

# Perspectives



GERSON & SCHWARTZ P.A. ☎ 305-371-6000

## Making the Case for Safer Housing



If a home truly is your castle, then it needs to be safe. Castles, after all, were protected and secure; they were places where people could go about their lives without worrying about attack or danger. It's an age-old concept, one that is no less important today than it was centuries ago. Unfortunately, our modern-day homes, particularly apartments, are not always safe and secure. Foreseeable criminal acts, and serious injuries, do happen. We've worked to help those who suffered recover.

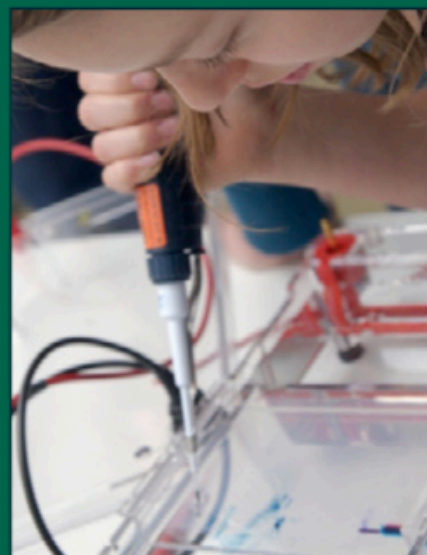
In two cases, inadequate security led to severe harm for our clients. Both lived in subsidized housing projects, communities where taxpayer dollars are used for the construction and operation of the buildings, and where residents should be able to sleep at night knowing that all reasonable measures have been taken to insure their safety.

Landlords didn't undertake adequate security protections in either case. As we've done in the past, we sued, not just to enforce the rules and regulations but to send a message that those who run subsidized housing facilities need to fulfill their duty to keep residents safe. Or face the music in court.

> Continued on page 3

Gerson and Schwartz, P.A.  
1980 Coral Way  
Miami, Florida 33145

## To Catch a Thief



The crime was horrific: A senior citizen was pulled violently from her car and thrown to the ground by a carjacker, breaking her pelvis — all while her husband watched powerlessly from his apartment window above. But the circumstances leading up to that crime were troubling, too. For hours, officers of the condominium association had noticed a stranger wandering the property. They were suspicious, but they did nothing. No call to police; no request that gate security confront

> Continued on page 2

### IN THIS ISSUE

**Creative Approach Brings Relief to Hotel Shooting Victim** P. 3

**Bruce Fleisher Joins Firm** P. 6

**Medical Malpractice Results in Settlement** P. 5



## To Catch a Thief

> Continued from page 1

the trespasser. Two weeks later, when the victim's car was found in front of that stranger's apartment. But that wasn't enough to solve the crime.

The story didn't end there. The elderly residents who had witnessed the alleged assailant's trespassing could not make a positive identification, so no arrest was made. We brought a civil case against the condominium association. They had failed, after all, to take the simple, reasonable steps that would have stopped this terrible crime. We learned the suspect had been seen drinking a soda in a building lobby just before the carjacking. We knew that the police had confiscated and preserved the soda can in the course of their investigation. So we set about doing a little detective work of our own.

We subpoenaed the suspect for deposition. We videotaped him drinking from a cup of water. We sealed the cup while the videotaping continued, and once he left the room we turned it over to the police for DNA analysis! Defense counsel Katherine McHale cooperated in our effort to use civil proceedings to help law enforcement catch a criminal, and we want to thank her for her professionalism. The result: A criminal was identified and our client's claims settled for a significant sum at mediation. ■



GERSON & SCHWARTZ P.A.

1980 Coral Way  
Miami, Florida 33145

Tel. (305) 371-6000  
Fax (305) 371-5749

E-mail: [info@gslawusa.com](mailto:info@gslawusa.com)

[www.InjuryAttorneyFla.com](http://www.InjuryAttorneyFla.com)

## Tobacco Trials and Tribulations

For the past decade, our firm has been at the forefront of tobacco litigation in Florida. In 2002, we won a \$37.5 million jury verdict that rang out far beyond the courtroom, sending a message to thousands of Floridians that the harm they suffered because of tobacco companies could be redressed. That verdict, in the John Lukacs case, was the first lawsuit to be tried in the wake of the landmark Engle smokers' class action litigation. Engle, which established tobacco industry responsibility for 16 deadly diseases, resulted in specific jury findings about the industry's products—including negligence, product defect, fraudulent concealment, and conspiracy. Under Engle these findings would apply in individual cases brought by members of the class, meaning that plaintiffs didn't have to start from scratch, but needed to prove only their addiction, and medical conditions caused by smoking and their damages.

