

ROBINS  KAPLAN_{LLP}

JUSTICE REPORT

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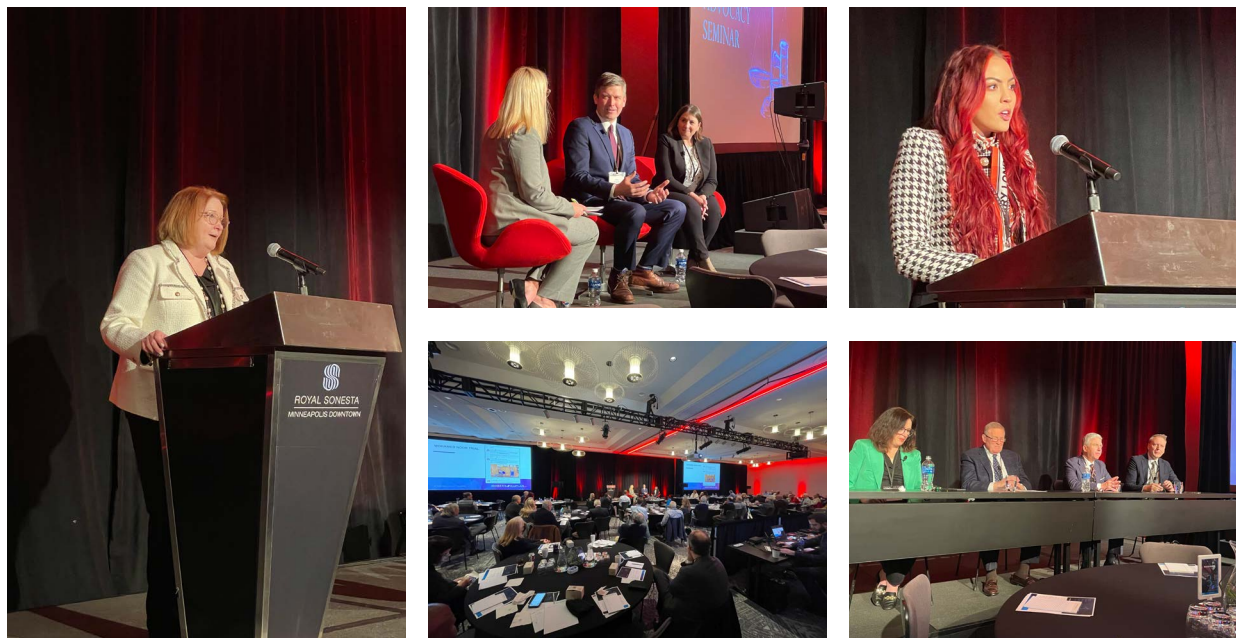
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Thank you!

Thank you to everyone who joined us for our 2022 Trial Advocacy Seminar!



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.

RAYNA KESSLER APPOINTED LIAISON COUNSEL IN EXACTECH MULTI-DISTRICT LITIGATION

Robins Kaplan LLP is pleased to announce that on December 12, 2022, New York partner Rayna Kessler was appointed liaison counsel in the multi-district litigation *In re: Exactech Polyethylene Orthopedic Products Liability Litigation*, MDL No. 3044, 1:22-md-03044-MMH. The MDL was recently formed by the Judicial Panel on Multidistrict Litigation and involves hip, knee, and ankle replacement devices manufactured by Exactech, and was assigned to Judge Nicholas G. Garaufis, U.S.D.J., of the Eastern District of New York.

In her leadership position, Rayna is responsible for working closely with the Plaintiff Executive Committee, communicating with the Court and other counsel to ensure local and MDL procedures are followed, advise parties of important developments in the MDL, and serve as a resource to other plaintiff attorneys who may file claims within the MDL.

To date, Exactech has recalled approximately 150,000 hip, knee, and ankle replacement devices. The recall first became public in February 2022 when Exactech issued an Urgent Medical Device Correction Notice informing surgeons that most knee inserts manufactured from 2004 to 2022, as well as total ankle replacement devices manufactured from 2017 to 2022, were packaged in non-conforming bags. The defective bags did not contain a secondary barrier layer of ethylene vinyl alcohol to reinforce the device's resistance to oxygen, which can cause inserts to wear out prematurely or become damaged after implantation. On August 11, 2022, Exactech expanded its recall to include total hip replacement devices manufactured from 2004 to 2021.

