

THE NEWSLETTER OF

Spring
2000
Edition

Nurenberg Plevin

A Publication For The Clients, Associates & Friends of NPHM Co., L.P.A.

An Overview

Who We Are

We bring more than just a lawyer to handle your case.
We bring a law firm.

Call
24 hours.

(216) 621-2300

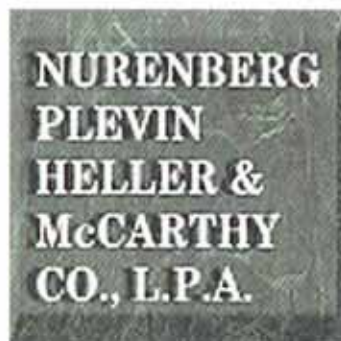
1370 Ontario St., Suite 100
Cleveland, OH 44113

▶ ON THE AIR

Don't forget to listen for Thomas Mester, Esq. the third Thursday of each month on Radio Station WERE AM 1300. Mr. Mester appears on the radio at 7:15 a.m. to discuss various aspects of the legal community and the law. The radio program is sponsored by the AFL-CIO.



Helping
the injured
seek
justice since
1928.



"...NPHM has decided to keep you, our most treasured resource, up-to-date as to the happenings and successes of the firm."

Nurenberg, Plevin, Heller & McCarthy, Co., L.P.A. (NPHM) is a trial law firm which concentrates its practice in a variety of tort areas, representing plaintiffs who have sustained personal injury or death from medical malpractice, product liability, aviation accidents, automobile accidents and work-related injuries whether that be governed by the Workers' Compensation Laws of the State of Ohio or railroad employment injuries under the F.E.L.A. The firm is actively involved in class-action litigation as well.

In practice for over 70 years, the firm has vast experience in trial and appellate courts of both Ohio and Federal Court Systems. Members of the firm are additionally licensed to practice in California, Colorado, New York and Pennsylvania, as well as courts surrounding the greater Cleveland area.

The law firm was formed in 1928 and currently consists of 18 lawyers and support staff of over 40 additional personnel. This personnel includes nurse paralegals, trial paralegals, investigators and additional support staff dedicated to maintaining the highest standards in tort and civil litigation.

To date, having served over 70,000 clients, NPHM has decided to keep you, our most treasured resource, up-to-date as to the happenings and successes of the firm. We want you, our clients, to know that we bring more than just a lawyer to handle your case, but a law firm. A law firm experienced just not in personal injury litigation but in complex personal injury litigation.

We hope you enjoy the first issue of our newsletter. Please visit us at our web site at www.NPHM.com.

The Editors

Attorneys named principals in the law firm



Ellen M. McCarthy, Esq. and Robin J. Peterson, Esq. were both named principals to the law firm of NPHM Co. Both Ms. McCarthy and Mr. Peterson are graduates of the Cleveland-Marshall College of Law.

Ms. McCarthy graduated from St. Leo College and limits her practice to complex personal injury litigation. Mr. Peterson attended Kent State University and heads the Workers' Compensation Department of NPHM Co.

Adopting a family for the holidays.

The Nurenberg, Plevin Law Firm continued its tradition of adopting a family during the Christmas holiday. This year, the firm adopted a family whose daughter was diagnosed with Leukemia earlier in the year and had suffered many complications from the illness. The attorneys and support staff of the firm contributed money for gifts in the hope of making this young woman's Christmas a little brighter.

Thanks to the generosity, time, and dedication to this project, we indeed brought some cheer into the family's home for Christmas, much to the appreciation of Jessica, her older sister and parents.

"Light the Night" Leukemia Sponsor.

The Nurenberg, Plevin Law Firm was a proud "bright light sponsor" for the first annual Light The Night Leukemia Walk during the weekend of September 23rd - 26th, 1999.

Walkers included cancer patients, survivors, family

members, friends, teams and individuals. In keeping with the mission of the Leukemia Society of America, the proceeds from the Light The Night Leukemia Walk will fund research to find cures for Leukemia, Lymphoma, Hodgkins Disease and Myeloma.

