

Perspectives

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Rape Victims Get Justice

Continuing our long-standing tradition of securing compensation for crime victims, the firm handled two significant cases last year involving rape victims. In both cases, the withholding of important information by the defendant proved harmful to innocent and unsuspecting individuals.

Our client in one of the cases was attacked with a knife while babysitting at her sister's apartment. The rapist was a teenage neighbor who had burglarized and vandalized other residents. The apartment managers knew about these crimes but took no steps to evict this individual and his family or warn other residents.

Even though there was no follow-up mental health treatment, the case was settled for almost **\$400,000** on the eve of trial. A structured settlement will provide a lifetime income stream for the client.

The first victim of the serial "Kendall Rapist" asked this office to learn how she could have been kidnapped and raped while walking to her car after

working out at a health club which was located in a large neighborhood shopping center. After spending days sorting through the archived shopping center records of a former owner, we found numerous memos and letters documenting a pattern of neglect by the contractor responsible for providing security.

Further investigation showed the management company knew the security contractor's personnel were poorly supervised and guilty of many instances of neglect. Missing records for the date of the crime helped lead to settlements against the managers and the security contractor totaling almost **\$500,000**. ■

Jury Finding: Second Hand Smoke Aggravates Asthma

Early last year, Phil Gerson tried the case of a flight attendant whose asthmatic condition was aggravated by exposure to second-hand smoke.

For the first time in American judicial history, a jury found that second hand smoke does, in fact, aggravate and accelerate pre-existing asthma.

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Jury Awards Full Damages To Injured Construction Worker

When a construction company ordered one of its employees to carry sharp-edged pieces of sheet metal on a job site, it failed to provide the worker with proper protective equipment, and also failed to provide instructions on how to safely handle this dangerous material. Please See Page 3

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Jury Finding: Second Hand Smoke Aggravates Asthma

Irrelevant evidence of mental health treatment was used by the defendants to obtain a defense verdict on the issue of whether it was proved that the plaintiff's disease had been worsened by exposure to smoke in the cabins of airliners; however, the trial was significant because it demonstrated that one lawyer could try a second hand smoke case in less than a week against four tobacco companies with legions of lawyers and staff.



As Dwight D. Eisenhower once said, "What counts is not necessarily the size of the dog in the fight; it's the size of the fight in the dog." We wholeheartedly agree with that assessment, and encourage other experienced lawyers to bring cases against tobacco companies on behalf of deserving victims. We further pledge to help such efforts by providing data, documents and advice. ■

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Dwight D. Eisenhower (1890-1969)

September 11 Victim Recoveries

Like many of our colleagues across America, Gerson & Schwartz P.A. volunteered to represent survivors of the September 11, 2001 terrorist attack under the Trial Lawyers Care project of the Association of Trial Lawyers of America. The firm is proud of its work thus far on four cases under this program.

Ed Schwartz investigated, researched, prepared, negotiated and settled the first case for more than **\$1.2 million**, 100% of which will go to the decedent's loved ones. "We are proud to join lawyers throughout the country in public service to victims of terrorism," commented Ed. ■



Operating Room Error

Even though two other law firms had turned her down, our client contacted us after a friend showed her a recent issue of *Perspectives*. A routine laproscopic cholecystectomy (gall bladder removal) had left her with a severed duct which connects to the liver.

The surgery to repair the duct was extensive and disfiguring. After our team of expert witness was assembled, a significant confidential settlement was achieved in mediation. The confidentiality agreement prevents us from publicizing further details about the case. ■



Unintended Acceleration

Another confidential settlement was obtained from an automobile manufacturer for the widow of a 45-year-old former professional athlete. The decedent was returning to work after lunch when his 6-month-old car accelerated on its own, careening over a seawall into the bay and drowning both the driver and his passenger. After painstakingly cataloguing other episodes involving the same make and model, our office conducted a national search, interviewing every lawyer in the country we could find who had been involved in a similar case. We then created a team of experts with the evidence needed to obtain this settlement. There truly is strength in numbers, as proved by this and other collaborative efforts in which this firm has been involved. ■



From Page 1

Jury Awards Full Damages To Injured Construction Worker

As a result, the worker suffered a severe laceration to his wrist, causing nerve damage which necessitated surgery. So-called Fabre defenses and comparative negligence claims were rejected by a Broward County jury, which found 100% liability against the defendant contractor.

