

... And Justice For All

A LEGAL NEWSLETTER FROM THE LAW OFFICES OF

Moore, O'Brien, Jacques & Yelenak

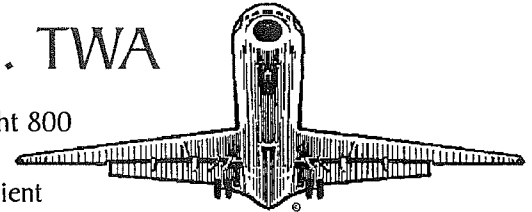
SPRING 1997

Our New Partner...

Since our last newsletter the firm has added a new partner, William P. Yelenak. Prior to coming on board, Bill was a partner at Carmody & Torrance where he practiced for 17 years in the fields of personal injury, product liability and construction litigation. Bill has also been instrumental in pursuing on behalf of hundreds of plaintiffs the State Police wiretap case which has received extensive media coverage. He also tried what is believed to be one of the longest (one year) federal court trials in Connecticut involving claims arising from the construction of a water treatment plant. In that case, Bill's client recovered \$8.1 million.

Bill lives in central Connecticut with his wife, Joyce and sons Billy, 14, and Bobby, 12.

Moore, O'Brien, Jacques & Yelenak VS. TWA



In the early evening hours of July 17, 1996 the world was informed that TWA Flight 800 enroute to Paris with 230 people aboard exploded just minutes after take-off from New York's JFK Airport. All aboard the flight were lost, including our 40 year old client from Connecticut. Most tragically, at the time of the disaster our client was on his way to Paris, the City of Light, to propose to his long time sweetheart. He had a 1.6 carat diamond ring in his pocket. And although he never reached Paris, the engagement ring was miraculously found by salvage divers and turned over to the FBI. The ring and his fiancée were ultimately united thanks to the efforts of FBI Assistant Director James Kallstrom, who headed the FBI investigation of the crash.

Although our client and his fiancée were never joined in marriage, his fiancée was appointed an administrator of our client's estate. Upon her appointment, she contacted Garrett Moore, of Moore, O'Brien, Jacques & Yelenak about filing a wrongful death lawsuit against those ultimately found responsible for the airline tragedy. Our firm has taken the case and, in consultation with the FBI and Federal Aviation Administration, has taken up the cause of determining who was responsible for the crash.

"Since the accident the news has been filled with every imaginable scenario," says senior partner Garrett Moore, "There is the missile theory, which has been largely discredited, the on-board terrorist bomb theory and the mechanical failure theory." Although none of these theories has been ruled out by investigating agencies, Moore believes that the cause of the crash will eventually be found to be an explosion within the center fuel tank. "There are two possibilities for mechanical failure as a cause of the accident," Moore explains. "The air conditioning units, which are located below the center fuel tank, may have heated the normally safe mixture of fuel and air in the tank to a dangerously high temperature. The National Transportation Safety Board has debris that shows damage consistent with an explosion within the fuel tank. The other possibility is that a flaw in the fuel pump that runs through the tank allowed static electricity to build up. This resulted in a spark that ignited the fuel fumes in the tank."

Moore also explained that as early as 1972 the Federal Aviation Administration proposed requiring airlines to implement a procedure that would have prevented fuel tank explosions. "The aviation industry successfully lobbied against the procedure, which flushed explosive vapors from fuel tanks. They claimed the procedure was unnecessary and too costly." Fortunately, Moore says, as a result of the TWA crash aviation officials are taking a new look at the idea.

Just two months before the TWA disaster a ValuJet airliner crashed in the Florida Everglades killing all 110 people aboard. That crash was also caused by careless safety practices. Moore, O'Brien, Jacques & Yelenak represent the family of a San Diego Chargers football star and his wife who perished in the crash in a lawsuit against ValuJet. "Hopefully sooner rather than later, and perhaps because of these enormous lawsuits, the commercial aviation industry will wake up to its responsibilities to the air traveling public," Moore said.

You, Your Family And The Law

Special Considerations When Taking A Cruise -- Don't Miss The Boat!

With the summer months rapidly approaching more than eight million people will board luxury ships for ocean cruises. Unfortunately, not every passenger's experience is destined to be as enjoyable as a voyage on the Love Boat. Each year thousands of tourists wind up being victims of on-board and portside accidents, crime or wind up being temporarily stranded because of mechanical malfunctions or bad weather. Fortunately, there are a number of simple precautions travelers can take to eliminate or minimize potential problems.

- **Avoiding Accidents.** The major cause of shipboard accidents is carelessness, most frequently associated with drinking or, with children, lack of supervision. The simple rule is that if you're going to drink while on a cruise do not participate in the vigorous recreational activities available and by all means, avoid the swimming pool. Make sure children are supervised at all times, especially during recreation. Portside, the same rules apply. Arguably, a cruise line might be responsible for serving a passenger too many drinks or for failing to eliminate on board dangers to children; however, it is only rarely that a cruise line will be held liable for accidents in a port.

