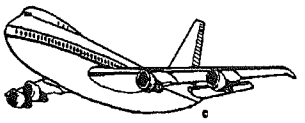
... And Justice For All

A LEGAL NEWSLETTER FROM THE LAW OFFICES OF

Moore, O'Brien, Jacques & Yelenak

SUMMER 2001

# MOORE, O'BRIEN, JACQUES AND YELENAK vs. ALASKA AIRLINES



On Monday afternoon January 31, 2000 Dr. David Clemetson and his family , including his wife Carolyn and seven-year old son, Miles, were flying home to Seattle from a last-minute weekend getaway to Puerto Vallarta, Mexico. Carolyn and Dr. Clemetson had been married in 1997 and although it was a second marriage for both, integration of their children had been successful. With a total of five kids, including their infant son, Spencer, the Clemetsons were truly a yours, mine and ours family.

In the cockpit of Alaska Airlines Flight 261, as the plane cruised over the ocean west of Los Angeles, the crew turned off the autopilot. At that moment, two faint thumps were heard. The crew immediately reported the noise to ground control, and seconds later the aircraft went into a violent two-minute dive, reaching a speed of nearly 400 mph. Only the pilot's diligence stabilized the plane at 24,000 feet. The crew then reported to ground control that "We have a jammed stabilizer and we're maintaining altitude with difficulty." Within minutes the flight had further descended to 18,000 feet and one minute later an extremely loud noise was heard in the rear of the plane.

Although the pilot struggled for control by applying the rear rudders, ailerons and speed brakes, the aircraft dove straight down for nearly three miles, impacting the ocean where it sank in 700 feet of water. All 88 persons aboard died. Over 90% of the wreckage was ultimately recovered, including the 40-foot-long horizontal stabilizer, a part of the tail assembly of the MD-83 aircraft which, enables the pilot to level the plane in nose up, nose down or level altitude. The jackscrew causes the stabilizer to respond to the pilot's commands. When the jackscrew was found among the wreckage its threads had been stripped, leading to the conclusion that the horizontal stabilizer had failed in-flight causing loss of control of the plane. Larger aircraft have two jackscrew assemblies so that if one fails the other will take over.

Post-accident investigation disclosed that Alaska Airlines had the most reported jackscrew problems. Several had failed to pass vital wear tests. It was also determined that the lubricating grease on the jackscrew from the doomed flight was contaminated, which probably caused accelerated wear. Originally, wear checks on aircraft were required every 3600 hours of flight time. However, in 1996, Alaska Airlines convinced the Federal Aviation Administration to decrease the test frequency. At the time of the accident, the fatal aircraft had logged nearly 8500 hours since its last inspection. During that inspection, an Alaska Airlines mechanic recommended that the jackscrew of the stabilizer be replaced because of wear; however, he was overruled by a supervisor. Also prior to the accident, a computer program had alerted Alaska of potential wear problems with the jackscrew; however, that, too, was ignored. Had the mechanic's replacement recommendation or the computer alert been heeded, the crash would not have occurred.

"There is no doubt that failure of the jackscrew caused Flight 261 to crash. But the story of human error that lead to the crash begins years before," stated lead partner, Garrett Moore, who, along with partner Stephen Jacques represents surviving members of the Clemetson family in a lawsuit filed in the California federal court. "A complex series of mistakes in design, maintenance, testing and government oversight all contributed to the eventual failure of the horizontal stabilizer."

The Clemetson family lead a nearly ideal life. They were prominent in the Seattle area and maintained close ties with their relatives in New York, Maine and Louisiana. However, for the family the tragedy goes beyond the loss of loved ones into the cold waters of the Pacific. After the crash, unscrupulous attorneys in Florida made a claim on behalf of a Guatemalan girl, alleging that she was fathered out of wedlock by Dr. Clemetson. After months of investigation it was determined through DNA testing and geography that the child's contention was false. "The callousness and insensitivity of that claim is nearly incomprehensible, " says Attorney Moore. "However, the real villains are Alaska Airlines, the designer of the aircraft and the maintenance personnel who failed to ground that plane."

