THE NEWSLETTER OF Volume 11, No. 1

NURENBERG · PARIS
INJURY LAWYERS

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

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- *Medical, Hospital & Nursing Home Malpractice*
- *Birth Trauma & Injuries*
- *Construction Site Accidents*
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Legacy Matters: The Litigator Gene Passes From Generation to Generation

At Nurenberg Paris, we often refer to our attorneys and staff as family. Many staff members have been here since the 1970's and 1980's, and collectively our 13 attorneys have nearly 250 years of experience! It is safe to say, we are rooted in tradition. Consistent with this, we have several father/son or father/daughter legacies among our attorneys. Here are their stories.

Jonathan Mester, Ellen McCarthy, Tom Mester (seated) and Bill Jacobson

The Mesters

Thomas Mester is the longest practicing attorney in our firm. He started here as a law clerk in 1967, while working his way through law school at Western Reserve University (currently CWRU). After graduation, he briefly worked at a large corporate firm, but his true sympathies lay with injury victims. In 1971, he returned to Nurenberg Paris where he has remained ever since, becoming a partner in the late 1970's. He has handled a wide array of cases, from products liability to motor vehicle accidents to work place injuries to medical malpractice actions, and is known for his ability to win verdicts and obtain good settlements for his clients.

Jonathan D. Mester, Tom's son, started here in 1998 after graduating from the Ohio State University Moritz College of Law. Jonathan's meteoric rise to partnership–he became a partner just five years into practice–was well deserved. There isn't an attorney or staff member in this firm that doesn't have the utmost respect for his abilities as a trial lawyer. Much of the credit goes to his dad: for most of his time at Nurenberg Paris, Jonathan has worked closely with Tom on many of their major cases.

About working with his dad, Jonathan says: "We have worked together for 12 years, so much of what I have learned about being an attorney came from working together. The most important thing I have probably learned and tried to emulate is the need to work hard in this profession. My dad has been practicing for about 40 years now, but he still works twelve hour days and does whatever it takes to make sure his clients' cases are handled in the best possible fashion. I have tried to do the same."

Tom's comments echo his son's, but with a bit of humor. Tom, who describes Jonathan as "a great lawyer as well as a good guy," jokes that he has provided Jonathan "a great example of what to do, as well as what not to do!" On a more serious note, Tom adds that his most rewarding moments in practice include "working with my son" and "obtaining 7 figure verdicts, especially when the defense has made no offer at all on the case!"

The Jacobsons

In 1963, the firm's founding partner, **Abe Dudnick**, died, and the firm became known (for a time) as Komito, Nurenberg, Plevin, Jacobson, Heller & McCarthy. One of the named partners, **Aaron Jacobson**, was the father of current partner, **William S. ("Bill") Jacobson**.

Aaron was with the firm from 1960-1985. According to Bill, his dad was in his late 30's when he decided to go to law school, at night, at Cleveland Marshall College of Law. During the day, Aaron, then a journalist, worked full-time as the "courthouse beat" reporter for the old *Cleveland News.* In that capacity, Bill laughs, his dad "got to know all the judges, trial attorneys

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Delayed Treatment of Viral Infection Leads To $2.5 Million Settlement

Jeffrey A. Leiken achieved a $2.5 million settlement for a young girl whose herpes simplex encephalitis was not timely treated by the defendant medical care providers. As a result, the child suffered severe neurological injuries, including loss of her ability to speak, an inability to control her tongue or the saliva in her mouth, brain damage and emotional issues.

Jeffrey A. Leikin

Her troubles began in February of 2006 when she started vomiting and experiencing abnormal neurological symptoms. These included a tongue deviation to the left, left-sided facial drooping, slurred speech, and a weakness to the left side of her body. These symptoms, known as "focal" neurological symptoms as they are limited to one side of the body, are one of the prime identifying features of herpes simplex encephalitis.

