



# ROBINS KAPLAN JUSTICE REPORT

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ROBINS  KAPLAN<sup>LLP</sup>

REWRITING THE ODDS

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## SELECTED CASE RESULTS



PETER  
SCHMIT

### **\$750,000 SETTLEMENT IN WRONGFUL DEATH CASE**

Peter Schmit settled the wrongful death case of a 55-year-old man who died of a cardiac arrest several months after being examined for a history of chest pain and getting an EKG that, at the time, showed concerning changes that should have been followed up on. Defense contended that given the length of time between the EKG and death, even if further workup had been done it would not have been diagnostic. The case settled for \$750,000.



BRANDON  
THOMPSON

### **\$4.3 MILLION SETTLEMENT IN MEDICAL NEGLIGENCE CASE**

As anyone who handles cases involving significant injuries is painfully aware, defendants and insurance companies are pushing harder and harder to make settlements confidential as a routine matter. We resist this whenever we can, but there are times when the interests of our clients require us to agree to confidentiality language we find totally objectionable as a matter of public policy.

That said, we are allowed to report that earlier this year Brandon Thompson negotiated a \$4.3 million settlement in a medical negligence case for an Iowa child who sustained an injury during a procedure.

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## OTHER DRUG AND DEVICE 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.

- **Abilify** - This atypical antipsychotic—used to treat a variety of disorders, including schizophrenia, bipolar, and depression—may cause impulse-control behaviors, including compulsive gambling.<sup>1</sup>
- **Benicar** - Popular blood pressure medication can cause intestinal problems known as sprue-like enteropathy, with chronic diarrhea, weight loss, nausea, and vomiting.<sup>2</sup>
- **Premature Hip Implant Failures** - Litigating cases involving DePuy ASR, DePuy Pinnacle, Stryker Rejuvenate, Stryker LFIT COCR V40, Wright Profemur, Wright Conserve, and Biomet M2a-Magnum.<sup>3</sup>
- **Invokana, Farxiga, and Jardiance** - These Type 2 Diabetes drugs can cause ketoacidosis—very elevated blood acid levels—which may require hospitalization.<sup>4</sup>
- **Stockert 3t Heater-Cooler Device** - This device used during open-heart surgery has been linked with a specific type of rare, nontuberculous mycobacterium infections, which can occur up to five years after exposure.<sup>5</sup>
- **Taxotere** - Studies and reports have associated permanent hair loss (alopecia) with the use of chemotherapy drug Taxotere (docetaxel).<sup>6</sup>
- **Viagra** - Use is associated with increased risk of melanoma.<sup>7</sup>
- **Xarelto** - Anticoagulant (blood thinner) linked to serious bleeding complications, intracranial hemorrhaging, gastrointestinal bleeding, wound infections from inhibited clotting, and lack of effectiveness in preventing dangerous clotting.<sup>8</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>9</sup>

# ANTITRUST CASE INVESTIGATION: READY-MIX CONCRETE

BY KELLIE LERNER



KELLIE  
LERNER

Our Antitrust and Trade Regulation Practice Group is investigating a potential lawsuit against certain manufacturers of ready-mix concrete in coastal South Carolina and Georgia for allegedly conspiring to raise prices of ready-mix concrete. The potential defendants include the following: Argos North America Corp.; Elite Concrete of SC, LLC; Thomas Concrete, Inc.; Coastal Concrete Southeast II LLC; Evans Concrete, LLC; Cemex, Inc.; and Holcim (US) Inc. Ready-mix concrete, used in both residential and commercial building projects, is a mixture of cement and aggregates that is blended at the manufacturing plant and arrives on-site ready to be molded and formed. If you know or represent any contractor or governmental entity that purchased ready-mix concrete directly from the potential defendants in coastal South Carolina or Georgia from January 1, 2012, to the present, please contact Kellie Lerner at (212) 980-7406.



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1. <http://healthycanadians.gc.ca/recall-alert-rappel-avis/hc-sc/2015/55668a-eng.php>
2. <http://www.fda.gov/Drugs/DrugSafety/ucm359477.htm>; <http://www.ncbi.nlm.nih.gov/pubmed/22728033>
3. *Concerns about Metal-on-Metal Implants*, available at [www.fda.gov](http://www.fda.gov)
4. <http://www.fda.gov/drugs/drugsafety/ucm446845.htm>
5. See <https://www.cdc.gov/hai/outbreaks/heater-cooler.html>
6. 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).
7. 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)
8. Lissan, M.R., et al. *Rivaroxaban versus Enoxaparin for Thromboprophylaxis after Total Knee Arthroplasty*. *N. Engl. J. Med.* 2008; 358:2776-86; Kakkar, A.K., et al. *Extended duration rivaroxaban versus short-term enoxaparin for the prevention of venous thromboembolism after total hip arthroplasty*. *Lancet* 2008; 372:31-39; Ericksson, B.I., et al. *Rivaroxaban versus Enoxaparin for Thromboprophylaxis after Hip Arthroplasty*. *N. Engl. J. Med.* 2008; 358:2765-75; Jameson SS, et al. *Wound complications following rivaroxaban administration*. *J. Bone Joint Surg. Am.* 2012; 1554-8
9. 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*. *Pharmacoepidemiology and Drug Safety.* (Oct. 2013)

# SPOTLIGHT

## SCOTT JURCHISIN



**SCOTT  
JURCHISIN**

The newest member of Robins Kaplan's Personal Injury and Medical Malpractice Group, Scott Jurchisin, is a 2016 graduate of the Mitchell Hamline School of Law. He received his J.D. *summa cum laude* after a law school career that saw him named National Quarterfinalist in the 2016 Texas Young Lawyers Association Mock Trial, and National Champion and Best Brief Award recipient in the 2015 Native American Law Student Association Moot Court.

