

A close-up photograph of a hand gently holding a small green plant seedling with several leaves. The background is dark and out of focus. The image is overlaid with a semi-transparent white banner containing text.

# ROBINS KAPLAN JUSTICE REPORT

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CHILDHOOD SEXUAL ABUSE**

**ROBINS / KAPLAN<sub>LLP</sub>**

REWRITING THE ODDS

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## EMPOWERING SURVIVORS OF CHILDHOOD SEXUAL ABUSE

**BY RAYNA E. KESSLER AND PATRICK STONEKING**



**RAYNA E. KESSLER**



**PATRICK STONEKING**

After far too long, survivors of childhood sexual abuse across the country are obtaining access to justice. Childhood sexual abuse and exploitation is a worldwide epidemic that infects every level of society. What's more, many of the institutions our society holds in the highest esteem have disappointed us all with a callous disregard for the welfare of our children. Survivor advocates across the world have worked tirelessly to encourage several states to extend their statutes of limitations for civil claims, allowing survivors to make their voices heard and hopefully protect children in the future.

The results from studies on the prevalence of childhood sexual abuse are shocking. They confirm that many adults are living with the scars of abuse suffered during their childhood. Some studies show that up to 1 in 4 girls and 1 in 6 boys will be a victim of child sexual abuse.<sup>1</sup> Altogether, approximately 42 million people are living with these harms.<sup>2</sup> Abusers target children of all ages, with more than 50% of survivors sexually abused before the age of 12.<sup>3</sup> Almost 90% of survivors know their attacker, and about 60% of children suffer abuse from an adult they know but who is outside their family.<sup>4</sup> Abusers target children who may be particularly vulnerable, and they position themselves as an important part of the child's life, often gradually introducing sexual conduct. Perpetrators are often trusted authority figures in our communities who seek out positions of power with access to children.

# COURT OF APPEALS AFFIRMS \$3.17M VERDICT IN POST-OP SURGICAL INFECTION CASE

BY TERESA FARISS MCCLAIN



**TERESA FARISS MCCLAIN**

A Hennepin County jury's \$3.17 million award was affirmed by the Minnesota Court of Appeals on May 28, 2019. In *Shellum v. Fairview Health Servs.*, 2019 Minn. App. Unpub., 2019 WL 2262246., Jeanne and Wayne Shellum brought a claim for medical malpractice by Fairview Southdale Hospital after Jeanne developed a serious post-operative infection in her eye immediately following surgery to repair a macular hole. The infection destroyed the retina within 48 hours, resulting in a loss of vision, and eventually Mrs. Shellum's eye was removed. Wayne Shellum, a retired chief of police for the City of Robbinsdale, contacted both Fairview Southdale Hospital and the surgeon to find out why this happened. Fairview didn't provide any answers, but the surgeon informed them that the bacteria that caused the infection, *Pseudomonas aeruginosa*

and *Serratia marcescens*, rarely caused eye infections. A Google search by Mr. Shellum confirmed that these bacteria are opportunistic and often found in dirty fluids and on dirty equipment, and are associated with hospital-acquired infections.

The Shellums contacted attorney Teresa Fariss McClain, who investigated their claim. The case was initially brought using the theory of *res ipsa loquitur*, but evidence of breaks in sterile surgical technique by Fairview Southdale and its admitted failure to follow national guidelines for compounding medications allowed the plaintiffs to survive summary judgment and to prove a prima facie case of medical negligence, surviving Fairview's motion for judgment as a matter of law. The jury returned a verdict within 30 minutes, finding Fairview Southdale negligent. Fairview brought post-trial motions, renewing its motion for JMOL and seeking a new trial, complaining that various evidentiary rulings by the trial court were erroneous and caused prejudice. The trial court denied all of Fairview's post-trial motions, entering judgment for the plaintiff. Fairview filed an appeal, and the trial court entered an order on pre- and post-judgment interest, ordering that post-judgment interest would accrue at approximately \$1,000/day until the judgment was paid in full.

The Court reviewed the trial court's denial of Fairview's motion for JMOL *de novo*. Fairview argued that the extensive expert testimony presented by the Shellums, which stated that breaks in sterile surgical technique caused the infection, was simply speculation and was insufficient to establish causation. The Court explained that Fairview essentially argued that because respondents' expert witnesses could not testify with 100% certainty that the breaks in sterile procedure caused the infection, the evidence was insufficient to allow the jury to find appellant liable. The Court held that that is not the standard that applies, and that in this case there was sufficient factual foundation to support the experts' opinions. The Court also held that the trial court did not abuse its discretion in any of the evidentiary rulings that were raised by Fairview.

Four hundred and forty days after the jury returned its verdict, and more than seven years after the injury, this deserving family received justice.



# MASS TORT INVESTIGATIONS

Robins Kaplan LLP is currently investigating many new potential cases. Please contact our Mass Tort team if you have any questions or know of any individuals whose case should be evaluated.

