busy parking lot entrance along the Embarcadero, the husband attempted to turn left into the lot but became stuck mid-intersection in traffic. While stranded, defendant's valet driver entered the intersection at a high rate of speed striking our clients' car broadside, and inflicting fatal injuries to the wife. Survivors included her spouse and two adult children. Doug and Spencer prosecuted the case on multiple theories including those of dangerous intersection, premises liability and negligent vehicle operation. An analysis of video retrieved from a passing Muni Railway vehicle was instrumental in demonstrating absence of comparative fault on the part of the surviving husband, given the congested and confusing nature of the intersection and the excessive speed of the valet driver.

RECENT CASES

Pedestrian v. Ride Share Driver

In Pedestrian v. Ride Share Driver (South Bay Sup. Ct.), Valerie Rose negotiated a six figure confidential settlement on behalf of a recent law school graduate who was hit in a crosswalk while walking home from work. At impact planitiff was thrown over 50 feet and sustained a fractured spine and significant post-concussive symptoms. Despite the severity of her injuries, the client returned to work shortly after the collision, fearing that a long absence after only recently passing the bar exam could impact her budding professional career. The defense argued that her early return to work and modest lost wages undermined her claim. Valerie used the early return to work facts positively in showing that the client was motivated and hardworking, and that returning to work early actually increased the value of the case, as her post-concussive symptoms which lingered for a year, produced serious job performance anxiety, thereby increasing the non-economic damage claim.



Belo v. Bally Hallinan Properties

In Belo v. Bally Hallinan Properties LLC (S.F. Sup. Ct. CGC-16-552777), Conor M. Kelly teamed with outside counsel to obtain a \$3,000,000 jury verdict for the wrongful death of a 55-year-old woman. The decedent, Lorraine Belo, died from complications of smoke inhalation after a fire started in her San Francisco apartment in June of 2014. The decedent's 29-year-old daughter, who lived in Arizona, sued the decedent's landlord alleging that the unit in which her mother lived contained a faulty electrical outlet which started the fire. The defendant denied liability and refused to engage in any reasonable settlement discussions. Conor was associated on the case for trial the week prior to jury selection. At trial, the defendant disputed that the fire had started in an electrical outlet and suggested that the decedent had herself started the fire. The defendant also argued that the surviving daughter had not suffered any damages because she and her mother were in a dispute at the time of the fire and had not seen each other for more than a year. After a three week trial, the jury returned a verdict in favor of the plaintiff and awarded \$3,000,000 in non-economic damages.

Family v. Resort Operator

In Family v. Resort Operator (court and number confidential), Michael Kelly, Khaldoun Baghdadi and Justin Chou concluded a wrongful death case against a commercial resort owner for the death of a husband and father who contracted a rare rodent-spread virus while a guest at the defendant's facility. The family stayed at one of the defendant's summer rental units. Symptoms of the disease developed after the family had returned home. The decedent was an otherwise healthy 45-year-old corporate executive. When he presented for treatment, his doctors were unaware of his exposure. The defendant, a national provider of lodging, fought the case vigorously for more than four years, making four dispositive motions and taking over 50 depositions. During the lengthy litigation Mike, Khaldoun and Justin prepared the viral exposure liability case and secured experts in multiple fields to prepare the case for trial. Prior to the trial date, a confidential eight-figure settlement was reached permitting the survivors to obtain closure and move on from their long and painful ordeal.

Tenant v. Owner and Property Manager

In Tenant v. Owner and Property Manager, et al. (S.F. Sup. Ct.), Richard H. Schoenberger, Matthew D. Davis, and Jeffrey A. Clause recovered \$3,500,000 on behalf of the surviving husband and parents of a 27-year-old San Francisco resident who experienced a "night terror" and fell from the fourth floor window of her San Francisco apartment in the middle of the night. Plaintiffs included both the surviving husband and the decedent's parents.

The Walkup team argued that the window sills were too low to the ground and created an obvious fall hazard which the property management company should have recognized and remedied. At the time the apartment building was constructed, building codes allowed window sills to be 18 inches from the floor. Because such low window sills led to a significant amount of falls, the California Building Code was amended in 2013 to require that no window sill be lower than 36 inches from the ground, unless certain safety devices that prevent the window from opening more than four inches were installed. Though the building code changes did not apply to this particular property, Rich, Matt and Jeff argued that industry standards mandated that the property owner and management company modify the windows for safety reasons. Had the defendants met these industry standards, the decedent would be alive today.

