

Driver Takes Fatal Plunge from 405 Overpass

(Multiple vehicle collision resulting in death of driver who jumped off overpass after collision. Settlement of third-party and UIM claim.)

On December 28, 1984, at about 6:45 a.m., a multiple vehicle collision occurred in the two northbound lanes of the overpass on SR 405 just north of the intersection with SR 522 near Bothell, Washington. The collision involved 21 vehicles. The temperature was low and the overpass was icy. The overpass consisted of two northbound lanes and two southbound lanes, separated by an opening several feet wide.

The incident began when a car lost control on the overpass and was struck by another vehicle. Four more vehicles then collided with each other. Seconds later, another four vehicles collided on the overpass. Several of the drivers got out of their cars.

After a few moments, a large, loaded hay truck consisting of a tractor and two

trailers headed toward the overpass at about 55 m.p.h. The driver of the hay truck perceived there was a problem on the overpass when he was at the intersection of SR 522 and SR 405, about 1,228 feet from the beginning of the overpass. The hay truck was traveling with defective brakes; the tractor-trailer rig had no braking capabilities. Unable to stop, the hay truck jackknifed (formed a V with its tractor and trailers) then crashed into a third set of vehicles. The hay truck plummeted forward and swept up these vehicles until finally it came to a stop.

As the rapidly approaching truck slammed into the cars and trucks on the overpass, some of the drivers standing on the overpass tried to escape from being struck. Plaintiff's husband, Michael Loy, was standing between the driver's door of his car and the inside railing (separating northbound and southbound lanes) of the roadway. He went over the railing to avoid

being struck, dropping 41 feet onto the ground below. Mr. Loy later died from injuries sustained in the fall.

Michael Loy was 32 at the time of his death and had been married to Linda Loy, 29, for ten years. The Loy's owned Wickers IGA, a grocery store in Lynnwood where Michael had worked since 1969, having started there as a box-boy. The Loy's had no children.

A lawsuit was filed in 1986 against the hay truck driver, several other drivers who had been involved in the collisions, and the State of Washington. Plaintiff's Seattle counsel, associated on the case in August, 1988 by Everett counsel, entered into a stipulation with the six defense counsel to assign the case to King County Civil Track I (Judge Heavey). The Loy's UIM carrier, Travelers Indemnity Co., was put on notice of a potential underinsured motorist claim. Extensive liability discovery followed, including a deposition over three days of the Washington State Patrol Officer in charge of the fatality investigation, Detective John Hunter, and a deposition of Phillip Bellgardt, a brake specialist with the Washington State Patrol. Plaintiff's expert on the issue of brake failure analysis was Robert S. Brinton of Seattle. On the issue of whether or not the state was reasonable in sanding the overpass on the morning of the collision in light of the existing weather conditions, plaintiff's experts were James F. Cleary, a Seattle transportation engineer, and Dr. Clifford P. Mass, an associ-

ate professor of atmospheric science at the University of Washington. Dr. Eugene Silberberg, a Seattle economist, evaluated plaintiff's economic loss.

Settlements with various third-party defendants were achieved beginning in January, 1989. After a series of reasonableness hearings, the final third-party settlement was made in August, 1989. Settlements in the third-party action totaled \$530,628, 82 per cent of which was paid by the hay truck driver and hay company by whom the driver was employed. The hay truck driver/company ultimately tendered their policy limits after deductions for several previously-made settlements.

Plaintiff then proceeded under the Loy's UIM insurance policy with Travelers. Plaintiff's counsel had stipulated with counsel for Travelers prior to the first deposition in the third-party action that Travelers' counsel could attend all discovery depositions and participate fully in discovery with the understanding that such discovery could not be repeated in the UIM action. Discovery in the UIM action included depositions of defendant's economic expert, Seattle C.P.A. Henry Benson, on the issue of decedent's future lost earning capacity, and Dave Salzberg, an expert retained by defendant who testified to reasonable compensation for grocery store managers in the Seattle area and set forth salary range to consider in calculating Mr. Loy's future lost earnings. Pre-hearing motions heard by the arbitration panel

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Seminars... Maximize Potential

Making the most of what you've got will be the focus of WSTLA's most popular seminar, "Winning Top Dollar Settlements and Verdicts," chaired by Tom Chambers and Bill Bailey on June 1, 1990 in Seattle.

"We hope to show plaintiff attorneys how to put mileage onto their cases," says Tom Chambers, WSTLA past president and last year's "Trial Lawyer Of The Year." "Not every case is the same. Preparation for trial allows a lawyer to negotiate from a position of strength. The goal is to help everyone achieve top dollar settlements."



Judy Proller

The seminar will feature several noteworthy presentations, including a demonstration of state-of-the-art videos conducted by co-chair Bill Bailey and Terry Tainter, a video expert. "The day of video is here," notes Bailey. "It is ubiquitous. We are hoping to show how, for relatively little expense, a plaintiff attorney can demonstrate at a negotiation stage the strength of the case in a way that paper correspondence cannot."

