



## ... And Justice For All

A LEGAL NEWSLETTER FROM THE LAW OFFICES OF

# Moore, O'Brien, Jacques & Yelenak

WINTER 2005

## THE \$8,000,000 WOMAN

On a sunny Spring afternoon in 2002, 45 year-old school nurse Kim S. decided to treat her son and daughter to lunch at a popular Southbury hotdog stand. That simple gesture would forever change the course of their lives.

As Kim and her kids waited for their order, an elderly motorist pulled into the stand's parking lot abutting the pick-up counter. Twice in prior years the motorist had minor accidents when his car suddenly lunged forward because he had mistaken the gas pedal for the brake. History tragically repeated itself that Spring day when the man's car lurched beyond the parking lot and pinned Kim between the front of the vehicle and the hotdog stand. The impact was so great that it pushed the building off its foundation. As the tires of the vehicle continued to spin acceleration marks were ground into the pavement – grim evidence of the crushing forces inflicted upon Kim's body. Kim's legs were nearly severed below her knees and her children witnessed the horrific scene.

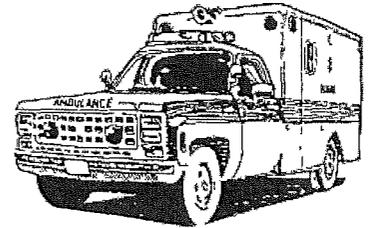
Kim was transported to Waterbury Hospital. But because of the severity of her injuries she was emergently transferred to the major trauma center at Yale. There, Kim's husband Rod was given the grim news that Kim might not survive. In an instant she had been transformed from an active and athletic wife and mother into a paraplegic whose prognosis, at best, was life in a wheelchair. Fortunately, Kim came under the care of Dr. James Yue, a renowned orthopedic surgeon who saved Kim's life and then began the arduous reconstructive process on her legs. Kim had sustained 14 fractures of her right leg and had lost 5" of leg bone. Her left leg had six fractures and most of the muscle had been crushed or ripped away. Kim underwent 38 operations. She incurred medical bills of nearly \$1,000,000. Kim's husband, who had been a high-salaried corporate executive, quit his job to care for her. Kim's children, having witnessed the accident, suffered permanent emotional scars.

Senior partner Garrett Moore was retained and a lawsuit was filed against the careless motorist, the corporate owner of the leased car he was driving and against the hotdog stand for failing to place concrete parking barriers to protect its patrons.

Vigorous attempts were made to settle the case to avoid subjecting Kim and her family to the additional trauma of a trial in which all would need to be recounted and relived. However, the insurance companies for the defendants failed to realistically assess the significance of Kim's case and rejected the settlement demand of \$9,000,000. Astoundingly, they offered less than half that amount!

At trial, Attorney Moore was joined by partner Bill Yelenak whose impassioned opening statement clearly swayed the jury to Kim's side from the start. Eyewitnesses to the accident testified about the horror of that day. And Dr. Yue described in devastating detail Kim's injuries and each of the extraordinary surgeries she had undergone. After all the evidence had been presented, an award was entered in the family's favor in the amount of \$8,000,000 ending a three-year legal battle.

"In my entire career I have never seen a more devastating injury nor a braver family," said Attorney Yelenak. Added Attorney Moore, "When we first met Kim, despite her devastating injuries and intractable pain, it was obvious she was a very special person and that a jury would want to do everything within their power to help her. The bittersweet outcome, though, is that no amount of monetary compensation can turn back time and return Kim and her family to the life they enjoyed before that terrible Spring day."



## **DON'T BE SNAGGED IN THESE COSTLY SCAMS**

Whether it's a car salesmen or doctors, identity thieves or home repairmen, airlines or Internet auctioneers, at some point someone will try to take you to the cleaners. The following tips from top consumer watchdogs will help you protect yourself – and your wallet.

### **REPAIR TROUBLE**

Experts claim that one-half of all auto body repairs are fraudulent. When existing auto parts were secretly marked beforehand and requested afterwards, nearly 50% of the time the so-called old replaced parts didn't have the markings – a signal that they were still in the vehicles. Solution: do the same thing before leaving your car for even routine maintenance work. Mark your air and oil filter, spark plugs, brake pads and other visible parts. Upon pick-up ask for the old parts. If they don't have your mark your old parts are still in your car.

Another tip: If you're buying a new car don't give the dealer your driver's license in return for a test drive. He'll make a photocopy and use the information to get your credit history, what you paid for your last car, the balance on your credit cards and mortgage payment data. If you want to test drive, show the dealer your license and agree to a photocopy but with at least two digits or your driver's license number deleted.

