

# FOCUS

## on torts

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## HIGHWAY SAFETY VERDICT HIGHLIGHTS RECENT TRIAL RESULTS

Following three weeks of evidence and argument, we are pleased to report that Rich Schoenberger and Joe Nicholson obtained one of the largest verdicts in San Luis Obispo County history in the amount of \$5,510,000 arising out of a poorly designed highway construction project. Rich and Joe were associated into the case just two months before trial in the face of a zero settlement offer. Their verdict is a victory for all motorists who are forced to navigate construction zones on California's public highways.

The Cuesta Grade project was planned and executed under CalTrans's authority and supervision. The general contractor Telfer subcontracted with defendant Anrak Corporation for the asphalt grinding portion of the work. All three were named defendants.

On August 12, 2015, plaintiff Mickey Bruce was driving home from his job as a Caltrans inspector, traveling north on Highway 101 in the #1 lane on the Cuesta Grade. At this time the highway was undergoing a repaving project.

Mr. Bruce, traveling 60-65 mph on his motorcycle, was confronted with a vehicle in front of him that had come to an abrupt stop in the fast lane. Mr. Bruce struck it from behind in a

violent collision. To complicate matters, at least one eyewitness described Mr. Bruce looking in the opposite travel lanes where the paving project was underway just prior to the collision. It was unclear whether Mr. Bruce had actually braked his motorcycle prior to rear-ending the car in front of him. There were no skid marks and the defense offered convincing evidence that he had not braked.

The foregoing facts framed the defense theory and explained the absence of a settlement offer before trial. For the defense, it was all about the plaintiff's comparative negligence.

The force of the collision launched Mr. Bruce over the stopped vehicle and into the highway. He sustained serious or-

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## Firm Announces Newest Shareholder

We are proud to announce the elevation of Andrew McDevitt as the firm's newest shareholder. Andrew graduated magna cum laude from Cal Poly San Luis Obispo with a Bachelor of Science degree in Mechanical Engineering prior to law school. He began working for the firm as a law clerk in 2008 while attending UC Hastings. Since joining Walkup as an associate in 2010, Andrew's efforts have resulted in the recovery of more than \$100 million dollars

for clients in a wide range of personal injury and wrongful death actions. His notable results include a \$12.5 million dollar settlement for an injured vehicle occupant in a design defect product liability suit against an auto manufacturer, an \$8.3 million dollar jury verdict for an injured construction worker, a \$7.9 million dollar settlement on behalf of an injured cyclist in a dangerous condition of public property case, a \$7.25 million dollar settlement at the

end of trial in a premises liability case brought on behalf of an injured hotel guest, and a \$6.5 million dollar settlement after arbitration in a medical malpractice action. Clients describe



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# Conor Kelly Becomes Fourth Walkup Partner to Win SFTLA Trial Lawyer of The Year

A Walkup partner has once again been presented with the prestigious San Francisco Trial Lawyers "Trial Lawyer of the Year Award." This year, Conor Kelly received the award along with Andje Medina of Altair Law, for their outstanding efforts in the matter of Belo v. Bally Hallinan, a vigorously contested premises liability wrongful death trial in San Francisco.

The case centered around an apartment fire of disputed origin. Plaintiff, the decedent's surviving daughter, contended that the fire started in an electrical outlet which the defendant landlord had negligently installed and maintained. The defendant denied the fire started in the electrical outlet and insinuated that



the decedent had started the fire herself. The defendant also contended that the decedent was negligently responsible for her own death because she was a hoarder and had accumulated and stored dangerous amounts of flammable possessions inside her apartment.

Conor was associated into the case for trial the week before jury selection. He and Ms. Medina proved to the jury that the electrical outlet was installed with loose wiring which caused it to overheat and start the fire. They also convinced the jury that the plaintiff had suffered substantial general damages even though the

decedent had not seen, or spoken with, her daughter for at least two years before the fire took her life. The defendant's final settlement offer before trial was \$150,000, but the jury returned a verdict of \$3,000,000 and further found no comparative fault on the decedent.

This marks the third time in a decade that a Walkup partner has received this prestigious award. Conor joins current Walkup partners Mike Kelly, Rich Schoenberger and Douglas Saeltzer in receiving the honor. Walkup partner and former Trial Lawyer of the Year nominee herself, Doris Cheng, announced the winner at the awards dinner and presented Conor with the award. This was Conor's second nomination for the award, having been previously nominated in 2014. ▲

## HIGHWAY SAFETY VERDICT HIGHLIGHTS RECENT TRIAL RESULTS

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thopedic injuries including a shattered pelvis, a fractured hip requiring a total hip replacement with the probability of another surgery in 18-20 years, a severely fractured left wrist with a likelihood of wrist fusion within five years, fractures to his right ankle and the heels of both feet, and a fracture of the L3 vertebrae.