- **JUUL** – Investigating cases of JUUL users who were unaware of the addictive nature of Juul when they began using it, who subsequently became addicted.
- **Premature Hip Implant Failures** – Litigating cases involving premature hip failures, such as Stryker Rejuvenate and Stryker LFIT COCR V40.<sup>1</sup>
- **Roundup** – Exposure to Roundup® has been linked to an increased risk of cancer, including Non-Hodgkin’s lymphoma, hairy cell leukemia, multiple myeloma, B-cell lymphoma, and lymphocytic lymphoma.<sup>2</sup>
- **Taxotere** – Studies and reports have associated permanent hair loss (alopecia) with the use of chemotherapy drug Taxotere (docetaxel).<sup>3</sup>
- **Tribal Opioid Claims** – Litigating on behalf of Native American Tribes claims against the manufacturers and distributors of prescription opioids for their alleged role in creating the opioid epidemic.
- **Viagra** – Use is associated with increased risk of melanoma.<sup>4</sup>
- **Zofran** – This anti-nausea drug prescribed “off label” for morning sickness is associated with increased risk of cleft palate and congenital heart defects.<sup>5</sup>

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1. Concerns about Metal-on-Metal Implants, available at [www.fda.gov](http://www.fda.gov)
  2. ARC Monographs Volume 112: evaluation of five organophosphate insecticides and herbicides, 2015.
  3. See, e.g., Kluger, Permanent Scalp Alopecia Related to Breast Cancer Chemotherapy by Sequential Fluorouracil/Epirubicin/Cyclophosphamide (FEC) and Docetaxel: A Prospective Study of 20 Patients, *Annals of Oncology* at 1 (May 9, 2012); Prevezas et al., Irreversible & Severe Alopecia Following Docetaxel or Paclitaxel Cytotoxic Therapy for Breast Cancer, 160 *Br. J. Dermatology* 883-885 (2009); Tallon et al., Permanent Chemotherapy-Induced Alopecia; Case Report and Review of the Literature, 63 *J. Am. Academy of Derm.* 333-336 (2010).
  4. Wen-Qing Li, et al. Sildenafil Use and Increased Risk of Incident Melanoma in U.S. Men: A Prospective Cohort Study. *JAMA Intern. Med.* (June 2014)
  5. M. Anderka et al. Medications Used to Treat Nausea and Vomiting of Pregnancy and Risk of Selected Birth Defects. *Birth Defects Res A Clin Mol Teratol.* (Jan. 2012); JT Anderson et al. Ondansetron use in Early Pregnancy and the Risk of Congenital Malformations – A Register Based Nationwide Cohort Study. *Phar-macoepidemiology and Drug Safety.* (Oct. 2013).



Childhood sexual abuse creates an undeserved and unfair burden that survivors carry with them, and every survivor's response and decision to disclose is deeply personal. More than 60% of survivors may never disclose,<sup>5</sup> and those who choose to disclose share an average age of 52 years.<sup>6</sup> There are many reasons survivors may choose not to disclose, including trauma-induced depression or fear that little or no action will be taken. Because these conditions are common among child sex abuse victims, our society should reflect this reality, rather than creating arbitrary deadlines to file or prosecute claims that only favor perpetrators and the institutions that protect them.

Fortunately, there is now a movement among states to lift these injustices. For example, New York recently passed the Child Victims Act that extended the statute of limitations for civil claims arising out of childhood sexual abuse. Beginning on August 14 of 2019, there will be a one-year window for survivors who were abused in New York to bring a civil claim against the offender and the institutions that are liable. The Act also carves out exceptions to notice requirements that apply in claims against public entities and schools. After the window closes in August 2020, survivors will have until the age of 55 to bring similar claims.

Similarly, New Jersey passed a bill that will go into effect on December 1, 2019. Under the new law, survivors – both child and adult – will have a two-year window to bring civil claims against their abusers and/or the institutions that are liable. Additionally, survivors will have until the age of 55 or within seven years of their realization of the abuse. Prior to this law, New Jersey survivors had only two years from their 18th birthday to bring these civil claims.

California previously opened a lookback window in 2003 that has long since closed, but a new bill extending the statute of limitations is under consideration in the state's legislature. Advocates remain hopeful that it will pass and be signed into law, providing survivors with another overdue opportunity to bring claims.

Robins Kaplan represents survivors of childhood sexual abuse in claims against their perpetrators and the organizations that failed to keep children safe. We understand the courage it takes for survivors to come forward and that privacy is of the utmost importance. We are committed to being a positive force in our clients' lives and to seeking justice to prevent similar abuse from happening in the future.

As part of this commitment, we partner with one of the nation's premier law firms specializing in childhood sex abuse cases, Jeff Anderson & Associates. For decades, Jeff Anderson has stood with survivors and fought for their access to justice, working tirelessly to drive legislative and judicial changes that help all survivors. We are proud to join forces with Jeff Anderson & Associates and help survivors create lasting change for generations to come.

