

BERMAN & RIEDEL, LLP

ATTORNEYS AT LAW

Practicing throughout the State of California

Summer 2009

*Courtesy of
Berman & Riedel, LLP*

Areas of Practice:

- Serious Personal Injury
- Wrongful Death
- Nursing Home Litigation
- Construction Site Accidents
- Automobile/Motorcycle
- Products Liability
- Burn Injuries
- Slip & Fall
- Insurance Bad Faith
- Consumer Class Actions

Berman & Riedel, LLP
12264 El Camino Real, Suite 202
San Diego, California 92130

Tel. (858) 350-8855
Fax (858) 350-9855
www.bermanlawyers.com
www.preventelderabuse.com
Office Hours:
Monday - Friday
8:30 am - 5:30 pm

Attorneys & Staff:

William M. Berman, Esquire
U. Kelley Riedel, Esquire
Christopher C. Walton, Esquire
Matthew A. Paré, Esquire
Natalie B. DeClusin, Esquire

Rita Cole, Admin./Paralegal
Valerie Ramirez, Paralegal
Yvonne Sanchez, Legal Assist.



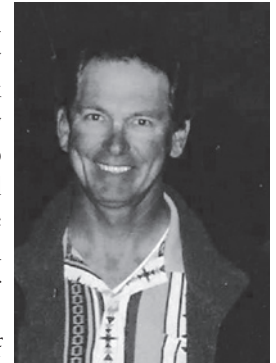
Vista Jury Awards \$1,850,000 to Children of Father Killed by Person Asked to Drive Vehicle When Known to be Fatigued

In May 2009, *Berman & Riedel, LLP* had the privilege of presenting a case at trial on behalf of the three children of 48-year-old Derek Ritter, who was tragically killed on January 25, 2006 while riding his motorcycle on his way to work. Derek Ritter was struck head-on by a large Dodge Ram truck that crossed a double-yellow line into his direct path of travel, and at a closing speed of 115 mph. According to the accident reconstruction expert that was called to testify at trial, Derek Ritter had time to perceive the accident but not react; the truck crossed into his path a mere two seconds before impact. When struck, his motorcycle exploded and he was thrown from the bike. The parties involved in the accident fled the scene, and were later arrested for their involvement.

Due to her failure to accept any responsibility for her role in causing the death of Derek Ritter, *Berman & Riedel, LLP* tried to case against the girlfriend of the driver involved in the accident, under most difficult legal claims of Negligent Entrustment and Wrongful Death. Evidence was presented at trial to demonstrate that it was Delynn Reed, as the girlfriend of the driver, Dean Ray Osuna, who made a grave error in judgment by giving the keys to her vehicle to her obviously impaired and exhausted boyfriend and encouraging him to drive.

In support of the difficult legal claims pursued against Delynn Reed, evidence was put on at trial showing that the accident happened at 5:13 a.m., on State Route 78, when Osuna, at the request of his girlfriend, Reed, were in the process of "moving" her belongings to her home in San Pasqual Valley. Defendant Reed, who gave Osuna the keys to her truck to drive, was driving directly in front of Osuna in "tandem" and actually witnessed the head-on collision in her rear-view mirror. Notwithstanding the major impact and the fact that Derek Ritter lay on the side of the road, they both fled the scene, Reed driving Osuna away and taking him to her uncle's house where they remained until apprehended 12 hours later that day.

(Continued inside)



Derek Ritter

Understanding the Goal Behind California's Elder Abuse Act ("EADACPA")

Civil claims being filed under California's Elder Abuse Act are occurring with much more frequency these days. Perhaps this is a sign that proper and compliant care is still not being afforded in our nursing homes and residential care facilities that operate for the elderly. Only 18 years on our books in its current state, claims under California's Elder Abuse Act are becoming more widely pursued against wrongdoing medical care providers, especially in the context of claims for nursing home abuse again. So is the goal behind the Elder Abuse Act being accomplished?

