

Premises Liability Recovery Against Condominium Association and Property Management Company

Our client was a well known principal at a local private school. On her way to work one morning she slipped and fell on a vinyl floor in the hallway leading to parking garage fracturing her hip and requiring extensive surgery. Even without being able to prove that there were any prior accidents on the premises, Nicholas I. Gerson succeeded in obtaining a significant settlement based on a negligent mode

of operation theory. A comparison of other residential properties showed that floor mats that were used on site were the wrong size and type. By establishing that the condominium management company also did not have any policies and procedures to address the problem and quick thinking to obtain surveillance video offered compelling evidence and a significant settlement was reached prior to trial. ■

2.4 Million Arbitration Award for Traumatic Brain Injury in Truck/Motorcycle Accident

Resolving disputes through alternatives to jury trials is becoming increasingly common. In non-binding arbitration, we obtained a \$2.4 million award for our client, a German national who suffers visual disturbances due to a brain injury arising from a truck-and-motorcycle collision. Bad faith proceedings are now underway to enforce this award against State Farm, which insured the truck but made no settlement offer to our client -- even though there was \$1.5 million in coverage, all of which was paid to another claimant.

In our arbitration work, we often represent crew members of cruise ships and other vessels. Cruise line companies -- in order to avoid the fairness of the United States courts and the Jones Act statute -- require virtually all crew members to agree to international arbitration of their injury claims. They force foreign law -- of flag states like Panama, the Bahamas, and other small nations -- upon their crews, as well as foreign hearing venues, in jurisdictions such as the Philippines, Monaco, London, and Panama. By forcing these choices of law and forum on crew members, the companies are often able to deny them the justice they deserve. In the arbitration hearing or the courtroom, we continue to fight for victims' rights. ■

Gangway Slip and Fall Accident Results in Total Knee Replacement

Many cruise passengers are elderly and in less than perfect health. So disembarking a ship via a port gangway can present a danger to many, especially when it is raining. Accidents -- and life-altering injuries -- happen far too frequently because those who operate these facilities do not take simple, common sense safeguards. Using coefficient-of-friction testing and expert analysis of surface design, Nicholas Gerson obtained a settlement for a confidential sum. ■



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Medical Malpractice

Our commitment to helping victims of medical errors obtain just compensation remains firm. Recent cases -- and their results -- demonstrate how vigorous, experienced advocacy can help those who have suffered needlessly. In one case, hospital neglect of a dementia patient resulted in a fall from a gurney. In another, a suspicious mass on a chest x-ray was missed by an emergency room doctor despite a radiologist's report recommending clinical correlation (within nine months, that mass would spread to other tissues, leading to the death of our client's wife). In both of those matters, confidential settlements were obtained. ■

Surgical Errors

Surgical errors -- which can be difficult to prove -- are another focal point for our firm. In many cases, the physician or hospital will claim that patient consent to accept surgical complications bars that patient from bringing suit. But in fact, such consent does not bar all patients. In many cases, a body part outside the scope of the surgery is inadvertently injured. That was exactly what happened in a recent case we handled, in which laparoscopic gall bladder surgery resulted in injury to the common bile duct and hepatic artery. In that case, too, our client obtained a confidential settlement.

In another case, a laparoscopic appendectomy resulted in injury to the small bowel. Unfortunately, the mistakes didn't end there, and a failure to correctly identify abnormal post-surgery signs and symptoms led to a stroke in the young patient. That combination of errors -- both in how the surgery was performed and in the failure to correctly diagnose post-op complications -- formed the basis of a negligence case, which went to trial. To paint the picture of what went wrong -- and how it all could have been avoided -- we brought in expert witnesses in hospital care, general surgery, and neurology. But the most important evidence turned out to be entries made by nurses corroborating our client's account and refuting the defendant doctor's unsupported assertions. After ten days in court, confidential settlements were achieved with the surgeon and the internist while the jury was deliberating. ■

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Crime Victim Cases Negligent Security Recovery in Shopping Center Parking Lot Shooting



Holding his two-year old son in his arms, our client turned away from armed robbers but was shot in the spine. Rendered a paraplegic, his life -- along with his family's -- was changed forever. And it all could have been prevented.

