

Perspectives

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Philip M. Gerson



A tenant, a jogger, a housekeeper, a shopper, a flight attendant, a smoker. For thirty-two years, Philip M. Gerson, P.A., and its predecessors have represented people—not corporations—giving each client the attention and effort needed to serve their best interests and obtain compensation for their injuries.

Philip M. Gerson, P.A., tries more plaintiffs' cases than many other injury firms because we are committed to getting the best possible results for our clients. Crime victim and tobacco litigation are just two areas of the law where we are on the cutting edge—fighting and breaking new ground to expand the rights of victims in a just way. Our winning record is broad, encompassing a wide array of cases and significant monetary awards, all made possible by Philip M. Gerson, P.A.'s highly credentialed legal team and lifelong commitment to getting crime victims the civil justice they deserve.

Our contributions extend beyond the courtroom as well, to conferences, publications, professional associations, victims' services providers and the classroom. It is through our collective work—on behalf of those in need of representation and the professional community that serves them—that we define our mission and success.

Philip M. Gerson
Senior Partner and Trial Attorney
Philip M. Gerson, P.A.

Philip Gerson on Legal Team to Try First Individual Smoker's Case

On May 28, 2002, Miami attorney Philip M. Gerson went to Miami-Dade Circuit Court as part of a legal team looking to pin liability on Big Tobacco for the oral and bladder cancer of Miami lawyer John Lukacs.

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Philip Gerson on Legal Team to Try First Individual Smoker's Case

Lukacs's case will be the first individual suit tried by one of the plaintiffs in the *Engle* case, a massive class action lawsuit brought on behalf of 700,000 Florida smokers that netted \$145 billion in punitive damages against the tobacco industry in July 2000. The case, in which the tobacco industry was found guilty of fraud and misrepresentation, is now on appeal. The award for punitive damages was the largest of its kind.

"It was in the mid-1990s that the tobacco industry found itself facing a formidable new adversary: well-funded, well-run plaintiffs firms ... A hallmark of the plaintiffs' lawyers' effort was their cooperation as they built multi-million dollar war chests, exchanged documents and developed common evidence and strategy." *The Wall Street Journal*

Gerson will join Lukacs's son-in-law, Miles McGrane of McGrane & Nosich in Coral Gables, Fla., in trying the case. Said Gerson, "We want to prove that tobacco company products (smoke) caused our client's illness and disease."

Timing of Plaintiff's Case Critical

Gerson's court date of May 28 comes just in time for the 76-year-old cancer patient, who wants a jury to make Big Tobacco compensate him for his suffering and for making an addictive product that is killing him after 30 years of smoking. In March, the 3rd District Court of Appeals in Miami affirmed a lower court's ruling that Lukacs's lawsuit against the tobacco industry can go to trial in Miami-Dade Circuit Court. The ruling enabled Lukacs's case to proceed despite the tobacco industry's appeal in the *Engle* case.

Led by Brown & Williamson Tobacco Corp., Philip Morris and Liggett Group, Inc., the tobacco industry appealed the multibillion-dollar verdict to the 3rd District Court of Appeals, arguing that no individual cases should be tried until their appeal has been decided.

"The tobacco companies are well financed and notorious for dilatory tactics to keep dying plaintiffs from getting to trial," said Gerson. Lukacs's illness, like that of plaintiffs elsewhere, provides Big Tobacco with plenty of incentives to stall, knowing his death could let them off the hook—yet again. Although a wrongful-death claim could be filed on behalf of Lukacs's wife, she too is elderly—and resolving the tobacco industry's appeal could take years she does not have. Though Lukacs's case will become invalid if the tobacco industry's appeal succeeds, his lawyers are willing to take the risk, said McGrane. The reason: if *Engle* is upheld, Lukacs's case could serve as a blueprint for the other individual smoker cases.

Gerson's law firm joined with McGrane & Nosich and five others in the Miami area in filing individual cases against the tobacco industry. The case is symbolic of Philip M. Gerson's continuing commitment to enforcing the rights of victims against manufacturers.

