

MEDICAL NEGLIGENCE VICTIMS BENEFIT FROM MICRA CHANGES

After 47 years, the California legislature has finally passed a modification of the harsh and unfair MICRA law which has plagued California's medical negligence victims since 1975. This historic accomplishment comes as the result of an unprecedented mobilization of medical negligence survivors in every state senate district in California who negotiated together with a team of dedicated patients' attorneys including Walkup Melodia partner Douglas Saeltzer.

The qualification of a ballot measure which sought to overhaul the existing statutory structure triggered a series of meetings between the California Medical Association, patient advocates and the Consumer Attorneys of California. The ultimate result was Assembly Bill 35, which the Senate voted on



in May and signed by Governor Newsom days after its passage.

MICRA's 47 year old \$250,000 damage cap for harms other than economic out-of-pocket losses will be replaced by new higher damage limitations adjusted upward to reach a maximum of \$2.25 million in personal injury

cases and \$3 million in wrongful death cases over the next 10 years, with an annual cost of living adjustment applied beginning in year 11.

Although medical negligence victims will still be treated differently than other tort claimants, this change is a major step forward for consumers. As Walkup partner Mike Kelly told the Los Angeles Daily Journal, "In 1978 \$250,000 was somewhere in the range of reasonable when compared to other types of compensation. But over the past 20 years, cases where families have been awarded millions by juries for the loss of parents, children or spouses only to have those awards cut to \$250,000 has generated a lot of animosity both towards the

Continued on page two

Doris Cheng Receives ABOTA Champion of Justice Award

On May 14, 2022, in the ballroom of the Four Seasons hotel in Chicago, Walkup partner Doris Cheng was presented with the inaugural American Board of Trial Advocates "Champion of Justice Award." The award was created to recognize and honor those who advance ABOTA's primary purpose of preserving and promoting the civil



jury trial. In making its selection of Doris, the ABOTA governing Board commended her ongoing, strong, and exceptional commitment to trial by jury, and her efforts to improve the ethical and technical standards in the practice of law.

Lewis R. Sifford, ABOTA National President, said the

Champion of Justice Award recognizes those who believe that America's jury system is the one system which guarantees necessary safeguards for the protection of the rights of persons and property.

An ABOTA National Board Representative from the San Francisco Chapter, Doris was selected for her achievements as a chair or faculty member for a number of legal

Continued on page two

Walkup Partners Join The Fight Against Ghost Gun Makers

Last month President Biden announced that the U.S. Department of Justice has issued a final rule to rein in the proliferation of “ghost guns” – unserialized, privately-made firearms that law enforcement officers are increasingly recovering at crime scenes in cities across the country. One of our clients introduced President Biden at the White House announcement of this important new rule. Three of our partners are involved in the fight to put the makers of these untraceable firearms out of business.

Last year alone, there were approximately 20,000 suspected ghost guns reported to the ATF as having been recovered by law enforcement in criminal investigations. Because ghost guns lack the serial numbers marked on other firearms, law enforcement has an exceedingly difficult time tracing a ghost gun found at a crime scene back to an individual purchaser.

This final rule bans the business of manufacturing the most accessible ghost guns, including unserialized “buy build shoot” kits that can be bought online or at a store without a background check, and can be easily assembled into a working firearm in as little as 30 minutes. The new rule clarifies that these kits qualify as “firearms” under the Gun Control Act, and that commercial manufacturers of such kits must therefore become licensed and include serial numbers on the kits’ frame.

Rich Schoenberger, Spencer Pahlke, and Sara Peters filed Walkup’s first case against a ghost gun kit seller, 1911 Builders, two years ago. That case arose out of a tragic 2019 school shooting at Santa Clarita High School which left two dead and three injured. Our client - a freshman at the time - was shot in the



stomach and her best friend was killed. The shooter was a fellow student who took his own life after opening fire on his classmates. He obtained the gun from his father who was legally prohibited from possessing firearms, but who had purchased a gun kit through the 1911 Builders website.

In 2021, Rich, Spencer, and Sara filed their second ghost gun case, this time against the largest ghost gun manufacturer in the industry, Polymer80. Our clients are two Los Angeles County sheriff deputies who were shot multiple times, including in the face. The shooter was a felon who gained possession of a Polymer80 ghost gun.

