



... And Justice For All

A LEGAL NEWSLETTER FROM THE LAW OFFICES OF

Moore, O'Brien, Jacques & Yelenak

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THIS IS WHAT LAWSUITS ARE FOR



With the media and even the White House bombarding the public with propaganda about "Fivolous lawsuits" and the need for medical malpractice reform, it is no wonder that victims of negligence feel like they are hopelessly manning the last outposts of justice. Clearly, the Goliath forces of insurance, medicine and politics, nationally and in Connecticut, are poised to crush the ability of the average citizen to obtain fair and just compensation through the courts. As it has been said by one knowledgeable source, "The powerful have been effective at deceptively convincing the public to vote against its own interests," We, therefore, felt it important to mention a recent case tried by our firm to verdict as a key example of the need for vigilance in safeguarding the right to hold wrongdoers accountable by a jury drawn from the community. The story begins as follows:

One winter evening, in 2001, Moore, O'Brien, Jacques & Yelenak partner Stephen Jacques met at a diner in Newtown with Mary D. and her husband Tom to learn about an act of extraordinary malfeasance by a well-respected physician who the year before had delivered Mary and Tom's fifth child. In July 2000 Mary was admitted to a local hospital for what was supposed to be a routine and safe induced delivery. During labor an emergency suddenly arose because the fetus developed non-reassuring vital signs. A stat C-section was called. During those few moments before Mary was rushed to the operating room her ob-gyn, Dr. G., leaned over her and asked if she would also like him to perform a tubal ligation to prevent her from having future children. In reply, Mary, astonished, yelled that she could not think about such a thing under the circumstances. Nevertheless, without her consent, Dr. G., went ahead and sterilized her.

Dr. G. did this by exploiting upon Mary's husband Tom's fear that if the doctor's suggestion was not followed Mary and the baby might die. Mary, 38, had a congenital heart defect, But she had previously and without complication successfully delivered four prior children. And there was no reason to believe she couldn't have had more children, But Tom, panicked by Dr. G's comment that his signing the consent form to the sterilization would make Mary's cardiologist happy, signed for his wife. Mary was whisked away for the C-section and tubal ligation. It was only afterwards that Tom and Mary learned there was no medical need at all to sterilize Mary.

"It was done without our consent, informed consent or otherwise," Mary said at that initial meeting. "It was a total violation."

Hearing Tom and Mary's story and believing them, we filed a lawsuit against Dr. G., but with the admonition to our new clients that the case would be an uphill battle lasting years and that a trial would probably be necessary where six jurors from the community would have to be convinced that the board certified ob-gyn with 30 years practice and an untarnished reputation had ignored the law and medical ethics by performing sterilization. "Mary and Tom were solid citizens with no reason to lie. But we had serious reservations whether in today's anti-lawsuit climate a jury would believe our case," said Attorney Jacques. Even if the jury was convinced that permission had not been obtained, Mary and Tom already had five children.

During the lawsuit, Dr. G. gave a deposition in which he claimed that at three prenatal visits he had counseled the couple about tubal ligation and at the hospital Mary had given verbal consent to be sterilized. Dr. G. said there was no mention of sterilization counseling in his records because the couple hadn't finally decided until the need for C-section arose. He also said that Mary's cardiologist had discouraged her from having more children.

Prior to trial in January 2005 the defendant offered nothing to settle the case. After five hours of deliberations the jury returned a verdict in favor of Mary for \$500,000.

Every now and then the good guys do win.

THE MYTH OF THE McDONALD'S COFFEE SPILL CASE

Just about everyone has heard about the case of the old lady who won a multimillion dollar verdict after foolishly spilling a cup of McDonald's coffee on her lap. This story is unfortunately viewed as an example of outsized runaway jury awards. However, the truth of the case is far different. The 89-year old lady, a passenger in her grandson's car, while trying to pry the lid off the coffee, spilled it and sustained third degree burns over 16% of her body. She was hospitalized for 8 days and underwent two years of agonizing medical treatment. McDonald's admitted that in the years before the accident more than 700 customers including children and infants, had been scalded by its overly hot coffee, which McDonald's continued to brew and serve, despite published medical warnings that serious burns were being caused by serving the java too hot. The elderly plaintiff offered to settle her case for \$20,000, a fraction of her medical costs. McDonald's offered nothing. As to the multimillion dollar award, it was reduced after trial to \$640,000. In a single day, McDonald's earns more than \$1,000,000 from its coffee sales.

