



THE LEGAL INSIDER

Serving the Delaware Valley for Over 35 Years

Published by the law firm of **DORIAN, GOLDSTEIN, WISNIEWSKI, & ORCHINIK, P.C.**

"A Full Service Law Firm Serving Clients in the Delaware Valley for over 35 Years"

215-750-7200

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DEADLY MEDICATION ERROR

Anyone who has ever been sick knows it is very important to get the right medication. It is equally important to insure that a correctly prescribed medication is *administered properly*.

In a recent case, a nursing home resident suffered from severe arthritis and was prescribed a powerful pain medicine that was given to her through a patch; however, untrained staff at the nursing home - apparently not realizing how powerful the patches were - did not remove the old patch when applying a new one.

The patient unwittingly overdosed on her pain medication and died of heart failure. The resident's family argued that the failure to administer the medicine properly was not acceptable care, and the jury agreed, returning a verdict against the nursing home for \$1 million.

At Dorian, Goldstein, Wisniewski & Orchinik, P.C., we handle cases against nursing homes and assisted living centers when they cause injuries or death due to negligent or substandard care in the treatment of patients. Should you suspect that a loved one has been neglected or treated improperly, call us at 215-750-7200 and ask to speak to one of our attorneys.

TICK, TOCK

We have all heard that "haste makes waste," but this may not be true when you have been injured by another's carelessness. Whether your injury was caused by an animal attack, a car accident, a defective product, or improper medical care, you should contact our firm ***as soon as possible***. One reason for this is that your injury starts the ticking of a legal clock, known as the "statute of limitations."



A statute of limitations is nothing more than a legal rule that limits how long you may wait before bringing a claim against a negligent person or company. If you do not make your claim before the statute of limitations expires, the law may prevent you from ever doing so.

Statutes of limitations are followed strictly by our courts. If you are even a single day late, your claim may be dismissed — "close enough" does not help with the statute of limitations.

So how long is the statute of limitations for an injury claim? The answer is that it depends on the facts of each case and the way in which you were injured. **CALL US AS SOON AS POSSIBLE AFTER AN ACCIDENT OR INJURY SO THAT WE CAN PROMPTLY EVALUATE YOUR CASE.** Don't let the clock run out on you!



AUTO ACCIDENT CHECKLIST — If you are involved in an auto accident, remember these tips:

- 1) STAY CALM
- 2) Move yourself and your passengers out of harm's way if possible. Call the police immediately.
- 3) Assist anyone who is injured. Call for an ambulance if necessary.
- 4) Get the name, address, phone number and license number of the other driver(s) and car(s). Exchange insurance information. DO NOT discuss the accident (except with the police), but DO make notes of anything the other driver(s) says about the accident.
- 5) Get names, addresses and phone numbers of any witnesses.
- 6) Get photographs of your vehicle, contact your insurance company, and write down everything you remember about the collision ASAP.
- 7) Contact our firm to discuss your legal options.

THANKS FOR REFERRALS

Despite the modern age of marketing and advertising, the best source of our new business is word of mouth. We are grateful that many of our clients and friends feel confident in recommending our firm. Unfortunately, when many people need a good lawyer, they do not know where to turn. If you or someone you know needs legal help, please call us.



SCAFFOLD ACCIDENTS AND INJURIES

Construction workers have one of the most dangerous occupations, with thousands of people killed on job sites every year and many more injured. Some of the most common construction accidents involve scaffolds, or other types of lifts. These accidents can be very serious and usually result either from falls due to defective scaffolding or from objects plummeting from scaffolding that injure a worker below.

Unfortunately, suits involving injured construction workers are often more difficult to handle than other kinds of injury cases. An injury or death at a construction site involves the acts of many workers employed by different companies, each of whom is pointing at someone else as the party responsible. The question of liability can turn on whether a party is the property owner, the general contractor, the subcontractor, or someone else. Because of these complexities, it is vital to have a lawyer involved in a construction injury case ASAP.

If you or a loved one has been injured on a construction site, contact our office to discuss your situation.

Dorian, Goldstein, Wisniewski & Orchinik, P.C. Awarded Highest Rating

Our firm has again earned an AV rating in the Martindale Hubbell Law Directory for our legal abilities and high standards of professional ethics. Martindale Hubbell bases its assessments on surveys of members of the bar and judges. We take pride in our colleagues' recognizing and respecting the quality of our legal work. Only 5% of all law firms earn an AV rating.

COMMERCIAL LANDLORD SUED FOR UNSAFE CONDITIONS

A silkscreen printing company with one employee rented a building from a commercial landlord. The employee suffered permanent injuries after falling from the stairs leading to the basement of the building. In the ensuing lawsuit against the landlord, the employee alleged that the fall happened because the stairs were wobbly, had no handrail, and had low ceiling clearance. The court found that the landlord had no liability.

Bearing in mind that there was no direct contractual relationship between the employee and the landlord, there could be a duty of care running from the landlord to a third party (such as the employee) only in one of two circumstances: if the landlord bound itself by contract, (i.e., in the lease) to make repairs and then did so negligently, or if the dangerous defect was in an area over which the landlord retained control, such as a common area. The case before the court presented neither of these circumstances.

The fall occurred in an area clearly leased and controlled by the tenant. In unambiguous language, the lease provided that the tenant would have exclusive control of the premises and that the tenant had the obligation to maintain the building at its own expense.

