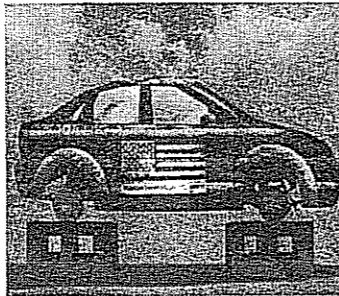


### Antidote for Arrogance

A straight-talking Rhodes scholar, William McCurine Jr. is known for his compassion.

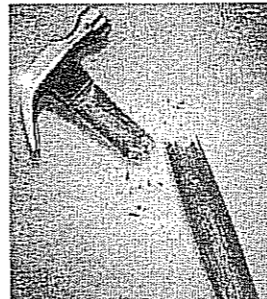
JUDICIAL SPOTLIGHT  
PAGE 5



### Wheels of Fortune

U.S. car manufacturers have at long last improved the quality of their products, but given the worsening state of the economy, this may be a case of too little, too late, writes Gideon Kanner.

FORUM PAGE 6



### A Case of Mistaken Indemnity

The state Supreme Court's 'Crawford' ruling does not establish an immediate duty to provide a defense regardless of the language of indemnity provisions, writes Jad Davis. FOCUS PAGE 7

SAN FRANCISCO

# Daily Journal

MONDAY,  
NOVEMBER 10, 2008  
VOL. 114 NO. 216  
\$ 2.00

www.dailyjournal.com

— SINCE 1893 —

© 2008 Daily Journal Corporation. All Rights Reserved

## Jurors Deal Personal Injury Firm A Pair of Eight-Figure Verdicts

By Noah Barron  
Daily Journal Staff Writer

LOS ANGELES — Plaintiffs' lawyer Terry O'Reilly calls eight-figure verdicts "the gold standard" for attorneys, a huge payday that means jurors agreed with his arguments, big time.

Awards in the tens of millions are an event for any firm, but two in one month is what he and his partner Mike Danko pulled off in October at O'Reilly & Danko, a three-associate San Mateo personal injury boutique.

O'Reilly won \$24.9 million on Oct. 16 for a client who claimed he was paralyzed when his car was negligently struck by a speeding American Medical Response ambulance. That verdict is subject to reduction under California's Medical Injury Compensation Reform Act.

Danko won \$15 million on Oct. 30 for injured aviators who claimed their single-engine aircraft

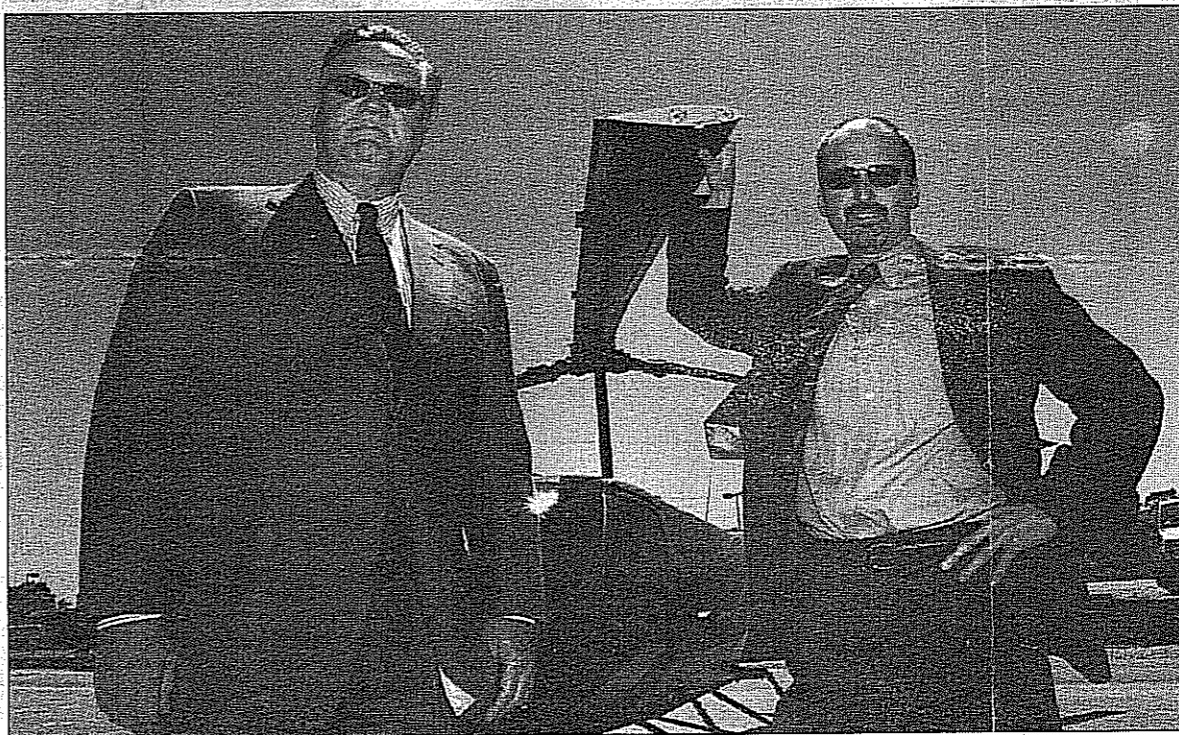
"I'm not one to blow my own horn," Danko said, "but it really is an event."

