

## PG&E TRUST PAYMENTS BEGIN

Following the North Bay and Paradise/Butte County wildfires in 2017 and 2018, PG&E Corporation filed for Chapter 11 bankruptcy protection. Our Wildfire Litigation team, headed by partners Michael A. Kelly and Khaldoun Baghdadi, have led the fight to hold PG&E responsible for the damage it caused since October 9, 2017. They were lead and liaison counsel respectively in the JCCP Coordinated Litigation that began in November 2017, and later served as counsel to members of the Tort Claim Creditors Committee in the bankruptcy. They presently serve on the Trust Oversight Committee established at the time of PG&E's exit from bankruptcy.

PG&E's Plan of Reorganization under Chapter 11 was confirmed by the Bankruptcy Court on June 20, 2020. The Fire Victim Trust is tasked with evaluating, administering, processing and resolving more than 70,000 claims under the direc-



tion of the Trustee, the Honorable John K. Trotter, Jr. (Ret.).

The Claims Resolution Procedures outline seven types of claims that fire victims may submit: (1) Real Property, (2) Personal Property, (3) Personal Income Loss, (4) Business Loss, (5) Other Out-of-Pocket Expenses, (6) Wrongful Death and Personal Injury, and (7) Emotional Distress.

The Trust is funded 50% through cash and 50% through shares in the reorganized PG&E. This fact has resulted in some uncertainty as to when full funding will be achieved, but it will not prevent the Trust from beginning to pay first installments on approved and accepted claim awards beginning on and after March 15, 2021. Trustee John Trotter has said that it is his hope that victims will get everything they're owed. Currently managing \$6 billion in cash, the Trustee and his advisors have developed a careful 'sell-down plan' waiting for the share price to rise and stabilize before selling shares.

The payment process has required analyzing tens of thousands of claim questionnaires, with less than 50% of claims having been verified and completed as of February 15. Nonetheless, on February 15, the Trust began notifying victims with completed deficiency-free questionnaires how much their claims were

*Continued on page two*

## Walkup Lawyer Volunteers In Vaccination Effort

Dr. Christian Jagusch, Walkup's Medical Negligence Counsel, has been treating patients with COVID-19 since March 2020 using telemedicine across 11 states. Now with the rollout of the COVID-19 vaccine, Dr. Jagusch has joined the Napa County



Medical Reserve Corp. As part of this volunteer team, he will administer vaccines to the community in the nationwide effort to put an end to the pandemic.

As we go to press, two vaccines are approved for use in the U.S. They are manufactured by Pfizer and Moderna.

Unlike other vaccines, these vaccines use a unique method for inserting the viral RNA messenger into the body's cells to produce an immune response to the Spike protein, a specific part of the Coronavirus. Neither vaccine is a live virus and neither can cause disease. Though a novel approach to vaccines, this therapy has been studied since 2013 for other disease processes and is considered

*Continued on page three*

# Firm Prosecutes Successful Tenderloin Quality of Life Action

Firm partners Michael A. Kelly, Richard H. Schoenberger and Matthew D. Davis acted as co-lead counsel in a Federal District Court action that forced the City and County of San Francisco to address the massive proliferation of tents and encampments on the sidewalks and streets of the City's Tenderloin district. The positive impact suit was filed on behalf of UC Hastings College of the Law (which is situated in the Tenderloin) and

loin's sidewalks became literally impassable due to the erection of more than 400 tents and makeshift encampments blocking sidewalks and doorways. The suit alleged:

The Tenderloin, always a community of tolerance and compassion, is now blighted; its sidewalks are unsanitary, unsafe, and often impassable. Open-air drug sales and other criminal activity, plus crowds of drug users and sidewalk-blocking tents, pervade and threaten

ing that the Tenderloin plaintiffs demanded only that the City address the deplorable conditions in their neighborhood.

The suit was assigned to United States District Court Judge Jon S. Tigar, who quickly issued an order requiring the City to immediately make an appearance in the case. The City and the Tenderloin plaintiffs then entered into settlement negotiations, presided over by Magistrate Judge Jacqueline Scott Corley. Following extensive and intense negotiations, the parties reached a settlement, set forth in a "stipulated injunction" which Judge Tigar entered on June 30, 2020, less than eight weeks after the lawsuit was filed.

