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Oregon Agricultural Worker Awarded $6.2 Million for Hay Bale Machine Accident that Left Him Paralyzed

From *The Oregonian*, June 21, 2013

Greg Kafoury, Zeferino Vasquez, and Mark McDougal.
For more information on this story, see our website for links to the news coverage.

A Multnomah County jury on June 21, 2013, awarded more than $6 million to a 21-year-old Oregon agricultural worker who was paralyzed from the waist down when his torso was crushed into an inch-wide space by a hay bale-cutting machine.

The jury found that Double Press Manufacturing, which makes the equipment in Madras, was 60 percent responsible for injuries suffered by Zeferino Vasquez in Junction City.

Vasquez was found 40 percent at fault. He didn't press a control-panel button that would have prevented the machine from moving while he was inside removing some jammed hay.

Greg Kafoury, whose law firm represented Vasquez, said his client is one of leagues of Latino workers who work some of the nation's most dangerous jobs for modest wages. The workers often won't complain about hazardous working conditions, he said.

"These guys don't have unions," Kafoury said. "They are incredibly vulnerable. A lot of them have immigration issues, so they really are at the mercy of the machine makers and the employers.

"If you had this kind of injury pattern with white college kids working summer jobs, this industry would have been cleaned up in a heartbeat."

Vasquez was injured in an OR/PAC warehouse, where he made $9.15 an hour. Vasquez's attorneys faulted Double Press for failing to keep records of people injured using that machinery, which was sold to 45 other companies.

They said they found through their own research that the injuries included three workers who lost fingers, broke a leg or mangled an arm while working with similar machines. They also acquired a Double Press memo referencing three serious accidents in 2000 —a decade before Vasquez was hurt.

> *If you had this kind of injury pattern with white college kids working summer jobs, this industry would have been cleaned up in a heartbeat.*
> — Greg Kafoury

In 2006, a man named Mateo Maldonado lost his arms in a hay-processing machine at Anderson Hay & Grain in Aurora.

At the request of OR/PAC, Double Press modified the machine that hurt Vasquez, but not the other machines, he said.

"The jury system is the only way these manufacturers can be held accountable," said Kafoury, who represented Vasquez along with Mark McDougal and Jason Kafoury.

A doctor testified that the squeeze of the machine essentially cut Vasquez in half, leaving him held together only by soft tissue. Five surgeries later, doctors have told him he'll never walk again.

"I felt a lot of pain," Vasquez said.

Jurors decided Vasquez's damages amounted to about $10 million — and because jurors decided he was 40 percent at fault, Judge David Rees reduced the award to $6.2 million.

Vasquez, now 24, plans to go to college to become a physical therapist who specializes in working with people with disabilities.

As jurors streamed out of the courtroom, most of them stopped to shake his hand and offer words of encouragement.

No trial results can ever be guaranteed. Any results set forth here were dependent on the facts of that particular case and the results will differ from case to case.

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Medical Sex Abuse Victims Awarded $2.4 Million; K&M Prove Negligence against The Dalles Hospital

Based on excerpts from *The Dalles Chronicle* By RaeLynn Ricarte

After a nearly month-long trial in The Dalles, Oregon, a Wasco County jury returned a verdict of $2.4 million for three women who were sexually molested during surgery at Mid-Columbia Medical Center. Court observers said it was the largest Wasco County verdict in memory. Anesthesiologist Frederick Field was sentenced in 2012 to 23 years in prison for molesting a dozen women while they were in varying states of consciousness after having been sedated (nineteen total victims eventually came forward). Field concealed his crimes behind a standard surgical screen, often placing a female patient's hand on his genitals, offering them reassuring words whenever he detected signs of struggle or resistance.

Plaintiffs Willie Gmeinder and Erin Vance were awarded $900,000 and $700,000 in non-economic damages, respectively. They were represented by Mark McDougal and Greg and Jason Kafoury of Kafoury & McDougal. Plaintiff Sharon Hobbs was represented by Jan Wyers, and was awarded $800,000.

