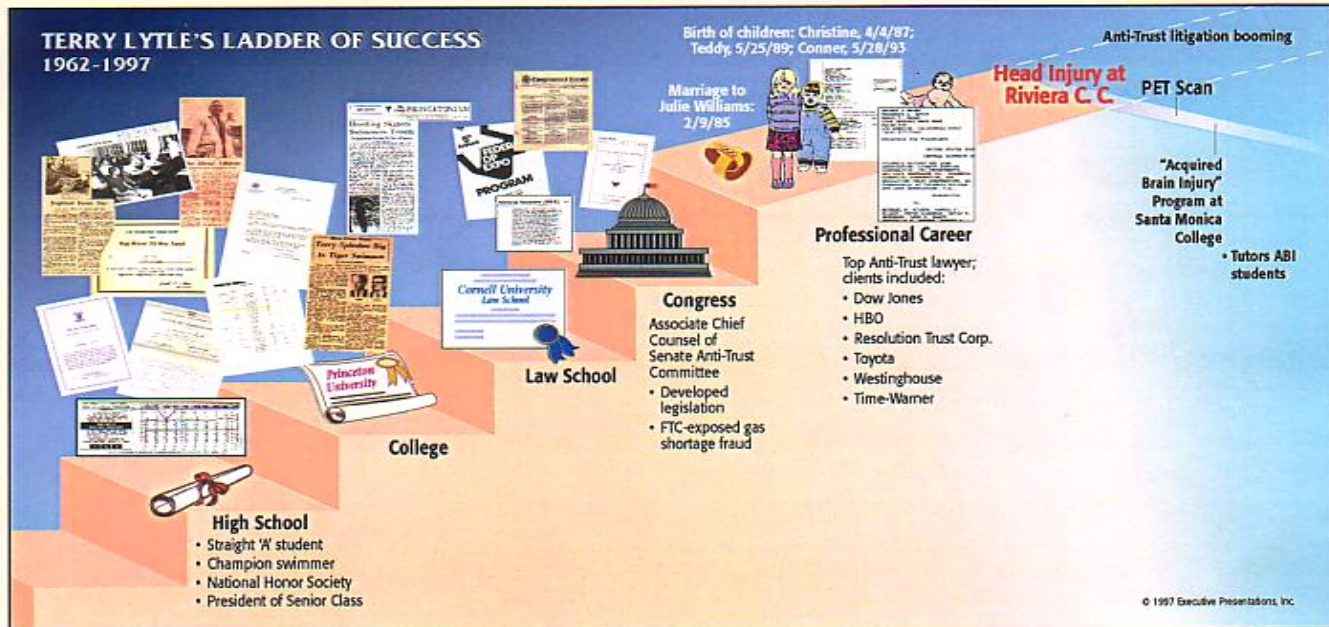


## DEMONSTRATIVE EVIDENCE

**\$3.6 Million Award is Par for this Course**

## THE CASE

## Golfer Awarded \$3.6 Million for Injury on Course

**Type:** Personal injury, negligence, heavy equipment Accident.

**Verdict:** \$3,625,000

**Case/Number:** Theodore L. Lytle v. Riviera Country Club/ SC028794

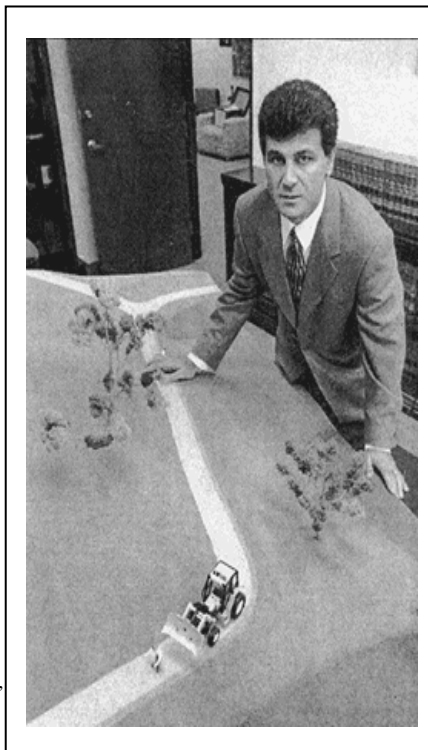
**Judge:** James A. Albracht, Dept. W.

**Attorneys:** Plaintiff - Garo Mardirossian, Joseph M. Barrett (Garo Mardirossian & Assocs., Inc., L.A.). Defendant - Stephen D. Roberson (Graves, Roberson & Borassa, Thousand Oaks).

**Technical experts:** Plaintiff - Leonard N. Matheson, Ph.D., vocational rehabilitation, Saint Louis, Mo.; Peter Formuzis, Ph.D., economist, Santa Ana; Peter Orner, biomechanical engineer, Poway.

**Medical experts:** Plaintiff - Edwin C. Amos, III, M.D., Neurologist, Santa Monica; Robert M. Brook, Ph.D., neuropsychologist, Santa Monica; Joseph C. Wu, M.D., PET scan, Irvine; Munjig John Takakjian, M.D., Psychiatrist, Brentwood. Defendant - Alan D. Waxman, M.D., radiologist, Beverly Hills; Kyle B. Boone, Ph.D., psychologist, Beverly Hills; William W. Sutherland, M.D., neurologist, L.A.; Franklin G. Moser, M.D., MRI, L.A.