Under the terms of the settlement, the City agreed to reduce the number of tents in the neighborhood and to "make all reasonable efforts to achieve the shared goal of permanently reducing the number of tents, along with all other encamping materials and related personal property, to zero."

David Faigman, Chancellor and Dean at UC Hastings, commented that "the team of Mike Kelly, Rich Schoenberger and Matt Davis were spectacular. They brought enormous intelligence and extraordinary expertise to what was a delicate legal and political matter. They were a constant delight to work with and even during the most tense moments they brought perspective, calm professionalism, and blessedly, a sense of humor to our meetings. We were incredibly fortunate to have this team as our champions in this litigation."

Monitoring and enforcement of the injunction continues as the City works to solve ongoing drug sale issues which have persisted notwithstanding resolution of the sidewalk encampments. Our team remains involved, continuing their quest to improve the quality of life for all who live or work in the Tenderloin. ▲



**Homeless camp on Eddy and Taylor in San Francisco's Tenderloin on April 3, 2020**  
(Photo: Jason Doiy/ALM)

five other Tenderloin individuals and businesses. Kelly, Schoenberger and Davis are all Hastings graduates. The firm performed the work pro bono.

The complaint in Hastings College of the Law, et al. v. City and County of San Francisco was filed in the United States District Court of Northern California, after many of the Tender-

loin's health and lives of all of the Tenderloin's residents. What has long been suffered in the Tenderloin has become insufferable. The conditions now prevailing in the Tenderloin constitute a violation of the fundamental civil rights of those residing and working there.

The lawsuit sought no monetary recovery, focusing exclusively on injunctive relief, mean-

## PG&E TRUST PAYMENTS BEGIN

*Continued from page one*

valued at, with the intention of rolling out partial claim payments beginning March 15, 2021 for accepted claims where the victim forgoes further appeals or litigation. The pro rata amount to be paid has not been determined as we go to press. According to bankruptcy law, all victims must be treated the same with each

receiving the same flat percentage.

The Trust kick-started the payment process in the fall of 2020 by creating a preliminary compensation program to give survivors as much as \$25,000 before their full claims were processed. At the time that plan was initiated with the Trust, administrators said they were not aware of any other bankruptcy case that had imple-

mented such an early payment program.

While the journey for victims is far from over, there is finally a glimmer of light at the end of the tunnel. Our Wildfire Litigation team has stayed focused on the rights of our clients since the first of these fires ignited in the fall of 2017. We will not rest until each of our clients has received the maximum amount due them under the Trust's rules and procedures. ▲



# DANGEROUS CROSSWALK LEADS TO \$11,100,000 SETTLEMENT



Richard H. Schoenberger, Douglas S. Saeltzer and Jeffrey A. Clause recently obtained an \$11,100,000 mediated recovery on behalf of a 6-year-old boy and two surviving heirs of his deceased grandmother following a tragic auto versus pedestrian crash. The boy and his grandmother were crossing the street in a marked crosswalk when they were struck by a hit-and-run driver. The young plaintiff sustained severe orthopedic injuries and a traumatic brain injury. He spent more than 50 days in the hospital. His grandmother sustained fatal blunt force trauma. She was survived by her two adult children.

The Walkup team argued that the underinsured hit-and-run driver, as well as the city which maintained the crosswalk, were both substantial factors in bringing about the tragedy.

As to the public entity which paid

\$11,000,000 of the settlement, Rich, Doug and Jeff demonstrated that the marked crosswalk located at a multi-lane, high speed, high traffic volume and uncontrolled intersection, negligently created a false sense of security which allowed pedestrians to feel safe in the absence of stop signs or stop lights. Several months before the collision the City had conducted a pedestrian traffic study of the intersection and confirmed that the marked crosswalk was potentially dangerous and actually increased the pedestrian crash risk. As a result, the City undertook to remove the marked crosswalk by attempting to grind out the painted markings. But the removal was negligently carried out – with the crosswalk remaining visible in the form of distinct grind marks and remnants of the white thermoplastic. Making matters worse, the City removed advanced pe-

destrian crossing warning signs as part of the removal project in violation of its own Design and Procedures Manual. Thus, not only did the marked crosswalk arguably remain visible, but necessary warnings to drivers were eliminated.

