

**SPECIAL ISSUE: EXPERT WITNESSES**

Supplement to Los Angeles Daily Journal and San Francisco Daily Journal

Friday, October 4, 1996

# VERDICTS & SETTLEMENTS

**CASE IN FOCUS  
LITIGATOR PROFILE**

## Winning Hinges on 'Taking Advantage of Surprises'

**Name:** John C. Torjesen.

**Name of firm:** Grassini, Wrinkle, Gallagher & Torjesen.

**Location of firm:** 20750 Ventura Blvd., Suite 221, Los Angeles, Calif. 91364.

**Education:** Southern Illinois University School of Law (J.D. Cum Laude, 1987); Southern Illinois University (graduate studies in economics and philosophy, 1981 - 1983); University of Chicago (graduate studies in philosophy, mathematical logic and economics, 1978 - 1980); Southern Illinois University (graduate studies in economics, 1976 - 1978); Wheaton College (A.B. economics, 1975).

**Affiliations:** Board of Governors of Consumer Attorneys Association of Los Angeles, Los Angeles County Bar Association, Consumer Attorneys of California and Association of Trial Lawyers of America.

**Length of time practicing law:** 9 years.

**Publication:** Maritime Injury and Death — The Law of the Sea, A View From the Arch, The St. Louis Bar Journal, Spring 1988, (Vol. XXXV, No. 4) p. 23 (with Sandor Korein).

**Types of cases:** Product liability, personal injury and death cases where liability or causation is difficult to recognize.

**Background:** Torjesen was born and raised in Taiwan. In 1970, he returned to the United States for college, and then "spent an inordinate amount of time in graduate schools before turning professional with law." Torjesen chose law, in part, because "I have always tried to help people and enjoy being a problem solver, which is what was attractive about the plaintiff's bar." Torjesen began his legal career with Carr, Korein & Schlichter in St. Louis in 1987, handling personal injury cases in numerous states up and down the Mississippi River. In 1990, he moved to Los Angeles to be "back near the Pacific," and joined the firm which would later become Grassini, Wrinkle, Gallagher & Torjesen. For Torjesen, the most exciting time in any trial is receiving the jury's verdict. "The excitement is so much sweeter when the case is one that was generally considered impossi-



HUGH WILLIAMS / The Daily Journal

**READY AND WAITING** — John C. Torjesen says that some attorneys believe trials turn on luck or on errors of opposing counsel. But, "those things don't just happen — they result from . . . being ready to take advantage of whatever happens."

ble to win." **Keys to success:** Torjesen credits his success to "looking at a lot of information, again and again, and using only a little."

**Favorite trial moment:** One memorable trial moment occurred in a sexual misconduct case, in which Torjesen was "struggling to show the culpability of a defendant who professed innocence while denigrating the plaintiff." After a break in the trial, Torjesen learned that the defendant was chased through the courthouse parking lot by courtroom spectators who were shouting "unpleasant" expletives at him. Defense attorneys brought the incident to the court's attention. "My first question was 'is the man okay — was he hurt?' My second ques-

tion was 'is the case preserved?' The case was preserved and Torjesen ultimately won the trial.

**Practice Pointer:** Torjesen believes that the difference in the outcome of a case often comes from taking advantage of surprises that happen at trial. Some attorneys believe that trials turn on luck or on errors of opposing counsel. But, "those things don't just happen — they result from thorough preparation and understanding, and being ready to take advantage of whatever happens."

**Personal:** Torjesen is married to Laura Torjesen, who has a master's degree in social work from Washington University in St. Louis. Mrs. Torjesen has an active social work practice with an emphasis

on geriatrics and bereavement. They have two sons: Anders, 4 and Noah, 5 months. When he is not working, Torjesen spends his time with his family, being outdoors, going on "trips and adventures," and "answering an inquisitive 4-year-old who enjoys asking the hard questions."

**What other litigation professionals say about this attorney:** Judge James Otero of L.A. Superior Court in Glendale praised Torjesen as "an excellent lawyer. He is very unassuming, very smart and prepared — a gem in the courtroom." Michael Thomas of Thomas & Price in Glendale described Torjesen as "a very homespun person with a great deal of jury appeal. As a result, he is very successful."