OUR ATTORNEYS

MARSHALL I. NURENBERG

LEON M. PLEVIN

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JOHN J. MCCARTHY

THOMAS MESTER

HARLAN M. GORDON

DAVID M. PARIS

RICHARD L. DEMSEY

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ROBIN J. PETERSON

ROBERT S. ZELLER

ELLEN M. MCCARTHY

J. CHARLES RUIZ-BUENO

KATHLEEN J. ST. JOHN

JONATHAN D. MESTER

BRENDA JOHNSON

Jamie R. Lebovitz, Esq. and David M. Paris, Esq. appointed to Plaintiffs' Steering Committee on Amtrak Crash Case.

On March 15, 1999, the "City of New Orleans" Amtrak Train collided with a tractor trailer at a railroad crossing in Illinois. Of the 216 passengers on the train, 11 were killed and over 100 were treated for injuries. Jamie R. Lebovitz, Esq. and David M. Paris, Esq. filed lawsuits on behalf of the estates of three of the deceased passengers.

On November 18, 1999, Cook County, Illinois Judge Judith N. Cohen selected both Mr. Lebovitz and Mr. Paris to be members of the Plaintiffs' Steering Committee which will conduct the discovery on all liability issues in the case.

Jury awards \$2.8 Million in brain damage case

Maximum limit obtained by partners Thomas Mester, Esq., William Jacobson, Esq. and Harlan Gordon, Esq.



Thomas Mester, Esq., William Jacobson, Esq. and Harlan Gordon, Esq. received a jury verdict in the amount of \$2,800,000 for the family of an infant who suffered irreversible brain damage during birth. The 2.8 million verdict represented the insurance company's policy limits. During the course of the child's birth, a fetal monitor showed persistent decelerations, continuing for a two hour period, evidencing fetal distress. Despite the signs of fetal distress, the attending obstetrician allowed labor to continue, allowed continued administration of Pitocin, and failed to perform a C-section. As a result of inaction on the part of the obstetrician, the infant suffered irreversible brain damage, resulting in cerebral palsy, spastic quadriplegia and profound mental retardation.

Laboratories pay victims for misinterpreted pap smears.

David M. Paris, Esq. resolved two cases against laboratories and medical providers who failed to meet standards established by the Federal Government which imposed strict requirements for pap smear slide handling, interpreting and reporting. The Federal Law is entitled CLIA '88.

In the first case, a 39 year old client was diagnosed with Stage IIIB rare vaginal cancer. After filing suit, it was discovered that the lab technician for a local HMO had interpreted her pap smear as mild dysplasia. A follow-up pap smear was interpreted by the same HMO lab as normal.

However, the HMO's own regulations require that any patient with a prior abnormal pap smear (such as dysplasia) must have the subsequent "normal" pap smear re-read by a supervisor. The HMO failed to do this and, it was later discovered that the subsequent pap smear was in fact, abnormal, and a pre-cancerous condition was permitted to progress to a severe cancerous stage. The case was settled shortly before trial for \$1,000,000.

In the second case, a 48 year old client was the victim of a similar breakdown in laboratory procedure. Once again, a lab

technician interpreted a pap slide as normal and failed to have it re-read by a supervisor per the lab's own regulations, since a prior pap smear had been abnormal.

In fact, this later pap smear was found to be cancerous, resulting in a terminal condition by the time it was diagnosed. The defendants agreed to compensate the next-of-kin of the client in the amount of 1,100,000.

OTHER SIGNIFICANT SETTLEMENTS

William S. Jacobson, Esq. obtained a \$900,000 settlement, prior to trial, for the improper prescription of an estrogen based birth control pill for a young client, twenty-three years of age. In achieving the settlement, plaintiff's experts testified that the prescription of the estrogen based birth control pill to the plaintiff who suffered from Lupus caused her to suffer a stroke leaving her with permanent disability in her dominant right arm.

Leon M. Plevin, Esq. and Harlan Gordon, Esq. obtained a 1.2 million dollar settlement on behalf of a deceased client who died following an injection of Imitrex for migraine headaches. The injection of this drug was contraindicated for cardiac patients such as the decedent. The result of the injection was a massive myocardial infarction resulting in the client's death.