Walkup is working on these cases in partnership with Everytown Law - the largest group of litigators devoted to advancing gun safety nationwide. Through both of these cases, Walkup and Everytown are demanding money damages in excess of these companies’ insurance coverage, jeopardizing their ability to obtain insurance and to stay in business.

We are heartened that the Biden Administration is paying attention. We look forward to getting these illegal firearms off the street. ▲

MEDICAL NEGLIGENCE VICTIMS BENEFIT FROM MICRA CHANGES

Continued from page one

court system by those who have been under compensated, as well as between patients and their Health Care providers. This change is a positive step forward, and hopefully, one day, we will get to a place where there are not different classes of litigants in different kinds of cases.”

The bill alters the existing \$250,000 maximum on pain and suffering damages for personal injury by increasing that amount to \$350,000, and then over the next 10 years adding a \$40,000 increase each January 1st beginning on January 1, 2034, until the maximum cap for pain and suffering against health care provider reaches \$750,000. At that point, the cap increases annually by 2% per annum. A similar methodology is used in increasing the damage limit in wrongful death cases. Currently, the maximum amount for loss of care, comfort, society, love and affection is capped at \$250,000. That limit is immediately increased by the legislation to \$500,000, and is increased each January 1st by \$50,000 for 10 years until it reaches \$1 million, when it too will be annually increased by a 2% per year cost of living annual increase.

For more than 50 years, the Walkup firm has represented clients harmed as a result of health care providers negligence. We are pleased that our current clients will now be treated more fairly. At the same time, we regret that it took so long for the legislature and governor to right the fundamental unfairness the MICRA laws have created over the last five decades. ▲

Doris Cheng Receives ABOTA Champion of Justice Award

Continued from page one

education programs nationally and internationally. She has directed legal training programs in association with the U.S. Department of Justice Overseas Prosecutorial Development and Training, as well as the National Center for State Courts. She has served as a lead trial skills training director

in support of the Caribbean Basin Security Initiative. Doris created the first trial skills program in San Francisco to promote women trial lawyers as first chair in civil jury trials, and has been widely recognized for her legal work in consumer protection cases. She has served as the president of the San Francisco Trial Lawyers Association (2015), the Bar Association of San

Francisco and Justice & Diversity Center (2019), and the San Francisco ABOTA Chapter (2020).

Doris has directed the Intensive Advocacy program at USF Law School for more than 10 years, developed curriculum for the national Trial School non-profit practitioners resource, and served as editor of the Rutter Group’s treatise on Personal Injury Litigation. We congratulate Doris on this well-deserved and remarkable honor from National ABOTA. ▲

NEW ASSOCIATES

Kelsey Constantin graduated magna cum laude from the University of California, Hastings College of the Law in 2020 and was admitted to the California Bar in 2021. She received her B.A. in Psychology from the University of California, Santa Barbara in 2014.

At UC Hastings, Kelsey earned multiple academic awards and honors including the Witkin Award for Academic Excellence in Evidence, the Chancellor's Scholarship, the Outstanding Achievement in Pro Bono award, and admission to the UC Hastings Honor Society. Kelsey also served as a teaching assistant in both Legal Research and Writing and Current Constitutional Cases, a seminar taught by Judge Marsha Berzon and former California Supreme Court Justice Joseph Grodin.



Throughout her time at UC Hastings, Kelsey consistently furthered her dedication to public service and client-centered advocacy. In her final year, she successfully represented two clients in a Social Security appeal and a criminal conviction dismissal through the Individual Representation Clinic.

Daniel Contreras received his B.A. in Government from the University of Texas, Austin in 2016, and earned his J.D. from the University of California, Berkeley School of Law in 2019. While in law school, he was a member of the Mock Trial Team and the Executive Committee of the California Law Review.

Following his graduation from law school he moved to San Antonio, Texas, where he completed a Judicial clerkship before returning to practice in California as an associate.

In addition to pro bono work, Daniel is active in the community volunteering at his law school by mentoring and coaching law students on the Berkeley Mock Trial Team, helping to ensure that future generations of lawyers have the trial advocacy skills they need to bring justice for their clients.

Kelly Ganci received her B.A. in Political Science and minor in Writing from the University of California, Santa Barbara in 2017. She graduated with honors from the University of California, Hastings College of the Law in 2020.