The child's mother took her to the emergency room of a local hospital, which transferred her to a regional children's hospital. There she underwent MRI examinations, a lumbar puncture, and multiple blood tests. The child's left-sided focal neurological symptoms were also noted.

The pediatric neurologist created a differential diagnosis which included ADEM (acute disseminated encephalogmyelitis) and herpes simplex encephalitis. Both diseases can cause permanent brain damage. There is no known treatment for ADEM other than hospitalization, observation, and medical support. Herpes simplex encephalitis, however, can be treated with the antiviral drug Acyclovir, which, if timely administered, avoids permanent brain damage.

The child arrived at the children's hospital during the early morning hours of February 25, 2006. Yet, despite her symptomatology, Acyclovir was not prescribed until late in the afternoon of February 27, 2006, when her cerebral spinal fluid test came back positive for herpes simplex encephalitis.

In the lawsuit filed against the hospital and pediatric neurologist, the plaintiffs alleged that Acyclovir should have been prescribed once herpes simplex encephalitis was included in the differential diagnosis. Had this been done, we contended, the child would not have had any permanent neurological damage. The plaintiffs' case was supported by experts in interventional radiology, neurology, pediatric neurology, infectious diseases, and pediatric infectious diseases. The plaintiffs also hired a physiatrist who prepared a Life Care Plan and an economist who evaluated the economic damages.

The defendants took the position that the child's symptoms were not typical for herpes simplex encephalitis, and that it was unnecessary to prescribe Acyclovir until a diagnosis had been confirmed. The defendants also maintained that even if Acyclovir had been prescribed earlier, the child still would have suffered the same permanent neurological deficits.

Following intensive mediation and settlement efforts, the case settled prior to trial for $2.5 million.

Family Of Man Negligently Prescribed Anti-Psychotic Drug Recovers $750,000 For His Wrongful Death

Jonathan D. Mester settled a wrongful death/medical malpractice case on behalf of the family of a 70 year old man whose death was allegedly due to the hospital's improper administration of an anti-psychotic drug.

The events leading to our client's death began on November 29, 2007, when he was brought to the hospital expressing suicidal thoughts. The client was a long-time alcoholic and had recently "fallen off the wagon." Upon admission, he was given Ativan for his agitation. On his second night there, he became increasingly agitated and was given Haldol. Four hours later, his agitation resumed and he was given the anti-psychotic drug Geodon. Shortly thereafter, he went into arrest and a "code" was called. He subsequently went into a coma, in which he remained until his death on April 19, 2008. The undisputed cause of death was anoxic encephalopathy stemming from the arrest he suffered at the hospital on December 1, 2007.

The basis of this malpractice action was that the drug Geodon was contraindicated for this patient. First, Geodon is FDA approved for conditions such as schizophrenia–not for alcohol withdrawal. Second, the package insert that comes with Geodon states that this drug is contraindicated for persons with a cardiac arrhythmia known as a QT prolongation. Our client's medical chart contained a rhythm strip indicating he had a QT prolongation, and the defendant doctor admitted this to be the case. Third, Geodon should not be used in concert with Haldol, since Haldol also prolongs the QT interval. The package inserts for both medications clearly state these drugs should not be used together.

The hospital contended that its physician was not negligent because our client's alcohol withdrawal required use of Geodon on an emergent basis and because our client did not exhibit the type of cardiac arrhythmia contraindicated on the label. The hospital also disputed that its conduct caused our client's arrest, instead attributing it to an allergic reaction.

The case settled in mediation for $750,000.

NOTE TO OUR READERS

Nurenberg Paris has prepared this newsletter for its many friends, clients and colleagues world-wide. It is purely a public resource of general information. Although it is not intended to be a source of either solicitation or legal advice, it may be regarded as an advertising or promotional communication in the terms of the lawyers' professional responsibility law. Accordingly, it is necessary that certain information be supplied to and noted by the reader.

