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Daniel O'Fallon

DANIEL A. O'FALLON IS APPOINTED TO THE 10TH JUDICIAL DISTRICT BENCH

On October 6, 2009, Daniel A. O'Fallon, who has practiced at Robins, Kaplan, Miller & Ciresi L.L.P. for over 21 years, was appointed to the 10th Judicial District bench by Governor Tim Pawlenty. Dan is a trial lawyer with extensive experience in major litigation.

Dan received his J.D. from the University of Michigan Law School in 1985 and his B.A. from the University of Montana in 1982. He has been a partner with the firm since 1993. He is a member of the American, Minnesota State, and Ramsey County Bar Associations, where he was co-chair of the Families First event. Dan is a member of the Minnesota Association for Justice, where he serves on the Board of Governors and the Executive Board; a state delegate to the American Association for Justice; a member of the Douglas Amdahl Inn of Court; and a member of the Southern Minnesota Regional Legal Services Campaign for Legal Aid Urban Leadership Committee. He is also active in his community, where he was a founding member and served on the board of directors of the Centennial Area Education Foundation, an assistant girls basketball coach with the Centennial Basketball Association, a Girl Scout Troop parent volunteer, a lector at St. Genevieve's Catholic Church, and a participant in his neighborhood's National Night Out celebration.

Dan lives in Lino Lakes with his wife and three daughters.


Chris Messerly

CHRIS MESSERLY INDUCTED INTO THE AMERICAN COLLEGE OF TRIAL LAWYERS

Chris Messerly was recently inducted in to the American College of Trial Lawyers as a Fellow where he will join other practice group members, Terry Wade and Kathleen Flynn Peterson, who are also Fellows. The American College of Trial Lawyers is composed of the best of the trial bar from the United States and Canada and is widely considered to be the premier professional trial organization in America. Founded in 1950, the College is dedicated to maintaining and improving the standards of trial practice, the administration of justice and the ethics of the profession. Fellowship is extended only by invitation, after careful investigation, to those experienced trial lawyers who have mastered the art of advocacy and whose professional careers have been marked by the highest standards of ethical conduct, professionalism, civility and collegiality. Membership can never be more than 1% of the total lawyer population of any state or province.


Terry Wade

TERRY WADE OBTAINS $1.25 MILLION JURY VERDICT

On October 26, 2009, a Hibbing, Minnesota jury returned a verdict involving the death of a boy named Andrew. Andrew's family was represented by Terry Wade and Legal Nurse Consultant, Bonnie Grzeskowiak. Over a four-day period Andrew was misdiagnosed twice. He was initially diagnosed as having influenza during a telephone conversation with a nurse from the office of Dr. Kevin Krause, a Hibbing pediatrician. A diagnosis of "stomach flu" (gastroenteritis) was made following a brief office examination of Andrew by Dr. Krause three days after the telephone diagnosis. Andrew died the next day at home. He had neither influenza nor gastroenteritis. He had a gangrenous appendix which had leaked bacteria into his abdomen and was the only cause of his death according to the St. Louis County Medical Examiner's investigation. The jury found that the negligence of Dr. Krause was a direct cause of Andrew's death. The jury acknowledged what a wonderful boy Andrew was and what a wonderful man he was expected to become when the jury found the damages due to Andrew's death to be just over $1.25 million.

SELECT RESULTS*


William Maddix

$1.85 Million Settlement - William Maddix recovered $1.85 million for a man in a case involving perioperative blindness. The male patient had emergency surgery to repair an aortic dissection. After the 12-hour surgery, he continued to bleed profusely for four hours before the surgeon returned him to surgery and repaired a bleeder at the site of the aortic graft. The case settled on the eve of trial with a Frye-Mack motion pending. The defense motion was premised on the contention that there is no current agreement in the medical community about the cause of perioperative vision loss, and that vision loss is a known complication of the underlying surgical procedure. Plaintiff countered with decades of literature from the neuro-ophthalmology community (and ancient Greece) linking sudden vision loss to massive hemorrhage.


