

# The Trial Lawyer

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SUMMER 2003

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## Seven Months; Four Cases and Huge Verdicts

Wesley Lowe's interview  
with Bill Veen



Plus: Who Was Right, The Beatles Or Your Mother? • Noteworthy Verdicts

## HOLES

*Ryan v. City and County of San Francisco* --San Francisco Superior Court, Civil Action No. CGC-00-390027

Plaintiff's Attorneys: Christopher B. Dolan and Elizabeth E. Comeau of The Dolan Law Firm

Defense Attorneys: Ellen Shapiro, City Attorney's Office, City and County of San Francisco

**TRIP AND FALL - POTHOLE:** Plaintiff twisted her ankle and suffered severe nerve paralysis resulting in a drop foot when she tripped and fell in a hole that was 14" in diameter near a Muni station. Plaintiff sought damages for liability and James Soong, Plaintiff's attorney, obtained a judgment from the City and County of San Francisco which was rejected.

**INJURIES**  
specials of \$4

STARTS  
HERE →

**SETTLEMENT DETAILS:** The City and County of San Francisco offered \$125,000.

**VERDICT FOR PLAINTIFF:** The jury awarded \$2,008,000, consisting of \$858,000 in economic damages and \$1,150,000 in noneconomic damages. The jury also found plaintiff 18% comparative which resulted in a net verdict of approximately \$1.6 million.

**COMMENT:** The outstanding result in this trip and fall case is directly due to the discovery conducted by plaintiff which established that the pothole at issue was a defective condition that the City had sufficient notice of in order to repair. Christopher B. Dolan, plaintiff's lead trial attorney, wrote a feature article for *The Trial Lawyer* (Summer 2002) that discussed the strategy he followed in discovery to make the case for plaintiff at trial.

## HEIGHTS

*Shropshire v. City of Walnut Creek* --Contra Costa County Superior Court, Civil Action No. 01-02541

Plaintiff's Attorneys: William B. Smith and Robert J. Waldsmith of Abramson & Smith (415) 421-7995

# ATTORNEY CONDUCT MATTERS

State Bar Defense

Expert Witness

Ethics Advice

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Every few days, new court decisions affecting California attorney conduct are filed. I summarize these cases on the What's New page at [www.FishkinLaw.com](http://www.FishkinLaw.com)

**A-V Rated by Martindale-Hubbell**

Defense Attorneys: William H. Staples of Archer Norris

### Diving Accident - Dangerous Condition of Public Property

Plaintiff Scott Shropshire (U.C. Davis diver), age 20, was diving as a guest of the Diablo Divers (a diving club) at the dive pool at the Clark Memorial Swim Center, owned and operated by the defendant City of Walnut Creek. At the time, defendant City of Walnut Creek had concurrently rented water time in the dive pool to 2 private clubs, the Diablo Divers and the Walnut Creek Aquanauts, a synchronized swimming club. During a 3 hour period each day in the summer, the 2 clubs shared the 81 foot long and 40 foot wide dive pool without any physical divider between the 2 inconsistent activities. The shared use arrangement of the dive pool had existed for 15 to 17 years prior to the accident without any diver/swimmer collisions although swimmers, divers, and coaches who testified at trial each acknowledged an awareness of a few "close calls" over the years, where divers had just missed colliding with synchronized swimmers. The evidence at trial established that the City's dive pool was the only one in the world that allowed divers and synchronized swimmers to share use without any means of physical separation between the two activities and also allowed the synchronized swimmers to swim into the diving area during diving practice. The collision occurred when a synchronized swimmer who had been swimming a cool down lap left her position along the wall under the three meter board and swam directly into the board's landing area. She did this at the time Mr. Schropshire left the three meter board for his dive. Tragically, his head hit her right buttocks area, resulting immediate C-4 quadriplegia.

**INJURIES AND DAMAGES:** For plaintiff, C-4 quadriplegia. He suffered double-locked facets with C-4

being locked over C-5, causing spinal cord necrosis at that level. Plaintiff's economic loss consisted of \$1,064,102 for past medical bills, \$1,948,380 for loss of earning capacity, and a range of \$7,807,932 to \$16,292,604 for future medical needs, most of which represents the cost of 24 hour attendant care.

**SETTLEMENT DETAILS:** Plaintiff served a C.C.P. \$998 offer in the amount of \$15,999,999. The City offered a total of \$12,000,000 in combination with the other defendants.

**VERDICT FOR PLAINTIFF:** The verdict for plaintiff was \$27,750,000, consisting of \$16,500,000 for economic damages and \$11,250,000 for noneconomic damages. The jury assessed fault 60% to the City, 20% to the synchronized swimmer, and 10% to each diving club. The jury found no comparative fault on the part of Mr. Shropshire.

**COMMENT:** One significant question confronting plaintiffs' trial counsel before trial was how to concisely and persuasively present a large amount of evidence. Their solution - a multimedia presentation intentionally patterned after a Dateline or 60 Minutes investigative report because counsel believed that the jury would be used to receiving information in that manner. Every one of plaintiff's nearly two hundred trial exhibits was presented electronically, with particular focus on showing various computer generated diagrams depicting various configurations of the dive pool and the pool facility, photographs of the pool from various perspectives, and photographs and video of the plaintiff, both before and after he was injured. This method of presentation proved so effective that counsel opted not to show a "day in the life" video; instead, they used short (5-15 seconds) video clips during the direct examination of plaintiff, his treating physicians, his family, and the experts. This allowed the witnesses to

talk about plaintiff in more detail and gave the video clips a great deal more context.

The electronic presentation of evidence also enhanced and reinforced impeachment evidence. It is an extremely powerful moment when the jury sees the witness contradict himself or herself via an adjacent video monitor

Finally, plaintiff's presentation contrasted sharply with the presentation by the defense, which involved shuffling corkboards back and forth and publishing hard copies of documents to the jury. In the end, the jury looked to plaintiff for the evidence not only because they had become accustomed to receiving it in an electronic fashion, but also because plaintiff's evidence was more credible due in part to the seamless way it was presented.

### MORE HEIGHTS

*Lown v. Mildenberg* --San Joaquin Superior Court, Civil Action No. 014180

Plaintiff's Attorneys: Richard H. Schoenberger and Matt Davis of Walkup, Melodia, Kelly, Wecht and Schoenberger (415) 981-7210

Defense Attorneys: Luther Lewis-Corell and Assoc., Rancho Cordova, Ca. Climbing Accident - Weak Flagpole

Plaintiff David Lown ran a HVAC repair service. One of his important customers was RPM Company, a residential property management company that managed several apartment complexes in Stockton. As a favor to RPM's regional supervisor, Mr. Lown attempted to change an advertising banner affixed to a metal pipe atop a wooden flagpole that stood at the edge of one of RPM's apartment complexes. Mr. Lown had placed a ladder against the flagpole to inspect and then attempt to repair. While he was in the process of repairing, the flagpole