Broin Class Action Suit

In August 2000, Philip M. Gerson, P.A., filed claims for 600 sick flight attendants pursuing individual claims against the major tobacco companies. The class action suit, known as *Broin*, was brought on behalf of 3,200 nonsmoking flight attendants suffering from diseases and disabilities caused by secondhand smoke that they were forced to inhale as part of their jobs. As senior partner, Gerson was cocounsel with attorney Steve Hunter in the first trial of an individual plaintiff's case in March 2001.

"Working with six other outstanding law firms has been rewarding and satisfying. The team approach brings more resources and the complementary skills of many lawyers to bear, and has been effective in moving cases closer to trial." *Philip Gerson*



The *Broin* class action suit against the cigarette industry was settled in 1997. Then, tobacco companies set aside \$300 million for a foundation to study the hazards of secondhand smoke and pave the way for these individual trials.

Gerson claimed that Big Tobacco should pay, at the least, hundreds of thousands of dollars to Marie Fontana, who claimed cigarette smoke present in airline cabins in the 1970s and '80s contributed to the diseases taking over her lungs. Gerson went after the tobacco companies to compensate for Fontana's medical bills, both past and future, expenses for the home attendant she needs to live out the rest of her life, and her lost wages, pain and suffering, and anguish.

As a prelude to trying the Lukacs case, Gerson gathered in late April with other lawyers winning big verdicts against tobacco companies to share their secrets. Every U.S. attorney who has won punitive damages against a tobacco company in an individual smoker's case, along with other leaders in the legal movement against the tobacco industry, were present at the Tobacco Products Liability Project (TPLP) Annual Conference at Northeastern University School of Law in Boston.

Philip M. Gerson welcomes the opportunity to work with other talented law firms on complex, challenging cases. Call 305-539-8000 to discuss cocounsel opportunities.



Edward S. Schwartz

Attorney

Edward Schwartz has practiced law in Florida for more than 18 years. Since joining forces in 1981, he and Phil Gerson have worked on hundreds of successful cases. Ed's practice is concentrated in the areas of appellate and plaintiffs' personal injury, including premises liability, product liability and medical malpractice.



Ed Schwartz brings to his work an expansive knowledge of Florida and federal law, according to Phil Gerson. "Ed can cite cases from memory and can zero in on a new point of law faster than anyone else I know," Gerson states.

Mr. Schwartz serves on the amicus curiae committee of the Academy of Florida Trial Lawyers, and publishes law review articles on such topics as constitutionality of the recent tort reform act.

He is a member of the Florida Bar and Academy of Florida Trial Lawyers.

Ed was valedictorian at Ransom. He graduated with honors from Williams College in 1978 and from the University of Miami School of Law in 1981, after serving as an Articles and Comments Editor of the University of Miami *Law Review*.

Xiomara "Z" Diaz

Office Manager

"Z" Diaz has worked with Phil Gerson and Ed Schwartz since 1984. "Z does just about everything to make our law firm work," Phil Gerson says. "When it comes time to do final trial preparations, Ed and Z give us a big advantage over other firms because they have done it together so many times in all kinds of cases," he adds.

A paralegal as well as the firm's office manager, Z handles most client relations, sets office procedures, manages other staff, and analyzes evidence and liaisons with court and defense firm personnel.

Z is a committed professional who sets the example for others in the office.

News and Events

Philip M. Gerson, P.A.'s New Offices



It has been a year since Philip M. Gerson, P.A., moved into the firm's own building at 1980 Coral Way in Miami with Jeffrey Davis. "We completely remodeled the 3,500-plus-square-foot building," said Philip M. Gerson, who oversaw the construction and design of everything down to redoing the parking lot. "Everything is new from the granite floors to the roof."

State-of-the-art hurricane-proof windows, doors and monitoring cameras provide security for both clients and staff. An advanced remote and automated audiovisual system in the main conference room enables easy videotaping of depositions, mock trials and focus groups. Because no outside videographer is necessary, witness preparation can be taped easily and reviewed with clients. Other high-tech equipment makes mediation, settlement conferences and strategy meetings with cocounsel effective and efficient.

