

FIRM OBTAINS \$11 MILLION SANTA CRUZ VERDICT

On February 7, 2017, heavy rains caused a mudslide that closed north-bound lanes of Highway 17 on the Santa Cruz side of the summit. The California Department of Transportation (Caltrans) hired Granite Rock Construction Company as the general contractor to clean up the slide. Granite Rock then hired Hildebrand & Sons Trucking as a subcontractor to provide extra trucks and drivers.

Two days later on February 9, 2017, a powerful rainstorm hit the already muddy jobsite, making it harder for the work crews to see, hear and move about. At about 11 a.m., the Caltrans onsite engineer decided that the jobsite should be shut down due to safety concerns. However, he never communicated that decision to the subcontractors,



Granite Rock or Hildebrand. While the Granite Rock foreman had the power to shut down operations if things became dangerous, he did not believe the rainstorm made conditions dangerous. Unaware of the Caltrans decision, Granite Rock and Hildebrand crews continued working in a heavy downpour.

At 12:05 p.m. a three-axle Hildebrand dump truck backing uphill ran over two Granite Rock employees, killing “truck boss” Robert Gill. Gill’s 20-year-old son, Robert Jr., a new Granite Rock employee, witnessed his father’s death.

Walkup partner Matt Davis, in association with Tim McMahon of the Corsiglia, McMahon & Allard firm, represented the Gill family in a three-week trial in Santa Cruz County Superior

Court against Hildebrand and Caltrans. While property owners generally have no liability for injuries to or the death of an employee of a general contractor, Davis argued that an exception to that rule applied here because Caltrans retained control over Granite Rock’s cleanup

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1st District Limits Arbitration Rights

In *Pacific Fertility Cases* (2022) 85 Cal. App.5th 887, the First District Court of Appeal rejected a product manufacturer’s motion to compel arbitration on grounds that the manufacturer was not a signatory to plaintiffs’ arbitration agreement with their medical providers.

The appeal arose from the 2018 fertility center tragedy where some 400 individuals and couples lost eggs and embryos through

the combined fault of physician-owned Pacific Fertility Center, and Chart Industries that manufactured a defective cryostorage tank which malfunctioned. The plaintiffs had signed arbitration agreements with the physician defendants who operated PFC. Chart, a stranger to those contracts, sought to have superior court claims against it stayed or dismissed by the PFC arbitration contract.

Though not initially certified for publica-

tion, the Walkup team obtained a publication order with the help the Amicus Committee of CAOC. In announcing holdings of first impression, the court of appeal found that equitable estoppel did not apply because the plaintiffs’ product claims did not arise out of the contract, and that issues of comparative fault and the risk of inconsistent obligations were not proper considerations in determining whether

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SCHOENBERGER RECEIVES ABOTA HONOR

Pictured here is partner Rich Schoenberger on the occasion of being honored by the San Francisco Chapter of ABOTA with its Don Bailey award. The award was instituted in 2000 following the death of chapter stalwart Don E. Bailey to acknowledge an individual chapter member who models civility and humanity in their work. Bailey successfully blended tenacity with politeness; success with humility. He took his clients' causes seriously – but himself not so. He



was a great model to younger lawyers of how to be a zealous advocate without losing one's sense of perspective. Rich holds and maintains these same traits, serving as a mentor to younger attorneys on both sides of the aisle. He is the third member of our firm to receive this prestigious honor, following in the footsteps of Dan Kelly and George Shelby. We congratulate Rich on this special and well deserved recognition. [▲](#)

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operations and negligently exercised that control by failing to shut down the jobsite.

Both defendants denied liability. Hildebrand argued its driver did nothing wrong and Caltrans contended that Granite Rock was solely responsible for jobsite safety pursuant to the job contract. They also argued that Mr. Gill was at fault because he was responsible for directing the movement of the trucks.

