

## SELECT CASES & RESULTS



Chris Messerly

### CHRIS MESSERLY AND CINDY BUTLER OBTAIN \$986,000 JURY VERDICT

The defendant, Dr. Patrick Carney, dermatologist, owned a number of "spas" ("Skin Speaks") in which he employed minions of staff (e.g. estheticians). He paid his staff in part on commission based on revenue from cosmetic procedures they performed and procedures on patients they referred to him. Our client, a woman in her 40s, started seeing the defendant for acne twenty years ago. Over the years he and his staff convinced her to undergo dozens of cosmetic procedures including Botox and other injections, dermaplaning, and mild facial chemical peels performed by staff (with four months education from a "beauty school"). In late 2007, our client's esthetician suggested that our client undergo a chemical peel by the defendant. Our client and the defendant's esthetician told the defendant that our client wanted only the "lightest" peel. The doctor chose to give our client "more than she asked for" by performing a medium or deep peel with an acid. During the peel, our client was in such pain (which she compared to giving birth to her son) that she said "STOP" three or four times. After she recovered, the doctor chose to continue. The peel caused keloid scarring on our client's face.



Cindy Butler



Kathleen Flynn Peterson

### KATHLEEN FLYNN PETERSON OBTAINS \$4 MILLION SETTLEMENT

The firm obtained a \$4,000,000 settlement for a woman whose doctor and clinic failed to properly treat her seizures. Our client developed seizures following an angiogram procedure. EEGs confirmed the presence of seizure activity and although two different types of anti-convulsant medications were used, the seizure activity was never stopped. Our client developed increasing confusion and cognitive impairment. She was transferred to the Mayo Clinic where non-convulsive status epilepticus was confirmed and the seizure stopped. Our client continues to exhibit cognitive impairment which prevents her from returning to her professional work.



Terry Wade

### TERRY WADE OBTAINS \$2.8 MILLION SETTLEMENT

Our forty-year old client developed hypertension a few days after delivering her second child. Postpartum acute hypertension requires prompt monitoring and treatment to prevent catastrophic complications. The hypertension was not properly monitored or treated in keeping with accepted standards of medical practice. Our client, a teacher who leaves behind a husband and two young daughters, died as a result of the inadequate treatment. Economic losses to the family were approximately \$2,000,000 according to plaintiff's economist and \$775,000 according to defendants' economist. The case was aggressively defended with both Minnesota experts and a Harvard neurologist generally taking the position that our client had a condition for which there is no recognized, standard treatment and that treatment would not have altered the outcome in any event. The case was complicated by the fact that our client was treated by numerous physicians over a two-week period, most of whom were implicated in substandard care according to plaintiff's experts. Named defendants included four obstetricians, an internist, a neurologist, and three separate practice groups. While there was ample basis for claims against each named defendant, persuading a jury that all of these physicians were negligent and contributed to the cause of death was daunting. The settlement was reached during mediation.

## PRODUCT ALERTS

### YAZ, YASMIN AND OCELLA'S DANGEROUS SIDE EFFECTS

Birth control pills Yaz, Yasmin and the generic Ocella have a unique ingredient called drospirenone, a synthetic progestin, which is not found in other birth control pills. Drospirenone has been associated with a number of severe side effects. Reported serious side effects include blood clots, as two recent epidemiological studies of pills containing drospirenone have found that these were associated with a higher risk of blood clots than some other oral contraceptives without drospirenone.<sup>1</sup> There have also been reports that drospirenone-containing pills may increase potassium levels, which can lead to hyperkalemia, a condition which can lead to serious heart rhythm disturbances.<sup>2</sup> Additionally, oral contraceptives are associated with an increased risk of gallstones and gallbladder disease.<sup>3</sup> In February 2010, Bayer started a \$20 million dollar corrective advertising campaign for Yaz after the FDA found the company overstated the drug's benefits while minimizing its risks.<sup>4</sup>

### AVANDIA'S SERIOUS SAFETY PROBLEMS

In the third quarter of 2009, Avandia had the dubious distinction of ranking first among all prescribed drugs in the number of serious, disability and fatal problems reported to the FDA, including over 300 deaths reported to the FDA in the third quarter alone.<sup>5</sup> Manufactured by GlaxoSmithKline (GSK), Avandia is a drug for Type 2 diabetics designed to help keep blood sugar levels stable. But, it has been associated with multiple safety issues, including heart attacks, congestive heart failure and bone fractures.<sup>6</sup> In 2009, GSK reported the results of a five-year study which showed a twice as many patients on Avandia experienced heart failure causing hospital admission or death than those in the control group.<sup>7</sup> In February 2010, the FDA announced it conducting a safety review of the drug, with results expected in July 2010.<sup>8</sup>

