

JUSTICE REPORT

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EXPANDING JUSTICE FOR VICTIMS OF MEDICAL
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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.



MINNESOTA PASSES SURVIVORSHIP BILL, EXPANDING JUSTICE FOR VICTIMS OF MEDICAL MALPRACTICE AND WRONGFUL DEATH

On May 20, 2023, Minnesota became the last state to pass a Survivorship Bill, expanding the damages that families can pursue after losing a loved one.

Liz Fors, co-chair of the Legislative Committee for Minnesota Association for Justice (MAJ) and partner at Robins Kaplan LLP, said MAJ has been working on behalf of consumers for over a decade to get this bill passed.

“We have been lobbying and educating our representatives and senators about the need for this bill for years,” Fors said. “One of our top priorities for 2023 was to get this law passed.”

There are two primary scenarios in which the Minnesota Survivorship Statute is pertinent, she explained. The first is when someone is the victim of medical malpractice but dies from an unrelated cause. Prior to the law being passed, the case could not be carried on after the person’s death. Unfortunately, this situation was not uncommon when the person was very old or sick, and defense attorneys have been known to drag their feet in those cases.

In one instance, a wife lobbying for the Minnesota Survivorship Bill testified about a situation with her husband, who was suffering from stage 4 colon cancer. During one of the surgeries required to treat his cancer, a 12-inch sponge was left inside his abdomen. It was discovered two weeks later. He was hospitalized for nearly two months after it was removed, losing nearly 50 pounds and undergoing surgery after surgery to insert drains in all the infected abscesses the sponge left behind.

The couple hired a lawyer and offered to negotiate a fair settlement, but the hospital did not respond. After moving forward with a lawsuit, the hospital denied any negligence and requested a jury trial, which is now set after Thanksgiving.

“In my mind, there can be only one reason for the hospital to refuse to negotiate and to include ridiculous defenses and to ask for a jury trial—and that is they are hoping he will die from cancer before they can be held accountable for their negligence,” the wife said.

Fors recalls another case involving victims of alleged abuse in Minnesota nursing homes.

“Years ago in Southern Minnesota, there were numerous investigations at nursing homes where residents were sexually and physically abused,” Fors said. “Many of the victims died from unrelated causes before the lawsuit was resolved and their families could never hold the wrongdoers accountable.”

The second scenario involves claims for the deceased’s pain and suffering, and emotional distress. The previous law only allowed families to bring a claim for wrongful death when a loved one died from medical malpractice. The deceased’s economic damages, such as lost wages, were assessed. The families could only claim the loss of the relationship with their loved one, not the deceased’s pain and suffering.

“Now we can get justice for these families,” Fors said. “We don’t have to ignore the horrible things that their loved ones went through.”

With the passage of the bill, Fors and other members of the firm’s Personal Injury and Medical Malpractice Group are seeking to amend complaints to add these damages for a number of clients. They look forward to helping their clients finally get the justice they deserve and hold the wrongdoers accountable.

“Now we can get justice for these families. We don’t have to ignore the horrible things that their loved ones went through.”

-LIZ FORS



Southern Minnesota Regional Legal Services:



A BEACON OF CIVIL JUSTICE

BY H.K. WILSON

More than a century ago, the lawyers of Ramsey County began a volunteer initiative to provide free legal services to area residents in need. In the years since, Southern Minnesota Regional Legal Services, widely known as SMRLS, has remained a beacon of civil justice for Minnesotans.

SMRLS' mission is to provide a full range of high-quality legal services to low-income persons and eligible client groups in civil matters, in a respectful manner which enables clients to (1) enforce their legal rights; (2) obtain effective access to the courts, administrative agencies and forums which constitute our system of justice; (3) maintain freedom from hunger, homelessness, sickness and abuse; (4) empower persons and assure equal opportunity, thus, helping people to help themselves and become economically self-reliant, to the extent their individual abilities and circumstances permit.

In 1974, the founders' vision expanded when the United States Congress formed the Legal Services Corporation (LSC). This publicly funded, 501(c)(3) nonprofit corporation ensures equal access to justice under the law by providing funding for civil legal aid to those who otherwise would not be able to afford it. As a result, SMRLS now serves residents in all 33 Southern Minnesota counties and is one of six such organizations funded by the LSC statewide.

