

NURENBERG PLEVIN

Attorneys At Law • Since 1928

NURENBERG PLEVIN HELLER & MCCARTHY

CO., L.P.A.

The Nurenberg Plevin Law Firm has been representing individuals and their families 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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Harlan M. Gordon
Richard L. Demsey
Jamie R. Lebovitz
William S. Jacobson
Jeffrey A. Leikin
Ellen M. McCarthy
Kathleen J. St. John

President Emeritus
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Baycol Death Results In \$2.1 Million Settlement

David M. Paris represented the family of a 54 year old woman who died of drug induced liver failure after not being properly monitored for her usage of the cholesterol-lowering drug Baycol. The woman was being treated with Baycol for high cholesterol by her primary care physician. The Physician's Desk Reference (PDR) – a text commonly referred to by physicians to obtain critical information on prescription drugs – recommends baseline liver function studies prior to placing the patient on the drug, then monitoring the liver function 6 weeks later and then 12 weeks later, followed by every 6 months thereafter. The woman's liver function studies for the first 3 tests were normal. Six months later, the patient missed her follow-up exam and in that interim was placed on other medications by a health care professional for unrelated problems. Four months later, her Baycol prescription ran out. She called her family doctor, who renewed the prescription without first performing the liver function tests, even though 10 months had elapsed since the last one.

Four months later, the woman awoke jaundiced and in liver failure. She passed away 13 weeks later waiting for a liver transplant. The plaintiff's experts testified that the family physician was negligent in failing to perform the liver testing timely, and that had the tests been performed before the prescription was renewed, they would have been abnormal prompting a reversal of her condition. Defendant's expert argued that, although this was probably a drug-induced liver failure, no one could state with any certainty which drug or combination of drugs were responsible, or what her liver enzymes would have been if tested before her prescription was renewed. The case settled before trial for \$2.1 million. The woman was survived by her husband and 2 adult children.

The Barbara J. Wilkinson "Adopt A Family" Memorial



For the 5th year in a row, the staff and attorneys at Nurenberg, Plevin are "adopting a family" for the holidays through the American Cancer Society. The tradition actually began seven years ago, when Barb Wilkinson, our former office manager, and Tamara Brininger, one of

our paralegals, decided to find a family that needed extra support for the holidays by working with a local charity. The attorneys and staff agreed that this was a wonderful idea, and year after year they have embraced this project.

In 1997, Barb was diagnosed with a rare form of cancer, to which she would eventually succumb in April of the following year. Barb was a remarkable woman. Starting at the firm as a "girl friday" at the age of 19, she worked her way up to Office Manager – a position she would hold for more than 20 years. Her energy, knowledge, and dedication to the job were equally boundless. She could balance the books, run the docket department, provide moral and practical support to the attorneys, and counsel and advise the staff – all with equal cheerfulness and finesse. Her days started early, conferring with then-managing partner Leon Plevin at 7:00 a.m. to discuss numerous administrative details. She acted as friend and mentor to many of our staff, and everyone at the firm was part of her extended family.

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Jury Awards \$750,000 For Injuries Due To Sponge Left In Abdomen

Thomas Mester represented a 59 year old man who developed a severe abdominal infection after 2 laparotomy pads ("lap pads") were left in his abdomen following surgery. The man had undergone surgery for removal of his right kidney and a portion of his left. Due to extensive bleeding, the surgeon applied lap pads to control the bleeding. After surgery, a sponge count was performed to determine whether any materials were left behind in the patient. Although it was discovered that one or more lap pads were unaccounted for, the operating surgeon elected not to remove the lap pads at that time. Six days later, when the surgeon performed further surgery to remove the lap pads, the patient's condition had deteriorated to the point that he was in septic shock. As a result of this incident, the patient had to have two additional surgeries, one to address an infected hematoma in the area where the lap pads were removed, another for drainage of an intra-abdominal abscess. Following these surgeries, the patient recovered, sustaining no permanent injuries as a result of this incident.

The case was tried to a jury for six days in October of 2003. The plaintiffs' experts testified that the surgeon was negligent in leaving the lap pads in the patient's abdomen and/or in not performing surgery earlier to remove them. The defense argued that the surgeon had intentionally left the lap pads in for the purpose of preventing bleeding, that his doing so was not improper, and that the lap pads were not the source of the patient's infection. The jury returned a verdict in favor of the plaintiffs totaling \$750,000. Of this amount, \$500,000 was awarded to the patient, and \$250,000 was awarded to his wife on her loss of services claim.

