

THE NEWSLETTER OF

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Edition

Nurenberg Plevin

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

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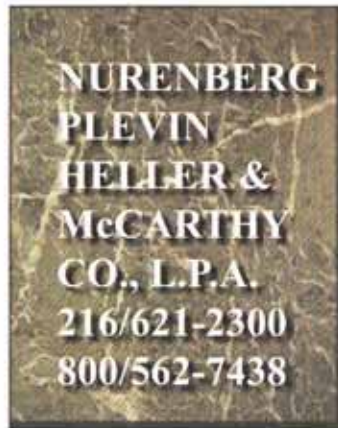
► ON APPEAL

Supreme Court
Upholds Class Action
Against State Farm
Details inside.

Helping
the injured
seek
justice since
1928.

This Year Your Vote Will Count

The future of your legal rights are at stake.



VOTE TO RE-ELECT AND ELECT

- JUSTICE Alice Robie Resnick
- JUDGE Timothy Black



Justice Alice
Robie Resnick



Judge
Timothy Black

This election year, two seats on the Ohio Supreme Court will be decided. YOUR VOTE IS IMPORTANT. Why? Because the Ohio Supreme Court is the final decision maker on issues that determine your individual legal rights in the tort system, including your rights to recover damages from those parties that have caused you injury and damage.

Over the last decade, the Ohio Supreme Court has struck down tort reform legislation which has been introduced and supported by business interest and insurance company lobbyists. The Ohio Supreme Court has been the people's protection against these special-interest groups. In order to keep this protection in place, it is essential that the most qualified candidates be elected to the Ohio Supreme Court.

Therefore, in response to many requests that we have received, we have, as your lawyers, evaluated the various candidates who are running for these two seats. Based upon this examination, we strongly recommend the election and re-election of the following judges on Election Day.

Justice Resnick and Judge Black are experienced and highly qualified judges who have a long record of fairness and respect for individual rights of the citizens of Ohio.

Justice Resnick was the fourth woman elected to statewide office in Ohio and the second elected to the Ohio Supreme Court when she won election in 1994. During her tenure as a Supreme Court Justice since 1994, Justice Resnick has participated in a number of decisions which have upheld your legal rights.

Judge Black, a graduate of Harvard University, has been a judge in the Cincinnati area since 1993. He has also been a leader in a number of local and statewide organizations which protect individual rights.

On November 7, 2000, we urge you, your family members and friends to go to the polls and **vote to re-elect Justice Alice Robie Resnick and elect Judge Timothy Black for the Ohio Supreme Court.** YOUR VOTE WILL COUNT as the future of your legal rights are at stake.

NPHM Representing Families of the Alaska Flight 261 Crash

The aviation section of NPHM continues to play a significant role in air crash litigation throughout the United States. On January 31, 2000, Alaska Airlines flight 261 operating as an MD-83 aircraft, crashed off the coast of California near Los Angeles killing all 83 passengers and 5 crew members. Soon after this tragedy, families of victims engaged the representation of Jamie R. Lebovitz, Esq. who heads the NPHM aviation team. The firm was eventually retained by nearly twenty percent of the passengers' families to pursue claims for wrongful death and pre-death pain and suffering against the airline, the airplane manufacturer (McDonnell Douglas) and other responsible parties.

Although the investigation into the crash of flight 261 is ongoing and is not expected to be finished for several months, NPHM has formed a team of experts in various fields, including aircraft design, metallurgical engineering and aircraft operations to help determine why this tragedy occurred. The Alaska litigation is pending before the Honorable Charles Legge in the United States District Court for the Northern District of California in San Francisco. Like most air crash disaster cases, we expect there to be a significant period of time devoted to the discovery phase (taking of depositions, reviewing vital documents) and thereafter a jury trial.

One of the objectives in bringing a lawsuit in an aircraft case is to

establish accountability on the part of the wrongdoers and in turn, force the corporate defendants to implement changes; for example to the design of an airplane, so as to prevent a similar disaster from occurring. In the USAir flight 427 litigation, NPHM together with other aviation lawyers established that the Boeing 737 airplane design had a dangerous flaw which could permit the rudder of the airplane to fail in flight and produce an uncontrollable flight situation and ultimately a crash. Because of the vigorous efforts and determination of NPHM and other aviation lawyers, major changes were made to 737 type aircraft so as to ensure that passengers would no longer be at risk of similar in flight dangers and death. Like the flight 427 case, the NPHM aviation lawyers will tirelessly work to uncover all of the problems which resulted in the crash of flight 261, and push for whatever changes are required to make certain that a similar disaster never occurs again.