The jury unanimously found the hospital liable for negligence and battery. The key allegations were that hospital officials told the women who complained about Field that they had been imagining things, concealed documentary evidence, and made false and misleading statements to police once an investigation began, all in order to avoid scandal and liability for the hospital. Greg Kafoury and Mark McDougal compared their conduct to the sex abuse scandals of the Catholic Church and the Boy Scouts.

While the great bulk of evidence of misconduct was directed towards CEO Duane Francis and Vice President Dianne Storby, the jury found in their favor regarding their personal liability.

RaeLynn Ricarte

From left to right: Jason Kafoury, Erin Vance, Greg Kafoury, Willie Gmeinder, Sharon Hobbs, and Mark McDougal. For in-depth coverage of the trial, see our website for links to the news coverage.

A year before the trial, at Dr. Field's sentencing, Greg Kafoury publicly declared, "I want to promise the residents of this community that those who knew, those who were told and those who concealed will be brought to trial."

> *Institutional responsibility has been established for the historical record.*
> — Mark McDougal

McDougal hailed the verdict as a victory for the plaintiffs: "It is a finding of evidence against the hospital and may be usable in other cases," he said. "The plaintiffs got what they wanted with the finding that the hospital was liable for negligence and liable for battery in allowing use of force against both our clients."

"Institutional responsibility has been established for the historical record," he said. Hobbs said she was "thrilled" with having a $2.4 million judgment levied against the hospital because she said that payment of that money, and possibly more in the next trial, would bring about needed changes.

The hospital, Francis and Storby were defended by Robert Keating of Keating and Jones in Portland and Andrew Efaw from Colorado. The Dalles Chronicle provided daily coverage of the trial.

Kafoury & McDougal represent four more women who were molested by Field. Their cases are set for trial in September.

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A Washington County Jury Awards Nearly $1 Million to ESD Whistleblower

Greg Kafoury, Mark McDougal, client Michael Wright, and Jason Kafoury.

In what may be the largest jury award in the history of Washington County, jurors on August 1, 2012 awarded $970,000 to Michael Wright, a former employee of the Northwest Regional ESD. With an attorney fee petition pending, the case settled for $1.2 million.

Mr. Wright was represented at trial by Jason and Gregory Kafoury. Mark McDougal conducted video depositions of the defense witnesses, which were used at trial to devastating effect.

The jury found that Wright was fired in retaliation for his advocacy for the rights of blind students. Wright, a highly specialized teacher of blind students, persistently maintained during the 2009-2010 academic year that the region was failing in its legal obligation to spend a three million dollar fund which had been set aside by the legislature to provide specialized teaching, equipment, and services to Oregon's blind students. The fund was created to assist in the transition of students of the Oregon School for the Blind, which was closed in 2009 after 130 years, and for the 850 other blind students across the state.

Jurors heard testimony that the three million fund was intended to be spent during the next two years, and that the fund was to be fully replenished every two years thereafter to provide continuing services for blind students. Joan Steiner, assistant superintendent at NWRESD, had secured the right to disburse the fund, and was in charge of spending the money during the two-year period. However, evidence showed that the actual expenditures were pitifully small, and in response, the next legislature refused to provide any new funds. As a result, the blind students throughout Oregon had been deprived of what was intended to be major funding for blind students in the future.

Jason Kafoury released the following statement: "When Michael Wright refused to back down from his advocacy for blind students who were being cheated by his bosses at ESD, they papered his file and fired him. This jury has delivered a great victory to all blind students, public employees, and whistleblowers."

Wright was written up by his superiors, including Joan Steiner, for what they termed his "advocacy," was told to curtail his volunteer involvement with blind students, and to refuse any requests for advice or assistance from parents of blind children. He was told that "We serve districts, not students." When his job was threatened in writing, and he was accused of a lack of "professionalism," he responded with a memorandum written to Jack Musser, Director of Human Resources, as follows: "I was told that 'we are an Education Service District, that means we serve districts.' I objected to this ... I do not serve districts. I serve students. By doing my best to serve students, I fulfill my role as an ESD employee and the districts are served as well. I won't change. This is what you got when you hired me."

