# ROBERT W. KERPSACK CO., L.P.A.

**Consumer and Small Business Protection Lawyers**


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Robert W. Kerpsack
Co., L.P.A.

MetroCenter V
655 Metro Place South
Suite 255
Columbus, OH 43017-5389
614-766-2000
800-944-0755
FAX: 614-766-2005
e-mail: info@rwklaw.com
Web site: www.rwklaw.com


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## *Bob Kerpsack receives Amicus Curiae Award for work in Fireman's Rule case*

The Ohio Association for Justice recently announced that the recipient of its annual *Amicus Curiae* Award is **Bob Kerpsack.** The award is presented annually to an individual who most advances the Association's causes to the courts and the public. This year's award is a tribute to a successful *Amicus Curiae* ("friend of the court") brief filed by Mr. Kerpsack in an Ohio Supreme Court case that threatened to substantially erode the legal rights of injured firefighters and police officers.

In a rare unanimous decision by all seven justices, the Ohio Supreme Court adopted Mr. Kerpsack's legal arguments by reversing the judgments of two lower courts that erroneously expanded the application of Ohio's Fireman's Rule, protecting nearly all negligent wrongdoers from liability for injuries to firefighters and police officers during emergency runs. Ohio courts originally adopted the Fireman's Rule to protect property owners from liability for injuries to firefighters and police officers on an owner's property. The purpose of the Rule was to encourage property owners to call public protection agencies during emergencies, without fear of liability for injuries suffered by those responding to the emergency. In his *Amicus Curia* brief, Mr. Kerpsack argued that the Fireman's Rule shields only property owners from liability, not negligent third parties whose conduct has nothing to do with the firefighters or police officers responding to an emergency.

"I am honored and privileged to have had the opportunity to file the brief on behalf of the Ohio Association for Justice and to receive this award," said Mr. Kerpsack. "The Supreme Court's decision means that injured firefighters and police officers in Ohio will have a much better chance of obtaining full, fair, and just compensation for all of their legal damages." In addition to the *Amicus Curiae* Award, Bob Kerpsack has also been the past recipient of Distinguished Service Awards from the Ohio Association for Justice for his work in organizing and presenting educational seminars to fellow lawyers on consumer and small-business protection issues.

## AUTO ACCIDENT INVESTIGATIONS

When a client is seriously injured in a vehicle collision, we will make every effort to seek additional sources of precise, detailed, and thorough information to determine responsibility for the accident. We often investigate:

- Cell-phone, personal digital assistant, and global-positioning satellite records for all involved vehicles and drivers. These may record direction, mechanical problems, operating errors, position, velocity, or improper electronic-device use.
- Digital 911 call records to locate witnesses who may have observed and reported the accident.
- Digital photographs taken by police at the scene.
- Paramedic, ground ambulance, or medical air transport reports of emergency care that may include injury specifics.
- Tow-truck or wrecker records, which also may shed light on accident details.
- Traffic cameras at dangerous intersections to determine if the monitoring system recorded the accident.

*We take your family's safety and security personally.*

## 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:

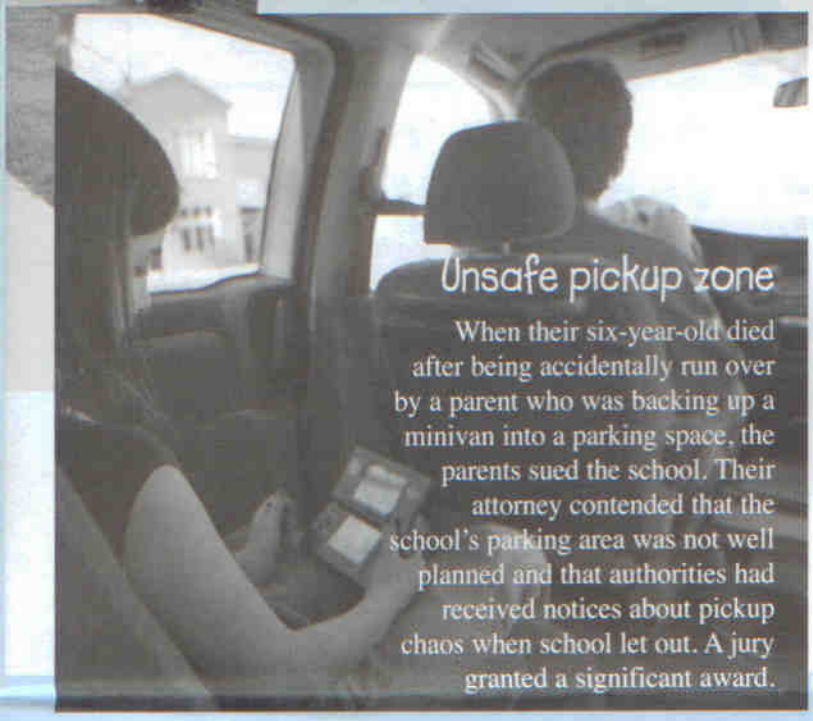
Trial attorneys charge outrageous hourly fees and leave victims with practically nothing if they win cases. **Not so:** *Lawyers who represent injured clients who cannot afford legal fees provide representation on a* ***contingency-fee basis.*** *If there is no monetary recovery, clients owe nothing 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.

