

The A&G Report

Inside this issue:

I. Negligence Update	1-3
II. Mass Torts Update	3-4
III. Union News	4
IV. Firm Activities	5
V. Crime Blotter	6

I. Negligence Update: Cases in the News

Pearson v. District of Columbia; \$10 million settlement in foster care case

Michelle Parfitt and Sidney Schupak, partners in Ashcraft & Gerel's Alexandria office, successfully negotiated a \$10 million dollar settlement from the District of Columbia on behalf of a 5-year-old boy abused by his foster mother.

Rafael Pearson was only a few days old when he was placed in the foster home of



Tanya Jenkins. His mother, a drug addict, had brought Rafael to Virginia Hospital Center the day he was born. Hospital personnel were concerned as he weighed less than six pounds and had traces of cocaine in his system. They contacted the District's Child and Family Services Agency (CFSA)

who was able to reach Rafael's grandmother, Sylvia Pearson. She advised CFSA to take Rafael until she was able to find a way to care for him. Sylvia had already adopted one of her daughter's children.

Less than six weeks later he was brought to the hospital where it was discovered that Tanya Jenkins had beaten and shaken him so severely that he had suffered devastating brain damage. He spent several days on life support not expected to survive.

Now, at 5 years old, he remains profoundly disabled. He is blind, will never walk or talk

(Continued on page 2)



Rafael Pearson at his grandmother Sylvia's house

CASE RESULTS DEPEND UPON A VARIETY OF FACTORS UNIQUE TO EACH CASE. NO REPRESENTATION IS MADE OR INTENDED TO GUARANTEE OR PREDICT THE OUTCOME OF A PARTICULAR CASE.



I. Negligence Update (Cont.)

and is wheelchair bound. He will require 24-hour nursing care for the rest of his life.

At the time of his placement in her home, Jenkins was unemployed and living with her 2-year-old son and boyfriend. Earlier that year she had sent another infant back to CFSA, complaining that it was too difficult to care for her. In spite of this warning sign, CFSA came to her five months later with Rafael.

According to her testimony, even without the additional child, Jenkins was struggling financially. After Rafael arrived, a neighbor testified, Jenkins began complaining about

never sleeping and was unable to handle the stress of caring for an infant.

Jenkins contacted CFSA to return Rafael, claiming she was overwhelmed with caring for him. She was reportedly told that she could not return him prior to 30 days.

Court-ordered rules dictate that a social worker must visit weekly during the first eight weeks a child is with a new foster family. CFSA made only one visit to the Jenkins home during the six weeks Rafael was there.

The lawsuit was filed on behalf

of Rafael by Sylvia Pearson in 2007 after Jenkins was tried and sentenced to 12 years for cruelty to children.

Sylvia plans to move Rafael from a nursing facility to her home which is being modified with an elevator and other accommodations. Rafael will have a health aide 24 hours a day.

The settlement is to be paid in three installments; the first, a \$5 million payment, was made in November.

Shaw v. W.C. English, et al.; Jury awards deputy more than \$220,000; finds company failed to warn of dangerous construction site

Craig Brown, a partner in the firm's Alexandria office, secured a verdict with a value exceeding \$220,000 on behalf of his client, Sgt. Randy Shaw of the Stafford County Sheriff's office. The verdict was against a construction company for injuries Shaw sustained when his vehicle plummeted 75 feet into a ravine while in pursuit of a suspect at a construction site.

The case proceeded to trial after Shaw rejected the Defendant's only offer of \$3,000.

On May 17, 2005, Shaw received a call regarding suspected crimi-



nal activity involving suspects fleeing in a motor vehicle. Shaw gave chase in an attempt to intercept them.

The reported location of the fleeing suspects induced Shaw to

enter a new housing development under construction. To gain access to the development and continue his

pursuit, Shaw turned onto a paved roadway. As he drove along, however, it changed to a gravel roadway and finally to a dirt roadway. Then, without warning, the road ended abruptly with an approximate 75-foot drop onto railroad tracks below.

The lay of the land was such that this drop-off was not apparent to Shaw as he drove toward it. Furthermore, there were no warning signs, barricades, guardrails or other devices to alert Shaw to this condition or to prevent his cruiser



I. Negligence Update (Cont.)

from plunging over the side where the road ended. The vehicle landed on its roof in standing water next to the railroad tracks, leaving Shaw dangling from his seat belt and seriously injured.

Trial testimony revealed a warning sign had blown down days before but had not been replaced by the Defendant.

Medical malpractice case settles after man loses right foot following improper diagnosis

Wayne Mansulla, a partner in the Alexandria office, successfully negotiated a settlement on behalf of a young man who lost his leg below the knee after his foot pain was misdiagnosed.

The 21-year-old male was an insulin-dependent diabetic. He presented to the defendant doctor in May and

September of 2007 with complaints of worsening right foot pain. He was diagnosed with a strain and advised to wear soft shoes. No pulses were felt in the foot during both visits. No diagnostic vascular studies were prescribed.

