



... *And Justice For All*

A LEGAL NEWSLETTER FROM THE LAW OFFICES OF

Moore, O'Brien, Jacques & Yelenak

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DISASTER IN THE EMERGENCY ROOM



On a bitter cold winter day in 2000, Lynda B. frantically wheeled her husband into the emergency department of a local Connecticut hospital because earlier that day while at work he had suddenly and inexplicably become paralyzed. Her husband Allen B., had gone off to work that morning, as had Lynda without incident. However, shortly before noon, Lynda got a call from Allen's boss informing her that Allen was having some kind of a medical problem. Lynda raced there and discovered Allen was having difficulty moving his arms and legs and could barely stand up. She took him home first, but then rushed him by car to the hospital.

There, Allen was triaged by a nurse and given an injection of a sedative to calm his anxiety before being seen by the emergency department physician. When the doctor came in he first asked Lynda and Allen for a medical history. Being forthcoming, they readily reported that Allen had, years before, suffered from panic attacks which had once or twice manifested themselves as physical ailments. But nothing like the paralysis he was now experiencing. After a physical examination which confirmed near total loss of use of his arms and legs, and blood work, which came back normal, the emergency room physician rushed to judgment in deciding that Allen's paralysis was probably in his head - psychosomatic. Even though the couple insisted that Allen B. had never before experienced paralysis a psychiatric consult was ordered, which consumed nearly two hours of precious time if in fact Allen's paralysis was due to a serious physical condition. Even after the counselor told the emergency room doctor there was nothing mentally wrong with Allen and that his anxiety, under the circumstances, was appropriate the physician insisted on speaking by phone to the psychiatrist on call. In the conversation the psychiatrist said it sounded unlikely that Allen's symptoms were merely a panic attack. Nevertheless, the emergency room doctor, in the ensuing hours, never ordered an MRI scan of Allen's spine or any other tests to look for a physical basis for the paralysis.

It was not until approximately 7:30 p.m. that the emergency room physician thought to contact a neurologist. In that conversation, the emergency room physician described Allen's case as merely psychiatric and did not ask the neurologist to come to the hospital to examine Allen. Although the neurologist said he didn't know what was causing Allen's symptoms, he could not rule out any number of diseases that attack the nerves in the spinal cord. Despite this, the emergency room doctor still did not order any further testing and instead attempted to reach Allen's primary care physician. When it turned out that the doctor was not available, the physician on call (who had never seen Allen before) was reached. He was told, incorrectly, that the neurologist had ruled out any neurological cause of Allen's paralysis. Therefore, Allen was admitted not to the intensive care unit but to a regular floor where the nurses were fewer and not as highly trained. At approximately 7:30 the next morning, Allen was discovered unconscious, brain damaged and in an irreversible coma. He was transferred to another hospital where an MRI diagnosed him as suffering from a neurological disease of the spine known as transverse myelitis. After four months, life support was withdrawn and Allen died.

Moore, O'Brien, Jacques & Yelenak filed a medical malpractice/wrongful death suit against the emergency department, the neurologist and the on-call doctor alleging that the emergency department bungled the diagnosis by failing to timely order appropriate testing, that the neurologist and the other doctor should have come to the hospital and ordered an MRI and steroid treatment and that Allen should have been placed on mechanical respiratory support. "This is a case where a man needlessly died because three doctors felt that taking responsibility for the patient was someone else's job," says partner Stephen Jacques. "Each doctor felt that Allen was the other doctor's problem." After four weeks of jury selection the case went to trial and was ultimately resolved for \$2,559,375.

HOW TO SAVE \$ ON YOUR AUTO INSURANCE

In these lean economic times you may be tempted to reduce your car insurance by cutting down on the amounts of your coverage. However, there are equally effective methods for reducing rates while at the same time providing your family with adequate protection. While you can't do much to change your Zip code, gender, age or marital status, all of which affect your insurance rates, you can do the following things, which can pay big dividends rate-wise.

- * Compare rates every year or two;
- * Cancel collision and comprehensive coverage on cars five years or older;
- * Keep your deductible as high as you can afford;
- * Take a defensive-driving course, which may cut your rates by as much as 15%;
- * Ask your insurer for a discount which may be available for groups, households with two or more policies or teen drivers with good grades;
- * Place your auto and homeowners' policies with the same carrier for a potential discount of 10%-15%;
- * Choose a car less popular among thieves (check www.hwysafety.org.) and a model that costs less to repair if damaged in an accident; the insurance industry actually assigns numerical ratings to vehicles based upon repair costs statistics.

