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- Construction Site Accidents
- Workers Compensation
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Ohio Supreme Court Seats Up for Election



Judge C. Ellen Connally



Judge Nancy Fuerst



Judge William O'Neill



Justice Paul E. Pfeifer

NPHM Endorses These Candidates

This November, more than ever before, YOUR VOTE IS IMPORTANT. On November 2nd, there are four seats on the Ohio Supreme Court that your vote will decide. The position of Chief Justice is up for election, as well as three Associate Justice seats. Voting in these four races is highly important to protecting your legal rights. The Ohio Supreme Court is the final decision maker on issues that determine your individual legal rights, including your right to recover damages from parties that have caused you injury.

The following candidates are *highly qualified* and have *records for fairness and respect* for individual rights of Ohio workers and consumers. *We highly recommend that you vote for these four candidates.*

Judge C. Ellen Connally

Judge C. Ellen Connally is a candidate for Chief Justice of the Ohio Supreme Court. If elected, she will be the first woman to serve in this position. Judge Connally has a long and esteemed career on the bench. After serving as a law clerk in the Court of Appeals, and as a Referee in the Probate Court, Judge Connally was elected Judge of the Cleveland Municipal Court in 1980. She served in this position for 24 years, until her retirement in 2004. Judge Connally's academic record is also impressive. She has a bachelor's degree from Bowling Green State University, a law degree from Cleveland Marshall College of Law, and a Master's in History from Cleveland State University. She is expecting to complete a Ph.D. in History from the University of Akron in 2005, and has published several articles in historical journals.

A lifelong resident of Cleveland, Judge Connally is the mother of one son, Seth, a Marine Corporal on active duty in Iraq. Judge Connally has been active in numerous organizations, including the Northern Ohio Municipal Judges Association, the Ohio Judicial College, the City of Cleveland's

Fair Campaign Finance Commission, the Youth Violence Committee of the Task Force on Violent Crime, and the Mayor's Advisory Committee for Gang Violence. She currently sits on the board of CAAA ("Community Action Against Addiction"), is Vice President for Traffic Safety for the Greater Cleveland Safety Court, and is a member of the Board of Trustees for the Cleveland Public Theater.

If elected, Judge Connally will bring to the Court her long years of judicial experience, academic excellence, and strong sense of public service.

Judge Nancy Fuerst

Judge Nancy Fuerst, who is running for Associate Justice of the Ohio Supreme Court, has been a judge on the Cuyahoga County Court of Common Pleas since 1997. During that time, she has personally disposed of more than 9,300 combined civil and felony criminal cases, and her docket is one of the most current on the Court. Judge Fuerst's personal and work history is rich and varied. In the early 1980's as a single parent, she returned to school full-time, receiving a B.A. in Economics (with honors) from Cleveland State University, and a law degree (with honors) from Cleveland Marshall College of Law. After law school, she worked as a judicial law clerk in the U.S. District Court, then in private practice for several years before being elected to the common pleas bench.

Judge Fuerst is married to economist John Burke, and has 6 children, 4 stepchildren, and is also a grandmother. Judge Fuerst comes from a strong family tradition of public service. Her father, Judge Norman A. Fuerst, served on the Ohio Legislature in the 1950's, and has been a judge since 1960. Her cousin, Gerald Fuerst, has been the Cuyahoga County Clerk of Courts since 1975. Judge Nancy Fuerst has been a speaker at judicial functions,

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Amtrak City of New Orleans Passenger Train Cases Resolved for over \$21 Million Dollars¹

On March 15, 1999, at 8:03 p.m., an Amtrak passenger train left Chicago, Illinois, heading southbound with a final destination of New Orleans, Louisiana. This train, known as the "City of New Orleans," carried 206 passengers and 23 crew members. It consisted of two locomotives pulling fourteen cars, and was operating on tracks owned and maintained by the Illinois Central Railroad Company.

At around 9:46 p.m, the City of New Orleans entered the village of Bourbonnais, Illinois. The Birmingham Steel Company plant is located in Bourbonnais, adjacent to the train tracks. A road running away from the Birmingham Steel plant intersects the tracks. The traffic at this crossing is controlled by a warning system consisting of gates and signals. This warning system is designed to activate at least 30 seconds before any train's arrival at the crossing to prevent any vehicular traffic from entering the path of an oncoming train. Illinois Central is responsible for maintaining this warning system.

Around the time the City of New Orleans was entering the village of Bourbonnais, a tractor trailer truck, owned and operated by Melco Transfer, Inc., was leaving the Birmingham Steel plant. The truck, driven by John Stokes, was carrying close to 400 steel reinforcing ("rebar") bars. These sixty foot long rods overhung seven feet from the rear of the trailer. As the truck, heading eastbound, began to traverse the crossing, the City of New Orleans, heading southbound, approached the crossing at 79 m.p.h.