The seminar will also feature a judge's perspective of "What Works and What Doesn't", presented by Charles Burdell, former King County Superior Court judge, and also the defense perspective on minimizing damages by Joel Cunningham, Seattle attorney.

"We are very pleased to be able to present a case study in arguing damages to the jury," notes Tom Chambers, referring to a presentation by Seattle attorneys Mike Withey and Jeffery Robinson, who will demonstrate their arguments in the case of *Domingo v. Marcos*, a case of international

significance resulting in multi-million dollar verdict.

Other segments will include Seattle attorney Sam Kinzer's discussions of "You Client As An Asset", with suggestions for using your plaintiff to build damage; "Information Gathering", as explained by Seattle attorney Ann Pearl Owen, and strategies for dealing with insurance adjuster by Bellingham attorney Gerry Zmolek. Special problems involving children plaintiffs will be addressed by Tacoma attorney Elaine Houghton, while WSTLA stalwart, and Bellevue attorney Mary Ar Ottinger will discuss "Key Strategies For Presenting Emotional Injuries."

The financial side of negotiation or settlement will be addressed by attorney Gordon Tobin of Bellevue, who will give tips on "Making Numbers Interesting Dealing With The Economist." "Tips C How To Understand Structured Settlements, Their Advantages And Disadvantages," will be offered by Bernard McNeil, Spokane structured settlement consultant.

And Tom Chambers, who has made career of winning top dollar verdicts, will demonstrate voir dire techniques to "Set The Stage For Success."

"The premise behind this seminar," says co-chair Bill Bailey, "is that not every case you handle is an obvious a block-bust but there are many things you can do from initial intake, through negotiation, and through presentation at trial which will maximize your result."

The seminar, worth 6.5 hours CLE credit, will be held at the Sheraton Hotel Seattle on June 1st.

Judy Proller is a partner in the firm Aaby, Putnam, Albo & Causey in Bellingham. Her practice emphasizes personal injury and worker's compensation.

Neuroleptics and the treatment of mental illness

by Seth Cohen, MD

The introduction of neuroleptics in the mid-1950's was an event which had great impact on the care of the mentally ill. In this article I will describe these medications, discuss their efficacy and limitations, and focus on new psychopharmacological advances, including the recently FDA approved medication clozapine (Clozaril).

Chlorpromazine (Thorazine) was the first neuroleptic introduced to the U.S. market. Temporarily this development corresponded with the era of deinstitutionalization, a movement towards the community care of patients previously attended to in hospital settings. In the mid-1950's, the time of Thorazine's approval, the population of state mental hospitals in the U.S. had reached 550,000. By 1980, the figure had dropped to 110,000. The data supports the role of neuroleptics in allowing formerly institutionalized psychiatric patients to be taken care of in community facilities and the 80% decline in state mental hospital population over a 25-year period. Approximately 80% of decompensated schizophrenic patients will show minimal to marked improvement with six weeks of neuroleptic treatment, while only a small percent will deteriorate. Similarly, studies show that about 60% of decompensated schizophrenic patients show no improvement, or deteriorate when treated with placebo over a six-week time period. Thus the efficacy of this class of medication in the acute treatment of schizophrenic illness is well established.

In terms of preventing relapse in schizophrenic patients, the data clearly supports maintenance neuroleptic treatment. Combining the results of 35 studies involving over 3,500 schizophrenic patients stabilized on neuroleptics for a 6-week to 2-year period shows an overall relapse rate of about 60% in placebo-treated patients versus 15% in the neuroleptic treated group. Treatment of acute schizophrenic episodes and prevention of relapse is of extreme importance. Patients with the illness and its associated hallucinations and delusions account for the occupancy of 25% of all U.S. hospital beds and have a mortality rate eight times that of the general population.

Within a decade of chlorpromazine's introduction, many neuroleptics were approved and marketed (see Table). They all share a common pharmacological property which is proposed as the mechanism of action of these agents, namely blockade of the D-2 dopamine receptor in the mesolimbic system (the anatomical substrate associated with the regulation of emotion). Dopamine is one of many neurotransmitters (chemical messengers) that transmit signals from one nerve cell to another in the brain.

