THE NEWSLETTER OF Volume 10, No. 1

NURENBERG · PARIS
INJURY LAWYERS

NPHM Volunteers With Greater Cleveland Habitat for Humanity

In the 81 years that Nurenberg Paris has been in existence it has been headquartered in Cleveland, Ohio. So when managing partner **David M. Paris** was contemplating a new volunteer activity for the firm to take on, he wanted a project that would improve the quality of life for people here in our hometown.

Enter the Greater Cleveland Habitat for Humanity – an organization whose mission is to eliminate poverty housing in our community. Since 1988, the Cleveland Habitat has built over 160 homes in neighborhoods throughout Cleveland. Recipients of Habitat-built homes are families who currently live in substandard shelter. Those chosen as "Partner Families" must undergo financial literacy and routine maintenance training, invest 500 hours of "sweat equity" in Habitat building projects, and have the "ability to pay a no-profit, no interest mortgage consistently over time."[1]

Nurenberg Paris Team (Day One) With"Partner Family" Volunteers

This was just the sort of project Paris was looking for. "I can think of nothing more important right now than housing," Paris said. "People are being displaced... left and right in this economy. You need a roof over your head, and anything we can do to help... we want to be part of that."

Attorney **Jamie R. Lebovitz** was equally enthusiastic about the project. "We help people's lives in the cases we handle," Lebovitz explained. "This is just another way of helping people improve their lives."

For two Saturdays in June two different teams of Nurenberg Paris attorneys, staff, and family members reported to their assigned locations. The first Saturday found our volunteers at a house in the Union-Miles neighborhood. The house had been completed the previous fall, but the driveway had only recently been poured and the backyard was knee-high in weeds. Jared, our Habitat group leader, arrived with a pick-up truck carrying wheelbarrows, shovels, pick-axes, and rakes. The task was to clear the backyard of weeds and trash, and to build up the soil around

Continued on page 3

Legal Assistant Volunteers In El Salvador

Amy Polomsky, legal assistant to **David A. Herman,** used her time off this summer in a most gracious way by traveling to San Jose Villanueva, El Salvador to volunteer with a non-profit group known as Epilogos. The founders of Epilogos, Susie and Mike Jenkins, are an American couple who retired to El Salvador as community organizers. While in El Salvador, the volunteers varnished a mural previously painted by the town's children, and assisted a local contractor and his teenage helpers in constructing an amphitheater at a local school. Donations collected by Amy and her church group prior to their journey were used to purchase mortar and bricks for the amphitheater.

Amphitheater construction. Inset: Amy Polomsky.

INJURY LAWYERS

The Nurenberg Paris Law Firm has been representing individuals and their families in personal injury and wrongful death cases since 1928.

- *Auto, Truck, Train, Boat & Bus Accidents*
- *Medical, Hospital & Nursing Home Malpractice*
- *Birth Trauma & Injuries*
- *Construction Site Accidents*
- *Workers Compensation*
- *Airplane Crashes*
- *Defective Products*
- *Class Action Litigation*

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Jamie R. Lebovitz
William S. Jacobson
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Ellen M. McCarthy
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Jonathan D. Mester
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Medical Malpractice

Birth Trauma Injury Results in Multi-Million Dollar Settlement

Thomas Mester

Thomas Mester and **William S. Jacobson** settled a medical malpractice action brought on behalf of a two year old child and her mother due to alleged medical negligence of an OB/GYN and a hospital prior to the child's birth. The child's injuries include significant neurological disabilities and cerebral palsy. She has had little meaningful development since infancy.

The mother's pregnancy was uncomplicated until about 18 days before the child's birth. On that day, during a visit to her OB/GYN, it was discovered that the child's fundal height did not match her gestational age. An ultrasound also revealed the infant to be small for her gestational age. Two weeks later, during the next visit with the OB/GYN, the size/date discrepancy was greatly increased. Despite this, the defendant doctor failed to consider or conduct any additional antenatal (pre-birth) testing.

William S. Jacobson

Several days later, the mother returned to the OB/GYN's office and the testing performed on the fetus showed the baby to be non-responsive. As a result, the mother was referred to the defendant hospital for a biophysical profile, which is a test of fetal well-being. This biophysical profile scored 2/8 which mandated immediate delivery. The baby was born 90 minutes later having suffered severe fetal hypoxia, which resulted in a brain injury to the child.