During law school, Kelly was inducted into the Pro Bono Society for her work bringing free legal services to those most in need. She served as a Senior Articles Editor on the Hastings Law Journal and a Teacher's Assistant for Legal Research and Writing.

Since joining Walkup, Kelly has worked on a number of mass tort matters, feeling particularly passionate representing farmworkers who have developed Parkinson's disease after using Paraquat during their agricultural careers in the 80s and 90s.

Katherine Connolly obtained both her undergraduate and law degrees at William and Mary College in Williamsburg, Virginia. While in undergraduate school, she was a four year Division 1 varsity lacrosse player. In law school, she was a staff member of the Women and the Law Journal staff, and volunteered at the Lewis B. Puller, Jr. Veterans Benefits Clinic.

After passing the New York bar exam, Katherine worked for 2 ½ years at an 80 person New York City civil litigation firm where she focused on the defense of product liability, health care and general negligence claims. She moved to California during the pandemic and is enjoying San Francisco.

She is admitted to practice in the states of New York and California, and the United States District Court for the Southern and Eastern Districts of New York. She is working with our team on premises liability, health care, vehicle collision, and mass tort matters. ▲

KELLY INDUCTED INTO HALLS OF FAME

We are proud to report that in April of this year, partner Mike Kelly was honored by induction into the National Trial Lawyers Hall of Fame located on the campus of Temple University's Beasley School of Law in Philadelphia, Pennsylvania. The honor was presented at the NTL's annual induction ceremonies in Las Vegas. Kelly joins a list of top plaintiffs' counsel who have previously been selected for membership based upon



the qualifications required for entry. Prior honorees include Moe Levine, Johnnie Cochran, Gerry Spence, Judge Sandra Mazer Moss, Sheila Birnbaum and Mark Lanier. Selection criteria require that members have at least 30 years of practice, a demonstrated record of dedication to the adversary system and the Constitutional right to a jury trial, a track record of significant verdicts and

legal victories benefitting the public, and a lifetime of adherence to the highest legal and professional standards. The Trial Lawyer Hall of Fame at Temple opened on September 10, 2014, and is a non-profit organization open to the public and featuring information about how its members have fought on behalf of their clients and communities in the name of justice. Six months earlier Kelly was inducted into the Lawdragon Hall of Fame after mul-

multiple years of having been selected to the magazine's "500 Leading Lawyers" list. The Lawdragon Hall of Fame was established as part of the magazine's 10th Year Anniversary celebration in 2015, recognizing past members of the Lawdragon 500 who have made remarkable contributions as leaders, litigators, and innovators. We congratulate Mike on these two signature honors. ▲

WALKUPDATES

Sara Peters recently published an original article titled *Shifting the Burden of Proof on Causation: The One Who Creates Uncertainty Should Bear Its Burden*, in the peer-reviewed Journal of Tort Law, 13 J. Tort. L. 237. Sara also continues to work on the faculty of the Stanford Law School Trial Advocacy program...

Valerie Rose was reelected to the Board of the San Francisco Trial Lawyers Association...**Doris Cheng** moderated a panel discussion with Chief Justice Tani Cantil-Sakauye, Presiding Justice Teri Jackson, Presiding Judge Kimberly Merrifield, and Judge Linda Colfax at the Bay Area Women Lawyer Retreat entitled: Women Judicial Leaders Talk about the Role of Women in the Legal Profession. Doris also served as a faculty trainer for a combination NAACP/Legal Aid of Cleveland Deposition Skills program...**Mike Kelly** spoke to the orthopedic residents and faculty at Stanford University Medical Center Grand Rounds on the subject of avoiding medical negligence claims. In April Mike chaired the 10th Annual CAOC Kaiser Program, speaking on the topic of Undermining Kaiser's Economic Damages Approach. Mike was also co-chair of 360 Advocacy's two-day How to Win Trucking Cases seminar held in Las Vegas...**Khalidoun Baghdadi** was named as co-lead counsel in the national MDL litigation focused on Paraquat, an herbicide which has been linked to Parkinson's disease. He also served as a panelist for the ABA Emerging Issues in Product Liability Conference on the topic of civility in the courtroom...**Spencer Pahlke's** UC Berkeley Law Trial Advocacy program has risen to the top 10 in the country in US News and World Reports. Spencer has started a leading law school trial