### TOYOTA'S SUDDEN ACCELERATION RECALL

Following a recall of over 8 million Toyota vehicles, a safety researcher has reported that he found 19 deaths and 341 injuries resulting from 815 separate crashes involving the sudden acceleration of Toyotas.<sup>9</sup> And, a former Toyota in-house attorney who left the company due to his allegations of Toyota's "criminal acts" has become a whistleblower and claims he has internal documents proving that Toyota has a "regular pattern and practice" of failing to produce damaging documents and of hiding and destroying evidence in product liability cases.<sup>10</sup> Robins, Kaplan, Miller & Ciresi, L.L.P. is investigating personal injury cases resulting from sudden and unintended acceleration in Toyotas.

## PRO BONO

### I-35W BRIDGE COLLAPSE UPDATE

In 2009, Robins, Kaplan, Miller & Ciresi L.L.P. continued with its biggest pro bono case in the firm's 71-year history: representing the victims of the I-35W bridge collapse. The August 1, 2007 disaster in downtown Minneapolis killed 13 and injured more than 150. Our attorneys lead a consortium of 16 other firms throughout the state in representing more than 100 of the people injured or otherwise affected by the bridge's collapse. After playing a key role in the 2008 passage of historic legislation to partially compensate the victims, we turned our attention to pursuing the corporations responsible for the catastrophe. In 2009, we obtained a settlement for the victims with the construction company that placed heavy construction materials on the bridge. We then focused on the most responsible party: URS, the foreign engineering corporation that the State had hired to make sure the bridge was safe. We are now preparing the case for trial in early 2011.

## APPOINTMENTS & RECOGNITION



Kathleen Flynn  
Peterson

### KATHLEEN FLYNN PETERSON RECOGNIZED

Kathleen Flynn Peterson was recently recognized by *Best Lawyers in America* as the "Minneapolis Medical Malpractice Lawyer of the Year" for 2010. *Best Lawyers in America* designates "Lawyers of the Year" in high-profile legal specialties in large legal communities. Only a single lawyer in each specialty in each community is honored. The list is compiled by conducting exhaustive peer-review surveys in which thousands of leading lawyers confidentially evaluate their professional peers. The lawyers being honored as "Lawyers of the Year" have received particularly high rankings for their abilities, professionalism, and integrity.

Kathleen was also recently named to the fifth annual *Lawdragon 500* which sets the standard for the best in the legal profession. The *Lawdragon 500* is the leading guide to the nation's best lawyers and judges. It is comprised of private lawyers from a wide range of practices, as well as in-house counsel, law professors, judges and neutrals, government attorneys, and public interest lawyers. Those named to the list represent less than one-half of one percent of the legal profession, placing them among the most elite group of legal professionals.

### 2009 PRO BONO ACTIVITY FOR ROBINS, KAPLAN, MILLER & CIRESI L.L.P.

32,119

NUMBER OF HOURS  
DEVOTED TO PRO BONO

89%

PERCENT OF FIRM  
ATTORNEYS WHO DID  
PRO BONO

7.7%

PERCENT OF BILLABLE HOURS

# THE ROBINS JUSTICE REPORT

## OUR PEOPLE



Brandon Vaughn

### BRANDON VAUGHN, ASSOCIATE

Brandon is a Chicago, Illinois, native and the oldest of three. As a child, Brandon's parents focused on education and hard work. These two core values helped Brandon focus on a career in law. Brandon knew at an early age that he wanted to be a lawyer; he annually reviewed his grammar school's Code of Conduct and would counsel his peers on what type of discipline they could receive for their behavior. The inspiration he got from his father who is also an attorney didn't hurt either.

Brandon joined Robins, Kaplan, Miller & Ciresi L.L.P. as a summer associate in 2006 and returned as a summer associate in 2007. In 2008 he began as an associate practicing in the Personal Injury and Medical Malpractice group. His practice includes representing plaintiffs in personal injury, medical malpractice, and product liability actions. In addition to focusing on these areas, Brandon has provided pro bono representation to clients in the areas of family law and immigration law. Brandon is a member of the American Association for Justice, Minnesota and Wisconsin Bar Associations, American Bar Association, Minnesota Association for Justice, and the Minnesota Association of Black Lawyers.