Recognizing the need to afford better protections for our largely growing elderly and dependent adult population, California lawmakers enacted this very unique and powerful form of legislation in 1991, which was specifically aimed at deterring acts of abuse and neglect directed towards elderly and dependent adults. Commonly referred to simply as California's Elder Abuse Act, the legislation is more formally known as California's Elder Abuse and Dependent Adult Civil Protection Act and is found at Welfare & Institutions Code Section 15600, et seq.

In enacting California's Elder Abuse Act, the State Legislature expressly recognized that elders and dependent adults are particularly subjected to abuse, neglect or abandonment, and that the state has a distinct responsibility to protect these persons. The Elder Abuse Act expressly states the Legislature "desires to direct special attention to the needs and problems of elderly persons, recognizing that these persons constitute a significant and identifiable

(Continued inside)



Vista Jury Awards \$1,850,000 *(Continued)*

Prior to the accident, Reed and Osuna had been up all night, with her packing for the intended move and him at band practice. After Reed picked Osuna up at band practice at approximately 2:00 a.m., they returned home so she could finish packing whereupon they then set out on their intended 1 hour and 15 minute drive at approximately 4:30 a.m. Unfortunately, the evidence suggested that Osuna was impaired and exhibited signs of being unfit to drive before they left. Notwithstanding, Reed encouraged Osuna to drive, a decision that proved fatal.

The evidence presented at trial showed that both Reed and Osuna had been partying for three straight days together, using crystal methamphetamine and smoking marijuana, although they both denied using drugs within the 24-hours preceding the accident several times. At a minimum though, Osuna was known to be "very tired," a fact that rang out over-and-over throughout the trial. As per the drug impairment, such was hard to prove, because they both fled from the scene of the accident, and were not apprehended until 5:00 p.m. later that day.

During trial, introduction of Osuna's drug use was excluded based upon rulings that insufficient evidence existed to demonstrate exactly when the illicit drugs had been used. Despite a positive drug test taken at 7:00 p.m. later that day showed that Osuna had methamphetamine and marijuana in his system, the Court ruled such evidence would not be admitted for consideration by the jury because the test results failed to establish a nexus as to when it was used because: (1) Osuna told arresting CHP officers that he had smoked methamphetamine and marijuana after the accident, to calm his nerves, and (2) finding that there could be no link between the testing which were post 12 hours following the accident when the drug tests (including blood work) were taken. Nevertheless, certain evidence of the drug use came in at trial, through two officers from the California Highway Patrol that were called to testify and who spoke about incriminating admissions made by Reed and Osuna following their arrests.

In seeking to prove Reed's knowledge of Osuna's impairment and unfitness to drive before Reed handed the keys to her truck for Osuna to drive, Trial Attorney William M. Berman put on evidence that Osuna demonstrated obvious outward signs of impairment and also stated that he was fatigued before they set out on the trip, a statement both Reed and Osuna gave to the arresting officers in attempt to diffuse the drug use. Their claim was that the accident occurred because he was tired and he fell asleep at the wheel, and not because of any drug use. Despite such argument, Attorney Berman highlighted the fact that Osuna had told Reed that he was tired before Reed handed him the keys and encouraged him to drive, stating "we'll make it." There was also evidence put on during trial that 30 minutes into the drive, Osuna pulled over to again

tell her he was very tired. Again, Reed encouraged him to continue, stating "we can make it." The accident happened approximately 15 minutes later, after Reed and Osuna got back onto the road, whereupon Derek Ritter was struck head on in his lane of travel and then left for dead on the side of the road.

In defense of the case, counsel for Reed argued that Osuna was responsible for the accident, because he as the driver of the truck involved in the fatality accident made a conscious decision to get behind the wheel and drive. To counter the defense put on by Reed, Attorney Berman argued issues of Responsibility and Accountability, insisting that we as a society know better than to give the keys to a vehicle to someone who is obviously impaired or tired, thereby encouraging them to drive. Attorney Berman stressed that when someone gives the keys to a vehicle to someone who is obviously impaired or tired and encourages them to drive on our public roadways, they too are responsible for any harm that is caused.