advocacy podcast called Unscripted Direct...**Jeff Clause** has been appointed by the Marin County Superior Court to represent two San Quentin inmates on a pro bono basis in medical malpractice cases that will likely go to trial this year. More importantly, Jeff will be wed to Kellyann Estrem in June with our own Doris Cheng serving as officiant. We wish the couple every happiness...**Kelly Ganci** spoke at UC Hastings on a panel discussion entitled "Women in Plaintiffs Side Practice"...**Andrew McDevitt** spoke at the CAOC/CCTLA Sonoma Seminar on the topic of public utility caused wildfires. His presentation was entitled "Wire, Wire, Catch on Fire – Origin and Cause Investigations." Andrew also participated in the May 2022 "Walk MS" event held in Marin County. The charity walk was first held in 1988 and raises funds for research and programs to improve the lives of those afflicted with multiple sclerosis...

Kelsey Constantin published op-ed pieces in Law 360 and in the San Francisco Daily Journal on SB 447. Kelsey is also volunteering at 826 Valencia, a nonprofit organization dedicated to supporting under-resourced elementary school students with their writing skills...**Rich Schoenberger** taught at a NITA / ACLU co-sponsored program for young lawyers focused on motion practice. In April, Rich served as Master of Ceremonies for the Northern California chapter meeting of the American College of Trial Lawyers honoring the chapter's 2022 Charles Renfrew Award winner,

John Kecker. In June he will be speaking at Golden Gate University School of Law on effective introduction of evidence...**Conor Kelly** spoke at the spring Don Galine CAOC conference on the topic of investigating and prosecuting cases arising out of elevator malfunctions. Drawing upon currently pending cases, he provided attendees with tips on finding evidence of elevator defects from sources other than the defendant. Pictured here is our recently retired Finance Manager **Linda**

Davis who left us after 31 years. An essential member of our team since 1990 until last December, Linda came to Walkup after having served in a similar role at Bronson Bronson & McKinnon. Through three decades she took care of more than a thousand clients and worked with more than 20 partners. She started off with the now antiquated job title of "bookkeeper" and retired as the person most familiar with all aspects of our internal and external business



finances, taking responsibility for everything from client trust accounts, to insurance, employee benefits, accounts payable, banking relationships, retirement plans and much more. She steered the ship clear of many rocks and always into a safe harbor. The firm grew and prospered under Linda's financial stewardship. A lover of travel she is now free to see the world, spend time with her husband, daughters and beloved grandchildren and enjoy well-earned free time. We will miss her. **Thank you Linda!** ▲

AUTONOMOUS VEHICLE LITIGATION IS HERE

A new chapter in auto accident litigation is peeking over the horizon. Driverless cars are on the streets of San Francisco. The photo to the right was snapped this May by one of our partners driving on Franklin Street. No one at the wheel. No one in the car. Who is responsible for the first wreck these autonomous taxis cause? How does the investigating officer speak to the driver after the collision? There will be no shortage of video! Cruise Automation is working

to deploy its autonomous driving technology for ride-hailing purposes, transporting riders around the city without a driver. It has been testing its vehicles with a backup driver in the front seat since 2015, but it started allowing users to hail driverless cars in San Francisco six months ago. Driverless cars have also been approved for Waymo taxis (owned by Google). Waymo announced last month it will begin operating self-driving taxis in San Francisco



without a person behind the wheel, and announced it as a "a major step on our path to deploying a fully autonomous commercial service." The future is here. Are you ready? ▲

PRE-DEATH PAIN AND SUFFERING STATUTE ENACTED

A new law has been signed by the governor changing California law to allow recovery of pain and suffering damages experienced by a person who dies before trial. Historically, California law had prohibited the recovery of pain and suffering damages by anyone other than an injured person who survived until trial. Estates and families had no legal remedies available when family members suffered greatly before dying as a result of the negligent or wrongful acts of others, even when the decedent would have been able to recover damages through a personal injury lawsuit if he or she had survived.

The California Legislature recognized that this type of outcome was unfair and has now made changes to the governing law allowing a tort victim's estate to pursue damages for the losses the victim suffered before succumbing to his or her injuries.

