

SUMMER 1996

# ... And Justice For All

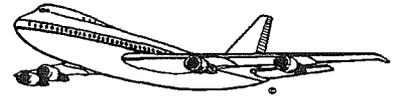
A LEGAL NEWSLETTER FROM THE LAW OFFICES OF

## Moore, O'Brien & Jacques

Welcome to And Justice For All, a new client information service from Moore, O'Brien & Jacques

*Our newsletter will keep you informed of new developments in personal injury law that may affect your rights and your responsibilities. We will also strive to inform you on such topics as product safety, issues at your job, automobile insurance and other matters that impact the daily life for you and your family. Helping our clients be informed citizens and consumers is our goal. We will also feature recent case results our attorneys have obtained and highlight new cases of interest to our clients. We look forward to serving you in the future with periodic issues of And Justice For All.*

### Moore, O'Brien & Jacques VS. ValuJet



Within hours of the tragic news of the May 11, 1996 ValuJet Airlines crash in the Florida Everglades making headlines Attorney Garrett Moore of Moore, O'Brien & Jacques was contacted to handle the case arising from the deaths of San Diego Charger football star Rodney Culver and his wife on the flight. Attorney Stephen Jacques of the firm was immediately dispatched to Georgia to meet with Rodney's surviving family members—his mother, two small daughters—and to meet Rodney's sports manager, a native of Connecticut. After meeting with the family, Steve continued on to Florida to investigate the crash with members of the National Transportation Board and local attorneys in Miami.

The ValuJet crash represents both a loss and an urgent wake-up call to the air travel industry. With the proliferation of low cost airlines, attention to safety factors involving the traveling public have been given scant attention. The Federal Aviation Administration, the oversight agency for airline safety, has permitted its responsibility to the public to be undermined. Too often in recent years the FAA has ineptly tried to fulfill its two competing objectives—ensuring airline safety and promoting air travel. Inevitably, these goals have proved incompatible and led to safety compromises by pressure from airlines wanting to boost profits.

With ValuJet in particular, it is clear that the rapid expansion of low cost airlines has been reflected in slipshod enforcement of safety regulations, specifically in light of the Everglades crash, rules involving the inspection and careful transporting of hazardous materials. According to the preliminary conclusions of the NTSB, the ValuJet crash was caused by fire resulting from oxygen canisters originally believed to have been deactivated having been placed in the forward hold of the ValuJet plane. The apparent mislabeling of these canisters by ValuJet's maintenance company, Sabretech, Inc., as inert and the failure of ValuJet to independently inspect the canisters led to the tragedy.

Rodney Culver, 25, and his wife, Karen, were returning from Miami at the time of the crash to their home in Woodstock, Georgia. Culver, a star running back with the San Diego Chargers, earned an estimated \$500,000 playing pro football last year. According to teammates, Culver was the best liked and most well respected player on the team. Culver and his wife had two children, Briana, Age 2, and Jada, Age 1.

Moore, O'Brien & Jacques have filed a lawsuit stemming from the tragedy in the Florida state court against ValuJet, Sabretech, and ValuJet's other maintenance contractor, Aerothrust, inc. Recoverable damages from the lawsuit are estimated at approximately ten million dollars. According to Garrett Moore, however, a larger issue is involved. "Both the ValuJet and the more recent TWA disaster in New York demonstrate that heightened security and inspection measures must be undertaken by all airlines on an emergency basis. Public confidence in the airline industry will not be restored until the industry does an about-face and acknowledges this crisis. If the FAA can't do it then perhaps lawsuits stemming from these horrible tragedies will jolt the airlines into responsible action," Moore told Connecticut's Channel 8 T.V. News in a recent interview.

## You, Your Family And The Law

### ***Making your Automobile Insurance Work For You***

There was a time when simply having an auto insurance policy was all we needed. However, times have changed and understanding your auto insurance policy has become not only necessary, but vital to protect yourself and your family. Benefits are not assigned automatically. You must select the correct form of coverage or your family will not be afforded the protection you are paying for. There are four basic Do's and Don'ts in selecting your best automobile insurance protection. They are:

- ***Understanding Your Auto Insurance Policy***

Although your insurance agent can help you, you should independently know what to consider when buying auto insurance. To make the best selection, you should obtain answers to the following questions: *What can be done to increase protection for yourself and your family? What is the amount of your bodily injury/liability coverage? What can be done to obtain underinsured motorist conversion coverage?*

- ***Protect Yourself By Increasing Your Uninsured/Underinsured Motorist Coverage***

Approximately 250,000 Connecticut motorists are driving without auto insurance. Even a greater number are driving with inadequate levels of insurance. If one of these uninsured or underinsured motorists hits you the results can spell disaster for you and your loved ones. There may be nowhere to turn for payment for medical bills and lost wages except your own pocket even though the accident was not your fault. Uninsured/underinsured motorist coverage is the only way to protect your family from the catastrophic financial consequences a collision with an uninsured or insufficiently insured driver can cause. Under the prior auto insurance laws in Connecticut, you could automatically multiply the amount of uninsured/underinsured motorist coverage on each of your vehicles by the number of vehicles you owned to cover the damages sustained in an accident. However, this is no longer permitted. For example, if you once had uninsured/underinsured motorist coverage of \$100,000 each and you owned two vehicles, you automatically had \$200,000 of coverage. However, since 1994, regardless of the number of vehicles you own, your coverage under this example has been only \$100,000. You should therefore increase your uninsured/underinsured motorist coverage to twice the amount of your bodily injury coverage. This will increase your premium only a few dollars more and will protect you and your family from catastrophe at the hands of an uninsured/underinsured motorist.