Kathleen Flynn Peterson


Thomas Sinas

$1.7 Million Settlement - Recently, Kathleen Flynn Peterson and Thomas Sinas worked on a dental negligence case arising out of the failure to timely diagnose and treat oral cancer. On multiple occasions over nearly four years, the plaintiff was referred to an oral surgeon for evaluation of a tongue lesion. The oral surgeon later referred the patient to an oral medicine specialist. Months later, a biopsy of the tongue lesion was finally performed that showed squamous cell carcinoma. After extensive staging and evaluation, the patient was diagnosed with advanced-stage, metastatic cancer. The patient required extensive head and neck surgery as well as radiation and chemotherapy, resulting in numerous side effects and complications. Plaintiff's treating physicians and plaintiff's expert oncologist opined that the delay in diagnosis resulted in a five-year survival rate of 30 – 40% whereas the plaintiff's chances for five-year survival would have been greater than 70% had the diagnosis been made on a timely basis. The case was settled at mediation for $1.7 million from all defendants.

$625,000 Settlement - In June 2009, Kathleen Flynn Peterson and Thomas Sinas obtained a $625,000 settlement on behalf of a patient who experienced burns in the operating room during the course of a same-day surgical procedure. The case was settled after minimal discovery.


Philip Sieff

$1.5 Million Settlement - Philip Sieff, Patricia Yoedicke, and Craig Sieverding recently recovered a $1.5 million settlement on behalf of a victim of an alcohol related accident. The case alleged a violation of a State law which requires liquor establishments to refrain from serving alcohol to persons who are obviously intoxicated, due to the horrendous injuries that may result. When such an illegal sale can be proved, the law makes the liquor establishment responsible for the damages caused to members of the public.


Vincent Moccio

$1.75 Million Settlement - On October 1, 2009, the United States District Court, Minnesota, approved a final class settlement of $1.75 million in *Simpson v. County of Meeker, Minnesota.* Ms. Simpson alleged an unconstitutional policy at the Meeker County Jail of strip searching arrestees for minor crimes and taking embarrassing photographs of them. Mass Tort Department partner, Vincent Moccio, was appointed class counsel and negotiated the class settlement.

$750,000 Settlement - On June 18, 2009, the United States District Court, Minnesota, approved a final class settlement of $750,000 in *Engeseth, et. al. v. County of Isanti, Minnesota.* Mr. Engeseth alleged an unconstitutional policy at the Isanti County Jail of strip searching arrestees for minor crimes. Vincent Moccio, who had previously been appointed class counsel, negotiated the class settlement.

TORT REFORM: A BAD DEAL

The public dialogue on health care reform has unified many in the goal of providing quality, affordable health care for Americans. The dialogue has also brought misinformation. Interest groups again have pushed tort reform as some panacea for our ailing system. Such "reform," however, is no solution at all. The proposed reforms serve to bargain away patient's rights but do nothing to improve the quality of care, provide more coverage, or impact costs. This is a bad deal, particularly for Minnesotans who already benefit from quality care at relatively low costs.

Health care reform must address patient safety. The Institute of Medicine (IOM) estimated that as many as 98,000 people die every year due to preventable errors. This figure, if included by the Centers for Disease Control (CDC), would represent the sixth-leading cause of death in America. Even greater in number are preventable medical injuries. There are an estimated 15 million incidents of medical harm each year. In 2003 alone, the Congressional Budget Office (CBO) estimated there were 181,000 severe incidents attributable to negligence.

While tort reform does nothing to prevent injuries on the front end, it bargains away patient's rights and takes away restitution on the back end.

These errors come at a great cost to the system. The IOM estimated that preventable medical errors cost $29 billion per year. The potential savings from the elimination of medical error are undeniable. Medication errors, for instance, account for an estimated 7,000 deaths per year. Health advocates have proposed solutions, such as bar coded medication and smart pumps, that can reduce serious medication errors by 55% at a savings of $7 billion per year. These are real solutions.

