



Curd, Galindo & Smith, LLP

A t t o r n e y s A t L a w

FALL 2009

Brought to you by
**Curd, Galindo &
Smith, LLP**
Attorneys At Law

301 East Ocean Boulevard
Suite 1700
Long Beach, CA 90802
562-624-1177
1-800-300-2300
FAX: 562-624-1178
e-mail:
agalindo@cgsattys.com

OFFICE HOURS

Monday-Friday

8:00 a.m.-5:00 p.m.

Saturdays and Sundays
by appointment.

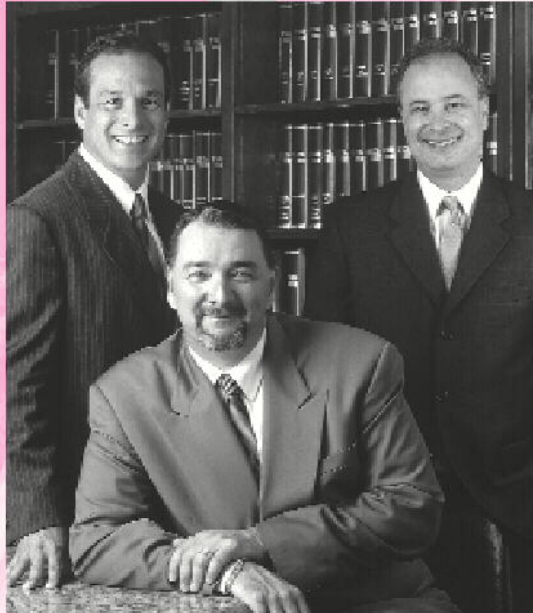
Jeffrey S. Smith

State Bar of California
Bankruptcy Specialist

PERSONAL INJURY PRACTICE

- Wrongful Death
- Products Liability
- Medical Malpractice
- Automobile Accidents
- Industrial Accidents
- Animal Attacks
- Criminal

**BANKRUPTCY
PERSONAL INJURY
REAL ESTATE
GENERAL BUSINESS
LITIGATION
CRIMINAL
ESTATE PLANNING**



The more they resisted, the harder we fought

Noel Gomez, a 24-year-old licensed pest-control technician, was done working for the day. He had just completed a chemical treatment of the crawl space for a customer who complained of an ant infestation. He knew the job would take all day because the lady who hired him had let the problem go for many years. After completing the job, Noel finished his paperwork, got into his truck, and started on the 16-mile drive back home to his wife Yvette and his infant son.

While driving home, Noel noticed construction crews working on a new residential project. The street was otherwise empty and Noel was looking forward when suddenly life as he knew it was forever altered. What Noel did not see, nor would he have any way of knowing, was that above him on a rather steep hill a construction crew was having difficulty starting a forklift that had been having engine and brake problems. The construction company had a mechanic who maintained the heavy equipment.

At the same time Noel was driving down the street, the "mechanic" asked that another worker push-start the forklift. The forklift was pushed and as it started forward, the worker repeatedly pumped on the brakes. Unfortunately, the brakes were totally inoperable, and as the forklift lurched forward, it rolled down the hill, gaining speed by the second.

Noel, who was unaware of the forklift's loss of brakes, continued driving straight. As he did, the forklift came rumbling down the hill. The forklift crashed into Noel's truck approximately two feet behind the driver's door.

Noel never saw it coming; suddenly his truck was hit with a tremendous force. The collision was so strong that Noel's pickup truck rolled over three times, coming to rest on its roof. His head and body were tossed about in a violent and dangerous manner. Noel was stunned; he was now upside down and strapped in by his seat belt. The rolling of the truck caused Noel to hit his head numerous times and to briefly lose consciousness.

As he regained consciousness, Noel could smell the pest-control chemicals and gasoline leaking from the upside-down truck. Not knowing what had happened and fearing that a fire could start, Noel quickly released his seat belt and came crashing down on his head, hitting the bottom of the truck's roof. Confused, hurt, and scared, he was able to crawl out of one of the truck's shattered windows, where he collapsed in the street. Police paramedics and fire personnel converged on the scene. Noel was placed on a backboard, his head was set in a

(continued on page 2)

We take your family's safety and security personally.