Failure To Diagnose Tumor Results In \$900,000 Settlement

Ellen M. McCarthy represented the family of a 2½ year old child who came to her pediatrician with complaints of difficulty breathing and a cough. The child was diagnosed with croup and sent home with medication. She continued to have difficulty breathing and was brought to the Emergency Room ("ER") five days later where a chest film was taken. The film was read as pneumonia by the ER physician and the radiologist. The child was sent home with medication and the parents were told to follow up with her pediatrician if she did not improve. Two days later, she presented to the ER again with significant difficulty breathing. She died later that day from asphyxia, caused by a tumor compressing her esophagus.

It was the plaintiffs' expert witness's opinion that the tumor compressing the child's esophagus could be seen on the chest film,

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That first holiday season after Barb's death, Tamara Bringer continued the tradition of "Adopting a Family," and dedicated the project to the memory of Barb Wilkinson. It seemed appropriate to adopt a family who was struggling due to cancer. Tamara has worked with the American Cancer Society each year to find a family, who has a mother, father or child that is battling cancer, and who otherwise would not be able to enjoy the holiday season. The Nurenberg, Plevin family collects gifts and money for them in the hope that our adopted family will be able to celebrate one more holiday season together. With the generous support of our Nurenberg, Plevin family we hope to be able to continue to share Barb's legacy for many years to come.



and that the ER doctor and radiologist negligently misread the chest film. The plaintiffs' expert witness also gave his opinion that if the film had been properly interpreted, aggressive treatment could have been started and the child would have survived. The plaintiffs settled with radiologist and the hospital that employed the ER doctor for \$900,000. It is unclear what defense the defendants would have offered had the case not settled, as the settlement occurred before the defendants' expert witness reports were due.

NOTE TO OUR READERS

Nurenberg Plevin has prepared this newsletter for its many friends, clients and colleagues worldwide. 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 Plevin 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 licensed to practice in Ohio, California, Colorado, New York and Pennsylvania and with the assistance of local counsel, the firm's members practice and are admitted in courts across the United States. In preparing and disseminating this newsletter, Nurenberg Plevin 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 Plevin 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.



Photograph by Nannette Bedway Studio

Wishing you and yours a peaceful

Fatal Accident Caused By Dump Truck Driver Results In \$2.5 Million Recovery



David M. Paris and Kathleen J. St. John represented the family of a 69 year old grandmother and two grandchildren who were killed, and one grandchild who was injured, in a motor vehicle collision caused by the driver of a dump truck. This tragic incident occurred on a Saturday morning when the grandmother was driving the three children to athletic activities. The defendant's dump truck driver failed to stop at a red light, broadsiding the grandmother's vehicle, and causing it to plummet into a ravine. The grandmother and two of the children were killed instantly. The third child sustained forehead lacerations.

Numerous family members were tragically affected by this calamity. The most horrendous loss was suffered by the mother of the three children, who lost two of her minor children and her mother, and had to cope with the injury and trauma experienced by her youngest child. Serious loss was also sustained by the grandmother's six other adult children, all of whom were close to her, as well as by the minor child who survived this crash, and the minor children's father, who was divorced from the children's mother.

The employer of the dump truck driver only had \$2 million in liability insurance. Although the entire \$2 million was paid in settlement, this amount was insufficient to pay for the claims of the numerous survivors. Therefore, claims were successfully made against the insurers of five of the grandmother's children who carried underinsured motorist coverage. Additionally, of the *Scott-Pontzer* claims made against several of the adult children's employer's policies, two settled without dispute as to coverage.

Why You Should Purchase Uninsured/Underinsured Motorist Coverage

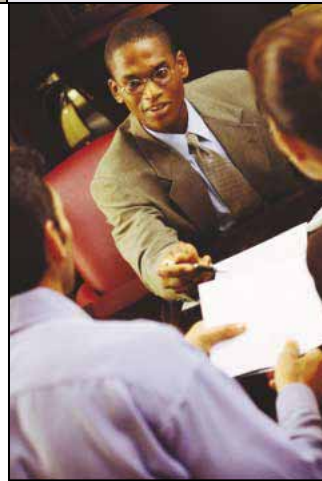
We live in a time when "survival of the fittest" is the name of the game. If you don't protect yourself, you may find that no one else will—even if they're legally required to.

Take automobile insurance. Ohio has had financial responsibility laws on the books for many years. These laws require all Ohio motorists to obtain automobile liability insurance in a minimum amount of \$12,500 per person or \$25,000 per accident, or to self-insure through a financial responsibility bond or other statutorily-approved means.

But what if the driver who hits you hasn't complied with the law and is driving uninsured? Or what if you sustain serious or catastrophic injuries that result in financial loss to you in far greater amounts than the \$12,500 minimum liability limits of the other driver?

In these instances, assuming the other driver does not have a hidden fortune that can be recovered through a lawsuit, the only way you can protect yourself is by purchasing uninsured/underinsured motorist coverage ("UM").