On October 1, 2007, plaintiff returned to the doctor a third time, stating both feet were getting numb when walking. The doctor's diagnosis this time was arterial disease. Doppler studies were fi-

nally arranged for three days later but the man's pain worsened over the next 24 hours. He went to Potomac Hospital's emergency room where Doppler studies showed clots from the knees to the feet in both legs. He was transferred to Fairfax Hospital but despite a diligent effort they were unable to save his right foot. He underwent a below the knee amputation.

The terms of the settlement are confidential. * * *

II. Mass Torts Update

Legal 500 recognizes Ashcraft & Gerel

Ashcraft & Gerel was recently featured in the mass tort and class action/pharmaceutical section of The Legal 500. The Legal 500 is an independent worldwide guide to leading law firms and has been published for more than 20 years.

The listing featured the firm's success in the Dexatrim litigation and its appointment to the steering committee in the Vioxx case against Merck. It also high-

lighted the firm's current work in Hydroxycut, Yaz, Yasmin, and Ocella Birth Control Pills and the firm's involvement in the Plaintiffs Discovery Committee for the Gadolinium Based Contrast Agent litigation.

Defense Base Act Cases

In the Metropolitan area there are a number of civilians who have worked overseas for private contractors over the past decade in support of the wars in Afghanistan and

Iraq. Others have worked in support of the mission in Kosovo or helped building or repairing U. S. Government facilities around the world. Employees who have been injured in the course of their employment with these contractors may be entitled to workers' compensation benefits for lost wages and medical care under the Defense Base Act. This law is somewhat unique in that it covers workers in many instances 24/7, as opposed to local laws which cover only injuries that occur at the

workplace.

Many lawyers are unfamiliar with this law, but our firm has represented a large number of injured individuals covered by the Defense Base Act for more than two decades. We have considerable experience in resolving disputes that arise in these cases and have brought them to successful conclusions.

If you have been injured overseas working for a civilian employer under contract

(Continued on page 4)



II. Mass Tort Update (Cont.)

to the US Government and want more information, please give Mark L. Schaffer a call at our District of Columbia office. The telephone number is (202)783-6400.

Ashcraft & Gerel expands its whistleblower practice

For about a decade Ashcraft & Gerel has been involved in the pursuit of federal whistleblower cases, also known as Qui Tam cases. These cases are brought by private citizens on behalf of the federal government. The goal is to recover money wrongfully taken by parties violating government guidelines or actively defrauding the government. When a recovery is made by the government, the plaintiff who

“blew the whistle” is entitled to receive a portion of that recovery.

In 2009 a whistleblower case brought against Network Appliance Inc by Ashcraft and Gerel was settled for a record \$128 million.

The case involved the failure of the defendant to comply with “best price” regulation. Under this rule, companies selling to the federal government are required to charge the government the best price they give to private sector customers. Our client became aware of systematic overcharging of the government and decided to try to stop it.

The settlement is the

largest single settlement to date on behalf of the GSA supply procurement program. Under the provisions of the law allowing a portion to go to the whistleblower, our client received 15% of the recovery, \$19.2 million.

Until recently the firm’s efforts had focused primarily on vendors providing supplies to the government and on Medicare fraud. In the past year we have expanded our area of review to include false claims by non-union construction firms violating the Davis Bacon Act. This is of real importance to our clients, because these firms are underpaying local workers, while at the same

time violating government standards.

The attorneys at Ashcraft & Gerel are very pleased to be combining our long standing support of labor with our newest litigation practice.

III. Union News

Ashcraft & Gerel client Othar Williams has celebrated more than 50 years as a member of the Laborers’ International Union of North America (LIUNA). Williams joined the union in 1956. He became a client of Lawrence J. Pascal, a partner in the Alexandria office, after an accident at work in 1973 left him with

a severe back injury.

Williams, a laborer, received maximum workers compensation benefits in Virginia and, through an agreement between his employer and the union, excess benefits. Now 86, he continues to receive these benefits.

In commemoration of his long LIUNA membership, he was awarded a 50-year Gold Card from the General Executive Board. In a letter to Williams, the union’s general president thanked him for his “leadership, dedication, sacrifice and commitment...”

“As long as the world shall last there will be wrongs, and if no man objected and no man rebelled, those wrongs would last forever.”
-Clarence Darrow



IV. Firm Activities

New Arrivals!

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Ashcraft & Gerel was proud to welcome 5 attorneys to the firm in 2010: **Peter Anderson, Alaina Dartt, Palmer Foret, Steve Gensemer and Pauline Khamo.**

Three new associates have joined the Alexandria office.

Alaina Dartt came to the firm after four years at the Public Defender's office in Fairfax County, Virginia.

She received her law degree from Georgetown University Law Center in 2005 and a Bachelor of Arts degree from the University of North Florida. She

practices in the areas of general negligence and workers' compensation.

Peter Anderson received his law degree in 2009 from George Washington University and a Bachelor of Arts degree from the University of Michigan.

Anderson has served as a clerk at the firm in the area of nursing home litigation. He will continue his work in this area as well as the mass torts division.