Because of these defects, some patients have experienced tissue damage, bone loss/osteolysis, instability, painful inflammation, and other injuries, leading to complex revision surgeries and extensive recovery time. Robins Kaplan is advocating for

patients who have received Exactech hip, knee, and ankle devices to be made aware of how the recall may affect them, and represent a number of plaintiffs who are injured by these products in the MDL.

"I look forward to working with the Court and the parties to progress our MDL forward as efficiently as possible," Kessler said. "We have a wonderful group of attorneys appointed to leadership positions with a vast amount of experience with medical device litigation. It is an honor to serve as a resource for this team, including to assist with New York local rules and procedure."

Rayna Kessler is a partner in the firm's New York office. Her practice focuses on complex civil and multivalue litigation in a range of matters that span products liability, medical malpractice, pharmaceuticals, and medical devices, as well as child sex abuse involving large institutions.

"Rayna is a skilled attorney who is dedicated to helping our clients and ensuring that the MDL progresses effectively," said Tara Sutton, Chair of the National Mass Tort Group of Robins Kaplan. "I'm confident that she will be a great asset for the management of the MDL and assisting counsel with their Exactech claims."

We are aware of Exactech recalled products being implanted in patients at the following hospitals:

- St. Cloud Orthopedics – St. Cloud, MN
- Tria Orthopedic Center – Bloomington and Burnsville, MN
- Center for Specialty Care – Fairmont, MN
- Stanford Hospital – Santa Clara, CA
- Hospital for Special Surgery – New York, NY
- New York Presbyterian Hospital – New York, NY
- Hudson Regional Hospital – Secaucus, NY
- St. Michael's Medical Center – Newark, NJ

Robins Kaplan continues to evaluate and accept claims related to Exactech hip, knee, and ankle products. If you have a potential client who is impacted by the recall, please contact Rayna Kessler at (212) 980-7431 or RKessler@RobinsKaplan.com.



ROBINS KAPLAN PURSUING CAMP LEJEUNE CLAIMS

Robins Kaplan LLP is proudly representing military service men and women, and their families, who may have been injured at Marine Corps Base Camp Lejeune in Jacksonville, North Carolina. With the passing of the Camp Lejeune Justice Act of 2022, injured service people now have a right to bring claims for injury relating to their exposure to contaminated water at Camp Lejeune.

WATER CONTAMINATION ONGOING FOR DECADES

Drinking-water contaminants were first detected in the drinking water wells at Camp Lejeune in 1980. Unfortunately, the wells had been in use for many years prior. The chemicals detected included trichloroethylene (TCE), perchloroethylene (PCE), benzene, vinyl chloride, and other compounds, which were likely related to on-base industrial activities and an off base dry cleaning facility. In 1987, the base closed the contaminated wells. It is estimated that up to one million people may have had contact with the contaminated water, causing long-term health consequences.

CONGRESS RESPONDS TO THE CONTAMINATION

In 2009, the National Research Council released its report “Contaminated Water Supplies at Camp Lejeune: Assessing Potential Health Effects” in response to a request from Congress. The guidance states that the Veterans Administration has authority to reimburse family members for medical conditions that are secondary to a covered condition.

In 2012, Congress passed the Honoring America’s Veterans and Caring for Camp Lejeune Families Act. The law provides medical care, but not compensation, to veterans and family members who have any of 15 specific health outcomes.

In August 2022, President Biden signed the “Camp Lejeune Justice Act of 2022,” providing a new legal avenue of recovery for veterans and family exposed to contamination at Camp Lejeune. This legislation provides additional funding to support those injured and sets specific parameters and time limits to make a claim. Under this act, claimants may be able to recover their healthcare costs and additional compensation, unlike the 2012 law.

Since the law passed, thousands of claims have reportedly been filed with the U.S. Navy’s Judge Advocate General’s Corp office, a prerequisite before filing a lawsuit. These cases must be filed in the U.S. District Court for the Eastern District of North Carolina, and it is expected they will eventually be consolidated before one judge there.

BENEFITS OF THE ACT

At a high level, the Camp Lejeune Justice Act is intended to help victims. First, it forbids any other statutes of limitations from applying to these claims, other than the ones articulated in the statute. Second, it creates a new cause of action for individuals to pursue compensation against the government, thereby waiving official immunity. Finally, it lowers the burden of proof that is typically required in these types of cases.