Attorney Lebovitz and the aviation section are also representing families of the EgyptAir flight 990 and SwissAir flight 111 crashes, both of which occurred not long after take-off from New York's Kennedy Airport. Mr. Lebovitz has been appointed by the Courts to the plaintiffs steering committees in these cases.

Vehicular Cases Yield Settlements of \$185,000 and \$199,000

NPHM has represented the victims of vehicular accidents since the inception of the firm in 1928. It is and always has been one of the firm's most active practice areas. Jeffrey A. Leikin, Esq. currently heads litigation which involves the FELA (Federal Employers Liability Act). In this field, the firm has provided representation for injured members of the Transport Workers' Union (TWU) for over 50 years and thanks the Union and its members for continued confidence and trust in our office for representation of its membership.

Back Disability Aggravated results in \$185,000.

J. Charles Ruiz-Bueno, Esq. settled a case for \$185,000 for a gentleman who was hit in a crosswalk and dragged underneath a car. The client already suffered from a prior back disability. However, as the case was prosecuted, his prior disability was proven to be substantially aggravated by this incident.

Settlement of \$215,000 Due to Carpal Tunnel Injury.

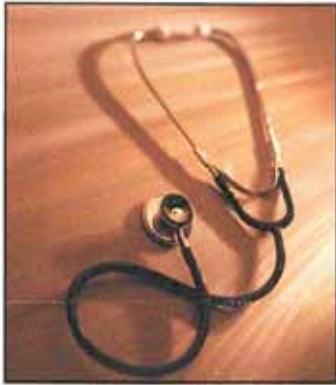
Jeffrey A. Leikin, Esq. also presented a FELA claim in which an injured carman was disabled due to a repetitive carpal tunnel injury. The railroad worker's injury was caused by the repetitive use of the railroad equipment and the failure of the railroad to provide a safe environment with shock absorbing and other safety tools. A settlement was achieved in excess of \$215,000.

Family Receives \$199,000 in Wrongful Death Case.

A family from the Cincinnati vicinity received \$199,000 as a result of the wrongful death of a 39 year old female. This one car accident occurred in the early hours of the morning after the decedent and her friend had been socializing in local taverns and restaurants. The driver of the vehicle, a friend of the decedent, lost control while operating at a high rate of speed and collided with a tree. Despite the fact that alcohol was a contributing cause of the accident and that the decedent was above the legal limit, Jeffrey A. Leikin, Esq. was able to settle this matter with the insurance company in the amount of \$199,000.

Claims Yield Million Dollar Results

The decision for a victim of medical negligence is a difficult one. It often times is troubling to think of proceeding in a legal action against a physician(s) or medical provider(s) with whom a victim has developed a long-term physician/patient relationship. Medical negligence, whether that be against a physician, hospital, nursing or rehabilitation facility, or involving the negligence of nurses, is another area of complex personal injury litigation in which NPHM has a long history of success.



Paraleptic Receives 1.3 Million.

Maurice Heller, Esq., and Jeffrey A. Leikin, Esq., represented a youthful 78 year old woman who had been admitted to Mt. Sinai Medical Center following an automobile accident. During the course of that hospitalization, her treating physicians failed to discover a thoracic spine fracture, which later collapsed leaving her paraplegic.

While the hospital and treating physicians argued that they had rendered proper care, it became obvious during the course of the litigation that the nursing staff had failed to communicate plaintiff's complaints concerning the loss of movement of her legs prior to the collapse of the thoracic spine fracture. Further, signs of the fracture were missed by hospital radiologists on her CT scans.

Shortly before trial, the insurance companies of the hospital and the attending physicians entered into a settlement for their policy limits of \$1.3 million dollars.

Death of 37 Year Old Results in 1.45 Million Settlement.

