

Ambulance Abuse Case: \$3.25M Award

Edited from *The Oregonian*, 9/9/09

A Multnomah County jury ordered ambulance company American Medical Response to pay \$3.25 million to a woman who was molested by a paramedic as she was rushed to the hospital.

Royshikka Herring, who was abused by serial sex predator Lannie Haszard, said during the month long trial that the incident had dramatically damaged her life.

The jury found Portland-based AMR Northwest and its parent company AMR negligent for failing to act to keep Haszard from escorting Herring to the hospital in December '07. Three women had complained to the ambulance company or police in the two years leading up to Herring's abuse. One woman said that Haszard appeared sexually excited when a hospital worker changed her into a gown at the hospital. Two others said he had groped them — either on the breasts or under the pants.

Defense attorney James Dumas argued that the company actively investigated all the complaints, but Haszard was so convincing with his explanations that he "duped" those who oversaw him.

This is a case about a predator who worked out of the back of an ambulance. It's about the woman—Royshikka Herring—who stopped him, and the corporation that didn't.

—Greg Kafoury's opening statement

But Herring's attorney, Greg Kafoury, argued that AMR brushed off the complaints of the other women, telling the first woman to complain that she must have imagined things. In the case of the second woman, an AMR manager claimed she was satisfied with his explanation that the touching was not sexual —rather a necessary part of checking her vital signs. But the now 76-year-old woman testified that she stood by her original story. As she was wheeled toward heart surgery, "in what could have been her last moments on earth," Kafoury said, "all she wanted to talk about was what that man did to her."

The third woman to complain only talked to police, and Kafoury criticized AMR for failing to interview her, or tell police about the two previous complaints.

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From left to right: Charley Merten, client Royshikka Herring, Greg Kafoury, Jason Kafoury and Mark McDougal. The \$3.25M verdict is the largest civil verdict in Multnomah County in several years.

Initiative Power Serves Injured Workers

Some of Oregon's most important civil justice laws were enacted by initiative petition. The eight-hour work day, ventilation for workers, prohibition of convict labor, the Corrupt Practices Act, and the Employer's Liability Act, all these resulted from citizen initiatives prior to World War I.

Without initiative petitioning, workers seriously injured would not be able to sue for job-related injuries. Hard-working Oregon citizens collected signatures to enact the following Employer's Liability Act provision:

All employers having "responsibility for any work involving a risk or danger to the employees or the public shall use every device, care and precaution that is practicable to use for the protection and safety of life and limb, machine or other apparatus or device, and without regard to the additional cost of suitable material or safety appliance and devices."

This law is powerful. It put people over profits. We recently represented a siding company foreman who suffered paraplegia from falling when a ladder and scaffolding collapsed. He obtained recovery against the general contractor, who allowed equipment to be unsafely used on the job site.

Other cases we've handled under this act include a paper plant workman who received serious chemical burns, a worker who fell from a platform, and workers injured by defective vehicles and machinery.

Citizens' initiatives also established a three-fourths verdict for civil cases. Grass roots organizations and progressive politicians understood the social value of prevailing with 9 out of 12 votes, rather than needing a unanimous verdict.

Natalie McDougal Rejoins Firm



Natalie McDougal is returning to a more regular schedule at Kafoury & McDougal now that the McDougal twins are one year old. She will focus her work on research and motion practice out of her home office, but will spend time at the firm's office to review files and do client meetings on a regular basis. Natalie's practice includes all areas of personal injury law, with emphasis on employer liability law cases and rights of injured workers.

AMR Ignored Patient Complaints

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In preparations for trial, Kafoury's office tracked 108 of the nearly 600 women Haszard had transported in the three years before he molested Herring. 18 of them said Haszard had done something sexually inappropriate.

Dumas said rape victims or those who witness grotesque acts of violence suffer post traumatic stress disorder, but Herring does not. Kafoury, however, said Herring's psychologist had found her post-traumatic stress disorder "was off the charts."

Herring, 29, testified that she was semi-conscious and aware of the abuse, but helpless to move, speak or stop Haszard at times during the ride. Since the abuse, the North Portland single mother of three said she suffers from frequent panic attacks, no longer attends her son's sporting events because she is afraid to leave her home and has become so withdrawn she lost her fiancé.