The shopping center where this tragedy occurred had a long history of crime -- and no history of management taking sensible, responsible measures to safeguard the premises. It was a textbook case of management neglect.

Indeed, hundreds of crimes had taken place on the property-- including dozens of robberies -- and countless code violations that had been racked up demonstrated owner indifference

regarding safety and security. To put it bluntly: they just didn't care. Together with our client, we decided it was long past time for them to start.

Another team effort by our entire firm resulted in the large settlement obtained for our client spurring important, potentially life-saving changes. A security program was instituted on the property -- demonstrating that civil litigation can bring vital improvements, for a broad population. Thanks to our client -- whose suit showed the necessity and feasibility of practical, cost effective security measures -- it is far less likely today that another innocent person will become a victim, with perhaps their own life changed forever, at this property. ■

Cruise Ship Accident, Maritime Settlements and Claims

Cruise Ship Sexual Assaults Confidential Settlement for Teen Raped on Cruise Ship



Cruise lines and their official trade organization, the Cruise Lines International Association (CLIA), often boast that passengers are safer at sea than on land. Unfortunately, the industry's track record says otherwise. After our underage client was raped by another passenger, we alleged fraudulent concealment by the cruise line because such claims of safety are not true.

> Continued on page 2

IN THIS ISSUE

Senate Testimony P. 3

International Cruise Victims P. 4

Tobacco Case Appeals P. 5

Recent Presentations and Interviews P. 6

> Continued from page 1

Indeed, the most reliable data -- taken from the cruise line company's own records -- painted a frightening picture of lawlessness at sea, in a jurisdictional vacuum. Testimony from crew members revealed that in contrast to the protections and safety promised travelers on websites and in print, the actual policy was, in effect, 'you're on your own.' In this case, promises of supervision for an emotionally disabled young girl were not kept -- with tragic results.

For those of us who have seen too many of these cases, the dangers aboard ship -- and their consequences -- are no surprise. Ship security officers are poorly trained. Their first priority is defending the cruise lines from liability, not protecting passengers from sexual assault. Parents beware: It is not safe at sea, especially at night. These facts led to a confidential settlement for our young client. We can only hope it leads to enlightenment -- and action -- by the cruise lines. ■

Confidential Settlement Obtained for Crew Member That Sexually Assaulted Passenger in Her Stateroom

When a cruise ship crew member sexually assaults a passenger, maritime law imposes strict liability for all the harm suffered. What this means is that in order to be awarded damages from the cruise line, the passenger need only prove that the crew member carried out the assault, and that their injuries resulted from the attack. With onboard assaults occurring at a deeply troubling rate, it is a legal principle that is all too regularly invoked.

Our client was napping in her teenage daughter's stateroom when a steward entered and molested her. Computerized room key records revealed that he had used his master key to enter the dark inside cabin several times within a few minutes -- a focus on the victim that had no sensible explanation.



Our client and her police detective husband reported the crime immediately. The cruise line sequestered the crewman, but then it returned him to Honduras, not to the FBI. This was a startling violation of the Cruise Vessel Security and Safety Act of 2010, which requires cruise ship operators to preserve a crime scene and report alleged criminal activity to law enforcement. As cruise lines commonly demand in all cases, the settlement amount and other conditions were required to be 'confidential.' ■

Making a Difference in the Court Room and Congress Senate Testimony

In July 2014, Philip Gerson was invited to testify before the United States Senate Committee on Commerce, Science, and Transportation. Chaired by retiring Senator Jay Rockefeller, the 25-senator committee held hearings on how to improve the Cruise Vessel Security and Safety Act of 2010 (CVSSA). Improvements to the law have been needed, and we welcomed this opportunity to help lawmakers shape them.