Commenting on the case, and subsequent jury decision, Phil Gerson said, "The size of the verdict

is not what is most important, even though the \$230,000 award was more than twice the settlement demand. This office is proud of the fact that we successfully enforced the rights of an unskilled working man who no one else was willing to help. Helping deserving victims find justice is what being a trial lawyer is all about, even in modest damage cases."

"Helping deserving victims find justice is what being a trial lawyer is all about..." Phil Gerson



Legislature Increasingly Pro Business

After the verdict was announced, Ed Schwartz noted that the Florida Legislature has quickly taken steps to unfairly tilt the playing field even more in favor of businesses and insurance companies. "The 2003 legislature has now granted immunity to all construction site contractors if workers' compensation benefits are available. This makes workers' compensation insurance more expensive, not less expensive, because the equitable distribution of reimbursement from the negligent contractor is eliminated. Another irrational gift of immunity to businesses and the insurance industry under Florida law - shifting the burden of loss from the wrongdoer to the victim."

If your law firm has clients whose meritorious claims have been barred by this new statute, contact us so we can pass them on to colleagues bringing a constitutional challenge. ■

"Another irrational gift of immunity to businesses and the insurance industry under Florida law - shifting the burden of loss from the wrongdoer to the victim." Ed Schwartz

A Word About Settlements Confidentiality, a necessary evil

AS noted in this issue of *Perspectives*, our firm has negotiated several confidential settlements over the past year. Following is our view on this controversial topic and its impact on the public.

➤ At Gerson & Schwartz P.A. we oppose confidentiality in settlement agreements. It is obvious to us that the public good is better served by open and full disclosure of settlements, especially in product liability cases.

➤ Hushed outcomes and returned proprietary discovery materials harm future victims and reward stonewalling and secrecy. All plaintiff's lawyers are conflicted by such agreements, because it is impossible to walk away from an otherwise workable settlement for your client in order to serve the public good.

➤ Our ethical duty to the client is at odds with our moral duty to publicize the truth about dangerous products and practices.

➤ During our 34 years of practice we have seen such settlement conditions, which at one time were extremely rare, become routine. Legislation is needed to protect the public interest against the conditions of confidentiality routinely required to reach a fair and equitable settlement.

“Everything secret degenerates, even the administration of justice; nothing is safe that does not show how it can bear discussion and publicity.”

Lord Acton (1834-1902)

Structured settlements - preparing for life after an injury

Like other responsible plaintiff's attorneys, we urge many of our clients to structure significant settlement proceeds in such a way that their future security is ensured.

➤ At the time of settlement, the benefits of tax-free structured future payouts are carefully explained to our clients. If there is a downside to structured settlement plans, it is that no one can foresee the future, and thus structured payment programs sometimes fail to meet the client's future needs - often due to unexpected events and changes in the client's health or lifestyle. The sale



of structure contracts for cash is now legal: both the United States (IRC s5891) and the state of Florida (F.S. s 626.99296) expressly authorize subsequent sale of annuities by plaintiffs.

However, the available pool of aftermarket investors, and companies available to purchase uncollected future income streams, have for many years included opportunistic financial predators. These less-than-scrupulous individuals and organiza-

tions have been known to treat disabled persons unfairly, often by purchasing their income streams at steep discounts not consistent with prevailing financial market conditions. We urge our clients and others to deal only with reputable companies. One such company, Strategic Capital Corporation, has been recommended by the Academy of Florida Trial Lawyers. Please visit them on the Web at www.strategiccapital.com. ■

Twenty Years And Counting!

