

BERMAN & RIEDEL, LLP

ATTORNEYS AT LAW

Practicing throughout the State of California

Winter 2008/2009

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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

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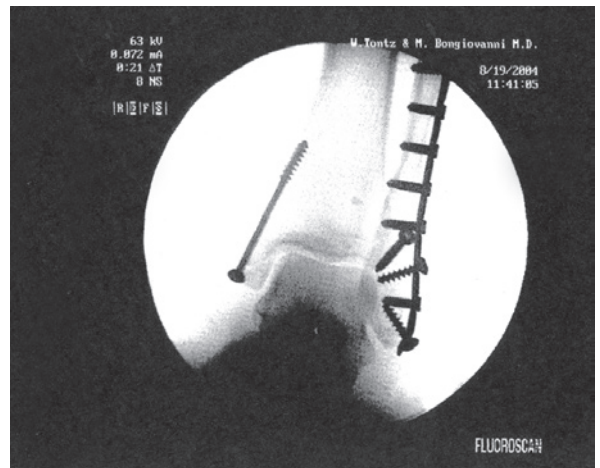
Office Hours:
Monday - Friday
8:30 am - 5:30 pm



Construction Site Accident/Fence Collapses on Pedestrians; \$800,000.00 Settlement Reached

On August 4, 2004, a “not so funny” thing happened to the Hartwig Family on their way home from the Padres’ game. That evening, Michelle and David Hartwig and their two young sons were leaving a San Diego Padres game in the new downtown “Gas Lamp” redevelopment area when they were injured in a most bizarre accident. While walking back to their car after the game, the Hartwig Family crossed Market Street on 11th Avenue near a construction site called “Park Boulevard West.” While passing the active construction site, an employee of Liberty 1 Security Company attempted to close an open fence gate after allowing a work vehicle to leave the construction site premises. Unbeknownst to the Hartwigs, the guards closing of the gate caused the attached fencing, which surrounded the entire perimeter of the construction site, to fall in a domino-like fashion. During the sequence of events, Michelle Hartwig and her youngest son were struck by the falling fence, and Michelle Hartwig was slammed to the ground and pinned underneath the fence. In being slammed to the ground, Michelle Hartwig sustained a severely fractured ankle which required reparative surgery, including the insertion of permanent screws and other stabilizing hardware.

On behalf of the Hartwig Family, *Berman & Riedel, LLP*, brought suit against the responsible defendants claiming negligent erection, maintenance, and handling of the construction site perimeter fencing. Although defendants admitted that neither the plaintiffs nor any other pedestrian had made contact with the fence prior to its fall, defendants contended that the Hartwig Family and others had passed warning signs and barriers that had been set up, and thus knowingly walked in an area that was unsafe for pedestrian traffic. Plaintiffs disputed that any warning signs or barriers were present on the evening



X-Ray of Michelle Hartwig's reconstructed ankle.

(Continued inside)

Highlighting Our Elder Abuse Practice: How to Spot the Signs of Elder Abuse and Neglect & What You Can Do About It

In our last firm Newsletter, we featured Part I of an article highlighting *Berman & Riedel, LLP*'s renowned Elder Abuse practice. That article focused on the significant differences between facilities licensed to operate in California as Skilled Nursing Facilities (SNF) and Residential Care Facilities for the Elderly (RCFE). In Part II of this featured article, we provide information to help you recognize if an elderly loved one is being abused, neglected or mistreated in a nursing home or care facility, and how you can formally report the suspected abuse/neglect and request that an investigation be conducted.

Recognizing Elder Abuse and Neglect

In 1990, California's Legislature passed the revised Elder and Dependant Adult Civil Protection Act (the Act) with changes aimed to protect elders (defined as persons 65 years of age and older) and dependent adults (ages of 18 and 65 years of age and confined to care facilities) who, because of a mental or physical deficiency, are under the care or guardianship of another. The Act as revised defines elder abuse as “physical abuse, neglect, financial abuse, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering, or the deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering.”

Physical abuse can include injury through intentional or negligent acts, including the infliction of pain,
(Continued on back)

FOREWORD: A Quick Word

by William M. Berman, Esq., the firm's Founding and Managing Partner



William M. Berman

The year 2007 is almost gone, and it has truly been a whirlwind in practice. It seems that this year in particular has passed more quickly than usual. But it has been a great year for the firm. The firm has continued to grow, and garner success in handling serious personal injury matters and elder abuse and neglect litigation.

In 2007, we successfully handled numerous complex matters in our catastrophic personal injury division of practice, including obtaining a favorable trial result of 100% fault and resulting verdict in the amount of \$1,526,000.00 in a case where an 18-year-old defendant driver disputed any wrongdoing after striking and killing a 22-year-old pedestrian with her vehicle. We similarly handled numerous other serious personal injury matters, obtaining notable settlements in cases involving construction site accidents, slip-and-fall type incidents, automobile accidents, and matters involving claims relating to defective products. (See, for example, 2007 Case Results below.)