In the end, the jury agreed and awarded total damages in the amount of \$1,850,000, with a 40% finding of fault on Reed and 60% finding of fault against Osuna. Following the verdict, the case was featured by the local news and called a tremendous victory for society, setting an example that those who knowingly entrust their vehicles to someone who is unfit to drive can also be held responsible for any injuries that the impaired driver causes.

In speaking to the press afterwards, the Ritter children most eloquently stated, "This trial was not about the money. It was about setting an example for everyone that life is precious and therefore those who fail to act responsibly and knowingly give their keys to an impaired driver and allow them to get behind the wheel of a vehicle and drive will also be held accountable." In addressing comments to Reed and Osuna through the press, 21-year-old Kara Ritter stated that she hoped the verdict sent a message that "Everybody in society has a role to be responsible, and if you make an irresponsible decision you need to be held accountable; I hope you make the decision to change and in the future, I hope you don't make that decision again. You need to stop yourself, and you need to prevent this pain from filtering through to any other person's family."

Although the case was tried to jury by *Berman & Riedel, LLP* Managing Partner William M. Berman, the case was worked up by the team of associate attorneys at the firm. Indeed, all of the attorneys and support staff with the firm prepared the case for presentation at trial, working tirelessly to ensure that the clients' case was presented with detailed clarity. While no amount of money will bring back Derek Ritter, the Ritter children are pleased knowing that both Reed and Osuna have held responsible for their roles in causing the death of their father, whom they each described during trial to be their best friend. ★

Additional Recent Results of Interest

Trucking Accident; Closed Head Injury — *Berman & Riedel, LLP* represented a 29-year-old woman who was injured when the van in which she was seated as a rear-seat passenger was rear-ended by a semi truck. As a result of the high impact collision, plaintiff was ejected from her seat and despite being belted, struck her head. Although she did not lose consciousness, she suffered a multitude of head, neck and back injuries that failed to resolve over a prolonged period of time. Despite only \$40,000 in billed medical specials, the attorneys at *Berman & Riedel, LLP* put on a case that plaintiff had suffered a closed head injury in the accident, which caused difficulty with concentration, prolonged physical pain and severe and permanent emotional and psychological stress related injuries. Eight months into the case, and in the face of a \$2,500,000 demand, the defense offered \$50,000 following six hours of a scheduled full day mediation. Without countering the \$50,000 offer, lead attorney William M. Berman and the client walked out of the mediation. Seven months later, after all discovery including expert depositions had been completed, and a mere two weeks before trial, the defense paid plaintiff a total of \$1,750,000 in cash settlement of the case.

Elder Neglect; Wandering Incident Resulting in Fracture Injury — *Berman & Riedel, LLP* was asked to assist another local prominent firm in representing the interests of a 76-year-old man who, while placed into the protective care of a San Diego based Adult Day Care Program which advertised itself as specializing in providing a safe environment for individuals with Alzheimer's Disease and Dementia, wandered away from the facility completely unnoticed by facility staff. When the brother of the plaintiff who had checked him into the day care program earlier that day came to pick him up to take him home, the facility then realized he was missing. Unaware of his whereabouts, the plaintiff had wandered approximately four miles away from the facility whereupon he fell over a curb while crossing a street, breaking his wrist. He was later found at the hospital. As a result of the wrist fracture, plaintiff suffers a lack of full use of his dominant hand. In suing the facility day care adult under claims based upon elder neglect as defined under California's Elder and Dependent Adult Civil Protection Act, the attorneys at *Berman & Riedel, LLP* were able to obtain a \$612,500 settlement on behalf of the injured plaintiff. ★

Understanding the Goal *(Continued)*

segment of the population and that they are more subject to risks of abuse, neglect and abandonment.”

In order to deter acts of elder abuse and neglect, the legislation provides additional recovery against those which bestow abuse or neglect upon the elderly or dependent adults. Specifically, the Elder Abuse Act includes a provisions for recovery by a victim of abuse and neglect, even in circumstances where the victims have died. In addition, the Elder Abuse Act provides recovery for all attorneys' fees and costs expended in a case where a claim of abuse and neglect is proven successfully. The Legislature specifically included these provisions to encourage attorneys to take up these claims, in hope that increased litigation will hold wrongdoers accountable for their wrongful acts and deter future acts of abuse and neglect.