WE are pleased to recognize Xiomara Diaz for twenty years of continuous service to this firm. Happy anniversary Xiomara - we look forward to at least twenty more! For twenty years Ms. Diaz, known to us and throughout the legal community as “Z,” has been an indispensable contributor to the success of our law firm. The terms ‘secretary’ and ‘paralegal’ are inadequate to describe Z’s role in our office. Everything from client relations, records analysis, discovery management, trial preparation, accounting and personnel supervision fall within her jurisdiction. “Z is as well known in the legal community as we are,” said partner Ed Schwartz. “Z’s high standards and ‘perfectionist personality’ have gone a long way in helping establish the reputation we have all worked hard to enjoy among our peers in the Bar Association - and the community in general. I wish we had three more just like Z,” said senior partner Phil Gerson. ■



Awards And Presentations

AS former chairman of a Florida Bar grievance committee and current member of the Standing Committee on Professionalism Phil Gerson continues the firm's tradition of service to the profession.

Speaking Engagements

➤ As part of a Lorman Seminar in the fall of 2003, Phil Gerson presented "Suing the Drunk Driver." The presentation highlighted and explained strategies and techniques learned from our experience in past cases and included advice on the use of toxicology evidence; when to and when not to ask for punitive damages; how to find public domain statistical evidence to support punitive claims; and how to interface a civil damages case with the state's criminal prosecution to benefit both cases.

➤ In October, 2003, Phil Gerson addressed the annual meeting of the National Crime Victim Bar Association. The presentation, "How To Be the Lawyer You Want To Be," focused on the challenges faced by all plaintiff's lawyers, the role of professionalism and the benefits of collaboration in fee sharing co-counsel relationships. During the convention, Phil was presented the Past President's Advisory Board Award, in recognition of continuing service to this dynamic and growing arm of the National Victims Center in Washington, D.C.

➤ Late in the 2003, Phil Gerson appeared on an expert panel discussing Tobacco litigation. Other panelists included Stanley Rosenblatt, Bob Montgomery and Professor Richard Daynard of Northeastern University Law School. Held at the University of Miami and sponsored by the South Florida Business Review, the panel discussed the future of tobacco litigation, following the reversal of the record verdict and judgment in the *Engle* class action.

Giving Back to The Community

Our firm continues its financial pro bono service and maintains a seat on the board of directors of



the Victims Services Center. Each and every day, this publicly-funded, community-based nonprofit provides counseling and other services to battered spouses, abused children and victims of violent crimes in Miami-Dade county. Phil Gerson was presented the Outstanding Service Award, in recognition of his contributions to the work of this worthy organization.

Phil Gerson Joins St. Thomas Advisory Board

Earlier this year, Phil Gerson was appointed to the Law School Board of Advisors at St. Thomas University. The board consists of approximately 30 federal and state judges, lawyers and other prominent citizens committed to providing leadership and guidance to an outstanding law school in our community. Though Phil Gerson and Ed Schwartz both attended the University of Miami Law School,

each graduating with honors and serving on the Law Review, Phil sees St. Thomas as a young school, still developing its role in the legal education community. "It's exciting and challenging to help a fast growing dynamic law school mature and to see it gain recognition for excellence on a national level. We intend to continue our support for St. Thomas into the future." ■



Phil Gerson

Looking Forward

Looking ahead to 2005 and beyond, our firm sees many changes in the legal profession - changes that will impact not only the way we try cases, but also in the laws that impact your rights.

The legislature continues to favor business over the individual, as evidenced by recent decisions regarding liability, punitive damages and a host of other issues that, if left unchallenged, will continue the steady erosion of victims' rights that we have witnessed over the past few years. The law firm of Gerson & Schwartz P.A. is committed to meeting these challenges head on, and we will continue to be tireless advocates for individual rights and freedoms.



About Gerson & Schwartz, P.A.

Gerson & Schwartz P.A. is recognized within the legal community for providing valuable and beneficial service to our clients. Our attorneys have extensive experience assisting accident victims including those involving automobiles; aviation; marine; premises liability; medical malpractice; defective products; and violent crime. We help our clients through all phases of injury and/or death claims, from initial investigation to both trial and appellate representation as required.

We encourage you to visit us on the web at www.injuryattorneyfla.com.

More detailed information on our areas of expertise can be found in the Practice Areas section of our web site, while some of the more notable outcomes we have achieved on behalf of our clients can be found under Results. Please contact us for specific information on how we can help you. ■



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