In his spare time, Brandon enjoys participating in several athletic activities (softball, golf, flag football, and basketball) and mentoring youth in the Twin Cities through Bolder Options, a mentoring program that focuses on physical fitness, community service, goal setting, healthy eating, and education. Some of the Bolder Options program activities include completing at least three 5K races, three community service activities, setting three measurable goals, and focusing on healthy eating and mental health habits.



Amy Morrell

### AMY MORRELL, SENIOR LEGAL FINANCIAL ANALYST

Amy has an M.B.A. in finance from the University of Minnesota, Carlson School of Management and is a certified public accountant. Amy joined the firm in 2005, but has more than 20 years of experience in litigation support, calculation of damages, financial analysis, valuation of business and other financial matters. Amy is one of nine members of the Financial & Economic Consultants, an in-house group that assists legal teams in addressing financial, accounting and economic issues which arise in litigation.

While at Robins, Kaplan, Miller & Ciresi L.L.P., Amy has assisted attorneys with many financial matters including, assessing and creating damage models, reviewing and organizing financial documents, and preparing topics and questions for financial related depositions. Amy has conducted analyses for many of the firm's practice areas, including lost earnings analyses for the Personal Injury and Medical Malpractice group.

Amy resides in Woodbury with her husband and enjoys traveling, cooking and golfing.

- 1 O Lidegaard et al. *Hormonal contraception and risk of venous thromboembolism: national follow-up study*. BMJ. 2009;339:b2890; A Van Hylckama Vlieg et al. *The venous thrombotic risk of oral contraceptives, effects of oestrogen dose and progestogen type: results of the MEGA case-control study*. BMJ. 2009;339:b2921.
- 2 R Schurmann et al. *Effect of Drospirenone on Serum Potassium and Drospirenone Pharmacokinetics in Women With Normal or Impaired Renal Function*. J Clin Pharmacol. 2006; 46: 867-875.
- 3 C. Thijs et al. *Oral Contraceptives and the Risk of Gallbladder Disease: A Meta-Analysis*. Am J Public Health. 1993 Aug; 83: 1113-1120.
- 4 <http://www.nytimes.com/2009/02/11/business/11pill.html>
- 5 <http://www.ismp.org/quarterwatch/2009Q3.pdf>
- 6 PD Home et al. *Rosiglitazone Evaluated for Cardiovascular Outcomes in oral agent combination therapy for type 2 diabetes (RECORD): a multicentre, randomized open-label trial*. Lancet. 2009; 373 (9681):2125-2135; YK Loke et al. *Long-term use of thiazolidinediones and fractures in type 2 diabetes: a meta analysis*. CMAJ. 2009; 180(1):32-9.
- 7 PD Home, *supra* note 6.
- 8 <http://www.fda.gov/Drugs/DrugSafety/PostmarketDrugSafetyInformationforPatientsandProviders/ucm201418.htm#sa>
- 9 <http://www.safetyresearch.net/2010/01/29/toyota-unintended-acceleration-complaints-update/>
- 10 <http://www.cnn.com/2010/US/03/10/toyota.whistleblower/index.html?hpt=T1>
- 11 R Freedman. *Exacerbation of Schizophrenia by Varenicline*. Am J Psychiatry. 2007;164(8):1269; I Kohen et al. *Varenicline-Induced Manic Episode in a Patient with Bipolar Disorder*. Am J Psychiatry. 2007;164(8):1269-70; AE Morstad, et al. *Hypomania with Agitation Associated with Varenicline Use in Bipolar II Disorder*. The Annals of Pharmacotherapy. 2008;42:288-289.

\* Past results are reported to provide the reader with an indication of the type of litigation in which we practice and does not and should not be construed to create an expectation of result in any other case as all cases are dependent upon their own unique fact situation and applicable law. This publication is not intended as, and should not be used by you as, legal advice, but rather as a touchstone for reflection and discussion with others about these important issues. Pursuant to requirements related to practice before the U. S. Internal Revenue Service, any tax advice contained in this communication is not intended to be used, and cannot be used, for purposes of (i) avoiding penalties imposed under the U. S. Internal Revenue Code or (ii) promoting, marketing or recommending to another person any tax-related matter.

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