



Trial Style

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Justice
for the
INJURED®



Digging for Defendants

Howard D. Krepack and Gary N. Stern
Work Around Bankruptcy
to Win Settlement
in Quarry Catastrophe

Style Stars
Howard D. Krepack
Gary N. Stein





HOWARD D. KREPACK

With three decades of successful legal practice, Howard D. Krepack has earned the recognition of his peers and accolades from his clients based on his long string of personal injury successes in the courtroom. He is a member of the prestigious American Board of Trial Advocates.

In the area of medical malpractice, Krepack has taken on difficult claims and obtained substantial verdicts. In a case involving an organ transplant, ***Cole v. Regents of the University of California***, Mr. Krepack won a settlement of an immediate cash payment of \$1.9 million plus a structured fund paying \$140,000 annually.

Other representative successes include ***Martinez v. Doe Oil Company*** in which Mr. Krepack settled a severe burn case for \$6.5 million. In ***Spitzke v. NASA***, after two federal court trials and an appeal to the Ninth Circuit Court of Appeals and the U.S. Supreme Court, Mr. Krepack recovered \$4.2 million for a client whose brain was injured while attempting to load a portion of the space shuttle for transport.

An avid bicyclist, he recently obtained a significant settlement for the family of Scott Bleifer, the 41-year-old cyclist struck and killed by a catering truck on Pacific Coast Highway in 2005. In addition, he has recovered noteworthy wins for other seriously injured bicyclists.

KREPACK AT A GLANCE

Education: J.D., University of California School of Law at Los Angeles, 1972

Admissions: State of California, the United States District Court, Central District of California; the Ninth Circuit Court of Appeals, and the U. S. Supreme Court.

Affiliations: American Board of Trial Advocates, Million Dollar Advocates Club, Los Angeles County Bar Association, American Bar Association, Consumer Attorneys Association of California, American Association for Justice and Velo Club La Grange.



GARY N. STERN

Gary N. Stern has been practicing law in California since December 1980, following graduation from UCLA in 1977 and Southwestern University School of Law in 1980. His practice is limited to serious injury cases with a focus on products and premises liability, nursing home abuse, medical malpractice and employment litigation.

Mr. Stern is a member of the Consumer Attorneys Association of Los Angeles, Consumer Attorneys of California, California Employment Lawyers Association and the California Advocates for Nursing Home Reform.

From 1997 to 2006, Mr. Stern served on the Respiratory Care Board of California, a Department of Consumer Affairs Board, which provides oversight and licensing for some 19,000 respiratory care practitioners in California.

Mr. Stern has published and taught in the areas of nursing home litigation, civil discovery and medical malpractice law.

STERN AT A GLANCE

Education: J.D., Southwestern University, 1980

Admissions: State Bar of California; United States District Court, Central District of California; United States Court of Appeal, 9th Circuit.

Affiliations: Consumer Attorneys of California; Consumer Attorneys Association of Los Angeles; Los Angeles County Bar Association, Labor and Employment Law Section; California Employment Lawyers Association; Wilshire Bar Association.

F E A T U R E D

Bucket of Trouble

Case of Catastrophic Injuries at Quarry
Resolves in Mediation

By Lisa Miller



The plaintiffs were left with
the need to find other parties
in the stream of commerce
who were exposed to liability.

Howard Krepack



M A T T E R

Heavy equipment and hydraulics make it possible for one person to move huge objects. Construction workers rely not only on the fact that their equipment will get the job done, but that their equipment is safe. Unfortunately, that's not always the case.

Enter attorneys Howard Krepack and Gary Stern of Gordon, Edelstein, Krepack, Grant, Felton & Goldstein in Los Angeles. In practice for a combined 64 years, Krepack and Stern specialize in major personal injury cases.

"Our nation's construction industry relies on the use of heavy equipment to move or carry thousands of pounds of material that if not properly secured, can cause catastrophic damage." Mr. Krepack says.

In 2004, two sand and gravel mining employees in Canyon Country were the unwitting victims of a defective piece of heavy equipment. They retained Mr. Krepack and his firm and in late 2007, Krepack and Stern obtained a settlement of \$4,250,000 for Plaintiff A and \$750,000 for Plaintiff B (the settlement is confidential). Getting to that point, however, required overcoming some unique and difficult issues.

The workers, both single fathers in their 40s, were operating a rock crushing machine when large rocks jammed the feeder tube. The site was a mining and gravel pit operation. A Komatsu excavator was used to dig rocks out of a riverbed. The rock crusher turns them into aggregate -- essentially crushed-up rocks, one of the components of concrete made on-site at that location.

