



JUNE 2011

The A&G Report

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Ashcraft & Gerel Mourns the Loss of a Founding Partner, Martin E. Gerel (October 27, 1918-April 1, 2011)

Martin E. Gerel, who along with Lee C. Ashcraft founded the law firm of Ashcraft & Gerel 58 years ago, was known as a leading expert in the field of workers' compensation.

In September 2001 he was presented with the first Lifetime Achievement award by the Maryland Workers' Compensation Commission's Workers' Compensation Educational Association.

Mr. Gerel was born in New York and attended City College of New York, where he



received a Bachelor of Science Degree. He continued his education at American University in Washington, D.C., receiving a Masters Degree in Economics. He received his law degree from Georgetown University in 1949.

After working for the Federal Government for several years, Mr. Gerel and Mr.

Ashcraft founded the firm in 1953. From a small DC walk-up, the firm grew into one of the largest personal in-



Martin E. Gerel and Lee C. Ashcraft, pictured here at a firm function.

jury law firms in the nation.

Mr. Gerel was known to all who dealt with him professionally as a tireless advocate and a relentless adversary, but to all of us at Ashcraft & Gerel he

was "Marty" —dignified, fair, compassionate and uncompromising in his principles.

He was a great lawyer, a great partner and a great friend. We will miss him.

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. Workers' Compensation Update: Remembering the Past

New York Factory Fire Remembered 100 Years Later; Labor Laws Forever Changed

On March 25, 1911, 146 workers died in a fire at the Triangle Shirtwaist Factory, the deadliest workplace disaster in New York City's history.

Many of the workers were trapped; the main stairway was ablaze and doors to additional stairways and exits had been locked by management.

Other employees crowded a single fire escape which was poorly anchored and collapsed, sending victims nearly 100 feet to their deaths.

Workers unable to escape the inferno chose to jump eight, nine, even 10 stories rather than face certain death by fire.

The entire episode took less than 30 minutes. Most of the victims were recent European immigrants and young women between the ages of 16 and 23. The youngest victims were only 14.

Shirtwaist employees worked 13 hours a day, six days a week for 13 cents per hour. They lived in crowded tenements. These poor working conditions were the hallmarks of the "sweatshops" of the time. The Triangle Shirtwaist Factory was just one of hundreds of factories across New York City and the Northeast that produced the goods demanded by a rapidly industrializing society.

The disaster and its aftermath brought to the forefront growing concerns in New York City regarding the conditions and safety of these "sweat shops."

After the fire, the city's building department initially was blamed for inadequate inspection of the factory. Borough President George McAneny said the building met standards when plans were filed 11 years prior but that the department was understaffed and underfunded and rarely had time to look at buildings except those under construction.

The public blamed the factory's wealthy owners, Isaac Harris and Max Blanck, who had declared that their building was fireproof. Continued public calls for justice and reports that the doors of the factory were locked at the time of the fire prompted the District Attorney's office to seek an indictment against the owners. Reverend Charles Slattery, rector of a church a few blocks from the Asch building told his congregation, "It will perhaps be discovered that someone was too eager to make money out of human energy to provide the proper safeguards."

The pair were indicted on seven counts, charging them with manslaughter in the second degree under Section 80 of the Labor Code, which mandated that doors should not be locked during working hours.

After a three-week trial, the

owners were acquitted. Twenty-three civil suits were subsequently brought against the pair, who eventually settled, paying \$75 per life lost.

In spite of the lack of legal vindication, the fire did bring about changes to the labor laws. In June 1911, the New York state legislature established the Factory Investigating Commission (FIC) to look into safety at workplaces across the state. Based on the FIC's recommendations, eight bills were passed in 1912 that addressed sanitation, rest periods, child labor, work hours for women and children and injuries sustained on the job. Eventually, 25 more bills were passed.

Today, factories and workplaces are governed by strict labor laws dictated by the government and unions, many of which were first set forth by the New York legislature after the Triangle Shirtwaist fire.