The defendants, faced with a possibility of paying punitive damages for their indifference to human life in addition to compensatory damages, have already made substantial settlement offers to resolve the Clemetson family's claim as well as the other cases stemming from the crash.

## *PROTECTING YOUR FAMILY FROM LYME DISEASE AND WEST NILE VIRUS*

With summer upon us, the outdoors is the place to be. However, outdoor recreation carries risks, especially in Connecticut, of Lyme Disease and West Nile Virus. It is hard to believe that an insect barely larger than the pencil point has compromised lives of thousands of people. But the deer tick is responsible for Lyme Disease. Lyme is simply an infection caused by an organism carried by the tick. It often starts as a skin rash and, left untreated, can progress to serious stages involving the joint, nerve and heart tissue. Several weeks of antibiotic treatment is usually curative; however, early diagnosis is the key.

Most people do not feel a tick biting, however, if not recognized and carefully removed, the tick may transmit the Lyme virus. The sooner the tick is removed the less chance of infection. To remove a tick you use a special tick-removing device or fine point tweezers. If in doubt as to how to properly remove the tick, seek immediate medical attention for removal.

A typical early symptom is a slowly expanding red rash at the site of the bite. The rash usually appears within a few weeks after the bite and may expand over days. Although most infected people develop the classic red rash, many do not. Therefore, if you or a family member experience a rash on an exposed area, see your doctor. Most importantly, to avoid tick bites wear shoes and appropriate clothing such as a hat, long-sleeved shirt and long pants tucked into your socks when in tall grass, brushes, brush or woods. And, before coming indoors, brush off your clothing. Also, if your household pet is allowed outdoors, beware that Lyme ticks can attach themselves to animals who then transport them into your home. Be sure to regularly inspect your pets for ticks.

West Nile Virus is just appearing in Connecticut. If it is found in your area, minimize your time spent outdoors between dusk and dawn when mosquitoes are most active. Be sure that door and window screens are tight fitting and in good repair and wear, socks, long pants and a long-sleeved shirt when outdoors for lengthy periods of time. To reduce the presence of West Nile-carrying mosquitoes, reduce the amount of standing water around the perimeter of your home, clean clogged roof gutters regularly and clean and chlorinate swimming pools that are not being used. Beware that mosquitoes may breed even in the water that collects on swimming pool covers. Although Connecticut has implemented an aggressive West Nile Virus plan, it is up to each of you to take steps to reduce this new hazard.

## MYTHS INSURANCE COMPANIES WANT YOU TO BUY ABOUT LAW SUITS AND INSURANCE RATES

With the economy in good shape, corporate profits are at record high levels and liability costs for businesses are minimal, it may be hard to understand why tort reform that limits your rights to compensation remains on the legislative agenda in Connecticut and Washington. One major reason is the large number of public relations and lobbying firms backed by well-funded insurance, tobacco, pharmaceutical and HMO interests wanting to escape liability for responsibility and wrongdoing. Their message, which always focuses on the oddball cases that the make the news, has created a false perception the system is clogged with frivolous personal injury lawsuits. Yet these are the facts that special interest groups don't want you to know.

Contrary to popular myth, very few injured Americans file lawsuits. Only 10% of victims ever file a claim for compensation, and only 2% file lawsuits. And although an estimated 400,000 Americans are injured or die each year due to medical errors in hospitals, eight times as many patients are injured as ever file a claim. And sixteen times that number suffer injuries as ever receive any compensation at all!

The number of personal injury ("tort") lawsuits is steadily dropping while big business lawsuits in which major corporations sue each other are on the rise. Between 1994 and 2000, personal injury lawsuits dropped 9%, while lawsuits filed by companies against other companies increased 10%. Personal injury cases now comprise only 7% of all cases filed in the U.S. and state courts. Therefore, if anyone is responsible for the supposed lawsuit logjam in our courts, it is big business.