During jury deliberations Matt and Tim settled with Hildebrand for an amount in excess of its liability insurance policy. The jury found both Hildebrand and Caltrans liable and awarded the Gill plaintiffs \$11.25 million in damages. The jury also found that Granite Rock and Gill shared some fault for the incident. After offsets and reductions for settlement, the net verdict against Caltrans exceeded \$3 million. [▲](#)

FIRM INITIATES WALKUP TEAM-UP PROGRAM TO PRESERVE THE RIGHT TO TRIAL BY JURY

Under the leadership of partners Rich Schoenberger and Spencer Pahlke, the firm has initiated a program to empower and enable lawyers of limited experience and financial resources to try cases that otherwise might not be cost-effective or feasible. We have developed this collaborative approach with solo practitioners and smaller firms to fight back against the vanishing jury trial and to actively support community members' rights under the 7th Amendment.

With Walkup Team-Up, collaborating counsel receive the benefit of a dedicated Walkup Law Firm trial lawyer to try the case with them, together with behind-the-scenes strategic support from some of the industry's most experienced and respected trial attorneys. We offer the opportunity to joint venture trials for California state and federal personal injury cases that are within four weeks from the start of the trial and for which settlement seems extremely unlikely. There is no minimum case size or duration.



If a case is selected, Walkup will finance up to \$25,000 of advanced case costs. Those costs are subject to repayment only in the event of a successful collectible verdict.

In some cases more than one Walkup trial lawyer may be available to assist. In addition, one of Walkup's most veteran trial lawyers (either Richard Schoenberger or Michael Kelly) will hold a strategy session with associate counsel and provide ongoing mentorship to the Walkup attorney who tries the case. In addition, those who apply for Walkup Team-Up with a qualifying case will receive automatic access to our motion in limine Sharefile database.

Founded in 1959, we have built a reputation for integrity, skill and excellence in bringing cases before juries. We are willing to confront defendants and insurers of all sizes. Our trial experience covers a wide variety of case types. All of our trial lawyers, from the most junior to the most senior, are committed to maintaining and protecting the right to jury trial. It is only in a courtroom that the average citizen can hold their government, large institutions and corporations accountable and responsible for their wrongdoing. We are committed to making sure that jury trials remain the centerpiece of our civil justice system. [▲](#)

WALKUP HOSTS NATIONAL PLA MEETING

In May, Walkup was honored to sponsor the first-ever national meeting of the country's emerging Plaintiff's Law Associations, or PLAs, representing students at nationally recognized law schools who are interested in plaintiffs'-side work. PLAs at various law schools have begun hosting events, featuring distinguished plaintiffs' attorneys to share insights about their practice and the societal benefits achieved by ethical and talented trial lawyers, but had never met one another in a national summit. Walkup felt that bringing students together from across the country for a weekend would be beneficial, providing a forum to share their individual agendas, goals and experiences.

The event was a great success with so-



cial events on Friday and Saturday evenings and Walkup partners Khaldoun Baghdadi, Valerie Rose, Conor Kelly, and Spencer Pahlke leading workshops on the topics of mass tort practice, sexual abuse cases, trial practice, and business development throughout the weekend. A primary focus of the group is to create a nationwide plaintiffs'-side interview

day, bringing together students who want to practice on the plaintiffs' side with dozens of plaintiff's firms, in hopes of providing an alternative to "Biglaw's" on-campus interview program.

Participating law school PLAs included Berkeley Law, UC Law SF, Stanford Law, Michigan Law, University of Texas School of Law, Harvard Law, Penn Law and The University of Chicago School of Law. We were

pleased and honored to bring these future stars of plaintiff's practice together. With four of our partners serving as adjunct faculty at Northern California law schools, we deeply value our connections to law students across the country, and look forward to our future work with bright young advocates. ▲