The stopped vehicle had come to a stop because a construction pickup truck operated by an employee of Anrak had just attempted an illegal left turn from the northbound shoulder, across the northbound lanes. For Rich and Joe, the case came down to why in the world such a left turn was ever made.

It was learned that the Anrak employee had made the left turn from the northbound shoulder at the instruction of Telfer's superintendent. Anrak was grinding asphalt in the southbound lanes, but its grinders were staged off of the northbound shoulder. Rather than load the grinders onto trailers for the purpose of transporting them to their work location, Telfer's superintendent decided to have Anrak

employees simply drive the grinders across the northbound lanes. The superintendent intended to slow or stop northbound traffic with Telfer's own vehicles as opposed to seeking assistance from CHP officers who were available for traffic breaks. Telfer needed three vehicles to cover the three northbound lanes but it only had two available, so it sought assistance from Anrak. Anrak, which does not participate in any traffic control measures, nonetheless volunteered a 24-year-old employee who had never performed a traffic break.

In front of the jury, Telfer argued that it owed no duty to Mr. Bruce nor to the general public despite its control of the construction site. The plaintiff's trial team put the focus on Telfer, demonstrating that its superintendent had safer, feasible alternatives to the ad hoc traffic break. The trial team proved that CHP officers were on the project at the time to perform traffic breaks, and that CHP officers were never contacted.

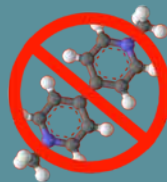
In cross-examining the Anrak driver whose turn across three lanes of oncoming traffic triggered the collision, Rich elicited the admission

that the driver had actually wanted to enter with the flow of traffic and use a proper overpass instead of cutting across traffic, and that his drive across traffic was unsafe.

From opening to closing, Telfer never accepted any responsibility for Mr. Bruce's injuries arguing that the collision was attributable exclusively to his inattention. It hired human factors, motorcycle and mechanical engineers to support its theories that plaintiff easily could have avoided the collision had he simply been paying attention.

Plaintiff's pre-trial \$3.5 million global settlement demand remained open through the trial. With the case submitted to the jury, Telfer made a final offer of \$200,000. Ultimately, the jury concluded that Telfer unreasonably endangered the public, causing Mr. Bruce's injuries and awarding him \$1,010,000 in economic damages and \$4,500,000 in non-economic damages. In addition to putting 50% of the fault on Telfer, the jury allocated 17% responsibility to Anrak for a net verdict of \$3,691,700. Because the result exceeded plaintiff's 998 to Telfer, post-offer costs were also recoverable. We congratulate Rich and Joe on a tremendous result. ▲

# Firm Commences Paraquat Litigation



Walkup attorneys Michael Kelly, Khaldoun Baghdadi, Sara Peters, and Justin Chou, in association with Korein Tillery of St. Louis, have filed the first California lawsuits alleging harm from exposure to the herbicide paraquat. The lawsuits allege that long-term exposure to paraquat causes Parkinson's disease in agricultural workers as well as those who live near fields where the chemical is applied. Paraquat is sprayed both by tractor-drawn rigs and crop-dusting airplanes and helicopters.

First sold in the United States in the early 1960s, paraquat was used by the United States in aerial attacks on Mexican heroin poppy and marijuana fields in the 1970s. It is a "non-selective" herbicide which kills green leafy plants on contact. Imperial Chemical Industries (ICI) first developed and marketed paraquat for use as an agricultural tool for killing weeds and processing crops like cotton and almonds. ICI

and Chevron ultimately reached an agreement to make Chevron the exclusive distributor of paraquat in the United States. In 1986, this agreement came to an end and ICI (which exists now as a part of the Swiss corporate giant Syngenta) began selling paraquat in the U.S. To this day, Syngenta continues to sell paraquat to American farmers.

Although the acute poisonous properties of paraquat are well-known (drinking a teaspoon of paraquat can easily kill an adult), exposure to mist or microscopic droplets of paraquat can also devastate the human nervous system. Paraquat kills plants by causing "oxidative stress": breaking oxygen atoms free from the molecules of living cells. When a person breathes paraquat mist, or paraquat is absorbed through the skin, it travels through the lungs, the olfactory bulb, the skin, or the stomach and damages the part of the brain

called the substantia nigra pars compacta.

