

MIRALDI & BARRETT, CO.

## SUPREME COURT CLARIFIES SPOUSE'S LOSSES FROM CAR CRASH

Sometimes a person's injuries from an auto accident are so severe that a spouse or another family member must take time off from work to care for that injured family member. On occasion, that time off from work is for a very long time or even permanent. Can the spouse or family member who stays home recover those lost wages?

The Ohio Supreme Court recently addressed this question. In this case, the wife suffered a traumatic brain injury as a result of an auto accident caused by another's negligence. Her brain injury affected her thinking, speaking and abilities to perform household activities. Unfortunately, her injuries were permanent.

Her husband, who was a financial planner, lost a great deal of time from work when he stayed home to care for his wife; and his earnings were greatly reduced. As a result, he claimed that he was entitled to recover for the earnings he lost when he spent hours at home caring for his wife. He hired an economist to demonstrate how much money he had lost in the past and would likely lose in the future as a result of his reduced earning potential.

The Ohio Supreme Court ruled that he could not recover for his decreased earnings. The court ruled that the proper way to measure this loss was to place a value on the husband's services. What would it cost to hire someone such as a nurse's aide to stay with his wife? This amount could be recovered as part of the wife's claim, not his lost wages.

Unfortunately, the attorney representing this couple did not provide any evidence on what this care would cost. As a result, the couple could not recover the husband's lost earning capacity, nor were they awarded any money to compensate the husband as his wife's caretaker.

Attorneys handling personal injury cases must know the law's fine points when working to recover all of a client's losses. The attorneys at Miraldi & Barrett have that knowledge.

C O M M U N I T Y

# SAFETY Review

VOL. ELEVEN

A MIRALDI & BARRETT NEWSLETTER FOR THE PEOPLE

## Miraldi & Barrett, Co.

A T T O R N E Y S A T L A W

### Video Settlement Brochures

Obtaining a fair settlement with an insurance company has always been a challenge. However, over the last five years, insurance companies have changed their practices and, as a result, settling claims has become even more difficult. Insurance companies have taken away much of the discretion that their claims adjusters used to have in resolving cases. In its place, many insurance companies use computer programs to determine a case's value and have the insurance adjuster only input information required by the computer program. This approach leads to a "one size fits all" evaluation of the claim.

This computerized analysis is not fair because each injury affects individual people differently. One way to combat this approach is to force the insurance company to see the "human" side of the case by sending a short video featuring the client, the client's spouse, and perhaps the treating doctor. In this short ten-minute video, the client and others talk about the hardships and complications caused by the injuries. This technique works best when the client is able to describe problems that the insurance company would not normally foresee from the injuries.

The law firm of Miraldi & Barrett uses video brochures in cases where the damages are significant and the injuries may be outside the common experience of the insurance adjuster. These videos are professionally edited. Besides showing the clients talking about the incident and their injuries, the video will show charts and photographs that explain the speaker's testimony. All in all, the video brochure allows clients to effectively tell the insurance company just how their lives were altered by wrongdoers negligent actions.



Experience Doesn't Cost More!

## BIG-BOX STORE ACCIDENTS

Although data are hard to obtain, lawsuits in the early 2000s indicated that more than 2,200 customers were being injured annually by falling heavy merchandise at just one chain of big-box home centers.

Several states have passed shopper-safety regulations for retailers who high-stack heavy merchandise, such as clothes washers and microwave ovens. These include adding safety stops to shelves, setting up netting or other protective devices, or establishing barricaded safety zones to keep customers out of areas where forklifts move heavy products from upper shelves to the floor.

### A 19-POUND BOX

A shopper at a home center was struck on the head and knocked flat by a falling 19-pound box as employees stocked upper shelves. When his attorney demonstrated that the plaintiff's negligent store injury resulted in severe pain and corrective discectomy surgery, a jury awarded a significant sum.

## NURSING HOME VIOLATIONS

In 2007, nine in ten U.S. nursing homes were cited for violating at least one federal health and safety law in each of the past three years, according to a U.S. Department of Health and Human Services report. The nation's 15,000 facilities are home to about 1.5 million elderly residents.

The most common citations were for infected bedsores, drug errors, resident malnutrition, and outright patient abuse or neglect. More than 15 percent of violations resulted in "actual harm or immediate jeopardy" to residents.

Inspectors authenticated 39 percent of the more than 37,000 complaints about nursing home conditions. Two in ten confirmed complaints involved patient neglect or abuse.

States varied widely in deficiency rates. Seventy-six percent of Rhode

Island nursing homes received complaints. One hundred percent of homes in Alaska, Idaho, Wyoming, and the District of Columbia received complaints.

Responsible adults who suspect that nursing home care is insufficient or has resulted in an injury should get medical care for the loved one, notify residence management of concerns, and seek legal counsel. Attorneys familiar with nursing homes can help elderly loved ones receive better care or determine the bases of injuries and hold the responsible parties accountable.



## DEBUNKING CIVIL JUSTICE MYTHS

Insurance, oil, and drug companies spend millions creating and publicizing myths about how lawsuits are out of control and responsible for many of America's ills. The facts tell a different story.

