

# Briefs

## Defective Cable Causes Logging Yarder Failure *Tony B. v. Logging Supply Co.*

With thirty-five years running a yarder, Tony B. knew how a job was going just by listening to the cables on his rig. When he was pulling a heavy load of logs uphill to the landing, the 1 ½ inch diameter cables would hum and pop as they wound around the drums on the Berger Mark IV yarder. The tension on the cables was enormous, but with the guylines on the tower properly set, Tony could safely move the raw logs out of the hole up to the landing where they were processed and loaded on trucks to be taken to local mills.

On August 8, 2007, Tony began pulling logs from a freshly-cut section of hillside. The new pull direction put tension on a new set of guylines. Just as Tony began lifting the logs with the skycar, he heard an unfamiliar noise--an explosive crack and then a whistling sound as one of the guylines failed and whipped past the window of his cab. As the 100 foot high tower rocked, he tried to drop the load, but everything came crashing down, and the yarder fell over onto its side. Tony's right leg was crushed, his shoulder was severely damaged, and a blow to his head knocked him unconscious. Tony's injuries are disabling, and he will never again operate a yarder. He asked us to represent him and help him obtain compensation for his injuries.

Our investigation of the yarder failure revealed that one guyline was defective. However, when the tower came down all the lines gave way. Consequently, it became our job to establish that the defective line failed first, causing the cascade of other failures. We had to rule out

the possibility that the yarder was not set up properly or that it was pulling too heavy a load to rule out operator error and preserve a third party products liability claim. We were assisted in this task by investigators from the workers' compensation carrier. We were also helped by investigators from the yarder's insurance company, which was interested in establishing that the manufacturer of the guyline was at fault, not the operator or logging crew.

In the course of the investigation, we hired a forestry professor from Oregon State University

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### SEAT HEATER BURNS

With GM and Chrysler out of bankruptcy, we are again handling defective seat heater cases. Surface temperatures in defective seats can reach up to 160 degrees Fahrenheit. We have represented over a dozen people with sensory loss below the waist who have sustained severe burns. See the March 10, 2011 USA Today article on seat heaters for more information.

# Case Notes

## Medical Product Multi-District Litigation

Kugel Mesh, Avandia, NuvaRing, DuPuy and Zimmer Artificial Hips – We are currently representing clients in multi-district litigation involving these medical devices and pharmaceuticals. Some of the cases are filed in U.S. District Court of Oregon; others are filed in the jurisdiction where the multi-district litigation is being handled. As with other mass torts we have handled in the past, such as Dalkon Shield, L-Tryptophan, and Vioxx, it is extremely important to evaluate and screen cases carefully. Often, proving that a client's injuries were caused by the defective product is the biggest challenge. For that reason we rely on our staff nurse, Jodie Wize, R.N., B.S.N., to research current literature and our clients' medical records.

## Failure to Diagnose Colon Cancer

### *Estate of James C. v. Hospital and Doctor*

James C. was 76 years old when he went to the emergency room complaining of abdominal pain and constipation. A surgeon performed a colonoscopy and found multiple polyps, but did not remove them all. The pathology report showed that some of the polyps were precancerous, but the doctor told our client and his primary doctor that the tissue was benign and that he should return in two years. The standard of care required that James have a repeat colonoscopy in 3 to 6 months. Two years later James was diagnosed with end stage colon and liver cancer. We filed a lawsuit on James' behalf. Sadly, he died while the litigation was pending. We then filed an Amended Complaint for Wrongful Death. Based on strong expert opinion that the doctor had violated the standard of care, and an oncologist's opinion that the cancer likely would not have been fatal had it been caught during the first colonoscopy, we pushed for an early mediation of the case. The case was settled for a confidential amount.

## Construction Negligence

Our client and her husband purchased a lot and a manufactured home from a developer. The developer did not complete the installation of the manufactured home on time and gave the couple permission to move in when the front door had no stairs and opened onto an unprotected four foot drop. Tragically, our client suffered a severe spinal cord injury and partial paralysis when she opened the door to stop the storm door from swinging in the wind and fell out the opening onto the ground. We filed suit against the developer for failing to install front steps or put up a guard rail. After successfully appealing summary judgment entered in favor of the defendant developer, we reached a confidential settlement.