Available damages in survival actions were previously limited to the financial losses the deceased person suffered as well

as any punitive damages that might have been recovered. California Code of Civil Procedure Section 377.34 now permits damages for a decedent's pain, suffering, or disfigurement to be recovered in an action brought by the decedent's personal representative in actions filed on or after



January 1, 2022, and before January 1, 2026. The amendment requires plaintiffs recovering under this statute to report their awards to the Judicial Council and the Judicial Council will provide this information to the Legislature. The Legislature will evaluate

whether to maintain CCP Section 337.34 in its current form or consider amendments to same.

There were two primary arguments made in support of the legislative amendments: (1) that California was among the minority of states that prohibited recovery for intangible damages or damages not economic in nature; (2) the existing law provided a "death discount" that incentivized defendants to delay trials in bad faith until claimants died. Advocates for change in the law relied heavily on the fact that existing law serves to protect bad actors, specifically, corporate defendants and insurers who have sought to exploit the law by purposely delaying court cases in the hopes that the victim will die.

Immediate family members as identified under the probate code have always had the right to recover damages for the losses they have suffered because of the loss of a wife, husband, child or parent. Now, by allowing the decedent's estate to recover non-economic damages for pre-death suffering, jurors will be permitted to fairly appraise and award damages for pain and distress that actually occurred and for which defendants were previously excused from paying. ▲

Meet Our 2021-2022 Walkup Fellow Sarae Snyder

Sarae Snyder grew up in New Hampshire and attended Middlebury College, where she received her B.A. in Dance. Shortly after graduation, she was injured while choreographing a dance, and her time spent recovering sent her down a new path. After working for two years in the tech industry, she knew she wanted to make a bigger difference in people's lives, but wasn't quite sure how to do it. One night, she had a dream she was graduating from Berkeley Law, and upon waking up the next morning decided law school was not a bad idea. Fol-

lowing that dream she applied to Berkeley and graduated in 2021.

During her time at Berkeley, Sarae developed a passion for environmental justice. She earned a Public Interest and Social Justice Certificate and a Certificate of Specialization in Environmental Law. Through two semesters of work with Berkeley's Environmental Law Clinic, she advocated for individuals harmed by major corporate polluters and communities harmed by PG&E's exceptionally poor attempts to mitigate wildfire risk.

When Sarae learned about Walkup's Civil Justice Fellowship during her last year of law school, she was excited by the opportunity to



work with such an exceptional group of trial attorneys. She was also excited to see that the cases the Walkup team handles have both the kind of tangible impact she hoped to have when first deciding to apply for law school, and the effect of protecting the community from wrongdoers.

Since beginning work in her position as the firm's fourth Fellow, Sarae has had exposure to a variety of case types involving general negligence, government liability, product liability and medical negligence. We look forward to working with Sarae as she develops her skills over the next 12 months. ▲

RECENT CASES

TRUCKING LIABILITY



Child v. Interstate Trucker

In Child v. Interstate Trucker (U.S. Dist. Ct.), Michael A. Kelly and Richard H. Schoenberger negotiated an \$18,000,000 settlement on behalf of a 10-year-old child who sustained serious brain injury when the car she was riding in was struck by an 18-wheeler on a suburban state highway. The trucking company accepted liability but vigorously challenged damages, alleging that the child suffered from pre-existing spectrum disorder disabilities, and that her parents had not followed up on optimal rehabilitation care after the child's acute hospitalization. Using experts in pediatrics, pediatric neurology, neuroradiology, and neuropsychology, Rich and Mike were able to show that the child's residual limitations were expected given the magnitude of her initial brain trauma and that her socialization and educational functioning prior to the collision were normal in all respects.

MEDICAL NEGLIGENCE



Patient v. Mental Health Center

In Patient v. Mental Health Center (Bay Area Sup. Ct.), Conor Kelly negotiated a \$5,000,000 settlement on behalf of a 61-year-old patient who suffered traumatic injuries while under the care of a Bay Area mental health center. The client had a pre-existing diagnosis of bipolar schizoaffective disorder. Although his symptoms were controlled by medication, he experienced occasional schizoaffective episodes. After experiencing one of these episodes, he was placed on a 72 hour detention in the defendant's mental health facility. He became agitated and argumentative during his detention. During a confrontation with staff members he was pushed to the ground striking his head. Conor established that such conduct violated standard training. The facility compounded the problem by failing to obtain medical care for more than 24 hours. Ultimately, when the plaintiff was finally seen he was found to have a spinal fracture and a head injury, both of which worsened due to lack of treatment. The plaintiff had lived independently with his disabilities before the event but required around the clock care afterwards.