### MYTH:

Schools are canceling recess because they fear playground litigation. **Wrong:** *School districts across the nation consistently blame elimination of recess on time needed to meet increased testing and teaching requirements.*

### MYTH:

People have stopped volunteering to help Little League, Boy and Girl Scouts, and other nonprofits because of lawsuits. **Wrong again:** *Congress passed the Volunteer Protection Act of 1997 to give immunity to nonprofit volunteers in the course of their charity work.*

### MYTH:

Everyone's insurance rates are skyrocketing because of lawsuits. **Incorrect:** *Your insurance premiums may be going up, but it has nothing to do with lawsuits. In 2007, insurers reported \$61.9 billion near-record profits. They still argued to restrict awards and damages to victims even though personal injury cases resolved in U.S. courts fell by 79 percent between 1985 and 2003.*

### MYTH:

Trial attorneys charge outrageous hourly fees and leave victims with practically nothing if they win cases. **Not so:** *Lawyers who represent injured clients who cannot afford legal fees provide representation on a contingency-fee basis. If there is no monetary recovery, clients owe nothing for legal services. If the plaintiff wins, attorneys charge a percentage of the money damages that are recovered.*



## AFTER-SCHOOL CHILD PICKUP

For student security and safety, many schools establish after-school pickup guidelines.

Administrators ask parents and guardians to specify names and vehicles of those who have permission to pick up a child, such as parents, car pools, relatives, baby-sitters, or neighbors.

Some schools require physical descriptions, photo IDs, and signed notes when pickup plans change. Others require signed instructions for special after-school tutoring, detention, athletics, clubs, and even emergencies.

### Unsafe pickup zone

When their six-year-old died after being accidentally run over by a parent who was backing up a minivan into a parking space, the parents sued the school. Their attorney contended that the school's parking area was not well planned and that authorities had received notices about pickup chaos when school let out. A jury granted a significant award.

## Workplace injuries

On-the-job injuries can occur at any workplace, from white-collar offices to blue-collar industries.

Negligent parties can range from managers who assign dangerous duties to untrained workers, to third parties that market equipment that is poorly designed or lacks finger-protecting guards.

A personal injury attorney can investigate causes of worker injuries and help hold those responsible for harm to account.

Common occupational-workplace injuries an attorney can handle include:

- **Burn injuries** from fires, chemicals, and electricity.
- **Diseases** resulting from chemical exposure, such as asbestos or benzene.
- **Existing employee health conditions** aggravated by employment activities.
- **Injuries** from trips and falls, amputations, broken limbs, or cuts.
- **Mental disease** resulting from work-induced stress.
- **Repetitive-movement injuries**, such as carpal tunnel syndrome.
- **Third-party liability**—injuries, such as a fall from a poorly designed ladder, for which a third party is responsible.

*For legal assistance with workplace injuries, please seek legal counsel.*



## Recreational boating

In 2007, nearly 700 Americans died and just over 5,000 were injured in pleasure-boating accidents in motorcraft, sailboats, houseboats, and inflatables.

Accidents were caused by intoxicated, inexperienced, or reckless drivers; defective steering, engines, or other mechanisms; and failure of boaters or owners to maintain watercraft or obey boating regulations.

If you or a loved one has suffered severe injury from others' negligence in a boating accident, an experienced attorney can help hold responsible parties accountable.

### Impaired driver

An intoxicated speedboat driver crashed into the stern of a cabin cruiser, immediately killing its owners. The victims' family sued and reached settlement with the out-of-control, speeding boat driver after he pleaded guilty to two counts of manslaughter due to intoxication.

## accidents



**Miraldi & Barrett Co., L.P.A.**  
Personal Injury Law  
6061 South Broadway  
Lorain, OH 44053  
*Return Service Requested*

**Miraldi & Barrett, Co.**  
ATTORNEYS AT LAW



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## MIRALDI & BARRETT & THE EAGLE RUN

Once again, the law firm of Miraldi & Barrett was one of the sponsors for the CCWR Eagle Run, a five-mile race that raises funds for local charities. This year, the event raised money for the Avon Schools Educational Endowment Fund, Avon Seniors, Inc., and Community Resource Services. The race drew hundreds of runners from throughout Northeastern Ohio. Monetary prizes were awarded to the top three male and female finishers, while plaques were given to the top three finishers in each age division.

The race began and ended at the Avon High School after weaving its way through the streets of Avon. After the five-mile race, the day's event concluded with a one-mile race for children. Last year, the Eagle Run raised \$20,000 each for both the Avon Schools Endowment Fund and the Avon Senior Center. Miraldi & Barrett is pleased to be a part of this worthwhile cause.



*Clockwise: Start of the race; Dave Miraldi handing out awards at the finish line; David and Leslee Miraldi with daughter, Ginny, the first-place finisher in her age division.*



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**Compensation for Injury or No Attorney Fee or Cost**  
6061 South Broadway, Lorain, Ohio 44053  
**440-233-1100 or 800-589-3023**

**Notice:** We will advance expenses for our clients in most cases. Clients do not have to repay expenses unless there is a successful outcome.