Relying on a published federal study and the municipality's own Pedestrian Crossing Guidelines, the Walkup team successfully survived summary judgment arguing that the defendant took an intersection that it knew was dangerous, and effectively made it even more dangerous. Had the City completely removed the crosswalk and left the warning signs in place, the young boy would not have been injured and his grandmother would still be alive today.

The case resolved at mediation shortly before trial. It is believed to be one of the largest pretrial dangerous crosswalk settlements in Northern California history. [▲](#)

## Walkup Lawyer Volunteers In Vaccination Effort

*Continued from page one*

safe with only rare serious side effects. Current data reports approximately 95% effectiveness after the two-injection series. This means that the vaccinated person possesses excellent protection from getting COVID-19 disease. Preliminary data suggests that these vaccines may also be effective in prevent-

ing the transmission of COVID-19. Until more data on the transmission of disease is reviewed, it remains critical that even vaccinated people continue practicing physical distancing, diligent handwashing, and mask precautions.

Most experts agree that once 60-70%

of the population has either been vaccinated or has natural immunity from contracting the disease, COVID-19 can be controlled or even eradicated. This principle is based on so-called herd immunity. Together with continued safety precautions and vaccinations, we can reach the end of this pandemic. [▲](#)

# WALKUPDATES

**Mike Kelly** was selected to the Law-  
Dragon 500 Hall of Fame. Mike was also  
honored to be the top vote-getter among  
all Northern California Super Lawyers in the  
balloting for 2020 and 2021. In the spring  
he has been invited to present the second  
annual Connecticut Trial Lawyers "Michael  
Koskoff Memorial Lecture." The presentation  
honors the memory of Mike Koskoff, an icon  
of the Plaintiffs Bar nationally, who passed in  
2019... **Rich Schoenberger** was an invited  
presenter for a NITA Studio 71 nationwide  
broadcast focused on jury selection. He also  
spoke at a fall roundtable hosted by SFTLA  
entitled "Plaintiff Attorneys Trial Playbook:  
Life After People v. Sanchez." Rich was also  
elected to the Board of Governors of the In-  
ternational Society of Barristers Foundation...  
**Matthew Davis** was elected to membership  
in the San Francisco Chapter of the Ameri-  
can Board of Trial Advocates (ABOTA). Matt's  
election brings the total number of ABOTA  
members from our firm over the past 60  
years to 20 – more than twice as many mem-  
bers as any other trial firm in Northern Cali-

fornia... **Doug Saeltzer** was elected to the  
position of Vice President of the Consumer  
Attorneys of California (CAOC) having previ-  
ously served as Secretary of the organization.  
Doug was also appointed Chair of the Bar  
Association of San Francisco Judiciary Com-  
mittee. The committee is charged with eval-  
uating candidates seeking appointment or  
election to the San Francisco Superior Court,  
the Court of Appeal for the First  
Appellate District, the Supreme  
Court of California, the Ninth  
Circuit Court of Appeals, and the  
U.S. District Court for the North-  
ern District of California... **Doris  
Cheng** completed her term as  
President of the San Francisco  
Chapter of ABOTA, navigating  
the pandemic year via multiple  
informational, membership and  
CLE events via online platforms.  
She is the sixth member of the  
firm to have held this position – a record  
unmatched by any other firm. Doris was  
also honored to be appointed Chair of the  
California Lawyers Association Task Force for  
the Future of the Profession. Finally, she has  
agreed to direct a reprise of the hugely suc-

cessful "Women in Trial" skills program for  
the Bar Association of San Francisco... **Spencer  
Pahlke** helped organize a team of 150  
volunteers to do in excess of 5,000 hours of  
work in the 2020 General and Run-Off Elec-  
tions... **Conor Kelly** was an invited speaker  
at the annual Consumer Attorneys of Cali-  
fornia (CAOC) virtual convention addressing  
the issues surrounding litigating personal in-



jury cases against rideshare  
companies... **Valerie Rose**  
was elected to the Board of  
Directors of SFTLA and will  
be co-chairing its Women's  
Caucus this year... Sara  
Leung, wife of associate  
**Joseph Nicholson**, recently  
accepted an associate  
position at Bley and Bley  
in San Francisco, where  
she continues her family  
law practice... Announcing

our newest parents, **Jade Smith-Williams**  
and husband Ricky Ramos, who welcomed  
their first born, a son, Kayson Kairos Ramos,  
on November 23. Arriving at 8 lbs, 15 oz  
and 22 inches, mom reports "he is growing  
so fast!" 🐼