Likewise, our elder abuse and neglect division similarly flourished in 2007, handling several complex cases to remarkable outcome. In addition to obtaining several significant settlements on behalf of victims of nursing home abuse and neglect, the firm continued its work in supporting the State Legislature and other charitable organizations, all with the goal of striving to protect our elderly.

The year 2007 is almost over and the year 2008 is soon approaching. Given our current outlook, 2008 is sure to be another busy year in practice. On behalf of everyone at our firm, we want to thank you for your continued support and referrals of business. And on a personal note,

we also want to wish you and your loved ones a very best for the Holidays and New Year to come. May your holiday season and entire new year be filled with peace, love, health, and happiness. These qualities are more important than anything else. ★

Construction Site Accident (Continued)

of the incident, a claim that was later corroborated by other witnesses to the events that unfolded that evening.

In addition to claiming comparative fault on the part of plaintiffs for walking in an unsafe area, defendants disputed the nature and extent of Michelle Hartwig's injuries, claiming that the severe ankle fracture she suffered healed well and was therefore not serious or debilitating. In support of their position, defendants argued that Michelle Hartwig's medical specials totaled just over \$35,000.00, and that Ms. Hartwig was able to return to work full-time as a 4th-grade teacher the following school year, where she was required to stand on her feet for prolonged periods of time as part of her job responsibilities.

After 16 months of contentious litigation and several sessions of mediation, defendants agreed to pay the Hartwig Family plaintiffs collective settlement in the sum amount of \$800,000.00. Of the total \$800,000.00 paid by defendants, the Hartwig's elected to place a total of \$50,000.00 towards the purchase of guaranteed structured annuity payments for their two minor sons, which will increase the total net amount that their young boys will eventually receive and will help fund their college educations. The Hartwig Family is happy and healthy today, and are relieved that the events of August 4, 2004, are forever behind them. ★

2007 Results of Interest

Slip & Fall Incident/Back Surgery — A 41-year-old woman went to a San Diego, California, day spa, where she suffered injuries to her back after falling upon a wet common area flooring. After using the facility's whirlpool, the woman walked into an adjacent restroom which was wet where the tile flooring was uncovered. During the litigation, the facility's staff admitted that they failed to place mats on the tile floor to prevent falls on the slick surface, nor had they mopped, cleaned or recently checked the bathroom flooring. In falling, the woman suffered severe back injuries, which required fusion surgery. Although she made a very good recovery, the injuries she sustained severely impacted her life and ability to continue as a nursing student. Through mediation conducted during litigation, *Berman & Riedel, LLP*, settled the case with the defendant spa paying \$550,000.00.

Construction Site Accident/Ankle Fusion — \$800,000.00 total cash settlement for family of fence fall incident. (See Cover Story on Page 1 for more detail.)

Elder Neglect/Wrongful Death — An 88-year-old woman was transferred to a San Marcos, California, Skilled Nursing Facility (SNF) to recuperate after successful surgery to repair a fractured hip. Upon her admittance, it was noted that she "possessed good restorative potential" and that she was specifically being admitted for short-term rehabilitative therapy so she could regain her strength and return home to live with her husband. As requested by her admitting physician, the facility's nurses were required to continuously monitor a hematoma on the patient's right groin area for signs of infection. However, the SNF never

developed a specific plan on how its staff should monitor the patient's hematoma, failed to monitor the presence or absence of a femoral or pedal pulse, failed to assess the color and temperature of her right leg, and failed to monitor the presence of edema. Less than three weeks after entering the SNF, the patient developed a complete loss of circulatory function in the affected leg, which went unobserved for several days, and died shortly following emergency surgery. After six months of extensive litigation against the Skilled Nursing Facility, *Berman & Riedel, LLP*, was able to settle the case at mediation for \$700,000.00.

Elder Neglect/Wrongful Death — A 78-year-old woman was admitted as a patient to a Southern California based Skilled Nursing Facility for short-term rehabilitative therapy with a good prognosis to return home to live independently. Upon her admission, facility administrators and nursing staff were made aware that the patient required close management of her nutrition, monitoring of her blood sugar levels, administration of her diabetes medications and monitoring for prevention of skin breakdown. Nevertheless, while under the direct care of defendant's staff, and in a period of less than six weeks, the patient became extremely dehydrated, malnourished and was deprived of her pain medications as well as of her necessary insulin, all which resulted in the development of skin breakdown and painful decubitus ulcers (bed sores), a severe urinary tract infection and she ultimately a fatal heart attack. Through mediation conducted early during the litigation, *Berman & Riedel, LLP*, was able to obtain settlement for the decedent's surviving children in the amount of \$600,000.00.