HIDDEN HAZARDS IN YOUR CAR

Although modern motor vehicles are crash tested and feature such safety devices as air bags and antilock brakes, with the advent of SUV's and the increase of speed limits on highways a new motoring hazard places families at risk and has caused thousands of injuries per year. People have turned their super-sized vehicles into mobile living-rooms where hidden dangers abound. These include a variety of objects which, in a crash, can become deadly projectiles: Everything from the obvious such as toolboxes, cell phones, laptop computers, toys and even unrestrained backseat passengers and pets. According to a federal agency, in 2002, more than 12,000 children were injured by loose items that became airborne in even low-impact accidents. According to the study, people have suffered serious injury from the seemingly most benign items.

Of course, the first step toward eliminating deadly hazards is to recognize them and remove as many as possible from your vehicle. For those items which must remain, the following steps should be taken:

- * Utilize all secured storage spaces, such as your glove compartment, front arm rest or center console compartments for storage of cell phones and CD's.
- * Although your SUV, station wagon or minivan may have a cargo net, such devices are meant to secure items from shifting during normal driving, not collisions. Therefore, you should add a crash-tested cargo barrier that bolts into the frame. Also, always use safety features such as grocery-bag hooks and tie-down anchors.

- * Although keeping the kids entertained during trips can be a nerves saver an unsecured TV, soda bottles and even a hardcover book can cause fatal injury. The solution is to utilize compartments such as backseat and door pockets and allow only soft books and toys in the vehicle.

Moore, O'Brien, Jacques & Yelenak Helps 9/11 Victims Recover More Than \$5,000,000

We are gratified to report that Moore, O'Brien, Jacques & Yelenak, as part of the Trial Lawyers Care program, has recently helped three Connecticut families who lost loved ones in the September 11th terrorist tragedy recover more than \$5,000,000 in compensation. Our firm, in helping one family recover more than \$3,500,000, has taken no fees on any of the cases for our efforts. "Its simply part of what so many citizens have done to give something back to the community," explains Garrett Moore.

It's A New Attorney

We recently added an eighth attorney to our office family. Twenty-six year old Chris Flood, the younger brother of Attorney Brian Flood has joined us and will be representing clients. Chris is a graduate of Quinnipiac School of Law and has recently passed the bar exam.

Tort Reform Hypocrites - Join Now To Fight Them

No one likes a hypocrite. However, you would be hard pressed to find more hypocrites than in the tort reform drive to place caps on medical malpractice victims compensation. Lawmakers, lobbyists and even journalists who complain about lawsuits turn a blind eye when they or family members are hurt and seek compensation from wrongdoers. Corporations that find the 'shortchange the victim' movement are no exception either: while supporting efforts to shield themselves from liability for harming consumers, big companies do not hesitate to go to court to advance their own interests.

Perhaps the most glaring hypocrisy occurred recently in California where a surgeon won a \$4,000,000 verdict because a light fell on him during surgery. Yet under California medical malpractice cap law a child dying at the hands of a careless surgeon would be entitled to only \$250,000. Apparently, the medical industry feels an injury to a doctor is worth 18 times that of the life of a child.

It gets worse. As Texas governor, George W. Bush was one of the tort reform movement's biggest proponents. However, when it came to problems involving his own family, Bush headed straight to court. In 1999, Bush sued Enterprise Rent-a-Car over a minor fender bender involving one of his daughters in which no one was hurt. Although his insurance company would have covered the repair costs, Bush sought additional money from Enterprise, which had rented a car to someone with a suspended license. The case settled for \$2,500.

Similarly, U.S. Senator Rick Santorum, who has supported limits on consumer rights to compensation in courts, supported his wife's 1999 medical malpractice lawsuit for \$500,000 against her chiropractor. At trial, the Senator testified that his wife should be compensated for pain and suffering caused by a botched spine adjustment because

she could no longer accompany him on the campaign trail. A year later a judge set aside the \$350,000 verdict, deeming it excessive.

The news media is not immune from hypocrisy either. As viewers of T.V.'s 20/20 Show know, there are a few things that irk host John Stossel more than people who file lawsuits. However, when Stossel was punched by a professional wrestler in 1986 after implying that wrestling was a fakery, Stossel sued and received \$20,000 for his pain and suffering.

For years, Aetna Insurance Company was a leader in the push for tort restrictions. However, Aetna did not hesitate to use the courts when it came to seeking money it had wrongly paid one of its corporate customers. Similarly, film giant Eastman Kodak used the courts to obtain a \$12,000,000 verdict against Goodyear Tire And Shell Oil for an infringement of one of Eastman's patents. Exxon has favored restrictions on consumers suing their own insurance companies for unfairly denying claims. Yet when insurer Lloyds of London refused to pay Exxon \$250,000,000 for losses it suffered in the Valdez oil spill, Exxon...yes, sued its own insurance company!