There are also dopamine receptors in other areas of the brain, and the blockade of these receptors leads to many of the side effects associated with neuroleptics. Dopamine blockade in the basal ganglia

(the brain area controlling movements) leads to the adverse effect known as the extra-pyramidal symptoms. These include pseudo-Parkinsonism (similar to idiopathic Parkinson's disease with shuffling gait, pill-rolling tremor, salivation and "mask-like" face), akathisia (restlessness), and dystonia (abnormal muscle contractions frequently appearing in the tongue, neck or back). These side effects occur in about 10-20% of patients treated with neuroleptics. The unusual side effect of galactorrhea (abnormal lactation) is a result of dopamine blockade in a brain area known as the tubero-infundibular system. Dopamine blockade may also be responsible for tardive dyskinesia, a late onset of long term neuroleptic use which occurs in about 20% of such patients, and consists of abnormal involuntary movements usually appearing in the tongue, mouth, extremities or trunk. Neuroleptic malignant syndrome is a side effect occurring in 1% of neuroleptic treated patients and may be due to dopamine blockade in the hypothalamus. It is a syndrome consisting of rigidity, diaphoresis, altered mental status, pulse, blood pressure and various blood test abnormalities. It can be fatal if not detected and treated early.

Many of the above noted neuroleptic side effects are dose related and can be treated by dose manipulation or the addition of other medications. There are other possible adverse sequelae of the use of neuroleptics, some of which are due to dopamine blockade in other brain regions, and others which are a result of the neuroleptic action on other neurotransmitters or receptors. These potential side effects include but are not limited to sedation, anticholinergic effects (dry mouth, blurred vision, urinary retention and constipation), orthostatic hypotension (dizziness upon standing), weight gain, skin and eye effects, cardiovascular effects, liver effects and seizures.

Thus the treatment of choice for schizophrenia, namely neuroleptics, is one which is clearly efficacious yet is not a panacea and is associated with the possible risk of many side effects. In light of the limitations of neuroleptics, psychiatrists have strived to develop more effective and less potentially toxic agents. Some of this research has been occurring at Harborview Medical Center in Seattle. After 15 years without a new neuroleptic, clozapine (Clozaril) was approved by the U.S. FDA, and Sandoz began marketing in March, 1990. It is one of a group referred to as the atypical neuroleptics, meaning that it has a significantly different neurotransmitter blocking profile and has less extra-pyramidal symptom liability.

In landmark research published in 1988, a multicenter trial which involved over 250 treatment resistant schizophrenics demonstrated response in 30% of the clozapine treated patients compared to 4% of the Thorazine treated group. Clozapine has been available in Europe since the mid-

1970's, and in approximately 15,000 patients treated with the medication, there has been no documented cases of tardive dyskinesia. The reason for the delay in U.S. approval is an unusual but potentially fatal side effect called agranulocytosis, a drop in the white blood cell count, the cells which are needed to fight infection. There were 15 cases which developed in Finland in 1975, eight of which proved fatal. Overall there have been about 130 cases reported in the world, one-third of which have died. There have been 15 cases in the U.S., none of which died. The cumulative incidence of agranulocytosis with clozapine is about 1-2%, and the risk is reported to be the greatest in the first 6 to 16 weeks. The most common side effects associated with clozapine are drowsiness, tachycardia (rapid heart beat), dizziness, nighttime salivation and weight gain. Its use should probably be reserved for the treatment resistant schizophrenic or those unable to tolerate good neuroleptic trials because of intolerable side effects or those with tardive dyskinesia. In light of the possibility of agranulocytosis, clozapine was approved with the proviso that a strict blood monitoring system be established. Sandoz, the manufacturer of clozapine (Clozaril), has contra-

acted with a health care agency named Caremark who has set up this system. It requires a weekly blood test before the next week of medication is dispensed, and the medication is only available in this country through that system. The associated cost is approximately \$170 per week.

Thus, clozapine represents a great advance, yet it is clear that there is more room for improvement. Other atypical neuroleptics are being actively studied and should lead to further quality of life improvements for the mentally ill.

Typical Neuroleptics Used in Treating Schizophrenia and Other Psychotic Illnesses.

Generic Name	Trade Name
Chlorpromazine	Thorazine
Thioridazine	Mellaril
Mesoridazine	Sereniti
Fluphenazine	Proloxin
Trifluoperazine	Stelazine
Perphenazine	Trilafon
Thiothixene	Navane
Haloiperidol	Haldol
Molindone	Moban
Loxapine	Loxitane



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Fatal Plunge

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included whether or not the financial condition of Wickers IGA following Mr. Loy's death could be considered in calculating Mr. Loy's future economic loss.

Following an all-day mediation ten days before the scheduled arbitration hearing, during which defense counsel focused on the alleged contributory negligence of Mr. Loy and his future lost earnings in the grocery business, the case settled for \$180,000 cash and a structure with a

\$65,000 stipulated present value.

The third-party action was Linda Loy, as Personal Representative of the Estate of Michael J. Loy v. Jake Anker, et al., King County Cause No. 86-2-13435-2. Plaintiff's counsel were James S. Rogers of Rogers & Darvas, Seattle, and Timothy Robbins of Everett. Counsel for defendant in the UIM action was Lee Corkrum of Ogden Murphy Wallace, Seattle.