Just as the tractor trailer was part way through the crossing, the Amtrak train violently struck it, hitting the trailer's rearmost axle on the left side. This caused both locomotives, and 11 of the 14 passenger cars, to derail. The first six cars of the train, including a sleeper car, piled together and came to rest near one of the locomotives. A fire erupted as a result of a ruptured fuel tank in one of the locomotives. The fire spread and engulfed the sleeper car where many of the passengers were trapped. Eleven of the passengers in the sleeper car were unable to escape the raging fire, and died as a result of thermal injuries and inhalation of toxic fumes.

Immediately after the crash, rescue, fire, and other personnel came upon the horrific scene and discovered that while many of the passengers escaped with minor injuries, others were not as fortunate. In the early morning hours and days following the crash, teams of National Transportation Safety Board ("NTSB" investigators), Illinois State Police, and other governmental personnel combed through the wreckage and crossing area to begin the difficult task of determining the causes of this calamity.

As is the case with other major transportation accidents, the potentially responsible parties (Amtrak, Illinois Central, and



Melco Transfer) each focused on finding evidence to exonerate themselves and implicate the others. Amtrak blamed the truck driver for failing to stop at the crossing and await the passing of the train. Amtrak and Illinois Central both believed the gate and signal crossing system were functioning properly and that the truck "drove around" the gates. Amtrak also took the position that its train engineer, Angel Flores, did "everything he could" to avoid the collision. Amtrak claimed that Flores had applied the train's brakes to minimize the force of the collision.

Melco Transfer believed that its driver operated its vehicle in an appropriate manner and that the truck entered the crossing while the gates were still up and before the signals were activated. Melco Transfer argued that it was not until the truck was nearly on the tracks that the lights activated and halfway across the tracks when the gates began to lower.

Eyewitnesses to the accident corroborated Melco Transfer's position. Nevertheless, Amtrak and Illinois Central attempted to discredit these witnesses, and to convince the government investigators that the fault lay with the truck driver.

Many of the victims and their survivors filed lawsuits against Amtrak, Illinois Central, and Melco Transfer in both state and federal courts in Chicago, Illinois. As with all mass disaster litigation, the lawsuits were consolidated before a single judge in both the Cook County State Court and the Federal Court. Judge Matthew Kennelly presided over the consolidated actions in federal court; Judge Timothy Evans presided over the consolidated actions in state court.

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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.

Railroad Crash Litigation

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Attorneys **Jamie R. Lebovitz** and **David M. Paris** of the **Nurenberg, Plevin Law Firm** were two of just a handful of lawyers from around the United States appointed by Judges Evans and Kennelly as members of a Steering Committee to conduct the litigation on behalf of the victims and their families. **Lebovitz** is among the few air crash and railroad accident attorneys in the United States who is regularly court-appointed to Steering Committees that represent the victims of such disasters.

Over the next five years, Lebovitz, Paris, and their colleagues in the Amtrak City of New Orleans litigation used a vast amount of resources to discover and identify the evidence that would answer the many complex questions raised by this train crash. The litigation was complicated by the fact that Melco Transfer carried only 1 million dollars in liability insurance – a wholly inadequate amount to remedy the losses of so many victims. As such, it was imperative for the lawyers representing the families to prove that the greater percentage of fault fell on the shoulders of Amtrak and Illinois Central so as to maximize the recovery for the families and the survivors.

The litigation was hard-fought, with pretrial preparation involving numerous battles. Lebovitz, Paris, and their colleagues took scores of depositions – of eyewitnesses, train engineers, signal maintainers, supervisors, and other personnel from Amtrak and Illinois Central. Thousands of pages of documents were produced which provided key information and evidence implicating Amtrak and Illinois Central's wrongdoing. The lawyers for the families and victims retained numerous expert witnesses in the fields of accident reconstruction, train engineering, procedures and training for passenger operations, gate crossing signal maintenance, forensic medicine, and other areas.



During the course of the litigation, the government investigators concluded their respective investigations, with contrary findings. The NTSB concluded the accident was

the result of the truck driver's inappropriate response to the grade crossing warning devices and driver fatigue. The Illinois State Police, on the other hand, concluded that the gates and signal systems failed to operate and provide the appropriate advance warning interval, and that the gates descended onto the truck's trailer well after the truck had entered the crossing. Neither the NTSB nor the Illinois State Police addressed the issue of whether the train engineer failed to take appropriate evasive action to avoid the collision.