This newsletter should not be considered as an offer to represent in any legal matter, nor should it be the basis of legal hiring decisions. Thus, the reader should not consider this information to be an invitation for an attorney-client relationship, should not rely on information provided herein, and should always seek advice of competent counsel.

All lawsuits are different, and Nurenberg Paris makes no representation or promises that it can obtain the same results as reported in this newsletter in other legal matters. Nothing in this newsletter constitutes a guarantee, warranty or prediction regarding the outcome of any future legal matter. Further, it should be noted that even where the fee arrangements are on a contingency basis, clients will still be responsible for payment or reimbursement of the costs and expenses of litigation out of the recovery.

The owner of this newsletter is a law firm whose members are licensed to practice in Ohio, California, and the District of Columbia, and who, with the assistance of local counsel, practice and are admitted in courts across the United States. In preparing and disseminating this newsletter, Nurenberg Paris has made a good faith effort to comply with all laws and ethical rules of every state into which it may be sent.

In the event, however, that it is found not to comply with the requirements of any state, Nurenberg Paris disclaims any wish to represent anyone desiring representation based upon viewing this newsletter in such state.

Finally, this newsletter is disseminated to our many friends around the world. We hope you find the information here useful and informative. Anyone, however, who does not wish to receive future newsletters can contact us at the numbers or locations listed here, and the matter will be promptly attended to.

Legacy Matters (continued from page 1)

Aaron Jacobson

and many of the more colorful gangsters who were ubiquitous in downtown Cleveland."

Bill started with the firm as a law clerk in 1981, while attending law school at CWRU. He became an attorney with the firm in 1984, and a partner in the early 1990's. His practice, which in the early days consisted of a wide range of personal injury matters, is now devoted primarily to medical malpractice cases–most particularly to birth trauma cases.

Among the lessons he learned from his father, Bill values most his integrity. "He told me from the start," Bill says, "never to have a reputation as an attorney who was quick to settle his cases without going to trial. Accept your wins and losses with dignity and don't get into the habit of second-guessing yourself."

That advice has served Bill well. Recently, despite having regularly litigated against University Hospitals, he was asked to co-chair its risk management seminar. The seminar was attended by over 100 of its physicians, some of whom Bill had successfully litigated against. "There is satisfaction in knowing that not only have you helped your clients, but you've also earned the respect of your opponents," Bill says.

John J. ("Jack") McCarthy

The McCarthys

Another great litigator and named partner for many years was **John J. ("Jack") McCarthy**. Having graduated from law school at Cleveland Marshall, Jack McCarthy started at the firm in 1963, where he remained until 1999. Known for his skill in telling clients' stories and his ability to relate to juries, Jack imparted these talents to his daughter, **Ellen M. McCarthy**.

A partner today, Ellen says of her father, "he loved work, loved trying cases, and was interested in the lives of his clients." He taught her that "an exhaustive understanding of the facts is critical to preparation" and that "you can never go over the facts too many times."

Ellen began with the firm as a law clerk in 1988. Like her dad, Ellen attended Cleveland Marshall. She became an attorney in 1990, and has since become a partner. Gifted with the fabled Irish wit and story-telling ability, Ellen shares her father's love of trying cases and popularity with juries. Within the firm, Ellen emphasizes the importance of team work. "The most important aspect of Nurenberg Paris," she says, "is the willingness of all our attorneys to help each other out–no matter what he or she is doing. The concept of the greater good makes this firm unique."

Product Liability

Confidential Settlement Reached In Exploding Wheel Case

David M. Paris and **David A. Herman** represented a 56 year old truck driver who was blinded when a plastic wheel from his snow blower exploded while he was inflating the rubber tire attached to the plastic rim.

Our client purchased the snow blower in December 2005. In January of 2007, after sitting unused in the garage, one of the tires was flat, so he took it to a gas station to inflate it with a commercial air compressor. He inflated the tire several seconds, then removed the hose from the valve. As he reached for his manual air gauge to test the pressure, the plastic wheel rim exploded, lacerating his face and blinding him.