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1. <https://www.childsafehouse.org/get-informed/additional-facts.cfm>
  2. <http://www.naasca.org/2012-Resources/010812-StatisticsOfChildAbuse.htm>
  3. Snyder, H.N. (July 2000). Sexual Assault of Young Children as Reported to Law Enforcement: Victim, Incident, and Offender Characteristics. Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics. Retrieved from <http://www.bjs.gov/content/pub/pdf/saycrle.pdf>
  4. Finkelhor, D. (2012). Characteristics of crimes against juveniles. Durham, NH: Crimes against Children Research Center.
  5. Whealin, J. (2007-05-22). "Child Sexual Abuse". National Center for Post Traumatic Stress Disorder, US Department of Veterans Affairs.
  6. London, K., M. Bruck, S.J. Ceci, and D.W. Shuman. Disclosure of Child Sexual Abuse: What Does the Research Tell Us About the Ways That Children Tell? *Psychology, Public Policy, and Law*, 11(1), 194-226 (2005).
  7. <https://www.clinicalkey.com/#!/content/medline/2-s2.0-24669770>

# RECOGNITIONS AND AWARDS



**PETER  
SCHMIT**



**PHILIP  
SEIFF**

## **PETER SCHMIT AND PHILIP SIEFF NAMED TO THE NATIONAL LAW JOURNAL'S ANNUAL LIST OF TRAILBLAZERS**

Robins Kaplan LLP is pleased to announce that Peter Schmit and Philip Sieff have been named to *The National Law Journal's* annual list of trailblazers.

Schmit has been named to the inaugural list of Health Care Law Trailblazers, recognizing attorneys who “have made significant marks on the practice, policy and technological advancements in their sector.” Sieff has been named a Plaintiff’s Lawyers Trailblazer, which recognizes attorneys who are “agents of change” and “continue to make their mark in various aspects of legal work on the plaintiffs’ side.”

## **ATTORNEYS RECOGNIZED AS 2019 MINNESOTA “SUPER LAWYERS” AND “RISING STARS”**

Super Lawyers recently included several attorneys in the Minneapolis office on the “2019 Minnesota Super Lawyers” and “2019 Minnesota Rising Stars” lists.

Attorneys named to the Super Lawyers list include: Kate Jaycox, Teresa Fariss McClain, Peter Schmit, Chris Messerly, and Tara Sutton. Attorney listed as Rising Stars include: Holly Dolejsi, Elizabeth Fors, and Patrick Stoneking.

Additionally, Chris Messerly and Tara Sutton were named in the Minnesota Top 100 List. Sutton was also recognized on the Minnesota Top 50 Women list.



**TERESA  
FARISS MCCLAIN**

## **TERESA FARISS MCCLAIN HONORED WITH ELITE WOMEN OF THE PLAINTIFF'S BAR AWARD, MEDICAL MALPRACTICE GROUP NAMED FINALIST**

Teresa Fariss McClain was selected to receive the NLJ’s “Elite Women of the Plaintiff’s Bar” award. The award recognize U.S. attorneys and law firms that have provided cutting-edge representation and achieved major wins on behalf of plaintiffs. According to the NLJ, the finalists were selected from more than 300 submissions. Additionally, the firm was recognized as a finalist in the Medical Malpractice category.



**BRANDON E.  
VAUGHN**

## **BRANDON VAUGHN NAMED TO LAWYERS OF COLOR'S NATION'S BEST LIST, FEATURED ON THE COVER OF ATTORNEY AT LAW MAGAZINE**

Brandon Vaughn, a principal in the firm’s Personal Injury and Medical Malpractice Group, has been named to Lawyers of Color’s inaugural Nation’s Best List. The award recognizes “exceptional law firm partners and senior-level corporate counsel who have achieved prominence and distinction in their fields and demonstrated a strong commitment to advancing diversity in the legal profession.” Vaughn and the other award recipients were honored at a reception on June 18 in Chicago.

Vaughn was also featured on the cover of the May issue of *Attorney at Law Magazine*. The article highlighted Vaughn’s medical malpractice and personal injury practice, as well as his diversity and leadership efforts in the firm and the community.





**UPCOMING EVENT:  
2019 TRIAL ADVOCACY SEMINAR**

## **SAVE THE DATE**

### **JOIN ROBINS KAPLAN LLP ON OCTOBER 14, 2019, FOR OUR ANNUAL ONE-DAY TRIAL ADVOCACY SEMINAR**

The future is now. Artificial intelligence is all around us, from our homes to our workplaces to our hospitals. Automobiles drive themselves. Wearable devices track our every move and measure our health. Our genetic code can be stored like a criminal record. Today's technology is a powerful force in the path towards justice, yet our obligation as trial attorneys to cut through complexity and tell our client's compelling story remains the same. Are you prepared to deploy every tool necessary to advance the rights of your client? After all, with great data comes great responsibility.

**Agenda:**

8:00 a.m. - 9:00 a.m. Registration

9:00 a.m. - 4:00 p.m. Program

4:00 p.m. - 5:15 p.m. Reception

**Early registration is available now at [robinskaplan.com/trial-advocacy](http://robinskaplan.com/trial-advocacy)**

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