

JOHNSON JOHNSON LARSON & SCHALLER PC

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Newsletter - Winter 2010

Driving Under the Influence of Intoxicants

Estate of Shayna McGinnis v. Estate of Joel Ribich

Tragically our experience demonstrates repeatedly that drinking and driving do not mix. 27 year old Shayna McGinnis died in November 2007 when her friend sped around a curve on Lorane Highway, lost control of his BMW, and skidded through a hayfield and smashed into a large oak tree. The car burst into flames, and the driver and Shayna were killed on impact. The driver's blood alcohol content was more than twice the legal limit.

We brought a wrongful death claim against the estate of the driver on behalf of Shayna's mother. Shayna and her mother worked together in a clothing design business, and Shayna was a talented artist. We worked with a local expert economist and Shayna's family to prove substantial economic damages from the loss of Shayna's skills as a designer and entrepreneur. We advocated that the statistics used by economic experts to project economic loss to an estate should reflect the modern work force, and that the economic value of a life should not be based on gender. We resolved the claim during a settlement conference with Judge Rasmussen for a confidential amount.

Public Entity Liability

Itzkowitz v. City of Eugene

Sandy Itzkowitz was enjoying a Saturday morning bike ride with the Greater Eugene Area Riders, cruising downhill on Fox Hollow Road in Eugene, when she crossed a ragged and uneven section of the pavement and was suddenly thrown from her bike onto the roadway. Luckily, she was wearing a helmet. Still, she suffered severe and permanent injuries in the fall. Sandy came to our office in hopes that by taking legal action, she could prevent others from getting hurt in the same location.

Through our investigation we discovered that other cyclists had been injured at the same section of bicycle lane. In spite of the City's assertion that they were immune from liability based on discretionary immunity, we negotiated a settlement with the City before trial. Perhaps most importantly, the hazardous section of bicycle lane where Sandy was gravely injured has since been repaired.

Hospital Neglect

Scott Hailey v. Cascade HealthCare Community, Inc., et al

For Scott Hailey, what should have been a routine neck fusion turned into a nightmare when medical staff failed to respond to a devastating post-surgical complication. In 2005, Scott herniated a cervical disc at work, and six

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months later he went to the hospital for an anterior cervical fusion. At about 11:00 p.m., shortly after surgery, Scott told the hospital nurse that he had coughed and "something bad had happened" to his neck. The nurse saw that Scott had developed a large lump on his neck about the size of half an orange. She called a physician's assistant who examined Scott and saw that the huge bulging bruise was pushing his trachea to one side. In spite of Scott's increasing pain and discomfort, no one called a surgeon until three hours later when Scott collapsed to the hospital floor, unable to breathe. Surgeons opened the bulging hematoma and removed large quantities of blood clots, but Scott suffered permanent brain injury from lack of oxygen.

Before the brain injury, Scott was a healthy and energetic 44 year old with a passion for engineering and cooking. Afterward, Scott had severe visual, emotional, and mental deficits, and he was completely disabled. Sadly, he died of unrelated causes in June 2008 as he struggled to regain his former life style. The estate's survivorship claim settled after Scott's death.

Third Party Product Liability Claim

Ferreira v. J & S Machine, Inc.

We represented a young woman who was seriously injured at work in a third party claim against the foreign manufacturer and United States distributor of a defective pipe-bending machine. Our client worked for a company that manufactured steel frames for green houses. It was her job to feed long 1 1/2 inch diameter steel pipe through the rollers of a pipe-bending machine that bent the pipe to programmed specifications. Late one afternoon, she momentarily looked away from the machine to respond to a co-worker, and her glove was immediately caught between the front roller and the pipe, pulling her hand into the unguarded pinch point. Two of her fingers were crushed before she managed to hit the emergency stop button. We filed a complaint alleging that the absence of safety guards rendered the machine dangerously defective. We settled the claim with the U.S. distributor, and the Italian manufacturer developed and now markets a guarding system designed to prevent others from being similarly injured.

Failure to Diagnose Brain Bleed

Potter v. Dunes Family Health Care, et al

Ron Potter was riding an ATV on a camping trip with his family when he wrecked and smashed his face and head on the handle bars. His face was covered with blood from multiple cuts, debris was embedded in his face, and he was in pain. In the emergency room, lab tests showed blood in his urine and a high risk of internal bleeding from Coumadin for a previous surgery. The combination of obvious severe facial injuries and the risk of internal bleeding should have alerted the physician to rule out bleeding in the brain. Unfortunately, the hospital's CT scanner was broken, so instead of sending him to another hospital 30 minutes away to get the necessary scan, the doctor ordered a more convenient but much less reliable x-ray. Hospital physicians interpreted the x-ray as negative for facial fractures, and sent Mr. Potter home. The next day the hospital radiologist read the same x-ray

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and saw facial fractures and blood in the sinuses and recommended a CT scan, but no one told Mr. Potter. He died 48 hours later of a massive brain bleed. The case settled for \$260,000.