In his testimony, Gerson urged the senators to understand the plight of crime victims at sea like those we represent in civil lawsuits. He also drew attention to the need for statutory amendments requiring cruise line companies to fully disclose on-board crimes. This simple requirement would result in an informed public -- one better able to understand and weigh risks to their safety. It is a proposal that, perhaps unsurprisingly, has been opposed by the cruise ship industry and its powerful trade group, the Cruise Lines International Association.

Fortunately, the lawmakers understood the value of this common sense -- and safety enhancing -- provision. Thanks to the hard work of many, Congress did pass amendments to the CVSSA in December 2014. So now the cruising public must be told the truth -- finally -- about the risks of crime onboard cruise ships. ■

Wrongful Death Settlement Against Railroad for Failure to Install Crossing Gates

In the 1970's a well-known railroad crossing had automatic gates installed at the request of the DOT. For unknown reasons they were removed. Since then, more than a dozen accidents -- including a double fatality -- were not enough to spur CSX to re-install crossing gates at Lejeune Road near the Miami airport. Our client's vehicle was T-boned by the locomotive. After our client was injured and her husband was killed at the unguarded crossing, we sued CSX, asking for punitive damages. Over the course of nearly 6 years of litigation, including dozens of depositions, Nicholas I. Gerson uncovered a paper trail of documents that knitted together

like a jigsaw puzzle, which revealed an indefensible 7-year delay in installing the gates. Resisting its responsibility, the railroad even retained a former NASA astronaut to bolster its excuses for the long delays. With the assistance of an airport lighting expert and a railroad crossing accident reconstruction expert we showed that crossing gates were no obstruction to airline traffic, which was CSX's claimed excuse. After orders from the trial court to permit pleading for punitive damages and a jury view at the crossing at nighttime, a confidential settlement was obtained shortly before trial. ■



Philip Gerson Elected Chairman of The National Center for Victims of Crime Board of Directors

Our firm is proud to continue its long-term commitment to America's most respected advocate and voice for the crime victim movement: The National Center for Victims of Crime (NCVC). This influential organization has played a key role in shaping policy, training, and awareness regarding crime victims -- and provides those victims with invaluable support and expertise. After years serving on NCVC's board and executive committee, Philip Gerson has undertaken the ultimate position of leadership. In 2014, he was elected Chairman of the center's board of directors.

As active supporters of NCVC, our firm has worked to make a successful and important organization even better. We helped create a new initiative known as the National Compassion Fund, a program for the collection and administration of charitable donations to help victims of mass shootings in public places. This program places the NCVC on the same level as the Red Cross -- in this case, providing assistance for those who impacted by criminal disasters.

Helping crime victims rebuild their lives is the core mission of this distinguished organization.



To learn more about NCVC and the work it does, please visit victimsofcrime.org. ■

Philip Gerson Speaks to World Conference on Victimology at The Hague in the Netherlands

After traveling to Brussels and London to meet with leaders from the European Union, the U.K. Parliament, and the International Maritime Organization, Philip Gerson continued his presentations on victims' rights and remedies at The Hague in the Netherlands, where he spoke at The World Conference on Victimology.

It was, Gerson says, "a unique opportunity to compare diverse approaches to universal problems. Cruise ship crimes, in particular, harm people from all countries. By meeting and speaking to others, we are able to teach what we know while learning how our colleagues in Europe approach the same issues and challenges."

Presenting at The World Conference on Victimology at The Hague was a great honor for our firm. For more information about our sister crime victim advocates, visit victimsupport.uk and victimsupport.eu. ■



International Cruise Victims

Since its founding by a grass roots group of crime victim survivors and families, International Cruise Victims (ICV) has become the worldwide voice for public awareness of cruise ship crime -- and the need for legal reform. Philip Gerson has been a supporter and volunteer advisor to this organization from the beginning -- and continues to serve in those roles for what is now

a global movement with local representatives in dozens of countries.