Pauline Khamo received her law degree from Catholic University in 2010 and a Bachelor of Arts from Boston College. She was also a clerk in the area of nursing home

litigation before being hired as an associate. She will be practicing in the areas of nursing home litigation, products liability and medical malpractice.

The firm's Rockville, Maryland office added new faces as well.

Steve Gensemer brings several years of experience to the firm in civil and criminal litigation.

He received his law degree from American University in 2002 and a Bachelor of Arts degree from Dickinson College in Pennsylvania.

He practices in the areas of workers' compensation and criminal

litigation.

Palmer Foret has more than 30 years experience litigating negligence cases including medical malpractice, products liability and other personal injury cases, most recently in solo practice. His practice at Ashcraft & Gerel will continue in these areas.

He is past president of the Trial Lawyers Association of Metropolitan Washington, D.C.

Foret received his law degree from Gonzaga University.

He is of counsel with the firm.

Mary Connolly celebrates 35 years with Ashcraft and Gerel!

Mary Connolly joined the firm in 1976 and worked in the D.C. office for 33 years. She began working with Wayne Mansulla, a partner in the firm, who was then a new associate. Mansulla had served as a Marine officer and Mary's father was a career Marine officer, giving them an immediate bond.

She now works with

Mansulla in the Alexandria office in the area of medical malpractice. She has also worked in the areas of workers' compensation and general negligence during her tenure at the firm.

Mary graduated from Hawaii Loa College with

a BA in History and Anthropology. As part of a military family

Mary moved a lot and became an avid fan of archeology. She has traveled to Spain, Portugal, Morocco, Egypt, Scotland and Ireland.

She enjoys the Caribbean and loves snorkeling in the Bahamas. When not

traveling or working, Mary knits and rides her bike—even riding to work three days a week! She took a bike trip to the big island of Hawaii for ten days and rode to the top of a crater in Volcano National Park. Mary also enjoys gardening and gourmet cooking.

She lives in Alexandria, Virginia with her quirky but lovable bassett hound, Kira.





BITS AND PIECES V. Crime Blotter

West Virginia Insurance Commissioner sues company for not having workers' comp insurance- seeks more than \$.5 million

The Office of the Insurance Commissioner of the State of West Virginia has filed suit against Remac America claiming the company did not maintain workers' compensation coverage

According to the Plaintiff in the suit, the lack of coverage was discovered when Joseph Friend, an employee of Remac, was struck in the head by a metal chain while moving a piece of scrap machinery and attempted to file a workers' compensation claim.

According to the suit, Friend has suffered severe head injuries and other injuries that have required extensive medical treatment.

Mark V. Soresi, Remac America's sole owner, has also been named in the suit. The Plaintiff is seeking \$552,297.43 with post judgment interest.

Source: The West Virginia Record

Fraud investigators begin probe into workers' compensation claims at Illinois prison

State investigators have begun an official probe at the Menard Correctional Center after hundreds of guards and other employees filed or received settlements for "repetitive trauma" allegedly caused by heavy cell locking mechanisms.

An article in the Belleville News-Democrat prompted the investigation, reporting that at least \$10 million had been paid in about 225 cases.

More than 500 claims have been filed at the prison by 389 guards and other workers.

Rep. Tom Holbrook, D-Bellefonte, said his offices had not heard of the cases until the newspaper articles. "When you see that many cases, it raises a red flag. I'm thankful that the Department of Insurance has decided to open an investigation...."

Holbrook said legislators were working in committee to reform the Workers' Compensation Act, an effort that has been underway for several months

Source: Belleville News-Democrat

OSHA investigates Spider Man musical; several actors injured

After four actors were seriously injured during production of "Spider-Man Turn Off the Dark", producers have agreed to implement additional safety measures.

OSHA began an investigation of the production after a referral by the New York Department of Labor.

The play, which features music from U2's Bono and The Edge, is the most expensive in Broadway history, reportedly costing more than \$60 million.

The most recent injury occurred when an actor fell an estimated 20-30 feet into the orchestra pit when a cable meant to support him snapped or came un-

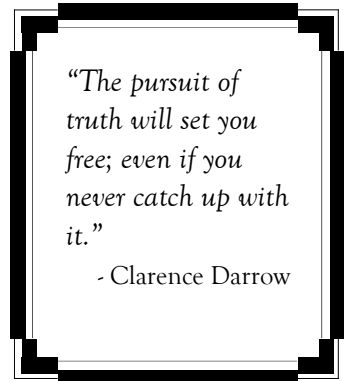
done. He sustained multiple fractures.

Other actors have sustained injuries including broken wrists and a concussion.

FBI investigates \$4 million scam by insurance executives in Wisconsin

The FBI is investigating two Manson Insurance executives accused of defrauding clients of millions of dollars over nearly 12 years. The scam apparently involved forged loans, overbilling and embezzlement from other insurance companies and non-profit groups.

The FBI believes the funds were then diverted into a Manson account.



"The pursuit of truth will set you free; even if you never catch up with it."

- Clarence Darrow



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