I. Workers' Compensation Update: Remembering the Past (Cont.)



Workers' Compensation Centennial

The early 1900s showed amazing technological progress; Americans were enjoying new inventions and business owners were reaping the economic rewards. Urban workers, however, began to feel exploited by employers bent on turning a profit. The gulf between labor and management was huge.

The plight of industrial workers and the lack of positive change in working conditions were driving many to seek modifications to existing laws.

On September 1, 1911, the nation's first constitutionally valid workers compensation law was passed in Wisconsin. That same year, 10 other states enacted workers compensation laws and by

1948, all 50 states had some form of "workman's comp". This was the first form of no-fault insurance; medical and wage loss benefits were paid to an injured worker regardless of who caused the work injury. This idea hoped to reduce the number of lawsuits over fault and compensation which were clogging the judicial system at the time.

These laws depended upon employers giving up common law defenses for liability and workers giving up their right to seek money damages in court. The result for the employees was sum certain recoveries, unrelated to fault.

Early programs (1911-1916) were voluntary participation laws. Employers were not compelled by the various statutes to purchase



A group of workers gather around a desk to witness and celebrate the signing of the first workers' compensation claim judgment in Wisconsin in 1911.

workers' compensation.

In 1917, the Supreme court upheld the constitutionality of compulsory insurance requirements, opening up the doors for every state to require the purchase of workers' compensation coverage. Then, as now, each state instituted different threshold requirements.

Workers' Compensation Laws Passed in Virginia

HB-1475 Ware, O.

SB-823 Edwards

Creates a presumption, absent a preponderance of evidence to the contrary, that an injury is work related. The presumption arises in a claim for compensation where an employee is physically or mentally unable to testify and there is un rebutted prima facie evidence that the injury was work related. *Adding §65.2-105*

HB-1705 Lewis

Authorizes the Commission, in awards entered for incapacity for work, to require the employer to furnish and maintain modifications to equipment for the injured employee's automobile. Such awards may be made upon the determination by the treating physician and the Commission that they are medically necessary. This may be in addition to currently authorized awards for bedside lifts, adjustable beds, and home modifications. Increases the maximum aggregate cost of all such items and modifications on account of any one accident from

\$25,000 to \$42,000. *Amending §65.2-603*

HB-1812 Miller, P.J.

Adds police officers of the Metropolitan Washington Airports Authority (MWAA) and the Norfolk Airport Authority to the list of public safety employees entitled to the presumption that certain infectious diseases are occupational diseases. Applies to officers of the MWAA only for the period that the Authority voluntarily subjects itself to the provisions of the Workers' Compensation Act. *Amending §65.2-101.*



II. Mass Tort Update

Ashcraft & Gerel Expands Mass Torts Practice

Current Litigations

Ashcraft & Gerel presently handles the following cases:

- Accutane
- Aredia
- DePuy Hip Implant
- Drug Eluting Stents
- Fosamax—Osteonecrosis injury
- Fosama—Femur Injury
- Gadolinium Based contrast Agent (MRAs/MRIs)
- Medtronic Sprint Fidelis Lead
- Selective Serotonin Reuptake Inhibitors (SSRI-Antidepressants)
- Yaz Birth Control Pill
- Zometa
- Tylenol /Acetaminophen cases in correlation to liver failure.

New Litigations

The mass torts group is now handling four new litigations.

Radiation Exposure from CT scans, fluoroscopy procedures and other medical devices can increase one's chance for developing cancer, burns, cataracts, hair loss, scarring, jaw calcification, bone death, organ failure and death.

Hydraulic Fracturing (Fracking) is a process used to mine natural gas and oil. A hydraulic fracturing well is drilled vertically and then horizontally. High pressured water mixed with chemicals including benzene is then shot down the well. When the water is recovered later it is full of radioactive elements and carcinogens.

The process results in water and land being contaminated and the possibility of one developing neurological issues, cancer, respiratory problems etc.

Unfortunately at this point, the "science" behind the health issues has not been documented or well proven. Therefore the firm is focusing on property damage cases primarily but will investigate personal injury cases.