Up until October 31, 2001, Ohio's UM statute required all insurance companies to offer UM coverage in every automobile liability policy sold to Ohio motorists. However, in an effort to defeat consumer-friendly decisions of the Ohio Supreme Court, the legislature amended that statute so that the insurance companies no longer have to offer this coverage to you—though, of course, they will still sell it to you if you request it.

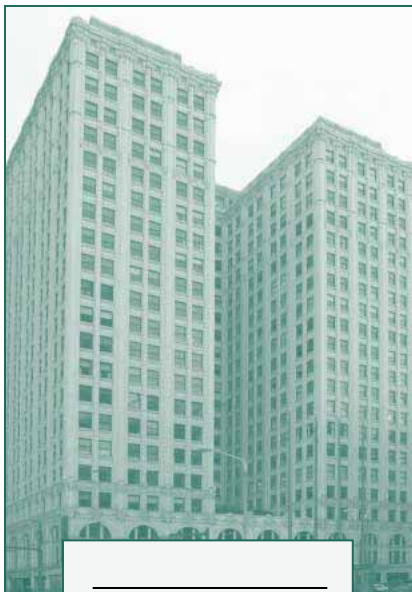


As a driver purchasing an automobile liability policy you should purchase UM in the highest amount you can afford. If you only purchase \$12,500 in UM, you will only be able to access that amount if the other driver has less than \$12,500 in liability insurance available to you. On the other hand, if you purchase \$100,000 in UM, and the at-fault driver has liability coverage of \$12,500, then you will be able to recover the \$12,500 from that other driver and up to \$87,500 from your own UM policy.

Some people ask why they need UM coverage if they have good health insurance. The answer is that health insurance only covers medical bills—and probably only a portion of those after paying a deductible. "Damages" from an accident, however, include more than just medical bills—they include lost wages, loss of earning capacity, pain and suffering, and loss of the ability to do or to enjoy things you can no longer do because of the accident. Also, health insurance does not help your family if you are killed by an uninsured driver.

UM is especially important for motorcyclists to carry. It may be a little more expensive, as the risks motorcyclists face are greater than those faced by other motorists. But the expense is worth it if—God forbid—you're hit by an uninsured or underinsured motorist.

Call your insurance agent now. Ask him or her to verify in writing that you have UM coverage, and, if you don't, ask that you be covered immediately.



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Our Attorneys In The News



Nurenberg, Plevin is pleased to announce the recent hiring of attorney Edward FitzGerald. Mr. FitzGerald comes to us from the Cuyahoga County Prosecutor's Office where he litigated cases as an Assistant Prosecuting Attorney for the past four years. Prior to that, he served as a Special Agent with the Federal Bureau of Investigation and as an Aide in the United States House of Representatives. In addition to his law practice, Mr. FitzGerald is a Councilman, At-Large, for the City of Lakewood and was recently voted Council President.

Mr. FitzGerald's practice will focus on litigation, including automobile collisions, premises liability, workplace injuries, products liability, and medical malpractice.



Attorney Andrew R. Young was recently elected Councilman, At-Large, for the City of North Ridgeville. An associate with Nurenberg, Plevin since May of 2001, he has previously served as a Precinct Committee Person in North Ridgeville, and as a member of North Ridgeville's Planning Commission.

Mr. Young was also appointed by United States District Judge James Carr to serve as a member of the Merit Selection Committee. This committee was created to select a new Magistrate Judge for the United States District Court, Northern District of Ohio. The committee's task was recently completed and its selection is expected to be announced soon.

Seasonal Safety Tips

Household fires and carbon monoxide poisoning claim hundreds of lives each year. We want you all to have a happy and safe holiday season, so we're passing on these seasonal safety tips from the Consumer Product Safety Commission and Underwriters Laboratories:

- Have your heating and air conditioning systems inspected and serviced yearly.
- Have your chimneys swept every year.
- Install smoke and carbon monoxide detectors in your home that meet current industry standards, and check them regularly. Install at least one of each on every floor of your home, and change the batteries every six months. (Tip: Replace the batteries in these units when you change your clocks for daylight savings time).
- Make sure your family knows what the smoke and carbon monoxide alarms sound like. Also, develop and practice a fire escape plan with your family.
- Never burn charcoal inside your home or your garage. Never operate an unvented fuel burning appliance (such as a kerosene space heater) in a closed room, and never use your gas range, oven or dryer to heat your house. Also, never use portable fuel-burning camping equipment inside a home, garage, vehicle or tent.
- Follow the safety and operating instructions on all your home appliances. If the appliance isn't working correctly, don't use it until you've had it checked and repaired.

For additional information and safety tips, contact:

Consumer Product Safety Commission
Website: www.cpsc.gov
Consumer safety hotline: (800) 638-2772
Underwriters Laboratories, Inc.
Website: www.ul.com
Customer service hotline:
(877) ULHELPS (854-3577)

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