- ***Don't Be Penny Wise But Pound Foolish***

Insurance coverage in an inadequate amount can be equivalent to no coverage at all. The law requires that each auto insurance policy contain at least \$20,000 of coverage per person and \$40,000 of coverage per accident. This requirement, however, represents only a minimum of insurance protection. It was not intended by the legislature to constitute adequate coverage for anything other than the most minor injuries. The law permits you to obtain uninsured/underinsured motorist coverage of twice the amount of your bodily injury coverage. You should

obtain all of the uninsured/underinsured motorist coverage permitted. The cost of this maximum protection is minimal in light of the potential consequences of doing otherwise.

By the same token, you as a motorist should, for the protection of other drivers, carry more than a \$20,000 per person/\$40,000 per accident liability policy. Although the law only requires that you carry those amounts as a minimum, if you or a covered family member negligently injure others in an accident it is basic to responsible citizenship that you have coverage sufficient to compensate those injured for their losses. Also, maintaining inadequate liability insurance could expose your personal assets, including your home or salary to a judgment against you.

- ***Don't Skip Medical Coverage On Your Auto Policy***

In 1994, no fault insurance was eliminated in Connecticut. Therefore, your auto insurance policy does not include the automatic \$5,000 coverage for medical expenses and lost wages. This change has had little effect on people who have medical insurance through, for example, their employer. However, if you do not have medical insurance, which is not uncommon nowadays, you should strongly consider purchasing optional medical payments coverage with your automobile insurance. Doing so will protect you from having to pay automobile accident-related medical costs out of your pocket.

## SAFETY ALERT

With the warm weather months it is natural that you and your family will seek outdoor recreation. This, of course, includes various watersports. However, great care should be taken in choosing to operate or permitting a family member to operate a high-powered personal watercraft. The most popular of these personal watercraft are known as Jetskis (Kawasaki's brand name). These craft, which we have all seen buzzing around lakes and rivers, have enjoyed tremendous popularity. They are fun to operate. However, there is, of course, a need to balance recreation with safety. Classified by the Coast Guard as a Class "A" Inboard, these vehicles, which can reach speeds of 60 m.p.h., do not offer the stability or protection of traditional powerboats. Because these vessels appear to offer thrills on the water, they are often loaned to friends or sometimes piloted by children who have no watercraft safety training.

As a result, accidents have abounded in which, quite frequently, operators have collided with other vessels or even stationary objects. The reason for this is because, according to experts, during operation inexperienced riders must devote so much attention to operating the craft and keeping it stable that inadequate attention is available for looking ahead to avoid obstacles. While we do not recommend that operating personal watercraft be avoided, it is strongly suggested that a basic boating course, such as that offered by the Coast Guard be taken beforehand. Personal watercraft, although they may appear to be toys, are high powered motor-driven vessels and are dangerous in the hands of inexperienced operators.

## Protecting Yourself From Attorney Solicitations

Although as attorneys ourselves, Moore, O'Brien & Jacques has the greatest respect for the legal profession, we must also acknowledge the unfortunate fact that, as with every profession there are those who seek to exploit the public for personal gain through unscrupulous practices. We have all heard the derogatory phrase "ambulance chaser" used in connection with some attorneys. If you have been injured in an accident, you should know that it is illegal in Connecticut for a lawyer to attempt to contact you in person, by telephone or mail within 40 days of the accident to solicit your case. If you are contacted by any of these means by an attorney with whom you do not already have an ongoing relationship you should contact the Connecticut Trial Lawyers Association in Hartford at (860) 522-4345. They will report the matter to the proper authorities. Further, as with all important matters, when selecting an attorney to represent you whether it be for a personal injury case, a real estate closing or drafting a will, you should check the attorney's credentials and even contact the Connecticut Bar Association to determine whether the attorney has been the subject of any recent disciplinary proceedings. Bad lawyers do the public a disservice and undermine the reputation of our honorable profession.

## CASEFRONT

In addition to the Valujet case, Moore, O'Brien & Jacques is currently litigating the following cases we feel may be of interest to our clients.

