

## ... And Justice For All

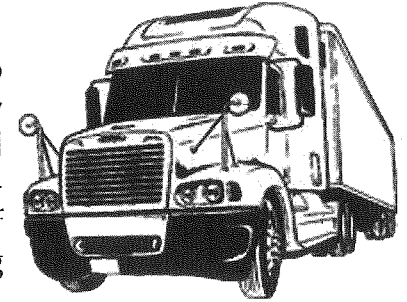
A LEGAL NEWSLETTER FROM THE LAW OFFICES OF

# Moore, O'Brien, Jacques & Yelenak

SPRING 2012

### Cutting Corner Costs Trucking Company \$1.275 Million Dollars

In 2008, construction was well underway on the Interstate 84 exit ramp in Southington. The project involved widening the ramp, which was necessary because of new commercial businesses having opened in the area. Additional traffic was anticipated. Our client, Philip O., was the site surveyor for the project. By late August, the construction was nearly done except for the painting of the lane markings on the ramp. Phil's job as site surveyor included calculating where the lane markings should be.



On the morning of August 29, 2008, the exit ramp was newly opened for traffic coming off of Interstate 84. Phil, finishing up his duties, was standing just off the travel portion of the exit ramp discussing final details with the project foreman. Phil's back was toward the oncoming traffic when a tractor-trailer negotiating the curve hit Phil. It's rear wheels jumped the curb and literally crushed Phil's right foot.

Phil was taken to the hospital where it was initially thought that his foot would have to be amputated. Fortunately, Phil underwent surgery instead, involving bone grafting and hardware placement so that he could walk again. Despite lengthy and painful physical therapy Phil was given a twenty percent permanent partial impairment of his right leg. Due to the force of the accident Phil's left leg was also permanently injured. His medical bills exceeded \$120,000.

Moore, O'Brien, Jacques & Yelenak partners Garrett M. Moore, Sr. and Joseph Foti represented Phil. A lawsuit was immediately filed against the trucking company. However, the defense tried to turn the tables on the facts of the accident. They claimed that Phil himself was responsible because he had been standing with his back toward traffic at a sharp curve in the ramp. The defendant also tried to blame the general contractor for not having provided adequate safety cones for the construction areas. One of the first things Attorney Foti did was take the deposition of the tractor-trailer driver. In the deposition, the driver admitted that he saw Phil standing next to the roadway and that he also saw a line of orange cones ahead on the opposite side of the road. He said he steered the truck to take into account both of Phil and the cones. However, at the last minute, he widened his turn to avoid workers crossing the road. He admitted that he could have stopped or at least beeped his horn. But he did neither. This last-minute maneuver caused the trailer to jump the curb and hit Phil.

Both sides hired engineering experts. But it was Attorney Foti's incisive deposition questioning of the truck driver that carried the day.

Although Phil made a better than expected recovery from his injuries, he continued to suffer daily pain in his right foot. As a surveyor, he is called upon to traverse uneven terrain which has caused him to pass up many lucrative surveying jobs.

The parties tried settling the case through mediation, but it was unsuccessful. The defendant's initial settlement offer was \$200,000. Two weeks before trial, the defendant raised the offer to \$1 million dollars. Phil rejected it. After four days of jury selection the defendant offered and Phil accepted a settlement of \$1,275,00 dollars.

## COMMON SENSE WAYS TO CHILDPROOF YOUR CHILDREN'S SUMMER

As children burst into the long lazy days of summer – on wake boards, roller coasters and all terrain vehicles – parents need to bone up on precautionary measures because injuries to children under fifteen spike during the summer months, resulting in more than 2.5 million emergency room visits and two thousand deaths annually. The good news is that the death rate has decreased by forty percent over the past two decades, thanks to bike helmets, seat belts and alarms that sound when a toddler slips into the pool.

However, much can go wrong short of tragedy. Here are some common sense ways parents can keep kids accident free without spoiling the fun:

- **Prep Your Kids for the Acrobatics:** Kids love the summer sport of wake boarding, which is a combination of water-skiing, surfing and snowboarding. The way it works is a large boat wake bounces the wake-boarder high enough to perform dizzying flips and spins in the air. However, unlike water-skis, the board's binding doesn't always release which causes thousands of ligament tears annually. Experts advise that would-be wake boarders do a few simple exercises beforehand, such as leg presses, lifts and lunges to loosen up. A life vest, of course, is a must.

