



... And Justice For All

A LEGAL NEWSLETTER FROM THE LAW OFFICES OF

Moore, O'Brien, Jacques & Yelenak

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FATAL ERROR IN THE E.R.

Just a few weeks before Christmas 2002, 39 year-old Debbie C. was awakened by the sudden onset of the worst headache of her life. Her husband, Jim, took her immediately to the emergency room of a western Connecticut hospital. By the time they arrived, Debbie was also suffering from nausea and a stiff neck. These were classic signs of a subarachnoid hemorrhage - a bleed from a vessel in the brain which requires immediate surgical intervention - to prevent death.

The doctor ordered blood tests and a CT scan, which were negative; and, most importantly, a spinal tap to determine whether there was blood in Debbie's cerebrospinal fluid from a bleeding vessel in her brain. It was 10:00 a.m. by the time the tap was performed. And by that time another E.R. physician had come on duty. A needle was inserted in Debbie's spine and fluid was withdrawn. The fluid was sent to the lab for analysis.

The key to whether or not Debbie had a brain hemorrhage was the analysis of the fluid that had been withdrawn from her spine. If it contained a high concentration of blood after being spun in a centrifuge that would establish that the blood was from a ruptured vessel in her brain. If after spinning down the blood cleared, it would mean that the blood was from the spinal needle having nicked a small vessel in Debbie's back: an insignificant "traumatic tap." What the emergency department physician didn't know was that the lab, instead of determining if the blood had cleared by examining the fluid under a high-powered microscope, had simply held it up to a light bulb. Just as bad, the blood was allowed to sit for hours before it was taken to the lab for analysis - a delay that further skewed the validity of the results.

When the lab misreported that the blood had cleared it was concluded that the blood was from the harmless needle puncture in her spine. In fact, the blood was from a bleed in Debbie's brain.

Debbie stayed in the emergency department that afternoon. And although pain medication had eased her headachd, her nausea and vomiting persisted. This caused a delay in performing a sophisticated MRA imaging study of Debbie's brain. The MRA was not performed until 5:30 p.m. By that time, another emergency room physician had taken over. At 7:00 p.m. the new physician told Debbie and her husband that the MRA was negative for a brain bleed. That, combined with the (falsely) negative spinal tap, probably meant that Debbie was merely suffering from a migraine headache. She was discharged with instructions to follow up with her primary care doctor.

Actually, the MRA showed a leaking blood vessel in Debbie's brain. The radiologist had misread the MRA.

Debbie followed up with her family doctor the very next day. However, he had no reason to doubt the validity of the hospital's diagnosis. Two weeks later Debbie collapsed and was taken to a different hospital where it was determined that the brain aneurysm had burst and flooded her brain with blood. Emergency neurosurgery was performed and seemed initially to be successful. However, because of the amount of blood that had leaked into Debbie's brain and had remained there for weeks, her condition deteriorated and she died the day after Christmas.

Following her death Debbie's family doctor asked the radiologist to take a second look at the MRA film. After reviewing it, he reported that upon closer scrutiny he could see the aneurysm.

Debbie's husband contacted Moore, O'Brien, Jaques & Yelenak to investigate her death. A lawsuit was filed against the physicians who had misdiagnosed Debbie during her 14-hour emergency room stay. "If just one of these multiple errors had been caught in time Debbie would be alive today," says partner, Garrett Moore. "Instead, they let her walk out the door thinking it was just a migraine." This case is scheduled to go to trial in Waterbury in May.



DENY, DELAY, DEFEND

We applaud CNN for its recent airing of its 18-month investigation of how automobile insurers handle minor impact accidents. Perhaps not surprisingly they discovered that if you're hurt in a minor car crash it's likely you will be in for the fight or your life to get the responsible insurance company to pay what you should get for your injuries. CNN focused on accidents involving little visible damage to the vehicles involved and reviewed more than 6,000 company documents and court records; they also interviewed former insurance company insiders and accident victims. What they found was a conspiracy by some of the biggest insurance companies that forces the injured victim to either take pennies on the dollar or endure years of costly litigation.

One former attorney for a major auto insurer revealed that the companies' strategy was to make fighting the company so expensive and time-consuming that lawyers for accident victims would start refusing to help clients. Some companies offered victims as little as \$50 to settle their claims! And those who refused quick and cheap settlement offers were portrayed in their claims as fraudulent profit-seekers. In truth, the real motive was the insurance companies' bottom line profits.