**THE CASE**

## Jury Awards \$4 Million in Scaffolding Accident

**Type:** Personal injury, construction accident, collapsed scaffolding.

**Verdict:** \$4,078,870 (net).

**Case/Number:** Bill Kuhlman v. Phoenix Custom Services, Upton-Smith Co. / EC003041.

**Court/Date:** L.A. Superior Burbank, transferred to Central Civil West / May 24, 1996.

**Judge:** Hon. William A. Drake (by assignment).

**Disbursement:** \$796,755 (economic); \$2.8 million (non-economic).

**Attorneys:** Plaintiff — John C. Torjesen (Grassini, Wrinkle, Gallagher & Torjesen, Woodland Hills). Defendants — Bruce Gridley (Federation, Gridley & Gradwohl, L.A.) for Upton-Smith Co.,

Michael Thomas (Thomas & Price, Glendale) for Phoenix Custom Services; Rick W. Manthei (Law Offices of Rick W. Manthei, Tarzana) for cross-defendant Kuhlman Construction Co.

**Technical experts:** Plaintiff — Morris S. Farkas, construction safety, L.A.; Joyce Elaine Pickersgill, Ph.D., economist, Santa Ana. Defendants — Donald R. Kuehnert, construction safety, San Juan Capistrano; Byron V. Citron, construction safety, L.A.; George M. Brinton, Ph.D., economist, L.A.

**Medical experts:** Plaintiff — C. Neil Shepherd, M.D., orthopedist, L.A. Defendants — Frederic George Nicola, M.D., orthopedist, Beverly Hills.

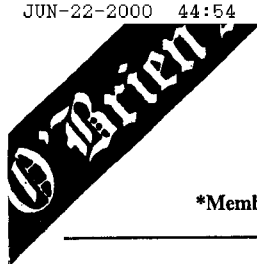
**Facts:** On July 30, 1990, plaintiff Bill Kuhlman, a self-employed carpenter

and contractor, was working as a framer on a three-story apartment being built by defendants Upton-Smith, the developer, and Phoenix Custom Services, the supervising general contractor. The plaintiff built scaffolding on the third floor using available 2x8-inch boards sticking out through the wall every 10 feet. These "outriggers" were braced inside by 2x4 studs, and 2x10 planks were laid across the outer portions of the outriggers to form the working platform. The scaffolding collapsed while the plaintiff and another carpenter were standing on it and pushing a window into position. The plaintiff and the other carpenter fell 26 feet to the concrete walkway below. After the collapse, a building inspector ordered that this type of scaffolding no longer be used.

The plaintiff returned to work four months after the fall. Within two years, the plaintiff had revenues equal to one-half his pre-injury revenues. The plaintiff brought this action against the defendants based on negligence (direct and by respondeat superior).

**Contentions:** The plaintiff contended that the scaffolding collapsed because an unlicensed plumbing contractor must have removed a 2x4 brace when no one was looking. The plaintiff also contended that his ability to obtain work in his injured condition demonstrated that he could have been fully employed if he had not been injured. The defendants contended that the scaffolding was illegal and unsafe; that it collapsed because of poor design, poor materials

See Scaffolding next page



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## AFTER 7 YEARS . . . A JACKPOT!

**PLFF. ATTY:** **John C. Torjesen**  
 (Grassini & Wrinkle), Woodland Hills (818) 348-1717

**Experts:** Jamieson, Keith Spinal Cord Downey  
 Hume, Mary Orthopedic Surgeon USC County  
 Alza, Gustavo Internist Glendale  
 Minkoff, Leon Rehabilitation San Bernardino  
 Barras, Donna Cost of Care Buena Park  
 Pickersgill, Joyce Economist Santa Ana  
 Kruemper, Harry Accident Reconstruction San Bernardino  
 Asa, Don Truck Operations Phoenix, AZ

**DEF. ATTY:** **Lon Harris**  
 (Harris & Green), Torrance (310) 540-2664

**Experts:** Shapiro, Jeffrey M. Liver Specialist Orange  
 Wachs, Barton H. Internist Long Beach  
 Painter, Gary Orthopedic Surgeon Riverside  
 Krell, Martin Neurosurgeon Culver City  
 Boudreau, Richard Oral Surgeon Marina Del Rey  
 Petrosky, Jerrold Rehabilitation Engineer Irvine  
 Bruno, Gene Rehabilitation Counselor Los Angeles  
 Kerkhoff, John F. Accident Reconstruction Somis  
 Herbert, Veryl Paul Truck Operations Quincy

**INSURANCE CO:** **U.S. Fire Insurance Co.**

**CASE:** Raquel Diaz-Ordaz Perez, German Perez Monterrubio, parents and heirs of Lorena Perez, Deceased, Blanca Perez, Gladys Perez, Jose Perez and Claro Nunez vs. Larry Hall Trucking Company, Inc. and John P. Freudenberg No: 24 73 44

**JUDGE:** Barry L. Plotkin San Bernardino Phase I: 10/12/93; Phase II: 4/3/95

**TRIAL:** Phase I: 14 Days; Phase II: 27 Days **JURY OUT:** 3 Days; 5 Days

**POLL:** 9-3

### FACTS

#### Phase I - Liability and Phase II - Damages

4/25/88 at 4:30 a.m.: Plaintiffs (4) and one Decedent were passengers in a small Toyota pickup with a camper top which rear-ended the Defendants tractor-trailer on Interstate 15 southbound. It was one-half mile north of the truck weigh station near the base of Cajon Pass.