"Now that we have finished the construction, we are working on an art collection," said Phil Gerson. "We have a Warhol series and just commissioned a piece for the waiting room by a University of Miami art department professor."

Practice Areas

Defective Products



Consumers expect products to be safe. Against the enormous economic power and might of manufacturers, the plaintiff's bar has fought for the public's right to products free of defects. Philip M. Gerson, P.A., has experience with defective automobiles and trucks, tires, medical devices, industrial equipment and other products. Most cases have involved design defects. The firm collaborates with leading engineers to identify defects and demonstrate alternative, safer and improved designs.

Crime Victims



Philip M. Gerson, P.A., has been a national leader in the fight to obtain compensation from property owners and business operators for foreseeable and preventable crimes that victimize tenants and members of the public. We have been innovative in the use of expert witnesses to establish legal responsibility for crime victims. Our lawyers have written and lectured extensively in this growing area of the law.

Agility and Expertise

The Philip M. Gerson, P.A., Team

Philip M. Gerson, P.A.'s strength is its specialized legal team: senior partner and founder Phil Gerson, appellate attorney Ed Schwartz and office manager Xiomara "Z" Diaz.

"Phil is a highly talented and compassionate attorney. He is committed not only to giving his clients excellent representation, but also to elevating the legal profession as a whole. Attorneys like Phil give lawyers a good name."

James A. Ferguson, Director, National Crime Victim Bar Association

Philip M. Gerson

Senior Partner

Philip M. Gerson is a board certified civil trial lawyer who has practiced law in Miami, Fla., for more than 30 years. Mr. Gerson limits his practice to plaintiffs' injury and death cases, with a focus on medical malpractice, defective products, third-party liability for criminal acts, and other complex litigation.

Phil is admitted to practice in all Florida courts, the United States Supreme Court, the United States Court of Claims, the United States Court of Appeals for the Fifth and Eleventh Circuits, and the United States District Court for the Southern and Middle Districts of Florida.

He is a sustaining member of the Association of Trial Lawyers of America, Dade County Bar Association, and the Dade County Trial Lawyers Association. He also serves as an EAGLE patron of the Academy of Florida Trial Lawyers, a member of the Continuing Legal Education Committee, an active member of the Florida Bar Professionalism Committee, and chairman of a grievance committee.

Phil got his undergraduate degree from the University of Miami. He is a cum laude graduate of the University of Miami Law School, where he was a member of the editorial board of the *Law Review*, a Moot Court winner and student instructor in legal research and writing.



Philip M. Gerson, P.A., Crime Victim Awards Near \$12 Million Mark

As plaintiffs' attorneys, Philip M. Gerson, P.A., has a long history of winning awards for the victims of negligent security.

	\$2,225,000	A car was stolen from an auto dealership when an inattentive service writer left keys in the car's ignition. During a high-speed chase with police, the thief's car hit a secretary, causing a neck fracture, but no paralysis. Five law firms turned down the case before the client called Philip M. Gerson. Award for negligent security.
A drunk driver hit a midnight jogger. Award for mild brain injury.	\$2,100,000	
A shopping center restaurant patron was shot in a struggle with a robber over a cell phone. Award for paraplegia.	\$2,000,000	
A six-year-old was molested by a babysitter, who was employed by a babysitting service authorized by a real estate developer. The developer then tried to cover up molestation of other children. Award for future psychological injuries.	\$1,250,000	A Dominican teenage tourist was killed by gunshot to the head when caught in the crossfire between an armed robber and security at a flea market. Award for wrongful death.
During a bar fight, an ejected bar patron was hit with a tire iron in a parking lot, sustaining a mild brain injury. Award against shopping center owner.	\$925,000	
	\$750,000	A plaintiff was injured in a drive-by shooting at a bar/package store parking lot. Award for brain injury.
	\$518,000	
A purse-snatch victim suffered a fractured hip and back sprain at a mall. Award against shopping mall cafeteria for negligent security.	\$500,000	A tenant was assaulted by the landlord's daughter, who was found to have a history of mental health problems and a violent past. Award for broken arm and broken leg.
A victim recovered damages against the U.S. Post Office due to a sexual assault. Award for negligent architectural design.	\$400,000	
	\$300,000	A mentally retarded woman was raped in an apartment building by neighbors who had intimidated other tenants in the past. Award for negligent security.
A shopper was assaulted by purse-snatching robbers at a shopping mall. Award for sustaining knee injury.	\$250,000	
	\$200,000	A housekeeper for Metro Mover was sexually assaulted in an elevator at the station. Award for posttraumatic stress disorder.
A public school student was molested by a teacher. Award for negligent supervision.	\$175,000	
An elderly matinee moviegoer was knocked down by running teenagers leaving the theater. Award for broken wrist.	\$160,000	A Boy Scout was molested by a volunteer leader who was a police officer. Scout officials ignored police requests for information about the officer offender. Award for negligent failure to cooperate with police.
	\$100,000	
	\$90,000	An apartment building handyman put a video camera in a tenant's closet. Award for negligently allowing intentional infliction of emotional distress.
	\$25,000	

