



## ... And Justice For All

A LEGAL NEWSLETTER FROM THE LAW OFFICES OF

# Moore, O'Brien, Yelenak & Foti

SUMMER 2014

## LACK OF SECURITY LEADS TO FATAL STABBING

In November of 2011, our client had just left a baby shower with his family and made his way to his cousin's 21st birthday party at a local club. At age 37, our client had begun to lay out his future with the hope of making a better life for himself and his family. As part of that plan, he continued his education in pursuit of an HVAC degree while working full-time. Additionally, our client had also invested in real estate projects with the intention of restoring property and reselling them when completed.

Tragically, the hopes and dreams of our client ended in November of 2011. While attending his cousin's birthday party, a fight erupted at the club. Prior to the night in question, although the club was always extremely busy, it had discontinued the prior policy of hiring off duty police officers for security.

In the melee that ensued, our client was stabbed and was pronounced dead a short time later. With the blink of an eye, he was gone, leaving behind a grieving family and a world of unfinished dreams.

With the hope and expectation that justice would be done, a criminal trial began. A description of the assailant was given, including a description of the clothing he was wearing. A person was identified by the police as fitting the assailant's description. In fact, a knife found at the scene and confirmed to be the murder weapon was identified as similar to one owned by the alleged assailant. Topping it all off, a confession was obtained from the accused, admitting the crime. It seemed as though justice would prevail.

Unfortunately, the criminal trial did not provide justice, as the confession was not allowed into evidence and the accused was deemed "not guilty."

Moore, O'Brien, Yelenak and Foti was asked to represent our client's estate and to try to bring some justice to this tragic event. A lawsuit was brought against the club for failing to provide adequate security to its patrons, including our client. Allegations included the service of alcohol to its patrons and inadequate security for the type and size of crowds frequenting the club.

At trial, Moore, O'Brien, Yelenak and Foti partner Joseph D. Foti established that our client, a hardworking young man, went to that club just to see his cousin on his birthday. It was also shown that the club's total disregard for the safety of its patrons including our client led to his untimely death. A judgment was rendered in the amount of \$3.4 million dollars against the club and its owners.



## CASEFRONT

Moore, O'Brien, Yelenak & Foti 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 DRUNK DRIVING WRONG WAY COLLISION RESULTS IN COMPENSATION IN EXCESS OF A MILLION DOLLARS

In February 2012, our client was the passenger of a vehicle when the driver of our client's car drove the wrong way on an on-ramp to Interstate 84 westbound. The driver traveled east onto Interstate 84 near exit 24 and crashed into another vehicle head on. The impact was so hard the vehicle our client was riding in caught on fire.

As a result of the collision our client suffered injuries resulting in her death. During the course of our investigation we learned the driver of our client's vehicle, our client and their friends were patrons of several bars and were highly intoxicated on the night of the crash. Our client was underage at the time of the accident.

In October of 2012, a lawsuit was brought on behalf of the estate of our client against the driver of our client's vehicle and against several bars that served the driver and our client. Moore, O'Brien, Yelenak & Foti partner Joseph D. Foti, Jr. represented our client at mediation and during other negotiations resulting in a settlement totaling over 1 million dollars with payments from each bar.

### TRACTOR TRAILER CRASHES INTO CAR ON 84

In December of 2010, our client was operating a vehicle on I-84 westbound when a tractor-trailer was also traveling west and changed lanes and crashed into our client's vehicle. As a result of the collision our client suffered from injuries to her neck, low back, left shoulder, head, face, and chest. She was diagnosed with tears in her left shoulder. A lawsuit was filed against the driver of the tractor-trailer. The driver of the tractor-trailer was a convicted felon and in jail in Texas. Attorney Joseph Rossetti traveled to Texas to take the driver's deposition. At trial, the defense argued the collision was our client's fault. Attorney Rossetti represented our client at trial. The last offer from the defense was \$22,000. The jury came back with a verdict for the plaintiff in the amount of \$42,330.

### CAR V. PEDESTRIAN COLLISION

In December 2011, our client was walking south across North East Transportation driveway on Thomaston Avenue in Waterbury Connecticut when a car turned right and sped into the driveway and struck our client. As a result of the impact our client went up onto the hood of the car and fell onto the ground. Our client injured his neck, back, hip, left leg, shoulder, head,

groin, pelvis, and he was diagnosed with a tear in his hip. A lawsuit was brought on behalf of our client. Moore, O'Brien, Yelenak & Foti partner William P. Yelenak represented our client at arbitration. At arbitration our client testified that he has continued pain and experiences difficulty with daily activities. Ultimately, our client was awarded \$500,000.

