

THE ADVOCATE

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& ASSOCIATES, L.P.

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SPECIALIZING IN:

- Medical malpractice
- Family law
- Personal injury
- Wrongful death
- Nursing home litigation

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Attorney kudos

Partners **Marshall Mundy** and **Frank Rogers** have been listed in the 2005-2006 *Best Lawyers in America*® publication. Mr. Mundy was recognized in the Family Law and Personal Injury Litigation specialties, while Mr. Rogers was listed in three areas: Family Law, Personal Injury Litigation, and Alternative Dispute Resolution. Published biannually since 1983, *Best Lawyers* is compiled through an exhaustive survey in which more than 350,000 top lawyers in the United States confidentially evaluate their professional peers in 30 specialties. To learn more about *Best Lawyers*, go to www.bestlawyers.com.

In December of 2004, Partner **Frank Rogers** was chosen by his peers as one of Virginia's Legal Elite. For the fifth year, *Virginia Business*, a leading business publication, polled nearly 5,300 Virginia lawyers, asking them to nominate the best attorneys in 12 practice categories. Mr. Rogers was included in the family law category. You can visit *Virginia Business* online at www.virginiabusiness.com.



Medical negligence

Physicians and insurers in the medical industry have been rethinking their traditional “defend and deny” practice after they have been accused of harming patients. In the past, physicians and their defense attorneys customarily defended their erroneous decisions as medically appropriate and denied that they were responsible.

Today, however, patients are seeing another small, but growing, movement based on apologizing for errors. Increasing medical malpractice premiums, patients' rights movements, and, in many cases, the desire to do the right thing have prompted some physicians to express contrition for mistakes. They may send letters, make phone calls, or even invite patients and their families to coffee to express regrets for errors and suffering they may have caused.

The overall goal is to say “I’m sorry” and to reduce costs of settling disputes over medical care.

Our advice: By all means, listen to explanations and apologies. But talk to us, too. An apology will not pay for required medical care, living costs, and other unforeseen expenses associated with medical errors.

The best legal thinking gets the best results

Civil justice in America

Here are some truths our firm lives by:

- ★ Trial lawyers stand up for people harmed through no fault of their own so that the average American can get a fair shake in court.
- ★ We champion the legal needs of individual consumers and working families who have been injured physically and financially.
- ★ Trial lawyers promote public safety and the public good by compelling corporations and businesses to make safer products, improve workplace safety and fairness, clean the environment, and improve the safety and quality of health care.
- ★ When it comes to assessing the “economic impact” of individual consumers and working families who have been injured, the truth is that those who create the costs of the legal system are those who cause the injuries, not the victims who are injured through no fault of their own or the lawyers who represent them.

The civil justice system and the right to trial by jury, with the help of trial lawyers, have done all these things.

Motorcycle safety

Motorcycling has grown in popularity over the past several years. Whether a rider is new to motorcycles or has been riding for a long time, safety is of paramount concern.

Rider safety depends on five guidelines:

1. Read the vehicle’s manual to fully understand operations and all safety features.
2. Take a safe-rider’s course to hone mental and motor skills for safe street and highway motorcycling. Become proficient at shifting, braking, turning, and responding to emergencies.
3. Wear high-visibility protective clothing, concentrating on protective helmets, eyewear, gloves, boots that cover the ankles, sturdy pants, and a jacket.
4. Always have a valid driver’s license and adequate insurance coverage.
5. Conduct good pre-ride checkups and routine maintenance.

Driver negligence

Cars rank among motorcyclists’ most serious risks. No matter how diligent a rider may be about safety, problems can always crop up. When two cars collided in front of an experienced rider, he struck the rear of one, suffering leg injuries that required surgery. He also missed ten months of work and will experience future lost income. He sued the driver of one car as well as the driver’s employer for negligent vehicle operation. The parties settled prior to trial.

Jury waivers

Beware giving up your rights

Mandatory arbitration has become increasingly expensive, and arbitrators have become less predictable.

In response, some businesses that formerly asked employees to sign employment contracts with mandatory arbitration clauses have now switched strategies. So have some marketers that required consumers to agree to mandatory arbitration clauses in product warranties.

They are now asking their employees and customers to agree to jury-waiver clauses. They want everyone to take their grievances back to court. However, businesses and marketers again want judges—not juries—to make final decisions.

Jury-waiver clauses may turn up in auto loans, employment contracts, residential leases, mortgage contracts, and many other legal documents.

We’re encouraging all of our clients to be on their guard about jury-waiver clauses in contracts. Anyone asked to sign a contract should ask if there are mandatory arbitration clauses or jury waivers in the document. If so, one should then seek legal counsel to protect his or her rights.



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Preemptive justice

What's that?

It's giving away one's rights to trial by jury. Anticonsumer lobbyists and lawmakers have proposed legislation to prevent consumers from using the civil justice system, thus depriving consumers of their right to a day in court.

Preemptive justice is essentially very unfair in that it does not derive from intellectual debate by committees or research by learned scholars. Instead, it is based on insidious half-truths, supported by urban legend-type anecdotes and outright lies—all nurturing a political agenda to destroy citizens' rights.

What are some examples of existing or proposed preemptive legislation?