Thomas Mester, Esq. and William S. Jacobson, Esq. settled a medical malpractice claim shortly before the jury returned its verdict earlier this year. A 37 year old married man, father of four, had gone to an emergency room with chest pain and was admitted overnight for further testing. Two days later,

he died as a result of a ruptured aortic dissection, a condition extremely rare for his age group. The cardiologist and attending physician primarily responsible for this man's care, were insured by the PIE which had limited insurance coverage.

NPHM claimed that these and other defendants were negligent in failing to diagnose this medical condition clinically, and additionally, that they had misread x-rays which should have lead to the correct diagnosis. The defendants responded that the x-rays were normal and that the condition was so rare in persons under 50 years of age that it was statistically nonexistent, making the condition impossible to diagnose clinically.

Trial in this case began in Summit County, Ohio, and lasted for eight days before the case was settled for \$1.45 million dollars.

his upper airway collapsed because of swelling around his neck, where he had some liposuction performed. The anesthesiologist and his assistant repeatedly tried to re-intubate him but were unsuccessful because of the upper airway swelling. Before an emergency tracheostomy could be performed, our client suffered severe brain damage and died shortly thereafter.

Mr. Jacobson retained the services of medical experts who opined that the surgeon should have been called earlier because the anesthesiologist was not experienced in creating an emergency surgical airway. The anesthesiologist argued that his treatment was in compliance with the standard of care and that the surgeon was called promptly. Despite this defense, the anesthesiologist's insurance company paid \$910,000 to settle this claim.

OTHER SIGNIFICANT RECOVERIES

Leon Plevin, Esq. and Harlan Gordon, Esq. represented a woman who had noticed what appeared to be a wart on the bottom of her foot. Despite seeing a podiatrist, this condition remained untreated for two years. The treating podiatrist never took a biopsy. It was finally discovered that this "wart" was an undiagnosed melanoma and cancerous. A recovery of \$900,000 was achieved.

William Jacobson, Esq. represented the family of a 35 year old married woman in a wrongful death/medical malpractice claim. This 35 year old client had fractured her ankle outside of her home on some ice and had gone to the emergency room for treatment. She was misdiagnosed, released and died the next day of a pulmonary embolism. The parties reached a recovery of \$750,000.

Thomas Mester, Esq. and Ellen McCarthy, Esq. obtained a \$385,000 recovery for a 45 year old male who was misdiagnosed at an emergency room for a small bowel obstruction. It was plaintiff's contention that the small bowel obstruction should have been diagnosed and treated when plaintiff originally presented at the emergency room for a local hospital. The emergency room physician was a PIE insured with limited insurance coverage.

Emergency Room Physician's Misdiagnosis Results in Wrongful Death.

Leon Plevin, Esq. and David M. Paris, Esq. represented the family of a 21 year old man who reported to the emergency room of a local hospital complaining of fever, headaches and chills. This young man had a history of spinal meningitis two years previously. The

emergency room physician diagnosed his condition as a viral syndrome and sent him home leaving his bacterial infection untreated. Six hours later our client was rushed back to the hospital where he experienced overwhelming septic shock and his life was unable to be saved. Had antibiotics been given in the emergency room, this young man would have survived. A settlement of \$900,000 was obtained.

Anesthesiologist Pays \$910,000 for Settlement of Death Claim.

William Jacobson, Esq., represented a 36 year old single man, who had gone to Cincinnati, Ohio to have some plastic surgery performed by a surgeon he had met on the internet. The surgery went well, but after he was extubated,

Ohio Supreme Court Unanimously Rules

Class Action May Proceed Against State Farm for Deceptive Tactics

NPHM is actively involved in class action litigation having represented clients against oil companies, the insurance industry, lending institutions and the automobile industry. Most recently, the Ohio Supreme Court affirmed certification of a class of approximately 1.4 million policy holders of the State Farm Mutual Automobile Insurance Company.