Liability costs to businesses are therefore miniscule and dropping, Yet most of us have been brainwashed by the media into believing that the cost of personal injury lawsuits is so substantial that it accounts for rises in the price of merchandise and our insurance rates. The facts show that lawsuit costs are less than on third of one percent.

Limiting personal injury law does not reduce insurance rates. In fact, the only study conducted on the impact of tort limits on insurance rates finds no connection between tort reform and your insurance rates. And many states without tort reform have experienced low rate increases while other states with tort reform have seen high rate increases. So the message is don't believe what you hear on the news. It's being brought to you by the bad guys.

## KNOWING YOUR RIGHTS AS A MEDICAL CONSUMER

As we have previously informed our clients in our newsletters, although hundreds of thousands of citizens fall victim annually to medical negligence by doctors and hospitals, most malpractice victims sacrifice their right to compensation by not knowing the law or learning it only after it is too late. As a consumer you pay directly or through insurance premiums for medical care and, thus, your dollars give you legal recourse for injury caused by negligent medical mistakes.

In Connecticut, a medical malpractice lawsuit must be brought within two years from the date you discover or should discover that your injury was caused by negligence. However, you have a maximum of only *three* years from the date the medical negligence occurred,

within which to start your lawsuit, regardless of when you discover the negligence. Therefore, if you, a family member or friend even suspect that malpractice has caused injury you should contact an attorney immediately to investigate. Also, because Connecticut law does not automatically impose liability on a hospital or group of doctors for negligence of their assistants, nurses or laboratories, it is doubly important that an attorney be quickly contacted so that an investigation may identify and sue each healthcare provider that may be responsible for the injury.

It is likely that the attorney you contact will first obtain your medical records and have them reviewed by an independent medical expert. If the doctor or facility whose conduct is in question contacts you, never speak to them about the specifics of potential claims, instead refer them to your lawyer.

Because medical malpractice lawsuits are vigorously defended by the insurance companies for healthcare providers, even if your claim is highly meritorious, you should keep in mind that it will probably be years before your case is resolved through a settlement or a trial. Expert testimony is almost always required to establish a claim for medical malpractice and this, coupled with the general complexities of such claims, provides fruitful ground for medical defendants to object and delay all the way to the courthouse steps.

One means of prompting a medical defendant to settle a case before trial is the filing of an Offer of Judgment, which gives the defendant 30 days within which to accept a monetary offer. If the offer is not accepted within that 30 days and the case goes to trial and results in a verdict equal to or in excess of the settlement amount originally offered, you will be entitled to 12% annual interest on the judgment for the time you had to wait before trial.

**MOORE, O'BRIEN, JACQUES AND YELENAK** is proud to announce that partner Stephen Jacques has been inducted into the American Board of Trial Advocates, as one of only 50 attorneys in this State. ABOTA is a professional organization of lawyers skilled and experienced in the trial of cases and dedicated to maintaining and improving the standards of trial practice, the administration of justice and the ethics of the profession.

## 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.

### • *Train/Truck Crossing Accident Yields $750,000 Settlement*

On October 5, 1995, our client, a 57-year old woman, was injured when the commuter train on which she was riding collided with a truck that was stuck on the tracks at a crossing in Milford. The collision forced the train off the tracks and it continued to travel approximately 100 yards before coming to a stop. A year after the crash the client underwent shoulder surgery to repair a torn rotator cuff and two years later she underwent knee surgery. Her medical expenses totaled $110,200 and she lost $34,000 in wages. After mediation, the case was settled against the trucking company by partner Bill Yelenak for $750,000. The case against the railroad company is still pending.