David M. Paris, Esq. and William S. Jacobson, Esq. represented a 69 year old client who was treated by a dermatologist and a urologist for a penile lesion. His treating physician ordered a biopsy which was negative, but misread by the pathologist. The result was a 1.25 million dollar settlement.

Blocked Ureter Results in 1.2 million dollar settlement.

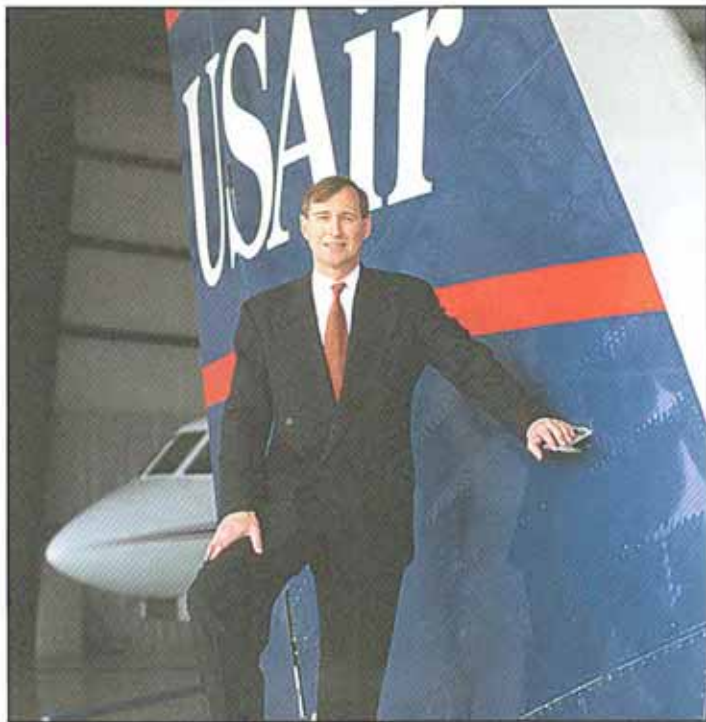
Thomas Mester, Esq. and David M. Paris, Esq. represented an infant whose mother underwent a prenatal ultrasound at a hospital which showed a blocked ureter in the fetus. However, the reading radiologist did not verbally communicate the test results to the infant's OB-GYN and the latter never read the written report. Approximately four years later, the infant was diagnosed with chronic renal failure, resulting in irreversible kidney damage.

In obtaining the settlement, Mr. Mester and Mr. Paris alleged that the blocked ureter was clearly identified on the prenatal ultrasound which the radiologist had failed to communicate to the infant's treating physicians.

It was further alleged that the treating OB-GYN was negligent in failing to review the interpretation of the ultrasound and that the kidney damage could have been avoided through the appropriate treatment had the diagnosis been timely rendered.

Jamie R. Lebovitz, Esq. participates in 48 million dollar settlement

Included largest settlement for a commercial passenger ever achieved



In September, 1994, US Air Flight 427 crashed into a hill seven miles outside of Pittsburgh, killing all 132 people aboard. Following a governmental investigation, and a multitude of lawsuits, it was determined that a malfunctioning valve on the Boeing 737 jetliner's rudder, caused the crash. The 48 million dollar settlement was paid by US Airways, Parker-Hannifin Corp. and Boeing Company. Among the settlements was a 25.2 million dollar settlement for a family of a crash victim who was the CEO of a large manufacturing company. This was the largest settlement for a passenger on a US commercial flight ever achieved. This settlement also became the focus of a USA Today article, appearing in the January 5, 2000, issue.

In other litigation matters, Mr. Lebovitz was able to obtain a 1.9 million settlement for a 26 year old female who was killed in the Value Jet Flight 592 crash in the Florida Everglades. The crash was believed to be the result of an on-board fire. The 26 year old client was survived by a mother and father. In addition, a 20 year old student's family obtained a \$950,000 settlement as a result of the ComAir Flight 3272 crash on approach to Detroit Metropolitan Airport. In this suit, Mr. Lebovitz alleged that the crash was due to the flight crew's failure to activate de-icing equipment, under icy conditions, as well as manufacturing and design defects associated with the aircraft's capability to fly safely in icy conditions.