PLEASE CONTACT OUR CAMP LEJEUNE ATTORNEYS WITH QUESTIONS

If your clients have questions about a potential Camp Lejeune claim, please feel free to **contact us** at **1-800-553-9910**. The process begins with an administrative claim, and there are strict deadlines in which to file, so please do not hesitate to reach out.

HOLLY H. DOLEJSI

TARA D. SUTTON

CAROLINE M. MOOS



CLAIM REQUIREMENTS

There are a few key requirements for those seeking to pursue a Camp Lejeune claim. Contact us with specific questions on whether someone may qualify. First, in order to be eligible under the act, individuals must have lived or worked at Camp Lejeune for at least 30 days between August 1, 1953, and December 31, 1987. This includes veterans, reservists, and guardsmen and women; the families of those service members; and civilian workers.

Second, the government has listed some presumptive qualifying injuries and conditions, which include:

- Adult leukemia
- Aplastic anemia and other myelodysplastic syndromes
- Bladder cancer
- Kidney cancer
- Liver cancer
- Multiple myeloma
- Non-Hodgkin’s lymphoma
- Parkinson’s disease

This list is not exclusive or exhaustive. Other injuries may qualify.

Greta Wiessner

MAKING THE CIVIL RIGHTS MOVEMENT A MODERN-DAY REALITY

Greta Wiessner became a lawyer to fight for justice. An associate in the Civil Rights and Mass Tort groups, she is passionate about advocating for those who feel voiceless in the legal system. It is a passion that stems from her time as a teacher.

For three years, Greta taught fifth grade in low-income communities in Texas. She witnessed firsthand the systemic barriers affecting her students and their families. It was during that time that she experienced one of her first callings to become a civil rights attorney.



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With the Mass Tort Group at Robins Kaplan, I realized that I could use my passion for complex litigation to advocate for a lot of people at once.

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CIVIL RIGHTS

It was after she read her students the story of Ruby Bridges, the first African American child to desegregate the all-white William Frantz Elementary School in Louisiana. At the end, she asked for questions, expecting to dive into conversation about the civil rights movement and desegregation. Instead, one of her students raised his hand and asked, “So where do white people have to go to school now?” There were almost no white students at his school. Even in 2013, segregation persisted.

“That was a moment where I thought, ‘What else could I be doing outside the classroom to make the civil rights movement in the modern day a reality?’” she said.

Greta went on to become a public interest fellow at the University of Pennsylvania Law School, where she explored different areas of social justice lawyering through the Penn Law Immigrant Rights Project, Child Advocacy Clinic, Transnational Legal Clinic, and as a summer law clerk at the Hennepin County Public Defender’s Office. She also grew more interested in complex civil litigation.

“With the Mass Tort Group at Robins Kaplan, I realized that I could use my passion for complex litigation to advocate for a lot of people at once, which is a super-effective and interesting way to seek justice,” she said.

After law school, Greta completed two federal clerkships: one on the U.S. Court of Appeals for the Third Circuit and the other on the U.S. District Court of the Eastern District of Pennsylvania. It was during Greta’s first clerkship that news of George Floyd’s murder at the hands of a police officer made national headlines, sparking protests around the world. It also sparked Greta’s interest in moving back to her home state of Minnesota to pursue a career in civil rights law.

“I wanted to be part of the movement for police reform and racial justice and equity that seemed to be ramping up in Minneapolis,” she said.

She researched and inquired about civil rights law firms in Minnesota and was quickly directed to Bob Bennett, a partner at Robins Kaplan with over 40 years of experience in civil rights and police misconduct. In September 2021, Greta joined the firm to work on Bob’s team, becoming the first associate in the Civil Rights and Police Misconduct Group.

“Bob’s team is small but mighty, and they have welcomed me with open arms,” Greta said. “They treat me like I am one of them and have the expectation that I can do the same level of work, which is both exciting and daunting.”

“But when I’m afraid to do something, I do it afraid,” she said.

BOB BENNETT

KATIE BENNETT

ANDREW NOEL

MARC BETINSKY



“

The most exciting part for us was hearing the judge validate some of our client’s feelings and impressions.

”

Since joining the firm, Greta has played a key role in a variety of high-profile cases. Most notably, she argued before the U.S. Eighth Circuit Court of Appeals that a case involving a 12-year-old who died by suicide at the Dakota Boys and Girls Ranch should not have been dismissed before discovery. In a unanimous decision, the U.S. Eighth Circuit Court of Appeals agreed and reversed the trial court.