## Walkup Civil Justice Fellow For 2020-2021

We are proud to introduce the 2020-  
2021 Fellow for the Walkup Civil Justice  
Fellowship Program. Kelsey  
Constantin grew up in Irvine,  
California and attended UC  
Santa Barbara where she  
received her B.A. in psychol-  
ogy. After graduation, she  
moved up the coast to Oak-  
land and enjoyed Bay Area  
living while exploring differ-  
ent career paths. When she  
landed a position as a legal  
assistant at a personal injury  
firm, it sparked her interest  
in becoming a lawyer.



Kelsey graduated *magna cum laude* from  
UC Hastings in 2020. During her time at Hast-  
ings she pursued opportunities in various legal  
sectors but always maintained her passion  
for public interest work. Growing up around

her mother's special education classroom  
and volunteering with special needs children  
throughout high school in-  
stilled a passion in Kelsey for  
helping young people which  
she applied in her internship  
at East Bay Children's Law  
Offices, and as an Executive  
Board member of the Hast-  
ings Association of Youth Ad-  
vocates. While in law school  
Kelsey externed for the Hon-  
orable Ming W. Chin on the  
California Supreme Court,  
interned in the Clean Slate  
Program operated by the Al-

ameda Public Defender's Office, and served as  
the Executive Articles Editor for *Hastings Law  
Journal*.

In her last year of law school, Kelsey  
worked in the Hastings Individual Repre-

sentation Clinic and represented clients  
in a Social Security appeal, and obtained  
a criminal conviction dismissal. Her law  
school experiences led Kelsey to apply for  
the Civil Justice Fellowship because it of-  
fered the opportunity to learn from dis-  
tinguished litigators while helping clients  
through critical and difficult points in their  
lives. Connecting with people and client-  
centered advocacy fighting social injustices  
are Kelsey's main driving forces in her legal  
career. The types of cases that the Walkup  
team handles also exemplify the kind of im-  
pact on both individuals and systems that  
Kelsey wants to be a part of.

As Kelsey arrived we bid a fond adieu to  
last year's Fellow, Daniel Contreras, who re-  
turned to his home state of Texas to complete  
a judicial clerkship in San Antonio at the end  
of his fellowship year. We wish Daniel contin-  
ued success in his legal career. 🐼

## HEALTHCARE INDUSTRY PROFITS DURING PANDEMIC

In the midst of a pandemic-induced floundering economy, Kaiser Permanente announced it had achieved \$2.2 billion in operating income in 2020. HCA Healthcare reported a profit of \$1.4 billion for the fourth quarter of 2020 alone. In a year of belt-tightening and job losses, healthcare profits remain sizeable. This is not surprising. Even with a COVID-19 related reduction in income of 5-15%, hospital income overall in California was forecast to be \$38 billion for 2020. Given the annually increasing profits of healthcare corporations, it is harder than ever to watch our medical negligence clients suffer from the economic burdens imposed by California's harsh and oppressive 45 year-old MICRA laws. Those laws insulate all medical personnel — from ambulance drivers to multibillion-dollar corporations — from paying full damages for the human suffering they cause. Though down 19% from the \$2.7 billion profit generated in 2019, Kaiser, HCA, University Medical Centers, Sutter Health, and others are still protected from paying a penny more than \$250,000 in non-economic damages for the wrongful death, paralysis or disfigurement of their patients. That is just wrong. [▲](#)

## FIRST DISTRICT REVERSES MED MAL DISMISSAL

In Filosa v. Alagappan (First District Court of Appeal Case No. A156412), Michael A. Kelly and Valerie N. Rose obtained a significant Court of Appeal victory benefiting claimants in medical malpractice cases. The First District Court of Appeal reversed summary judgment dismissal by the Contra Costa County Superior Court which erroneously held that the one year statute of limitations barred a suit for delayed discovery of a brain lesion. The First District panel held that a jury, and not a judge, should decide whether or not the facts indicated that the patient suspected malpractice more than one year prior to his filing.