“Crime victims incur some \$450 billion in damages each year, losses rarely fully covered by restitution or crime victim compensation programs. Crime victims deserve compensation for the harms they have suffered, and third parties are increasingly held accountable through the civil justice system.” *The National Crime Victim Bar Association*

Negligent Security

A Commitment to Helping Victims of Crime

Senior partner Philip M. Gerson's legal work with crime victims dates back 30 years, encompassing a long string of successful litigation in a wide variety of representation, pro bono work for victims' services organizations, gifts, professional associations dedicated to advancing the legal rights of victims nationwide, and publications, courses and conferences.

Mr. Gerson's track record includes million dollar-plus wins for negligent security, in both injury and death cases. More recently, his firm has become involved with representing hundreds of individuals harmed by secondhand cigarette smoke as well as smokers themselves.



Lectures, Speeches and Conferences

Mr. Gerson is a guest lecturer on Responsibility and Remedies for Torts for School Administrators at Florida International University and Barry University. He also guest lectures for the American Society for Industrial Security on the topic of Liability for Crime Because of Negligent Security and is an instructor for the Hospitality Security Officers Training Program at Barry University.

In October 2001, just after the terrorist attacks on New York and Washington, Phil Gerson was the opening speaker at the National Crime Victim Bar Association inaugural educational conference held at George Mason University Law School in Alexandria, Va. The presentation dealt with psychological principles in negligent security cases after September 11th.

Mr. Gerson will be an invited speaker at the Association of Trial Lawyers of America annual convention in Atlanta in July. The presentation will be "Alternative Theories of Liability for Crime Victims." Trial lawyers from all 50 states will be attending.

Professional Associations, Pro Bono Work and Gifts

Mr. Gerson has just finished his term as president of the Advisory Board of the National Crime Victim Bar Association. This nonprofit organization of victims' rights lawyers based in Washington, D.C., is affiliated with the National Center for Victims of Crime. The center has had a leadership role in the development of guidelines for the September 11 Victims Compensation Fund. Mr. Gerson continues to serve on the advisory board and is a leader in the fight for protection of victims' rights.

A gift from Philip M. Gerson to the National Crime Victim Bar Association covers the 2002 publication costs of *Crime Liability Monthly*, a summary of notable crime victim cases across the country.

For the last year, Phil Gerson also has provided pro bono legal services to the Victims Services Center, a Miami-based nonprofit social service organization providing counseling and other support to violent crime victims. The Center was established to help victims recover from the effects of trauma and provides free services to crime victims and witnesses of all ages who qualify under the Florida Victims Compensation Act.

Mr. Gerson received the Center's 2001 "Angel" award and has recently been elected to its board of directors. The Victims Services Center is using a gift from Philip M. Gerson to furnish expanded offices and treatment facilities in its Miami facility.

Publications



Edward Schwartz and Philip Gerson contributed chapter 5, entitled "Issues and Experts in Negligent Security Cases," to *2001 Expert Witness Update: New Developments in Personal Injury and Litigation*, published by Aspen Law and Business, a division of Aspen Publishers. Chapter topics include legal barriers and the burden of persuasion; types of negligent security cases; proof of specific foreseeability; proof of general foreseeability; preventability and foreseeability; proving preventability; using experts to prove foreseeability and preventability; and types of experts.