- Limits on compensation juries may provide for harm done by HMOs, hospitals, and physicians.
- The Federal Asbestos Trust Fund, which prevents initiation of liability lawsuits in state courts.
- Gun manufacturer liability eradication.
- The "Class-Action Fairness" bill to federalize and impede virtually all individual and mass-action tort cases.
- "Obesity" lawsuit protection for food manufacturers.

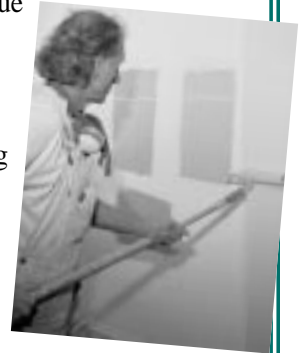
What do all preemptive-justice initiatives have in common? They reduce the accountability of insurers, drug manufacturers, physicians, and others for the welfare of customers and patients. Preemptive-justice measures will also save insurers, drug manufacturers, physicians, and others a lot of money by shifting the financial burden of their errors to the victims and other taxpayers. Some call these ideas tort "reform," but is it reform to take away people's rights?

Asbestos UPDATE

Even though manufacturers knew of the deadly dangers of asbestos products 70 years ago, they concealed health hazards from workers and the public. In the 1970s, asbestos use was limited but not prohibited, but corporations continue to wage legal and public relations battles to avoid accepting responsibility. The following are some recent developments.

Painter

A commercial painter working since the 1950s and now suffering from terminal mesothelioma sued manufacturers of asbestos-laden, joint-compound products to which he had been exposed during his career. Following a settlement, a jury reached a verdict of compensatory and punitive damages against the manufacturer for failure to warn of danger to the worker.



Pipe fitter

A pipe fitter and plumber serviced and installed boilers for more than 40 years. He died at age 71 from lung disease after inhaling asbestos dust for 40 years.

His wife and estate brought a wrongful-death suit against boiler manufacturers and asbestos suppliers for failure to warn her husband about the dangers of working with their products. The manufacturers settled and a jury found the defendants 100 percent guilty, awarding the estate compensatory damages.

BURN SAFETY ON THE JOB

Unfortunately, many American workers are burned in fires at offices, factories, retail establishments, and other workplaces.

Office fire safety measures should include monitoring and training employees in the use of heat-producing electrical appliances, such as microwave ovens, hot-water dispensers, and coffee makers. Training also may include guidelines for burning candles or potpourri and smoking.

Factory or plant personnel training is usually comprehensive and should include orientation on handling and using combustibles, flammable liquids or gases, electrical equipment, and flammable metals.

All training should emphasize understanding how fires start, notifying fire departments, extinguishing fires, evacuating in emergencies, and helping coworkers who may be on fire or who have suffered burns.

Poor fire training

When a fire started in an auto aftermarket-supply company, its sales manager drove a burning truck out of the building and returned to help others evacuate. He suffered first-, second-, and third-degree burns over 20 percent of his body. He subsequently sued his employer, alleging negligent fire training and management in failing to comply with local fire regulations and operating without a permit. A jury found his employer and its parent company each 50 percent liable for his injuries and awarded the sales manager compensatory damages.

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What caused the injury?

Consumers may harm themselves if they misuse or abuse a product. An example? A person falling when standing on a child's lightweight plastic play chair to reach a top cabinet shelf.

In other cases, negligently designed products are accidents waiting to happen. When they do, consumers have recourse.

Lack of a handguard

A seven-year-old suffered extensive crush and skin injuries from a riding mower when his hand contacted spinning parts in the running engine's exposed air intake. His parents sued the manufacturer and retailer for designing and selling the mower without an engine guard. Following an initial settlement, a jury awarded additional funds for pain and suffering, continuing medical expenses, and lost future wages.



Unsteady baby walker

When a walker holding a ten-month-old baby tipped over, she fell headfirst into a bucket of mop water. Despite emergency medical efforts, she suffered irreversible brain damage and remains in a vegetative state. Medical and lifelong expenses will be significant. Her parents sued the company that imported the walker and the retailer that sold it, alleging the design violated federal safety standards and was unreasonably dangerous. It fit through standard doorways, lacked a gripping mechanism to prevent it from falling down stairs, and had no use instructions or warning labels. The parties settled prior to trial to fund a trust to provide care for the child.



Pap smear screening

Named for its advocate, Dr. George Papanicolaou, Pap smear screenings are performed quickly, cheaply, and with minimal discomfort. Medical experts believe that failure to obtain screenings represents a significant risk factor for cervical cancer.

The screenings are believed to be responsible for up to an 80 percent decrease in cervical cancer deaths. As many as 50 million women obtain Pap smears annually, with about seven percent receiving diagnoses of irregularities requiring further evaluation.

Screening is not perfect. Even the best labs misjudge results in up to five percent of all cases. In a 1993 Rhode Island case, a patient died of cervical cancer after receiving four false-negative misreadings in seven years.

Litigation is increasingly common, as about one in ten pathologist lawsuits involves misread Pap smears. Some insurers have withdrawn their coverage for such readings.

For more information on Pap smears and the steps patients can take if they suspect errors in screening readings, please contact our office.