The plaintiff suffered persistent headaches for years beginning in 2005 and underwent an MRI scan in 2010. The MRI was incorrectly read as normal. Four years later, Filosa's headaches worsened and he underwent a second MRI in December 2014 which was interpreted as showing a brain tumor. Both films were interpreted

by the same radiologist. Re-review of the first MRI revealed the mass was present in that film and had grown in the interim.

California Civil Procedure Code Section

340.5 states a medical malpractice claim must be brought within three years after the date of the injury or one year after the plaintiff discovers or should have discovered the injury, whichever occurs first. Defense attorneys argued that Filosa should have discovered his injury earlier than 2016

MICHAEL FILOSA,  
Plaintiff and Appellant,  
v.  
RAVI ALAGAPPAN et al.,  
Defendants and Respondents.  
No. A156412  
(Contra Costa County Super. Ct. No. MSC17-01396)  
California Courts of Appeal  
First Appellate District  
Division Four  
Filed January 8, 2021

when he filed. Mike and Valerie argued that the clock didn't start on the statute of limitations until Filosa's second MRI. "He couldn't have known about the tumor until 2014," argued Kelly.

The Appellate Court agreed, reversing the trial court in a published opinion stating that a reasonable jury could conclude Filosa's injury manifested at the time of the second MRI in December 2014. The opinion is important precedent reinforcing the right to have a jury hear and decide these types of factual issues. [▲](#)

## Civil Rights Case Filed On Behalf of Special Needs Children

Khaldoun Baghdadi and Valerie Rose have filed a civil rights lawsuit against school administrators and the Clark County Nevada School District in Las Vegas on behalf of three special needs children for failing to protect them from physical abuse, and thereafter intentionally concealing the abuse from their parents. Our team is prosecuting the cases in association with Rahul Ravipudi, Ian Samson and Adam Ellis of Panish Shea & Boyle LLP of Los Angeles.

Due to their disabilities the plaintiffs and

their classmates are functionally non-verbal. During interviews conducted by Child Protective Services and Clark County School District Police, the complaint alleges that students told investigators that their teacher repeatedly struck them on their hands and bodies with a long, wooden stick. The full extent and duration of the abuse suffered by the children is currently unknown. The effects of the abuse, however, are evident to their families who have seen changes in their children including frequent nightmares, difficulty sleeping, crying

often, emotional volatility, sadness, aggressive behavior with siblings, and responding to simple reprimands with hysterical crying.

The lawsuit seeks relief for Violation of the American with Disabilities Act, the Rehabilitation Act of 1973, Intentional Infliction of Emotional Distress, Negligent Supervision, and Enhanced Damages for Injury or Loss Suffered by a Vulnerable Person. The case is Barnett, et al. v. Clark County School District, Case No. 2:21-CV-00218, United States District Court, District of Nevada. [▲](#)



# RECENT CASES

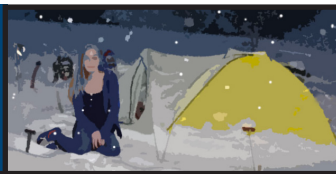
## PRODUCT LIABILITY



### Heirs v. International Manufacturer

In Heirs v. International Manufacturer (confidential settlement), Michael A. Kelly, Doris Cheng and Andrew P. McDevitt obtained a confidential multi-million dollar settlement for the wife and newborn baby of a Northern California deliveryman who suffered fatal injuries while working. The decedent was riding in the middle position of the front bench seat of the delivery truck. As designed, the occupant of that middle seating position was not protected by an airbag, and was restrained by a lap-only seatbelt. No shoulder harness was available for the decedent. The Walkup team alleged that this lap-only restraint design was defective because it allowed the decedent's unrestrained upper torso to rotate forward at impact when his co-employee rear-ended another vehicle. In the subject crash the decedent's head and torso struck the dashboard without any supplemental airbag protection. The defendant vehicle maker denied any problem with the design, asserting that it fully complied with applicable Federal Motor Carrier Safety Regulations at the time of its manufacture and sale. The manufacturer argued in its own defense that the sole cause of the fatal injuries was the victim's co-worker who negligently rear-ended the car ahead. The co-worker claimed that the vehicle ahead of him was stopped on the freeway for no reason. That driver denied being stopped. Black box data from both vehicles proved that the rear-ended driver had indeed been stopped on the freeway. Mike, Doris and Andrew showed that the lap-only restraint design was known to be defective to the entire industry even though it did not violate federal law. As part of the resolution the workers' compensation lien and future credit were both compromised.

