



# ... And Justice For All

A LEGAL NEWSLETTER FROM THE LAW OFFICES OF

## Moore, O'Brien, Jacques & Yelenak

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### Moore, O'Brien, Jacques & Yelenak Champion Cause of Catastrophically Injured Child.



On February 22, 1991, Alex C. was born at St. Mary's Hospital in Waterbury. Alex was an apparently normal infant with a full life ahead of him. However, at his two month visit to his pediatrician, Alex's parents were told he might have a non-serious heart murmur. As a result, Alex was referred to a pediatric cardiologist who confirmed the murmur and referred Alex to a major New Haven medical center for tests. Within days, Alex's parents received the startling news that Alex had a life-threatening heart condition. Alex had a hole between two of the pumping chambers of his heart, an absence of a passage between his heart and the artery that carried blood to his lungs, and that the artery itself was abnormally narrow. Therefore, Alex was not getting enough blood to his lungs. And the backup of blood in his heart was causing abnormally high cardiac pressure. Alex needed immediate surgery. Understandably, Alex's parents placed their trust for the care of their infant son in the supposedly capable hands of the cardiac surgeons at the medical center, which they were told was one of the foremost in the United States. However, 7 months and 4 operations later, Alex had suffered a devastating stroke that left him catastrophically brain damaged and totally disabled. During the last operation on Alex on November 20, 1991, air entered his system and traveled to his brain causing the permanent devastation. The operation from a cardiac standpoint had been a success. But the tiny patient's life had been destroyed.

Alex's parents, at a loss to understand what happened, asked one of Alex's doctors whether an attorney should be consulted. The doctor hesitatingly replied in the affirmative. Alex's parents contacted Moore, O'Brien, Jacques & Yelenak to investigate the case. Because the medical issues were so complex, the firm consulted with several of the top pediatric cardiac surgeons and neurologists in the nation. Through these experts, who reviewed Alex's medical records, it was learned that Alex's cardiac condition had been mismanaged at the New Haven medical center from the start.

In an attempt to cure Alex's heart condition, the New Haven surgeons had employed an overly aggressive approach. In a single surgery, the first of four, an attempt was made on 2 month-old Alex to fix all of his cardiac problems, despite the fact that even at more medically advanced hospitals, such techniques were never used on infants.

Further, Alex's surgeons had limited experience in performing cardiac operations on such young infants. Multiple acts of medical malpractice between April and November, 1991 had destroyed any chance that Alex would have a normal life.

The first surgery on Alex was in April, 1991. In that operation, the surgeon attempted to close the hole between the heart chambers and widen the narrow artery leading to Alex's lungs by sewing a surgical patch in place on Alex's heart. Initially, the surgery seemed successful. However, within 24 hours the patch blew out and Alex nearly bled to death. Alex was rushed back into surgery where a new patch was placed. The first patch had failed because, as Alex's doctors had known all along, his heart had abnormally high pressure.

Making matters worse, following the emergency replacement of the patch and while in recovery, a nurse at the hospital accidentally administered to Alex three times the amount of blood he was supposed to receive. As a result, Alex's heart ballooned because of even greater pressure. To relieve the problem, Alex's surgeons created a hole in Alex's heart. Within days, Alex's chest cavity filled with blood and he almost died again.

By this point, rather than referring Alex to one of the major children's medical centers in Boston or New York, an even less experienced cardiac surgeon was brought in to care for Alex. In a third surgery, a larger patch was placed on Alex's heart. However, during the operation, the surgeon lacerated one of Alex's heart chambers. Alex nearly died again.

In July, 1991, the surgeon then tried to widen Alex's narrow heart artery by inserting a balloon device. This too failed, and by late October Alex was actually in worse condition than before any of the surgeries. The multiple operations and hemorrhages had softened the tissues of Alex's heart making future surgeries even riskier.

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On November 20, 1991 Alex was taken back into surgery where yet another patch was placed on his heart and another attempt was made to widen the narrow artery. But because of Alex's now weakened heart, the surgeon decided to operate while Alex's heart was still beating. During the surgery air was accidentally permitted to enter Alex's heart and his heartbeats sent air to his brain instantly causing a devastating stroke.

A lawsuit was filed against the medical center and the surgeons by Moore, O'Brien, Jacques & Yelenak. Alex's pediatric cardiologist testified in a deposition that before the surgeries Alex was neurologically normal and that absent the stroke, Alex would have enjoyed a normal life and career. Other experts our firm brought into the case have projected the combined cost of Alex's life care and his earning loss as in excess of \$10 million.