CURD, GALINDO & SMITH, LLP

The more they resisted, the harder we fought

(continued from front)

**Noel, his wife,
and their baby
have been on a
long and painful
road since the
events of the
accident.**

hard collar, and he was transported by ambulance to the hospital. Once admitted to the ER, he was examined, x-rayed, and told that he had a laceration on his hand and a severe neck sprain. The Kaiser doctor released him and told him to take the rest of the week off from work.

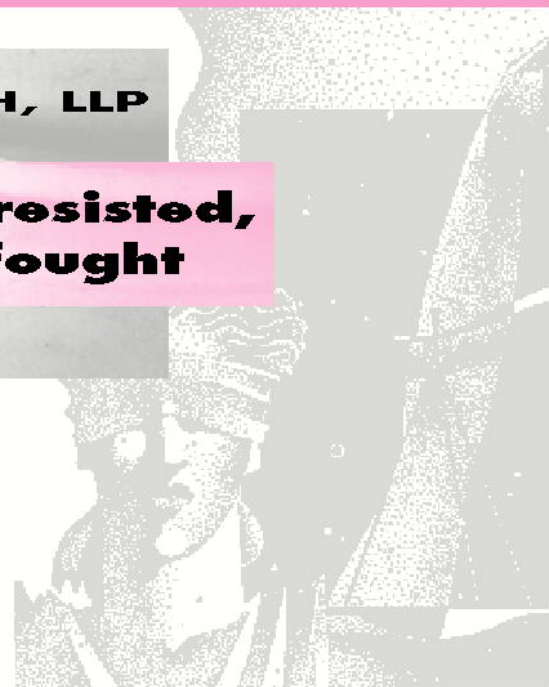
Noel's wife, Yvette, brought him home later that night. Once the pain medication administered at the hospital began to wear off, Noel knew that this had to be more than a simple sprain. The pain was so intense that he could hardly stand it, and he spent a fitful and restless night trying to find any position that would somehow relieve the pain racking his body. The doctor at Kaiser told Noel to follow up with an orthopedist should he continue feeling discomfort.

Not knowing where to go or who to see, Noel called our office and asked that we represent him. After hearing the circumstances of the accident and seeing his preliminary medical

records, we arranged for Noel to be examined by an orthopedic surgeon who specializes in neck and head trauma. The doctor prescribed months of physical therapy and massage treatments. Although the treatments helped to relieve the pain while he was at the rehabilitation facility, after a few hours, Noel's neck became rigid and he was unable to bend his neck to look up or down. Noel also suffered from a tingling sensation in his right hand. This affected his range of motion, his grip, and strength.

The pain became so debilitating that Noel spent the better part of each day laying down and taking pain medication. After the physical-therapy sessions ended, there was still no relief. The doctor extended Noel's time off of work, and, as a result of the accident, he lost his job. Unable to even sit for an extended period of time, Noel's days became filled with one doctor appointment after another. Because Noel was technically still at work when the accident happened, he was also availing himself of his workers' compensation benefits. Between the workers' compensation doctor's appointments and those that his treating doctors sent him to, he was constantly in and out of doctors' offices and rehabilitation facilities.

After the fifth set of rehabilitation sessions were completed, his orthopedist ordered an MRI of Noel's head and neck



They put their trust and belief in our office, and it has been our pleasure and honor to represent them.

When the results of the MRI came back, Noel's worst fears were realized. The original diagnosis of a severe sprain was only a small part of the trauma. The damage done to the tendons and disc in his neck did not show up on an x-ray; it took the MRI to demonstrate the actual damage. After reviewing the MRI and all of his rehabilitation and medical records, Noel was referred to a neurosurgeon.

The MRI showed spinal stenosis and a major impingement of the cervical spinal cord. The neurosurgeon told Noel that the only way to correct the damage would be for Noel to undergo a surgical procedure that would result in his damaged disc being removed and replaced with an artificial one, and for his remaining disc to be fused together.

Noel was informed that he would never be the same again, but that this was the only way to relieve the pain, the limited range of motion, and the tingling in his hand that he had been suffering with since the accident. Noel obtained a second and third opinion before the surgery. All three doctors concurred that Noel was indeed a candidate for this very delicate and extremely precise multilevel cervical fusion surgery. Noel knew he had to do something because the pain was increasing and his range of motion, instead of improving, was diminishing. The tingling was becoming painful and

made it very difficult for Noel to relax. Even though he had been warned that this sort of surgery could result in paralysis or even death, Noel felt he had no other choice but to put himself in the hands of a skilled neurosurgeon.