### **HOME REPAIR**

The most notorious scammers are those who canvas the neighborhoods and sell services at your doorstep. Check the repair truck's license plate. If it's from out of state you're probably talking to a fly-by-night operator. The most common dupe is an offer to "recoat" your roof or driveway. This major rip-off may involve nothing more than covering shingles or asphalt with a shiny substance that makes them look new but adds nothing to their life.

### **THE HOSPITAL STAY RIP-OFF**

Insist that your hospital itemize your bill to the last detail. Three out of four hospital bills include overcharges – money you pay for supplies or services you never got. Hospital bills are calculated in advance for a block of medical supplies and services deemed to be needed for your type of upcoming care. Even if they aren't provided you'll be billed for them. A daily line-item bill will permit you to figure out what you received – and what you didn't – during your hospital stay.

Also, if possible, bring your own medications. Hospitals are notorious for charging outrageous prescription drug fees. Before your admission ask your doctor what drugs you'll need, get a prescription and pick them up. On admission tell the hospital you'll supply those drugs – unless you'd rather

pay \$3.00 for a single Tylenol tablet.

### **LET THE LAB DRAW YOUR BLOOD**

Whether it's an annual cholesterol screening or a test for disease, you'll pay twice as much for blood drawn at your doctor's office as you will at a lab. At the doctor's, you're charged for the scheduled office visit, the blood drawing and even for its transport to the lab. Also, it's usually easier to schedule an appointment at the more flexible lab.

### **FINANCIAL PRIVACY AND INTERNET SECURITY**

If your bank emails you requesting updated financial information, it's probably not your bank. This sophisticated scam starts with an email that looks official and like it's from your bank stating that it needs your password to continue providing you with its services. No bank would ever ask for this information on line. Delete such e-mails immediately.

### **ON-LINE AUCTION SCAMS**

There may be great deals on e-Bay. But others may be a scam. If an on-line auctioneer asks you to send a cashier's check, beware. You won't get the item you successfully bid for. Also, never provide requested bank account numbers, social security numbers or other information and avoid outfits that ship from or are registered in small countries, many of which are a home base for phony vendors.

### **STAY UP LATE FOR TRAVEL BARGAINS**

Newspaper ads for low-fare flights are usually sold out before their ink is dry. To get discount travel you must respond to those ads just after midnight on a Wednesday. This is when airline computer systems cancel unpaid reservations and dump those seats on the market at bargain prices. Just be sure that it is just past midnight in the time zone where the airline you want to fly is based. For example, if you live in New York and you're booking with American Airlines (in Texas) start calling at 1:01 a.m. It works.

For cheap hotel rooms call the hotel directly. You're not getting the best hotel bargain by booking on-line. Travel websites include a fee paid to the hotel built into their prices. Call the hotel directly and request a discounted room. The hotel will still make a profit by eliminating the website's fee. Just be sure to speak to the on-duty manager or sales director, not the reservations operator or the desk clerk.

## **WINTER DRIVING SAFETY TIPS**

Here comes winter, which means travel and car problems, most of which can be avoided if you keep in mind the following:

### **Starting Your Car and Keeping it Running**

- Before attempting to start your engine, shut off all electrical accessories.
- Never pump the accelerator - with fuel injection,

you'll flood the engine.

- Once your car is running, turn on electrical accessories (lights, windshield wipers, etc.)
- In extreme cold, start your car every few hours to ensure the battery remains charged.

#### **Basic Rules for Safe Driving**

- Allow plenty of time because trips take longer in winter.
- Keep your fuel tank full so you won't run out of gas if caught in traffic or take an alternate route due to bad weather.
- Keep windshield and windows clear of all snow and ice before starting out. Also, stop at safe turnouts to use a snow brush and scraper.
- Drive slowly and keep your seat belt fastened at all times—ice and snow can drastically increase stopping distance.
- Be on the lookout—winter weather can limit visibility.
- If you stall, stay with your vehicle and try to conserve fuel while maintaining warmth—be alert for exhaust or carbon monoxide problems.
- In mountains for every 1,000 ft. of elevation, 5% of power is lost. Don't cause an engine breakdown by pushing your car beyond its limits.

## **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.

### **Fatal Day Surgery = \$750,000**

In 2002 Grace A. was dropped off by her son at a major Connecticut hospital for what was supposed to be simple surgery involving the implantation of a cardiac pacemaker. However, during the procedure the surgeon, while threading a wire in a major vein, lost control and perforated the vessel. Despite emergency treatment, Grace bled to death on the operating table. A lawsuit was filed by partner, Steve Jacques. The surgeon claimed in his defense that vascular injury such as the one that killed Grace was an unavoidable risk of the procedure. However, after hearing a cardiac surgeon and a vascular surgeon we retained testify that the injury can only occur from carelessness, the defendant agreed to a mediation and the case was settled for \$750,000.