Despite the conflicting findings of the governmental investigators (most of which are not admissible in a civil trial), the attorneys for the victims and their families developed extensive and compelling evidence of Amtrak's and Illinois Central's misconduct leading to this crash. The following lists only some of the facts that were revealed during discovery which were relied upon by the lawyers and their experts in preparing the cases for trial:

- The gates and signals at the Bourbonnais crossing were not properly configured to activate and provide the appropriate warning interval for vehicles approaching the crossing when a passenger train was near.
- Illinois Central knew that the gates and signals at the Bourbonnais crossing were malfunctioning on occasions prior to the crash, but failed to take any steps to repair the system.
- Although Amtrak engineer Angel Flores testified at his deposition and before a panel of NTSB investigators that when he saw the tractor trailer in the crossing ahead of him, he applied the train's emergency brakes, **THIS WAS NOT TRUE**. The Event Data Recorder system "Black Box" (which is contained on the locomotive) revealed that at no time prior to the collision did the engineer activate the emergency brakes. In fact, the train continued to travel at the maximum speed of 79 m.p.h. for a distance of 1/4 mile until impact, and it was only because of the impact that the emergency brakes automatically engaged.



- Amtrak failed to provide any type of training or procedures to its engineers as to what actions are to be taken in situations when engineers believe a collision with a vehicle in their path is imminent, despite a long history of similar accidents.
- Had the Amtrak engineer timely and properly applied the emergency brakes, the train would have slowed sufficiently to avoid striking the truck and thus to avoid causing the substantial loss of life and injuries that occurred.

The trial of the actions consolidated in federal court was set to begin in May 2004. Shortly before trial, the defendants, knowing how strong the victims' case was, aggressively engaged the lawyers for the victims and their families in settlement discussions. The week prior to trial, numerous pretrial motions had been filed with the district court, and the rulings from the court spelled serious problems for the defense. Through the efforts of one of the Nurenberg, Plevin Law firm's legal scholars, **Brenda M. Johnson**, the lawyers for the families were successful in preventing the defense from introducing prejudicial testimony, and in obtaining a favorable ruling of first impression in the United States concerning Amtrak's failure to provide proper procedures for operating passenger trains in like circumstances.

The families of the dead and the surviving passengers were determined to publically expose the wrongs committed by the defendants, in the hope that their efforts would prevent future catastrophes. Since the conclusions reached by the NTSB and the Illinois State Police were conflicting, it was the resourcefulness of the lawyers, and the patience and persistence of the families, that finally brought to light Amtrak's and Illinois Central's misdeeds and held them accountable.



Automobile Collision Causing Quadriplegia Results in \$2,525,000 Recovery

Thomas Mester represented a 38 year old husband and father of two who became a quadriplegic as the result of a two-car collision. As the incident occurred in the summer of 1994, but was only fully resolved this past year, this case is a good example of the hard work and tireless efforts that are often needed in order to get a satisfactory recovery for our clients.

The accident occurred at an intersection on a Sunday around noon. The other driver, who was turning left at the intersection, failed to yield to our client who had the right of way. Although the other driver escaped with minor injuries, our client suffered a cervical fracture which caused him to become a quadriplegic. Unfortunately, the other driver had only \$25,000 in liability insurance and no other significant assets. Our client had only \$50,000 in underinsured motorist coverage (which meant he recovered \$25,000 from his own policy – the difference between his policy limits and what the defendant’s insurance paid).

Fortunately, there was another defendant whose conduct subjected it to potential liability. After several years of hard-fought litigation with that defendant, a confidential settlement agreement was reached.

Additionally, while the action was pending, there were developments in Ohio insurance law which enabled the clients to seek underinsured motorist insurance from policies issued to our client’s and his wife’s employers’ policies. After extensive briefing of the coverage issues under those policies, the plaintiffs were able to recover monetary settlements from the husband’s employer’s primary carrier, the wife’s employer’s primary carrier, and the wife’s excess carrier.

Thus, after some 10 years of hard-fought litigation, we were able to recover a total of \$2,525,000 for our client and his family to help compensate them for their losses as a result of this devastating injury.

Employer Pays Worker \$1.5 Million

David M. Paris represented a 41 year old worker employed by a company in rural Ohio. The worker was assigned to be a helper in a core drilling procedure. This involved using a 72” core drill, with a 36” diameter, to drill approximately 20 feet down into the earth. As the drill proceeded deeper, two 3-foot pieces of stone were removed. It was during this portion of the job that the client was injured.