Ed Schwartz has published an article, "An Unconstitutional Deprivation of Access to the Courts: An Analysis of Section 19 of Chapter 99-225, Florida Statutes," for the *St. Thomas Law Review* in 1999.

In 1997, Phil Gerson's article, "An Ounce of Prevention" on proving shopping center liability, appeared in *Trial* magazine.

Alternative Theories of Liability for Crime Victims

"In recent years, courts in many jurisdictions have expanded the potential liability of property owners, possessors and managers for negligence in providing security on their premises, resulting in damages to invitees due to criminal assaults on the premises.

A number of defendants and legal theories may be available to provide relief to clients' injuries caused by criminal attack. Even if local law makes recovery against the property owner, manager or tenant difficult, there may still be options for recovery. Even if counsel's own jurisdiction had not addressed a theory of liability, law from other jurisdictions may be used to persuade local courts to develop the law and adopt a new theory. Counsel in negligent security cases should always be willing to think outside the box and consider alternative theories and defendants." *Philip M. Gerson*

About Philip M. Gerson, P.A.

Philip M. Gerson, P.A., is recognized within the legal profession for its expertise, lengthy and successful track record, and commitment to its clients. The firm's attorneys have extensive experience assisting accident victims in automobile, aviation, marine, premises liability, medical malpractice, defective product and violent crime cases.

Philip M. Gerson, P.A., helps clients through all phases of injury and/or death claims, from initial investigation to both trial and appellate representation, as required. Contrary to the trend with law firms in practice today, Philip M. Gerson, P.A., has remained small in order to ensure a high degree of personalization and quality.

Each client case is worked on by all of the firm's attorneys, so no client is ever passed off to a junior or inexperienced lawyer. All of the firm's lawyers are honors graduates of the University of Miami School of Law, where legal studies emphasize Florida law. Furthermore, each has practiced extensively in all state and federal Florida courts.

Practice Areas

Philip M. Gerson, P.A., specializes in all types of personal injury and wrongful death cases. Subspecialty practice areas include:

- **Motor Vehicle Accidents**
- **Marine and Airline Accidents**
- **Slip and Fall Accidents**
- **Medical Malpractice**
- **Defective Products**
- **Victims of Criminal Acts**

Motor Vehicle Accidents

Motor vehicle accidents are the most common types of personal injury cases handled by law firms. Philip M. Gerson, P.A., is at the forefront in its creative use of video, animated reconstruction and computer graphics. The firm's use of advanced technology is just one of the methods it uses to bring about just and successful outcomes for clients.



Marine Accidents

Pleasure boat operation, cruise ship passenger and seaman claims have been part of Philip M. Gerson, P.A.'s practice for many years. The firm's lawyers fully understand both the international and local rules of law applicable to admiralty and maritime claims.



Airline Accidents

Passengers on commercial airlines and small private aircraft also need protection from the dangers of air travel, including pilot error, neglect of proper maintenance or defective design. The firm's lawyers have handled numerous cases involving both domestic and international aircraft accidents.



Slip and Fall Accidents

From supermarket spills to defective stair tread design, Philip M. Gerson, P.A., has helped accident victims recover damages from landlords and business operators. The firm has sought and obtained justice for its clients from virtually every type of premises liability case, including drownings, collapsing structures, electrocution, fire and hidden defects.



Medical Malpractice

According to the National Academies, every year, more Americans are killed by medical negligence than die in automobile accidents. Countless more victims survive with lifetime disabilities.

For three decades, members of the firm have fought back against doctors and hospitals to recover just compensation for victims. Philip M. Gerson, P.A., has experience in almost every medical specialty, undertaking difficult cases to help define the standard of practice under the law: recently, the firm broke new ground in medical malpractice law by successfully recovering damages for loss of cryopreserved embryos.



Before a medical malpractice case is accepted, it is reviewed by at least two medical experts. We consult with leading experts in all fields of medicine routinely. Most often, medical scholars from other states are used to consult and, when necessary, to testify.

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