Despite Alex's debilitating condition, he remains at home in the care of his parents. Carla and Steve C., despite having 3 other children, remain devoted to Alex and determined that he not be institutionalized. "Alex belongs with his family where he receives the best care and plenty of love", says Carla, who has become a strong voice in Connecticut on behalf of disabled children. Both Carla and Steve say they take joy in the small gains Alex has made since the stroke, such as his saying a few words and reacting positively to his parents' smiles.

"As much of an inspiration as Steve and Carla are, the tragedy is that none of this had to happen", says Garrett Moore. "The doctors were simply under-experienced and overly confident, not to mention the errors the nursing staff made between surgeries." The trial of Alex's case is scheduled to start in Waterbury in March, 1999. Garrett Moore and Steve Jacques represent Alex.

## The Lowdown on Air Bags

According to the National Highway Traffic Safety Administration (NHTSA), more than 110 people have died in airbag-related accidents since 1985 when airbags first appeared in cars: 65 children and 45 adults. And NHTSA is investigating another 40 deaths. Yet some say these numbers are just a tip of the airbag iceberg.

In the past 6 months, one major automobile company has recalled 1 million cars because of airbag injuries and deaths. Based upon several studies, the facts about airbags are as follows:

1. Despite warnings from the government, automakers and consumer groups against placing children under 12 years of age in the front seat, most children still ride there.
2. More than 1/4 of air-bag deaths have been of women under 5 feet 4 inches tall because many short women sit too close to the steering wheel or dashboard, from which the airbag deploys.
3. Airbags, now in 75 million cars, have saved 3,350 lives--- approximately 30 times the number of fatalities from air bags.
4. Although airbags are designed to work in conjunction with seatbelts, drivers often don't buckle up properly or at all, which

actually causes or worsens the severity of airbag injuries.

Fortunately, efforts are underway to prevent more airbag tragedies. Congress has authorized new airbag testing standards next year to ensure airbag safety not only for average size drivers in high speed crashes, but also for small adults, children and out of position passengers in low speed collisions. Also, NHTSA has begun allowing "high risk" occupants, such as children who must sit in the front seat because of medical conditions, or short drivers who can't sit more than 10 inches away from the dashboard, to have on/off airbag switches installed in their cars.

In addition, many automakers are producing depowered airbags, which automatically reduce the initial deployment force by as much as 35 percent. Another advance, the dual-threshold bag, features sensors that automatically determine whether an occupant is belted and adjusts the bag's deployment force accordingly. The best safety principles to follow are:

1. When driving, avoid leaning forward toward the dashboard. Deployment of an airbag against a passenger who is even opening the glove compartment can cause serious injury.
2. While driving, don't put your hands or arms through the center of the steering wheel. If the bag deploys, it can break bones.
3. Don't let children under 13 ride in the front seat. If you have to drive several children have the largest child sit up front.
4. Passengers shouldn't put their feet on the dashboard. Airbags have broken legs.
5. Don't place the seatbelt shoulder strap behind your back or under your arm. If the top part of your body isn't restrained, you can be thrown into a deploying bag and die. Remember, the velocity with which an airbag opens is an average 155 miles per hour even in a minor low speed accident.

## Our Firm Contributes to Emergency Care

In May, 1997, one of our clients was seriously injured when the Jetski she was operating while on vacation in Antigua was hit by another jet skier. Our investigation of the accident was aided significantly by a local island paramedic who responded to the accident scene. Jonathan Cornelius administered first aid to our client who suffered spinal injuries in the accident. And during our accident investigation, Jonathan helped us locate the damaged Jetski that had been discarded in a remote island location. As a result, when we learned that the Antigua paramedic force did not have videotape equipment needed to film accident rescues for teaching purposes, we purchased a video camera for the paramedic force.

## Two New Attorneys Join Our Firm

In recent months, Moore, O'Brien, Jacques & Yelenak has added two attorneys to our team.

Joseph Foti comes to us from his partnership with another local firm where he practiced for 12 years in the personal injury field. Joe was also Assistant Corporation Counsel for the City of Waterbury where he was appointed the Police Legal Advisor. We welcome Joe, his wife, Laura, his two sons, Mike age 16 and Chris age 9, and daughter, Brooke, age 6.

Brian Flood is a recent graduate of Quinnipiac College School of Law. He previously was a law clerk with a prominent personal injury firm in Hartford and, prior to that, worked for a major insurance company as a retirement planner. Brian has already proven himself a valuable new asset.

## CASEFRONT

Moore, O'Brien, Jacques & Yelenak is currently litigating or has recently resolved by settlement or verdict the following cases which may be of interest to our clients. Of course, the results here should not be applied to other cases.