In the past couple of years, we've tried three Engle progeny cases—the most noteworthy of them in May 2009, when we won a \$1.2 million jury verdict for the wife of a deceased smoker. The defendant, R.J. Reynolds Tobacco Company, had argued that the death of our client's 66-year-old husband—from esophageal and lung cancer—was caused by risk factors other than a lifetime of cigarette smoking. The jury



rejected that argument. The tobacco company has challenged the jury verdict, but the trial judge denied all their sour grapes complaints. Of course, R. J. Reynolds appealed, and we are awaiting a decision from the 4th District Court of Appeal.

More tobacco trials are scheduled for 2011 and we look forward to the opportunity to show Florida juries why tobacco companies should be held accountable for—and must compensate—the human suffering they caused in a relentless, irresponsible, and deadly pursuit of profits without any concern for the effects on the health of Americans who become addicted as teenagers and get horrible diseases later in life.

We also look forward to continuing a team approach in these cases, working with some of Florida's most talented and dedicated law firms as co-counsel, such as our colleagues at Hunter, Williams and Lynch, P.A. Freidan, Dobrinsky and Rosenblum, P.A. and Conrad Scherer. We welcome the chance to form partnerships with other experienced litigators; partnerships that will help us bring our client's cases to trial as soon as possible, and help bring them the accountability, compensation, and justice they deserve. ■

## Prevailing Under House Party Statute

Troubled by the consequences of underage drinking, Florida passed the House Party Statute in the 1990s. The idea was simple: create penalties that would deter parents from enabling, or tolerating, drinking by underage teens in private homes. Recently, we sued under this statute to obtain recovery for our client's family after two cousins, ages 14 and 18, died in the duplex apartment owned by the defendant. In this case, the owner's adult daughter was living in one unit of the property while renting the adjoining duplex apartment to known gang members. She drank and used drugs with her tenants more than once, and evidence we uncovered made it clear that she knew crimes were being committed on her property—including probable violations of the House Party Statute. These crimes led to the deaths of the young cousins, and resulted in a notorious criminal prosecution still ongoing in southwest Florida. Our case, on the other hand, has concluded, because we were able to obtain a settlement for our client's family. ■



## Making the Case for Safer Housing

> Continued from page 1

In one case, our client was robbed and shot while sitting on his front porch. Even though he had a criminal record and recovered from his wounds, we tried his case because we believe that everyone—from every background and experience—is entitled to a safe place to live. In the course of our investigation, we located government inspection reports that clearly showed landlord neglect and serious security violations had occurred. We saw the injustice, and, eventually, so did the defendant. After a five-day trial, the case was settled for a six-figure sum while the jury was deliberating.

In the second case, management at another

federally subsidized housing community failed to properly maintain windows and the locks on sliding glass doors. As a result, a sexual predator who had been linked to prior sexual assaults in the neighborhood gained entry and raped a woman sleeping inside. Again, our aggressive investigation turned up troubling problems: lax oversight by senior management, inadequate maintenance, and the complete failure to heed blatant warning signs. Our client should have been a protected resident, not a victim. This was an injustice we weren't going to let stand without redress. When the facts of the case were presented to the management company's lawyers,

an early settlement was reached.

It wasn't just skill that obtained these victories. It was knowing the rules, and the strategies, that apply to the apartment industry. Subsidized housing properties are subject to federal and state regulations that don't apply to the private sector. We know what rules govern, and where to find what victims need to make—and win—a case. Call us for advice or co-counsel participation if you have a client who has been seriously injured in a government multifamily housing project. We want to help—and are proud of our long track record of doing just that. ■

## Creative Approach Brings Relief to Hotel Shooting Victim



For decades, we have been committed to obtaining justice—and financial compensation—for victims of senseless crimes. By the early 1990s we were recognized for defining in articles and lectures the basic approaches that can be used to prove proving civil liability for criminal victimization. Then, as now, innovation and originality formed our core reputation and remain our signature for finding and winning just compensation.