Profile on Fresh Start Surgical Gifts: How a Local Charity Continues to Make A Difference Throughout the World

There's nothing that lights up a room more than the warming smile of a child. And perhaps there's no greater joy in the world than being able to put a smile on a child's face for the first time. That is what the doctors, nurses, staff and volunteers of Carlsbad, California-based charity Fresh Start Surgical Gifts has been doing for children all over the world.

Fresh Start was first founded in 1991 by Encinitas Plastic and Reconstructive Surgeon Dennis Nigro, MD, FACS, with the goal of transforming the lives of disadvantaged children and young people afflicted with physical deformities caused by birth defects, accidents, abuse or disease. The organization, which was praised by President George Bush within his famous 1992 speech "A Thousand Points of Light," is built upon a network of volunteers, including numerous talented medical professionals, all of whom donate their time and services to the organization to locate patients and provide much-needed reconstructive surgery during each of the 7 "Surgery Weekends" that Fresh Start conducts throughout the year.

Since its inception, Fresh Start has provided well over \$14 million in medical services to children and young people from dozens of countries, giving them the opportunity to have a positive self-image and forever changing the course of their lives. All of the funds raised go directly to pay for travel, lodging, medications, operating room facility fees and medical devices necessary to give Fresh Start patients the best care possible.

During each Surgery Weekend, teams of volunteers work to change the lives of children born with congenital work defects by providing cost-free reconstructive surgery. A typical Surgery Weekend involves multiple major and minor surgeries of several patients, laser treatments as well as speech therapy sessions and multi-specialty patient examinations and consultations. At each Surgery Weekend a team of volunteers, including highly skilled physicians and nurses, medical technicians, dentists, speech pathologists and support staff, donate their time and expertise to provide disadvantaged children with the highest possible medical services and on-going care.

One of the core principals of Fresh Start is to continue treatment until the best possible outcome is achieved, and often that means providing care throughout childhood and into young adulthood.

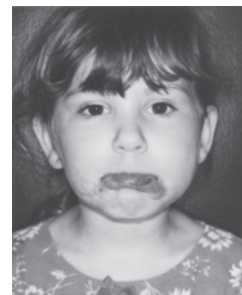
And the difference the Fresh Start volunteers make transcends the physical appearance. Although it oftentimes, takes multiple surgical procedures their patients are better able to speak and communicate effectively with others, and volunteer speech therapists provide further treatment for patients so they can develop into productive and successful members of society. Also, Fresh Start dental volunteers give children the ability to eat, speak and smile more easily.

In addition to the Surgery Weekends, Fresh Start provides medical education and training to surgeons and organizations providing reconstructive surgery. For example, Fresh Start provides funding, in conjunction with the Plastic Surgery Educational Foundation (PSEF), for a three-day symposium where doctors from around the world gather and learn from expert faculty about the latest approaches in multi-disciplinary facial reconstruction in children and adults. In cooperation with UCSD Division of Plastic Surgery and Rady Children's Hospital of San Diego, Fresh Start funds a Craniofacial and Pediatric Plastic Surgery Fellowship, and also supports other research and the collection of data related to pediatric reconstructive surgery.

If you would like to find out how you can make a donation or volunteer your time or services to Fresh Start, please call (760) 944-7774 or visit their web site at www.freshstart.org. ★



Callie, a Fresh Start patient from Oklahoma, was born with a benign tumor across the lower half of her face, called a hemangioma.



At approximately 5-years-old, after a few surgeries.



After dozens of surgeries and laser treatments she is now a most beautiful and confident 15-year-old young woman.

Results *(Continued)*

Automobile Accident/Foot Fracture — A couple was involved in a high-impact automobile accident while traveling down Interstate-5 in Los Angeles, on their way to a mid-day holiday luncheon. When traffic ahead of them stopped, the husband applied his brakes and brought his vehicle to a stop. The defendant driver, who was traveling in the adjacent lane of southbound Interstate-5 in a Peterbuilt truck owned by his employer, made an unsafe lane change and failed to notice traffic stopped in front of him until it was too late. Although the defendant attempted to apply his brakes, he was traveling way too fast and his vehicle spun out of control, striking the rear of the Toyota behind the plaintiffs' vehicle, which caused the Toyota to thrust forward and strike the plaintiffs' vehicle. In addition to the couple sustaining minor back sprains/strains, the wife suffered a non-displaced fracture in her right foot (of her first metatarsal/big toe), which required casting and extensive rehabilitation therapy. The clients' total medical specials were \$23,000.00. Just before trial was ready to start, *Berman & Riedel, LLP*, was able to obtain a \$180,000.00 settlement on behalf of their clients.