### • *Anniversary Tragedy Results in \$1,450,000.00 In Compensation*

In early 1997, our 59 year old client was enroute to Vermont with her husband to celebrate their 10<sup>th</sup> wedding anniversary. As the couple traveled through Vermont, a truck made an improper left turn, smashing into our client's car. Her husband was killed instantly and our client died about 10 minutes later as a result of severe chest injuries.

Questions in the case concerning whether Connecticut or Vermont law applied were resolved in our client's favor. Wrongful death damages are much more generous in Connecticut than Vermont. Under Connecticut law, our client was entitled to damages for her lost income (she worked as a clerk in a discount store) her pre death pain and suffering and her loss of enjoyment of life. Vermont law only allowed for damages for lost income.

Both cases were resolved by Garrett Moore before trial for \$1,450,000.00.

### • *Medical Malpractice Yields Settlement of \$300,000.000*

On October 7, 1994, our 48 year old client underwent a hysterectomy. The operation was complicated by a question as to whether the surgeon had inadvertently created a perforation in

the client's bladder. Although there was no evidence of any leakage, the surgeon placed sutures in the area of suspected perforation. However, in doing so he accidentally sewed the patient's vaginal cuff to her bladder. As a result, over the next two years the client underwent numerous diagnostic and corrective procedures. Although the damage was repaired, the client was left with a scar and numbness in part of her thigh. A lawsuit was filed. Several months before trial, Steve Jacques settled the case for \$300,000.00.

### • *Going Against Greyhound Results in \$285,000.00 Settlement*

In June, 1995, our 32 year old client was stopped in a line of traffic at an intersection when a Greyhound Bus collided with the last car in line. The chain reaction caused our client to sustain a permanent partial disability to his back. Garrett Moore of the firm took the case and it was settled for \$285,000.00.

### • *Golf Cart Accident. Victim Awarded \$300,000.00*

On October 16, 1996, our client, a 44 year old corporate executive was earning approximately \$130,000.00 per year. While golfing with business clients his cart was struck from behind by another golf cart. The client's cart was pushed forward at least 10 feet. Although our client felt immediate neck pain, he continued playing and finished the game.

After several weeks the pain worsened and the client began to feel numbness in his arms. He was examined by a neurosurgeon who determined that as a result of the impact he had suffered disc herniations in his neck at two levels. Surgery was performed in which a bone graft was taken from the client's hip and placed into his neck.

As a result of the accident, our client lost \$16,000.00 in wages and incurred \$38,000.00 in medical bills. He also suffered a permanent disability of the neck.

Rather than wait years for a trial date, the case was submitted to binding high/low arbitration. The guaranteed low was \$25,000.00 the high was \$300,000.00. The arbitrator was not aware of the high/low figures. Yet he found in our client's favor for the \$300,000.00 maximum. The client was represented by Garrett Moore.

### • *Slip & Fall Accident - \$175,000.00*

On January 12, 1995, our client had plans to go grocery shopping with her son. As she descended the steps of her rented apartment, she slipped and fell on ice that had not been removed or sanded, hitting her back against the concrete steps.

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A short time later, our client consulted with a neurosurgeon who discovered two herniated discs in our client's back. Despite two operations, she was left with a permanent impairment and \$32,000.00 in medical bills. She was also unable to return to her job as a factory worker.

For years the landlord's insurance company placed blame for the accident on our client and refused to settle the case. One week prior to trial Bill Yelenak settled the case for \$175,000.00.

The insurance industry forces are at it again. This time they are attempting to resurrect the no-fault insurance scheme, which was repealed in Connecticut in 1994 and in many other states because it was a plain and simple consumer rip-off. Unfortunately, the latest go-round on no-fault is an attempt by Congress to create a Federal no-fault insurance law that would tip the scales against every motorist in all 50 states.

Under the so-called auto "choice" bill before Congress, if a reckless or drunk driver covered by no-fault hit you and your family, the driver would never bear civil accountability, even in

the event of catastrophic injury or fatalities. Not holding drivers, especially in the era of road rage, accountable for careless driving, undermines the fundamental principles of justice in our society. No-fault auto insurance is a product of the 1960's when a few egg headed economists claims that if drivers paid to insure only themselves for their own injuries, the cost of auto insurance would be reduced. However, nearly every state that enacted no-fault found it was a failure. And in fact, the four states with the highest auto insurance rates all have some form of no-fault. Between 1990 and 1996 insurance premiums grew 40 percent faster in no-fault states.

The bottom line is that under no-fault, good drivers would be forced to pay for bad drivers because the bad drivers would not be held financially responsible for the harm they cause. The true cost bad drivers would impose upon society would not be reflected in their insurance premiums but instead, in yours!

Moore, O'Brien, Jacques & Yelenak urges all of our clients to tell their Congressmen and Senators that no-fault insurance should once more hit the road.

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