



... And Justice For All

A LEGAL NEWSLETTER FROM THE LAW OFFICES OF

Moore, O'Brien, Jacques & Yelenak

SPRING 2009

THE PATIENT DIES; THE DOCTOR LIES

In August 2006 our 50 year-old client, Joseph A., was a senior executive at a major international aircraft company. In addition to his professional career, Joe was an avid fitness enthusiast who regularly engaged in bicycling, rock climbing, skiing and daily jogging.

As a result, when he suddenly experienced worrisome chest pain, he made an appointment with a cardiologist, Dr. K. At the early morning appointment Joe reported the chest pain and the doctor conducted an examination and performed an EKG on Joe's heart. The EKG showed an abnormal heart rhythm that suggested Joe's heart was not getting enough oxygen because of a blocked coronary artery. However, Dr. K., probably because he was busy that morning with a waiting room full of patients, either misinterpreted the EKG or didn't review it at all and just assumed it was normal. He, therefore, dismissed Joe's chest pain as acid indigestion, for which he gave Joe a prescription for an antacid and a six-week follow-up appointment to see how the medication worked.

Joe, having been reassured by the doctor that he was in good health, left a week later for a business trip to eastern Europe. While on the trip and after going jogging one afternoon, Joe collapsed from a heart attack. In the time it took for emergency personnel to arrive, Joe suffered major brain damage. He was airlifted to a hospital in London but the doctors were largely helpless in the face of Joe's permanent vegetative state. However, in their attempts to render care the physicians gathered all available medical data – including Joe's recent medical records from the United States. Within days the doctors had a copy of the EKG performed by Dr. K. And they readily appreciated the gravity of the abnormal finding and of Dr. K's error.

Joe was transferred to a Connecticut hospital where, a few weeks later, he died. It was determined that the blocked coronary artery, if timely diagnosed, was readily treatable. And Joe's life would have been spared.

Once Joe's family learned that Dr. K. had taken no action in response to the abnormal EKG they contacted Moore, O'Brien, Jacques & Yelenak. In turn, we immediately requested that Dr. K. produce a copy of Joe's complete medical chart. What Dr. K. produced was dramatically altered records.

The changed records made no mention of Joe's complaint of chest pain. It instead identified the complaint as solely indigestion. Worse, the changed record had Dr. K. urgently recommending a cardiac treadmill test and Joe declining it! Plainly stated, Dr. K. had negligently missed Joe's heart condition and was now trying to change the story to make Joe responsible for his own death. In this scheme, what Dr. K. did not realize was that a copy of his unaltered record had reached the hands of Moore, O'Brien, partners, Garrett Moore and Stephen Jacques.

In September 2007, the medical malpractice lawsuit for Joe's death was filed against Dr. K.

During the discovery phase of the case, Dr. K., in responses to written discovery (interrogatories) and in his sworn deposition, embellished his falsehood. He claimed there were numerous telephone conversations in the week following Joe's appointment in which Dr. K. unsuccessfully tried to convince Joe to have a treadmill test in light of the EKG findings. Dr. K. also tried to dismiss the different versions of his appointment note on the basis of hurried inaccuracies. However, Dr. K.'s telephone records revealed that no calls were made to or from Joe. As to the differing versions of the appointment note, Attorney Jacques retained a computer technologist who was prepared to show that the altered record was made by Dr. K. after he was sued for Joe's death.

A total of nine expert witnesses, eight of whom were medical experts, were retained to testify at trial to Dr. K.'s negligence and that outpatient surgery would have averted Joe's death. An economic expert concluded that Joe's lost earnings totaled nearly \$2,000,000. Because Dr. K.'s liability insurance policy limit was \$3,000,000, steps were taken to eventually freeze Dr. K.'s real property in the event of a trial verdict that exceeded the policy limits.

At mediation, partners Garrett Moore and Stephen Jacques obtained a settlement very close to the \$3,000,000 policy limit.

We are proud to report that Partner Garrett Moore has been recognized by Connecticut Magazine as one of the top 10 attorneys in Connecticut (see insert).

SCAM ALERT

The economic crisis has left many Americans in debt over their heads and desperately looking for bargains. However, in the process, many consumers are falling prey to con artists and scammers. The following are some of the newest stings to avoid:

Letting Them Loot Your Bank Account.

If you respond to an email that purports to be from your bank advising you to update your account information for security purposes, chances are you will wind up with a zero balance. Nowadays, email scammers are pulling out all the stops to trick you out of your data and clean out your bank account. Never log onto your bank from a link in an email. Further, call your bank and report suspicious solicitations; also, forward the email to the Federal Trade Commission at spam@uce.gov.

Don't Buy the Debt-Settlement Scam.

It's tempting, if you are drowning in bills, to fall prey to promotional ads by debt settlement companies that claim they will fix your credit by consolidating your bills. Typically, the scam, instead of you paying your creditors, authorizes the debt relief company to deduct a monthly amount from your bank account for them to pay your bills. Instead, after months of withdrawals the company will disappear. But your unpaid bill won't.

Desperate People and Unscrupulous Movers.

In this job-scarce economy more and more people will readily move out of state for work. Be aware though. Moving company crooks are just waiting to load up your things and then double the quoted moving fee. Most of these sharks are actually moving company brokers, not real movers. Simple steps such as checking out movingscam.com can save you grief as well as dough.

The "Landlord" May Not Be the Landlord.

With the home foreclosure meltdown reaching new highs millions of families are searching online for bargain apartment rentals. The property may be real and for rent. But the so-called landlord may not own it. And you'll only find this out after you've emailed first and last months rent and security deposit. The scam only requires a website and posted

photos of somebody else's apartment. Common sense dictates if the rent seems too good to be true for the property it probably is. Rent only in person and at the premises.