PARAQUAT LITIGATION MOVES TOWARD TRIAL



The Paraquat litigation continues to move toward trial dates in both the national MDL venue in Southern Illinois (where Khaldoun Baghdadi is a co-lead) and the California JCCP venue in Contra Costa (where Mike Kelly is a co-lead). Trial dates have now been set in both jurisdictions. Judge Rosenstengel in the MDL has selected a date in October 2023 for the first federal bellwether, and Judge Treat in Contra Costa has picked a date in January 2024 for the first state court trial. Expert depositions are almost all complete, and the volume of new Paraquat Parkinson's disease cases being filed continues to increase. In the MDL the total cases count now exceeds 3,700. Current scheduling has *Daubert* hearings to be heard in August in the federal cases, and *Sargonne* motions shortly thereafter in state court. Paraquat is a highly toxic herbicide used to control weeds and grasses in a variety of crops. It works by interfering with photosynthesis in plant cells, ultimately leading to their death. It is also highly toxic to humans and animals, causing a

range of health problems. The Paraquat litigation is focused on the link between Paraquat exposure and an increased risk of developing Parkinson's disease based on research indicating that Paraquat damages the cells in the human brain responsible for producing dopamine, a neurotransmitter that is essential for normal movement. Epidemiological analyses have shown that individuals with Parkinson's disease are more likely to have been exposed to Paraquat than those without the condition. ▲

1st District Limits Arbitration Rights

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equitable estoppel applies in the context of an arbitration agreement.

The appellate court rejected Chart's argument that it was entitled to be in arbitration because plaintiffs would not have had eggs and embryos in the subject tank but for their contractual agreement with PFC. Writing for the majority Justice Kathleen Banke stated: "the argument Chart and Praxair advance 'confuses the concept of claims founded in and intertwined with the agreement containing the arbitration clause' with but-for causation... the doctrine of

equitable estoppel does not bind nonsignatory indemnitors to an arbitration agreement between the parties to the underlying action when, as here, the indemnity claims are not founded in the contract containing the arbitration provision and there is no preexisting relationship between the defendants on which to base an estoppel." *Pacific Fertility Cases*, 85 Cal.App.5th 887, 896.

Chart also argued that arbitration of the claims against it was necessary to prevent "unfair apportionment of responsibility between the different Defendants." The Court of Appeal dismissed this argument, stating that "the issue of comparative fault and joint liability on certain issues... does not inform the equitable estoppel analysis unless the joint liability is based on the same or similar legal theories and/or facts that underlie the obligations under plaintiffs' contracts with [Pacific]. That, however, is not the case here." *Id.* at 900.

The decision has wide reaching effects in cases where arbitration agreements apply to some but not all defendants, a situation which often occurs in the medical negligence context. We commend our team in this matter headed by shareholder Doris Cheng for making new law in this area. ▲

WALKUPDATES

The pandemic gave **Jeff Clause** the opportunity to pick up homebrewing as a new hobby. After one year of brewing his own beer at home, Jeff entered the California State Homebrewing Competition and placed 3rd in the IPA and Double IPA categories, collecting two bronze medals. Jeff also recently guest lectured at UC Law SF on the



topic of taking and defending expert depositions... **Rich Schoenberger** taught a two day deposition course in association with the program Mexican American Legal Defense Fund (MALDEF) at UC Davis King School of Law. In March he presented on voir dire techniques at a San Francisco Trial Lawyers CLE program and spoke at the annual CAOC Sonoma Travel Seminar on "Overcoming the Natural Fear of Trial"... **Khalidoun Baghdadi** spoke at the Louisiana State Bar Association's Annual Complex Litigation Symposium, providing an update on the Paraquat Multi-District Litigation. Khalidoun has served as co-lead counsel via court appointment in the proceedings, which are now pending in the US District Court for the Southern District of Illinois... **Joseph Nicholson** published an article in the Winter 2023 issue of SFTLA's *Trial Lawyer* magazine. The article analyzed potential problems with CACI's present cash value instruction in light of the requirements of the