Elder Neglect/Wrongful Death — An 85-year-old woman passed away due to complications following an attempted below-the-knee amputation surgery that was necessitated because she had developed severe bilateral heel wounds (pressure ulcers/bed sores). The woman was admitted as a patient in a Southern California-based skilled nursing facility to receive short term rehabilitation therapies following hip surgery. Due to an alleged lack of care on the part of her medical care providers as well as inaction by her health management organization, she developed bilateral heel wounds which progressed to become extreme necrotic Stage IV wounds, with the left heel becoming severely infected. After becoming septic, a below-the-knee amputation of her left leg was performed in attempt to save her life. Unfortunately, she suffered complications and died. Following almost two years of extensive litigation against defendants responsible for the patient's medical care, *Berman & Riedel, LLP*, was able to obtain collective settlement on behalf of decedent's surviving family for just over \$1,700,000.00. ★

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Firm Photo by Jeff Hall

Season's Greeting from all of us at Berman & Riedel, LLP

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.

Elder Abuse *(Continued)*

sexual assault or molestation, and the use of physical or chemical restraints not authorized by a doctor or for punishment. Physical abuse can also be a result of a caretaker's failure to provide food, clothing or shelter, assistance with personal hygiene, or protecting a person from health and safety hazards.

The signs of physical abuse can be bruises and hematomas, scratches, cuts, bed sores, marks caused by restraints, fractures and broken bones, as well as unexplained weight loss, malnutrition or dehydration. It is important to note that physical abuse can result from neglect as well as from intentional acts.

An elder who is being abused may not show physical signs of the abuse in areas of his/her body that are readily visible. Possible behavioral abuse indicators such as agitation, anger, anxiety, confusion or disorientation, withdrawal and depression may be cause for you to conduct a comprehensive exam of the resident or patient that would uncover physical abuse that was otherwise not noticeable. For example, if a resident or patient has suffered a closed-head injury they may appear to be confused or disoriented but may not have a physical mark that is readily noticeable. If you notice any change in a loved one's personality or behavior, you should immediately speak with the nurses and staff, as well as the resident/patient's primary care physician.

Reporting Elder Abuse and Neglect

Sometimes a concern you have about the care of an elder or dependant adult can be resolved by bringing it to the attention of the staff or administration of the nursing home facility. For example, if you notice that your family member is experiencing repeated falls, you should discuss the issue with the nursing home staff and administration as well as resident/patient's primary care physician.

If you are concerned about the treatment of an elder or dependant adult and you feel that your concerns are not being adequately resolved through communications with the nursing home staff and/or administration, you may be able to resolve your concerns by contacting your local long term care ombudsman office. The ombudsman program helps residents of nursing homes to resolve complaints with nursing homes as well as help you file a formal complaint with DHS. It is important to note that the ombudsman does not have any powers or direct authority over the nursing home.

If your concerns are not resolved through the above means, you can file a complaint with the California Department of Health Services. Any person, not just residents or their family members, can file a complaint against a nursing home with the Licensing and Certification Division of the California Department of Health Services, which is the state agency that enforces nursing home laws and regulations through regular inspections and complaint investigations. A complaint can be filed to report suspected abuse or neglect, violations of resident/patient rights, poor general care or attention to basic needs of a resident/patient, unsafe conditions, etc. In lodging a complaint it is important to report the name of the resident/patient on whose behalf the complaint is being made, the name and location of the facility, the date(s) and time(s) of the incidents, as much detail as possible about your complaints as well as names of witnesses such as health care providers or other medical personnel who can provide information, the names of staff, if relevant, and any records that should be examined.

Under California law, the DHS must begin an on site investigation of your complaint with ten working days of receipt, or within 24 hours if the complaint involves a threat of imminent danger of death or serious bodily harm. As a complainant, you have several rights, including the right to receive notification of the name of the assigned investigator within two working days of your complaint, the right to remain anonymous (but note that if you choose to remain anonymous it may be difficult to substantiate a complaint), and the right to receive a written response of DHS' findings within 10 days of the completion of its investigation.

Berman & Riedel, LLP, has one of the leading legal practices in California in handling claims for personal injuries and/or wrongful death against nursing homes, residential care facilities, and other assisted care facilities for the elderly. A major part of the firm's focus, *Berman & Riedel, LLP*, has achieved some of the most substantial and publicized results against nursing homes and other care facilities since the Legislature's 1990 revision of the Act. If you have questions or concerns about the treatment of a family member or loved one in a nursing home or other type of care facility for the elderly, please do not hesitate to contact us by telephone at (858) 350-8855, or through our firm's web sites at www.preventelderabuse.com and www.bermanlawyers.com. ★