This "beat up the victim" strategy was first developed in the mid-1990's with the assistance of a major financial consulting firm whose goal was to lower insurer's expenses and increase profit. The strategy, according to a former employee of two top insurers, relies upon the three D's - deny the claim, delay settlement of the claim and defend against the claim all the way to the courthouse. Intimidate the little guy and wear out his attorneys.

When requests were made by CNN for interviews, the companies predictably declined and, instead, offered a carefully scripted statement that customer service was paramount and that all claims were handled promptly and fairly. Additional information on CNN's investigation are available online at:

www.cnn.com/2007/us/02/09/insurance.hardball
and
www.trialguides.com.

CRUISE SHIP DANGERS – AND HOW TO AVOID THEM

Summer is nearly here and, with it, more than 9,000,000 Americans will be taking cruises. The ads abound for carefree cruising in the sun to exotic destinations. However, what's downplayed is what may happen if you get sick on board and need medical treatment.

There are no good estimates of how many medical

emergencies occur on cruise ships because cruise lines aren't required to release that information. However, what is known is that medical care on a luxury liner is woefully limited. The ship's infirmary is equipped primarily to stabilize a patient until treatment can be rendered elsewhere. And because of this, people who experience a medical emergency on board are routinely transferred from the ship to a hospital in the nearest port. This happens even when the mainland medical facility in a foreign country is substandard. Further, medical patients, once they leave the ship, usually get little or no help from the cruise line in locating local competent medical providers.

In addition, if a sick passenger receives bad initial care on board, there may be little or no later recourse. This is because shipboard doctors are technically not employees of the cruise line and may be foreign residents. As such, they can't be held to American medical standards or sued for damages in the United States.

Fortunately, in the past two years onboard medical care has improved at least to the point where some cruise lines have accepted the medical standards of the American College of Emergency Physicians, which requires round the clock available care and basic pharmaceuticals and equipment, including defibrillators. Nevertheless, cruise ships police themselves, which makes finding out which ones are up to par very difficult.

The following are simple safety tips if you are planning a cruise:

What To Do Before You Sail

- Because ships don't usually stock a full range of drugs, pack all your prescription medicines as well as needed over the counter medicines.
- Bring a completed information form available at www.cdc.gov.
- Call the cruise line to discuss any specific medical concerns you have or ask how the ship would handle such an emergency.
- Buy a telephone credit card or prepaid long distance phone card so you will be able to call your doctor from anywhere.

If You Get Sick On Board

- Go immediately to the ship's doctor, both for medical care and so that later it can't be claimed that you didn't report the accident or injury.
- Be clear and specific on any requested incident/illness forms to avoid the defense that you failed to provide adequate information.
- Bring people with you to the ship infirmary to be witnesses.
- Keep precise notes on what happened and, if an accident, take photos of where it happened.
- Ask for copies of your medical records and get names of the doctor and others who treated

you; this may be the best evidence if you need to make a claim.

Cruises can be a great time. But remember that once you are on board, you're in the middle of the ocean or docked at a tiny island. That's not a good place to get sick.

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.

\$1,000,000: FATAL ACCIDENT IN ITALY

Partners, Garrett M. Moore and Stephen L. Jacques recently obtained a \$1,000,000 settlement on behalf of three clients who were involved in a fatal motor vehicle accident in the summer of 2005 on the Italian island of Sardinia. At the end of vacation, two middle aged couples were enroute from their hotel to the airport when they got lost and made a U-turn on a local highway. The vehicle was hit by a speeding van driven by an Italian physician who sustained only minor injuries. However, in the other vehicle, the driver, a prominent Connecticut attorney, and his front seat passenger, a prominent university president, were killed. In the backseat, their wives fortunately sustained non life-threatening injuries. We represented the deceased front seat passenger and his wife. Following an investigation of the accident and prior to filing a lawsuit, we settled the case with the attorney's insurance company for the available policy limit of \$1,000,000.

BOTCHED KNEE SURGERY \$850,000

In November, 2000, our client underwent knee surgery for a ligament tear so he could return to work as a Department of Corrections officer. However, during the immediate post-operative period he developed compartment syndrome - a sudden abnormal increase in pressures in the flesh of his calf. The orthopedic surgeon negligently failed to timely diagnose and treat the condition and, as a result, our client had most of his calf muscle removed. Two years later he underwent an ankle fusion. Although he was never able to return to work, he collected Workers' Compensation for years. Two weeks before trial, and with the doctor's insurance company teetering on the brink of bankruptcy, partner Steve Jacques settled the case for \$850,000 plus a

waiver by the State of the \$643,000 Worker's Compensation lien.