In 2013, Gerson became a member of ICV's Board of Directors and the Executive Committee. Our firm continues to provide pro bono legal counsel and leadership in the worldwide effort to make cruising safer for both passengers and crew. ■



Ed Schwartz Joins Temple Beth Am Board of Directors

After decades of quiet leadership, Ed Schwartz has been elected to the board at one of Miami's most acclaimed reform synagogues. We are proud of Ed's commitment and lifetime of service to his temple community. ■

Tobacco Case Appeals



Gerson and Schwartz Convinces United States Supreme Court Deny Big Tobacco Petition in Brown v. R.J. Reynolds

We continue our commitment to obtain justice for Engle class-action smokers. We tried the first so-called "progeny" case in 2002 -- before the landmark Engle case was decided in the Florida Supreme Court. In *Brown v. R.J. Reynolds*, we successfully defended the constitutionality of the class action plan. Our work led to the Fourth District Court of Appeals upholding -- in what was to become a leading opinion -- the jury verdict we obtained. After eight more state court affirmed final judgments tagged to Brown as the lead case, the United States Supreme Court denied certiorari -- putting to rest once and for all tobacco industry claims of violation of the due process clause. We are proud of our work in tobacco cases and continue to represent class member plaintiffs. ■

Statute of Limitations Burden for Tobacco Companies

In another landmark opinion -- one that should benefit many smokers and their survivors -- the Third District Court of Appeals made it harder for tobacco companies to evade liability by invoking the statute of limitations. The court's decision in *Frazier v. Philip Morris and R.J. Reynolds* -- which reversed a jury verdict in favor of the tobacco industry -- re-set the burden of proof for tobacco companies asserting this defense against Engle-class members.

The appellate court ruled that vague historical respiratory symptoms are not by themselves sufficient to trigger the statute of limitations (a defense whereby tobacco companies essentially say the plaintiffs should have sued sooner). Instead, proof of a smoker's actual knowledge that smoking possibly caused their disease is the required standard for this defense. Thanks to this important opinion, many smokers and their families will no longer be barred from obtaining their rightful recovery. ■

2.8 Million Dollar Verdict Against Strip Club in Dram Shop Liability Case

Dram shop liability -- whereby an establishment that provides alcohol to someone who is both a habitual alcoholic and visibly intoxicated at the time of service, is liable for any injury or death that person may subsequently cause. These strict legal requirements are almost impossible to prove under Florida law. But almost doesn't mean never. After a one-week trial, our team succeeded and a jury awarded our client, injured in a car accident, \$2.8 million dollars. The jury found that a popular strip club knew that one of its dancers was a habitual alcoholic yet served her to promote sales of alcohol to customers.

The club's business model encouraged dancers to drink all night, so as to encourage customers to spend more money in the club. Phil Gerson argued that the club knew this particular dancer was too drunk to drive but it didn't intervene to protect the public. The result was predictable, preventable, and tragic. On her way home at 5 a.m., the intoxicated dancer crashed into our innocent client, causing serious injuries.

The jury understood that what happened here was more than a mistake. It accepted our client's position and dram shop liability was established. In this case, at least, an innocent victim of others' negligence was able to obtain some measure of justice. ■

Boat Manufacturer Warehouse Explosion Results in Chemical Burns to Worker

A skilled tradesman yacht painter, our client suffered severe burns after unsafe chemical agents used by other contractors contaminated his workspace. A 55-gallon resin drum exploded nearly blowing the roof off the warehouse. Once again, a wholly preventable danger resulted in a tragic event. The business owner had ignored all concepts of safety practices and of industrial hygiene, leading to dangerous, foreseeable conditions. Insurance policy language limited the confidential settlement to less than it should have been. ■