While attending law school, Scott served on the editorial board of the *Mitchell Hamline Law Review*, clerked at the U.S. Attorney's Office, and worked at a business litigation firm, where he became familiar with all stages of litigation. Prior to joining Robins Kaplan, Scott clerked at the Minnesota Court of Appeals for the Honorable Jill Flaskamp Halbrooks.

Scott now puts his skills to work for the firm's Personal Injury and Medical Malpractice Group, where he advocates on behalf of those who have been harmed by the negligence of others.

## MICHELE MCLANE



**MICHELE  
MCLANE**

A 1989 graduate of Mankato State University, Michele McLane spent the first 17 years of her career in retail and mortgage lending, where she negotiated high-value mortgage repurchase deals with brokers. In 2008, she decided to make a career change. She obtained her ABA paralegal certificate and, in 2012, joined Robins Kaplan's Mass Tort Department.

"Making a career move was difficult, but it was the right choice," says Michele. "My job gives me the opportunity to play a positive role during a difficult time in my clients' lives." Michele also values her opportunities to do pro bono work at the firm. Recently, she helped her local fire department obtain 501(c)(3) status and worked with a human-trafficking victim to secure a T visa that will allow him to remain in the United States.



# AWARDS

## CHRIS MESSERLY AND LIZ FORS HONORED AS ATTORNEYS OF THE YEAR



**CHRIS  
MESSERLY**



**ELIZABETH  
FORS**

*Minnesota Lawyer* recently announced it has named Chris Messerly and Elizabeth Fors among its 2017 Attorneys of the Year.

Chris Messerly, partner at the firm, has spent more than 30 years representing families and individuals who have been injured in cases involving medical malpractice, personal injury, and product liability. Liz Fors, an associate at the firm, also focuses her practice on helping those who have been injured from medical malpractice or personal injury.

In August, Chris and Liz helped secure the largest medical malpractice wrongful death verdict in Minnesota history: a \$20.6 million jury verdict in the death of a 30-year-old woman who went to an emergency room with a fever and nausea three days after giving birth, but was sent home, only to pass away less than a day later.

Chris and Liz were not the only Robins Kaplan attorneys included in this year's awards. Attorneys Richard Allyn, Eric Magnuson, Patrick Arenz, and Peter Surdo were also honored for their achievements of the past year.

This year's honorees were selected based on their leadership in the profession, involvement in major cases and newsworthy events, and commitment to public service. *Minnesota Lawyer* selected only 36 attorneys throughout the state for this recognition.

## TARA SUTTON NAMED "LITIGATION TRAILBLAZER" AND "PRODUCT LIABILITY MVP"



**TARA  
SUTTON**

We are pleased to announce that Tara Sutton, chair of the firm's Mass Tort Group and a member of its executive board, has been named to both *The National Law Journal's* list of Litigation Trailblazers and to *Law360's* list of Product Liability MVPs.

From the firm's history-making win against Big Tobacco nearly 20 years ago to her \$300 million settlement in August against a pharma giant, Sutton repeatedly has achieved victories that create a path to recovery for thousands injured by drugs and medical devices.

Most recently, she served on the executive committee and plaintiffs' negotiating committee of a 2,000-plaintiff multi-district litigation over the blood pressure medication Benicar, which was resolved for a proposed \$300 million. Sutton also acted as lead plaintiffs' counsel in litigation over antipsychotic drug Abilify.

She has served as lead counsel in many other matters, including: the first bellwether trial over smoking cessation drug Chantix, which settled three days before jury selection and led to the nearly \$300 million settlement of virtually all pending cases; the massive Stryker Rejuvenate/ABGII modular hip litigation, in which she spearheaded the development of a \$1.4 billion global settlement program; and the first bellwether trial over the Parkinson's disease drug Mirapex, which resulted in a \$8.2 million jury verdict (\$7.8 million in punitive damages), and nearly 300 Mirapex cases that she subsequently settled.

A longtime advocate for social and economic justice, Sutton was elected president of Public Justice, a non-profit public interest law firm, in July. Her role includes guiding the firm's litigation, fundraising, and advocacy work.

*The National Law Journal's* annual Litigation Trailblazers list recognizes attorneys who have moved the needle with innovative legal strategies and out-of-the-box thinking that is changing how their colleagues practice law. Sutton is one of only 25 individuals honored nationwide.

*Law360's* MVP award recognizes attorneys who have distinguished themselves from their peers in litigation, deals, and other complex matters. Sutton is one of only six attorneys recognized for Product Liability and one of only 157 attorneys recognized nationally across 32 practice areas. This is the second time that *Law360* has honored her with this award.

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