The substantia nigra pars compacta creates dopamine—a neurotransmitter. When animals are exposed to paraquat, the number of dopamine-creating cells in their brains is depleted.

In humans, the reduction of dopamine-creating cells is one of the hallmarks of Parkinson's disease. When dopamine-generating neurons are killed, the body is unable to maintain healthy levels of dopamine, confounding many of the brain's functions. Common symptoms of Parkinson's disease include resting tremors, slow or poor muscular control, shuffling gait, difficulty speaking at a normal volume, and dementia.

The lawsuits allege that Syngenta, Chevron, and others involved in the process of manufacturing, marketing, and distributing paraquat are liable for causing or contributing to the development of Parkinson's disease.

The first filed cases are awaiting Judicial Council Coordination in Contra Costa County Superior Court.

Clients or associate counsel wishing more information regarding the paraquat litigation should contact Mike Kelly, Khaldoun Baghdadi, Sara Peters or Justin Chou. [▲](#)

## WALKUP'S BAND BRINGS THE HOUSE DOWN AT CHARITY CONCERT

How many bands can pull off hits from Post Malone, Led Zeppelin, Notorious B.I.G., and Pat Benatar all in the same set? That was exactly what happened on April 25, 2019, when the Walkup Law Firm's own Magnum PI took the stage at the seventh annual Law Rocks charity concert in San Francisco, raising over ten thousand dollars for a local non-profit. Law Rocks is a non-profit that hosts concerts all over the world, inviting legal professionals to perform in support of local charities.

Magnum PI started as a collaboration between lead vocalist Justin Chou, a Walkup associate, and fellow associate Joseph Nicholson, a lifelong guitarist. Paralegal Brian Robbins keeps things moving on bass guitar and friend Dino Adani holds it down on percussion. 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.

This year the ensemble received a boost from Joseph's wife, Sara Leung, on vocals. Sara not only wowed the crowd with an energetic rendition of Pat Benatar's Heartbreaker, but did so while visibly pregnant with the couple's first child, due in July.

For Magnum PI's 2019 participation at Law Rocks, it raised funds for Collective Impact, a San Francisco non-profit that runs the Ella Hill Hutch Community Center in the Western Addition. Collective Impact provides homework help and safe spaces for at-risk youth, and sponsors a yearly backpack exchange that provides school supplies to students. The organization has set the ambitious goal of matching every high-school age student in San Francisco with a paid



internship for summer 2019.

Magnum PI proudly finished Law Rocks in second place out of eight bands participating. The group remains committed to bringing positivity and support to the larger Bay Area community with musical performances that reflect its diversity under the Walkup banner. [▲](#)



# WALKUPDATES

**Mike Kelly** delivered the keynote address at the Wisconsin Association for Justice's Annual Winter Meeting in Milwaukee. He also served as a faculty member at the spring NITA Witness Examination Boot Camp program held in Boulder, Colorado. Lastly, Mike was co-Program Director for 360 Advocacy's annual Trucking Litigation seminar held in Las Vegas... **Rich Schoenberger** was appointed Program Director for NITA's new week-long skills training: "Expecting the Unexpected." Earlier in the year he lectured on final argument and provided in-class critiquing at BASF's inaugural "Women in Trial Program." He also chaired the American College of Trial Lawyers "Western Regional Conference" held at Squaw Valley in June... **Khaloud Baghdadi** moderated a panel of state and federal judges at the ABA confer-

ence on emerging issues in product liability... **Doris Cheng** designed, planned and directed a pair of two-day programs sponsored by the San Francisco Bar Association to increase participation by female attorneys in civil trials. The two "Women In Trial" programs provided training to 100 women in all facets of trial advocacy. Doris also spoke at a discussion sponsored by the Asian Pacific American Women's Partners &

San Francisco's School of Law 27th Annual "Intensive Advocacy Program" providing two weeks of trial ad training to second year law students... **Spencer Pahlke** will be returning this summer to teach law students from across the country at Baylor Law's School of the Trial, held annually in St. Andrews, Scotland... **Sara Peters** has been elected to the Board of Directors of SFTLA. She continues to teach Trial Advocacy during the fall quarter at Stanford Law School. And of course she remains plenty busy as a parent of three pre-school aged boys... **Conor Kelly** spoke on Trial Lawyer Skills at the CAOC Travel Seminar in Sonoma. Conor and his wife Tanis welcomed their third child, Rory, born on Saint Patrick's Day 2019... **Justin Chou**