Peninsula Engineer v. Sidewalk Café

In Peninsula Engineer v. Sidewalk Café (Santa Clara Sup. Ct.), Michael Kelly and Justin Chou represented a 34-year-old computer engineer who was eating lunch in the sidewalk seating area of a Palo Alto restaurant when an elderly man drove onto the sidewalk injuring five people. The firm's client suffered major leg fractures and a significant brain injury, leaving him in a "locked-in" state. Over the course of three years Michael and Justin consummated three separate confidential settlements with the defendant driver (who contributed both insurance and personal assets), the restaurant, and the building owner where the restaurant was housed. The final settlements came while the case was on appeal following a grant of summary judgment. The case was procedurally complex involving multiple plaintiffs, four defendants, a driver who died during the pendency of the case, resolution of a seven-figure medical lien, and briefing of an appeal to the 6th District following the trial court's finding of no duty on the part of the restaurant defendant. The settlement proceeds were placed in a special needs trust to fund the client's ongoing attendant care needs while preserving his entitlement to public benefits.

Thespian v. University Fine Arts

In Thespian v. University Fine Arts (So. Cal. Sup. Ct.), Jeffrey A. Clause negotiated a six-figure settlement on behalf of a 43-year-old professional actress hired to work on a graduate school student film. Plaintiff fell while on-set, injuring her shoulder and eventually undergoing surgical repair. Because the defendants had failed to secure the required workers' compensation insurance, plaintiff was initially denied the medical treatment she needed. The defendants alleged that plaintiff was not an employee, but rather an independent contractor, and thus they were under no obligation to secure workers' comp insurance. Jeff showed that because plaintiff was a union member the defendants were required to hire her as an employee and protect her with the requisite insurance. Further, as uninsured employers, Jeff argued that the defendants were subject to a presumption of negligence. The recovery included the cost of medical care, lost wages and pain and suffering damages.

FOCUS *on torts*

MEDICAL NEGLIGENCE



PRSR STD
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Permit No 925

Infant v. OBGYN Service

In Infant v. OBGYN Service (confidential), Michael Kelly and Christian Jagusch obtained a cash and guaranteed annuity settlement with a present cash value exceeding \$9,500,000 for a child who suffered hypoxic ischemic encephalopathy during delivery at a Bay Area hospital. In the second stage of labor, attending obstetricians negligently failed to timely recognize fetal heart monitoring showing signs and symptoms of fetal distress, and by the time they did take action the baby was in extremis. Rather than delivering by prompt Caesarian section, defendants negligently performed a vacuum-assisted extraction, pulling on the baby's head for 41 minutes with four pop-offs using two different vacuum devices. Throughout this time the child suffered oxygen deprivation resulting in cerebral palsy, seizures, and profound developmental delays. A settlement was structured to provide home modifications and transportation needs, as well as to create a reservoir of cash to meet unexpected or unanticipated medical needs as they occur, coupled with multiple annuities to fund increasing levels of attendant care as required throughout the child's life, all of which were placed in a special needs trust to protect the infant's eligibility for government-provided benefits.

WORKSITE INJURIES



Worker v. Telecom Companies

In Worker v. Telecom Companies (court and number confidential), Khaldoun Baghdadi, Sara Peters and Joseph Nicholson negotiated a confidential settlement in excess of \$29 million for a telecommunications worker who suffered catastrophic electrical shock and thermal burn injuries requiring amputation of an arm. The plaintiff was in an elevated aerial bucket splicing a non-electrified communications cable. While working, he made contact with one of the defendants' high voltage electrical power lines which was strung above him, but not attached to the utility pole. Plaintiff suffered third and fourth degree burns to more than one-third of his body, resulting in chronic pain and disability. State regulations specify the minimum safe clearance distances that must be maintained around such uninsulated high voltage lines to protect non-electrical workers like the plaintiff. The Walkup team was able to show that not only was the power line sagging too low at the time of injury, but also that the responsible party had identified the dangerous condition at this precise location more than a year earlier, and failed to fix it. In seeking to establish comparative fault, the multiple defendants argued that the plaintiff either ignored the obvious hazard of the overhead power line or was not properly trained by his own employer. The multi-party settlement included contributions by various contractors that either inspected or worked on the site prior to plaintiff and failed to remedy or warn of the hazard.

Electrician v. Utility Company

In Electrician v. Utility Company (Ala. Co. Sup. Ct.), Michael A. Kelly, Matthew D. Davis and Jeffrey A. Clause recovered \$2,500,000 on behalf of a 36-year-old man who suffered a traumatic brain injury at a worksite. Plaintiff, an employee of a contractor hired by the defendant property owner, fell from a work space that was greater than seven feet above the ground. No one witnessed the accident and plaintiff had no recollection of his fall. He was hospitalized for several months and will never return to work. Matt and Jeff argued that the design of the facility did not accommodate the use of any fall protection equipment, work positioning equipment, or travel restricting equipment, and that the defendant prohibited the plaintiff from using any fall protection equipment. Had he been allowed to use such equipment, plaintiff would not have sustained any serious injuries. In addition to the monies recovered in this third party case, Matt and Jeff collaborated with plaintiff's workers' compensation attorney to ensure that funds from both cases were deposited into a special needs trust, providing for the plaintiff for the remainder of his life. ▲

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.



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