TAKE ANOTHER LOOK AT YOUR HOMEOWNER'S POLICY

Chances are you haven't looked at your homeowner's insurance policy since you bought your home many years ago. With time, things may have changed and you may not have the coverage you need. For example:

Valuable Items. Many homeowner's policies provide very restrictive coverage for items such as jewelry, furs, silverware and fine art. In order to have coverage for the full value of such items you need to add a list of your specific valuables to your policy. Otherwise your claim in the event of loss will probably be challenged.

Home Office. Your policy probably provides only minimum coverage for costly items such as computers, word processors and wide screen televisions. Further, if you run a business out of your home, even part-time, your policy will not cover liability claims arising from the work you do unless you see to it that such claims are expressly covered.

Nannies and Other Employees. If you employ a nanny, maid, nurse or gardener and an accident occurs, you may be in for big trouble. Household help should never be allowed to use their own cars to perform employment related duties because neither your homeowner's nor your auto policies will provide coverage if an accident occurs. Also, unless you cover such help with worker's compensation you may be held personally responsible for injury to people you regularly pay for work around your house.

Leaking Oil Tanks. Most homeowner's policies do not cover the cleanup costs and damages caused by leaking oil tanks. If your fuel provider offers such coverage, buy it. It could save you thousands in environmental clean-up costs.

Renovations. If you have made significant renovations and you do not notify your insurance company your homeowner's policy could be nullified in the event of a fire or other catastrophe because the renovations altered your home's risk profile. Insurance gobbledegook? Maybe, but promptly tell your insurance company or agent of any renovations. Also, if your home is vacant or unoccupied for any significant time your insurance company should be told.

A Final Tip: Photograph, or better, videotape your home throughout, including valuable items. And keep the tape in another location just in case.

Toy, Pool and Playground Safety Tips

Not to spoil the enjoyment of the coming of warm weather, but keep in mind that more than 600,000 kids are injured each year in summer recreational activities. A few simple guidelines to keep this Summer safe:

Playground Safety:

According to the Consumer Products Safety Commission these playground hazards should be identified before you let your kids play:

- * Concrete, asphalt or hard-packed dirt.
- * Age-appropriate playground equipment.
- * Swing seats made of metal or wood - avoid them.
- * Lack of sightlines between where your child will play and where you will sit.

Report hazards to those responsible and don't let children use that playground until it's been made safe.

Pool Safety:

Swimming and diving into a pool may seem harmless childhood activities, but annually more than 600 children suffer crippling spinal cord injuries from pool diving and jumping every year. The American Spinal Injury Association suggests that to prevent aquatic injuries:

- * Educate your children about the pool, including depth markings, lighting, deck surface and time for use.
- * Set strict hours for pool use and secure the pool with fencing (it's the law!) to keep children out during inappropriate hours.
- * Never allow children to swim alone, even momentarily, or to consume food at poolside.
- * When the pool is used always have someone present trained in water safety and lifesaving techniques.
- * Never allow kids to play with toys other than pool toys while in the pool; toys that may prove harmless otherwise may act as deadly anchors in water.

Playing It Sun-Safe At The Beach

You're never too old or too young to be harmed by the sun--especially at the beach. And there are special skin and sun concerns for every age group. Infants under six months old should never be exposed to the sun. Especially avoid sun exposure between 10:00 a.m. and 4:00 p.m. when the ultraviolet rays are the most intense. Cover your baby's super-sensitive skin with proper protective clothing,

including tight woven long-sleeved shirts, long legged pants and a wide-brimmed sun bonnet or hat. Also, be sure to use a carriage or stroller with a canopy or hood. At six months start using sun screen. Choose a waterproof product that is moisturizing rather than alcohol based, and one that has a protection factor of 15 or greater.

The average child spends much more time outdoors than the average adult and is exposed to three times more ultraviolet radiation each year. Research shows that regular use of SPF 15 sunscreen throughout childhood and adolescence can reduce the risk of skin cancers by almost 80%. A single severe childhood sunburn after sun exposure may double the lifetime risk of developing skin cancer. Call your doctor if your child has severe pain, lethargy, blistering skin or a temperature over 101 degrees.

Teach your teens that it takes courage not to seek a suntan. Beach sun is bad enough but the UV radiation exposure at teen popular tanning parlors is two or more times greater than sunbathing at noon on the sand. If your teen must have a tan, have them get it out of a bottle. Self-tanning lotions and creams can duplicate a natural tan without injuring the skin. If your teen is an avid beachgoer, insist that suntan hours be limited to early or late in the day when the sun's rays are less intense and that sunscreen be used at all times.