Noel presented to the hospital and had a six-hour surgery that completed the fusion and the replacement of the damaged disc. He then went back to physical therapy for six months and worked hard to strengthen and increase the range of motion he had lost due to the accident. The surgery was a great success, the tingling all but disappeared, and as of this writing it has diminished month by month. Noel is now almost pain-free. The constant aching and throbbing are gone, and his range of motion has improved dramatically. Noel knew going in that all he could expect was improvement. The life he had before the accident was now only a memory. Noel will have to be careful for the rest of his life; one more accident could cause him great difficulty. He knows that the trauma he sustained on some levels is permanent.

We filed suit against the construction company, and litigation commenced. This case, like all others, had its pitfalls, and we had to address each one. First, the forklift mechanic who crashed into Noel's truck had sustained a brain injury and was unable to testify; second, the insurance company for the construction company was a new one, and this was its first big claim. They were going to fight and defend this case as strongly as they could. The insurance company hired an orthopedist and neurosurgeons who testified that Noel's injury, although



dramatic, was just a sprain. The defense doctor also opined that Noel's surgery was done correctly. It was also his opinion that it was unnecessary and that Noel was fit and ready to go back to work without limitations.

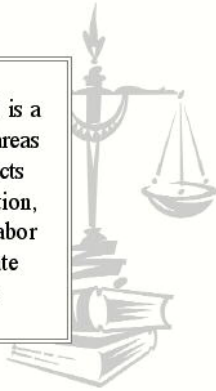
It was an interesting opinion, but it only resulted in us pressing harder.

Both sides fought hard and the depositions of the emergency personnel and medical doctors were taken. The evidence revealed that Noel's injury was severe and that the surgery was reasonable and necessary.

At the request of the attorneys for the construction company, several mediations were conducted. After two mediation hearings, liability was no longer in dispute; the defense conceded that the accident was 100 percent their fault. What remained at issue was the amount that Noel should receive for his medical bills, loss of earnings, and his pain and suffering. The third mediation was a complete failure. It was clear that the

(continued on back page)

Curd, Galindo & Smith, LLP, is a full-service firm. Our practice areas include personal injury, products liability, general business litigation, bankruptcy, employment and labor law, real estate litigation, estate planning, and criminal law.



© Copyright 2009. Newsletters, Ink. Corp. Printed in the U.S.A. www.NewslettersInk.com

The information included in this newsletter is not intended as a substitute for professional legal advice. For your specific situation, please consult the appropriate legal professional.

The more they resisted... *(continued from page 3)*

defense's tactic would be that Noel was fine and should go back to work, and although he did suffer a trauma, the insurance company only offered \$180,000.

I begged to differ and retained a group of experts that would prove to a jury that the defense was wrong. Noel was sent to a vocational rehabilitation expert, a forensic economist, and a nurse consultant. We hired an accident reconstructionist and bio-mechanical engineer to determine the forces applied to Noel's neck as a result of the rollover. During all of this time, Noel had done his best to follow his doctors' advice and do the things he needed to do to get better. We were now into the third year of litigation, and when the defense asked for yet another mediation, we accepted, knowing that this time our trial date was coming up, and if they did not offer a fair settlement, we were going to be selecting a jury in a matter of weeks.

This time, we started off by having the mediator watch our trial animation. He could see we were prepared and ready for trial. The first offer was so high, Noel may have even settled had he been offered that at the first mediation seven months earlier. We stood steady; the mediator could see that our position was firm. He went back to talk to the defense and after several hours they increased the offer; this was fair, this was equitable, this was more like it, and so we turned it down. The mediator knew that this was



more than we expected, but he also could tell that we were close to settling. He suggested a break—a few days to reflect. "Let's think about our respective positions and talk about it again next week"... both sides agreed.

Noel was in disbelief. He never expected to be offered this much. He took a few days to think about it and asked us to settle. Although we are unable to divulge the confidential settlement figure, it was much more than was originally offered.

Noel, his wife, and their baby have been on a long and painful road since the events of the accident.

They put their trust and belief in our office, and it has been our pleasure and honor to represent them.