General Counsel Speakers Panel in May. Other speakers included Catharina Min (Covington Burling); Joan Haratani (Morgan Lewis); Kalpana Srinivasan (Susman Godfrey). Finally, Doris acted as Program Director for the University of

taught at the Stanford Law Trial Advocacy Workshop and was a guest judge for the Berkeley Law Mock Trial Team... **Joseph Nicholson** and his spouse Sara Leung, also a San Francisco attorney, are expecting their first child this summer. ▲

## Firm Members Make Million Dollar Gift To UC Hastings

Michael A. Kelly '76, Richard H. Schoenberger '85, and Matthew D. Davis '89 have committed \$1 million to UC Hastings Law School. The gift will support the Dean's Discretionary Fund, equipping Chancellor and Dean David Faigman with the flexibility to address institutional priorities. Those priorities range from broadening academic resources, to providing student support, and helping attract and retain top-tier faculty. The gift establishes the Walkup, Melodia, Kelly & Schoenberger Scholarship Fund.

"We are proud to be Hastings alums," says Davis. "The school has been the wind at our backs all of these years. We fully recognize the escalating and sometimes prohibitive cost of the outstanding education Hastings provides. We want others to experience the same academic excellence that we enjoyed and, with this contribution, hope to make it easier for those who have come after us."

"We are deeply grateful for Kelly, Schoenberger and Davis's generosity," said Dean

Faigman. "This gift demonstrates their belief in, and commitment to, the UC Hastings mission to be a center of excellence in legal education."

The gift builds upon strong connections with the law school. In addition to Kelly, Schoenberger and Davis, the firm is home to more than a dozen UC Hastings law graduates, including shareholders Khaloud A. Baghdadi '97, Conor M. Kelly '09, and Andrew McDevitt '10, associates Max Schuver '10, Joseph A. Nicholson '12, Christian R. Jagusch '15 and Jade Smith-Williams '17, and of-counsel Kevin L. Domecus '79. Douglas Saeltzer '94, also a shareholder with the firm, is currently an assistant professor at UC Hastings.

Kelly, Schoenberger and Davis look back fondly on their time at the law school and credit the training they received as having helped to propel them to the top of their field. "I particularly enjoyed the opportunity to take trial advoca-

cacy courses and learn from some of the best professors in the country," says Schoenberger.

In recognition of the trio's generosity, the main lecture hall in the new academic building at 333 Golden Gate Avenue will bear the Walkup, Melodia, Kelly & Schoenberger name. "There aren't many law schools that are able to offer the type of innovation, academic rigor and level of hands-on practice that UC Hastings is able to offer its students," notes Kelly. "With the new academic building and continued commitment to excellence, UC Hastings is shaping the future of legal education. We're proud to support UC Hastings with this foundational gift."

The new building will house classrooms, clinics, and several administrative offices. It is expected to open for instruction by Spring 2020 and will mark the first step in transforming the UC Hastings campus into an academic village. ▲



## Firm Announces Newest Shareholder

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Andrew as compassionate, hard-working, creative and effective.

In 2016, Andrew was honored with the Outstanding Barrister Award by The Bar Association of San Francisco for his work associated with the BASF Delegation to the California Conference of Bar Delegates. In 2015, he served as the BASF Delegation chair where he led one of the largest delegations in conference history. He also served as a BASF Litigation Section executive committee member and spent pro bono time as a volunteer mock trial coach for Lowell High School. Each year since 2017 Andrew has been named to the Rising Star list compiled by Super Lawyers magazine.

On the CLE front Andrew has co-chaired the San Francisco Trial Lawyers Association's annual Lien Program for the past three years. He regularly serves as a speaker for programs sponsored by the San Francisco Trial Lawyers Association, the Consumer Attorneys of California, and other organizations on the topics of discovery, litigating against Kaiser, government liability for dangerous roadways, and products liability.

Outside of work, Andrew enjoys spending time with his wife Kristen and their two young daughters at their home in Greenbrae.