## Uninsured Motorist

### *Nicolas A. v. Farmers Insurance*

Nick was 21 years old when he died of fatal injuries sustained as a passenger in a high speed one car crash. The driver of the vehicle was uninsured, but as a student Nick was still a member of his parents' household, so we brought an uninsured motorist claim against Farmers Insurance under his parents' underinsured motorist liability and umbrella policies.

The damages recoverable for Nick's parents' tremendous loss were subject to ORS 31.710, which imposes an arbitrary \$500,000 cap on noneconomic damages awardable in wrongful death claims. This damages cap still applies in wrongful death cases, even though it has been held unconstitutional in personal injury claims. Punitive damages, which might otherwise have been recoverable from the driver, were also excluded under the terms of the Farmers' policies.

As a student, Nick did not have a significant earnings history. However, he planned to join his father's successful brokerage business following his graduation from college. Eventually he would have become joint owner of the business with his brother. This rare opportunity greatly enhanced his future earning capacity over that of many college graduates and resulted in a substantial pecuniary loss to his estate recoverable as economic damages. With the benefit of this uniquely provable future economic loss, the case settled for a negotiated amount.

## Failure to Properly Treat Post-Surgical Deep Vein Thrombosis

### *David F. v. Veterans Administration*

A lead electrician at Roseburg Forest Products, David F. was only 52 years old when he died of a pulmonary embolism. After an uneventful surgery, David developed deep vein thrombosis, or clotting, in his calf, and a saddle embolism in his lungs. He returned to the Portland VA Hospital, but doctors there failed to properly evaluate and treat David's serious condition. He went to the Roseburg VA for followup care, where doctors again failed to recognize the severity of his condition, and provided inadequate medical care. David died unnecessarily from an embolism as a result of the poor medical care he received. David's wife went to see Roseburg attorney Jeff Mornarich, and Jeff referred her to our office.

We filed an administrative claim against the Veterans Administration for David's wrongful death. We obtained a thorough expert opinion from a pulmonologist and critical care specialist that the VA's treatment fell below the standard of care in several respects. In addition, one of David's VA doctors stepped up and stated that the care which David received was not up to standard. With his excellent earnings history and the support of human resources at Roseburg Forest Products, working with an economist we put together a strong economic damages case. We were able to negotiate a just resolution with the Veteran's Administration and the Department of Justice.

# Closing Remarks and Referrals

We want our newsletter to be helpful and informative to our colleagues and friends. Our firm litigates a wide range of complex personal injury and wrongful death cases involving motor vehicle accidents and defects, construction accidents, medical malpractice, and defective products and medical devices. We especially enjoy working with other counsel throughout Oregon and adjoining states. Referral arrangements vary from case to case. Most commonly, our firm guides strategy and advances costs and resources for investigation and prosecution.

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## *Defective Cable...continued*

to assist with interpreting logging regulations and proper practices. He spent several days examining the scene, reviewing depositions and the OSHA investigation. We hired a logging surveyor to establish that the yarder had been set up properly. He mapped the entire landing, and with the help of eyewitnesses determined the exact location of the anchors holding the guylines. We spent hours at the scene with the crew chief and Tony's co-workers, who described Tony as one of the best yarder operators in the business. We also worked with a metallurgist to explain how the guyline had been defectively manufactured and what forces were required to cause its failure.

We retained a number of experts, including an economist, a vocational rehabilitationist, a life care planner, and independent medical experts. Tony's treating physicians were also very helpful by explaining the seriousness of his injuries. The case was settled for a confidential amount.

## Attorney & Staff Notes:

### KEITH SEMPLE

The firm is very happy to announce that Keith Semple has joined the litigation team. Keith has over seven years experience handling workers' compensation claims, social security claims, and employment cases, and he will continue that work with our firm. He is also diving into wrongful death and personal injury cases, and joining works in progress. We welcome his expertise, affability, and sharp analytical skills.

### CATHY FITZSIMMONS

Cathy Fitzsimmons, a legal assistant with the firm for 17 years, has retired. During her tenure, Cathy held numerous positions, and willingly took on every assignment sent her way. So, we are pleased for her and sad for us. She says she will come around occasionally, and should we ever need to tap her expertise, whether on medical bills and records or last minute trial preparation, she has promised to answer our calls. Cheers, Cathy.