Multaq (dronedarone) is a drug manufactured by Sanofi-Aventis that is prescribed to treat atrial fibrillation. It was approved by the FDA in July 2009 but interestingly a 2005 clinical trial showed that it doubled the risk of death and actually could worsen existing heart failure.

In less than two years since its approval there have been at least 492,000 Multaq prescriptions in the United States filled by about 147,000 patients at outpatient pharmacies across the country. In addition, this drug is given to patients being treated in hospitals

The FDA issued a warning about Multaq liver problems in January 2011 after Multaq was linked to multiple cases of liver toxicity and acute liver failure. The firm will be investigating these injuries.

Lawsuit Against Aaron's, Inc.

Ashcraft & Gerel is collaborating with several law firms on the case known as Brian Byrd and Crystal Byrd, et al., v. Aaron's Inc., et al., No. 11-cv-101 in the U.S. District Court for the Western District of Pennsylvania alleg-

ing the national rent-to-own chain put spyware on its computers.

According to the lawsuit filed May 3, 2011, the software secretly tracks keystrokes and takes screenshots and webcam images of customers while they use the devices at home.

The lawsuit was filed on behalf of Brian and Crystal Byrd, a Wyoming couple who rented a computer from Aaron's. A store manager came to their home trying to repossess the computer. He mistakenly believed they hadn't finished paying for it and showed Brian a picture of himself using the computer. In addition, the software tracked the couple's internet usage and took pictures of websites they were visiting. It is believed that other companies may also be using this or similar spyware.

The unauthorized picture had been taken by the computer's webcam, without their consent or knowledge, and was shot with the help of spying software, which the lawsuit contends is made by North East, Pa.-based Designerware LLC and is installed on all Aaron's rental computers.

Ashcraft & Gerel's legal team is pursuing certification as a class action seeking damages on behalf of customers who have leased computers from Aaron's, Inc. and other rent-to-own companies.

For information regarding any of these litigations, please contact Nan Parfitt in the Alexandria office at 703-931-5500.



III. Firm Activities

Ashcraft & Gerel Sponsors Northern Virginia Labor Federation Dinner

Ashcraft & Gerel was proud to be a sponsor of the Northern Virginia Labor Federation 2011 Volunteer Recognition Dinner on April 29, 2011.



Daniel Duncan, president of NoVA Labor (center) poses with Lawrence Pascal and Craig Brown of Ashcraft & Gerel

The annual event honored the work of volunteers within the

Northern Virginia Labor Federation. These volunteers give their time for various causes including sending donations to troops overseas, collecting food for the hungry and helping Scouts obtain their Labor Badge.

The dinner honored approximately 150 volunteers. Other major sponsors included IBEW Local Union No. 26, Iron Workers Local Union No. 5 and UFCW Local Union No. 400. The keynote address was given by Walter Wise, general president of the International Association of Bridge, Structural, Ornamental & Reinforcing Iron Workers.

Ashcraft & Gerel Participates in Food Drive to Benefit Capital Area Food Bank

Ashcraft & Gerel collected the equivalent of 3,281 “pounds” of food as part of “Legal Food Frenzy”, a food drive competition

among Virginia law firms. In addition to the weight of the food donated, each dollar raised counted as four pounds.

Attorney General Ken Cuccinelli’s office and the Virginia Bar Association sponsored the event which took place from April 4-April 15, 2011.

In addition to raising food and money, each participating firm received bonus points for sending volunteers to work at a local food bank. Winners of the event will be announced later this month. Prizes include the Attorney General’s Cup for the largest per capita contribution and awards for small, medium, large and sole proprietor law firms. In addition, awards are given to law schools and government and public service organizations.

The 2010 event collected more than 1.7 million pounds of food for Virginia’s hungry.