Elder abuse and neglect occurs in many forms including financial, physical or emotional abuse, and often the elderly do not realize it is happening to them. The elderly are often incapable of obtaining adequate help and protection to remedy the abuse against them. It was the express intent of the Legislature in enacting the Elder Abuse Act to provide incentives through enhanced civil remedies to redress the reckless acts and/or omissions that are perpetrated against the elderly. The Act provides abused elders enhanced means to compensate them for the horrific injuries and abuse they have suffered. This acts as both a deterrence for future abuse as well as a safety shield to provide elders a peaceful state of mind as they enjoy their golden years.

Over 115,000 elders currently live in assisted nursing facilities within the state. Unbeknownst to many, the California Department of Social Services estimates over 225,000 cases of elder abuse occur each year. Doctors, nurses, caregivers or other trained specialists within these facilities are often the main cause of the egregious abuse or neglect that the elderly suffer each day. The Elder Abuse Act states that most the elders who are at the greatest risk of abuse or neglect by their caretakers suffer “physical impairments and other poor health that place them in a dependent and vulnerable position.”

Abuse or neglect against an elder, when not corrected, often leaves the elder in a state of anguish many times resulting in death. The Elder Abuse Act, unlike most laws in California, allows for postmortem recovery for the pain and suffering endured by the elder prior to death. Thus, families may bring action on behalf the abused elder against those responsible for the death. The Elder Abuse Act further requires mandatory reporting of actual abuse or suspected abuse by those who are responsible for an elder's wellbeing. The Elder Abuse Act's monumental provisions ensure the means necessary for the elderly to take immediate action to protect their wellbeing and to correct any abusive situation to ensure their own safety. ★

Berman & Riedel, LLP Proudly Welcomes its Newest Attorney

Berman & Riedel, LLP is pleased to introduce its newest attorney to the firm, Natalie B. DeClusin, Esq. Having initially been hired as a temporary Post-Bar Intern, Ms. DeClusin quickly made a place for herself at Berman & Riedel, LLP and earned herself an offer to join the firm as an Associate Attorney. With great enthusiasm for the work done by the firm, she accepted the offer and formally joined the firm as an Associate Attorney in December 2008, directly following her admission to the California State Bar.



A native of Phoenix, Arizona, Ms. DeClusin earned her undergraduate degree at Arizona State University, graduating cum laude in 2004 with her B.A. in English Literature and a Minor in Spanish. While at ASU, Ms. DeClusin was extremely active in the Kappa Alpha Theta women's fraternity, and was inspired by its national philanthropy, Court Appointed Special Advocates (CASA), which prompted her to pursue a career in the law with the desires to help others. With the help and guidance of her grandfather, Thomas E. Parrish, who was a successful Arizona attorney, she set out to accomplish her goal of becoming a civil attorney.

After graduating from Arizona State University, Ms. DeClusin went on to earn her law degree from California Western School of Law. While there, she was accepted into the prestigious dual-degree program, and graduated cum laude in May 2008 with both her Juris Doctor from California Western as well as her Master's of Business Administration from San Diego State University. Ms. DeClusin made the most of her short time at California Western, becoming involved in the California Western Community Law Project, the Street Law program, the Bail Project, and as a tutor for the Academic Achievement program.

Prior to joining Berman & Riedel, LLP, Ms. DeClusin had the opportunity to expand upon her written, analytical and problem-solving skills in a number of legal and non-legal settings. Not only did she intern for the First Assistant United States Attorney for the District of Arizona, but she has also worked for multiple private firms. Further, while earning her M.B.A., Ms. DeClusin worked hands-on with the City of Chula Vista to develop and implement cost-effective ideas for improving the Broadway Business District located between “C” Street and Naples. ★

We Appreciate Your Referrals

We would like to express our sincere gratitude to the many of you who continue to refer your friends and family to our office for legal representation. Thank you.

