

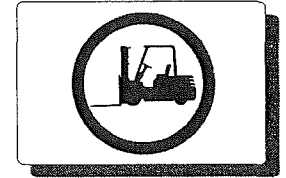
... And Justice For All

A LEGAL NEWSLETTER FROM THE LAW OFFICES OF

Moore, O'Brien, Jacques & Yelenak

SPRING 2000

INDUSTRIAL DISASTER IN THE WORKPLACE



As 41 year old Kenneth J. drove north toward Albany, New York, he was enthusiastic about his new job. For years, he had sold flooring products for a major out-of-state company. However, a few months before he had landed a job with a Connecticut company that would provide Ken the potential to earn more and spend more time with Sharon, his wife of 20 years, and their 5 children. Ken enjoyed life at their country home as well as a host of family activities with the local church. Ken's new employer had sent him to Albany to help in the opening of a new warehouse. Ken would be there for just the day and he anticipated being home in time for a late dinner with his family.

At the warehouse, Ken helped supervise the placement of stacks of flooring products which for the most of the day placed him in close proximity to a forklift his employer was using on a trial basis. The machine had been loaned by the forklift dealership to Ken's employer with the idea that if it worked well the employer would purchase it. Although the forklift had been newly painted by the dealer it was, in fact, more than 20 years old.

By late in the day Ken was feeling dizzy and had trouble concentrating. On his return drive home Ken stopped twice because of severe headache and nausea. At home, his wife found him so ill that she took him to a local emergency room where he was diagnosed as suffering from carbon monoxide poisoning. He was immediately transferred to Norwalk Hospital for tests and treatment in a hyperbaric oxygen chamber. MRI films of Ken's brain showed clear evidence of his exposure to toxic levels of carbon monoxide. He had sustained serious brain damage from working near the forklift in the warehouse.

The next day Ken's condition was reported to his employer and representatives of the local power company responded to the warehouse because it was initially suspected that the dangerous fumes had been emitted by the ceiling heaters.

However, testing of the exhaust of the forklift and of the warehouse air disclosed that the forklift was emitting more than 50 times the federally acceptable levels of carbon monoxide. The concentrations in the warehouse air exceeded 150 parts per million, more than 3 times the Federal Safety Standards level. Because these tests were conducted a day after Ken's exposure, it was determined that when Ken was in the warehouse the day before, the concentration of fumes was much higher.

Following the incident, Ken tried to continue working for his new employer. However, because of the damage to his central nervous system, his ability to concentrate and perform even simple organizational tasks was impaired. Ken was eventually placed on indefinite medical leave. Ken contacted Moore, O'Brien, Jacques & Yelenak to investigate the incident and take appropriate action.

A lawsuit was immediately filed in Connecticut against the forklift dealer and depositions were taken. It was learned that the dealer had serviced the forklift for years when the forklift was owned by another company. During that time the forklift was frequently brought in for mechanical problems, and at one point, when the dealer informed the owner what was needed to make the forklift safe, the owner never returned to pick up the machine. It was ultimately purchased by the dealer for a small salvage price and offered for sale to Ken's employer at 3 times that price. At the time Ken's employer took the forklift for trial use no operation manual was provided nor were any safety instructions offered. It was also learned that just days before Ken's exposure, other warehouse employees working with the forklift had become ill. After Ken's injury, his employer attempted to have the dangerous emissions problem corrected, without success.

"Ken's accident represents gross negligence and reckless indifference to personal safety" explained partner Steve Jacques. "In the name of quick profit, the dealer inflicted catastrophic injury to Ken and his family". With the lawsuit going to trial in Waterbury as soon as June, Moore, O'Brien, Jacques & Yelenak has retained Ken's treating physicians to testify as well as a forklift mechanic and an expert with 30 years experience in managing a forklift dealership. The attorneys for the dealership have also hired experts, one of whom, a neurologist, has admitted there is "no doubt" that Ken incurred "significant carbon monoxide intoxication". When the case goes to trial Attorney Jacques and partner, Garrett Moore, will represent Ken and his family.

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MAKING YOUR MEDICINES WORK FOR YOU

Although we live in an age where prescription medicines are readily available to treat and cure a wide variety of illnesses, studies show that up to 50% of prescriptions are not taken properly. And, therefore, people do not get the full therapeutic benefit of many wonder drugs. One of the easiest ways to assure the safety and effectiveness of any medicine is the following:

- Use your medicines correctly;
- Ask questions so you understand how to take your medicines before leaving the doctor's office or pharmacy;
- Fill all prescriptions promptly and renew them before they run out;
- Take all of your medicines on time. If you miss a dose, ask your doctor or pharmacist what to do;
- Report side effects or reactions to your doctor immediately;
- Always discard outdated medicines;
- Do not take a larger or smaller dose of the medicine than prescribed;
- Do not share your medicines or take medicines prescribed for others no matter how similar your symptoms.