prudent investor rule... In April, **Mike Kelly** was invited to present the Commencement lecture for Temple University's Beasley School of Law Litigation Advocacy LLM class of 2023. In March, Mike presented at the annual TBI Med/Legal Brain Injury seminar in San Diego at which more than 2,000 healthcare, legal and allied professionals were in attendance. Mike's presentation was titled "Using Analogies and Metaphors in Opening and Closing in TBI Cases."... **Spencer Pahlke** finished Season 4 of his trial advocacy podcast *Unscripted Direct*, one of the country's leading law school podcasts. In May, he hosted the first-ever National Plaintiff's Law Association Conference, which welcomed law students dedicated to plaintiff's work from across the country... **Clifton Smoot** served as a coach for the UC Law SF (formerly UC Hastings) Trial Team throughout the spring semester. His team of students completed a successful run at the regional competition in February 2023, and earned their place to compete at the US's most prestigious mock trial tournament: the National Trial Competition. Along with his co-coach, Clifton helped coach the students in preparation for the multi-day national finals competition. Clifton also continues his work as a board member and vol-



unteer coach for The Miracle League of SF Peninsula (MLSFP), an adaptive baseball league for youth and adult players with special needs... **Conor Kelly** spoke at the annual CAOC Conference in Hawaii and at the CAOC Don Galine Spring Conference in Sonoma where his presentation focused on advanced cross-examination in auto cases. Earlier in the year Conor was invited to lecture at the UC Law SF course on personal injury litigation discussing pre-trial case resolution... **Doris Cheng** accepted an invitation to serve as a member of the Board of Trustees for the University of San Francisco. She was also appointed to the Board of Visitors for the National Judicial College. In April she served as co-director of the NITA Midwest Drills program held in Chicago... **Sara Peters** published a column for the *Daily Journal* arguing that California should retain the 2022 law which allows plaintiffs to recover pre-death pain and suffering damages. In addition to teaching her annual course on Trial Advocacy at Stanford Law School, she was also a featured speaker this year at Golden Gate University School of Law. In April she spoke on mass tort issues at UC Law SF: Mass Torts Made Perfect... **Andrew McDevitt** presented at the national meeting of AIEG in Memphis on autonomous driving technology. In November he spoke at the Summit Council meeting in New Orleans on crash avoidance technology and automatic emergency braking in large trucks. **Doug Saeltzer** just completed his 11th year at UC Law SF (formerly UC Hastings) teaching the Practical Litigation course. In March, Doug was inducted into the International Society of Barristers at the group's annual meeting in Barcelona, Spain. In November 2022 he was sworn in as the Second Vice President of CAOC. ▲



Team member David McEvoy, who is responsible for oversight of firm calendaring operations, organized a Movember fundraiser to support men's health issues

and fight prostate cancer and testicular cancer. Organizing an in-office facial hair growing contest, David nearly doubled his original donation goal and caused more than a few smiles in the office by enlisting eight contestants who agreed to a 30-day-long contest for growing moustaches, beards and other facial hair configurations to be judged by an almost impartial panel of co-workers.

Movember is a global charity focused solely on men's health. The foundation raises funds to deliver innovative, breakthrough

research and support programs that enable men to live happier, healthier, and longer lives. Awareness and fundraising activities are run year-round with the annual Movember campaign being recognized for its fun, disruptive approach to fundraising and getting men to take action for their health.

The 2022 contest winner was Joe Nicholson who commented that never before had he been rewarded for growing a beard, and looks forward to defending his title in 2023. ▲

Police and Firefighter Wrongdoing Triggers Federal Wrongful Death Case

As recently reported in the *Sacramento Bee* and other local news outlets, the tragic death of Reginald Payne was caused by police and firefighter wrongdoing that resulted in “sudden cardiac arrest while being restrained in prone position,” according to the coroner’s report. Walkup attorneys Joseph Nicholson and Khaldoun Baghdadi filed suit against the City of Sacramento and individual police officers and firefighters after Payne died in custody in 2020. Firefighters who were originally dispatched to Payne’s home to respond to a hypoglycemic event, were unable to provide the necessary medication to Mr. Payne and called for police assistance in restraining to administer aid. Payne had committed no offense and was in a medical emergency. Nonetheless, the responding police officers handcuffed him face down in a figure-four leg lock. Mr. Payne is heard on police body cam video crying for his parents and saying he can’t breathe until he became unresponsive. Post-incident investigation reported by the *Bee* revealed that firefighters violated City protocols and training

when they stood by as the police officers held Mr. Payne face down in a dangerous position. The City ultimately terminated the fire department captain overseeing the response to the medical call. According to a March 2021 disciplinary letter obtained by the *Bee* through a California Public Records Act request, the



City’s investigation determined that the fire department personnel’s “actions and failure to monitor the medical condition on scene constituted an inexcusable neglect of duty.”