Karen King Celebrates 30 years with Ashcraft & Gerel

Karen King celebrated 30 years with Ashcraft & Gerel in February. She began working at the firm in 1981 as a legal secretary. The majority of her work with A&G has been in the area of workers’ compensation with Lawrence Pascal, a partner in the Virginia office. During her tenure, she has been promoted to paralegal and

also serves as office manager of the Virginia office.

Karen has seen a lot of changes during her three decades with the firm. She remembers typing documents with carbon paper on typewriters and being excited to be the next secretary in line

for an IBM Selectric III!

Karen grew up in Northern Virginia and attended Thomas Jefferson High School. She has two children, Amber and Jason, ages 30 and 23 and a granddaughter, Kayla, 8. She enjoys spending time with her family,



working on her house and gardening. She remains a longtime, loyal Washington Redskins fan, no easy task over the past several years! She also likes going out with friends, dancing, bowling and softball, which she played for many years. She was the star first baseman for the firm’s softball team, the A&G Sharks!

Karen lives in Falls Church, Virginia.



Texas Medical Supply Company Owner Sentenced to Three Years in Federal Prison for Fraud

Kaye Anne White, owner of Electra Enterprises and Electra Med, LLC, was ordered to report to prison and pay more than \$620,000 in restitution after pleading guilty to making false statements regarding healthcare matters.

Electra supplied electrical stimulation units, pain management devices, and related supplies to injured workers receiving benefits under Texas and federal workers' compensation.

Electra underreported the number of supplies it furnished patients on a monthly basis and was paid more than \$409,000 during a six year period for supplies it did not provide.

Source: Star-Telegram

Former Ohio Doctor Pleaded Guilty to Fraud Charges; Conducted Exams on Claimants

James E. Mann, a former doctor who lost his license more than 10 years ago, pleaded guilty to three counts of mail fraud and admitted he conducted physical evaluations and mailed the reports to a Cleveland attorney. These reports resulted in \$91,482.81 in benefit payouts to three federal claimants.

Per the plea agreement, Mann will be required to pay back more than \$91,000.00. Assistant U.S.

Attorney Joe Wilson said that although Mann lost his license in the early 1990s, he conducted physical examinations of potential claimants referred to his business and fraudulently signed forms with the names of licensed physicians working there.

His license had been voluntarily surrendered years before when he was charged with nine counts of illegal processing of drug documents as a result of overprescribing medications to patients.

Source: Toledo Blade

Louisiana Drywall Company Owner to Pay \$200,000 for Fraudulently Underreporting Payroll

Mauro Aguirre, owner of Escapade Acoustic Drywall, pleaded guilty to insurance and workers' compensation fraud. He received a two year suspended sentence, three years' probation and 30 hours of community service in addition to being ordered to make financial restitution.

He and his wife are accused of providing records showing they had 35 employees with a payroll of over \$145,000 when, in fact, they have over 300 employees with a payroll of over \$4 million.

Source: KLFY, Acadiana

Texas Labor Broker Fined \$1.1 Million for Mistreating Mentally Retarded Workers

Henry's Turkey Service paid more than 70 mentally retarded men about 41 cents an hour, plus room and board, to work in a meat-processing plant.

The Des Moines Register began inquiring about the old schoolhouse where the men lived, its lack of a care-facility license and the workers' wages. Soon after, many government agencies declared the house unsafe and relocated residents.

Iowa Workforce Development (IWD) imposed the fine on the company for allegedly making improper deductions from pay, failing to pay minimum wage and failing to give pay stubs to workers. The company appealed and Administrative Law Judge Jeffrey Farrell cut the fine by 85 percent. IWD appealed Farrell's decision to Christopher Godfrey, state commissioner of workers' compensation. Godfrey reinstated the entire original fine and in his decision wrote, "Locked behind the doors of the 'bunkhouse,' as the old schoolhouse had been labeled, were 37-plus years of secrets, neglect and deplorable actions..."

The federal Equal Employment Opportunity Commission ruled Henry's had abused and humiliated its workers, violated their civil rights and shortchanged them by at least \$1 million in wages.

Source: Des Moines Register



Ashcraft & Gerel, LLP

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