### **WILD PARTY COSTS HOMEOWNERS \$540,000**

In February 2001 our 18 year-old client attend-

ed a college party looking for romance. Instead, he encountered a knife-wielding jealous ex-boyfriend who inflicted severe neck injuries and an intestinal laceration. The party, which was thrown at the home of a coed while her parents were away, was supposed to be attended by a few school friends. However, once word got out, nearly 100 people attended, many of whom brought beer and hard liquor. Among the uninvited guests was the coed's ex-boyfriend, who, upon seeing our client cozying up to her, became intoxicated and provoked a fight. During the melee a knife was drawn and our client was stabbed four times. Partner Greg O'Brien filed a lawsuit against the coed's parents for failing to supervise their daughter. Homeowner's insurance ponied up \$540,000 just before trial.

### **WHEN THE CHRISTMAS BEAR TOOK A TUMBLE**

In December 2001 our client, Janet E. an aspiring Hollywood actress, took a part-time job performing in Christmas shows at shopping malls in the tri-state area. The job required Janet to wear a bulky bear costume which limited her sight lines in the performances. The job became even riskier when Janet arrived for the show at a Fairfield County mall and discovered that the size of the raised stage was too small and in violation of the minimum dimensions called for in her contract. Nevertheless, with a crowd of children already in attendance, Janet decided the show must go on. But within moments of starting, Janet toppled from the front of the stage onto the marble floor and sustained compound fractures to her right ankle. Amazingly, she managed to complete the performance but was then rushed by ambulance to a nearby hospital and air-lifted back to Hollywood where surgery was performed. A lawsuit for negligence and breach of contract was filed against the mall. The defense lawyers tried to blame the fall on Janet's carelessness. Partner Joe Foti settled the case for \$700,000 with the informal understanding that Janet's career, at least as a performing bear, was over.

### **CARELESS LANE CHANGE COSTS MOTORIST \$313,000**

In February 2003 our 24 year-old client was driving at night in the right-hand lane of Interstate 84 in Danbury when a tractor trailer suddenly changed lanes and broadsided his car. The driver defended the claim, saying that our client was traveling with his headlights off. Our client suffered soft tissue injuries to his neck and low back and torn cartilage in his knee, which required surgery by Danbury

orthopedist James DePuy, M.D. Dr. DePuy assigned a 9% permanent partial lumbar impairment, 10% impairment of the neck and a 12% impairment of the knee. Defendant offered to settle the case for \$35,000. Partner Brian Flood chose trial and the jury awarded \$313,000.

**FAILURE TO BREATHE = \$485,000**

In May 2003, our investment banker client had hip replacement surgery. It was expected he would make a full recovery. However, something happened during the immediate post-operative period which caused him to experience temporary cardiac arrest. At first, it was believed that the low-back epidural anesthesia needle implanted for the surgery had been accidentally pushed deeper into his spine when our client was turned on his back. However, the anesthesiologist and expert we retained ruled that theory out. Instead, it appeared that because of our client's age and limited lung capacity, during transport to the recovery room he had simply stopped breathing, which went unnoticed by the hospital transport team. Despite a vigorous challenge to this claim by the hospital attorney, associate Chris Flood obtained a \$485,000 settlement.

**MOTORCYCLE ACCIDENT:  
VERDICT OF \$554,000**

Our motorcyclist client was traveling on Route 6 in Eastern Connecticut when a van owned by road construction giant O & G Industries suddenly made a left turn in front of him. The motorcycle was no match for the truck and our client went down. He suffered a broken wrist, fractured pelvis, bruised bladder and low back injury. His medical bills were \$35,207. Partner Brian Flood took the case to trial where the defendant said our client was speeding. Defendant's settlement offer was \$5,000. The jury awarded \$692,000 and reduced it by 20% comparative negligence resulting in a net verdict of \$554,000.

**REAR-END MVA YIELDS \$300,000**

Our client was traveling on Main Street in Southington, preparing to turn left when he was rear-ended by a motorist who had reached down to retrieve a soda from the floor of her car. Our client's medical bills were \$33,000 but anticipated reconstructive surgery to his shoulder was going to cost him another \$18,000. In the lawsuit, the defendant claimed the accident was unavoidable due to the presence of black ice and offered \$10,000 to settle. At trial, Tricia Krupnik emphasized the gruesome nature of the future shoulder surgery and the significant 15% disability to our client's right knee. The jury awarded \$300,000.

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