Kirk Pasich, a prominent plaintiffs' lawyer at Dickstein Shapiro in Los Angeles, had no affiliation with the cases but remarked that winning two big jackpots in a month is noteworthy.

"It's unusual for a law firm, let alone a small law firm, to record two eight-figure verdicts in the same month," he said. "Most lawyers don't get many in their careers, so that's admirable, a great accomplishment."

O'Reilly said that though the timing of the two awards was pure coincidence, he thought the event might be a first in the state for a small firm.

In his case, Louis Del Barba, an 84-year-old retired farmer, sued ambulance contractor American Medical Response and the driver of the emergency vehicle, Teymour Jaber Amir. *Louis Del Barba v. Teymour Jaber Amir and American*



# Jurors Deal Firm a Pair of Eight-Figure Verdicts

Continued from page 1

O'Reilly convinced an Alameda County jury that in April 2007, Amir was driving on Highway 4 in Oakley near Stockton at about 70 mph in a 30 mph zone with lights and sirens on, and negligently crashed into Del Barba's vehicle. Del Barba was turning left onto the highway from a farm road.

O'Reilly argued that unlike police and fire professionals, who are trained in high-speed driving techniques, American Medical Response drivers receive only two hours of parking lot practice before taking the wheel of an ambulance.

"The jury's reaction was, 'These clowns are out there with no training it all?'" O'Reilly said.

"[AMR] gave him a five-ton ambulance and told him to drive it as fast as he wants."

**V**exing to O'Reilly is the fact that California's 1975 medical malpractice cap, MICRA, now applies to injuries received in ambulance crashes.

Therefore, the \$9 million in pain and suffering compensation that the jury gave Del Barba will be capped at \$250,000.

According to O'Reilly, the change in the law came from the 2nd District Court of Appeal in Los Angeles in *Canister v. Emergency Ambulance Services*, 2008 DJDAR 2739 (Cal.App. 2nd Dist. 2008), a

ruling that expanded the scope of MICRA's protection to ambulance driver negligence for injuries sustained by passengers. The trial court in O'Reilly's case interpreted the ruling as applying to third persons in other vehicles, O'Reilly said.

USC Gould School of Law professor Scott Bice, was not familiar with the *Canister* holding but said that extending MICRA's scope to third parties outside the ambulance fits within the state's practice of shrinking medical liability claims. "If they're including a third party, that's just part of the trend to reduce pain and suffering," Bice said.

Attorneys for Greenwood Village, Colo.-based AMR, Matthew Conant from Lombardi, Loper & Conant in Oakland and Steven Pratt from Gordon & Rees in San Diego, referred questions to AMR's spokesman Doug Moore, who declined to comment.

Unlike the ambulance case, O'Reilly & Danko's other big windfall, the \$15 million aviation negligence verdict, has no recent case law to dim its luster.

In *David Michelberg, et. al. v. Teledyne Continental Motors et. al.*, CV044796 (Santa Clara Super. Ct. filed Nov. 21, 2007), Danko sued on behalf of four plaintiffs who claimed that the manufacturer of their plane's single engine had published unclear directions to the mechanic who serviced it.

The crux of Danko's argument was that Teledyne Continental's technical manual was poorly worded, leading an Aviation Classics mechanic to mistakenly apply Teledyne's Gasket Maker brand sealant to an O-ring that caused a cylinder explosion in the plaintiffs' 1966 Beechcraft.

**T**he April 2005 crash landing near Paso Robles left passenger David Michelberg with serious brain and spine injuries while the pilot and two other passengers sustained minor injuries, the suit alleged.

Albert Reddick, president of Aviation Classics in Reno, declined to comment on the award.

Doug Paul at Kern & Wooley in Los Angeles, who represented the classic aircraft restoration outfit,

said that the mechanic, Adam Hutchins, consulted Reddick and other mechanics and read the engine manual before applying the sealant to the ring.

"We found no prohibition against using Gasket Maker," Paul said.

Aviation Classic may appeal, he said.

At trial, Danko argued the incomplete nature of Teledyne's documentation had caused other incidents of sealant being wrongly applied.

"Everyone knows you're not supposed to put sealant on the parts," Danko said. "But Teledyne's manuals were confusing."

Teledyne Continental, a Mobile, Ala.-based manufacturer that makes engines for about half of the country's small aircraft, did not return calls. Its lawyer, Shalem A. Massey of the Irvine office of Bryan Cave, declined to comment on the verdict.

O'Reilly and Danko are not names unknown to Teledyne's lawyers. In the past, O'Reilly negotiated a \$32 million settlement with the engine maker. The deal, *Paboojian v. Teledyne Continental Motors*, 654490 (Santa Clara Super. Ct., June 3, 1989), stands as the largest personal injury settlement paid to a single plaintiff in an aviation case.

"We don't get Christmas cards from Teledyne Continental," Danko said.

[noah\\_barron@dailyjournal.com](mailto:noah_barron@dailyjournal.com)

**It's unusual for a law firm, let alone a small law firm, to record two eight-figure verdicts in the same month.'**

**Kirk Pasich,**  
Dickstein Shapiro