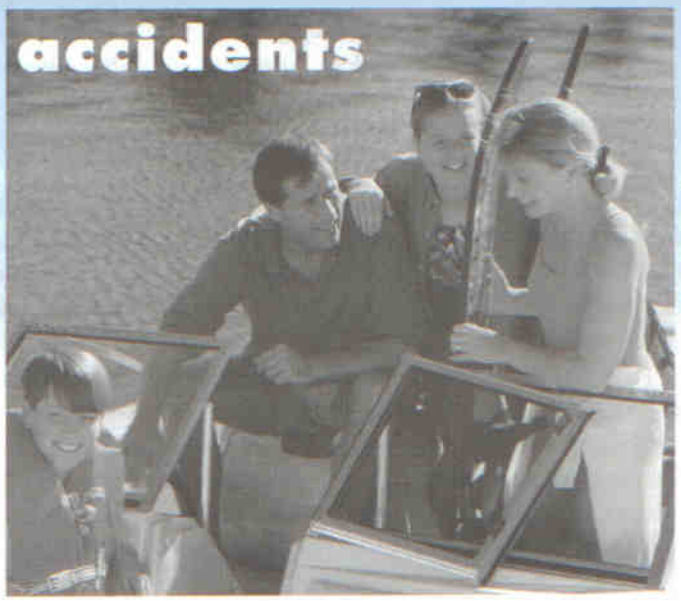
A personal injury attorney can investigate causes of worker injuries and help hold those responsible for harm to account.

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 accidents



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.

ROBERT W. KERPSACK CO., L.P.A.
655 Metro Place South, Suite 255
Columbus, OH 43017-5389

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## Top-ten worst U.S. insurers

### Insurance industry uses "Deny, Delay, Defend" strategies and puts profits over policyholders

Following a comprehensive investigation involving thousands of insurance company legal documents and financial filings, the American Association for Justice (AAJ) ranked the top-ten worst American insurance companies for consumers.

*The Ten Worst Insurance Companies in America: How They Raise Premiums, Deny Claims, and Refuse Insurance to Those Who Need It Most* outlines highly aggressive tactics these companies use against consumers to increase profits.

Allstate tops the "worst" list.

AAJ CEO Jon Haber said, "While Allstate publicly touts its 'good hands' approach, it has instead employed a hidden 'boxing gloves' strategy against its policyholders. Allstate ducks, bobs, and weaves to avoid paying claims to increase its profits."

According to AAJ's study, Allstate set new benchmarks for insurance company greed. In the 1990s, the insurer contracted with consulting leviathan McKinsey & Co. to design tactics to systematically force consumers to accept lowball settlement offers or face its "boxing gloves," an aggressive strategy designed to deny claims at any cost.

While Allstate ranked worst, the report also revealed a clear-cut pattern of misconduct among all ten ranked industry insurers that regularly deny paying fair and just claims, use hard-line tactics against policyholders, compensate corporate executives with extravagant salaries, and boost customer premiums while amassing excessive profits.

### Top-ten worst U.S. insurers

The AAJ study identified the worst companies in rank order:

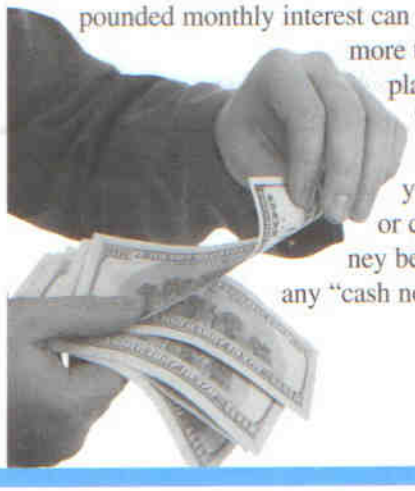
1. Allstate
2. Unum
3. AIG
4. State Farm
5. Conseco
6. WellPoint
7. Farmers
8. UnitedHealth
9. Torchmark
10. Liberty Mutual

## Advance cash settlements

Think twice before accepting "cash now," up-front payments while a lawsuit is pending. Television commercials offer advance payment for personal injury verdicts, annuities, fixed-income financial instruments, life-insurance policies, and even lottery winnings.

Unfortunately, many deals marketers offer are actually structured loans from lenders who may charge high compound-interest rates. In some cases, transactions double repayments due in less than a year. In fact, some offers pay only 25 to 50 cents on every dollar settlers are asked to "invest."

If someone takes a $50,000 "cash advance" loan against the recovery an attorney earns for a personal injury, the 10-percent monthly interest they will pay can compound up to 100 percent in a year. That may mean a $50,000 loan costing up to $100,000 if the case settles without an appeal. As time passes, compounded monthly interest can cost three or more times the amount plaintiffs are "advanced."



Please ask your accountant or consult an attorney before agreeing to any "cash now" offer.