To remove each piece of stone, the helper was lowered into the hole by standing on a chain connected to a hook at the end of a winch cable. The winch was a home-made conversion to a used truck. A 7 foot boom and pulley had been welded to the rear of the truck as part of the winch system. The winch was operated by a lever at the rear of the truck that ran on air pressure. When the truck was converted to be used as a man-lift, the employer failed to include any safety devices to protect the men riding on the cable. Prior to the client’s injuries, several of the workers complained to the foreman that the air valve which controlled the air pressure to the winch was leaking. The foreman did not have the valve repaired, and failed to take the truck out of service.

Just before the client’s injury, he had been lowered into the core hole and had attached the winch cable to a piece of stone.

He signaled his partner to raise the winch, and began his ride out of the hole holding onto the winch cable. As he emerged, still holding the cable, the air valve began to leak causing the winch lever to lose its ability to stop the winch. Because the winch moved so fast



and the pulley was located only 7 feet from the ground, the client had no time to react and jump off the moving cable. His hands were pulled into the pulley, resulting in the loss of most of his fingers on both hands.

The employer argued it had been using this process for the past 40 years without accident or injury. Therefore, it felt the process was not dangerous, and that it could not have known injury to the helper was a substantial certainty. It also argued that the workers, some of whom were members of the Union safety committee, could have filed a grievance with the company if they felt they were being forced to work with dangerous equipment. Plaintiffs’ experts opined that management must have known the process was dangerous and that injury to the helper was inevitable because:

(1) management testified that it knew, prior to the injury, that the truck was not certified as a man-lift under Ohio or federal law because it lacked any safety devices; and (2) management failed to take the truck out of service once it knew the air valve was leaking. The case settled during mediation for \$1.5 million.

Ohio Supreme Court Election

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has taught and mentored new judges, and regularly lectures for continuing education seminars, school audiences, and civic groups.

If elected, Judge Nancy Fuerst will bring to the Ohio Supreme Court her well-rounded life experiences, strong legal credentials, strong work ethic, common sense, and the ability to remain open-minded about the issues which are brought before the Court.

Judge William O'Neill

Judge William O'Neill, who is also seeking a position as an Associate Justice on the Ohio Supreme Court, has been an appellate judge on the 11th District Court of Appeals (located in Warren, Ohio) since 1996. Judge O'Neill is a Vietnam veteran who received the Bronze Star and the Army Commendation Medal. He retired from the Army Reserve with the rank of Lieutenant Colonel in 2001.

Before being elected to the Court of Appeals, Judge O'Neill spent 4 years in private practice and 12 years as an Assistant Attorney General for the State of Ohio. He has been lead counsel in over 100 jury trials. As a Court of Appeals Judge, he has sat by assignment as a visiting judge on the Ohio Supreme Court.

Judge O'Neill is the father of four children whom he has raised as a single father since 1995 when his wife tragically died in an automobile accident. His two daughters are in college, one of his sons is in the United States Air Force, and his other son is in high school. Judge O'Neill has a bachelor's degree from Ohio University, a law degree from Cleveland Marshall College of Law, and an RN degree from Huron School of Nursing.

If elected, Judge O'Neill would bring to the Court his rich and varied personal and professional experiences, strong legal credentials, and strong philosophical beliefs.



Justice Paul E. Pfeifer

Justice Paul E. Pfeifer is running unopposed to serve a third term as an Associate Justice on the Ohio Supreme Court. First elected to the Ohio Supreme Court in 1992, he has served there for the past 12 years. During that time, his record as a Justice who is concerned for the rights of everyday working people has been truly impressive. Prior to being elected to the Court, Justice Pfeifer was a member of the Ohio Senate for 16 years, of the Ohio House of Representatives for 6 years, and has served as an Assistant County Prosecutor and an Assistant Ohio Attorney General. He received both his bachelor's degree and his law degree from the Ohio State University. Justice Pfeifer, who is married and has three children and three grandchildren, lives on a farm in Crawford County where he raises Angus cattle. Having served the Ohio electorate so well for so many years, Justice Pfeifer truly deserves your vote.