Delivering Mother v. Hospital

In Delivering Mother v. Hospital (Nor.Cal.), Doris Cheng and Sara Peters obtained a binding and final arbitration award in the amount of \$3,158,000 on behalf of the children of a 43-year-old woman who died after childbirth. The matter was arbitrated for two weeks before a retired Sacramento Valley judge sitting as a single neutral arbitrator. Our birth injury attorneys proved that the mother's death occurred as

a result of a failure to properly manage the mother's labor and delivery, resulting in uterine atony and postpartum hemorrhage. Postpartum hemorrhage (PPH) is the leading cause of maternal mortality. The healthcare provider defendant claimed that the death occurred as a result of an unpredictable and unexpected pulmonary embolism. Doris and Sara showed that there was no objective evidence of a pulmonary embolism. Damages included future loss of support and lost household services, plus loss of love and companionship limited by the \$250,000 MICRA general damage cap.

UTILITY NEGLIGENCE



Surviving Heirs v. Utility Provider

In Surviving Heirs v. Utility Provider (confidential venue), Michael A. Kelly obtained a major 8-figure settlement on behalf of the surviving heirs of a professional who was earning in excess of \$1,000,000 annually. Mike proved that the defendant utility company failed to regularly inspect and replace its deteriorating poles and mismanaged its transmission lines such that they malfunctioned and caused the mother's death. The utility alleged that the event causing the accident was unforeseeable and that the age and condition of their system was not a causal factor in the happening of the death. Plaintiffs claimed future economic losses in excess of \$10,000,000. The defendant argued that the decedent had a reduced work-life expectancy and was likely to retire in 3 to 5 years. The matter settled prior to the conclusion of expert discovery.

PREMISES LIABILITY



Child v. Contractor

In Child v. Contractor (California Sup. Ct.), Douglas S. Saeltzer represented a young child who suffered full thickness burns on her flank, legs and feet due to scalding hot water coming out of a faucet while in a bathtub at her parents' rented apartment. Plaintiff alleged that the hot water heater had been set at a temperature which would cause full thickness burns in two seconds or less. In addition to the owner of the apartment complex, suit was also brought against the contractor who installed the hot water heater and the company which managed the building. The defendants all denied that the hot water heater was set too hot and blamed a caregiver for leaving the young child unattended in the bathtub. Working with plumbing and heating experts, Doug was able to demonstrate that the hot water setting had been changed post-incident, and that the burns could not have occurred without exposure to scalding hot water. The case settled at the mandatory settlement conference for a global resolution of \$7,825,000.

RECENT CASES

Minor v. East Bay Preschool

In Minor v. East Bay Preschool (Co.Co. Sup. Ct.), Richard Schoenberger and Jeffrey A. Clause negotiated a \$1,975,000 settlement on behalf of a 4-year-old girl who sustained a third-degree chemical burn on her right thigh at preschool. The school began using a new cleaning product as part of its Covid-19 protocols but failed to dilute the product with water as required by the product's instructions. After the child complained that her legs were itching, the school had her remove her leggings and washed her legs. The defendant teacher then put the leggings back on the minor and omitted to tell her parents what had occurred at school. Our team argued that the preschool's negligence caused the minor to experience a severe and prolonged exposure to the chemical cleaning agent which could have been avoided with timely care. They also showed that the preschool disregarded its own state-mandated training regarding the use of chemical products.