Disabled Carmen settlements exceed \$600,000 in FELA claims

Settlements for two disabled carmen, members of TWU.

On the railroad front, two successful FELA claims were brought by Jeffrey A. Leikin, Esq. on behalf of disabled carmen. In the first case, a \$310,000 settlement was received before trial for a railroad carman who was injured after releasing a hand brake and suffered a disabling hip injury. It was alleged during litigation that the railroad company had failed to provide proper safety footwear, resulting in the carman's slipping on ice existing on a ladder rung as the worker was descending the car.

In the second case, a railroad worker suffered a disabling shoulder injury when he fell on debris permitted to remain at and around his workplace in the yard. Testimony from the railroad's supervisor revealed that the accumulation of debris was a known condition in the yard for which the railroad company did nothing to correct. A settlement was achieved during trial in the amount of \$300,000.

Underinsured Motorists claims result in \$900,000.

David M. Paris, Esq. represented the family of a decedent who was killed instantly in a head-on collision with an underinsured driver. The family's underinsurance carrier previously settled for policy limits of \$500,000. After litigation was filed, Mr. Paris was able to establish that the decedent's farm insurance policy provided an additional \$400,000 coverage.

In another underinsured motorist's claim, Leon M. Plevin, Esq. and Ellen M. McCarthy, Esq. obtained a \$500,000 jury award on behalf of a client who was driving a motorcycle at the time of his accident. The client's motorcycle was cut off when a negligent driver pulled into his lane of travel from the curb lane. However, the negligent driver had only a \$12,500.00 insurance policy. The remainder of the jury award will be paid by the plaintiff's underinsured motorist coverages.

Injured worker receives \$150,000 in job shift

Robin Peterson, Esq. obtains lost wage compensation

Robin J. Peterson, Esq. was able to obtain workers' compensation benefits in the amount of \$150,000 for an injured worker who had sustained a rotator cuff injury. Following his injury, the client was released to return to work with restrictions that prohibited his lifting of greater than 20 pounds and prohibited overhead lifting. His employer, however, refused to accommodate him within these restrictions and the injured worker was caused to seek and successfully obtain

alternative employment. The compensation of \$150,000 was a consequence of the injured worker's wage loss. His new employment paid far less, in his restrictive job, than what he earned at the time of his injury with his old employer.

\$166,000 awarded injured electrical worker.

A 40 year old worker sustained an injury to her arm as a consequence of performing her duties as a laborer for a local electrical

contractor. Robin J. Peterson, Esq. filed a workers' compensation claim on behalf of this worker. Consequently, as a result of this injury, the client developed a neurological condition which essentially rendered her injured arm useless. She was awarded \$111,000 for permanent impairment to her arm and \$50,000 in temporary disability benefits. In addition, she was awarded permanent disability benefits payable bi-weekly over the remainder of her lifetime.

Family receives \$3.2 mil. for robotic accident

Robot designed without protective guards

Family receives 3.2 million for robotics accident.

A business visitor to a Cincinnati aluminum foundry was caused to come to his untimely death as a result of severe burns. Located within the area where our client was left standing was a robotics arm and ladle which was programmed to dip into wells which contained the molten aluminum, fill the ladle, and swing across the pouring deck to an automated assembly line - carousel which automatically poured the aluminum into a mold. The assembly line was shutdown and then re-started when the client was standing within the arc of the robotic pouring ladle. As a result, 20 pounds of molten aluminum were caused to be poured on his body causing the severe burns which lead to his death.

David M. Paris, Esq. and Leon M. Plevin, Esq. alleged that the robotic arm and ladle should have been designed and installed with barrier guards and light curtains which were economically and technologically feasible at the time and required by industry standards. The case was settled prior to a jury trial.

Fire fighter receives 1.6 million for amputated leg.