“That was a career-high moment for me, and to have that experience during my first year at the law firm was amazing,” Greta said.

Greta has also worked on the national opioid litigation with teams of attorneys from across the country. Opioid-related settlements and bankruptcy claims recently topped the \$54 billion mark after Walmart proposed a \$3.1 billion settlement with state, local, and tribal governments.

Most recently, Greta argued a motion for summary judgment filed on behalf of Marion

Humphrey Jr., who sued an Arkansas State Police trooper after a 2020 traffic stop in which he was detained for nearly two hours – most of that time in handcuffs – before being released with a warning citation. The judge spent four hours questioning both sides.

“The most exciting part for us was hearing the judge validate some of our client’s feelings and impressions, such as this was not best-practices policing or a justified stop,” she said.

Greta is now waiting on an order from the judge and hoping the case heads to trial next year.

These are only a few of the cases that Greta has worked on during her short time at Robins Kaplan. Moving forward, she hopes to continue building her trial skills to ensure her clients have an air-tight case from start to finish.

“I’ve proven myself an excellent researcher and writer and oralist,” Greta said. “Now, I want to become a full-package trial attorney.”

MASS TORT INVESTIGATIONS

BAUSCH & LOMB AREDS 2 PRESERVISION EYE VITAMINS

Robins Kaplan LLP is investigating a potential link between the use of this nonprescription product and serious injury. Bausch & Lomb AREDS 2 Preservision Eye Vitamins are typically used for eye health – specifically macular degeneration. However, the high levels of zinc in the product can result in copper deficiency. We are investigating a potential connection between copper deficiency and serious injury, including myelopathy and neuropathy.

INJECTAFER

This intravenous iron supplement prescribed to patients with iron deficiency anemia has been linked to severe hypophosphatemia — a dangerously low level of phosphorus in the blood that can cause life-threatening complications.

ELMIRON

The painful bladder syndrome drug Elmiron updated its labeling to warn that pigmentary changes in the retina have been identified with long-term use of the drug,¹ nearly two years after the journal of the American Academy of Ophthalmology published an article linking Elmiron to pigmentary maculopathy² (which may cause permanent vision changes, such as difficulty reading, slow adjustment to changes in lighting, and blurred vision).

PHILIPS CPAP AND BILEVEL PAP RECALL

In June 2021, Philips Respironics recalled certain CPAP, BiPAP, and mechanical ventilator devices after disclosing that the sound abatement foam used in the devices was degrading, causing small particles from the foam to break loose and come through the air hose. The possible risks resulting from the particulate and chemical exposure from the recalled devices include toxic and carcinogenic effects to the liver, kidneys, and other organs.

MEDFUSION

Robins Kaplan LLP is investigating serious injuries related to Smiths Medical Medfusion Syringe Infusion Pump recall. These syringe infusion pumps are used in neonatal and pediatric hospitals, hospital operating rooms, and intensive care units (ICUs) to administer precise doses of medication, anesthesia, antibiotics, blood, and other therapeutic fluids to patients. Malfunction of these devices may cause overdosing, underdosing, or a delay in delivering lifesaving medications to patients. If you or a loved one have been harmed or injured by overdosing, underdosing, or a delay in medication given intravenously while in a hospital ICU, emergency room, pediatric hospital, or neonatal unit, you may be entitled to additional compensation.

CAMP LEJEUNE

Robins Kaplan LLP attorneys are working on behalf of victims who were exposed to water contamination at Camp Lejeune in Jacksonville, North Carolina. If you or a loved one lived or worked at (USMC) Base Camp Lejeune in Jacksonville from 1953 to 1987, you may be entitled to a claim and additional compensation for your pain and suffering.

CHEMICAL HAIR STRAIGHTENER

Robins Kaplan is investigating the potential association between use of chemical hair straighteners and an increased risk of uterine cancer. If you have been diagnosed with uterine cancer and have regularly used chemical hair straighteners, feel free to contact us.

1. U.S. Food and Drug Administration, June 16, 2020 Supplemental Elmiron Package Insert. DRUGS@FDA, available at https://www.accessdata.fda.gov/drugsatfda_docs/label/2020/020193s014lbl.pdf.