The fire captain on the scene was terminated because of the incident, but appealed the disciplinary action and could be reinstated later this year after arbitration of his claim. Discovery conducted by the Walkup team has shown that the involved police officers were never disciplined whatsoever, and the City has consistently declined to provide records to the press pertaining to the officers in response to a Public Records Act request. Three years since Reggie Payne’s death, the family is speaking out to raise awareness of police wrongdoing and institutional racism, making community members aware of the tragedy of Reggie’s passing. According to Reggie’s sister Crystal, he was the first family member to attend college. He attended Grambling University where he pursued his dream of becoming a sports writer. He worked for the student newspaper and obtained an internship at *The Tennessean* in Nashville. After graduation he was hired by the *San Leandro Times* covering sports, but following a mental health crisis requiring hospitalization in 1996, he was never the same. His aspiration to be a professional journalist was derailed, and in the words of his sister showed that “you can do everything to be a good citizen and still die because of your color.” The case filed by Khaldoun and Joe is set for trial in the Eastern District Federal Court in February of 2024. [▲](#)

Meet Our 2023 Fellow

Ashcon Minoiefar is our 2023 Civil Justice Fellow after graduating magna cum laude from UC Law SF (formerly UC Hastings). Ashcon was admitted to the California Bar in 2022. He received his B.A. from the University of California, Santa Barbara in 2017.

At UC Law San Francisco, Ashcon was selected as one of two Tony Patino Fellows, a merit-based scholarship society for public

service. He received the Witkin Award for Academic Excellence in multiple courses as well as a Chancellor’s Scholarship. He was presented with the Outstanding Achievement in Pro Bono award and admitted to the law school’s Honor Society. In its first year he founded the UC Law Plaintiff’s Law

Association chapter, a student organization focused on promoting plaintiff’s practice. While in law school Ashcon also served as



a judicial extern to former Chief Justice Tani Cantil-Sakauye and District Court Judge William H. Orrick of the Northern District.

During his Fellowship year at Walkup, Ashcon is working on matters involving medical negligence, premises liability, transportation negligence

and has responsibility for pleadings, law and motion, pretrial briefing and summary judgment briefing. [▲](#)

RECENT CASES

PREMISES LIABILITY



Teen v. Terrain Park

In Teen v. Terrain Park (Calif. Sup. Ct.) Mike Kelly, Andrew McDevitt and Valerie Rose represented a 15-year-old snowboarder who suffered orthopedic injuries and a severe brain injury while snowboarding. The minor snowboarded off of park property towards his lodging when he encountered an unmarked 20 foot high drop-off created by snow removal equipment on adjacent private property. Unbeknownst to plaintiff, the snow pack terminated at the edge of an embankment above a paved roadway. The defendants disputed whether the park boundary was properly marked, and whether the drop-off and pavement below were discernable from the plaintiff's perspective as he descended the mountain. Plaintiff required multiple surgeries, remained in a coma for months, and is now permanently disabled. Defendants included the terrain park owner, the owner of the roadway, the homeowners' association that commissioned the snow removal and the owners of the private lots plaintiff crossed over after leaving park property. The Walkup team successfully defended seven different summary judgment motions, including two alleging that the claim was barred by the assumption of risk doctrine. After completing more than 60 depositions and multiple mediation sessions, the case resolved for \$13,200,000.