- **Jump with Caution:** Aerial acrobatics on dry land can be even more dangerous. The common backyard trampoline put 110,000 kids in the hospital in 2010 according to the U.S. Consumer Product Safety Commission. Most of the injuries tend to be broken bones and dislocated joints caused by mid-air collisions, attempted stunts, falling off the trampoline and hitting the frame or springs. As a precaution, only one person should jump at a time – and on a trampoline whose frame is covered entirely with shock absorbing padding and enclosed by a mesh wall to reduce the chance of falling out onto the ground.

- **Don't Count on the Lifeguard:** Drownings are the second-leading cause of accidental deaths in children under age fourteen and most happen when parents lost track of their kids for less than five minutes. It is recommended that families enroll kids in swim lessons, learn CPR and child proof their backyard pool. Alarms that can be worn or placed in the water to sound the alert when a small child goes in have become popular in recent years but they should not be used as the first line of defense. The drowning process is very quick, say experts. For the same reason, parents can't simply rely on the lifeguard at a public pool: it's just one set of eyes.

- **Check Out the Ride First:** You might assume that theme/park rides are held to stringent Federal safety standards. In fact, the feds regulate only traveling carnival rides. Amusement park safety is relegated to the states. And while state laws allow for the recall of an unsafe crib there is little regulation of rides carrying children at 125 miles per hour. Kids should be securely strapped in with both feet on the floor. Safety experts contend that one reason for injuries is that manufacturers of roller coasters and spinning rides typically design the seats safety restraints with the expectation that kids will sit still, hold on properly and behave – which often doesn't happen. Ideally, a parent should be riding too or checking out the ride beforehand to be sure it's appropriate in the first place.

- **Get Them Off the Couch:** After all is said and done, the riskiest behavior many kids will engage in this summer is gorging on junk food while stretched out in front of the TV. Thanks

to a couch potato lifestyle unheard of in previous generations, fifteen percent of teens and kids today are obese. A few years ago the American Medical Association announced blunt new guidelines: kids should exercise for at least an hour a day and watch their diet. Some smart ideas: disband the carpool and find a bike route to summer school or camp. Install a basketball hoop and start a neighborhood tournament. And go swimming as a family during hot summer evenings.

## ADVICE DOCTORS GIVE THEIR OWN FAMILIES

It may – or may not – surprise you that doctors' families often have the inside track when it comes to healthcare. Sometimes it's just plain favoritism. Or it's a question of time: they are so busy they don't think of passing on to patients information they ordinarily share with their families. Here are some medical must-knows that only physicians families and friends may be privy to.

- **Don't Assume the Head of the Department is the Best Doctor.** It seems like a smart decision: you need surgery so you schedule a consultation with a department head at a prestigious university hospital who's written three books. However, that might be a bad move. You shouldn't assume that a department head or chairman is the best physician out there. They may rarely see patients because they're so busy with administrative and academic work. You want someone who is out in the trenches, in the O.R. doing a lot of surgery.

This doesn't mean there aren't exceptions. If your trusted physician highly recommends a department head, go ahead and meet with him; but while you are there be sure to ask how many procedures the doctor performs and how many patients he sees. If you're having surgery but the surgeon has performed only a few surgeries this past month, that's a bad sign. Also, don't forget to ask about the doctor's complications rate. Ideally it will be less than one percent.

- **Don't be Brushed Off Onto a Nurse-Practitioner.** Its one thing if your physician's nurse calls to give you test results. But beware of a doctor who routinely has his nursing staff return his calls. It may be a red flag that this is the sort of doctor who, if you have an emergency in the middle of the night, might not deal with it properly. The statistics indicate that patients who don't consult with an M.D., but instead speak to a nurse-practitioner are more likely to be misdiagnosed. The bottom line is if your doctor tries to divert your calls to his nursing staff, tell the nurse you'd like to speak to the doctor directly. If the doctor doesn't call you within 24 hours, it's time to find another physician.