On May 24, 2000, the Ohio Supreme Court ruled in favor of policyholders who had sued State Farm in a Class Action for deceptive practices. David M. Paris, Esq., Kathleen J. St. John, Esq. and Lawrence A. Sutter, Esq. represent the class of policyholders in this case. Mr. and Mrs. Baughman had uninsured motorist (UM) coverage through five separate motor vehicle insurance policies with State Farm. From the time the policies were originally purchased until October 5, 1994, it was necessary for policyholders to purchase UM coverage under each policy to ensure coverage for themselves and resident relatives who were in collisions while in any household cars. On

October 5, 1994, however, the Ohio Supreme Court issued an opinion that changed Ohio insurance law. The Court's decision in *Martin v. Midwestern Group Ins. Co.* made purchasing UM coverage under multiple policies unnecessary. In other words, from October 5, 1994 until the law was changed back on September 2, 1997, premiums for UM coverage only needed to be paid on one household car (instead of on all household cars) in order to afford protection to all family members living in the home. This would have resulted in substantial savings to policyholders without reducing insurance protection. Nonetheless, State Farm refused to disclose this information to its policyholders and continued to collect UM premiums from the Baughmans and all 1.4 million Ohio policyholders similarly situated. Although State Farm has thus far failed to disclose the amount of premiums it collected as a result of this conduct, it is estimated to be in excess of \$150,000,000.

Premises
and
Products
Liability

Employer Pays 2 Million for Electrical Injuries

David M. Paris, Esq. and Thomas Mester, Esq. represented the family of a factory maintenance worker who sustained a mild brain injury at work. The factory where he worked used a large industrial furnace to harden manufactured parts. The furnace, installed at the plant in 1978, was maintained by factory workers. Its 5000 volt electrical ignition system had been improperly altered by factory employees so that the original heavy gauge wiring was replaced with 600 volt motor wire which was left hanging out of uncovered electrical junction boxes. The plant supervisors were aware of this condition. NPHM's client received an electrical shock which stopped his heart while he was sweeping up dirt around the furnace as directed by his supervisor. Testimony by defendant's own employees as well as industrial experts were instrumental in bringing about the 2 million dollar settlement shortly before trial.

Surveyor Killed in Construction Tragedy Receives \$950,000

On the eve of trial, the parents and siblings of a 32 year old surveyor settled their wrongful death claim of \$950,000, when he was killed in a construction accident. The case was handled by David M. Paris, Esq. At the time of his death, our client was part of a survey crew which had a subcontract to stake out new alignment for RTA train tracks that were being reconstructed by a track reconstruction company. It was learned during the course of the litigation that the project had been running late requiring the construction crews to operate heavy construction equipment, such as tie cranes, on the train tracks while the survey crews were performing their tasks on the same tracks. No flag man existed in the area to alert workers of oncoming trains or tie cranes; no radio communication existed between the survey crew and the contractors to alert them of oncoming trains or tie cranes; and the operator of the tie crane had piled railroad ties so high on his cart that his forward view of the tracks (and our client) was obstructed. A computer animation of this accident demonstrated that our client saw an approaching train, on an adjacent track, and stepped back to avoid it into the path of an oncoming tie crane which struck him and killed him.

OTHER SETTLEMENTS

Richard L. Demsey, Esq. recently settled two product liability cases. The first involved injuries to two persons utilizing an allegedly defective portable heater intended for outdoor camping (\$450,000). The second case involved a finger injury to a worker who was using a large punch press at his place of employment (\$100,000).

David M. Paris, Esq. settled a case for a welder who lost the tips of five fingers after being burned by hydrofluoric acid. At the time of his injury, our client was hired by a contractor to clean and reline a 4000 gallon acid tank. He was told to clean this tank without the requirement of wearing a rubber acid suit. The settlement amount was \$650,000.

Leon Plevin, Esq. and Jonathan Mester, Esq. obtained a \$200,000 settlement on behalf of a female client who fell in a parking lot in Geauga County, Ohio. This woman fell as she stepped into a hole on the way back to her car after completing shopping.

“Communications were not established between the survey and construction crews to alert each other of oncoming trains or heavy equipment.”

Robert S. Zeller

New Head of Workers' Compensation Department

Robert S. Zeller, Esq. has been named the new head of the Workers' Compensation Department at the firm. Most of you probably are familiar with Bob since he has worked with NPHM for the past sixteen years, restricting his practice to workers' compensation law. In the past, Mr. Zeller has handled your workers' compensation hearings, specific safety violations and workers' compensation litigation. He will now add to his duties the administrative end of running the department.