We take pride in knowing that you have confidence in our ability to represent those in need. Let us assure you that we will continue to fight vigorously for the rights of our clients.

BERMAN & RIEDEL, LLP

ATTORNEYS AT LAW

12264 El Camino Real • Suite 202
San Diego, California 92130

In This Issue:

- Vista Jury Awards \$1,850,000
- The Goal Behind California's Elder Abuse Act
- Recent Results of Interest
- Berman & Riedel, LLP Welcomes its Newest Attorney
- Center for Medicare and Medicaid Services Website
- Visit Our Newly Designed Websites

Newsletter/Advertisement For Marketing Purposes

Disclaimer: The receipt of this Newsletter is not intended in any way to form an attorney-client relationship. Furthermore, this Newsletter and its articles are not intended to constitute legal advice, but rather, are provided for informational purposes only. Should you have any legal questions arising from the materials contained herein, please feel free to contact an attorney with the firm Berman & Riedel, LLP.

Center for Medicare/Medicaid Services Website Ranks Nursing Homes in Effort to Promote Better Care

The *Wall Street Journal* (6/1, Zhang) reports that as of December 2008, the Centers for Medicare and Medicaid Services started ranking facilities based on government inspection results, staffing data and quality measures. The data went into the Nursing Home Compare system, which gives one to five stars to 16,000 nationwide nursing homes. Unfortunately, the National Citizens' Coalition for Nursing Home Reform says that some of the data provided by nursing homes to the Nursing Home Compare website may contain errors, and advocates for improved care suggest that patients or their family and friends should visit a nursing home in person, take a tour of the facility, talk to residents there and look at data on the facility. In an attempt to further promote an increase of care, it has been confirmed that CMS will start running a pilot program this summer to see if cash incentives to nursing homes can improve the care they provide, especially in areas such as nurse staffing and preventable hospitalizations. Hopefully these tools will result in a higher quality care being provided to residents/patients admitted into nursing homes.★

www.bermanlawyers.com

www.preventelderabuse.com

www.sandiegopersonalinjuryblog.com

www.californiaelderabuseblog.com

Visit Our Newly Designed Websites

We would like to invite you to view our completely redesigned firm websites. Our Personal Injury practice oriented website can be viewed at www.bermanlawyers.com and our Nursing Home/Elder Abuse practice oriented website can be viewed at www.preventelderabuse.com. These two websites have been completely re-designed to include more information about our firm and what we do to provide our clients with the best possible legal representation in these two distinct areas of legal practice. The new design uses a very user-friendly format that makes it easy to navigate, and also enables our web site to be readily located by the major Internet search engines.

In conjunction with our main firm website, we have also launched two new blog web sites in order to provide our clients, colleagues and friends with up-to-date information on what is going on with current developments, news, and topics within these specific practice areas. Our blog sites are updated several times per week by the attorneys and legal staff in our law office. You can learn more about developments in these areas of law as well as our personal injury practice by visiting our personal injury practice blog site at www.sandiegopersonalinjuryblog.com and our nursing home practice blog site at www.californiaelderabuseblog.com. We hope you find all of these web sites most helpful ★

SAN DIEGO PERSONAL INJURY ATTORNEYS
BERMAN & RIEDEL, LLP
ATTORNEYS AT LAW
(858) 350-8855
SAN DIEGO, CA - HOME OFFICE
PRACTICING THROUGHOUT THE STATE OF CALIFORNIA
PROVIDING THE HIGHEST QUALITY
LEGAL REPRESENTATION

Homepage: www.bermanlawyers.com

SAN DIEGO NURSING HOME & ELDER ABUSE ATTORNEYS
BERMAN & RIEDEL, LLP
ATTORNEYS AT LAW
(858) 350-8855
SAN DIEGO, CA - HOME OFFICE
PRACTICING THROUGHOUT THE STATE OF CALIFORNIA
CALIFORNIA'S LEADING FIRM IN
ELDER ABUSE & NEGLECT LITIGATION
NURSING HOME ATTORNEYS YOU CAN TRUST.

Homepage: www.preventelderabuse.com