### • *Jury Awards $150,000 in Fatal House Fire*

On the night of March 13, 1997, a fire consumed a house in Seymour. Both elderly occupants died. Partner Steve Jacques represented the estate of the elderly woman who perished in a lawsuit against her platonic roommate, a 65-year old man. Because there were no witnesses to how the fire started, the case rested entirely on circumstantial evidence. According to the Seymour fire marshal, the fire was caused by someone having negligently placed live ashes in a paper bag next to the wood burning stove in the basement. Based upon the habits of the elderly man who was regularly seen outside chopping and collecting kindling, the lawsuit claimed that he started the blaze. The attorney for his estate, however, hired a fire expert who told the jury at trial that the fire started in a different location and attributing its cause to the ashes in the bag was speculation. After four hours of deliberation the jury returned a verdict of $150,000.

### • *Victims Of Bar Fight Receive $69,000*

After a long day at work, our two clients went to a local tavern for a snack and a beer. There, a rowdy patron for no apparent reason assaulted both men inflicting lacerations and contusions. A lawsuit was filed against the bar alleging inadequate training of its bouncer for his failure to separate the parties once the fight erupted. Prior to trial, the bar took a no-pay position. However, at trial, Attorney Joseph Foti, convinced the jury that the bar was liable and obtained a total $69,000 award.

### • *Trip And Fall Accident At Wedding Equals $91,000 In Damages*

On October 6, 1996 our 60-year old client was attending a wedding reception in Wolcott. While returning to her table with a soft drink, she tripped on an electrical outlet cover on the floor of the bandstand and broke her arm. In the lawsuit, partner Gregory O'Brien claimed that the inn, by creating an overcrowded and congested area, forced guests to use the bandstand as a means of circulating at the reception. Our client's fracture was not serious and did not require surgery. Her medical bills were $2,000 and her permanent partial disability was only 7%. At trial, the defendant blamed the accident

entirely on our client. After two hours of deliberation the jury returned with a total damages verdict of $91,000.

### • *Failure To Diagnose Colon Cancer Results In Settlement of 1,350,000*

Between 1994 and 1999 our 60-year old male client kept regular appointments with his Danbury internist. Although early on the doctor ordered regular tests for colon cancer, once the doctor became affiliated with a different medical group and specialized in cardiology he failed to continue ordering the tests. In June, 1999 our client's new internist performed a physical exam whith disclosed a large colon tumor. Lead partner Garrett Moore claimed in the case that the failure to continue testing was negligence and that a simple sigmoidoscopy test would have detected the cancer in time to have cured it. Within six months of filing the lawsuit the case settled for $1,350,000.

### • *Jury Awards $136,000 To Couple Injured In Minor Motor Vehicle Accident*

Our husband and wife clients were on their way hone with their children from dinner in their van when a Jeep operated by the defendant suddenly pulled from the roadside onto the highway and grazed our client's vehicle. As a result of the accident, the couple claimed neck and back strain and minor jaw injury. At trial the defendant contended that because of the minimal damage to our client's vehicle ($100) the couple could not have been significantly injured. Attorney Joseph Foti convinced the Waterbury jury that fair compensation for the couple's injuries was $136,000.

### • *Jury Finds Trip And Fall Over Orange Safety Cone Worth $39,000*

In October 1994, at approximately 8:00 p.m. our client was walking in the parking lot of Griffin Hospital when she tripped and fell over an orange safety cone on the sidewalk. She suffered a contusion to her head and a neck sprain. Her doctor assigned her a 7% permanent impairment to her neck. At trial, to prove liability, Attorney Brian Flood elicited testimony from the hospital security guard who stated that the cones in the parking lot were supposed to be stored in the guardhouse every day at 5:00 p.m. The jury found the hospital fully responsible for the accident and awarded the plaintiff $38,895.

### • *Loss Of Kidney Costs Doctor $200,000*

For 18 years our client entrusted her care to her internist, including his making sure that her lung condition didn't cause damage to her kidneys. However, the doctor only performed blood work rather than regular urinalysis or x-rays, By the time another physician ordered the necessary tests it was too late to save one of the diseased kidneys. Nevertheless, our client functioned well with the remaining kidney, Steve Jacques obtained a $200,000 settlement.

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