After the plaintiffs made a number of attempts to dislodge the rocks from the feeder, the company owner arrived on the scene and took over the controls of the excavator. He suggested a process for removing the jammed rocks that would involve using the power of the excavator and its attachments, a hydraulic coupler and a two-ton bucket. The plan, which had been used successfully in the past, called for the workers to wrap a nylon strap around the jammed rock on one end, with the strap tied to the lifting eye of the excavator bucket.

This particular excavator was fitted with a Hendrix hydraulic coupler between the excavator arm and the bucket. The coupler allowed the crew to change excavator attachments quickly. As the excavator was lifting

a rock, the coupler failed and the 2,780 pound bucket fell into the rock crusher, hitting both men. Plaintiff A sustained severe injuries over his entire body, including spinal fractures requiring spine fusion surgery, a traumatic head wound, rib and foot fractures, hearing loss, tooth loss, and multiple internal injuries. He permanently lost the ability to take care of daily activities. Plaintiff B suffered permanent injuries including torn knee ligaments requiring major surgery.

"Those who work with heavy machinery rely on their proper design and manufacture," Mr. Krepack says. "These plaintiffs did just that, with devastating consequences."

Stern first traveled to Louisiana where he took the deposition of a key engineer previously employed by Hendrix. It was learned that Hendrix had intentionally omitted a safety device from the coupler that was in the original patent, because it made the device quicker to use and more attractive to potential customers.

"They chose profits over safety," Mr. Krepack says.

Hendrix had also distributed this first-generation coupler without a maintenance manual, so there were no safety warnings. But Hendrix—whose hydraulic coupler Krepack and Stern learned had been involved in more than 30 other lawsuits around the country—could not be a party to this action due to a bankruptcy discharge.

"Since the manufacturer was bankrupt and there was no insurance coverage for Hendrix, we were left with the need to find other parties in the stream of commerce who were exposed to liability," Mr. Krepack says.

Depositions of personnel of Komatsu in Illinois revealed that Komatsu was aware that these defective couplers were being used on its excavators. But Komatsu, a named defendant, prevailed on summary judgment after the trial court ruled that such knowledge was insufficient to find liability for a part it does not make.

The excavator and coupler had been purchased used in 1996 from a local equipment dealer which was owned by an international conglomerate. That dealer had rented the equipment to others before selling it to plaintiffs' employer, and had performed maintenance on the coupler after this sale.

TECH SUPPORT

Because of the extent of the injuries and the technical nature of the equipment involved, a small army of experts was employed in preparing the case. They included technical as well as damage experts:

- L. Peter Petrovsky, structural and mechanical engineer
- Roland Ruhl & Associates, mechanical engineers
- Gregory Wright, heavy equipment operator and mechanic
- Vincent Gumbs, orthopedist
- Edward Haronian, neurosurgeon
- Francis Riegler, M.D., pain management specialist
- Robert Bilder, neuropsychologist
- Marc Nehorayan, psychiatrist
- Dorine Blundell, mental health counselor
- Anne Barnes, life care planner
- Stephen D. Nagelberg, orthopedic surgeon
- Paul Broadus, vocational rehabilitation
- Tamorah Hunt, economist

Defense experts were:

- Bernard Ross, mechanical engineer and failure analyst
- Arthur Kreitenberg, orthopedic surgeon
- Kyle Boone, neuropsychologist
- Edward L. Workman, vocational rehabilitation
- David Weiner, economist



The two-ton bucket involved in the incident that caused the plaintiffs' injuries

"It was our goal to establish not only strict liability against the dealer, but also negligence liability," Mr. Stern says.