### GUILLAIN BARRE SYNDROME FROM VACCINE

In 2011, our client received an influenza vaccine at Bristol Hospital. As a result, he developed Guillain Barre Syndrome. He was 27 years old at the time and working as a physician's assistant. His symptoms included burning, numbness and weakness. He had to stop working for a period of time and continues to experience chronic fatigue and numbness. We were able to recover \$160,000 on behalf of our client.

In order to recover, we filed a claim with the U.S. Court of Federal Claims under the National Vaccine Injury Compensation Program. Attorney Pamela Cameron of our firm is the only Connecticut attorney admitted to the U.S. Court of Federal Claims Bar Association. The National Vaccine Injury Compensation Program requires admission to the U.S. Court of Federal Claims in order to bring a claim on behalf of an individual who becomes ill due to a vaccination. It also has special rules where attorney's fees are paid separately and do not come out of the client's recovery. Therefore, the entire \$160,000 was able to go directly to our client.

### FALL AFTER HOLIDAY SHOPPING

In December of 2009, our client was walking with his family to his vehicle after holiday shopping when he fell violently onto the ground due to accumulated ice and snow. Other people in the parking lot witnessed his fall and ran over to assist in carrying our client to his vehicle. Our client was admitted to the hospital the day of the fall and as a result of the fall he fractured both his left hip and left wrist. Unfortunately, our client experienced complications during his recovery from these fractures and developed a pressure ulceration on his left heel that became infected and gangrenous. Eventually, his left leg was amputated above the knee. Our client's will to heal never left him but his body eventually grew tired from the constant medical care and complications from his injuries and he passed away. Moore, O'Brien, Yelenak & Foti brought a lawsuit on behalf of our client's estate in February 2011 against the shopping establishment and against companies responsible for snow and ice removal at the establishment. Liability was hotly contested. The defendants alleged that they regularly cleaned this parking lot and that our client's injuries did not result from the fall but rather from pre-existing conditions. Attorney Joseph Rossetti represented the estate for our client at mediation and through settlement negotiations which resulted in a settlement in the amount of \$325,000.

### INTERSECTION CRASH

Our client was involved in an intersection collision in Hart-

ford where the other driver drove through a stop sign and struck the right front side of the plaintiff's vehicle. The property damage was moderate, but at the time of impact the plaintiff's arm got caught in the steering wheel as the steering wheel spun hard to the left, causing the plaintiff to wrench his left arm. As a result, the plaintiff suffered a partially torn left rotator cuff which, unfortunately, went undiagnosed for several months. The impact also caused an aggravation of the plaintiff's pre-existing low back problem, for which he had been treating for two years before the collision. The responsible driver carried a \$50,000 policy with State Farm which was paid in 2012. The plaintiff had a policy with Allstate that provided \$100,000 in uninsured/underinsured motorist coverage. Therefore, there was another \$50,000 available in underinsured coverage for the plaintiff to tap into.

The plaintiff incurred approximately \$13,000 in medical bills. He worked as a janitor and laundry attendant for Hartford Hospital, but missed only two days from work. The plaintiff was rated by one orthopedic doctor with a 5% permanent partial disability of the left arm and another doctor rated him with a 5% to 7% disability. Both of the plaintiff's doctors raised the possibility of surgery, but the plaintiff declined surgery because the recuperation time would keep him out of work for 2 to 3 months and he simply could not financially afford to be out of work that long. A few weeks before trial Allstate offered an additional \$5,000 to settle the case, which the plaintiff refused. The plaintiff would have accepted another \$25,000 to resolve the case, but Allstate never moved off its \$5,000 offer. The case was tried in one day as a hearing in damages, with just the plaintiff and his wife testifying. The medical evidence was presented through the medical records and reports. Defense counsel submitted numerous records relating to the plaintiff's prior back condition for which the plaintiff had been treating at the time of the collision. The defense also pointed out the plaintiff's ability to continue in his work after the accident while missing only two days, as well as the plaintiff's refusal to undergo shoulder surgery which could have made him better. At trial, Moore, O'Brien, Yelenak and Foti partner Gregory E. O'Brien represented our client. The jury deliberated for approximately 2 hours before returning a verdict in favor of the plaintiff in the total amount of \$122,274.61.

## ABOUT US

### MUSIC FOR MATT

Attorney Pamela Cameron, had her life change forever on September 3, 2006, when her 24 year-old son, Matthew Costa, died in a boating accident in Mali, West Africa, where he was serving as a Peace Corps volunteer. Matthew grew up in Cheshire and graduated from Tulane University in 2003. Matthew had such a passion for life, music, and for helping others. Pam wanted some good to come out of this tragedy as a way to honor Matthew's life and to continue his legacy. After raising funds to build bleachers and a children's garden at the soccer field in Matthew's village in Mali, Pam wanted to do more. So she started a scholarship in Matt's name at Tulane University that is given annually to a service oriented student. She also worked with Matt's fraternity brothers to develop a concert series in New Orleans called

"Music for Matt." All the funds raised from the annual concert have been used to fund Peace Corps volunteer projects in Africa and for the Matthew Costa Memorial Scholarship at Tulane. Pam is also on the Executive Board of the Compassionate Friends, an international support group for parents who have lost children. Nothing can take away the heartbreak of losing a child, but Pam tries to stay positive by helping others and giving back to those less fortunate, just as her son would have wanted.