We go beyond just analyzing criminal history and inadequate security programs. Of course, these legal theories, which we helped pioneer in Florida, are important. But some cases present challenges that require something more. That's where creative approaches become essential.

For example, security has always been about cases involving locks, sliding doors, and keys. After the popular singer-actress Connie Francis was beaten and raped by an intruder who entered

her motel room through a sliding glass door with inadequate locks, a jury awarded her a record-breaking multimillion-dollar verdict in the 1960's. But her verdict did more than compensate for losses: It sent a message to the hospitality industry that they can be held liable for criminal acts that occur because of inadequate security. Since that time, most responsible innkeepers have done the wise—and right—thing. They've upgraded their security systems to keep up with technological advances. Most keys today are electronic, with no room numbers printed on them. Door locks are supplemented by dead bolts or peepholes or both. Nowadays, sliding doors are secured by limiters that keep them shut. These are important, potentially lifesaving steps.

But not all property owners are taking such steps, as one of our clients, a midwesterner visiting southwest Florida to work at exhibition baseball

games, tragically discovered. While our client rested in his motel room, a gunman burst in, robbed him, then shot him. We found out that entry for the assailant was all too easy: out-of-date door locks were in disrepair and failed to conform to industry standards. To show the jury just how inadequate—and dangerous—this was, we constructed side-by-side models to compare adequate locking hardware to what the motel had in place. That demonstration proved convincing—so much so, that after the exhibit inspection by defense counsel, a settlement was reached. A second lawsuit, against the motel's insurance agent for negligent failure to secure adequate coverage, is now pending. We have been leaders in pursuing enforcement of judgements against insurance agents who failed to carefully advise property owners to purchase adequate coverage. ■



## Broken Arm and a Broken Life

It was bad luck, bad timing, and bad consequences, but we were able to right the many wrongs in this case. The day before Hurricane Wilma passed over Miami, a delivery van driver backed his vehicle down an alleyway and struck our client. Falling on her arm, she suffered compound fractures in her forearm, injuries that required surgery. A courageous orthopedist attempted that surgery in the midst of power outages caused by the storm, outages that rendered fluoroscopy equipment useless and made the procedure impossibly difficult. Indeed, numerous repeat open-reduction surgeries were needed.

The impact was devastating; the woman had suffered not only an injury, but also a severe and costly interruption in our client's life. As a small business owner, she could no longer work in her family business, travel, or care for her grandchildren as she had before the accident. One week before trial, the defendant agreed: This wasn't just a broken arm, it was a broken life. A settlement of \$1.5 million was reached, a result, that wouldn't have been possible without the professionalism of defense lawyer Tom Neale, who protected the interests of his client while ensuring that a fair result was reached.

We are proud to acknowledge professionalism in the defense bar for high standards of practice. ■

## David Waksman Takes on Of Counsel Duties

David Waksman has filled many shoes in his career in law enforcement. A noted prosecutor who is now retired from the major crimes unit of the Miami-Dade State Attorney's Office, David Waksman had served as a homicide detective, as well. It's an unmatched resume — and a background that will prove invaluable for our firm. He joins us as Of Counsel. With David on our team, our commitment to obtaining justice for crime victims is stronger than ever. ■

## Motorbike Switch Leads To Settlement

Sometimes, a trial lawyer needs to be a detective as well. That's what Nick Gerson discovered as he dug deep into a challenging case and discovered that not everything was as it seemed. At the outset, the circumstances of the case appeared simple: Our client, a security guard had been killed by a thief on a stolen South Beach motorbike. The rental company that owned the motorbike had carelessly left it accessible to intruders. The owner's insurance company offered to settle for the minimal insurance policy limits applicable to bike riders—an offer we rejected as grossly inadequate.