A fire fighter received a 1.6 million dollar settlement as a result of a defectively designed and installed front-end pump equipped on a fire tanker. Thomas Mester, Esq. and Jeffrey A. Leikin, Esq. represented the fireman. It was alleged that the safety lights on the front-end pump had been improperly wired at the time of installation giving a pump operator the false impres-

"...the tanker inadvertently moved forward, pinning the fireman against another fire truck..."

sion that the tanker's transmission was in neutral instead of drive when the pump was used during a training evolution. The tanker inadvertently moved forward, pinning the fireman against another fire truck and resulting in an amputation of his leg. In addition, Mr. Mester and Mr. Leikin claimed that the fire tanker was defective since it had been equipped with inadequate brakes and an inadequate gearshift indicator.

SETTLEMENTS IN BRIEF

A construction accident resulted in a 1.8 million dollar settlement. The decedent was a laborer/flagman working on a highway resurfacing project in Lorain County. Another contractor was moving his dump truck in reverse and failed to see the decedent, pinning him against another piece of construction equipment. The 1.8 million dollar settlement obtained by David M. Paris, Esq. was the result of a claim brought against the construction worker as well as the decedent's subsequent medical providers. Further investigation as to the cause of the decedent's death revealed that the subsequent treating hospital failed to appreciate the extent of the decedent's abdominal injuries, giving rise to a medical malpractice claim.

Jury awards dog bite victim \$500,000. Leon M. Plevin, Esq. and Ellen M. McCarthy, Esq. received a jury award in the amount of \$500,000 on behalf of a minor resulting from a dog bite. The minor, age 8, was visiting his neighbor's home and was attacked and bitten on the face by the neighbor's dog. The child's plastic surgeon testified that he would need future surgery and that his facial scars would be permanent.

\$750,000.00 settlement for shoulder dystocia. William S. Jacobson, Esq. received a \$750,000 settlement on behalf of a 9 pound child who sustained shoulder dystocia at the time of his birth. This condition resulted from the child's mother's OB-GYN performing a natural birth. Mr. Jacobson argued that a C-section was proper given a previous pregnancy in which the child's mother had difficulty delivering a large baby who also suffered shoulder dystocia. The child's injury, to her right arm, resulted in permanent disability and for a future long-term loss of earning capacity for the child.

Window washer settles suit prior to trial. Richard L. Demsey, Esq. recently settled a lawsuit on behalf of the family of a window washer, killed while washing windows at the BP Building in downtown Cleveland. The June, 1996 accident involved a defected motor gear on the scaffold which also lacked an emergency safety brake, permitting the worker to fall 38 stories to his death. The amount of settlement is confidential.

Ohio Supreme Court reverses decision in wrongful death action

Diseased tree limb ruled a nuisance and municipality found liable

Kathleen J. St. John, Esq. recently obtained a favorable ruling from the Ohio State Supreme Court in a wrongful death action which was handled at the trial court level by Richard L. Demsey, Esq. The Administratrix of the decedent's estate filed a wrongful death action against the City of Cleveland Heights resulting from their next-of-kin's death caused when a limb fell from a rotting tree and crashed through the windshield of her vehicle. At the trial court, Mr. Demsey alleged that the evidence revealed that the condition was known to the city through a forestry department inspection which had occurred six months prior to this accident. Nonetheless, Summary Judgment was granted in Defendant's favor.

On appeal, the Ohio State Supreme Court reversed the trial court and held that a damaged or diseased tree limb that overhangs a roadway (and presents a hazard to the motoring public) can constitute a nuisance for which a municipality may be liable if it fails to correct the condition within a reasonable time after the condition is discovered.

For
Your
Information

On The Lecture Tour...

Many of the local law schools and Bar Associations have requested our services as guest speakers on a variety of subjects within the field of personal injury. Most recently, William Jacobson, Esq. delivered two lectures at medical malpractice seminars for the Ohio State Bar Association and The Cleveland Bar Association in the field of Obstetrical malpractice.

Further, David M. Paris, Esq. was asked by the Cleveland Academy of Trial Lawyers and the Cleveland Bar Association to give lectures concerning trial practice and the Constitutionality of the recently passed Ohio Workers' Compensation Statute.

In addition, Richard Demsey, Esq. continues to teach the lawyering process as an adjunct professor of law at the Case Western Reserve University School of Law and as a guest lecturer in the trial advocacy program at the Cleveland-Marshall School of Law.

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