We filed a lawsuit against the manufacturer and retailer. As to the manufacturer, we alleged the wheel was defective in three ways. First, the injection molding and cooling processes used to make the plastic rim caused weakness at high stress points. Second, the wheel's design was defective due to the use of an inferior material. Third, the inflation instructions failed to warn that a commercial air compressor would cause a high volume of air to be forced into the small wheel at a rapid rate, making it likely that explosions would occur.

It was our contention that the manufacturer failed to conduct any air pressure testing on the wheel before its release on the market in 2003. The evidence showed that in 2005-2006, the manufacturer began receiving reports that its plastic wheels were exploding and injuring consumers. At this time, the manufacturer began planning for a national recall of 138,000 snow blowers, looking for suppliers of metal wheels as a substitute for the plastic wheels, and making significant design changes using a stronger plastic and greater reinforcement.

The manufacturer denied its wheel was defective and retained expert witnesses to defend the integrity of its product.

As for the retailer, we alleged it had a duty to cooperate with the recall and to search its own data bases for names and addresses of customers who purchased the recalled snow blowers. Had it done so, it would have discovered our client's contact information and notified him of the recall. As it was, our client never learned of the recall until after his accident.

The retailer denied it was negligent, and insisted that posting the recall information on its website and store bulletin boards satisfied its obligation to its customers.

As a result of his injuries, our client incurred $70,000 in medical bills and suffered $400,000 in impaired earning capacity. A life care planner opined that our client's future supportive care would cost more than $1 million. The defendants retained damage experts to contradict our experts. After extensive briefing in response to defendants' summary judgment motions (**Kathleen J. St. John** on the briefs), the case settled for a confidential amount in private mediation shortly before trial.

Civil Rights/Wrongful Death

County Settles With Family Over Death Of Mentally Ill Inmate

David M. Paris and **Terry H. Gilbert** represented the family of a 28 year old man who died in pretrial detention in the mental health unit of the Summit County jail. At the time of his death, he was survived by his father and mother. An action for violation of his civil rights (known as a "1983 action") was filed against the County and its sheriff's deputies, asserting claims for wrongful death as well as a survival action for his pain and suffering.

The deceased had a history of mental illness which escalated in the summer of 2006. He was brought to the County Jail as a result of a mental health crisis and assigned to the jail's mental health ward. While in custody, he suffered a mental health crisis which the defendants believed posed a risk of self harm along with "unruly behavior." The on-call psychiatrist was contacted and 4-point restraints and injections of anti-psychotic medication were ordered.

Approximately six deputies were assembled to enter our client's cell and subdue him so that the medications could be administered. When he would not cooperate, the deputies "tased" him several times and beat and kicked him. He was ultimately subdued, his hands cuffed behind his back, his feet shackled at the ankles. One deputy continued to kick him in the head even though several deputies testified he was no longer a threat. When a nurse arrived to administer the anti-psychotic medication, the deputies exited the cell leaving our client handcuffed, shackled, and lying in a prone position. The same deputy that kicked him in the head returned to the cell with a one pound can of pepper spray, and sprayed him around the buttocks, back, and back of his head. This was done, according to witnesses, to "let him cook." About 15 minutes later, deputies returned to move him to a restraint cell and found him dead.

The autopsy determined his death was caused by asphyxiation due to the combined effects of chemical, mechanical and electrical restraint, with hypertensive arteriosclerotic cardiovascular disease as a contributory condition. We retained a former prison warden as an expert. He opined that the deputies engaged in excessive force and deliberately ignored the health care needs of our mentally ill client, and that the defendants' conduct was a proximate cause of our client's death. We also retained a forensic pathologist who opined that the cause of death was asphyxiation due to the manner in which our client was restrained (i.e., "hog-tied") and the manner in which he was doused with pepper spray.