Pedestrian v. Public Transit

In Pedestrian v. Public Transit (S.F. Sup. Ct.), Richard Schoenberger and Khaldoun Baghdadi negotiated an \$18,500,000 settlement on behalf of 56-year-old pedestrian who was struck by a municipal bus after disembarking and was crossing the street in a marked crosswalk. After impact the bus driver tried to turn the steering wheel to move the bus (which was still on our clients' legs) but a faulty brake switch locked up the steering, making the bus immobile for thirty minutes. Counsel for the public entity argued that that our client darted out in front of the bus after its driver had already entered the crosswalk. Using video from cameras in the area and a reconstruction engineer's analysis of the times, speeds and distances involved, Rich and Khaldoun established the bus driver entered the crosswalk well after the pedestrian. A visibility analysis showed that the client remained visible from the moment she left the bus to the moment she began crossing the crosswalk. The client's injury was exceedingly severe, including multiple fractures of her lower leg and a degloving injury resulting in loss of muscle tissue along her entire leg. Her lifestyle will always be limited and she will require substantial future medical care. The case was resolved at mediation.

Decedent v. Construction Contractor

In Decedent v. Construction Contractor (San Mateo Sup. Ct.), Khaldoun Baghdadi and Andrew McDevitt negotiated a \$5,500,000 pre-trial settlement on behalf of the family of a 26-year-old software engineer who was killed when he struck the back of a slow-moving construction truck while exiting a freeway lane closure. Under low-light driving conditions at night, drivers rely on the appearance of tailgate lights to gauge the speed and distance of other vehicles. This limits drivers' ability to detect how quickly they are closing in on vehicles ahead of them. The team utilized the concept of looming to show a reasonable driver could not have avoided the truck driver's slow speed under the best of circumstances. Khaldoun and Andrew showed that both a sub-contractor and the gen-

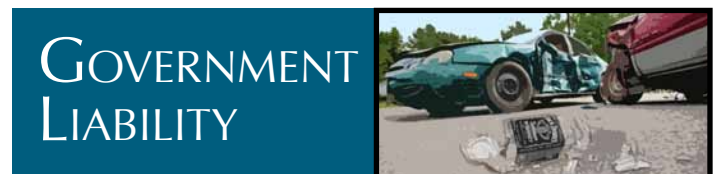
eral contractor had created a dangerous condition by negligently placing lane closures in an effort to speed up construction. To shift the fault for the accident to the decedent, the defense argued that the decedent was travelling at a high rate of speed, had consumed alcohol earlier in the evening, and was using his phone at some point during his drive. After several rounds of mediation, the matter settled after voir dire had concluded and opening statements were about to be given.

Heirs v. Roadway Contractor

In Heirs v. Roadway Contractor (Nor. Cal. Sup. Ct.), Richard Schoenberger and Conor Kelly recovered \$9,300,000 on behalf of the wife and father of a 51-year-old electrician who was killed when a construction vehicle collided with a metal beam inside a tunnel. The impact caused the 2,000 pound support to fall from a height of 13 feet striking and killing the decedent. Suit was brought against both the company that employed the driver and the structural engineers who were responsible for designing the placement of the overhead metal beam. During discovery, Rich and Conor established that the truck operator had violated his employer's safety protocols and Cal-OSHA rules by not lowering the boom on his vehicle inside the tunnel. Because the decedent did not have children, both his wife and father were rightful plaintiffs. The case was mediated and resolved during discovery.

Patient v. Emergency Department

In Patient v. Emergency Department (venue confidential), Andrew McDevitt and Valerie Rose recovered \$3,200,000 against multiple hospital based defendants on behalf of a 28-year-old man who was permanently paralyzed after healthcare providers at a northern California emergency room ignored his complains of severe pain to his mid-back. Instead of investigating a source of the complaints in the area of the pain, providers ordered imaging of the wrong area and missed a benign tumor which was pressing on his spine and required immediate surgery. Our client was sent home despite the fact that he could barely walk and gave a history of increasing numbness in both of his legs. When he returned to the emergency room one day later, it was too late to restore mobility.



College Student v. Public Entity

In College Student v. Public Entity (North State Sup. Ct.), Michael A. Kelly and Andrew McDevitt recovered \$5,500,500 on behalf of a 24-year-old man who sustained a severe traumatic brain injury when he was struck at high speed by a drunken driver. The collision took place at a dangerous urban intersection where more than 10 prior broadside accidents had occurred. Working with referring counsel, Mike and Andrew identified neighbors who were familiar with the accident history at this location and previous accident victims, willing to testify to the existence of prior wrecks and near misses. The defendant City brought two separate summary judgment motions and alleged that all fault rested with the drunk driver whose blood alcohol

Continued on back page

WALKUP, MELODIA, KELLY + SCHOENBERGER

FOCUS on torts

was three times the legal limit. Our team defeated both motions and, as part of the settlement, secured a more than 50% reduction in an outstanding 7-figure ERISA lien. In all, more than 30 depositions of lay and expert witnesses were completed before the matter settled at a court supervised mandatory settlement conference on the eve of trial.