## \$4 MILLION VERDICT RETURNED AGAINST L.A. TRANSIT DISTRICT

As we went to press, Doug Saeltzer and Doris Cheng obtained a multimillion dollar jury verdict against the Los Angeles County Municipal Transit Authority (LACMTA), on behalf of the mother of a 21-year-old bicyclist who was hit and killed after changing lanes in front of a moving bus. All experts agreed that the turn was too abrupt to give the MTA bus driver enough time to react and avoid the collision, but Doug and Doris proved that the driver should have seen and avoided the cyclist long before he changed lanes, showing he was alongside the left hand side of the bus for 15-16 seconds before impact. By the bus driver's own training and experience, she was taught to have used her mirrors to see cyclists and let them pass in such a circumstance.

Just prior to the collision, the bus had been stopped at a designated stop, blocking the right lane of travel. The on-board video from the bus showed that the bus operator, once a passenger boarded, departed the bus stop without checking her mirrors or her surroundings. The bus driver was obligated to identify the bicyclist, and permit him to pass her and return to the right lane, before leaving her stop. She testified she never saw the bicyclist prior to impact. The cyclist was riding a fixed gear bicycle (also known as a "fixie"), which did not

have an independent mechanical brake. Nor was he wearing a helmet, although a helmet would not have saved his life in this instance.

Our client, the surviving mother of the cyclist, had no contact with her son for nine years between the ages of 3 and 12. His father was abusive and kept her away from her son. When the son was 12, his school discovered that the father was physically abusing him. The decedent was removed from the father's custody, and the court granted full custody to our client who raised him from that point forward. He had a loving relationship with his mother, her partner and two half-sisters. At the time of his death, the son was living in Chicago, but had returned to Los Angeles to visit his mother and siblings. He had been in Los Angeles for three months with no specific date for returning to Chicago.

The jury of 6 women and 6 men awarded \$4 million for past and future non-economic damages and apportioned 65% comparative fault to the bicyclist. The net verdict before costs and prejudgment interest (Doug and Doris had tendered a Section 998 offer for \$1,000,000 before trial) was \$1.4 million. Defendant offered \$100,000 the day before trial commenced.

We congratulate Doug and Doris on this excellent result. ▲

## Firm Continues to Fight For Wildfire Victims

Following the catastrophic wildfires that ravaged Northern California in October 2017, the Judicial Council coordinated lawsuits in the Superior Court for the County of San Francisco. Judge Karnow appointed Michael Kelly and Khaldoun Baghdadi, as co-lead and co-liaison counsel respectively. In January 2019, following the Camp Fire, PG&E filed for Chapter 11 bankruptcy protection. As a result the San Francisco cases were stayed.

Our firm has not ceased its efforts to obtain justice for Californians injured by these devastating fires. Justice for those impacted by these fires means justice for everyone impacted, including Tubbs Fire victims. Our team is working in the

Bankruptcy process on the Official Committee of Tort Claimants to make sure that PG&E pays for the harm it caused.

We have never wavered in our conviction that PG&E is legally responsible for the Tubbs Fire, regardless of what Cal Fire has indicated. Those who lived in the footprint of the Tubbs Fire should contact an attorney to discuss filing a claim in the bankruptcy.

PG&E has requested that the court set a bar date of September 16, 2019 for Bankruptcy Court claims. We are fighting along with the Official Committee of Tort Creditor Claimants to push this date back to give Camp Fire claimants enough time to file.

Those who lost their homes, their possessions, their livelihood, or otherwise were injured or fled the Camp Fire should contact us as soon as possible to make certain that their rights to recover for their losses do not expire. Holding PG&E accountable for its failures from top to bottom is the only way to make us safer. For those with wildfire claims against PG&E, our wildfire team members Michael Kelly, Khaldoun Baghdadi, Andrew McDevitt, Max Schuver or Owen Stephens are available to help. We should expect nothing less from our electrical utility than a genuine commitment to our safety. ▲