A fiery young attorney named Jessie Nicholson joined SMRLS' ranks in 1989. Nicholson, now the organization's CEO, was inspired to transition from her career as an educator to the law by an associate pastor at the church she attended in Iowa.

"He was the only African American judge in the state at the time," she recalls. "He would come to church services wearing his robe, and I thought it was cool. It was the early '70s, and I remember him telling young people going off to college, 'Remember where you came from. Whatever you do with your careers, give something back.' I never thought about the law as something that was just for my benefit, but rather, something I could do for the broader community."

Nicholson and her husband relocated to Minnesota, where she completed her law degree. Springing from a low-income community, her first thought was that she would go to work for the public defender's office. But after serving a clerkship there, she decided it was not her true calling.

"I admire public defenders; it just wasn't for me," Nicholson says. "Civil legal aid was next, and it was the right choice."



Ever since, Nicholson has served SMRLS with a dedication equal to her passion for civil justice. Under her oversight, staff and volunteers in eight offices assist area residents and agricultural workers throughout North Dakota and Minnesota with matters relating to family law, government benefits, housing, immigration, education law, senior law, employment law, consumer law, and more.

SMRLS seeks justice for the low income, the elderly, the trafficked and others who feel voiceless in the legal system. A significant percentage of the organization's resources are spent on rectifying housing issues.

"People of color and immigrant populations often face issues that fall under the Fair Housing Act," she says. "Issues of discrimination impact people's ability to secure and maintain affordable, safe housing. These issues have been further exacerbated through the pandemic. Since the federal funds for housing expired and eviction moratoriums were lifted, unscrupulous landlords have filed eviction actions against tenants even though their rent arrearages were reimbursed. We have a lot of staff working on those issues."

Currently, SMRLS staffs roughly 100 people, 60 of them lawyers. The hours and expertise required to assist people with complex legal issues means that often, the organization is limited to simply giving advice to those in need rather than accepting cases for full representation.

The contributions of volunteers and donors are vital to SMRLS' ability to continue its work. By means of SMRLS' Volunteer Attorney Program, attorneys can sign up to assist people with legal counsel or full representation relating to their primary areas of practice. "Some don't mind taking on cases for representation in contested matters," Nicholson says. "Some work on behalf of seniors and do wills, trusts and powers of attorney. Others do bankruptcy work simply because that is what they do in their own practice. Whatever someone is most comfortable doing or they have experience in, we're glad to have the help. We also have law students who come in to help over the summer or during the year. It's a great opportunity for them to see if this is the career path for them."



Peter A. Schmit is a partner at Robins Kaplan LLP and chair of the firm's national personal injury and medical malpractice group. He is also chair of SMRLS Campaign for Legal Aid. Schmit was first introduced to SMRLS by former practice partner and mentor, Terry Wade. "Terry had been involved in the Campaign for Legal Aid for years, and when an opening on the committee appeared, he recruited me."

Robins Kaplan has long been a supporter of SMRLS and has helped to sponsor UnCorked, SMRLS' largest fundraiser of the year, since its inception. "We also field a team of hockey players for SMRLS on Ice, where teams compete at the XCEL Energy center (rink donated by the Wild). We sponsor that event as well as provide an annual funding contribution," Schmit adds.

According to Schmit, attorneys who give to SMRLS get out of it a lot more than they put in. "To see the legal and business community come together to support a great organization like SMRLS is very rewarding and satisfying. To hear a former SMRLS client, who now is a successful businessperson, tell their story about how SMRLS helped them during their darkest hours is fantastic. There are many ways to get involved. Join the committee, volunteer at one of the SMRLS clinics, attend UnCorked, play hockey, donate time or money — the list is long. SMRLS is a great organization and needs our help."

With the help of national law firm Fredrikson & Byron P.A., SMRLS and the state's five other legal aid groups spent the last legislative session lobbying for an increase in state funding. On May 19, SMRLS received some tremendous news, when Governor Walz signed off on the Legislative Conference Committee's vote to increase funding for civil legal services statewide by \$30 million.