The lawsuit alleged that the OB/GYN deviated from the standard of care by not following up with additional prenatal testing when the size/date discrepancy was discovered in the weeks before the child's birth. The plaintiffs also alleged that the hospital violated the standard of care in waiting too long to perform the delivery. The defendants both denied that they deviated from the standard of care. They also asserted that the baby's injuries occurred well prior to her birth and could not have been proximately caused by any conduct of the defendants.

Discovery in this case was extensive. In addition to conducting depositions of nine fact witnesses (on both liability and damages), nine depositions were taken of expert witnesses located throughout the United States. Ultimately, the parties chose to mediate the case, resulting in a multi-million dollar settlement, the precise amount and terms of which are confidential.

Family Recovers $1.4 Million Due To Medical Mistake

David M. Paris obtained a $1,400,000.00 settlement for the family of a 48 year old woman who died during a medical procedure involving endoscopic drainage of a pancreatic pseudocyst. The plaintiffs claimed that the standard of care required the use of ultrasound to visualize the internal organs and blood vessels, and that use of endoscopic ultrasound would have prevented the complications that resulted in the patient's death.

The defense claimed that endoscopic ultrasound was not the standard of care and the complications that arose were risks of the procedure.

New Cases at Nurenberg Paris

- **62 year old CEO of major health insurer** is killed while a passenger on a charter aircraft that collided with mountainous terrain on approach to San Juan International Airport.
- **41 year old mother of three** is killed by driver fleeing pursuing police officers.
- **67 year old family physician** dies when the aircraft he was passenger in collided with a student pilot's aircraft while on approach to Rock Springs, Wyoming airport.
- **60 year old machinist** operating a crane for which he was not trained, is struck by 1,000 pound steel disc, amputating one-half of his foot.
- **44 year old woman** who worked for a major construction company is killed when the corporate jet aircraft she was a passenger in crashed during an attempted aborted landing at Owatonna, Minnesota airport.
- **34 year old man** suffers anoxic brain injury, requiring long-term supportive care, due to post-operative complications following tonsillectomy and adenoidectomy.
- **42 year old dermatologist and 34 year old airline pilot** are catastrophically injured when their aircraft crashes during an emergency landing following in flight engine failure.
- **59 year old "finishing operator"** suffers upper extremity amputation following work-related accident when his left forearm was caught and crushed in a trimming machine.
- **58 year old retired carpenter** dies when struck head-on by another vehicle that went left of center on a highway in Illinois.
- **28 year old handicapped man** dies in hospital due to physician's failure to locate and diagnose an obstruction in his throat.
- **46 year old man** sustains serious injuries while deer hunting, when "tree step" used for climbing into tree perch breaks, causing him to fall.

Habitat for Humanity Volunteers (continued from page 1)

the driveway that was several inches higher than the surrounding grade. Our group attacked the weeds with gusto, then some rode with Jared to a Habitat lot down the street where they shoveled a mound of top soil into the truck to bring back to our site. Before the end of our work day, the soil around the driveway was built up and smoothed into a gentle slope, and the backyard was cleared to make way for new landscaping.

The second Saturday found our volunteers returning to the same home to build up the yard with additional top soil then plant grass seed.

We at Nurenberg Paris hope to be able to assist the community with projects like this for many years to come.

"Our law firm has been in Northeast Ohio for 80 years," Paris said, "and we've represented all segments of this community. We over the years have adopted a lot of different organizations, charities, and institutions that we feel are very worthy. The Habitat project has been particularly rewarding."

Lebovitz concurred, adding "this effort is meaningful to each of us here. It's important to give back to the community."

1 http://www.gchfh.org/Families/AboutHomeOwners.html.

Visit our website at www.nphm.com to view a news video about our project.

Nursing Home Negligence

The Unfairness Of Nursing Home Arbitration Agreements

Imagine this. Your elderly mother has a stroke that leaves her partially paralyzed. The hospital is about to release her and a decision needs to be made about her ongoing care. After weighing the options, your family decides to place her in a nursing home. You accompany her there and review the admission papers on her behalf. Included among them is a document entitled "Resident and Facility Arbitration Agreement." Distraught over your mother's condition, you read through the papers quickly and sign.

