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- Premises Liability (i.e. Slip-and-Fall)
- Wrongful Death
- Minor Rear-End Automobile Accidents
- Accident Reconstruction
- Fraud
- Bad Faith
- Workers' Compensation

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LATEST TRIAL

In January 2005, Rick Koep tried a case in Santa Barbara, wherein the plaintiff claimed serious personal injuries as a result of an automobile accident. Rick argued that an unidentified person caused the accident; he also disputed the nature and extent of plaintiff's injuries. Ultimately, the jury found that Rick's client was only 50% liable for plaintiff's injuries. The other 50% of liability was placed on the unidentified person. With respect to damages, the plaintiff never came down from her policy limit demand, and requested that the jury award her \$200,000 against Rick's client. However, the jury awarded the plaintiff only \$13,800, which covered only a fraction of plaintiff's medical bills.

WORKERS' COMPENSATION

MEDICAL LEGAL EVALUATIONS - REPRESENTED WORKERS

The medical legal procedures under Labor Code sections 4060-4062 have been dramatically changed. Some of the changes were in effect prior to 2005, but additional changes came into effect as of January 1, 2005. Although there is still a two track system, one for represented workers and one for unrepresented workers, there is now a QME panel system, which changes the ability of the parties to pick a QME. Importantly, this new system applies to evaluations done under Labor Code sections 4060-4062, which include denied claims. It appears the new procedures only apply to dates of injury on or after January 1, 2005, if the employee is represented. Labor Code section 4062.2.

Labor Code section 4062.2 sets forth the procedure for medical legal evaluations when the worker is represented follows.

If either party requests a medical evaluation pursuant to Section 4060, 4061, or 4062, either party may commence the selection process for an agreed medical evaluator by making a written request naming at least one proposed physician to be the evaluator. If no agreement to an AME is reached within ten (10) days (or agreed upon additional time, not to exceed twenty (20) days) of the first written proposal, either party may request the assignment of a three-member panel of qualified medical evaluators to conduct a comprehensive medical evaluation. The party submitting the request shall designate the specialty of the medical evaluator, the specialty of the medical evaluator requested by the other party if it has been made known to the party submitting the request, and the specialty of the treating physician. The party submitting the request form shall serve a copy of the request form on the other party.

Within ten (10) days of assignment of the panel by the administrative director, the parties shall confer and attempt to agree upon an AME selected from the panel. If the parties have not agreed on a medical evaluator from the panel by the tenth day after assignment of the panel, each party may then strike one name from the panel. The remaining qualified medical evaluator shall serve as the medical evaluator. If a party fails to exercise the right to strike a name from the panel within three working days of gaining the right to do so, the other party may select any physician who remains on the panel to serve as the medical evaluator.

(WORKERS' COMPENSATION CONT.)

The represented employee shall be responsible for arranging the appointment for the examination, but upon his or her failure to inform the employer of the appointment within ten (10) days after the medical evaluator has been selected, the employer may arrange the appointment and notify the employee of the arrangements.

Notably, if an employee has received a comprehensive medical-legal evaluation under this section, and he or she later ceases to be represented, he or she shall not be entitled to an additional evaluation.

**PREMISES LIABILITY
LIABILITY OF ADJACENT LANDOWNERS**

In January 2005, the California Appellate Court, Sixth District, decided the case of Joanne D. Gonzales v. City of San Jose & Charles Huang. Plaintiff Gonzalez alleged to have sustained personal injuries when she fell on a sidewalk owned by the City of San Jose. Plaintiff sued the City of San Jose, the owner of the sidewalk, and Charles Huang, the owner of the property adjacent to the sidewalk where she fell.

Huang filed a motion for summary judgment contending that he did not own the sidewalk that plaintiff fell on and that Municipal Code section 14.16.2205 was unconstitutional. The motion was granted by the trial court, thus, plaintiff and the City of San Jose appealed the trial court's judgment.

The Court of Appeal reversed the judgment of the trial court, holding Municipal Code section 14.16.2205, which imposed liability on abutting property owners, was constitutional and served an important public policy role.

The Court reasoned that the California Government Tort Claims Act did not preempt the Municipal section. The Act established liability for public entities and their employees for dangerous conditions on public property. However, unlike the Municipal section, the Act did not deal with the duty on the part of abutting landowners for injuries to third persons on public sidewalks, did not absolve San Jose of liability for dangerous conditions on public property, and the state legislature did not express its intent to cover sidewalk maintenance or abutting landowner liability. Therefore, there was no conflict between the Municipal Code section and state law. Finally, the court found that imposing a duty of care on an abutting landowner served an important public purpose by adding an additional level of responsibility on abutting property owners because they were in the best position to quickly identify and address potentially dangerous conditions.

The Chronicle is prepared by James A. Rossi, Esq. of our Calabasas Office. For questions regarding The Chronicle, please contact James A. Rossi, Esq., at 818-871-9900 or Rossij@cwllaw.com. Upon request, copies of any legal authority cited in The Chronicle are available.

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