### • *Honda Seatbelt Harness Bolt Injury*

On March 2, 1995 at approximately 7:00 a.m., 25 year old Brigida Foster was returning home from work in her 1994 Honda Accord when she rounded a turn on Route 262 in Watertown. Momentarily blinded by the sun, Ms. Foster swerved her vehicle and collided with an oncoming pick-up truck. Although the freak accident cannot be considered anyone's fault, Ms. Foster, a wife and mother of a three year old son, sustained a catastrophic head injury when she impacted the turn buckle of the shoulder harness portion of the seatbelt in her car. The harness was secured to an interior pillar of the car by a protruding bolt that was protected, according to Honda's design, only by a thin plastic snap-on cover. As a result of her injuries, Ms. Foster will require institutional care for the rest of her life. Moore, O'Brien & Jacques has filed a products liability lawsuit against Honda contending that the bolt should have been recessed into the pillar or protected by means of a thicker padding. It is understood that other vehicles in recent model years have undertaken such safety measures to protect occupants of vehicles in crashes.

### • *Amusement Park Tragedy Results in \$1,000,000 settlement*

In August, 1994, five year old Michael Mills was on an

outing with other children sponsored by Ansonia Community Action at Lake Quassapaug Amusement Park in Middlebury. After enjoying several rides, Michael and two of his friends boarded the ride known as the Twister. As the ride ended Michael, known as "Mighty Mike", was getting off when the ride suddenly activated throwing Michael to the ground. The accident resulted in Michael's death and a lawsuit against the park. Moore, O'Brien & Jacques filed a lawsuit against the park claiming the ride was mechanically defective and inadequately staffed. The park settled for one million dollars.

### • *Bus Accident Injuries To Twelve Year Old Boy Result in Jury Verdict of \$1,890,000*

Young Sal Galiuzza was only expecting a trip to the Bronx Zoo in New York City when he boarded a chartered bus with his family. However, as a result of the bus rear-ending a stopped tractor trailer Sal suffered brain injuries when he was thrown forward and impacted the metal-plated seatback in front of him. Following fruitless attempts to settle the case with the bus company, a trial took place in the Superior Court in Milford. After five weeks of trial the jury returned a verdict of \$1,890,000.

### • *Failure To Clear Snow and Ice \$75,000*

A young woman who worked as a travel agent was transferred to a new job location. On her first day, she was the first person to arrive at work. There had been a storm the night before and snow and ice three inches deep had accumulated on the walkways leading into the building. Not wanting to be late for work, the young woman began walking towards the building, but slipped and fell, injuring her back.

The client had previously sustained a back injury in an automobile accident just 2 years before. However, her fall severely aggravated her back condition and caused her to seek additional medical treatment. Eventually it was discovered that she sustained herniated discs. Her extensive medical treatment cost approximately \$20,000.

When the client came to Moore, O'Brien & Jacques it was clear the owner of the property was at fault for not having cleared the parking lot and sidewalks in a timely manner. A lawsuit was filed on her behalf and the case was settled for \$75,000.

### • *Dangerous Cracked Stairs*

While descending an outdoor cement stairway located at an apartment complex, our client was caused to fall due to severe cracking and chipping on the cement stairs. She sustained multiple injuries requiring medical treatment. Our investigation revealed that the stairs had been in a defective condition for a long period of time, yet the property owner failed to make the necessary repairs. Moore, O'Brien & Jacques filed a lawsuit on our client's behalf against the property owner. The case was settled for \$25,000.

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**• Railroad Crossing Tragedy Results  
in \$1,000,000 Settlement**

23 year old Susan Smart was on her way to a friend's house to trim a Christmas Tree in December, 1989 when she was hit and killed at a railroad crossing in Wallingford by an Amtrak train traveling approximately 70 miles per hour. Although there were railroad gates at the crossing they were malfunctioning at the time. Both Amtrak and the Wallingford Police Department had been notified of the malfunction but did not take appropriate steps in time to prevent the accident. Following the filing of the lawsuit, Moore, O'Brien & Jacques settled the case for one million dollars.

## Your Workplace

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### *Rumors About You Circulated By Management Can Be Grounds For A Lawsuit:*

The Connecticut Supreme Court recently dealt a major blow to employers in the case of Torosyan vs. Boehringer Ingelheim Pharmaceuticals. The court made it easier for employees to sue

their companies for whom they work for defamation. Most employers are cautious about communicating negative information about current or former employees outside the company. However, they feel safe in distributing such information within the company, especially among management personnel. This has been put to an end. The Supreme Court has held that communications within a company about an employee are not absolutely privileged or shielded against lawsuits. Therefore, employers must now exercise extra vigilance to ensure that information spread about employees within the company is fair and accurate.

### *Workplace Violence*

Homicide is now a prime cause of workplace fatalities in the U.S. An estimated 2 million incidents of workplace violence occur each year. Many incidents involve jilted spouses and the like. In Connecticut, although an employer has no affirmative duty to protect employees against unexpected criminal acts by non-employees, the employer can be found responsible for an assault if it had reason to suspect the attack might occur but failed to take responsible steps to prevent it.



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