Then the unthinkable happens. Due to the nursing home's neglect, your mother suffers a bedsore that leads to amputation of a limb. When you file a lawsuit, the nursing home moves to enforce the arbitration agreement. Your attorney, knowing that lawsuits are superior to arbitration for claims of this nature, opposes the motion. The court, however, grants the motion, and you are forced to arbitrate the claim.

This scenario and others like it happen with increasing frequency as "pre-dispute" nursing home arbitration agreements have become the industry norm. Many states, like Ohio, have legislation designed to mitigate the unfairness of these agreements, but they do so by half-measures, such as requiring the agreement to specify that signing it is not a condition of admission or that, by signing the agreement, the patient is giving up her right to a jury trial.

But these statutes do not address the fundamental problem. Why should the patient or her family be pressured to sign an arbitration agreement *before* a dispute has arisen -- particularly when the agreement is presented at such an emotionally charged time as upon admission to a nursing home?

The United States Congress is currently considering legislation that would make pre-dispute nursing home arbitration agreements illegal. This legislation, called the "Fairness in Nursing Home Arbitration Act," would prohibit nursing homes from enforcing pre-dispute arbitration agreements. The bill would not ban post-dispute arbitration agreements, but would permit the parties to choose arbitration if the choice is made after a controversy exists.

Unless this legislation is passed, nursing homes will continue to include pre-dispute arbitration agreements in their admission packets, and unwary patients and their families will continue to sign away their rights.

Although arguments can be made to avoid enforcing these agreements, they are often met with resistance in the Ohio courts. Frequently patients' lawyers argue that the arbitration agreement is "unconscionable" based on the circumstances at the time of the patient's admission, and the fact that the agreement forces the patient to give up certain rights he or she would have if the claim were litigated in the judicial system.

In *Hayes v. Oakridge Home*[1], the Ohio Supreme Court rejected such arguments from a 95 year old woman who signed a pre-dispute arbitration agreement as she entered the nursing home. The Court held that the fact that she was 95 years old did not make it unfair for the nursing home to have her sign upon admission, and that the agreement's provisions were not unfair because the patient and the nursing home both gave up certain rights when they agreed to binding arbitration. The dissenting judge, however, would hold such agreements unconscionable. When the 95 year old patient signed the arbitration agreement, Justice Pfeifer wrote, "factors beyond age were working against" her including that the agreement was presented to her as she was entering the nursing home -- "an emotional if not traumatic occasion for any person" -- and that she was "debilitated enough to require transport in an ambulance from the hospital to nursing-home care."[2]

Justice Pfeifer's dissent echoes the beliefs of patient advocates. "Admission to a nursing home is typically an unexpected, unwelcome and overwhelming event in a family's life. Not only are residents and their families faced with an emotionally challenging situation, but they must also attend to the admissions process. It is unfair to bind them to arbitration agreements that they inadvertently enter upon admission, when they have little opportunity to carefully examine all of the documents they are given and asked to sign."[3]

We hope the Fairness in Nursing Home Arbitration Act will pass and encourage you to contact your Senators or Congresspeople in support of this bill. Meanwhile, we urge our clients not to sign any Nursing Home Arbitration Agreements presented to you or your loved ones upon admission to a nursing home.

1 123 Ohio St. 3d 63, 2009-Ohio-2054.

2 *Id.* at ¶74.

3 Comment: Mandatory Arbitration Agreements Do Not Belong in Nursing Home Contracts with Residents, 8 De Paul J. Health Care L. 263, 302-303 (Fall 2004).

Head-On Collision Results In $1.1 Million Settlement

Andrew R. Young

Andrew R. Young, along with local counsel, secured a combined $1.1 million settlement due to a car accident causing the death of a 30 year old man and injuries to his three sons. The defendant-driver, a 19 year old college student, crossed the center line at a high rate of speed and struck our clients' vehicle. It was undisputed that the defendant caused the accident. His attorney, however, claimed the defense of "sudden medical emergency" to avoid responsibility for this fatality and the injuries suffered by the decedent's sons.