The defense retained two "standard of care" experts who opined that the deputies' conduct was justifiable. The defense also retained five medical experts all of whom claimed that our client's death had nothing to do with being beaten, hog-tied or doused with OC spray, but that his death was caused by "excited delirium" and a pre-existing enlarged heart with coronary artery disease.

After extensive briefing of summary judgment motions (**Brenda M. Johnson** assisting on the briefs), the case settled for $862,500.00 at a private mediation shortly before trial.

On the Web

Nurenberg Paris on the Web

If you haven't yet visited our website, please take the opportunity to do so. Our website, **www.nphm.com** has been revamped, with individual videos of each of our attorneys. We also have an aviation website at **www.NationalAviationLaw.com,** and are now on Facebook and YouTube. And for every 50 new fans we have on Facebook, we'll donate $50 to the Red Cross to support those affected by recent natural disasters.

Civic Activities

Our Attorneys in the Community

- **David M. Paris** was honored by Cleveland State University with a 2010 Distinguished Alumni Award. Mr. Paris was one of 9 recipients of this coveted award that honors outstanding CSU alumni who have made important contributions to their community through their leadership, service and career achievements. CSU's new president, Ronald Berkman, presented the awards at a well-attended affair during which individual videos were shown of each recipient, depicting his or her accomplishments.
- **Jonathan D. Mester** and **Andrew R. Young** were sworn in as directors of the Cleveland Academy of Trial Attorneys (CATA) at the annual meeting held on June 11th. Both Mr. Mester and Mr. Young have previously held positions as officers of this organization.
- **Andrew R. Young** was also sworn in as a trustee of the Ohio Association of Justice (OAJ). Ohio Supreme Court Justice Paul E. Pfeifer administered the oath. Andrew previously served as a trustee on the OAJ's board from 2002-2004.

Andrew R. Young

- **Ellen M. McCarthy** and **Kathleen J. St. John** served as judges for two separate mock trial competitions. Ms. McCarthy served as a judge for the American Association for Justice (AAJ) Student Trial Advocacy Competition. Law school teams from around the country compete in this prestigious three-day competition. Ms. St. John served as a judicial panelist for the Ohio Mock Trial Competition, sponsored by the Cleveland Metropolitan Bar Association (CMBA), in which teams of students from local high schools conduct mini-trials, competing for a chance to move on to a statewide competition.

David Herman and David Paris

Cincinnati Jury Returns Verdict For $2 Million

David M. Paris and **David A. Herman** represented John Chapman, an over-the-road truck driver who lost his right leg above-the-knee in a tow-truck related accident.

The accident occurred on November 9, 2005 when Chapman was en route to make a delivery to the Cincinnati area. He was traveling southbound on I-71 when he felt the trailer of his 18 wheeler semi-tractor trailer dragging. He pulled onto the right berm, several feet from the highway's edge, and called his dispatcher. He was under the impression that a mechanic would be sent to assist. Instead, an hour later, Johnny Whitaker, a tow truck operator employed by Milford Towing, arrived at the scene.

What happened following Whitaker's arrival was the primary dispute in the case.

Whitaker testified he met with Chapman in front of the disabled cab and told him he was going to tow the vehicle. Chapman agreed that Whitaker did say that, but the two men disagreed on what happened next. According to Whitaker, he told Chapman to "watch out and move away because I'm going to lower my under-reach and back up the truck." Chapman, on the other hand, testified that he told Whitaker the truck could not be towed until he called his dispatcher to get approval for the tow. He did this because the vehicle did not belong to him and it had been his understanding from his prior conversation with the dispatcher that the vehicle would be serviced on location, and not towed anywhere.