2. William A. Pearce et al., Pigmentary Maculopathy Associated with Chronic Exposure to Pentosan Polysulfate Sodium. OPTHALMOLOGY. E. Pub. May 22, 2018, available at <https://doi.org/10.1016/j.ophtha.2018.04.026>

CASE RESULTS

\$900,000 SETTLEMENT FOR MEDICAL MALPRACTICE WRONGFUL DEATH

Teresa Fariss McClain and Casey Matthiesen secured a \$900,000 settlement at mediation. The matter involved a medical malpractice and wrongful death following complications during a colonoscopy.

\$6 MILLION SETTLEMENT IN BIRTH INJURY CASE

Teresa Fariss McClain, Brandon Vaughn, and Casey Matthiesen secured a \$6 million settlement at mediation in a birth injury case.

\$775,000 SETTLEMENT FOR FAILURE TO DIAGNOSE LUNG CANCER

Peter Schmit and Morgan Voight secured a \$775,000 wrongful death settlement before trial in North Dakota. The matter involved a 16-month delay in diagnosing cancer of the lung and the subsequent delay in treatment.

FINAL DISTRIBUTION OF SETTLEMENT

Phil Sieff and Bob Bennett secured the final distribution of a highly complex yet confidential settlement arising from the wrongful deaths of 20-year-old Mack Motzko and 24-year-old Sam Schuneman who died in July 2021 from injuries sustained in a single car crash. The two young men were passengers in a car driven by James Blue.

OVER \$300,000 PREMISE LIABILITY JURY VERDICT IN NORTH DAKOTA

Tony Schrank and Tim Purdon secured a jury verdict in excess of \$300,000 in North Dakota. The trial involved injuries following a fall into an open storm shelter pit during a real estate showing.

\$522,500 SETTLEMENT AT MEDIATION FOR UNTREATED PNEUMONIA AND SEPSIS

Liz Fors and Morgan Voight accepted a \$522,500 confidential offer following the death of a 63-year-old mother from untreated pneumonia and sepsis.

TERESA FARISS
MCCLAIN

BRANDON
VAUGHN

CASEY
MATTHIESEN

PETER SCHMIT

MORGAN
VOIGHT

PHIL SIEFF

BOB BENNETT

TONY SCHRANK

TIM PURDON

LIZ FORS

AWARDS AND RECOGNITION

MARC BETINSKY AND LIZ FORS PROMOTED TO PARTNER

We are proud to announce that Marc Betinsky, an attorney in the Civil Rights and Police Misconduct Group, and Liz Fors, an attorney in the Personal Injury and Medical Malpractice Group, have been promoted to partner, effective January 1, 2023.

ROBINS KAPLAN RECOGNIZED IN *THE NATIONAL LAW JOURNAL'S* TOP 100 VERDICTS LIST FOR 2021

The firm's \$27.8 million verdict secured on behalf of Dr. Richard Tholen, a top Twin Cities plastic surgeon who endured an amputated leg after Assist America refused to evacuate him for proper medical care, was recently ranked among *The National Law Journal's* Top 100 Verdicts for 2021. The Robins Kaplan trial team, led by Patrick Arenz with Emily Niles and Jessica Gutierrez, secured the verdict in November 2021.

ROBINS KAPLAN ATTORNEYS NAMED TO 2023 BEST LAWYERS IN AMERICA LIST

The following attorneys were named to the 2023 Best Lawyers in America® list for Personal Injury, Medical Malpractice, and Mass Tort: Tara Sutton, Katie Bennett, Robert Bennett, Leo Feeney, Mark Hallberg, Kate Jaycox, Teresa Fariss McClain, Munir Meghjee, Peter Schmit, Philip Sieff, Roman Silberfeld, Tara Sutton, and Brandon Vaughn. Additionally, Tara Sutton was named "Lawyer of the Year."

MARC BETINSKY APPOINTED TO MAGISTRATE JUDGE MERIT SELECTION PANEL

Marc Betinsky has been appointed by Chief Judge Patrick J. Schiltz to serve on the Merit Selection Panel to advise the U.S. District Court for the District of Minnesota on the selection of a new U.S. magistrate judge. The panel will evaluate and recommend the most qualified candidates to the district judges for their consideration.

CHRIS MESSERLY HONORED WITH MAJ'S 2022 CHAMPION OF JUSTICE AWARD

Chris Messerly, a recently retired partner at the firm, received the Minnesota Association for Justice (MAJ) 2022 Champion of Justice Award. The annual Champion of Justice Award, previously known as the Lifetime Achievement Award, is presented to a MAJ member who has a proven legacy of commitment to justice, the profession of law, and MAJ over a career lifetime.

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