While Musser and Steiner acknowledged receiving the four-page response, they denied reading it, and denied that Wright's refusal to respond to the pressure to curtail his advocacy played any role in his September 15, 2010 termination.

The termination was formally based on a brief lapse in Wright's teaching license. His license was restored on September 10, after only two days of school, and the defense acknowledged that the district could have requested a brief emergency license for him.

Musser acknowledged that he made no effort whatsoever to learn whether Wright was a good teacher, and even the defense witnesses agreed that he was a teacher of high quality.

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City of Portland Must Pay $306,000 in Police Brutality Case

Based on *The Oregonian*, Feb. 2, 2012

A Multnomah County jury ruled Monday that the city of Portland must pay a 27-year-old man nearly $306,000 after police used a stun gun and pepper spray on him, punched him and dog-piled on top of him before they unlawfully arrested him for criminally trespassing on a downtown sidewalk.

Jurors found that police falsely arrested, battered and maliciously prosecuted Gallagher Smith after he quarreled with a doorman on Nov. 13, 2010, at the Aura nightclub on West Burnside Street. The doorman told Smith he'd have to wait at the end of a long line again even though he'd just been in the club and had gotten a stamp on his hand before stepping outside. The doorman eventually flagged down police.

> *Some of you may be wondering 'Why don't you just say, 'Yes, sir,' and keep on moving?' There's one thing that history has proved: If we don't defend our rights, we lose them.*
> — Greg Kafoury, addressing the jury in final argument.

Smith walked away from the club as police followed. Smith questioned police about what law prevented him from standing on a public sidewalk. Both sides agreed that police wouldn't explain why. Judge Youlee You ruled that the police did not have probable cause for the arrest, since the officers had no lawful authority to order Mr. Smith off a public sidewalk.

Smith was handcuffed with his feet tied to his wrists and charged with criminal trespass, interfering with a police officer and resisting arrest.

In June 2011, a jury found Gallagher Smith not guilty of all criminal charges.

In the civil trial, jurors awarded nearly $16,000 in legal fees for his criminal defense, medical bills and counseling. They also awarded $290,000 for his pain and suffering.

After the verdict, juror Patty Smith said police were wrong to rough up and arrest Smith, and most of the verdict was an acknowledgement of his lasting psychological injuries.

During closing arguments, Smith's attorney Jason Kafoury contended that police hoped to win a criminal conviction against his client to forestall a lawsuit when they learned Smith had a clean record and they were wrong to rough him up.

The Police Bureau's internal affairs unit investigated the confrontation and cleared the officers of wrongdoing, police spokesman Sgt. Pete Simpson said after the verdict. Kafoury applauded Smith for courage in standing up to police when he asked them what law he was breaking by standing on the sidewalk.

Image from KPTV Fox 12

Gallagher Smith. For video of the incident, see our web site.

"Some of you may be wondering 'Why don't you just say, 'Yes, sir,' and keep on moving?" Kafoury said. "There's one thing that history has proved: If we don't defend our rights, we lose them."

After the verdict, Smith hugged his attorneys. He summed up his feelings in one word: "Relieved."

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Grand Stable and Carriage Building
411 SW Second Avenue, Suite 200
Portland, Oregon 97204

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K&M Case: Eugene Slip and Fall Verdict, $725,000

Excerpts from *The Eugene Register Guard*, Sept. 5, 2013

In *Schoening v. Lyons Trust*, Greg and Jason Kafoury on August 30, 2013, received a jury verdict of $725,000 for Tammy Schoening, a 52-year-old ophthalmological tech who suffered major injuries when she slipped on a round river rock on a sidewalk in front of commercial property at 1215 Willamette Street in Eugene.