"Minnesota has a budget surplus, so this was the year to try to do it," Nicholson says. "A lot of work went into this whole process from January to now. With these funds, we can increase salaries and attract additional talent. We can also increase our capacity to provide more assistance to the people who come to us."

When asked if this windfall from the state means that SMRLS will no longer need the support of the local community, Schmit answered, “Absolutely not. Over the last decade, support from the federal and state level have dropped considerably, so SMRLS is playing catch up, and the funds are needed now more than ever.”

With increased funding, Nicholson and her executive team are looking to the future with renewed excitement. Together with SMRLS Director of Business Administration Lara Otsuka, Nicholson is streamlining internal processes and implementing new technologies that will allow the organization to grow for years to come. “She is also a lawyer with great business acumen,” Nicholson says.

SMRLS has also expanded its department of litigation advocacy to a team of three focused on “making sure we’re working on the most critical civil legal issues,” Nicholson says. “The department is revving up how we’re training our lawyers so they can take on more robust cases. We want our attorneys to feel they have challenging work here, especially with complex cases that we might want to take to the appellate or federal courts. We want our attorneys to be well prepared when they go into these proceedings so they can do a great job on behalf of the community.”

Nicholson’s journey at SMRLS is now coming full circle. “The most exciting thing now is that we are poised to bring in new talent — the next generation of lawyers who want to do this work, who have the passion to do this work. We have some very passionate non-lawyer staff as well. All this new talent will take us to the next level as a successful provider of civil legal services.”

She concludes, “I believe that Minnesota’s legal community embraces the value of access to civil legal services for all Minnesotans, regardless of means. Many attorneys assist legal aid providers like SMRLS by providing needed pro bono legal services for individual clients as well as other kinds of assistance. The need for assistance is great, and we welcome the partnerships of the legal community as we continue to serve the legal needs of the disadvantaged.”

“To see the legal and business community come together to support a great organization like SMRLS is very rewarding and satisfying. To hear a former SMRLS client, who now is a successful businessperson, tell their story about how SMRLS helped them during their darkest hours is fantastic”

-PETER SCHMIT



MASS TORT INVESTIGATIONS

EXACTECH

Exactech has recalled approximately 160,000 hip, knee, and ankle total replacement devices due to accelerated wear from defective packaging. The defective devices have caused the need for a revision surgery due to osteolysis (bone loss), pain, and swelling. Robins Kaplan LLP partner Rayna Kessler serves as the MDL Liaison Counsel in the multi-district litigation *In re: Exactech Polyethylene Orthopedic Products Liability Litigation*, MDL No. 3044, 1:22-md-03044-MMH.

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.

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.

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.

NEW INVESTIGATION

MEGADYNE MEGA 2000 AND MEGA SOFT REUSABLE PATIENT RETURN ELECTRODES



In July 2023, Megadyne recalled the MEGA 2000 and MEGA SOFT Reusable Patient Return Electrodes, used during electrosurgery, after receiving reports of patients receiving burn injuries. These burns may be as serious as third-degree burns requiring medical intervention and may lead to a longer hospital stay, scarring, and potentially more surgeries.

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. *OPHTHALMOLOGY*. E. Pub. May 22, 2018, available at <https://doi.org/10.1016/j.ophtha.2018.04.026>.

CASE RESULTS

ROBINS KAPLAN LLP SECURES TWO HISTORIC JURY VERDICTS IN SOUTH DAKOTA AND NORTH DAKOTA

Robins Kaplan LLP is proud to have recently secured two landmark jury verdicts in medical malpractice and wrongful death cases in Sioux Falls and Fargo.

In the first, a team led by Brendan Johnson and Elizabeth Fors obtained a \$2.5 million medical malpractice verdict against Sanford Health in Sioux Falls. The case involved Anna Harty, a 42-year-old mom of three young kids, who died on May 25, 2019, from a massive blood clot in the lungs. She went to her primary care doctor of 15 years due to fatigue and new onset shortness of breath with activity, the most common symptom of blood clots in the lungs. Her doctor failed to recognize Anna's risk factors for developing a blood clot: age, obesity, and taking birth control pills containing estrogen. She neglected to order the D-dimer blood test, which could definitively rule out a clot. Anna died in the emergency room just four days later.