- **Make Sure to Get Everything in Writing.** Whenever you see a physician be armed with pad and pencil. That way you can write down answers to your questions. Research shows that patients recall only about ten percent of what doctors tell them. Also, the more serious the problem, the less likely you are to remember the important details. If your doctor mentions that you have high blood pressure, for example, have her write down the exact numbers as well as treatment information. A good doctor appreciates that a patient who wants instruction written down is more likely to follow them.

- **Don't Assume That Your Doctor Knows Best.** Don't be concerned that your internist may think you are high maintenance if you ask what is in that anti-inflammatory he's prescribed. Not asking could endanger your life. More than ninety-eight thousand people die every year because of errors made by medical personnel, according to an Institute of Medicine report. Asking questions is a proven deterrent to errors. The big-

gest error you could make with your doctor is being too timid! Also, when your doctor writes a prescription, make sure you can read it. If you can't read your doctor's handwriting your pharmacist may not be able to either. A university study found that nearly ninety percent of errors in dispensing medication involved the pharmacist preparing and distributing the wrong drug or the wrong dose.

- **Make Sure Your Doctor is Board-Certified.** It is not enough that your doctor has finished medical school and completed his residency. He should also have been certified as a specialist in his field. The American Board of Medical Specialty recognizes twenty-four different boards from Obstetrics and Gynecology to Surgery. Even internists should be board-certified. But many physicians aren't certified. Generally, to become board-certified, your doctor has to pass a written test demonstrating knowledge in his field within the last ten years. The best way to find out if your doctor is certified is to ask. Also, there are websites that contain that information. In addition, make sure your doctor has hospital privileges. If they can't admit you to a hospital, you will have to go to the emergency room.

- **Don't Go Generic When it Comes to Prescription Drugs.** There is a difference between generic and brand name drugs. When it comes to prescription products, doctors say you get what you pay for. Generally, certain generics aren't as effective as brand name drugs. The only time it's okay to use generic is with an over-the-counter medication.

- **Ask for Those Free Samples.** Hidden in your physician's cabinets are stashes of free samples of medicine courtesy of drug companies. Companies give them to your doctor hoping they will pass them onto you so you'll become loyal to their brand. So don't hesitate to ask for a complimentary supply. The doctor may actually be grateful to have them taken off his hands. "Drug companies deluge us with samples," says one physician. "I am always happy to provide them when patients ask."

- **Get an A.M. Appointment.** When it comes to seeing your doctor, timing is everything. Getting one of the first appointments of the day means you can probably get in and out of the physician's office in half the time. Your doctor is less likely to be delayed by emergencies, and less stressed, at that time. If you can't get a morning appointment, try for the 1 p.m. slot right after the office lunch hour. Because your doctor has just started seeing patients again, there's less of a chance he'll have fallen behind. However, when it comes to surgery, early appointments are key. Your surgeon is more likely to be alert and not as hurried as he would be performing the procedure at 4

## 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.

### DEATH FOLLOWING SURGERY YIELDS \$800,000 SETTLEMENT

In the summer of 2008 our 50 year-old female client was admitted to a Connecticut hospital for hernia repair surgery. The doctor performed no preoperative testing to confirm the hernia diagnosis and during the surgery he discovered there

was no hernia. Nevertheless, he took it upon himself to remove portions of scar tissue in the patient's abdomen. In the process, he perforated her intestine and didn't realize it. The next day she was discharged from the hospital but returned by ambulance because of severe pain and vomiting. However, instead of rushing her into emergency surgery, orders were entered to merely monitor her vital signs. Eight hours later, as a result of the ongoing leakage from the intestinal perforation, the patient suddenly stopped breathing. She was taken to surgery where the injury was recognized and repaired. However, it was too late and she died.

Partner Garrett M. Moore, Sr. settled the case at a mediation for \$800,000.

### I-84 CAR CRASH: \$397,000 SETTLEMENT

Our client was traveling west on Interstate 84 in Waterbury when the defendant merged suddenly behind him and collided with the rear of the plaintiff's vehicle. The only treatment the plaintiff received was chiropractic. His total medical bills were \$22,800. After one year of treatments, the chiropractor assigned the plaintiff only a five percent impairment of his neck and an eight percent of his low back. The defendant hired a doctor to perform a medical exam of the plaintiff. However, the tactic backfired when the doctor concluded that because of the accident the plaintiff would require future hip replacement surgery at a cost of \$60,000.