# RECENT CASES

## BICYCLE INJURY



### Adult Cyclist v. City of Saratoga

In Adult Cyclist v. City of Saratoga (Santa Clara Co. Sup. Ct.), Michael Kelly, Matthew Davis and Andrew McDevitt represented a 47-year-old tech company vice president who sustained paralyzing injuries when his bicycle collided with a car that turned left into his path of travel on a popular Peninsula bike route. Eight years earlier a local newspaper labeled the location where the crash occurred as one of the most dangerous intersections in the county for bicyclists. In response, the City asked its on-call traffic engineers to propose changes to improve safety. The traffic engineers drew up a plan with modifications, which was then revised by two engineering firms following review by engineers from the State of California. Modifications made pursuant to the approved design were completed in 2012. Plaintiff's injury occurred two years later. In addition to suing the driver of the car that struck him, plaintiff sued the two government entities that owned the roadway and all of the engineering firms involved in the redesign. Four of the five defendants brought motions for summary judgment. The public entities argued design immunity. The engineering firms asked the court to find that they owed no duty to plaintiff based on the 'completed and accepted' doctrine. Plaintiff argued that the intersection remained dangerous after the improvements because defendants skipped the most critical step in the analysis – review of the accident history to identify the underlying causes of the collisions. As a result of this omission, plaintiff claimed that the redesign fixed a non-existent problem but left the intersection in a dangerous condition such that left-turning cars could not see oncoming bicyclists lawfully traveling in the designated bike lane. The case settled for nearly \$8 million after three failed mediations and a judicially supervised settlement conference on the eve of trial.

## GOVERNMENT LIABILITY



### Zhou v. City of San Jose

In Zhou v. City of San Jose (Santa Clara Sup. Ct.), Matthew Davis and Justin Chou represented the family of a man killed by a diseased tree which fell and struck him in a public park. The decedent was retired and visiting his daughter from overseas. While she and her family were at work, he bicycled to a local park to enjoy the fresh air. While there, a 100-foot tall eucalyptus tree owned by the City of San Jose uprooted and fell on him, killing him instantly. When the City of San Jose rejected reasonable attempts to resolve the case, Matthew and Justin represented his bereaved daughter and widow in a jury trial. Davis and Chou, working with a top expert in the field of arboriculture (tree science), determined that not only had the City of San Jose failed to inspect and maintain the subject tree, but had contributed to its death by suffocating the tree's structural roots. A challenge at trial was overcoming language, cultural, and national barriers to demonstrate the deceased father and husband's loss to

his surviving family. The Walkup team obtained a successful \$1,000,000 verdict for the clients.

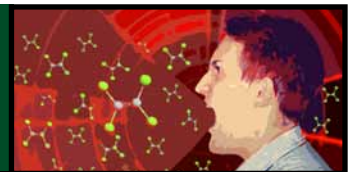
### Muni Patron v. CCSF

In Muni Patron v. CCSF (S.F. Sup. Ct.), Conor Kelly negotiated a confidential six-figure settlement on behalf of an 81-year-old woman who fell six feet when exiting a Muni train at the Stonestown light rail station. The Muni stop at that location has an elevated platform for loading and unloading passengers. The operator who was driving the train was travelling too fast as he approached the platform and was unable to stop the train fully adjacent to the boarding surface. As a result, the front door of the train was misaligned with the platform. Muni regulations prohibit operators from opening the train doors in this situation. The operator ignored his training and opened all train doors. The operator provided no warning to passengers that the front door was unsafe to exit. The plaintiff was travelling with her disabled husband and sitting at the very front of the train. When it stopped she helped her husband up from his seat and led him toward the front door. As she stepped outside the train, there was no platform and she fell six feet to the ground. She suffered eight fractured ribs, contusions to her lungs and multiple internal injuries. She was hospitalized for almost one month. Due to the plaintiff's age and injuries, Conor obtained a preferential trial setting. After completion of fact discovery the case settled at mediation.

### Parents v. Tow Company

In Parents v. Tow Company (Santa Clara Co. Sup. Ct.), Jeffrey A. Clause recovered \$600,000 on behalf of the parents of an 18-year-old who died when a tow truck driver struck him from behind as he walked in the street at 1:00 a.m. The decedent was walking in the bicycle lane of a roadway underneath a major overpass. Although six overhead lights were installed, the City allowed the lights to stop working, causing the area to become unusually dark. The tow truck driver crossed the bicycle lane to merge onto the freeway, but in doing so struck the decedent from behind. The defendants contended that the decedent was completely at fault for the accident for walking in the pitch-black roadway. The tow truck driver argued that he was driving within the speed limit, that he could not see the decedent prior to the collision, and that he did nothing wrong. The attorneys for the City argued that it had no duty to maintain the overhead lights and that the roadway was not dangerous. The Walkup attorneys argued that the driver was driving too fast for conditions and that the City was at fault because it undertook the responsibility to maintain the overhead lighting, but allowed the lights to stop working.