In the second, a team led by Matt Woods and Casey Matthiesen secured a \$500,657 jury verdict against Essentia Health in Fargo. In November 2017, our client's 66-year-old husband was admitted to the hospital after fainting several times and hitting his head. The hospital could not determine the cause of his fainting and decided to hold him for a day to do a cardiac work-up, because he had a history of cardiac issues. Due to these prior cardiac issues, he was on several blood thinner medications. The hospital was aware that, because of the blood thinners and head trauma, he was at increased risk for a brain bleed.

While waiting for the follow-up cardiac tests, he developed a sudden and severe headache, nausea, and a spike in his blood pressure. Although the nursing staff reported these symptoms to the primary care doctor, she did not order a CT scan to determine the cause. Instead, the headache was only treated with various pain medications. According to the hospital's own records, he was experiencing a "massive" subdural hematoma, otherwise known as a brain bleed. Because this brain bleed was not identified, and therefore not treated, his brain was irretrievably damaged over the course of several hours, and he became non-responsive. He died the following morning.

"These deaths are a tragedy, but we are grateful that a South Dakota and North Dakota jury delivered justice for the families," said Peter Schmit, chair of the firm's Personal Injury and Medical Malpractice Group. "We believe this is the first time Sanford has lost at trial in South Dakota, and medical malpractice plaintiff verdicts in North Dakota are very uncommon. We are proud to have secured these results for our clients."

\$2.5 MILLION
\$500,657



AWARDS AND RECOGNITION

KATE JAYCOX ELECTED PRESIDENT OF THE MINNESOTA ASSOCIATION FOR JUSTICE



Congratulations to partner Kate Jaycox, who was elected president of the Minnesota Association for Justice (MAJ) at the organization’s annual convention on August 18, 2023. Jaycox is a longtime member of MAJ, a professional association of attorneys with the mission to protect every Minnesotan’s constitutional right to a trial by jury, and every citizen’s right to redress for harms caused by the wrongful acts of others. For more than a decade, she has served on MAJ’s Executive Committee and Board of Governors. In July 2023, she was also appointed as one of 24 attorneys across the country to serve on the Executive Committee of the American Association for Justice (AAJ), the national professional organization devoted to promoting justice and safeguarding the right to trial by jury.

Kate Jaycox represents individuals and families who have been injured by the pharmaceutical and medical device industry. Focusing on complex civil litigation, product liability, and personal injury cases, she has recovered millions of dollars for thousands of injured plaintiffs over her 20-year career and has served in various mass tort litigation leadership positions, including most recently as co-lead of *In Re Injectafer* (E.D. Pa).

FIVE ROBINS KAPLAN ATTORNEYS NAMED TO *MINNESOTA LAWYER’S* POWER 30: PERSONAL INJURY LIST

Bob Bennett, Kate Jaycox, Peter Schmit, Phil Sieff, and Teresa Fariss McClain have been selected to *Minnesota Lawyer’s* POWER 30: Personal Injury list, honoring the state’s top personal injury attorneys. The POWER 30 profiles attorneys “whose mere presence on a case signifies the stakes, who have influenced the direction of the law, whose leadership in the community is pervasive and whose respect within the bar is undeniable.”



BRANDON VAUGHN SELECTED TO NATIONAL BAR ASSOCIATION’S NATION’S BEST ADVOCATES: TOP 40 UNDER 40

Brandon Vaughn was honored with the Nation’s Best Advocate award at the National Bar Association’s Top 40 Under 40 awards ceremony. Of the 40 attorneys recognized, five were presented additional awards for exemplary excellence in the areas of advocacy, leadership, service, activism, and innovation. The Nation’s Best Advocate is the most distinguished award presented to those honored.

RASHANDA BRUCE, RAOUL SHAH, AND GRETA WIESSNER NAMED 2023 “UP & COMING ATTORNEYS” BY *MINNESOTA LAWYER*

Each year, *Minnesota Lawyer* presents its prestigious “Up & Coming Attorney” award to a few select lawyers based on excellent and distinguished performance in their first 10 years of practice. Among them from our mass tort, civil rights, and personal injury and medical malpractice groups were Rashanda Bruce, Raoul Shah, and Greta Wiessner.

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