The jury awarded Herring money based on the claim that she was a vulnerable person

as she lay incapacitated in the back of the ambulance. The defense had argued that Herring wasn't incapacitated when Haszard touched her. Herring has said *The Oregonian* may print her name, even though she is a victim of sexual abuse. The newspaper does not normally do so.

After Herring reported the incident to police and demanded his arrest, other women came forward to report how they were abused. Immediately after the verdict was read, Judge Judith Matarazzo placed a gag order on all parties.

Haszard was sentenced in August 2008 to five years in prison for inappropriately touching four female patients. Four other women are suing the ambulance company, which has a contract with Multnomah County to provide emergency services. A judge ordered their cases tried separately. Herring's case was the first to go to trial.

The Dragon Says...Friends Don't Let Friends Talk to Insurance Companies

People constantly come to us and say that they were hurt in an auto accident, and that they tried to settle with the insurance company on their own. They tell us how friendly the insurance person was, and how shocked they were when they came to settle the case, and found the offer so trivial as to be in insult. They have made the fundamental mistake of trying to handle the case without a lawyer.

Insurance companies have no fear of people who are unrepresented, in fact, they feast upon them. While thinking that the company will be reasonable with them, the unrepresented person has routinely signed a medical authorization which allows the insurance company to

rummage through their medical files, and they will usually have given a recorded statement, and all of this will be used against them.

The insurance company will have conducted an investigation, secured photographs and witness statements, while the unrepresented person will have nothing but the false assurances that they will be adequately taken care of.

Injury cases are serious. If someone you know has been hurt, have them call a lawyer immediately. Our office has handled a vast number of auto cases, and we have a record that speaks for itself. All of our cases are handled on a contingency basis, and there is no charge for an initial consultation.



African American Men Win Police Brutality Case

Edited to fit from *The Oregonian*, 9/28/09

A Multnomah County jury Monday ordered the city of Portland to pay three men a total of \$175,000 for a 2007 encounter with police at a downtown parking garage in which the men accused officers of battery, assault and false arrest.

The jurors found the testimony of two independent witnesses especially compelling. The witnesses, a young college couple, saw the entire episode and corroborated the stories of the three men: Harold Hammick, Ri'Chard Booth and Alex Clay.

"Justice does work," Clay said after the verdict. "The system does work."

Greg Kafoury, the attorney for the men, said that the city's defense had invoked an ugly stereotype of young black men as belligerent, confrontational and profane.

All three men have clean records, with no history of violence. Clay is a graduate of Portland State University and works with at-risk youth at Head Start. Booth assembles mattresses, and Hammick is a computer technician.

Justice does work. The system does work.

— Alex Clay, statement after the verdict

Hammick, Booth and Clay had come downtown to celebrate St. Patrick's Day in Portland's entertainment district. According to Kafoury, Hammick and Booth had returned to an SUV in the parking garage at Southwest Fourth Avenue and Alder Street when they encountered the police. Clay showed up later after stopping at a pizza parlor.

The men sued the city for what they described as 40 minutes of terror in which they were held at gunpoint while officers searched their car and checked to see whether the handgun Hammick was carrying was stolen. The city tried to portray Hammick as an angry man with a gun who may have been involved in an altercation on the street before the encounter with police. Early in the



Ri'Chard Booth, Greg Kafoury, Harold Hammick, Jason Kafoury and Alex Clay celebrate verdict against Portland Police in police abuse case.

encounter, Hammick told Besner he had a gun and handed over his concealed weapon permit, Besner testified. After Hammick indicated the gun was in his waistband, Besner drew his weapon and took a half-step back. Two other officers on the scene also pulled their weapons. Hammick, Besner testified, was "definitely unhappy ... From the get-go, he was argumentative."

But Kafoury told a different story. All three men, he said, were wrenched from the SUV and handcuffed. Kafoury also said that Besner punched Hammick twice in the groin and questioned his manhood during the confrontation, accusations the officer denied.

"We know that the plaintiffs were not confrontational," Kafoury told the jury during his closing. "The word they used more often than any other was 'please.'"