Nick's painstaking investigation, turned up a

crucial fact: The rented motorbike that the owner identified for the police was not, in fact, the bike involved in our client's death. This was an unrented bike that an unknown person had stolen from the rental company, not a customer. This stolen, unrented bike had been involved in the deadly collision. That new fact was critical, because it established coverage under another insurance policy, one with much higher limits. When Nick presented his evidence, both insurance policies limits were tendered to settle the case, a far better outcome than anyone expected and one that wouldn't have been possible without Nick's determination to find the truth. ■



## Vindication for Hospital Rape Victim

One of the core values that guide us is justice for those harmed as a result of the negligence of others. That sense of justice—and the determination to obtain it—is heightened still more when the victim is a disabled individual who not only is unable to protect herself, but must rely on others to keep her safe. Our client, a woman suffering the debilitating effects of lifetime paranoid schizophrenia, asked us for help after she was sexually assaulted in her hospital bed in the behavioral unit of Miami's Tenet North Shore Hospital. Hospital officials had dismissed the incident as "consensual." But we wondered: How could you consent when you are too frightened to resist the unwanted sexual advances of another patient who snuck into your room late at night? And just what sort of security was in place that enabled the other patient to so easily get into the room?

The answers were troubling: There was no consent. And, there was inadequate security. Immeasurable, permanent harm resulted. So we filed suit and took our client's case to court. Once the whole story was told, the jury awarded our client more than \$1.3 million, finding that the hospital was negligent in its duty to provide adequate safety and security. It was the right result. But it was bittersweet. This crime never should have occurred—and it wouldn't have, had those entrusted with the care of the defenseless lived up to their responsibility. ■



## Cruise Ship Safety and Security Act Becomes Law

One of the most important public interest missions we undertake is assisting victims of crime aboard cruise ships. For years we have been advocates and advisers for the grassroots organization, InternationalCruiseVictims.org, a group that lobbies for important, necessary legislation to protect those vacationing on the high seas from crime and other recreational cruising hazards. Several years of hard work culminated in Congress passing the Cruise Ship Safety and Security Act, which President Barack Obama signed into law in July 2010. The new law requires cruise lines to institute crime prevention and law enforcement measures that have been routinely provided on land but notably—and dangerously—absent at sea for centuries. There is still more work to be done, but this is a good start toward making the high seas safer.

We're proud, too, of our participation in bringing this victims' group together with the National Center for Victims of Crime (NCVC.org), and in assisting with the drafting and lobbying that made this important new legislation possible. ■



## Coming Through for the Community

We like to think of our community as our client, too. Like many of our colleagues across Florida and the country, we know that winning appeals, jury verdicts, and settlements is just part of the contribution trial lawyers can make. Community service, and important pro bono work, is a vital part of who we are and what we do. It's an important value for us.

One key effort we've undertaken is our work with the National Center for Victims of Crime, located in Washington, D.C. The center, where Phil Gerson serves as treasurer and a member of the executive committee of the board of directors, is celebrating its 25th anniversary as the leading victims rights policy, education, and advocacy organization in the United States. We're proud to

be a part of it, and to have helped bring about some of its important achievements—accomplishments that benefit all citizens.

Meanwhile, we continue—just as passionately—our support of, and leadership in, community-based nonprofit organizations, including the Trauma Resolution Center Inc., where we assist through participation on its board, furnishing pro bono legal services and providing direct financial gifts. We have also increased our financial commitment to Mothers Against Drunk Driving, an extraordinary organization whose efforts have made our streets and highways safer.

Winning cases will always be important. But even more important is helping ensure a better future for everyone in the community. ■

## Medical Malpractice Results in Radiation Overexposure—And Settlement

Patients shouldn't expect miracles when they enter a hospital—but they should expect skilled, careful treatment. Unfortunately, that's not what our client received. After a series of treatments, she received a letter from a state agency, informing her that she had been exposed to double the prescribed doses of radiation for her cancer. Working with a team of internationally known experts in nuclear medicine, and conducting a thorough investigation, we were able to obtain a timely settlement for the needless, harmful side effects our client suffered due to excessive radiation exposure. ■





## Defective Rear Seat Costs Client an Arm—and Defendant a Case

**A** big part of handling a catastrophic injury case is reconstructing what exactly happened—and what went wrong. Our client lost an arm in a head-on collision on an interstate highway. But demonstrating the cause of her injury—and the defective design liability—was a complex undertaking. It wasn't just a crash that cost our client her arm; it was a chain of events involving a dangerously defective product. And we had to demonstrate that step by step.