Chapman testified he then turned around and climbed into the cab. He spent several minutes speaking with his dispatcher and securing his personal belongings, then prepared to climb out of the cab and tell Whitaker to proceed with the tow. Unbeknownst to Chapman, however, Whitaker had already begun the process, having placed the T-bars of his tow truck beneath the front axle and hydraulically lifted the cab 12–18 inches off the ground. Whitaker then chained the axles to the hydraulic lift and walked around to the driver's side of the tow truck where the controls were located.

As Whitaker reached the front driver's side of his tow truck, he saw Chapman exiting the cab. Chapman was exiting the proper way–facing inward as he backed down the external steps using a three-point contact hold. As he moved his left foot from one step to the next, he lost his balance and fell towards the road. While in mid-air, he was struck by a passing box truck, which threw him to the berm. His right leg was so badly injured it had to be amputated above the knee.

In addition to the dispute over who said what prior to the lift, one of the major points of contention concerned Chapman's testimony as to what caused his fall. Chapman testified that he had a sensation of the truck moving, as though it were being lifted, and that he felt as though he was being "thrown" off the truck. The defense sought to discredit this testimony by showing it was physically impossible because the cab had already been lifted. In cross-examining Chapman, the defense sought to show he was not just mistaken, but was a "liar"– a theme which was pursued throughout the defendants' entire case.

This strategy backfired for good reasons. To begin with, the expert testimony on the tow truck operator's negligence heavily favored the plaintiff. Both expert witnesses basically agreed on what the tow truck operator's duty required, and the evidence showed Whitaker failed in most aspects of that duty.

As for the defense's contention that Chapman was lying when he said he felt the cab moving as he began climbing down, a pivotal moment in the trial came during the testimony of the plaintiff's expert. He explained that a truck suspended 12-18 inches in the air by a hydraulic T-bar is unstable and is subject to wobble, rock, or sway. The defense was unable to offer any evidence to contradict this testimony, and thus Chapman's testimony was shown to be completely rational.

At the time of the accident, Chapman was 63 and single. His above-the-knee amputation required a prosthetic leg and extensive rehabilitation. He had $280,000 in medical bills, $430,000 in impaired earnings, and a lifetime of disability. The jury returned a verdict in the amount of $2,000,513.00, assigning 75% fault to the defendants and 25% to the plaintiff. The award was thus reduced by 25%. A motion for prejudgment interest remains pending, as does an appeal the defense filed on questions of law.

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Volunteer Activities

Walk for Wishes®

A team of Nurenberg Paris staff and family members participated in the Make-a-Wish Foundation's 5K Walk for Wishes® at the Cleveland Metroparks Zoo.

Paralegal Tamara Brininger reports: "It was a beautiful morning to walk and enjoy the sights and sounds of the zoo as we supported the Make-A-Wish Foundation of the Greater Ohio, Kentucky, and Indiana-Kentucky Region. This was the 18th annual Walk for Wishes® event that brings people together to raise funds to grant the wishes and dreams of children struggling with life-threatening medical problems. Thank you for supporting our walk!"

Nurenberg Paris Team

Workers' Compensation

Workers' Compensation Update

The Ohio Bureau of Workers' Compensation has adopted several new administrative rules beneficial to workers. These changes will not affect every workers' compensation claim, but will have an impact on a significant number of claims going forward.

First, an award of compensation for the amputation of a body part or the loss of use of that body part will be paid to the injured worker in a lump sum payment, as opposed to paying the award over a number of months or years as is currently done. This will result in prompter compensation to injured workers for these significant losses, rather than periodic payments that extend over a long period of time.

Second, the time frame for claims to be classified as inactive changes from 13 to 24 months. Claims fall into the "inactive" category when no medical treatment or compensation is paid over the defined period of time. Extending the inactive period requirement to 24 months eliminates the delays and additional steps required when an injured worker, having not seen his or her attending physician for more than a year, returns to that physician for additional treatment or evaluation during the extended time period.

If you are interested in learning more about either of these rules changes, please contact our workers' compensation department and speak with one of our representatives about these or any other issues or questions you may have.