Special Prescription Issues for Women

Women have special medicine-related needs when they become pregnant or go through menopause. These conditions can have a significant effect on how a woman's body responds to medicine.

- **Pregnancy and Breast Feeding:** Medicine that is taken when a woman is pregnant or breast feeding may be passed on to the child. Tell your doctor about medicines that you are taking.
- **Oral contraceptives:** Some medicines, such as antibiotics, sleeping pills and anxiety medicines may reduce the effectiveness of birth control pills.
- **Non-prescription medicines:** Before taking any new medicines, women should tell their doctor about any non-prescription medicines they use including aspirin, diet aids, calcium supplements or laxatives.

Prescription Guidelines for Children

Because parents are the most important decision-makers and role models affecting their children, teaching children about proper use of medicines is key to their lifelong good health. Most importantly:

- Make sure your child knows why he or she is taking the medicine;
- Don't expect your child to remember to take medicine regularly (even teenagers need parental monitoring);
- Teach children the difference between legitimate medicines and illegal drugs;
- Remember safety caps are child-resistant, not childproof. Therefore, keep all medicines out of reach of children;

- Pay close attention to the differences between tablespoon (tbsp.) and teaspoon (tsp.); Always read the label for the proper dose. Never guess on amounts. Kids are not just small adults; half of an adult dose may be more than your child needs or not enough.

Tips for Older Adults

Older adults should pay special attention to the following:

- Keep a list of your medicines, including non-prescription medicines and give the list to each doctor you consult as well as to a family member;
- Remove child-resistant caps and ask your pharmacist for easy-to-open containers;
- Make sure all medicines are secure and out of reach when children come to visit.

Storing Medicines

Store medicines separately from food and other household products and keep them in an airtight container in a cool, dry location, usually not in bathrooms or kitchens where warmth and moisture can cause them to deteriorate and lose their effectiveness. Dispose of outdated or unneeded medicines by putting them down the garbage disposal or flushing them down the toilet.

Today's medicines can prevent and cure illnesses and manage chronic conditions, but only if they are taken correctly.

Five Myths About Traumatic Brain Injury

Indirect injuries from motor vehicle accidents, falls and toxic exposure to chemicals involving the brain can be among the most difficult to treat and, although they can cause serious consequences, remain controversial and are always contested in personal injury cases. The following are a list of common misconceptions about traumatic brain injury, provided so that families and others can better advocate for those who have sustained brain injury:

Myth No. 1: If there is no loss of consciousness or no coma, there is no brain injury.

The truth is that many people who sustain brain damage never lose consciousness. Even "minor" brain injuries, where there is no direct impact to the head, can reduce a person's capacity to deal with complex activities of daily life.

Myth No. 2: "Minor" brain injuries are insignificant.

The truth is that "minor" head injuries can cause subtle, hard to detect deficits that can prevent a person from functioning at the pre-injury level. These can include speech and hearing disorders, short-term memory problems and diminished ability to reason. Frustration over these reduced capacities can lead to depression and other psychological problems.

Myth No. 3: Traumatic brain injury isn't that serious because it's just a "psychiatric problem."

The truth is that brain injury can cause the chemical and neurological pathways in the brain to actually change. These changes can magnify or distort emotions and the way information is processed. Long-term, these effects can produce serious disability in employment and social relationships.

Myth No. 4: Traumatic brain injury can only happen when the brain is struck.

The truth is that head injury can occur even after a serious neck injury or without the head actually striking any surface. In a whiplash, the brain can collide against the bony interior surfaces of the skull causing serious damage although the brain itself has not been directly impacted.

Myth No. 5: To be considered "real", problems with the brain and behavior have to fit an established clinical pattern.

The truth is that the outcome of any traumatic brain injury depends upon many things, which can include the location of the injury within the brain, the person's condition before the injury, and the kinds of treatment received. While there may be many similarities, each brain injury and its outcome may be different.

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.

• *Infant Surgical Victims Receives \$4,000,000.00 Settlement*

Last year, we reported about our case, Alexander Chiappalone vs. Yale New Haven Hospital, which involved a 10-month old infant who was the victim of malpractice by cardiac surgeons. We recently settled Alex's case for \$4,000,000.00.

Alex's family is purchasing a home in central Connecticut specially equipped to accommodate Alex's needs. They have also purchased a customized van to help transport Alex. Perhaps, most rewarding of all, however, because of the settlement, both of Alex's parents will be able to act as his caregivers on a full-time basis. Alex's mother, Carla, continues to be active in the community championing the rights of catastrophically injured children. The settlement was reached through the efforts of partners Garrett Moore and Stephen Jacques.