Hammick, he added, had tears streaming down his face.

The men also said that police told other people in the parking garage to move along, Kafoury said in closing arguments, "because they did not want witnesses."

The two witnesses who scrunched down in their car seat so they could watch the confrontation said all three men pleaded with passers-by not to leave them alone with police.

Those witnesses were a key to the jury's verdict, said forewoman Karen Nootenboom. Race was discussed only briefly during deliberations, she added, as jurors wondered whether white men would have been treated the same.

Besner has been at the center of controversy before. In 2005, while he was a sniper with the Special Emergency Reaction Team, Besner shot a suicidal man who was holding a weapon in the backyard of a duplex. The man was on the phone with a police negotiator at the time. The city paid the man's family \$500,000.

K&M at Oregon Supreme Court

from the *Associated Press*, 10/15/09

The Oregon Supreme Court has ruled that a man injured when his barstool collapsed can keep the money awarded by a jury for medical bills even though his bills had already been paid by Medicare.

George White had to be hospitalized after the barstool collapsed under him at the Ponderosa Lounge in Portland, owned by Jubitz Corp. Because he was over 65, Medicare paid for his medical bills. But the total was about \$38,000 and Medicare paid only \$13,400, so the health care providers wrote off the rest.

White then sued Jubitz for the entire \$38,000 and a jury awarded it to him. Jubitz appealed, arguing Medicare had already paid the bill. But the Supreme Court ruled the Medicare payments could not be deducted from the jury award.

White's attorney, Mark McDougal, said "When a company injures somebody, they pay for the reasonable value of the medical expenses."

The beginning of the Oregon Supreme Court's opinion lightheartedly starts off with "Plaintiff walked into a bar... the stool he sat on collapsed beneath him and he sued the defendant."



A defective stool at Jubitz truck stop led to a major victory for consumers.

Kafoury & McDougal's Oregon Supreme Court victory benefits all injured persons.

The Court held that life insurance, retirement, disability and social security benefits cannot be deducted from jury awards.

We've Got You Covered

If you're in an accident—as a driver, passenger, or pedestrian—always assume that you're covered under your own auto insurance policy. Insurance companies frequently deny coverage even when it exists: A bus passenger is injured when a car pulls in front of the bus. The client thinks his only recourse is through the bus company. He is in fact covered under his own auto insurance. Yet his own insurance company may deny the claim. Call us, we've got you covered.

"Arbitration Clause" Means Biased Judges Paid for by Corporations

Lawsuits against the National Arbitration Forum revealed that the Forum advertises to its corporate clients that they will have a higher success rate with arbitration than they will with litigation. Talk about truth in advertising! Internal documents of the Forum revealed that *fewer than one percent of arbitrations were won by individuals*.

You would think that Congress would react, but apparently Congress is beholden to the corporations, as well. Congress responded by merely holding "hearings."

Forced arbitration is a trap. The general public, judges, and lawmakers tend to view arbitration as an efficient alternative to litigation. Few know the ugly truth. Guess what? If you search for the truth about arbitration, you get a website run by the National Arbitration Forum www.arbitration-truth.com. The Forum's website touting "the truth" states that "reports that consumers are disadvantaged by contractual arbitration are clearly erroneous." Looks like they need to be sued again, this time for false

advertising. Eighty-one percent of Americans polled in a recent study disapproved of mandatory binding arbitration. This corporation-friendly, tie-your-hands arbitration is written into most of the consumer contracts we sign every day for credit cards, cell phones, etc. Ever try negotiating to change the terms—you can't. It is not only the big corporations that have forced arbitration on individuals—Oregon state law requires cases with a value of less than \$50,000 to be submitted to mandatory, court-annexed arbitration. While the lawmakers may have been well-intentioned, this court-annexed arbitration is not much better than the arbitration forced upon us by corporations.

Why? The insurance companies appeal the arbitration decisions. Once they've appealed the decisions, they try to get the plaintiff to take less than awarded by the arbitrator.

Long story short—voluntary arbitration is good, mandatory arbitration sucks.