MULTIPLE CAR PILE-UP ARBITRATION YIELDS \$375,000

In early 2005 our client was in a high speed multi-car crash in Milford. His initial neck and back pain resolved after a few months, but his mild traumatic brain injury led to chronic sleep disturbances that significantly interfered with his professional and personal life. Throughout the lawsuit, the insurance company for the defendant driver claimed that a "phantom vehicle" had caused the accident and that the client's sleep problems were unrelated to the accident. Partner Greg O'Brien retained renowned medical experts in neurology and neuropsychology to give testimony on the extent of the brain injury and its connection to the accident. Following a two-day arbitration, an award was entered in our client's favor for \$375,000.

REAR-END MVA YIELDS SOUTH AMERICAN IMMIGRANT \$800,000 SETTLEMENT

Our client, a hard working Argentinean woman, was living the American dream as the founder of her own commercial cleaning company, when she was rear-ended by a careless driver. She suffered a herniated disc in her neck that required surgery and because of her resulting physical limitations, she also lost her company. Despite defendant's contention that the surgery and work disability were due to back problems that pre-dated the accident, partner Greg O'Brien pressed the defendant's insurance company to an \$800,000 settlement.

TRUCK ACCIDENT ON I-95: \$750,000 MEDIATION SETTLEMENT

In October 2003, a crash with a truck on I-95 in Bridgeport put our 55 year-old client in the hospital with neck and back injuries and debilitating vertigo. Although the trucker claimed that his brakes gave way without any prior warning and caused the accident, partner Joe Foti discovered evidence that the trucker had told his employer weeks before on at least one occasion of braking problems. Our client underwent a lumbar fusion and lengthy rehabilitative treatment which, combined with his wage loss, brought his out-of-pocket expenses to \$183,000. At mediation, attorney Joe Foti won our client \$750,000.

\$1.8 MILLION FOR DEATH OF RETARDED WOMAN

On June 11, 2005 Connecticut Mental Health workers left our 52 year-old retarded client unattended in a van while they went on a shopping spree at a discount store. Our client, who had been in the care of DMR for nearly 20 years choked to death on fast food in the back seat. The three workers were criminally charged and in the civil suit the case was settled by partner, Garrett M. Moore for \$350,000 plus a waiver of the State's \$1.45 million lien for the costs of its non-negligent care over the years, for a total value of \$1.8 million.

**NEGLIGENT SUTURING COSTS
SURGEON \$750,000**

In October 2001 our 61 year-old client underwent intestinal surgery. During the operation the surgeon accidentally stitched part of her intestine to her urinary tract. As a result, our client required six subsequent surgeries over a two-year period, which involved the removal of several sections of her intestine. Practically none of the \$224,000 in medical bills were paid by our client. Partner, Steve Jacques settled the cast for \$750,000.

**RUNNING A RED LIGHT COSTS
DEFENDANT \$69,000**

A Danbury jury has awarded our client \$69,000 against a defendant for injuries he suffered when the de-

fendant ran a red light and broad-sided our 38 year-old client's vehicle. He suffered injuries to the ligaments of his knee, but despite consultations with doctors surgery was never indicated and the medical bills totaled only \$3,900. The defendant's insurance company offered \$25,000 to settle the case but then withdrew it when, months later, our client had a second accident in which he suffered another injury to his knee. Tricia Krupnik let a jury decide. They awarded \$69,000.

**JURY TURNS \$25,000 SETTLEMENT
OFFER INTO \$107,000 VERDICT**

When our client entered an intersection in Bristol with a green light, the last thing he expected was to be T-boned by another care. Although he initially thought he had escaped uninjured, when he awoke the next morning with neck pain he sought treatment. He was out of work for two weeks and had \$5,200 in medical bills - mostly for the physical therapy which improved him to the point where his doctor awarded him a modest 6% disability. The defendant admitted responsibility for the accident and made a settlement of only \$25,000, anticipating that a jury would be unimpressed with our client's injuries. At trial against partner Brian Flood, this mistake cost him \$107,000.

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