Heirs v. Technology Center

In Heirs v. Technology Center (confidential venue) Conor Kelly negotiated a confidential multimillion dollar settlement on behalf of the wife and two adult children of a salesman who suffered fatal injuries when he fell 20 feet through a ceiling at a warehouse. The decedent worked in sales of safety equipment and was contacted by the building owner's contractor to do a survey. In carrying out his work he accessed an elevated work area which did not have guardrails. He lost his balance and fell. Suit was brought against the owner of the building, the subcontractor responsible for building maintenance and the company that brought the decedent to the site. During depositions Conor established that the defendants had violated internal safety practices by failing to prohibit access to the area from which the decedent fell. In addition, he established that the building owner violated OSHA safety rules requiring fall protection for all work performed more than six feet above ground. The defendants argued that the decedent acted contrary to his own safety training and should never have entered an area of the building which was obviously dangerous. The defendants also argued that the plaintiff was precluded from recovering because of the exclusive remedy doctrine. The case settled after two full days of mediation following defeat of summary judgment motions filed by each of the defendants.

Skater v. Rink Designer

In Skater v. Rink Designer (Bay Area Sup. Ct.) Joseph Nicholson obtained a confidential settlement for a 6-year-old girl who suffered permanent injuries to her hand after a collision with another skater at an outdoor seasonal ice rink in Santa Clara county. The unique rink design incorporated existing palm trees, creating two concentric circles of ice which dramati-

cally reduced the space available to skaters. In discovery Joseph unearthed information indicating that the overall capacity of the rink was calculated on a hypothetical size that included the areas made inaccessible by the presence of the trees, necessarily resulting in overcrowding and making collisions between skaters inevitable. The mediated settlement included recovery for the minor's sisters, who witnessed the injury.

Parents v. School

In Parents v. School (Bay Area Sup. Ct.) Michael Kelly and Conor Kelly negotiated a settlement totaling \$15,000,000 on behalf of the parents of a 3 year-old who died when a school yard tire swing overturned and struck her in the head. The child was on the swing with two classmates under the supervision of a teacher when the newly installed play structure lost vertical stability, began to rock and toppled over. Suit was filed against the preschool as well as the manufacturers of the A-frame tire swing. Mike and Conor established that the preschool knowingly violated two health and safety code requirements by not anchoring the swing set to the ground and failing to provide a cushioned surface underneath the swing. Once installed the school also failed to have the swing set inspected by a certified expert despite requests from at least one parent. The case was mediated twice without success and ultimately settled on the eve of jury selection following a mandatory settlement conference. The plaintiffs, who established a foundation for playground safety in their daughter's memory following the tragedy, plan to use a portion of the funds to heighten awareness and improve playground safety in their community.

Senior v. Restaurant

In Senior v. Restaurant (Bay Area Sup. Ct.) Richard Schoenberger and Kelly Ganci negotiated a confidential settlement on behalf of a 78-year-old restaurant patron who suffered a traumatic brain injury after sustaining a fall at a restaurant. When attempting to leave the restaurant, instead of being shown out the front entrance, the plaintiff was led to a poorly lit unmarked exit in the back of the property by an employee. As she was making her way down the stairs in the dark she fell backwards hitting her head. Due to her incident-related head injuries, she was unable to remember details about the fall and there were no videos depicting it. Despite these obstacles, Rich and Kelly were able to recreate what occurred and to secure a substantial recovery.

GOVERNMENT LIABILITY



Pedestrian v. Governmental Entity

In Pedestrian v. Governmental Entity (Nor. Cal. Sup. Ct.) Walkup partners Richard Schoenberger and Spencer Pahlke represented a tech engineer who was struck in a crosswalk by a government truck, sustaining a complicated jaw fracture and brain injury. Post-injury imaging disclosed no intracranial bleeding, nor was there any loss of consciousness. However, based on modest changes in their client's technical aptitude at work, Rich and Spencer retained a team of experts in the field of brain trauma, including neurologists and neurobehavioral specialists. In

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addition they consulted with experts in tech programming to evaluate the impairment to the client's earning capacity. Their work demonstrated that the brain injury had large negative economic consequences in the marketplace. Notwithstanding a pay raise the client received after the acute injury, working with economic experts and industry colleagues Rich and Spencer established the unique nature of the client's future economic losses. Based on their highly detailed proof of future loss in earning capacity, Rich and Spencer were able to resolve the matter at mediation in the amount of \$7,500,000.