- **Avoiding Crime.** Law requires cruise lines to warn passengers of reasonably foreseeable risks, including crime, on board and in ports. The most common crime that befalls cruise passengers is theft and robbery. Therefore, all valuables should be given to the ship steward for safekeeping at the start of the voyage and, when in ports, valuables should be left on board or, in the case of expensive cameras, concealed as much as possible. Most importantly, read and take seriously the warnings issued by cruise lines about crime and other risks. The ship is not responsible for accidents if they warned you about it.

- **Avoiding The Desert Island Experience.** While most people dream of being adrift on a tropical island, the reality, whether it occurs on an actual island or on your disabled cruise ship, is very different. It is not unusual for a ship to be delayed in a distant port because of mechanical problems or bad weather. Most potential mechanical problems should be anticipated by the cruise line. If you wind up stranded, the line may be responsible to compensate you and your family for all reasonable losses, including wage loss, alternative transportation and inconvenience. You may also recover money if bad weather is the culprit. Despite cruise line claims, bad weather can almost always be foreseen. With weather satellites and other sophisticated technology, brewing hurricanes can be spotted days or weeks in advance. Cruise lines, however, are loathe to cancel or postpone cruises for profit reasons. Fortunately, you too can and should obtain advance weather information. If questionable weather is on the horizon contact the travel agent who booked your cruise and the cruise line directly for advice. This way responsibility for the trip is not solely yours if weather spoils your vacation.

- **Advance Planning.** In addition to checking weather, if you or a family member has a medical condition or is elderly have a physical checkup before the cruise. Also be certain to pack an adequate supply of needed prescription drugs. In addition, inform the cruise line in advance of medical conditions or needs in case of emergency.

- **Doing Your Homework.** In selecting a cruise, research each line you are considering. Ask for literature and incident report and security information on each line from your travel agent. And most importantly, check with friends about their experiences. They may not have experienced a disaster with a particular cruise line, but the experiences of others may help you avoid a ship with bad food, bad service or substandard cleanliness.

- **Making A Claim.** If while on a cruise you fall victim to an accident or crime and believe it was the fault of the cruise line, see an attorney immediately. Many cruise tickets contain a provision requiring passengers to notify the line of the intent to make a claim within six months after the incident. Your ticket may also require you to bring a lawsuit within one year of the incident. Most tickets also state that a lawsuit against the cruise company must be brought in the country where the cruise line is headquartered which could be thousands of miles from where you live or even in a different country.

When Loaning Your Car To Another Person -- Beware!

It often seems that the most innocent thing is to loan your car to someone else, particularly a family member, for even a short trip to, say, the supermarket. While we by no means suggest you never loan your car, care should be taken beyond merely considering the driving habits and history of the person to whom your car is being entrusted. In Connecticut, automobile insurance attaches to the car being driven at the time of an accident. Therefore, if you lend your car to someone and he or she has an accident, it is you and your insurance company, in addition to the driver, who may wind up on the receiving end of a claim or lawsuit. In Connecticut, there is even a statute that presumes if you loaned your car to someone else, a family member or otherwise, that person, at the time of the accident, was acting on your behalf, and you can be sued. It is even possible that you could be held responsible for an accident where you have loaned your car to a friend or relative and then, unknown to you, that person permits someone else to drive the car. So, before lending your car, first try to be certain the person to whom the car is loaned is a responsible and insured driver. Second, give that person express instructions that they are not to let anyone else drive the car.

SAFETY ALERT

Danger Lurks in Shallow Water. In 1989, 8,000 people were seriously injured after striking the bottom of a swimming pool when diving. Another 8,000 were injured by hitting the sides of pools. Nearly 60% of these injuries resulted from a

headfirst dive into shallow water. While common sense suggests that these divers were simply careless, there is frequently nothing in the appearance of a pool that gives warning of the catastrophic consequences that may result from a dive. Nearly 1,000 people every year in the United States suffer either fatal head injuries or permanently paralyzing spinal injuries from diving into shallow water.

To dive safely, a person must adequately judge the water's depth, calculate the diving angle and complete the entire dive without striking the bottom. According to studies, surprisingly, most people do not understand the complex factors involved in diving and, thus, have a false sense of safety when diving into shallow water. This misapprehension is learned in early childhood. When children, we almost never got hurt by striking the bottom when diving in shallow water because we weighed very little then and were too short to hit the bottom at threatening speeds. These dynamics are totally different as adults. Further, factors such as waves and ripples on the surface, the color of the pool and the quality of your eyesight can interfere with accurate depth perception. Most people perceive water as a soft, inviting cushion that will absorb the impact of their dive. The average swimmer does not appreciate how slight a force can catastrophically injure the spinal column and cause paralysis.

The following simple and common sense safety rules will help protect you and your family from diving disasters: (1) Never dive into an above-ground pool. Above-ground pools are never of sufficient depth for a headfirst dive.