Lawsuit Filed in Oxy Overdose Death

Reprinted from *The Gresham Outlook*, by Mara Stein, 7/21/09

PAYETTE CLINIC ACCUSED OF FLOODING THE NW WITH NARCOTICS

The local father whose teen daughter died after overdosing on one oxycodone pill last December is suing a Vancouver, Washington, clinic that prescribed them on a claim for wrongful death. Jack Daggett, of Damascus, is seeking \$1.3 million in damages in a wrongful death lawsuit filed Friday, July 17. The suit, filed by high-powered Portland attorney Greg Kafoury, accuses the Payette Clinic of prescribing opiates and other controlled substances "in amounts grossly excessive to any legitimate medical needs."

According to the state medical examiner, Rachel Daggett died after smoking one 30-milligram oxycodone pill. An investigation by Gresham police and federal narcotics agents revealed that the pill had been prescribed to Ronald Zaloznik, 33, of Troutdale. Although Zaloznik had a prescription for the controlled substance

from the Payette Clinic in Vancouver, Zaloznik was selling them.

Court records indicate that Zaloznik was addicted to oxycodone and was taking more than 1,000 milligrams a day for back and neck pain. Yet, he had enough left over to sell—the proceeds from which paid the rent on the home, as well as food, utilities and other living expenses.

The clinic that prescribed the pills is the target of 41 complaints from pharmacists and clients filed with the Washington State Nursing Commission dating back to 2006.

That history is what turned the sorrow of Rachel Daggett's grieving parents into anger, said her father, Jack Daggett.

"I want to shut that clinic down," he said, adding that what it is doing is "beyond unethical, it's criminal." The U.S. Drug Enforcement Administration raided the clinic to seize records as part of an ongoing investigation.



Rachel Daggett

Who You Gonna Call?

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Political Corner

Ralph Nader has a new book, *Only the Super-Rich Can Save Us*. He describes it as "practical Utopia," an imaginative work about how twenty-five of the richest people in the world get together to save the planet from corporate domination. They are all getting older and feeling the emptiness of lives spent piling up money while the social fabric of society and the ecological foundations of the planet slowly unravel. Many critics agree that the Nader book is a vital contribution to getting people to think creatively about all that needs to be done. Ralph met recently with billionaire Warren Buffet, and Buffet says he intends to ask many of the richest people on earth to contribute half of their estate to projects that serve humanity. Who knows what impact one thoughtful book could have? Lewis Lapham of Harper's called Ralph's book "as inspired a work of the political imagination as Tom Paine's *Common Sense*."

Kafoury & McDougal have long been close to Mr. Nader. We organized the original Nader Super Rallies in 2000, and have worked closely with him and supported him for a long time. In 2000, Ralph told Greg and Mark that "you guys are King Kong and Godzilla in this campaign."



Welcome to Our Newsletter

- We hope to provide practical and useful information.
- We want to share what we are doing with you.
- Let us know if there is something you want us to write about.
- We appreciate the business our clients refer.

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We appreciate referrals.
Please let your family, friends,
and neighbors know that if they
need a lawyer, they should call
Kafoury & McDougal first!

You Need to Know

QUESTION: IF YOU'RE HURT ON THE JOB, ARE YOU STUCK WITH THE LIMITED REMEDIES UNDER WORKERS' COMPENSATION?

ANSWER: You cannot sue your employer directly unless the employer intended to hurt you.

However, on-the-job injuries are often the fault of a person or company other than your employer. In that case, you can recover not only from Workers' Compensation, but you have a claim against the person or company that caused your injuries.

Here are some examples of cases handled by our office:

- A truck driver, delivering pumpkins to the Ellen DeGeneres show, was rear-ended by a

semi-truck. Our client received substantial Workers' Compensation benefits due to his injuries. We then sued the trucking company that owned the semi-truck and obtained a recovery above and beyond the limits of Workers' Compensation.

- A mail carrier suffered a serious foot injury while working. Although she received federal Workers' Compensation benefits, our firm successfully sued the owner of the building where she was delivering mail, because the owner had failed to repair the dangerous condition.

Other conditions of recovering beyond Workers' Compensation are mentioned in the Employer Liability Law panel on the next page of this newsletter.