The Lyons Trust owned the property, and had maintained planters on the sidewalk with exotic plants since the 1960s. In 2008, a tenant of a neighboring building received permission from the defendant's tenant to remove the dead and dying plants from one of the planters, and replace them with round, smooth river rocks, which were purchased for $1 for each five gallon bucket. The planter was about 10 by 4 feet, and was filled with river rocks to the same level as the sidewalk. There was testimony that the rocks would periodically find their way onto the nearby sidewalk, and by the time plaintiff was hurt,

Planter on public sidewalk in Eugene, filled with round, smooth river rocks.

the level of rocks had been reduced several inches below the level of the sidewalk. Greg Kafoury compared the defendant's conduct to strewing marbles on a public sidewalk. Mr. Lyons testified he was not an absentee owner and that he would go to inspect the property up to three times a week "to look for graffiti." Plaintiff suffered a fracture of her left wrist requiring a plate and screws, a compression fracture of L4, and a blown disk at L4-5 that required surgery. The defense neurosurgeon Thomas Dietrich testified that this kind of damage would ordinarily require a fall backwards out of a second-story window.

> *There are not enough words to express how grateful I am, thank you for being so professional, knowledgeable, compassionate, and understanding through the journey of my case. You made sure that I got the best care for my injuries, my disabilities, you were there 100%. I will forever be grateful for having the BEST ATTORNEYS!*
> —Tammy Schoening

Plaintiff's PCP, Dr. Mary Gabriele, family practice, and James Morris, MD, a pain management specialist, agreed that plaintiff developed traumatic fibromyalgia as a result of the incident and was disabled by it.

"Shopping While Black" at Walgreens

$67,000 TO WALGREENS' SHOPPERS

A jury awarded $67,000 to Teresa White and her son, Deante Strickland (top right photo), a basketball star at Central Catholic. The pair were falsely arrested by a Walgreens' manager who falsely claimed a "theft in progress." Police said video showed "no evidence" of theft. White and Strickland had emptied their pockets, and Ms. White had dumped the contents of her purse at the entranceway in order to prove her innocence. "This case is about more than shopping while black," said Greg Kafoury. "Walgreens fails to employ security guards, and instead uses the Portland police as their private security force; this is an abuse of customers, of taxpayers and of those who need the police to respond to emergencies."

INNOCENT WALGREENS' SHOPPER PUBLICLY STRIP-SEARCHED

Two clerks and the manager of a Walgreens store accused Henry Peth (bottom right photo) of stealing batteries, and strip-searched him to his waist in the middle of the store. Peth was a member of a royal family of a tribe in Ghana, and an accusation of dishonesty in his homeland is a matter of great gravity. Thieves are paraded by the police on market day, while being beaten with sticks. It is a humiliation to the thief and his family that can never be erased. For being falsely accused and being treated in such a humiliating manner, Peth sued Walgreens, and a jury awarded Peth $35,000. The result was widely publicized across the country.

Image from KPTV Fox 12

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I WAS HIT BY A DRUNK WHO HAD NO INSURANCE. CAN I STILL RECOVER FOR MY INJURIES?

The most severe auto injuries are often caused by drivers that have little or no insurance. This is often someone who lost his license after a number of DUIs and can't get insurance, but still gets behind the wheel. However, you can protect yourself and your family by getting the proper insurance coverage.

Every auto insurance policy in Oregon is required to provide uninsured and underinsured (UM/UIM) motorist coverage. That means that if someone with little or no insurance crashes into you, your own insurance kicks in, providing coverage.

The amount of insurance you buy in case you hit someone — the liability limit — should be the same amount of insurance that you can seek in settlement if someone with little or no insurance crashes into you. Unless you agree in writing to lower UM/UIM limits, your UM/UIM limits will be the same as your liability limits.

Some insurance sales people try to get you to sign a document agreeing to accept lower UM/UIM coverage. DON'T DO IT. You are likely a responsible and safe driver. The risk you should be protecting against is an irresponsible driver hitting and hurting you.

In fact, most people don't know it, but increasing the amount of your insurance limits just doesn't cost that much. High UM/UIM limits protect you, your family and friends.

Don't just automatically renew your insurance. Call and ask how much it would cost to increase your limits, to $100,000, $250,000, or even $500,000. If the price sounds high, tell the agent you're going to shop around and *do so.* High UM/UIM limits are the best investment you will ever make.

Our attorneys routinely negotiate, and, when necessary, sue our client's own insurance companies when the at-fault driver is uninsured or underinsured.

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