**Facts:** On July 28, 1993, plaintiff, Theodore Lytle, a 47-year-old antitrust lawyer from the Pacific Palisades, was golfing as a guest at the Riviera Country Club. As he started to take his driver out of his golf bag at the third tee, a bulldozer operator, who was an employee of the country club but under a contractor's control, came up a hill from behind him and drove directly



HUGH WILLIAMS / Daily Journal

into him at a low speed, hitting him on the head. Plaintiff was knocked out, but suffered a concussion. He had a quarter-inch cut to the back of his head, which was treated without stitches. An ambulance was called to take him to the hospital in Santa Monica for observation. CT and MRI scans taken at the hospital failed to show any brain damage. Nonetheless, the doctors at St. John's Hospital felt he may have suffered a mild form of brain injury, and he was followed by a neurologist. Gradually, plaintiff

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**CAREER TIMELINE** — Attorney Garo Mardirossian, left, with scale model depicting the mishap, used the timeline, above, to obtain a \$3,625,000 verdict on behalf of his client, an antitrust attorney who was hot on the head by a bulldozer while golfing at the defendant country club. The plaintiff contended that the blow to the head resulted in a concussion and that he suffered mild traumatic brain injury. As a result, the plaintiff claimed that he could no longer practice law. "I started with the three dimensional model [of the golf course prepared by Schultz & Zimmerman] in my opening," says Mardirossian. "It was important for the jury, not just to see an aerial photo, ...but to see the topography — the peaks and valleys of the golf course — to see how it was that the plaintiff was struck and didn't hear or see this huge bulldozer coming at him." Mardirossian says: "The idea for the [timeline] came out of looking at my client's background and seeing what he was made of — the successful family background he had. The defense wanted to sort of suggest he was faking it and that he was suffering from a conversion disorder — a disorder in which one does things without really knowing that they are doing it, but they do it ...so they can have a secondary gain — meaning, so they can have money. 'I showed the jury that [h]e wouldn't do it unless someone forced it upon him. I used the 'Ladder of Success' to show that every time he was faced with an obstacle, he overcame it. He is overcoming [this obstacle], but he is paying a price, which is that he can no longer work the way he did, but he is still trying. "At trial, I started building up to the [demonstrative evidence] with each witness, who would say something that I knew was going to be on [the timeline]. By closing arguments, it was all put together, and I put it in front of the jury. You can only say so much with words. They can see it, and they can hear it, and [the demonstrative evidence] is there for them to go back to in case they start daydreaming or following some other thought. "The [timeline] was very effective. During my closing, I saw two or three of the jurors looking at the model and not at me and taking down notes. I tried to get their attention but realized, 'Wait a minute. Let them take their notes from that, because all that is what my argument is about anyway.' Mardirossian adds: "I use [demonstrative evidence] a lot. It is an absolute necessity if you want to get a point across. It is important to use more than just your words. Judges appreciate it [also], because they get to see for themselves what you are talking about."

# Golfer

Continued from Page 6

withdrew from the practice of law because he claimed headaches and cognitive difficulties he began experiencing made him feel he could not properly represent his clients. Over the next three years, he never returned to regular employment. Due to financial difficulties, plaintiff's family moved out of their large home into a condo, and then into a smaller home. The plaintiff brought this action against the defendant based on a negligent theory of recovery.

**Contentions:** The plaintiff contended that the single photo emission computer tomography (SPECT) and positron emission tomography (PET) scans corroborated the cognitive deficits seen through neuropsychological tests. Plaintiff contended he suffered a concussion, had an altered state of consciousness and that percipient witness testimony

proved this. Plaintiff contended this was a classic case of mild traumatic brain injury. The defense contended the medical evidence proved there was no brain injury, only a bump on the head, a 1-centimeter cut and possibly a sprained neck and headaches. All five MRIs and CT scans were normal. Only a PET scan and two SPECT scans introduced by the plaintiff were argued to be abnormal. The defense also contended there was not a sufficient normal data base for these tests. Further, the defense argued that no medical organization recognized or approved such tests for minor head trauma.

**Injuries:** Plaintiff claimed he suffered a Mild traumatic brain injury, with ongoing daily headaches.

**Specials in evidence:** MEDS \$106,000; Future MEDS \$240,000; LOE \$122,000 (per year – less mitigating income of \$50,000 per year); Future lost earnings based on work history for work life expectancy.

**Jury trial:** Length 22 days; Poll 11-1; Deliberation six hours.

**Settlement discussion:** Defendant offered \$1 million which was withdrawn at Trial. Plaintiff demanded \$2.2 million.

**Settlement conference:** Two voluntary settlement conferences were held on July 22, 1996 and Jan. 20, 1997, before Judge Robert Wenke. It did not resolve the matter.

**Other Information:** The verdict was reached approximately three years and seven months after the case was filed. Plaintiff introduced into evidence a three-dimensional model of the brain with a PET scan, a video recreation of the accident, and a computer reanimation to visualize the actual impact. Plaintiff had a model made to scale of the area on the Riviera Golf Course where the accident occurred and introduced into evidence a bulldozer bucket. The plaintiff came to trial looking tanned and fit, and testified articulately. The defense conducted 18

months of sub rosa investigations, showing plaintiff going on ski trips, playing tennis, squash and other activities. The defendant had Lytle assessed by their own experts, who concluded he suffered from a 'conversion disorder', and a little cut with mild swelling, as the hospital records had noted. The defense hired one of the leading PET/SPECT experts in the nation who testified the images evidencing brain injury were experimental and useless to diagnose a traumatic brain injury and were misleading. The defense had hired a biomechanical expert, John Perry who performed a video reenactment with assistant Judson Weschler. Although the jury was told of this upcoming testimony, neither appeared. Defendant's psychological expert testified that plaintiff's PIQ/VIQ difference (he tested at 24) was normal for lawyers. Plaintiff's FSIQ of 115 was contended to be unaffected by the injury. Plaintiff's biomechanical expert contended the impact could have been violent enough to cause a concussion.