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.

• Failure of Hospital to Monitor Patient's Blood Pressure = \$490,000 Settlement

In June 2001, our client underwent vascular surgery at a major Connecticut hospital. During the post-operative period she did well. However, a few hours later her blood pressure began to rapidly drop. The nurse responsible for the patient failed to follow doctor's orders to take regular blood pressure readings. When the nurse returned from dinner break the Code Blue team had an emergency resuscitation in process. Revival measures failed. Attorney Joe Foti filed a lawsuit against the hospital and the case was settled for \$490,000.

• Failure to Diagnose Congenital Cataract = \$500,000 Award

In April 1998 our client was born with a congenital cataract which went undiagnosed before she was sent home. During the first few months, the infant's mother noticed the baby's right eye was starting to turn inward. Although she brought this to the attention of the pediatric group caring for the baby, they dismissed it as unimportant. Two other doctors also failed to

appreciate the problem. It was only after the child had lost nearly all of her sight in that eye that the condition was diagnosed and treated. Despite surgery, the child never recovered functional sight in that eye. Garrett M. Moore obtained an award of \$500,000.

• Dog Attack on Mailman Yields \$829,000 Verdict

Our mailman client had just finished placing mail in a customer's mailbox when he was attacked by a German Shepard. The dog repeatedly knocked the man down and inflicted serious bite wounds to his right hand. A neighbor intervened chasing the dog off with a stick. However, our client suffered loss of consciousness heavy blood loss and shock. He underwent two surgeries on his hand and was diagnosed with herniated discs in his neck and back secondary to the vicious attack. He incurred medical expenses of approximately \$70,000 and was out of work for a year. The insurance company for the dog owner refused to settle so Gregory O'Brien took the case to trial where a jury awarded \$686,000 plus prejudgment interest of \$143,000.

• Jury Awards \$91,000 to Pedestrian Knocked Down by Motor Vehicle

In January 2001 our client was standing on the sidewalk in Waterbury when he was hit by a vehicle backing out of a driveway. He suffered injury to a ligament in his knee and underwent surgery. Following a course of physical therapy, his orthopedist assigned him a 7% permanent disability of the knee. The driver's insurance company settled the case for the liability policy limits of \$20,000 and an underinsured motorist claim then was asserted by Brian Flood. A jury returned a verdict of \$206,000 (which was reduced to the \$80,000 of insurance available) plus \$11,000 in prejudgment interest.

• Auto Accident After Ice Storm = \$1.15 Million Dollar Settlement

Our client was driving to work after an ice storm when he was hit by an oncoming vehicle. Although he had no pain at the scene, he developed neck pain soon after. His doctor discovered that he had several disc herniations. He had four surgeries and a nerve stimulator was implanted in his spine for pain control. The defendant driver's insurance company claimed the accident was merely an act of nature through bad weather. Nevertheless, William Yelenak extracted from the insurance company \$1.15 million.

• Jury Awards \$150,000 for Head Injury at Wholesale Warehouse Club

Our 80-year old client was following his son out of a warehouse at a popular wholesale merchandise club in central Connecticut when an employee of the store accidentally pulled the warehouse door down on the client's head. Fourteen stitches were required. However, our elderly client made a good recovery except for mild memory problems. At a settlement conference, the judge recommended settlement for \$35,000. Christopher Flood tried the case and won our client \$150,000.

• Botched Thigh Surgery Prompts Doctor to Pony Up \$300,000

In 1999 our 64 year-old client underwent cosmetic thigh surgery by a prominent New York City plastic surgeon. Although the surgery itself went well in subsequent days the client telephoned the surgeon's office complaining of tightness and burning in her thighs. She felt the bandages had been wrapped too tightly.

Despite reassurances by the doctor that the burning was normal, two days later when the bandages were removed it was discovered that several layers of thigh tissue had died because of excessive compression. In the lawsuit filed by Tricia Krupnick, the surgeon claimed that our client declined post-operative requests that she come in to be checked. One week prior to trial the doctor settled the case for \$300,000.

• Motorcycle V. Box Truck: \$1,350,000

Our female client was operating her motorcycle in Westport when another motorist pulled out of a private driveway even though his view was blocked by an oncoming box truck. Defendant's left-hand turn cut off our client's line of travel and clipped the right side of the motorcycle. Our client suffered a shattered, compound fracture of her right leg for which she underwent four surgeries and incurred a \$265,000 in medical costs. She was out of work for three years and lost \$110,000 in earnings. Garrett Moore settled the case for \$1,350,000.

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