ITS FAIR, JUST AND REASONABLE COMPENSATION

A new study refutes the myth of runaway civil trial verdicts and greedy trial lawyers. In the first nationwide study of its kind, plaintiffs in civil cases (personal injury, contract and real property) were found to receive a median final award of only \$28,000. In personal injury cases, the median award was even less – \$24,000. Only about 4% of winning plaintiffs receive awards above \$1,000,000. And the median award in auto accident cases is a paltry \$15,000.

In personal injury cases, plaintiffs were most likely to win when the case involved an animal attack (75%), followed by motor vehicle accidents (64%). Plaintiffs in medical malpractice trials won only 23% of the time. The study also found that settling rather than going to verdict is usually the better move. Most plaintiffs who rejected a settlement offer and went to trial ended up getting less money than if they had taken the offer.

The law limits money damages to fair, just and reasonable compensation – and nationwide, juries appear to be doing just that.

PAY LE\$\$ FOR INSURANCE

Surprisingly, one cost of living expense that's going down is insurance for your home and car. You could save hundreds a year by a few simple steps.

- If you drive less lately you are probably entitled to a reduction in your auto premium because you are a lower risk. Similarly, you'll save money if you've been accident-free for five years or more.
- Insuring your home and auto with the same company is also a big money saver – up to 20%.
- Tell your insurer about major life changes. For example, if you have recently gotten married or moved you may qualify for a reduction in both home and auto coverage.
- Increase your deductibles. Higher deductibles (what you pay out of pocket) will lower your

insurance premiums. However, don't assume that because of the slump in home price values you should reduce your homeowner's policy limit. Even though the sale value of your house may be down, its replacement cost may have stayed the same – or even increased.

CASEFRONT

Moore, O'Brien, Jacques & Yelenak 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.

9% PPD = \$34,380 VERDICT

In October 2006, our 30 year-old client was rear-ended in a mall parking lot in Waterbury. Over the next year she treated with five different healthcare providers for low back pain, but no significant underlying injury responsible for the condition was ever diagnosed. As a result, the defendant refused reasonable settlement demands and the case went to trial. Attorney Greg O'Brien obtained a verdict of \$24,600 in compensatory damages, plus nearly an additional \$10,000 in prejudgement interest and trial costs for total recovery of \$34,380.

\$700,000 ASSAULT BY TRACTOR-TRAILER

In January 2007, our 50 year-old female client was traveling north on Interstate 91 in Hamden, when her car was forced off the road by a speeding tractor-trailer. We filed a lawsuit in Federal Court and the truck driver initially claimed the accident had never happened! Fortunately, an independent witness came forward and testified otherwise. Our client suffered two herniated discs in her neck and underwent a spinal fusion, which took her out of work for six months. Two weeks before trial, partner Bill Yelenak negotiated a \$700,000 settlement.

FAILURE TO DIAGNOSE DEADLY HERNIA - \$500,000 SETTLEMENT

Following hip replacement surgery our 70 year-old client was admitted to a rehabilitation center in central Connecticut. At the time of her admission a complete body audit was done on her which disclosed the presence of an abdominal hernia. Over the course of her 5-day stay she suffered from worsening nausea and vomiting as well as fever and an elevated blood count. Both rehab staff and her attending physician dismissed the patient's deterioration as probably due to a post-operative hip infection. Actually, the cause of her symptoms was that the hernia was strangling her intestine. By the time the correct diagnosis was made the patient was too weak for surgery and she died. Partner, Brian Flood settled the case against the doctor and rehab facility for \$500,000.

REAR-END MVA COSTS NEGLIGENT MOTORIST \$900,000

Interstate 95 in Stamford was clogged with stop and go traffic when our 51 year-old client was suddenly rear-ended by a pick-up truck. Although he was transported from the scene by ambulance to Stamford Hospital, he was released a few hours later with the benign diagnosis of neck strain. Wisely, he soon followed up with an orthopedist who ordered an MRI. A herniated neck disc was diagnosed. Urgent fusion surgery was required and performed by a renowned New York City surgeon. The medical bills quickly totaled \$158,000 on top of a \$26,000 wage loss. Despite the success of the surgery, plaintiff faced the possibility that during his lifetime he would need yet another surgery due to the severity of the injury. Partner Greg O'Brien reached a settlement on our client's behalf of \$900,000.

MEDICAL CHART MIX-UP = \$620,000

Our client, a high school teacher, was diagnosed by an ophthalmologist as having significant risk factors for retinal detachment. As a result, he warned her that she should immediately bring to his atten-

tion certain signs and symptoms. Approximately eight months later, when the symptoms appeared she promptly scheduled an appointment with the doctor. However, at the appointment the doctor's assistant wrote the symptoms in another person's chart. As a result, the doctor examined and diagnosed our client for a different set of complaints. The retina condition went undiagnosed and within weeks she suffered retinal detachment. Attorney Joseph Fotti settled the case for \$620,000.

permanent partial disability of the neck; the neurologist, however, assigned only a 10% impairment of the neck. Defendant's medical expert opined that the client had only a 5% neck impairment. Allstate's final settlement offer before trial was \$29,000. Brian Flood tried the case and won our client \$204,000.

\$204,000 LEFT-HAND TURN CRASH

In September 2006 our client was the victim of an accident when a car traveling in the opposite direction suddenly turned left in front of him. His injuries were neck strain and chronic headaches. His only treatment was with his primary care physician, a chiropractor and a one-time appointment with a neurologist. Although his medical bills totaled \$9,500, he lost only two days of work. One year post-accident the chiropractor signed a 12%

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