## TOXIC EXPOSURE



### Warehouse Worker v. Environmental Consulting Firm

In Warehouse Worker v. Environmental Consulting Firm (court and county confidential), Khaldoun A. Baghdadi, Justin Chou, and Jade Smith-Williams obtained a major seven-figure confidential settlement on behalf of a man who developed terminal kidney cancer after breathing air contaminated by tetrachloroethylene. Our client worked in a warehouse for 15 years, unaware that the facility had been constructed above



# RECENT CASES

a known groundwater plume of tetrachloroethylene. The warehouse owner hired an environmental consulting firm to manage and remediate the tetrachloroethylene contamination, but the consultant's efforts to remediate the chemical instead introduced it to the indoor air of the warehouse. After the defendant consulting firm was terminated from its remediation contract, a new consulting firm discovered troubling levels of tetrachloroethylene in the indoor air of the building where many people worked, breathing the air daily. In an effort to win the race against plaintiff's late-stage cancer, Baghdadi, Chou, and Smith-Williams moved for trial preference on behalf of their ailing client. Over the course of just three months, the Walkup team fought through three motions to compel and 15 depositions. Ultimately, the team was successful in negotiating this seven-figure settlement before the client's death.

## PRODUCT LIABILITY



### Servicemen v. Foreign Automaker

In Servicemen v. Foreign Automaker (court and case number confidential), Michael A. Kelly, Andrew McDevitt, and Valerie Rose represented two passengers of a sedan that crashed into a tree in central California, suffering enhanced injuries when the car's rear seat passenger restraint system failed. On the evening of the collision, it was raining and roadway warning signs suggested a speed of 45 mph for the curve where the driver lost control. Plaintiffs each asked the driver to slow down through the curve. The driver, a fellow armed services member, maintained a speed of 65-70 mph until his vehicle lost traction and slammed into a tree head-on. During the impact the rear passenger side seatbelt broke. One of our clients pitched forward, causing the top of his head to strike the back of our front seat client's skull. The head-to-head impact fractured the front passenger's skull. The rear occupant sustained multiple leg fractures, a broken clavicle and a burst fracture in his spine. In addition to the auto driver who had only minimal coverage, our team sued the vehicle manufacturer and the seatbelt supplier. The manufacturer and supplier argued that the driver's irresponsible conduct was solely to blame for plaintiffs' injuries. In light of the high-speed impact the defendants argued that plaintiffs would have suffered similar injuries regardless of how the restraint system performed. Defendants vigorously challenged both liability and damages, particularly challenging the claim of residual brain injury for the front seat passenger, and deposing more than 10 treating doctors to establish that no brain injury existed. The parties attended two unsuccessful mediations. The case settled for \$4.85 million during expert discovery.

## PREMISES LIABILITY



### Patron v. Propane Fire Pit Maker

In Patron v. Propane Fire Pit Maker (Yolo Co. Sup. Ct.), Walkup attorneys Matthew Davis and Spencer Pahlke represented a young woman who

suffered burn injuries while at a wine tasting. The incident occurred at a winery where the plaintiff was a member. During the event she sat down at a barrel shaped wine table. An employee of the winery subsequently opened a door on the side of the barrel, turned on the gas, and lit a decorative flame. A wind gust pushed the flames down through the barrel and out the side door which had been left open, catching the plaintiff's dress on fire. The fire quickly spread and caused second-degree burns on her legs and hands. Matthew and Spencer sued the winery, which had the obligation to provide its patrons a safe premises. This resulted in an initial \$1,000,000 policy limit settlement with the winery. A second suit was prosecuted against the manufacturer of the fire table. Through expert discovery, our attorneys identified several provable defects. Document and investigative discovery showed these defects resulted from poor manufacturing and design practices, compelling the manufacturer to pay its \$2,000,000 policy limits, for a global resolution in the amount of \$3,000,000.

## VEHICULAR NEGLIGENCE



### Pedestrian v. Motorist

In Pedestrian v. Motorist (court and county confidential), Matthew Davis and Joseph Nicholson represented a 69-year-old woman who suffered serious injuries when she was run over by a car as she walked her dog in Sausalito. The defendant driver was clearly at fault but carried only \$100,000 in insurance coverage. The driver worked as a cook and was driving from one restaurant job to another restaurant where he had a second job. Normally, the "going-and-coming" rule holds that an employer is not legally liable if its employee injures someone while driving to or from work. However, Matt and Joe developed evidence showing that both of the restaurants derived some benefit from the defendant using his car to drive between his jobs and one of the restaurants helped underwrite the cost of his commute. Both restaurants contributed to a global settlement of \$5.6 million.