Partner Joseph Foti, armed with the permanent partial disability ratings and the report of the defense doctor, settled the case for \$397,000.

### \$175,000 FOR FAILURE TO DIAGNOSE HEART INFECTION

Our client, who was born with a heart condition, was taken by ambulance to a New Haven hospital after passing out at her local hardware store. She was diagnosed with an irregular heartbeat and a pacemaker was implanted in her chest. As a routine matter, blood samples were obtained. However, when the results came back positive for an infection – that the patient probably was suffering from endocarditis (bacteria in the valves of her heart) – the finding was ignored by her doctor. It was not until six weeks later when she saw her cardiologist that the infection was recognized and antibiotics were prescribed. In the medical malpractice lawsuit, liability was strong. But despite the delay in diagnosis the patient miraculously sustained no definable injuries to her heart function.

Partner Garrett M. Moore, Sr. settled the case for \$175,000.

### DROPPED HANGER STRIPS CLOTHING STORE OF \$90,000

On a cold night in the winter of 2010 our client was at a discount store shopping for woolen tights for her six year-old daughter to wear to church the next morning. There were practically no shoppers in the store nor were there store personnel in the children's clothing department. While looking through a rack of clothing, the young mother slipped and fell on a hanger on the floor. She suffered injury to her shoulder which left her with bouts of aching pain. The defendant argued that it had no duty to constantly patrol the floor of the clothing department for dropped hangers; and, further, that our client

might have even dropped the hanger herself.

The defendant removed the case to United States Federal Court in Hartford. Just prior to trial partner Brian Flood settled the case for \$90,000.

**BILL FOR DOCTOR'S INATTENTION  
DURING SURGERY; \$500,000**

Our client, a thirty year-old mother of three, underwent a laparoscopic hysterectomy performed by her OB/GYN. The indication for the surgery was chronic pain caused by endometriosis, an abnormal growth of tissue in her uterus. During surgery, the doctors accidentally severed one of the patient's ureters, a vessel that drains urine from the kidneys down to the bladder. Three days later our client was readmitted to the hospital on an emergency basis. But it was not until a third hospitalization that the ureteral injury was diagnosed. A comprehensive repair was performed one year later by a specialist in Washington, DC. For our client's nearly two years of debilitating pain and depression a settlement was reached by partner Garrett M. Moore, Sr. for \$500,000.

**JURY AWARDS \$811,000 FOR REAR END  
MOTOR VEHICLE ACCIDENT**

In February 2009, our client was heading east in his motor vehicle on Farmington Avenue in Bristol. As he slowed for a traffic light, he was rear ended by the defendant who was changing channels on his radio. Nevertheless, he denied responsibility for the accident. At the trial, because of the

severity of the injuries, our client's orthopedist came to court and told the jury that the accident had caused a twenty-seven percent impairment to the plaintiff's right arm and despite two shoulder surgeries he had permanently lost significant range of motion.

Partner Greg O'Brien offered to settle the case for \$700,00, but the defendant insisted on trial. After three days of evidence the jury returned a total verdict of \$811,000.

**ARROGANT TEEN DRIVER SLAPPED  
WITH \$200,000 BILL**

Our client was enjoying a spring afternoon ride on his Harley motorcycle when suddenly and without warning, a car approaching from the opposite direction turned into his path. The driver was a 16 year-old girl who had just gotten her license. She disputed liability and claimed falsely that the plaintiff was speeding. As a result of the accident the plaintiff suffered major injuries to his leg and shoulder. The defendant was deposed in the case. And every time she thought she had "scored a point" against the plaintiff she high-fived her father. However, partner Joe Foti had the final "high-five" when he recovered a total of \$200,000 for our client.

**MOORE, O'BRIEN, JACQUES & YELENAK  
WELCOMES FIVE NEW ATTORNEYS**

We are pleased to announce that attorneys Pamela Cameron, Erica Pilicy, Garrett M. Moore, Jr., Alexander Bates and Joseph R. Rossetti have joined our firm. We guarantee that you'll be hearing and reading about them in the coming months.

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