Disabled Minor v. School District

In Disabled Minor v. School District (USDC, East. Dist.) Khaldoun Baghdadi and Valerie Rose represented a public school student who was physically assaulted by a classroom aide. The child, who was 11-years-old at the time, was repeatedly shoved, kicked, and dragged across the floor over the course of a school day. Our team brought civil rights claims against the school district, which failed to properly train its staff on how to safely interact with its disabled students, and repeatedly ignored a pattern of increasingly alarming behavior by the aide which culminated in the assault. The school district disputed that it had actual notice of the aide's misconduct to prevent the assault, and claimed that the minor plaintiff was not injured or affected by what had happened. Valerie and Khaldoun defeated multiple motions to dismiss and opposed a motion for summary judgment before achieving a resolution of the case for \$1,500,000.



Pedestrians v. Motorist

In Pedestrians v. Motorist (S.F. Sup. Ct.) Doris Cheng and Katherine Connolly were associated as trial counsel to represent a mother and two young children (ages 3 and 5) who were struck by an inattentive driver in a residential San Francisco neighborhood. The defendant was acting in the course and scope of his employment with a real estate company at the time of the injury. Plaintiff and her two children were walking to a local park when they were struck while in a crosswalk adorned with flashing pedestrian warning lights. The mother watched as her 3-year-old son rolled onto the hood of the car and then fell to the ground, striking his head and fracturing his leg. Her 5-year-old daughter was found on the ground with her shoes 10 feet away. The mother thought that both children had been killed and was ultimately diagnosed with severe post-traumatic stress disorder. The defendant did not dispute liability but sought to minimize the injury to the children retaining neuropsychological experts to testify that the children had no residual injuries. The young son had little recollection of the crash and the daughter had no hesitation about walking past the crash site. Defendants also sought to introduce evidence of the mother's pre-existing anxiety and depression. Co-counsel Anna Dubrovsky aggressively litigated the case for three years before partnering on the brink of trial with Doris and Katherine. After the Walkup team entered the case, the matter settled on the eve of trial in the amount of \$7,000,000.

Surviving Son v. Portable Power, Inc.

In Surviving Son v. Portable Power, Inc. (Sacto. Co.) Jeffrey Clause negotiated a \$3,000,000 settlement on behalf of a 35-year-old man whose mother died in a head-on vehicle collision. The defendant accepted liability but contested the severity and amount of the damages, arguing that the plaintiff and decedent did not maintain a close relationship given that they lived in different states and rarely saw each other. Jeffrey interviewed multiple family members and friends on video and used their testimonials to demonstrate a unique and loving relationship between mother and son. The case settled following mediation without undertaking lengthy discovery.

Heirs of Pedestrian v. Auto Driver

In Heirs of Pedestrian v. Auto Driver (Nor. Cal. Sup. Ct.) Joseph Nicholson negotiated a \$550,000 settlement for the adult children of an elderly woman who was struck and killed by a cargo van while crossing a street at night. Based on the driver's version of events, the initial police investigation concluded that the decedent had been crossing outside of a marked crosswalk and therefore blamed the decedent for the collision. The coroner's toxicology report also found that her blood alcohol level had been well over the legal limit. Joseph's investigation of the physical evidence uncovered that the collision actually happened in a marked crosswalk and that the defendant driver was likely driving much faster than the posted speed limit. Though the defense denied all aspects of this theory, the case settled at private mediation.