It was necessary under the terms of the lease for the landlord to approve of repairs made by the tenant, and the landlord reserved the right to come onto the premises to make repairs that were "compatible with the lessee's use of the premises." A commercial lease is essentially a business transaction, a contract for possession of property, and the "ancient" common-law rule is still observed, in keeping with the maxim "let the buyer (tenant) beware." In such a case, the terms of the agreement are most important.

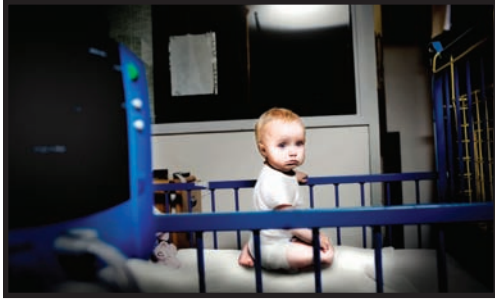


By contrast, with regard to residential leases, the law has evolved more favorably for tenants, for various public policy reasons, including disparity in bargaining power between the parties. A duty of care for residential landlords need not be found in the fine print of a lease. Rather, a residential landlord

is bound to act as a reasonable person would under all of the surrounding circumstances, including the likelihood of injuries, the probable seriousness of such injuries, and the burden of reducing or avoiding that risk. In short, the employee would have fared better in court if the stairs from which he fell had been in a rented apartment.

INJURED CHILD DOES NOT NEED INDEPENDENT GUARDIAN

A severely injured child, whose parents sued a hospital and doctors for medical malpractice, recently became the focus of separate litigation regarding who should manage the child's case. The child's parents hired attorneys who successfully sued the hospital and doctors, winning a \$15 million award, but during the appeal, the hospital's insurance company petitioned the trial court to appoint a separate lawyer to serve as a special guardian for the child, known at law as a guardian *ad litem*. A guardian *ad litem* is a person, usually a lawyer, appointed by the court to represent a minor child's interest in particular litigation before the court.



The insurance company noted that, during the appeal, the parties engaged in "extensive settlement negotiation" with the aid of professional mediator who was a former judge. The parties reached an impasse in those negotiations when the insurance company offered \$7 million, an amount that the company claimed would be sufficient to support the child for the rest of his life.

When the parents and their attorney refused the offer, the insurance company petitioned for the appointment of a special guardian *ad litem* for the child, in an effort to turn control of the settlement negotiations over to a lawyer who would not be responsible for following the parents' decisions. Claiming that a "substantial possibility" existed that the hospital would win the appeal and that the child could be left with nothing, the insurance company argued that the child needed his own independent guardian.

The court denied the insurance company's request. The court noted that the appointment of a guardian *ad litem* generally is reserved for extraordinary circumstances and for the kinds of cases where the child's interests may be directly and adversely affected, including proceedings to terminate parental rights and adoptions. Finding that both parents were focused on the injured child's best interests, the court decided that the appointment of a guardian *ad litem* would not be proper. Shortly after the court's decision the parents and the insurance company came to a settlement agreement.

Parents are entitled to sue on behalf of their children. They may choose the attorneys and they may manage the case. Only when extraordinary circumstances exist will the courts disturb parents' rights to manage legal matters for their child.



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They Said It

The following things were actually said by people in courtrooms across the country.

Lawyer: "How far apart were the vehicles at the time of the collision?"

Lawyer: "And you check your radar unit frequently?"

Officer: "Yes, I do."

Lawyer: "And was your radar unit functioning correctly at the time you had the plaintiff on radar?"

Officer: "Yes, it was malfunctioning correctly."

Lawyer: "Did you blow your horn or anything?"

Witness: "After the accident?"

Lawyer: "Before the accident."

Witness: "Sure, I played for ten years. I even went to school for it."

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We at Dorian, Goldstein, Wisniewski & Orchinik, P.C. handle a wide variety of legal matters including motor vehicle accidents, medical and nursing home malpractice, slip and falls, family law, criminal defense and wills and estates.

MARK A. WISNIEWSKI
1954-2007

Mark A. Wisniewski, a senior shareholder in the law firm of Dorian, Goldstein, Wisniewski & Orchinik, P.C. died suddenly on November 10, 2007. He was 52.

Mr. Wisniewski, a resident of King of Prussia, joined the law firm of Dorian, Goldstein, Wisniewski & Orchinik, P.C. in 1982. Since 1987, he was a managing shareholder of the firm. Mr. Wisniewski graduated from Penn State University in 1976 summa cum laude. He graduated from Villanova School of Law in 1979 with honors. Mark practiced in the areas of personal injury, estates and real estate transactions. He was a member of the Philadelphia, Bucks and Pennsylvania Bar Associations. He was an active member of the Sacred Heart Church of Swedesburg, Pennsylvania, and was a member of the parish Holy Name Society and the Polish Festival Committee. He was also a Eucharistic Minister at Sacred Heart and at the Basilica of Saints Peter and Paul in Philadelphia.

Mark loved working with children and coached various sports in Upper Merion. He was an avid fisherman and tennis player. He will be greatly missed by the many people he helped throughout his career, as well as his numerous friends, family and all of us at Dorian, Goldstein, Wisniewski & Orchinik, P.C. We especially want to thank the many people who expressed their kind thoughts and prayers following Mark's death.

DORIAN, GOLDSTEIN, WISNIEWSKI, & ORCHINIK, P.C.
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**** Attorney Members - AARP Legal Services Network ****