Inmate v. County of Santa Clara

In Inmate v. County of Santa Clara (pre-litigation resolution), Richard Schoenberger and Matthew Davis represented a young man held in a county jail on misdemeanor charges who suffered a serious neck injury while inside his cell. When a jail nurse saw him on the cell floor displaying clear signs of paralysis while saying he could not move his arms or legs, she failed to take proper spinal cord injury precautions. The nurse instead instructed deputies to lift the inmate from the floor and place him on the cell's cot. Body cam footage showed the plaintiff screaming in agony during this process. Jail staff then left him on the cot. For nearly a day our client did not move, crying and telling jail staff that he might be paralyzed. The staff ignored him for more than 24 hours until finally arranging for him to be transported to a hospital. By the time appropriate medical evaluation occurred, the client was left permanently quadriplegic. After retaining experts, Rich and Matt negotiated a resolution in excess of \$7,000,000.

Cyclist v. State of California

In Cyclist v. State of California (Marin Co. Sup. Ct.), Andrew P. McDevitt and Jeffrey A. Clause resolved a bicycle injury case on behalf of a 22-year-old man who rode his bicycle into a chain link fence at the end of a bicycle path, causing him to sustain fractures in both hands. Andrew and Jeff uncovered documents showing that the State knew the exit to the bicycle path was dangerous due to its "tight turn" and "narrow" exit, which forced bicyclists to make a complete stop and a 90 degree turn to avoid colliding with the fence. Recognizing the danger the State had placed fluorescent orange signs and cones near the end of the sidewalk, but inexplicably removed them before this incident. The hazard of the fence was increased due to the optical illusion created by the path's configuration: from the perspective of a seated cyclist, the path appeared to continue beyond the chain link fence. The defense argued that the path was not dangerous and that the plaintiff caused his own injuries by riding at night, even though the State knew commuters used this path at night. The case settled after an all-day mediation.

Senior Citizen v. City and County of San Francisco

In Senior Citizen v. City and County of San Francisco (S.F. Sup. Ct.), Jeffrey A. Clause negotiated a settlement in the amount of \$650,000 on behalf of a 91-year-old woman who was dragged by a light rail train after her hand became trapped in a closing door. The train's rear view cameras captured her standing on the platform with her hand caught for 12 seconds while the operator departed the station, dragging her on the ground beneath the train. She sustained multiple broken ribs, spinal fractures, pelvic fractures, and a collapsed lung. Jeff discovered evidence that showed the obstruction detection system on the new trains failed to operate consistently in testing, and that the manufacturer and City made no improvements to the system before

PRSR STD
U.S. Postage PAID
San Francisco, CA
Permit No 925

placing the vehicles in use. He also proved that the operator failed to follow the MUNI Railway's rules requiring that all passengers be clear of the train prior to leaving a designated stop.

Minor v. School District

In Minor v. School District (USDC No. Dist.), Khaldoun Baghdadi and Valerie Rose negotiated a \$3.75 million recovery on behalf of a special needs child. The child had been physically and sexually abused by his special education teacher for two years, but was unable to tell his parents about the abuse due to his disabilities. The teacher's abusive behavior had been reported to the administration for years. Instead of taking action or reporting the abuse to Child Protective Services, administrators consistently gave the teacher performance reviews indicating that his classroom was a "safe environment conducive to learning." Pre-trial procedure involved approximately 20 depositions, six different discovery dispute hearings and a successful Daubert motion. ▲

We are available for association and/or referral in all types of personal injury matters. Fees are shared with referring counsel in accord with Rule of Professional Conduct 2-200.

 **WALKUP, MELODIA
KELLY + SCHOENBERGER**

650 California Street, 26th Fl., San Francisco, CA 94108
(415) 981-7210 Fax (415) 391-6965
1 (888) SF ATTYS www.walkuplawoffice.com

Printed on recycled paper stock. ♻️