• *\$550,000 Slip and Fall Verdict*

Partner Gregory O'Brien recently obtained a jury verdict of \$550,000 for a client for a slip and fall accident that occurred on an icy sidewalk. The plaintiff, age 32, suffered the fall outside his apartment complex one morning. It had stopped snowing late the previous evening. Our client alleged that the apartment's maintenance crew failed to adequately clear the ice in a timely manner. Our client suffered two herniated discs in his low back

for which he was assigned a 15% permanent partial disability. The defendant offered \$15,000. The jury awarded our client \$550,000.

• *\$2.4 Million Dollar Settlement For 19-Year Old Girl Involved in Truck Accident*

In 1997, our client, a college student, was home visiting her parents when, while traveling on I-95, the rear tire and axle of a truck traveling in the opposite direction failed, causing the truck's tire to cross the median and land on the roof of our client's car. The roof crashed downward causing her severe spinal cord injuries which required months of rehabilitation. She was left with permanent nerve damage to her left foot and arm. She also experienced short-term memory problems. Her medical bills totaled \$240,000.00. After filing suit, Garret Moore got the trucking company to settle on a "structured settlement" basis whereby our client will receive more than \$8,000,000.00 over the course of her life. The cost to the insurance company for providing these payments in today's dollars is 2.4 million dollars.

• *Supermarket Fall Yields \$88,000 Verdict*

In May 1994 our client went to a local Stop & Shop supermarket to do her weekly shopping. As she entered, she noticed that for promotional purposes the store was serving juice and cookies. After nearly completing her shopping the plaintiff slipped and fell in the frozen food section of the market. She immediately noticed an orange-colored liquid on the floor next to her that had track marks from shopping carts and footprints in it. A claim was made by our firm on behalf of the client contending that the substance responsible for the fall was orange juice and that because of the cart marks and footprints the juice had been on the floor for sufficient time that the market should have cleared the spill. Partner Bill Yelenak tried the case before a judge who awarded our client \$87,924.

• *Failure To Correctly Report Mammogram Yields \$300,000 Settlement*

In November 1997, our 44 year old client underwent her annual mammogram. A few days later she called her doctor who had ordered the test and was told by a nurse that the finding was normal. In truth, the mammogram report stated there was a suggestion of cancer and that immediate follow-up care should occur. The following year, when the client went for her next mammogram a technician at the imaging center casually asked her what care she had received the year before for the tumor. The client immediately sought medical attention and underwent surgery. Fortunately, despite the one-year delay, the

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tumor was caught in time and removed. Attorne Steve Jacques was consulted and filed a lawsuit. Within months he obtained a \$300,000 settlement from the client's doctor for his nurse's error.

• ***Mother and Two Children
Receive Settlement of
\$497,500.00***

On June 8, 1994, 32-year old Jamell W. was returning home from a Bible study class in Windsor, Connecticut with her two sons when they were broadsided at an intersection by a vehicle driven by an out-of-state motorist. The impact caused Ms. W.'s vehicle to rotate nearly 180 degrees and throw her against the passenger side window. Although her sons were in the back seat, one boy suffered a fractured femur; the other boy suffered cuts and bruises to his right leg and a severe laceration to his scalp which required surgery and left him permanently scarred.

For years after the accident, Ms. W. experienced memory loss , confusion and mental fatigue. Although at the time of the accident she was unemployed, Ms. W. had plans to return to work in the health insurance industry where she had been trained as a financial analyst.

Partners Garrett Moore and Steve Jacques settled the boys' claims for \$210,000.00 and, on the eve of the trial, settled Ms. W.'s claim for \$287,500.00, for a total settlement of \$497,500.00.

Lawyers Should Have Known The Answers

It is fundamental in the legal profession that no good lawyer ever asks a question to which he or she doesn't already know the answer.

Nevertheless, the following are questions asked of witnesses during actual trials and, in some cases, the answers given by the witnesses.

- I. "Now doctor, isn't it true that when a person dies in his sleep, he doesn't know about it until the next morning?"
2. "The youngest son, the 20-year old, how old is he?"
3. "Were you present when your picture was taken?"
4. "Were you alone or by yourself?"
5. "Was it you or your younger brother who was killed in the war?"
6. "Did he kill you?"
7. "How far apart were the vehicles at the time of collision?"
8. "You were there until you left, is that true?"
9. "How many times have you committed suicide?"
10. Q. "So the date of conception (of your baby) was August 8th?"
A. "Yes"
Q. "What were you doing at the time?"
- II. Q. "You say the stairs went down to the basement?"
A. "Yes?"
Q. "And these stairs, did they go up also?"

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