In the ongoing medical malpractice reform battle in Connecticut, while the medical industry aggressively lobbies for damages limits Connecticut ranks 40th among states in disciplining doctors who commit malpractice. An estimated 6,000 to 10,000 Connecticut citizens are negligently injured during medical care each year. We urge our readers to join the fight against restricting patients' rights by becoming members of Connecticut Patients' Rights. The goals of CPR including removing offending doctors, enabling consumers to learn the malpractice history of physicians and passing whistleblower legislation to protect healthcare workers who report safety risks or wrongdoing. CPR can be contacted at P. O. Box 231335, Hartford, CT 06123 or online at www.neprg-ct.com.

CASEFRONT

Moore, O'Brien, Jacques & Yelenak is currently litigating or 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.

• *Tractor-Trailer Vs. Stranded Motorists* *\$1.23 Million Award*

In August 1998, brothers Chris and Andy G. were traveling home when their vehicle ran out of gas on the highway. Upon returning with a gasoline can the brothers suddenly saw a tractor-trailer bear down on them in the break-down lane. The driver, having fallen asleep, slammed into their car, causing Andy to tumble 10' down an embankment and suffer injuries to his neck and back. Chris rolled 50' landing upside down in a tree and suffered head injuries and nerve damage. He subsequently developed reflex sympathetic dystrophy of his legs. To control the pain, a morphine pump was implanted into his abdomen and an electrical stimulator was implanted in his spinal cord. At arbitration, Garrett Moore and Gregory O'Brien obtained a \$30,000 award for Andy and \$1.2 million for Chris.

• *Failure to Diagnose Stroke* *Costs \$800,000*

In 1999 our client, when hospitalized for pneumonia, reported symptoms just before her release suggestive of an imminent stroke. Despite her reporting this to the nurses and to her doctor the symptoms were dismissed and she was discharged. At a subsequent appointment her doctor wrote off her complaints as a sinus problem. Seven days later she suffered a debilitating stroke that required her to give up her job as a bookkeeper. Attorney Stephen Jacques filed suit and the case settled for \$800,000.

• *\$490,000 for Stool* *Collapse Verdict*

Our 63 year old client, a supervisor at an aircraft company, suffered a worsening of his arthritic hip condition when a stool on which he was sitting collapsed and he crashed to the floor. His bills for medical treatment totaled only \$5,000 but his doctor reported that the accident exacerbated his arthritis to the point where he could no longer work at his \$40,000 per year job. Attorney Greg O'Brien sued the stool manufacturer who argued at trial that our client would have probably retired in two years anyway. The jury disagreed and returned a verdict of \$490,000.

• *Jury Awards \$868,000 to* *Injured Pedestrian*

In 1999 our 12 year old client was enroute to an orthodontist appointment in Southington when she was hit by a car at an intersection. Because the crossing did not have a pedestrian walk signal, the girl looked to motorists for assistance in crossing the busy street. When waived across by a motorist the youngster ran into the side of a car coming from the opposite direction. In the accident she suffered a mild traumatic brain injury. Because no settlement offer was made by the defendants Bill Yelenak tried the case and won the girl \$868,000.

• *Failure to Diagnose Aneurysm;* *\$500,000 Settlement*

When our 66 year old client was admitted to the emergency department of a central Connecticut hospital he was quickly diagnosed by a CT scan as suffering from an expanding abdominal aortic aneurysm (a bubble on a major blood vessel wall). Because this was on a weekend, the hospital was staffed only by residents. However, the on-call surgeon was contacted and orders were entered to admit the decedent for surgery on Monday. Twelve hours later the aneurysm burst and the man died. Attorney Brian Flood filed a lawsuit against the surgeon and the hospital for failing to perform an emergency operation on the same day of the man's admission. The defense was claiming that the decedent's signs and symptoms did not warrant immediate surgery and that if they did, it was the other defendant's fault. Four weeks prior to trial the case settled for \$500,000.

• ***Death from Carbon Monoxide
Results in \$716,000 Settlement***

Our 30 year old client was renting, along with friends, a house for weekend ski trips to Vermont when overnight, because of faulty problems with the heating system in the house, our client and one of his friends died from carbon monoxide poisoning. Another friend suffered catastrophic injuries but survived. A lawsuit was brought in the federal court in Vermont against the landlord, the manufacturer of the heating system and two contractors who installed it. Despite the limitations in Vermont on recoverable death damages a day-long mediation by Attorney Joe Foti yielded \$716,000.

• ***\$85,000 Arbitration Award for
Motor Vehicle Accident Injuries***

In 1995 our client, a passenger in a car operated by a former classmate, was injured in an accident while the two men were enroute to a school reunion. As a result of impact with a retaining wall our client suffered multiple scalp lacerations and a whiplash injury to his neck. In a lawsuit against the driver the

the insurance company offered \$40,000 to settle the case. However, Attorney Greg O'Brien decided to arbitrate the matter and obtained an award of \$85,000.

Moore, O'Brien, Jacques & Yelenak
700 West Johnson Avenue
Cheshire, Connecticut 06410
(203) 272-5881