Claimants v. Cryogenic Device Maker

Claimants v. Cryogenic Device Maker (S.F. Sup. Ct.) Following the tragic loss of eggs and embryos belonging to more than 400 couples and individuals, our team headed by Doris Cheng and Mike Kelly filed negligence and product liability cases against a fertility service provider and a cryogenic storage device maker on behalf of more than 20 individuals and couples. Our clients suffered irreparable harm when the storage tank lost liquid nitrogen and all of the reproductive tissue in the tank thawed. In discovery, our engineering experts identified a welding defect created during the manufacturing process of the tank. Document and deposition discovery revealed that the fertility center did not keep accurate track of the liquid nitrogen levels which were depleting as a result of the leak. Once the liquid nitrogen filler was empty, the temperature in the tank was too warm to cryopreserve the eggs and embryos. After four years of litigation, one trial in federal court and multiple mediations with three different mediators, the claims of our clients have been resolved pursuant to a global negotiated resolution. While the amounts of the individual settlements are confidential, the various defendants contributed both insurance proceeds and personal contributions for allocation to the victims with the aid of a special master. Because each plaintiff and each household had different circumstances relating to their IVF experience, the amount of compensation for each settling party reflected the severity of their injury following a settlement allocation methodology reviewed and approved by an independent Special Master. According to that methodology individual case evaluations included consideration of a

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number of objective factors. Those factors included the expected success rate of implantation, the plaintiff's age at the time of the March 4 incident, the number of children already in a household at the time of the tank failure, the number of attempts to replace the damage or destroyed eggs and embryos after the tank failure and the existence of a spouse or partner claimant who also suffered a loss. We are hopeful that the lessons learned by the defendants will be taken to heart, with appropriate remedial measures instituted, so that no similar tragedies will occur in the future.

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MEDICAL NEGLIGENCE



Patient v. Internist

In Patient v. Internist (Nor. Cal. Sup. Ct.) Richard Schoenberger and Joseph Nicholson reached a multimillion dollar confidential settlement arising from a delayed diagnosis of cancer. The plaintiff initially presented with complaints of knee pain. An ultrasound revealed a mass which was also visualized on MRI. Although the reviewing radiologist opined that the mass was most likely malignant, the treating oncologist concluded the mass was likely a hematoma and chose not to perform a biopsy. One year later, the mass was finally confirmed to have been cancer all along. By that point, the patient had experienced metastasis to the lungs, dramatically reducing his likelihood of survival. The radiologist who performed the original diagnostic MRI testified in deposition that she had a "zero percent" index of suspicion that the mass was a hematoma back when her interpretation of the MRI as most likely malignant could have, and should have, saved the patient's life. The case settled following multiple sessions of private mediation.

Patient v. Stroke Center

In Patient v. Stroke Center (Nor. Cal. Sup. Ct.) Doris Cheng and Christian Jagusch successfully prosecuted an action against a stroke center for failing to diagnose an evolving stroke in a vibrant and brilliant 48-year-old young woman. Before the stroke, plaintiff had a keen mind for math and game theory. She was taken by ambulance to the emergency department after she collapsed at home. At the ED, she was awake, but confused and unable to follow commands, trying to climb out of bed. The emergency physician ordered a CT scan, but did not activate the hospital's stroke protocol. The on-call radiologist misread the CT scan, failing to identify a hyperdense mild cerebral artery sign and should have been reported as evidence of a stroke. Hospital protocol required the patient to be given IV tPA upon suspicion of a stroke. Stroke Center rules also required a neuroradiologist, rather than a community radiologist, to read the head CT scan. Neither of these requirements were followed. The medical providers' failure to diagnose and treat the stroke with IV tPA and mechanical thrombectomy resulted in permanent brain damage. Doris and Christian ultimately negotiated a settlement of \$7,750,000, which will be used to provide for her ongoing and lifetime care needs.

Patient v. Anonymous Medical Provider

In Patient v. Anonymous Medical Provider (Orange Co. Arb.) Doris Cheng and Jeffrey Clause negotiated a \$2,000,000 settlement on behalf of the family of a 30-year-old patient who died of chemotherapy-induced lung toxicity. The decedent was diagnosed with Stage 2a testicular cancer – a stage that should have a greater than 90% cure rate. The chemotherapy regimen the decedent was prescribed carries a risk of lung injury (bleomycin toxicity) which requires careful monitoring and aggressive treatment to reverse the effects of any lung damage once recognized or suspected. Doris and Jeffrey demonstrated that the decedent's medical providers negligently failed to diagnose his developing lung injury and thereafter failed to render the appropriate remedial care. The defendant physicians denied liability and disputed the amount of economic damages claimed. The case resolved prior to the contractual arbitration hearing. [A](#)

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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