Compared to the number of preventable harms, there are few medical negligence lawsuits. Of the many patients who sustain severe injuries due to negligence, the CBO estimated that only 17% choose to file a malpractice claim. This is why malpractice cases are rare in general. The National Center for State Courts (NCSC), in fact, estimated that medical malpractice cases account for only about 3% of the civil case load and that, from 1997 to 2006, this figure had dropped 8%. From all reports, this trend is more pronounced in Minnesota. This evidence shows that if there is something off with the number of medical malpractice lawsuits, it is that there are too few.

Damage caps would do nothing to address the true challenges in health care. Caps would not improve the quality of health care or provide coverage to more Americans. There is likewise no indication that caps would have a tangible impact on costs. Malpractice costs amount to less than 2% of overall care spending nationwide and 0.3% in Minnesota. A reduction in malpractice costs, particularly in Minnesota, would have no measureable effect on health care costs. It certainly would not be a panacea for our system.

In reality, the effect of damage caps would be substantial costs to patients. Non-economic damages compensate patients for very real, and often life-long, injuries — such as loss of limbs, fertility, and even loved ones. Damage caps would prevent the most vulnerable and seriously injured from being fully compensated. Caps would also restrict needed compensation to those who have less compensable injuries. Such measures have been shown to render negligence cases too expensive to bring to trial, especially for women, children, and the elderly who have not suffered substantial economic loss. This is plainly a bad deal. While tort reform does nothing to prevent injuries on the front end, it bargains away patient's rights and takes away restitution on the back end.

Such reforms also take away a real deterrent. Studies, including one by the American College of Emergency Physicians, find that patient safety and health care safety improve when injured patients can hold negligent hospitals or physicians accountable. With thousands of patients dying each year due to preventable medical error, we need to make strides in patient safety. Tort reform does not do that; it will not save a single life. The accountability of medical malpractice does, with its value likely exceeding the cost impact.

In order to obtain quality, affordable health care, we do not need to bargain away our rights, particularly here in Minnesota where we get nothing in return. Tort reform is a bad deal.

OUR PEOPLE


Peter Schmit

PETER SCHMIT, PARTNER

Peter is the youngest of eight and grew up on a small dairy farm in northern Minnesota. Life on the farm taught Peter many things, including a work ethic that he took with him to the University of North Dakota Law School where he graduated Order of the Coif in 1989. While at UND, he clerked for a small law firm that performed medical negligence work. Fortunately, those attorneys recommended Peter apply for a summer clerkship at Robins, Kaplan, Miller & Ciresi L.L.P. Peter clerked for the firm in 1988 and has been here ever since.

Peter represents injured consumers of health care and, in doing so, has had the opportunity to work with many skilled and accomplished trial lawyers at the firm. He has litigated and tried significant medical negligence matters all over the Upper Midwest. He has served on the Board of Governors on Minnesota Association for Justice and, more recently, became a Minnesota State Bar Association Board Certified Civil Trial Specialist. He is also on the school board and active in youth sports.

Married with two children, when he isn't practicing law, Peter enjoys working and playing outside.


Pam O'Brien

PAM O'BRIEN, SENIOR PARALEGAL

Pam knew the career she wanted while attending high school in International Falls. She joined Robins, Kaplan, Miller & Ciresi L.L.P. in 1987 and over the years has mentored many paralegals both inside and outside the firm. She has been active with the Minnesota Association for Justice Paralegal Section where she co-chaired a seminar on trial preparation. She has also co-authored articles that have appeared in the Journal of the Minnesota Association for Justice.

Pam focuses on medical malpractice case management issues and gathers evidence with regard to our clients' damages. Over the years, she has prepared for and attended as many as 12 trials in a given year. She also has worked on pro bono cases, including a case involving the termination of parental rights of parents who physically abused their conjoined twins.

Pam resides with her husband and black lab in South St. Paul.

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