Assembling a dream team of experts—including a biomechanical engineer, an accident reconstruction expert, a seat-back designer, and a latch design expert—we were able to show exactly what occurred, and to identify the failures that resulted in a horrible life-changing injury. In the collision, a heavy piece of luggage was launched like a projectile through the trunk–rear seat opening and into the rear seat back. The force of impact broke the seat back off its inadequate hinge mechanism. As a result, the free floating seat back then drove our client—sitting in the back seat—forward. In the process, her arm was severed by the seat belt she was wearing.

Our reconstruction showed, clearly and convincingly, how defective design cost our client her arm. Combined with the expertise of an economist, as well as our own research into the latest technologies for prosthetics, this enabled us to obtain a confidential settlement that will provide for our client's future. ■

## Defendant in Slippery Gangway Case Doesn't Slide Through

**A**ccidents happen, but usually there is a reason why. Our client slipped on an unsafe gangway in Portugal that was too wet, and too slippery. The result: a fall, an injury, and ultimately, knee replacement surgery. We were referred this case by an Australian law firm, which helped us find passenger eyewitnesses scattered across the globe. Piece by piece, we built our case, developing evidence and obtaining expert analysis from a marine surveyor who explained just what made the gangway so unsafe: inadequate gangway materials, lack of anti-skid adhesives on the surface, absence of rain protection on the highly angled ramp. It was, in short, an accident waiting to happen. Still, the cruise line defendant took a hard-nosed stance, refusing to do the right thing and make good for what befell our client. A week before the start of trial in federal court, the defendant realized the inevitable: Our case was more sound than the company's gangway. At last there was accountability. A settlement was reached, and our client obtained a much deserved financial recovery. ■



## Philip Gerson Celebrates 40 Years of Practicing Law

**I**t's one milestone that holds particular significance for our firm: Phil Gerson, our first senior partner, celebrated four decades as a trial lawyer in 2010. Admitted to the Florida bar in 1970—and fighting for the rights of others ever since, Phil Gerson reflected on his 40 years of distinguished service, noting that it's called the "practice" of law because lawyers continue learning and perfecting their skills no matter how many years they have spent in the courtroom.

"After more than 300 jury trials, I still walk into the courtroom to fulfill my duty owed to the court and to my clients; searching for new and innovative strategies to help those who have been harmed by the wrongs of others, and to do my best for those who have put their trust in me and given me the opportunity to represent them."

Also gratifying, Phil said, was working with skilled lawyers and other professionals who tackle cases as enthusiastically as he does. "Learning from other lawyers by working in co-counsel alliances; consulting with the leading experts in the world on scientific matters; learning to understand the viewpoint of opposing counsel: These haven't just made me a better lawyer; they've shaped my life, made me who I am."

The law, Phil added, is the dynamic evolution of the rules we live by in America. "My career has given me an inside view of the progressively effective enforcement of law to benefit our nation. Each decade sees the quality of our judiciary improving, and technology enhancing the efficiency, and effectiveness, of practice. No other pursuit could have exposed me to the extraordinary people I have had the privilege to learn from. I hope my work has helped others as much as they have helped me. If my gift of health continues, I intend to make my lifetime profession truly last for my whole life." ■



## Bruce Fleisher Joins Firm as Of Counsel

**W**e're delighted to announce that Bruce Fleisher, one of the country's most distinguished and celebrated criminal lawyers, has joined the firm as Of Counsel. Bruce brings more than 35 years of jury trial experience in state and federal court to our practice, and is already making his mark with us on crime victim and catastrophic

injury cases. At the same time, Bruce Fleisher continues his lifelong commitment to defending the accused in the criminal justice system and making sure that clients get the best possible legal representation. Bruce Fleisher's illustrious background makes him a unique asset for our law firm, and we are proud to add him to our team. ■