The sudden medical emergency defense relieves a driver from liability in those rare situations where the driver has a sudden loss of consciousness that is not reasonably foreseeable. The defense is not available when the defendant was made aware of facts sufficient to lead a reasonably prudent person to anticipate that driving would likely result in an accident.

In this case, the defendant's alleged sudden medical emergency was a hypoglycemic event caused by his Type 1 diabetes. His attorney hired an endocrinologist who opined that the defendant was "profoundly hypoglycemic" at the time of the accident. He also opined that this hypoglycemic episode was a "true medical emergency" resulting in "hypoglycemia unawareness" which precluded the defendant from properly driving his car.

Conversely, our endocrinologist opined that the defendant's experience as a Type I diabetic and information given him by his treating physicians required that he check his glucose before driving, have a monitor available in the car, and have some form of oral glucose available to him while driving. Our endocrinologist also opined that if the defendant experienced any symptoms of low blood sugar, he was required to stop the car and check his glucose immediately.

The evidence developed in discovery suggested that the defendant was casual about the management of his diabetes. On the day in question, he left work early "not feeling well." As such, his body warned him that his blood sugar was getting low. Testimony further indicated that the defendant brought his vehicle to a stop in a parking lot for a period of minutes and that he even made a cell phone call at this time. However, instead of remaining at the parking lot, the defendant made the fateful decision to resume driving. Less than a mile down the road he went left of center, killing the young father and injuring his three young sons.

The evidence clearly supported plaintiffs' expert's opinion that had the defendant anticipated the danger of "not feeling well" and followed routine driving precautions, the risk of this "profound hypoglycemic" episode would have been much less and this tragic accident probably would not have occurred. The case settled shortly before trial for $1.1 million.

Family Of Man Hit By Car Recovers $800,000 Following His Death

Ellen M. McCarthy

Ellen M. McCarthy achieved a combined settlement of $800,000 for the wife and daughter of a 73 year old man who died from complications of injuries he sustained when hit by an allegedly negligent motorist.

The chain of events was set into motion when a vehicle driven by the defendant rear-ended the vehicle driven by our client's husband. At the time, our client was a passenger in her husband's vehicle. Following the collision, her husband exited the vehicle and went around back to remove things from the trunk. While he was doing this, the defendant's vehicle hit him a second time, allegedly due to the defendant's suffering from a diabetic seizure.

The impact caused a fracture to our client's husband's lower leg that required surgical repair and hospitalization. During the hospitalization, he developed a blood clot in his left lower extremity that broke off and went to his lungs. While at the hospital, he was treated for a pulmonary embolism. He was later released with follow-up care for the clot and embolus.

Several months later, our client's husband collapsed and died. An autopsy determined that he died from a pulmonary embolism that originated from the clot caused by the accident.

The defendant tried to defend the case by arguing the "sudden medical emergency" defense, but the court ruled the defense was waived because it was not timely raised. The defendant also argued that our client's husband was comparatively at fault for the accident, and that the pulmonary embolism was not caused by the collision but by the hospital's negligence. Multiple depositions were conducted, and substantial time was spent in preparing the case. One week before trial, the parties reached a settlement in the amount of $700,000. When combined with the $100,000 recovered on the client's behalf from her underinsured motorist carrier, the total settlement proceeds to be shared by the client and her adult daughter amounted to $800,000.

Insurance Matters

If you can afford to own a motor vehicle, you can afford to buy uninsured/underinsured motorist coverage ("UM"). UM coverage is insurance you purchase to cover bodily injury losses to you and your family if the driver who causes your injuries does not have any insurance, or does not have sufficient insurance, to compensate your losses. If you or your family members are seriously injured by an uninsured or underinsured driver, and you don't have "UM" coverage, or you have only minimum coverage, you will regret that you didn't spend the extra money to protect your family.

Purchasing UM is particularly important for motorcycle riders. In Ohio alone in 2008, 215 people were killed in motorcycle accidents; and motorcycle accidents have injured more than 12,000 people in Ohio in the past three years.

Please purchase the maximum amount of UM coverage that you can afford. If you or your loved ones are injured in an accident caused by an uninsured or underinsured driver, we don't want to have to tell you there's no insurance to cover your injuries.