**Plaintiff claimed** (Phase I) the Defendants were going 35 miles per hour in lane 3 where traffic flow was 65 miles per hour. The Defendants should have been in lane 4 in case the weigh station sign flipped to open obligating them to enter the scales. Two of the Defendants tail lights did not work. The irregular shape of the load made the vehicle difficult to see.

(Phase II) They were severely injured and permanently disabled from the collision. Any other disease should have had slight effects. They obtained the best medical care they could afford. They had been attempting to progress to better jobs and were improving their English skills. They were entitled to damages for loss of earning capacity even if they had only worked at menial jobs.

**Defendant argued** the driver of the pickup was negligent and the sole cause of this accident. He was fatigued from a weekend of gambling and drinking in Las Vegas. He was being chased down the Cajon Pass by a tailgating vehicle that had its lights on high. The driver was momentarily distracted, inattentive and/or fell asleep before driving into the rear of their tractor-trailer. They were driving properly in lane 3 and had all lights on and operable.

(Phase II) The Plaintiffs injuries were caused by the tailgating vehicle that hit the Plaintiffs pickup shortly before the collision with their truck and/or were caused by the vehicle that hit Plaintiffs vehicle after it had rear-ended their truck. The Plaintiffs problems were related to other conditions such as decompensated cirrhosis, diabetes and genetically frail bones. The Plaintiffs failed to mitigate their damages. They had access to needed medical care but failed to follow medical advice. They had limited life expectancies and had misused prescribed drugs. Plaintiffs were not motivated to return to work. They had not worked in the United States except in menial capacities. They had planned to return to Mexico to accept wages below the United States minimum wage, but could work in the United States if they learned English.

**INJURIES:** Jose: Compression fractures of T-4 and T-8 with kyphosis. Blanca: Paraplegia and incomplete sensory. Gladys: Dislocated hip and bilateral fractured jaw. Claro: T-5 complete paraplegia. Lorena: Death, age 24, survived by her parents.

**DEMAND:** \$750,000 policy limit  
**OFFER:** \$75,000

### VERDICT

**\$11,414,425 gross, \$6,337,504 net after offset for prior settlements and prop 51 reductions**

Jury found the driver of the pickup 70% negligent and the Defendants 30% negligent. \$1,000,000 to Lorena, \$552,318 to Jose, \$6,240,454 to Blanca, \$401,666 to Gladys and \$3,219,987 to Claro.

## Scaffolding

Continued from first page

and poor assembly; and that a removed brace would have been obvious to the plaintiff when he stepped out onto the scaffolding. The defendants also contended that the plaintiff had fully recovered and that any downturn in his revenues was due to the severe downturn in the construction industry.

**Injuries:** The plaintiff alleged he sustained a fractured right and left calcaneus, a torn right anterior cruciate ligament and a compression fracture at L3-4 and 5 with possible herniation or stenosis.

**Jury trial:** Length 5 weeks; Poll 12-0 (liability), 11-1 (damages); Deliberation 1½ weeks; Comparative Liability 15% (plaintiff), 65% (developer) and 20% (general contractor).

**Settlement discussions:** The plaintiff made a C.C.P. §998 settlement demand for \$800,000. The defendants made a settlement offer of \$300,000.

**Post trial motions:** The defendants' post trial motions for remittitur, new trial and judgment notwithstanding the verdict were denied.

**Expert testimony:** The plaintiff's expert, Morris Farkas, testified that the scaffolding (as built) had a design capacity of four-times the load at the time of the collapse and that the accident was consistent with a brace being removed.

**Other information:** The trial was bifurcated. The jury returned its verdict on Feb. 29, 1996. (Per the plaintiff, the juror who dissented on the damages amount wanted to award greater damages.) The defendants' claim of pre-injury contractual release was then tried to the bench, which ruled in the plaintiff's favor on May 24, 1996. The plaintiff was awarded \$1,021,628 in prejudgment interest based on C.C.P. §998 settlement demands which were made Feb. 11, 1993. The court also ruled in favor of cross-defendant Kuhlman Construction Co. on the issues of express contractual indemnity and breach of contract.