

## LOCAL CIVIL VERDICTS

by Matthew P. Guichard

Although 1994 is already upon us, we're just now receiving responses for the November and December 1993 Contra Costa County Superior Court civil jury verdicts. In fact, a few reports are trickling in from Summer 1993 cases. However, if a case report comes in which might be of particular interest to our local legal community, we will still mention it, even if it's "old news."

Contra Costa County Superior Court Presiding Judge Doug Swager in his annual state of the court remarks at the County Bar Association luncheon on January 21, 1994, reported that in 1993 106 civil cases went all the way to jury verdict in Superior Court in our county. By our next issue of local civil jury verdicts we hope to break that number down into those in which plaintiffs prevailed, and those in which defendants prevailed. In 1992, 91 civil cases went to jury verdict. Incidentally, who said civil cases never get out to trial?

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In November of 1993, seven civil cases went to jury verdict. Of those seven, defendants prevailed in five and plaintiffs in two. In December of 1993, nine civil cases went to jury verdict. Plaintiffs prevailed in six and defendants in three. Preliminary figures do show that our civil juries return verdicts which are pretty evenly divided between plaintiffs and defendants. Now on to our case reporting.

#### GALEN V. MCALISTER

On September 10, 1993, a verdict was reached in the case of Galen v. McAlister, number C91-06109. The case was heard before the Honorable Sam Mesnick on assignment from the Bay Judicial District. The plaintiffs were represented by Thomas Trapani of Oakland. The defendant was represented by Kathryn Anderson of San Francisco.

Plaintiffs Donald I. Galen, M.D. and Donald I. Galen, M.D., Inc., filed a professional liability action against plaintiffs' benefits plan consultant for negligent administration of Dr. Galen's defined benefit pension plan.

In a 12-0 verdict, the jury awarded \$102,000 to plaintiff Donald I. Galen, M.D., Inc.

#### WEEMERING V. JOHN MUIR MEDICAL CENTER, ET AL.

On November 3, 1993, a verdict was returned in the case of Weemering v. John Muir Medical Center, et al., case number C91-04345. The case was of particular note for several reasons. E. Bob Wallach of San Francisco, together with Bruce Krell represented the plaintiff. Robert Lawrence, Ralph L. Smith and Richard Dodge represented the various defendants. The case was heard before the Honorable David Dolgin.

Plaintiff was severely injured at approximately 8:40 a.m. on September 18, 1993, when her bicycle collided with an automobile near her apartment in Richmond. She suffered severe head and facial injuries in the accident, including a depressed skull fracture. Plaintiff was transported via ambulance to John Muir Medical Center, the desig-

nated trauma center for the County of Contra Costa. The trauma team, which included trauma surgeon Howard Taekman, M.D., emergency physician Robert Mueller, M.D., and trauma nurses, respiratory therapist, x-ray technicians and related personnel, was assembled and waiting for plaintiff when she arrived at John Muir at 9:39 a.m. After stabilizing plaintiff's airway, diagnostic procedures including x-rays of the neck and CT scan of the head and face were undertaken, and Dr. Cavett Robert was called in for neurosurgical consultation. Following completion of the CT scans, plaintiff was taken directly to the operating room where she underwent more than 11 hours of surgery to repair her severe head and facial injuries.

Shortly after plaintiff came out of surgery on September 18, 1993, her

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nurses discovered that she had flaccid paralysis below the level of T-5. Further diagnostic work-up at that time revealed that plaintiff had a dislocated thoracic spinal fracture at T-5/T-6 which had severed plaintiff's spinal cord. Plaintiff remains a permanent paraplegic with neither motor/sensory sensation below the level of the fracture, nor bladder and bowel control.

Plaintiff contended that the fracture dislocation which caused her spinal cord severance did not occur until after she had arrived at the hospital. She further contended that the defendants negligently failed to properly diagnose, evaluate, and treat her spinal injuries, thereby causing the cord severance. Specifically, plaintiff contended that the defendants negligently failed to order thoracic spine x-rays and/or CT scans, and failed to properly immobilize plaintiff's spine in the hospital.

Defendants contended that they complied with the applicable standard of care with respect to their diagnosis, evaluation and treatment of plaintiff's life threatening injuries. Specifically, defendants contend that thoracic radiography was not indicated based on the presentation, findings, and mechanism of injury, and that plaintiff was kept in appropriate spine precautions throughout her hospital course. Finally, defendants contended that plaintiff's spinal cord severance occurred at the scene of the auto/bicycle accident, and was already complete by the time plaintiff arrived at John Muir Medical Center.

Prior to trial, plaintiff's attorneys demanded \$1,000,000 from John Muir and one of the defendant doctors, and \$950,000 each from the two other defendant doctors; \$75,000 was offered on behalf of John Muir. No offer was made by the doctors.

After a seven-week trial, the jury returned with defense verdicts.

#### KIRK V. SOURCE ONE MORTGAGE SERVICE CORP.

On November 10, 1993, a verdict was returned in the matter of Kirk v. Source One Mortgage Service Corp., case number C92-05408. Plaintiff was represented by Cary Dictor of Walnut

Creek. Defendant was represented by Mark Fenske of San Francisco. The case was heard before the Honorable James Trembath.

Defendant corporation was the mortgage loan servicing company for plaintiff's FNMA loan. Plaintiff alleged that he had the right to cancel his loan impound account and that defendant refused to allow it. Plaintiff alleged that defendant avoided canceling the impound for a period of three years. Defendant ultimately started foreclosure proceedings against plaintiff and reported plaintiff's loan as delinquent to national credit bureaus. At all times, plaintiff paid current principal and interest.

Prior to trial, plaintiff demanded \$225,000. Defendant offered \$30,000. The jury awarded \$921,500. Ouch!

#### PIKE V. LAPHAM

On December 20, 1993, the jury returned a verdict in the matter of Pike v. Lapham, case number C93-00341. The trial was held before the Honorable Richard Flier. Plaintiff was represented by Glenn Zwang of San Francisco. Defendant was represented by Daniel Bernhard of San Francisco.

Plaintiff invested in securities offered by Inlex, Inc. The offering materials failed to disclose the existence of an IRS tax lien for non-payment of withholding taxes and a bank lien encumbering all of the company's assets, including those assets purportedly pledged to plaintiff as security for his investment. The defendant was the controlling shareholder and chairman of the board of Inlex, Inc., and partici-

pated in the preparation and approval of the offering materials. Ultimately, Inlex, Inc. was sold to pay off the tax lien and the bank lien, and plaintiff's securities became worthless. After a five-day trial, the jury returned a unanimous verdict awarding plaintiff the amount of his investment, plus prejudgment interest. Judgment was entered in that amount less monies received by plaintiff as dividends from Inlex, Inc. and monies received by plaintiff from other defendants in settlement.

Prior to trial, the plaintiff demanded \$146,400.87. Defendant offered \$25,000.00. The jury awarded the plaintiff \$146,400.87.

#### KORITZA V. REZAPOUR, DDS

On November 19, 1993, the jury returned a verdict in the matter of Koritza v. Rezapour, DDS., case number C91-05087. The jury really got its teeth into this one.

The matter was heard before the Honorable Wayne Westover. Plaintiff was represented by Martin Titcomb of San Francisco. Defendant was represented by Ronald Goldman of San Francisco. Plaintiff was treated by defendant dentist in 1991 for periodontal disease. All of her teeth were extracted. The plaintiff alleged that she developed "TMJ dysfunction" as a result of the defendant's treatment.

Prior to trial, plaintiff demanded \$200,000. Defendant offered \$75,000. The jury found for defendant. The poll indicated a 10-2 split. ★

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