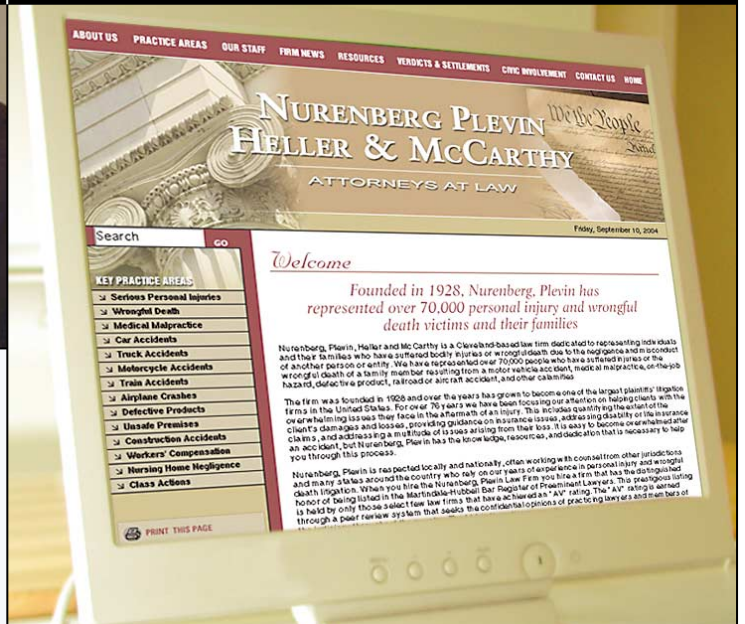
Spirit of Hope Gala –



NPHM Honored at “Spirit of Hope” Gala

Nurenberg, Plevin was pleased to be honored at the American Cancer Society's annual fund raising gala dinner. The “Spirit of Hope” Gala 2004 was held in the grand ballroom of the Signature of Solon on August 21, 2004. This annual fund raising event is held by the American Cancer Society to raise awareness and reach their goals of reducing mortality and incidence of cancer, and of measurably improving the quality of life of those affected by cancer. Nurenberg, Plevin was named as the Corporate Tribute of Honor due to our “Adopt a Family” program held each Christmas season. Several of our staff members and their spouses attended the event. Nurenberg, Plevin is proud to continue working with the cancer society to benefit our community.

Nurenberg, Plevin on the Web



NPHM Website Gets a New Look

The Nurenberg, Plevin website recently underwent a substantial upgrade. Now you can read more about our areas of practice, firm news, verdicts and settlements, civic activities, and staff. Visit us at www.nphm.com.



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Consumer Safety Tips –

Keeping Children Safe

Injuries to children are tragic – but with a little knowledge and preparation, adults can help prevent them. One key danger to small children is accidental poisoning. If you have small children in your house, either because you're a new parent or because your friends or family members have small children who may visit, the National SAFE KIDS Campaign recommends the following steps to help keep youngsters safe:

- Know which household products are poisonous, and buy child-resistant packaging;
- Keep poisons and household chemicals locked out of sight and out of reach, and always store them in their original containers so they can't be mistaken for something else;
- Throw away old medicines, and check your garage, basement and other storage areas for cleaning supplies and chemicals that you no longer need;
- Know what plants in and around your home are poisonous;
- If your home was built before 1978, have it tested for lead-based paint;
- Post the national toll-free poison hotline number at every telephone: 1-800-222- 1222. Keep activated charcoal on hand, but use it only on the advice of a poison control center or health care professional.

For more information and safety tips, including a list of poisonous household plants, contact:

National SAFE KIDS Campaign
website: www.safekids.org
(202) 662-0600

New Cases at Nurenberg Plevin

- 22 year old woman** dies as a result of carbon monoxide poisoning due to a faulty swimming pool heater.
- 60 year old patient/passenger** on an Air Evac Life Flight in southwestern Indiana, dies due to positional asphyxiation and obstruction of airway when the helicopter crashes and ejects his stretcher.
- 40 year old man** injured when thrown from bulldozer after contractor negligently releases hydraulic valve causing sudden movement in equipment.
- 58 year old judge** from Northeast Ohio dies as a result of a peritonitis, abscess, and intestinal injury during a laparoscopic diagnostic procedure.
- 28 year old woman**, traveling in Cessna Caravan aircraft, dies along with 9 passengers and the pilot (her fiancé) when the plane crashes in Lake Erie after taking off from Pelee Island.
- 21 year old landscaper** sustains crushing injuries to his legs and post-traumatic stress syndrome when his supervisor pins him against a wall with a front-end loader.
- 22 year old apprentice** electrician electrocuted at work while maintaining equipment.
- Carpenter** sustains crushing injuries to his dominant arm when hydraulic scissor-lift malfunctions, pinning him against ceiling structure.
- 21 year pilot** killed when his Cessna 310 crashed shortly after take-off from Lost Nation Airport.
- Newborn girl** suffers permanent brain injury due to the failure of the attending physicians and hospital to timely perform an emergency c-section.
- Passenger on Delta Airlines** flight to Frankfurt Germany develops deep vein thrombosis (DVT) and permanent disabilities as result of Delta's failure to inform and advise its passengers of the risks of DVT during long haul flights and the means of avoiding serious injury.