## NEGLIGENT SUPERVISION



### Teen v. Outdoor Recreational Group

In Teen v. Outdoor Recreational Group (court and settlement confidential), Doris Cheng and Jeffrey A. Clause obtained a multi-million dollar confidential award on behalf of a young teen who suffered frostbite and exposure injuries while a participant at the defendant's facility. The defendant's employees failed to properly equip and supervise a group of teens on a winter camping trip undertaken in spite of severe weather warnings. Plaintiff suffered permanent nerve injuries in both feet. Defendant disputed both liability and damages and produced testimony to the effect that by the time of trial the minor had fully recovered without any residual symptoms. In order to prevail, Doris and Jeff were required to defeat a contractual release by showing that the defendant's employees had acted with gross negligence, including violation of industry standards and their own operating manual and internal safety standards.

## PREMISES LIABILITY



### Commercial House Cleaners v. Residential Gas Supply

In Commercial House Cleaners v. Residential Gas Supply (court and caption confidential), Matthew D. Davis, Spencer J. Pahlke and Valerie N. Rose represented a couple who were cleaning a vacation rental home when leaking gas vapors ignited. Both clients suffered severe full thickness third degree burns in the ensuing explosion. Matt, Spencer and Valerie established that the defendants had violated a number of safety laws relating to supply piping and maintenance, and that these violations were a cause of the gas leak. The Walkup team developed evidence showing that the defendant had a history of violating these same safety laws, that there had been prior home explosions, and that the company had been warned future explosions were likely to occur in the event of continued violations. Matt, Spencer and Valerie argued that this history demonstrated a conscious disregard of the safety of the public justifying an award of punitive damages. The plaintiffs were non-English speaking legal residents who were rendered totally disabled by virtue of the full thickness burns, residual cosmetic disfigurement and functional limitations. The case settled at a judicially mandated settlement conference less than a week before trial for \$45,000,000.

### Customer v. Grocery Store Chain

In Customer v. Grocery Store Chain (S.F. Sup. Ct.), Valerie N. Rose negotiated a confidential six-figure settlement on behalf of a 93-year-old woman who fractured her femur after being knocked to the ground by a shoplifter fleeing a local grocery store. The defendant argued that it was not responsible for the shoplifter's actions. Security video cameras in the store captured a store employee chasing the shoplifter through the store. Valerie obtained discovery of the store's corporate policies governing employee responses to suspected shoplifters via multiple motions to compel the information which were granted. The policies, which had been consistently withheld prior to Law and Motion intervention, revealed that the store had recently laid off its trained loss prevention agents, and repealed a safety rule that forbid untrained store clerks from chasing suspected shoplifters. After this information was uncovered, the case settled one week before trial.

### Recreational Athlete v. Race Operator

In Recreational Athlete v. Race Operator (court and caption confidential), Michael A. Kelly and Andrew P. McDevitt represented a 40-year-old Bay Area husband and father who suffered a severe traumatic brain injury while snow skiing at an out-of-state resort. For unknown reasons the injured plaintiff ended up on a trail which had been incompletely closed in order to prepare for a competitive race. Competitors were training on the run and public access was supposed to have been blocked. Once on the course, plaintiff could not figure out how to get off. As he descended the hill he encountered a race official who, instead of escorting plaintiff off of the run, directed him to ski down the race training area. In doing so he crashed. Minutes later one of the race participants found his body tangled in race netting. He suffered a major head injury and was hospitalized for four months. Mike and Andrew alleged that the defendant race operators were negligent in failing to prevent recreational skiers from skiing on the run. Defendants argued that plaintiff was an expert skier who chose to ski

# RECENT CASES

on expert terrain and assumed the risks of skiing which ultimately led to his injuries. The defendant's motion for summary judgment was defeated on the basis that the race operators had increased the risks inherent in recreational skiing. The case resolved for a confidential amount after the summary judgment ruling and the completion of expert discovery.