## ANIMAL CASES

Over nearly 30 years in practice, partner Joseph D. Foti has handled many cases involving animals. In addition to many dog bite cases, he has successfully represented a horseback rider injured when a motor vehicle struck her horse after crossing the centerline of the roadway. He also represented the estate of a young man killed when a horse broke free from its paddock and ran into his car on a dark unlit road.

Attorney Foti has successfully led 2 cases before the Connecticut Supreme Court, each time changing the law before the state's highest court in favor of the injured victim. In *Allen v. Cox* the Supreme Court broadened a victim's ability to recover due to an attack by a vicious cat and in a very recent success, Attorney Foti was able to change the law to allow an injured victim to have his day in court when a horse bit a young child.

It is only appropriate that Attorney Foti finds himself handling these cases involving animals because in his personal life he has been the owner of numerous animals ranging from cats and dog rescues, birds, horses and even a spider monkey. In his spare time, Attorney Foti enjoys spending time with his wife, Shalin, daughter, Brooke, son Chris, four dogs, five horses and his newest addition, a sun conure parrot. He also works with dog rescue to help find homes for abandoned and or neglected pets.

## IN THE NEWS

### 'Catastrophic' Malpractice Payouts Add Little to Health Care's Rising Costs

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Source Newsroom: Johns Hopkins Medicine

*--Still, study suggests, efforts needed to reduce errors that lead to claims*

Newswise — Efforts to lower health care costs in the United States have focused at times on demands to reform the medical malpractice system, with some researchers asserting that large, headline-grabbing and "frivolous" payouts are among the heaviest drains on health care resources. But a new review of malpractice claims by Johns Hopkins researchers suggests such assertions are wrong.

In their review of malpractice payouts over \$1 million, the researchers say those payments added up to roughly \$1.4 billion a year, making up far less than 1 percent of national medical expenditures in the United States.

"The notion that frivolous claims are routinely resulting in \$100 million payouts is not true," says study leader Marty Makary, M.D., M.P.H., an associate professor of surgery and health policy at the Johns Hopkins University School of Medicine. "The real problem is that far too many tests and procedures are being performed in the name of defensive medicine, as physicians fear they could be sued if they don't order them. That costs upwards of \$60 billion a year. It is not the payouts that are bankrupting the system — it's the fear of them."

Called catastrophic claims, payouts over \$1 million are more likely to occur when a patient who is killed or injured is under the age of 1; develops quadriplegia, brain damage or the need for lifelong care as a result of the malpractice; or when the claim results from a problem related to anesthesia, the researchers found in a study published online in the *Journal for Healthcare Quality*.

Makary and his colleagues reviewed nationwide medical malpractice claims using the National Practitioner Data Bank, an electronic repository of all malpractice settlements or judgments since 1986. They looked at data from 2004 to 2010, choosing a 2004 start date because that is when data regarding the age and gender of patients and severity of injury became available for the first time. The information includes only payments made on behalf of individual providers, not hospitals or other corporations, meaning the number of payouts may be underestimated by 20 percent, Makary says.

Over that period, 77,621 claims were paid, and catastrophic claims made up 7.9 percent (6,130 payouts). The seven-year nationwide total of catastrophic payouts was \$9.8 billion, repre-

senting 36.2 percent of the \$27 billion worth of total claims paid over that time period.

The most common allegations associated with a catastrophic payout were diagnosis-related (34.2 percent), obstetrics-related (21.8 percent) and surgery-related (17.8 percent) events. Errors in diagnosis showed twice the odds of a catastrophic payout compared with equipment- or product-related errors and were associated with a roughly \$83,000 larger payment.

The age of the physician was unrelated to the likelihood of a claim, suggesting inexperience is not necessarily a factor. But 37 percent of catastrophic payouts involved a physician with a previous claim in the database. The largest payout in the study was \$31 million.

Makary says the data suggest that the focus of legal reform efforts should be on doctor protections aimed at reducing defensive medicine rather than the creation of malpractice caps. He says his findings argue for more research to determine what interventions might prevent the type of errors that result in catastrophic payouts, with the overall goal of improving patient safety and reducing costs at the same time.

But real cost reductions, he says, will come from reducing the overuse of diagnostic tests and procedures.

Other Johns Hopkins researchers who contributed to this study include Paul J. Bixenstine, B.A.; Andrew D. Shore, Ph.D.; and Julie A. Freischlag, M.D.

Patient Safety  
Exploring Quality of Care in the U.S.

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