(2) Never dive into water unless you firsthand know its depth and what is under the water. Many diving tragedies occur when people rely on depth information from others and strike a submerged object such as a rock or log. (3) Never dive into a crowded pool even if the depth is sufficient. A major diving hazard is other swimmers. Our firm has handled cases of catastrophic injury where although the diver knew the depth was sufficient he either dove into another swimmer or, attempting to avoid a swimmer, modified the dive and hit either the bottom or side of the pool. Crowded pools are no place to dive.

(4) Heed warning signs. If a sign prohibits diving, don't dive. The reason for the prohibition may not be stated, but there is a good reason and your life may depend on it. (5) Never drink and dive. Many diving tragedies occur when poolside partygoers lose their inhibitions and common sense and pay for it for the rest of their lives.

JURY DUTY AND YOU

If you have registered to vote in Connecticut or have a driver's license, chances are at some point you will be randomly selected and summoned to report to your local courthouse for jury duty. Upon receiving the summons, the first thing you should do is tell your employer that you have been selected to be a potential juror. Full-time employees are paid their regular wages for the first five days of jury service. Jurors who serve more than five days are paid \$50 per day for each day after the fifth day. Jurors not employed full-time are reimbursed for necessary out-of-

pocket expenses such as mileage, parking, and child or family care costs.

Connecticut is one of the few states which still selects jurors by individual questioning, or voir dire. This is a procedure where the lawyers in the case in which you may serve will ask you questions to learn of any prejudices you may have about their case. It may be a criminal or a civil (car accident, contract dispute, etc.) case. You will be questioned by the lawyers outside the presence of other potential jurors. In Connecticut, you can be selected to serve on a jury only on the day you report. If you are not selected on that day you will be released from your obligation to report for jury service for at least two years. If you are selected to be on a jury, you are required to serve the length of the trial. Court personnel and attorneys take great pains to make serving a worthwhile experience. Good jurors are vital to our judicial system. If called for jury duty consider it an opportunity to be an important part of our justice system. You might enjoy it.

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.

• *Workplace Injury Results in \$568,000 Settlement*

On September 21, 1993 our client was working on the property of Remington Products in Bridgeport servicing an air compressor. While performing the work, he was hit by two heavy steel conveyor belt parts that had been precariously placed against a wall by Remington employees. The client was taken to the Remington first aid station where he complained of only minor injuries. However, within a few days his symptoms worsened and he obtained treatment from an orthopedist and a neurologist because of back, neck and knee problems. At the time of the accident, the client was earning \$36,000 per year. He was unable to find a job after the accident although he was re-trained in computer science. Remington defended itself by saying the falling conveyor parts hit the compressor machine the client was working on rather than the client. Our firm obtained a structured settlement for the client in which he received a six-figure lump sum payment plus monthly tax free income until retirement age. The total value of the settlement was \$568,000.

• *Breach Of Insurance Policy Results In \$225,000 Settlement*

On September 5, 1994, our client set his house in southern Connecticut on fire. He died in the fire. He was found by firefighters reclined in the bathtub on the second floor adorned in religious clothing and medallions. The entire house and back yard were cluttered with religious statues, posters and other religious items.

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Our client had taken out a fire insurance policy on the house with a local insurance company. Following the fire, a claim on behalf of the client's estate and his ex-wife was made under the policy. The insurance company denied the claim because the client had purposely set the fire. However, according to a Connecticut Supreme Court case, if because of a mental condition a person does not know what he is doing, the insurance company should pay for the loss. In the lawsuit, our firm presented numerous witnesses, including neighbors and the client's clergyman, who attested to his impaired mental state. Three weeks before trial, the insurance company settled the case for \$225,000.

**• Accident At Home Depot Results
In Jury Verdict of \$100,400**

On October 8, 1991, our client was in the Home Depot store in Berlin purchasing insulation for a home remodeling project. The insulation was stacked in bundles to a height of twelve feet. Some of the bundles had been opened by previous customers, which made the stacks unstable. As our client was discussing her purchase with a store employee, a 75-pound bundle of the insulation fell and struck her in the back of her head and shoulders knocking her to the floor. The client ob-

tained medical treatment with an orthopedic surgeon and a chiropractor. But more than five years after the accident she continued to suffer from severe muscle spasms. Medical bills totalled \$6,700. Although Home Depot offered a small sum to settle the case, Garrett Moore tried the case and the jury returned a verdict of \$100,400.

**• Veteran's Administration Hospital
Negligently Permits Psychiatric
Patient To Escape**

Steve Jacques of the firm recently tried a case in Federal Court involving a Vietnam era veteran with suicidal tendencies who was permitted to escape from the Veteran's Administration Medical Center in West Haven. Following his escape, the veteran killed himself. On three previous occasions the veteran attempted suicide. As a result, he was confined to the psychiatric ward of the VA hospital. However, hospital psychiatrists placed the veteran in the care of an inexperienced psychiatric doctor. The doctor permitted the veteran to leave the locked psychiatric ward in the company of another psychiatric patient to have a cigarette. While outside, the veteran escaped and killed himself. One million dollars in compensation has been sought. The court's decision is expected in the near future.

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