



## DV&B Update Court Cases

Shortly before a jury trial was to begin, Bob Duxstad settled a Lafayette County personal injury case. Our client was severely injured in an auto accident in 1991, and required extensive surgery. The driver's insurance company paid its policy limits in 1994, after our initial demand; the car owner's insurance company claimed the owner's policy has lapsed, and there was no coverage. We conducted additional discovery, and learned that there was, in fact, a policy in effect at the time. The case settled after the discovery of the additional policy.

U.S. bankruptcy Judge Robert Martin agreed with Dan Bestul that our client should collect on a judgment, even though the debtor had filed for bankruptcy. While the client and the debtor were living together, the two bought a boat, made the down payment with money our client inherited from her mother. When the two separated, the debtor sold the boat, and pocketed the money. A Green County Court judge ruled our client was entitled to get her money back and, after the debtor filed his bankruptcy petition, Judge Martin ruled the debtor "disposed of the property and pocketed the funds", and "should not be permitted to escape responsibility for this" through bankruptcy.

Bob Duxstad negotiated the resolution of a willful OSHA safety citation for a corporate client. The case was pending before a federal administrative law judge. The Department of Labor agreed to reduce the willful citation with a \$27500.00 penalty to a repeat violation and a \$3000.00 fine. Following the resolution of the case, Bob Duxstad made a presentation to the company employees on OSHA regulations and what they should do in the event of an OSHA inspection.

After four days of hearing testimony, Judge Beer ruled in favor of Bob Duxstad and his client on a motion for a change of physical placement. The case was unusual due to the fact that the motion for change of placement was made shortly after a stipulated divorce had been granted. Under those circumstances, Wisconsin law requires that our client had to prove by substantial evidence that the child would incur physical or emotional harm if the current placement continued. After hearing evidence from two psychologists and a therapist, the court agreed, almost verbatim, with Bob Duxstad's proposed findings and order consisting of thirteen pages.

A personal injury settlement was settled one week before a jury trial was scheduled to be heard in Eau Claire County. Bob Duxstad represented a client who had been rear-ended by a person driving a car rented from Hertz. A local chiropractor in a videotaped deposition testified on behalf of Bob's client that she had suffered a permanent acceleration-deceleration (whiplash) injury. The Hertz Company finally agreed to settle for an amount almost three times its initial offer and very close to a demand previously made by Bob Duxstad and his client, the plaintiff in the case.





Dan Bestul represented a local couple who believed the repossession techniques employed by a car finance company violated the Wisconsin Consumer Act. After another attorney declined to handle the case, Dan filed a suit against the finance company; the trial court referred the case to mediation, where the finance company agreed to pay the couple for the car, and pay the couple's attorneys fees as well.

In December, Bob Duxstad handled a \$1.2 million real estate closing on behalf of a local business client. The real estate closing involved substantial negotiations between the parties on various issues. Issues relating to environmental concerns and tax consideration in apportionment of values for personal property and real estate were also addressed as part of our representation of the client.

In a case that has been ongoing for several years, the Wisconsin Court of Appeals ruled in favor of Bob Duxstad's client on a post-judgement change of physical placement matter. The Court of Appeals decision is available over the internet at <http://www.wisbar.org/WisCtApp2/1q01/00-0191.htm>. On the same day the Court of Appeals delivered its decision, a contempt hearing, which had been previously scheduled, was heard before Judge Beer. Again, Bob Duxstad's client received a favorable ruling whereby the client's ex-wife was found in contempt for failing to abide by the physical placement order, was ordered to have supervised visitation for eighteen months, and was ordered to pay \$3,000 in attorneys fees and costs.

Dan Bestul handled the appeal of a criminal client persuading the Wisconsin Court of Appeals that the trial court had improperly denied the client his right to a jury trial and was entitled to a new trial. Another attorney handled the case at the trial level, and had referred the case to Dan for the appeal. The case can be read on the internet at <http://wisbar.org/WisCtApp2/4q00/00-1665.htm>.

Bob Duxstad recently had a client agree to mediate a matter involving a farm lease with Reserve Judge Mark Farnum from Janesville. The matter had been the subject of ongoing litigation in Lafayette County. The mediation resulted in the opposing party agreeing to a stipulated judgment in favor of Bob's client. By using alternative dispute resolution, such as arbitration or mediation, clients often save substantial litigation costs.