### Mother and Toddler v. Defendant Driver

In Mother and Toddler v. Defendant Driver (Sonoma Co. Sup. Ct.), Spencer Pahlke represented a mother and her 17-month-old son, who were struck by a left-turning car as they crossed a street in downtown Petaluma. The mother was a licensed psychologist on a walk with her young son, who was in a stroller. The impact threw the mom to the ground, resulting in a concussion. While her son stayed in his stroller, the force of the collision knocked the stroller over and left him with scrapes and bruises. The primary challenge in the case was to fully understand and prove the extent and nature of a modest TBI. Great effort and attention was focused on developing full neuropsychological and vocational rehabilitation evaluations coupled with an economic analysis. Through competent expert testimony Spencer was able to successfully negotiate a policy limit settlement in the amount of \$1,500,000.

### Grandmother v. Construction Company

In Grandmother v. Construction Company (S.F. Sup. Ct.), Sara Peters represented a senior citizen from El Salvador who was run over by a construction company truck outside of her grandson's elementary

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## FOCUS on torts

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school in San Francisco. She sustained major injuries as well as brain damage due to loss of blood. There were no witnesses, and our injured client could not recall the accident. The defendant driver said he never saw our client. He first realized something was wrong when he felt his truck tires go over a "bump" mid-block. The police determined that based on the location of our client, the blood, and the truck, she had been jay-walking and the collision had occurred mid-block. Sara argued that, to the contrary, she had been in the crosswalk and had been carried down the street by the accelerating vehicle. The matter was resolved by settlement in the amount of \$1,000,000 prior to expert discovery.

### Driver v. Defendant

In Driver v. Defendant (Napa Sup. Ct.), Joseph Nicholson negotiated a settlement of \$725,000 for a young woman injured in an automobile versus automobile collision on a busy section of Trancas Street in Napa. The defendant, an elderly woman driving her daughter's vehicle, attempted a left turn across oncoming traffic into a Safeway parking lot. Though traffic in the oncoming center (#1) lane was backed up to the parking lot entrance from Jefferson Street, the oncoming #2 and #3 lanes had a green light and the queue from the stopped turn lanes did not impact their flow. The defendant, seeing the cars in the backed-up oncoming #1 lane, proceeded to make her turn. Proceeding in the #2 lane, the plaintiff's view of the defendant's vehicle was blocked by cars stopped in the #1 lane. By the time she saw the defendant's vehicle about to cross in front of her, it was too late to stop her vehicle and prevent a collision. The airbag in plaintiff's car deployed while she was honking the horn, shattering both the radial and ulnar shafts of her forearm near the wrist. Her treating orthopedic surgeon, who installed fixation hardware to rebuild the forearm, called this one of the worst wrist injuries he had ever seen. The defendant denied liability in her deposition and continued to do so through a court-ordered settlement conference. The case ultimately settled for the limits of the defendant's \$250,000 auto policy and \$475,000 from the umbrella policy of the vehicle's owner.



### Heirs of Telecom Manager v. East Bay Internist

In Heirs of Telecom Manager v. East Bay Internist (court and caption confidential), Conor M. Kelly and Spencer Pahlke secured a confidential seven-figure policy limit settlement on behalf of the surviving spouse and adult son of a 62-year-old telecommunications manager who died of bladder cancer after proving that the defendant internal medicine physician had improperly back-dated medical records. The decedent had a family history of bladder cancer and saw the defendant internist in 2014 and 2015 for blood in his urine. A urine cytology

was performed in 2015 and found potentially cancerous cells, but no follow up tests were performed. In 2017, the decedent was diagnosed with Stage IV bladder cancer and died within months of the diagnosis. The surviving wife and adult son filed a lawsuit against the internist alleging the defendant breached the standard of care by failing to appropriately test for bladder cancer and refer the decedent to a urologist. During their investigation of the case, Conor and Spencer obtained copies of the decedent's medical record. Upon review, the attorneys discovered several suspiciously placed handwritten chart notes which purported to document that the defendant had tried to refer the decedent to a urologist in 2015 but the decedent had refused to go. These notes were dated in 2015, but were inconsistent with other notes from that time frame. Troubled by the location and context of the notes, Conor and Spencer retained an expert in ink-dating to analyze and test the original medical chart in discovery. The expert analysis confirmed the attorneys' suspicions and showed that the defendant physician had added back-dated medical record entries after learning of decedent's cancer diagnosis. The case settled shortly after completion of expert analysis. ▲

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