Mr. Zeller is a local Clevelander having received both his Bachelor of Arts Degree and Juris Doctor from Cleveland State University. He is currently admitted to the Ohio Bar, U.S. Supreme Court, U.S. Court of Appeals for the Sixth Circuit and U.S. District Court for the Northern District of Ohio. Mr. Zeller resides in Hudson, Ohio.

Continuing to work in the department are Carla Reznik and Kathy Baraga who have been with NPHM for 4 years and 6 years respectively.



Robert S. Zeller



Andrew R. Young



William Brendan Morris

Young and Morris Join NPHM

Andrew R. Young, Esq. and William Brendan Morris, Esq. have joined NPHM as associate attorneys. Mr. Young will limit his practice to personal injury, admiralty and maritime accidents, products liability, medical malpractice and wrongful death claims. Mr. Morris will work in the workers' compensation department and limit his practice to workers' compensation law.

Andrew Young, Esq., was born in the Sandusky area. He comes to NPHM having served as staff attorney to Congressman Dennis J. Kucinich in Washington, D.C. Mr. Young received his Bachelor of Arts Degree from Ohio Wesleyan University and his Juris Doctor from Case Western Reserve School of Law. He currently resides in Cleveland, Ohio.

William Brendan Morris, Esq., has lived his entire life within the Cleveland area. He obtained his Bachelor of Arts Degree from Baldwin-Wallace College where he graduated Cum Laude in 1991 and his Juris Doctor from Cleveland State University. He is currently admitted to the Ohio Bar and the U.S. District Court for the Northern District of Ohio. Prior to coming to NPHM, Mr. Morris practiced five years in the field of workers' compensation law for both claimants and employers. He currently resides in Fairview Park, Ohio.

Two NPHM Attorneys Sworn in as Officers of CATA

David M. Paris

David M. Paris, Esq. was sworn in as Vice-President of the Cleveland Academy of Trial Attorneys in June, 2000. Mr. Paris has been on the Board of Directors of the organization for over six years and most recently served as secretary of CATA.

Ellen M. McCarthy

Ellen M. McCarthy, Esq. was sworn in as a Director of the Cleveland Academy of Trial Attorneys. Ms. McCarthy also serves currently as a Director of the Womens City Club, a position she was elected to this year.

OUR ATTORNEYS

Marshall I. Nurenberg

Leon M. Plevin

Maurice L. Heller

John J. McCarthy

Thomas Mester

Harlan M. Gordon

David M. Paris

Richard L. Demsey

Jamie R. Lebovitz

William S. Jacobson

Jeffrey A. Leikin

Robert S. Zeller

Ellen M. McCarthy

J. Charles Ruiz-Bueno

Kathleen J. St. John

Jonathan D. Mester

Brenda Johnson

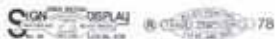
Andrew R. Young

William Brendan Morris

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Workers' Compensation

What You Should Know About Workers' Compensation

Did you know that you may be entitled to workers' compensation benefits even when you fail to lose any time from work for an on-the-job injury?

Yes. This is true. What many injured workers may not realize is that even though you are able to successfully return to work within a day or within a few days following an injury, you still may receive workers' compensation benefits in the form of a permanent partial impairment award. Permanent partial impairment awards compensate the injured workers for ongoing physical or mental impairments associated within on-the-job injury regardless of whether that injured worker had lost any time.

For more details regarding your entitlement to a permanent partial impairment award contact our workers' compensation attorneys, Robert Zeller, Esq., and William Brendan Morris, Esq.

In Other Areas

Settlement Made in Alleged Insurance Fraud Case

**"...the widow's
money was recovered
in full, together with
interest..."**

In other areas of litigation, Richard L. Demsey, Esq. settled a noteworthy case involving alleged fraud by an agent in the sale of two life insurance policies and two annuities. The widow paid nearly \$300,000 in up-front cash for these policies. The agent took nearly \$25,000- \$30,000 in commissions. The widow was "Rated" (not expected to live much longer) and therefore, the agent had difficulty obtaining a policy of life insurance despite trying to do so from numerous companies. At the same time, the agent sold the widow an annuity where she would not break even unless she lived a minimum of eleven years and clearly beyond her life expectancy! Through the efforts of Mr. Demsey, the widow's monies were recovered in full, together with interest at a very favorable rate.