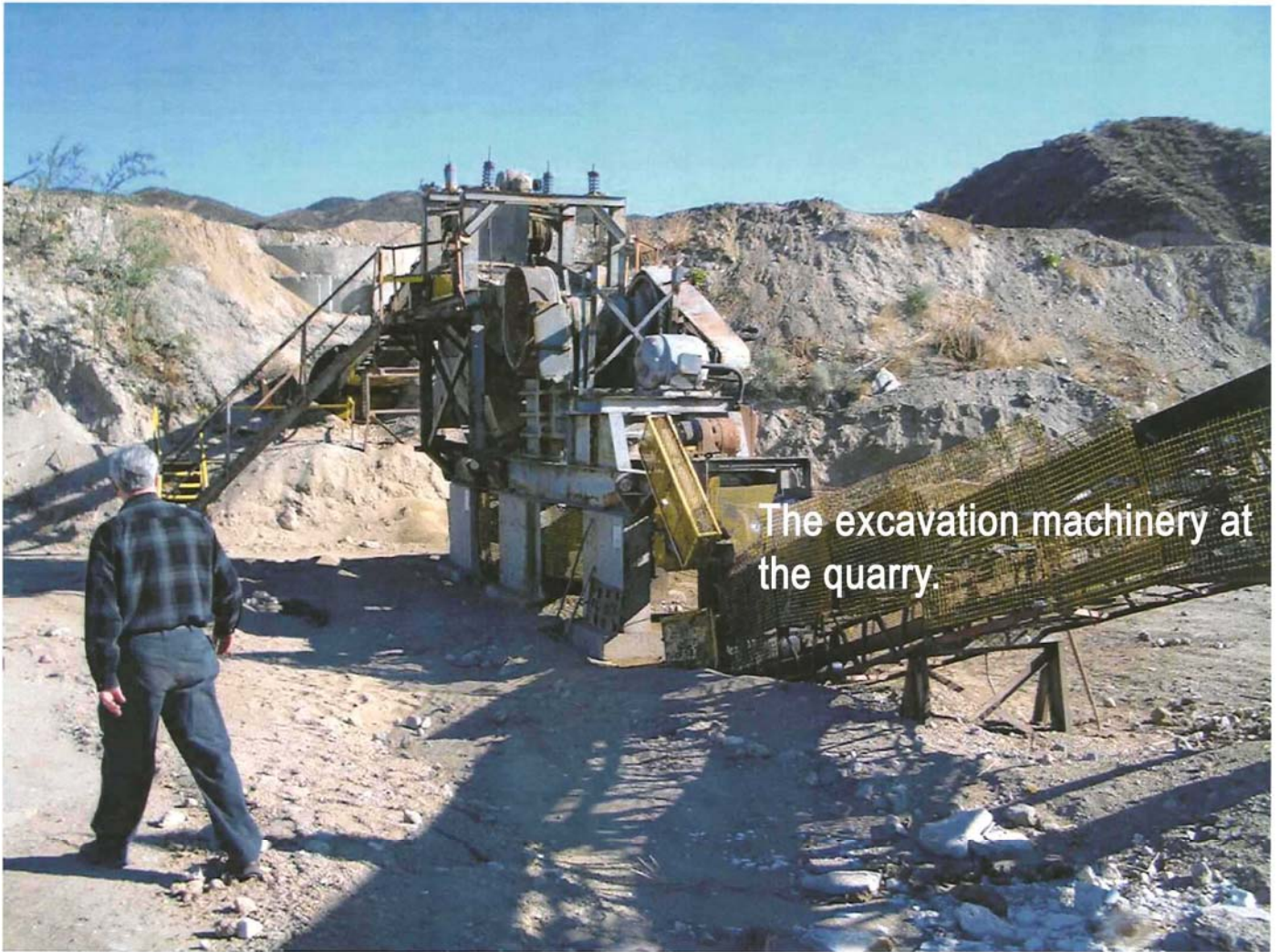
The attorneys established that the dealer knew, or should have known, that a coupler that lacked a mechanical lock pin and safety valve rendered the product dangerous and defective for its intended use.

"The development of this evidence was a turning point in the case. Once we were able to demonstrate that the retailer had this kind of liability exposure, everything fell into place," Mr. Stern says.

The defendant was represented by Patrick J. Duffy and Joseph Helgeson of Cooksey, Toolen, Gage, Duffy & Woog in Costa Mesa. The defense contended that the hydraulic coupler was not defective in design and was accompanied by appropriate safety warnings, that nothing about the coupler design caused the accident, and that the accident was caused by the employer's negligence. The defense maintained that the defendants had sold used equipment and thus strict liability did not apply. Defense counsel did not respond to requests for comments.

The assigned judge was the Honorable John P. Farrell at the Los Angeles Superior Court, Chatsworth. The case was eventually settled through mediation sessions with Joseph Thielen, Esq., a professional mediator.

"It was extremely satisfying to know that we were successful in obtaining a settlement that will provide some help and security for two genuinely good men and their families," Mr. Krepack says.



The excavation machinery at the quarry.

Over the past 25 years, the law firm of Gordon, Edelstein, Krepack, Grant, Felton & Goldstein has established itself as a recognized leader in Personal Injury and Workers' Compensation law in Southern California. Throughout our history, we have fought to win justice for those injured on or off the job.

We specialize in representing individuals who are seriously harmed by automotive accidents, construction accidents, defective products, elder abuse, general negligence, insurance bad faith, medical malpractice, toxic substances or unsafe premises. These often involve spinal injury, brain injury and wrongful death. We also represent victims of employment discrimination on the basis of religion, race, age, gender or disability. We have developed a reputation for effectively representing employees who are harmed at work as a result of injury, occupational illness, exposure or continuous trauma that develops over time.