## [In Re: Carbon Monoxide Poisoning](#)

In [In Re: Carbon Monoxide Poisoning](#) (court and caption confidential), Doug Saeltzer and Doris Cheng recovered \$3,100,000 on behalf of tenants who suffered carbon monoxide poisoning from their malfunctioning apartment heater. The couple fell ill with flu-like symptoms for roughly a week before being overwhelmed by fumes. With nausea and dizziness worsening they called 911. The fire department measured high carbon monoxide levels in the apartment. Doug and Doris' expert investigators documented a malfunctioning heater that was well past its life cycle. The plaintiffs required hyperbaric treatment. After treatment they were left with cognitive deficits, including moderate speech and memory compromise. The wife returned to work with accommodations by her employer. The husband had previously retired. The defendant landlord sought to minimize the nature and extent of the injuries through a consulting neuropsychologist who minimized the extent of plaintiffs' brain injuries, suggesting that both were suffering from pre-existing cognitive impairment and their diagnostic testing indicated exaggeration. Doug and Doris produced medical evidence that the cognitive deficits were consistent with objective injury shown on brain MRI scans.

## [Patron v. Night Club](#)

In [Patron v. Night Club](#) (court and caption confidential), Spencer J. Pahlke negotiated a settlement in the amount of \$920,000 on behalf of a client who visited a Solano County nightclub to celebrate with her friends where a disturbance erupted near closing time on an outdoor patio. A club security guard acting in response to the disturbance pushed his way through the crowd, knocking the plaintiff to the ground and injuring her knee. The knee developed repeated infections necessitating more than a dozen surgeries. Because neither the plaintiff nor her friends had reported the incident to the club, the defendant denied liability alleging there was no evidence of how the event actually occurred. Compromising matters further, midway through the litigation the night club's insurance carrier filed a declaratory relief action, arguing that the conduct involved was excluded under the policy's intentional tort exclusion. Medical expenses were less than 5% of the billed amount because all treatment was paid for by Medi-Cal. Notwithstanding these challenges, Spencer focused on general damages and the club's dearth of policies and training in bringing the case to a successful conclusion on the eve of trial.

## INDUSTRIAL NEGLIGENCE



## [Family v. Agricultural Trust](#)

In [Family v. Agricultural Trust](#) (Central Calif. Sup. Ct.), Douglas Saeltzer and Spencer J. Pahlke represented the surviving wife and children of a man tragically killed by an irrigation siphon pipe in the San Joaquin Delta. The decedent, his family and friends were wakeboarding on the delta when the tow rope got caught in the

boat's propeller. Swimming under the back end of the boat, he slapped the side of the boat with his hand, signaling he was unable to resurface. Rescuers discovered his leg had been sucked into a 12" irrigation siphon. He drowned as his family and friends attempted to rescue him. Doug and Spencer elected to proceed under Maritime Law. Because the incident occurred on navigable waters, it could be filed in admiralty, permitting a recovery for pre-death pain and suffering. The team also obtained a preferential trial date based upon the age of one of the surviving children. In discovery, Doug and Spencer obtained admissions from the property owner's manager and employees that this was an accident waiting to happen. The matter settled for \$20,000,000 shortly before expert discovery was to commence.

## [Mechanic v. Industrial Toolmaker](#)

In [Mechanic v. Industrial Toolmaker](#) (Central Valley Sup. Ct.), Joseph Nicholson and Khaldoun Baghdadi negotiated a major seven figure confidential settlement on behalf of the family of a 30-year-old laborer who was crushed and killed while performing repairs to equipment at an agricultural shipping center. During maintenance of the equipment used by the shipper, the laborer was working beneath a heavy metal plate supported by a rod much like the hood of a car. The decedent misplaced the support in a manner that caused its failure which Joseph and Khaldoun claimed was foreseeable under California product liability law. Their team developed evidence that other users were similarly misplacing the rod. They were also able to show that the manufacturer of the device was aware of such potential misuse at least a year before the death but took no remedial action. While the manufacturer ultimately made changes to the design of newer models of the machine, it never recalled or retrofitted the one which killed the plaintiff's decedent. The trial was continued twice due to the COVID-19 pandemic, and the matter eventually settled through mediation.