After a three day jury trial, Bob Duxstad's client was acquitted of two felony charges. As part of his defense, we retained Dr. Terence Campbell of Sterling Heights, Michigan to testify. Dr. Campbell is a nationally known expert on issues relating to children's memories.

One of Bob Duxstad's corporate clients was determined to be not liable for any contract damages after a one day arbitration hearing in Madison. The arbitrator from Milwaukee conducted the hearing in accordance with the American Arbitration





Association rules. The arbitration petition was brought by a former agent of the corporation who sought over \$50,000.00 in damages.

A county jail denied a local man work release privileges, claiming a drug test had detected signs the man had used a controlled substance. Dan Bestul obtained a court order granting him access to the jail's reports regarding the test. Within hours after receiving the reports, Dan obtained the man's release by showing that the test was inappropriate for the purposes used, and that the jailer performing the test had misinterpreted the results. Subsequently, the County agreed to pay the man his lost wages as a result of the mistake, and also agreed to pay his attorney's fees.

Following a day of testimony before a six person jury, traffic charges were dismissed against Bob Duxstad's client after the defense cross-examined the County's expert witness. The expert witness could not give the necessary testimony to a reasonable degree of scientific certainty which would have supported the County's case.

Dan Bestul successfully petitioned the Supreme Court to review a Court of Appeals' decision in a termination of parental rights case. The Court of Appeals had decided that a Wisconsin court cannot terminate a parent's rights concerning a child living in Wisconsin if the parent does not live in or have significant contacts with Wisconsin. In this case, the parent was imprisoned in another state, and the courts of that state had ordered that the parent could not have any placement with the child. The case will be argued before the Wisconsin Supreme Court in early September, and a decision is expected by the end of the year. An amicus curiae brief was filed with the Supreme Court, supporting Dan's position. The authors of the amicus brief included Theresa Roetter and Carol Gapen, of the Stafford Law Firm's Children's Law Center, on behalf of the American Academy of Adoption Attorneys; Attorney Richard Auerbach, on behalf of the Dane County Guardian ad Litem Project; and association professor Gretchen Viney of the University of Wisconsin Law School.

Bob Duxstad recently settled a personal injury claim for a client who suffered a permanent eye injury in a motor vehicle accident. Bob's client was returning from work when a car pulled out in front of him at a highway intersection. The airbag on the client's car struck him in the face, causing a hemorrhage in his left eye. The client sustained a permanent loss of vision in the left upper quadrant of the left eye. The client was able to return to work in a couple of weeks, and had relatively small medical bills. After submission of settlement documentation, including a report from Dr. Joseph Anderson of Anderson & Shapiro, as well as subsequent verification of available insurance, the matter settled for the limits of the other driver's insurance.

Bob Duxstad recently concluded representing a husband and his children where the client's wife was fatally injured in an automobile accident. Shortly after the accident, DV&B hired an engineering firm as well as a private investigator to fully investigate the





cause of the accident. This investigation confirmed the initial Sheriff's investigation which showed the other driver to be at fault.

DV&B then retained an economist to establish the present value for the loss of future earnings and the loss of household production. After an initial demand was rejected, a lawsuit was filed against the other driver, his employer, and two insurance companies. Depositions were taken of the other driver, our client, several witnesses to the accident, emergency personnel at the scene, the emergency room doctor, and an employer of the victim. The defense also retained an economist who questioned the amount claimed for loss of future earnings.

The parties agreed to submit the matter to mediation before a mediator in Madison. In mediation, a settlement figure was agreed upon which was twice the amount offered by the defense prior to the lawsuit being filed. DV&B then used the services of a plaintiff's broker to develop a structured payment plan for the client and his children which was approved by the Green County Circuit Court.

Bob Duxstad recently tried a Federal Tort Claim before U.S. Magistrate Steven Crocker in the United States District Court for the Western District of Wisconsin. Our client had been injured when a U.S. Postal worker drove over the centerline on a state highway while delivering mail and struck our client who was riding his motorcycle. The government conceded liability before trial but disputed that our client's torn rotator cuff was caused by the accident. While the court found that the torn rotator cuff pre-existed the accident, the court further found that it was asymptomatic before the accident until the government's employee sent our client "sailing and skidding" from the accident. The court awarded damages in an amount almost three times the government's offer prior to trial.