Devastating Freeway Crash

A Cottage Grove Family v. Henry Group, Joggers Bar & Grill, and Bryan Lewis

On a summer night in 2006, a Cottage Grove family of 7 was heading home on I-5 from a family wedding in Albany, Oregon. The evening was quiet, but suddenly they saw headlights speeding toward them on the wrong side of the freeway. They steered their Suburban right and then left to avoid the crash, but the oncoming car seemed to track their movements. It hit their vehicle head on at more than 75 miles per hour, killing the oldest son, and permanently disabling the parents and their four younger children.

We met with the extended family about the collision. The loss of the oldest child was emotionally and financially devastating to the family. He had lived in the family home and contributed greatly to the financial and emotional health of the family. Added to this loss, the parents and each of the four surviving children had severe debilitating injuries, requiring long hospitalizations, multiple painful surgeries and lengthy, ongoing treatment and recovery.

We began investigating the driver's background immediately. Bryan Lewis was driving the oncoming car. He was from Texas and was temporarily working in Eugene to troubleshoot the installation of equipment in a local bakery. His Texas employer, The Henry Group, Inc., arranged and paid for his Eugene apartment and rental car. Our investigator discovered and interviewed witnesses who told him that on the night of the collision Lewis and a coworker drank for several hours at Joggers Bar & Grill on Willamette Street in Eugene. At about 11:00 p.m. the co-worker took a taxi home, but Lewis stayed on and later left driving his employer-furnished rental car. He was never able to explain why he was nearly 30 miles north of Eugene at the time of the collision. Several hours after the collision Lewis' blood alcohol was .23% almost 3 times the legal limit. Our investigator's work in uncovering the facts regarding Lewis' employment relationship gave us the leverage of an additional theory of respondeat superior liability against the employer.

With the help of our talented litigation staff, we worked with many different kinds of experts to develop the family's damages claim. We met with the family and a professional Spanish language interpreter, Ana Maria Dudley. A consultant helped us to understand and explain how cultural differences affected the family's recovery, medical treatment, and economic losses. We also worked with a vocational rehabilitation expert to prove impairment of earning capacity. Because of the family's catastrophic injuries, we worked extensively with private and public agencies to help the family obtain services and assistance.

We settled each of the seven family members' claims for confidential amounts after lengthy mediations. It was a joy to assist this wonderful family.

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Measure 49 Claim

Beautiful rolling hills dominate the horizon as seen from Jim and Patty Robinson's farm near Grants Pass, Oregon. Jim Robinson has lived on the property for more than five decades, as his parents ran a dairy farm and a cannery there while he was growing up. In 2008, the Robinsons trusted a local land use planner to assist them in filing a Measure 49 Waiver with the State of Oregon so they could subdivide their property pursuant to Measure 37. Despite representations by the land use planner that their Measure 40 Waiver was timely filed, the Robinsons were dismayed to learn by notification from the State that their application was late and would not be considered. During our investigation, we found that the land use planner sent the waiver after the deadline had passed. Moreover, he did not carry errors and omissions coverage. In discussing the Robinson's claim with adverse counsel, we requested that the land use planner attempt to rectify his mistake by requesting the State reconsider the Robinson's application. The land use planner agreed to do so pursuant to new legislation that may allow reconsideration of the Robinson's Measure 49 Waiver application.

Staff Notes:

Scott Lucas and Michele Smith

We are pleased to welcome attorneys Michele Smith and Scott Lucas as shareholders. They each bring unique assets and a fresh perspective to the firm. As with all litigation attorneys, Scott and Michele are happy to work with other attorneys around the state on a referral basis.

Derek Johnson

Congratulations to Derek Johnson for his election as the Region 2 representative to the Oregon State Board of Bar Governors. The Board of Governors consists of 12 lawyers elected from six regions and four public members appointed by the Board. The Board of Governors governs the Bar, determines the general policies of the Bar, and approves its budget each year.

Derek is also a member of the Eugene Metro Futbol Club Board of Directors, and his young son enjoys playing soccer with the Club.

Best Lawyers in America

Kudos to Art Johnson, Doug Schaller, and Derek Johnson, who are included in 2010's Best Lawyers in America.