Medical Malpractice

Family Recovers $1.475 Million Settlement In Birth Trauma Case

Jonathan D. Mester achieved a $1,475,000.00 settlement on behalf of a minor child and his parents for the child's brain injury and cerebral palsy allegedly caused by the negligence of the defendant medical care providers in treating the child in the first days of his life.

Jonathan D. Mester

The matter dates back to 1997 when the child was born at 26 weeks gestation. Due to the extreme prematurity of his birth, he was immediately admitted to the hospital's neonatal intensive care unit. The first six days of his life were relatively uneventful. He was put on antibiotics for the first few days and fed through an IV and watched very closely.

Eight days after his birth, however, the child's condition took a severe turn for the worse. Around 10:00 a.m., he was assessed by a nurse practitioner and found to be greenish in tone. As his antibiotics had been discontinued two days earlier, they were immediately reinstituted. The preliminary diagnosis was suspected necrotizing enterocolitis and sepsis. Later that day, it was determined that the child did in fact have a possible necrotizing enterocolitis and he was rushed to a different hospital for surgery. The child "coded" when placed on the operating table; and it was only due to the heroic efforts of the doctors at this second hospital that the child lived. Nevertheless, he experienced a 15-30 minute period of hypoxia and ischemia, during which he was not receiving blood or oxygen to his brain. As a result, the child has been diagnosed with severe and permanent cerebral palsy. He is now 12 years old and continues to require significant medical care.

A lawsuit was brought against the hospital where the child was born and two of the neonatologists who cared for him. The plaintiffs' theory was that two days before the child took the turn for the worse, a lab test revealed a high white blood cell count that was potentially indicative of infection. Despite this, no effort was made to investigate for potential sepsis and to initiate antibiotics in response. The plaintiffs alleged that, had the antibiotics been instituted shortly after the high white blood cell count was discovered, the chain of events and injuries that followed would not have occurred.

The defendants raised several strong defenses. First, the defendants argued that the high white blood count was not indicative of infection, but was the natural and expected result of steroid medication administered a day earlier. They thus argued that they had not been negligent in discontinuing the periodic white blood cell count readings or in discontinuing the antibiotics. The defendants also argued that the problems the child experienced, including necrotizing enterocolitis and intraventricular hemorrhage, are known risks of severely premature birth, that were not caused by any negligence of the defendants.

The case was litigated over a period of several years, with numerous factual depositions being taken of all the medical care providers involved in the baby's care, as well as some 20 expert witness depositions. The case was settled during mediation for $1,475,000.00.

Hospitals and doctors should be held accountable for their negligence.

Pedestrian Injury

Pedestrian Injured In Crosswalk Recovers $3,249,000

David M. Paris recently settled a case against a driver who hit our 61 year old client as she crossed the street at a crosswalk located near a local theater.

Our client, a former teacher, had gone to a movie with her sister and brother-in-law on a drizzly October evening. When the movie let out around 9:30 p.m., the three began heading to their car which was parked across the street. Our client was ahead of her companions, walking briskly due to the rain. When the light for the traffic on the street she was about to cross turned red, she entered the crosswalk.

David M. Paris

Meanwhile, the defendant, a 26 year old woman driving her mother's Jeep, was waiting to make a left hand turn onto the street our client was crossing. The defendant was stopped at the intersection as there was traffic approaching from the opposite direction. After the oncoming vehicles passed, the defendant started to turn. There were no obstructions blocking her view of the cross-walk, and there was testimony that the intersection was brightly lit.

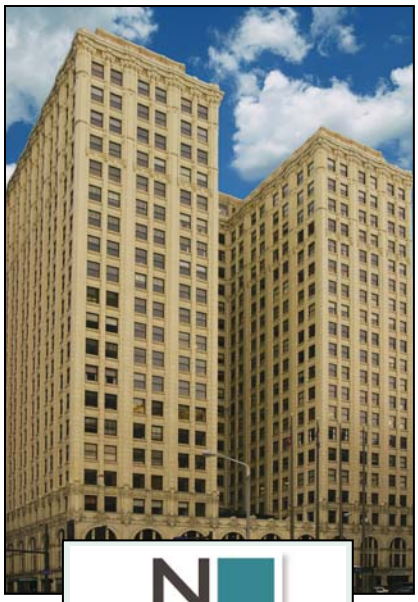
As the defendant started to turn, our client was at least two-thirds of the way across the street. According to a witness, the defendant turned left "quite fast," striking our client in the cross-walk. She was thrown onto the jeep's hood, and carried for 10-12 feet before she rolled off, hitting the back of her head on the pavement. She sustained a skull fracture and a traumatic brain injury, which included intra-cranial bleeds and subarachnoid hemorrhage. Due to the swelling in her brain, neurosurgeons performed a craniotomy. She remained in a coma for a period of time and was ultimately weaned off her ventilator and transferred to a nursing home. She was later transferred to another facility for intensive therapy and rehabilitation.