## VEHICULAR NEGLIGENCE



## [Electrician v. Trucking Company](#)

In [Electrician v. Trucking Company](#) (North Coast Sup. Ct.), Conor M. Kelly negotiated a \$1,200,000 settlement on behalf of a 62-year-old electrician whose pickup truck was struck by a tractor-trailer on Highway 37 in Sonoma County. The plaintiff was initially diagnosed with non-surgical fractures of the ribs and cervical spine, but continued to experience ongoing pain in his back and chest despite healing of the fractures. He returned to work in a limited capacity as an electrician following the accident, but was unable to perform the more physical tasks of his job. The defense contended that the plaintiff's ongoing pain complaints were the result of the natural aging process compounded by 35 years of working in a physical job, and further arguing that the plaintiff had not received significant medical treatment for his injuries. The case settled three weeks before trial after the completion of expert depositions for an amount in excess of ten times the past economic damages.

# WALKUP, MELODIA, KELLY + SCHOENBERGER

## FOCUS *on torts*

### Octogenarian v. Commercial Construction Co.

In Octogenarian v. Commercial Construction Co. (South Bay Sup. Ct.), Douglas S. Saeltzer and Joseph A. Nicholson recovered \$1,800,000 for a senior who was pinned between two cars at an intersection while trying to cross the street outside of a marked crosswalk. The incident occurred at an intersection adjacent to a construction worksite intended to make the area safer for pedestrians. Both the City and the construction company failed to plan an alternative to a commonly used pedestrian route during the execution of the project. The route was closed for several weeks without any marked detour. The plaintiff was attempting to recreate her typical path along this route at the time of the incident. She was hospitalized for several months undergoing tissue grafting and multiple surgeries, and will never walk again unassisted. The mediated settlement included a substantial six figure personal contribution from the driver of the vehicle who was underinsured for the incident.

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### MEDICAL NEGLIGENCE



### Patient v. National HMO

In Patient v. National HMO (confidential venue and case number), Conor M. Kelly obtained a settlement totaling \$2,850,000 on behalf of a 52-year-old man whose epidural abscess went undiagnosed resulting in paralysis below the waist. The plaintiff's complaints began with a scraped leg that subsequently developed an MRSA infection and required surgery. Following surgery the patient had persistent leg pain which ultimately led to hospitalization during which severe lower back pain began. The hospitalist overseeing the patient ordered an MRI of the patient to check for possible epidural abscess, but the patient was unable to complete the MRI because lying flat exacerbated his pain. Rather than obtain an anesthesiologist to facilitate timely completion of the MRI, the hospitalist returned the patient to the hospital ward where the patient was given pain medications. By the time an MRI was finally completed, the patient had lost function in his legs. Defendant argued that the likelihood of infection was extremely low given the patient's blood test results, but experts retained by Conor opined that a prompt MRI was the only method to rule out an epidural abscess. The case settled following mediation.

### Homemaker v. Rural Emergency Department

In Homemaker v. Rural Emergency Department (court and county confidential), Michael A. Kelly and Christian Jagusch M.D., J.D. reached an eight figure multi-million dollar confidential settlement on behalf of a mother of two who suffered the loss of both legs due to delayed diagnosis of sepsis. Plaintiff went initially to the office of her general practitioner for a skin irritation. He sent her home. Two days later she went

to a hospital emergency room where her history of being on two immunosuppressant medications was ignored. She was diagnosed with "flu-like symptoms" and released. The next day she developed a fever and body aches and visited a second hospital emergency department. The admitting nurse correctly noted that she was on immunosuppressant medications but did not communicate that fact to the physician on duty who diagnosed "viral syndrome" instead of worsening infection. The plaintiff decompensated into septic shock at home and was finally hospitalized near death with a massive Group A Strep infection. She remained hospitalized for two and a half months during which time her limbs suffered lack of blood supply and required amputation. All defendant health care providers denied responsibility. The plaintiff was the beneficiary of an ERISA medical insurance policy through her husband's employment. The medical benefit provider asserted medical liens in excess of \$2,000,000. As part of the case resolution a substantial compromise of the liens was achieved. ▲

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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