Although our client has regained her speech, ambulation and upper extremity functions, she continues to have residual cognitive impairment which primarily affects her judgment. She now requires round-the-clock supervision.

The defendants claimed that our client did not have the pedestrian walk signal in her favor and therefore did not have the right-of-way to cross the street. The defendants retained an accident reconstructionist who opined that our client was comparatively at fault because she was "running" across the street and because she failed to exercise reasonable care by not looking over her right shoulder at any time prior to one second before impact. The defendants also retained an expert life care planner who opined that a reasonable life care plan for our client could be financed for about $1,200,000.00.

Our evidence showed the contrary. When the case settled, our client had incurred approximately $750,000.00 in medical expenses, and there had been substantial insurance adjustments on these bills. The client's medical insurer had asserted a $225,000.00 lien which was negotiated down to $125,000.00.

The case settled prior to trial for a total of $3,249,000.00.



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New Attorney

NPHM Welcomes New Attorney

Benjamin P. Wiborg

Nurenberg Paris is pleased to announce the addition to the firm of **Benjamin P. Wiborg** as an associate attorney. Mr. Wiborg graduated from the Cleveland Marshall College of Law at Cleveland State University in May of 2008, and passed the Ohio bar in November of 2008. While still a law student, he worked at the firm as a law clerk. Mr. Wiborg has a Bachelor of Arts degree from the University of Findlay, in Findlay, Ohio, where he was first in his graduating class in two majors: Law & Liberal Arts, and History.

Currently, Mr. Wiborg practices in our workers' compensation department, where he works closely with the workers' compensation administrator Robert Trivisonno. Nurenberg Paris attorney Ellen M. McCarthy is also working closely with this department, handling the workers' compensation cases appealed to the Common Pleas Court.

The workers' compensation department handles administrative claims arising out of work-related injuries. Please feel free to contact our workers' compensation department if you or a loved one experience an on-the-job injury.

Civic Activities

Our Attorneys in the Community

- At this year's annual banquet for the Cleveland Academy of Trial Attorneys ("CATA"), **David M. Paris** received the CATA Service Award. Mr. Paris is a past president of CATA and has been instrumental in compiling data bases of information for CATA members. The CATA Service Award recognizes Mr. Paris' exceptional service on behalf of the organization.
- **Jonathan D. Mester** was a presenter at a seminar sponsored by the National Business Institute (NBI) this June. Mr. Mester spoke on the topics of "Current Case Law and Legislative Update," as well as "Preparing the Plaintiff's Bodily Injury Case."
- **David M. Paris, Jamie R. Lebovitz, William S. Jacobson,** and **Kathleen J. St. John** were chosen to *Super Lawyers*, and **Jonathan D. Mester** and **Andrew R. Young** were chosen to *Rising Stars*, in the 2009 edition of *Ohio Super Lawyers*®.
- **David M. Paris** was in the top 100 lawyers who received in the highest point totals in the 2009 *Ohio Super Lawyers* nomination, research and blue ribbon review process.
- **Andrew R. Young** was appointed by North Ridgeville's Mayor, G. David Gillock, to serve as a Member of the North Ridgeville Master Plan Committee, and was elected Co-Chairman of that committee by its Members. The Master Plan Committee was charged with creating a document that serves as a comprehensive visionary guide to assist the City in its future development.
- **David M. Paris** was also recognized in *Northern Ohio Live* as among the 50 Cleveland lawyers who received the highest point totals in the 2009 *Ohio Super Lawyers* nomination process. Mr. Paris has also been selected by his peers for inclusion in the 2010 edition of *The Best Lawyers in America*® in the area of Personal Injury Litigation.