

Firm News

■ El Faro

Attorneys Ben Gideon and Steven Silin have filed pleadings in the U.S. District Court in Jacksonville, FL on behalf of the families of two of the crew members of El Faro, both Rockland natives, who were killed when the ship sank in October. They were engaged to join in the legal efforts to hold the ship's owner financially accountable for these deaths.

■ \$155,320 Jury Verdict

Attorney James O'Connell won a unanimous jury verdict of \$155,320 for a motorcyclist from Rockport, Maine following a hard-fought trial in the Knox County Superior Court.

■ Chambers USA

Berman & Simmons has once again been ranked by *Chambers USA* as the best law firm in Maine for the representation of plaintiffs. The firm was the only one in the state to be ranked in the 'Litigation: Mainly Plaintiff' practice area. Five attorneys earning individual distinction from *Chambers USA* include Steven Silin, Julian Sweet, Jodi Nofsinger, Benjamin Gideon, and Jack Simmons.

■ A Practical Guide to Superior Court Practice in Maine

Attorneys Daniel Kagan, Alicia Curtis, and Benjamin Gideon contributed chapters for "A Practical Guide to Superior Court Practice in Maine," a guidebook for trial lawyers published this spring by Massachusetts Continuing Legal Education.

■ Martindale-Hubbell

Attorney Michael Bigos joins eight other Berman & Simmons lawyers in earning the highest possible peer rating in personal injury, litigation, and business law from Martindale-Hubbell.

■ Top 100 U.S. Verdicts of 2014

Attorney Benjamin Gideon has been recognized in the *National Law Journal* for receiving one of the top 100 verdicts in the nation. The jury awarded \$22.5 million dollars in the Hemond v. Frontier Communications of America case.

See more firm news at:

bermansimmons.com/news

Ready for the Next 100 Years, continued from page 1.

In 2014, we celebrated 100 years of serving Maine. The anniversary gave us an opportunity to celebrate our history and accomplishments, and reflect on the great lawyers who helped transform Berman & Simmons from a general practice firm to Maine's most successful trial firm, and now to a more specialized firm focusing on personal injury, medical malpractice, and complex trial matters.

While there is value in looking back, we don't spend too much time thinking about the past. As a firm, our focus remains on our commitment to our current clients and improving every aspect of how we represent them.

Leading the Pack: Where We Stand in 2016

Today, Berman & Simmons is the leading personal injury firm in Maine, with 16 lawyers and more than 40 staff members. We have the most plaintiff attorneys of any law firm in the state. Because of our reputation, we often provide counsel on high-profile cases and receive referrals from the most respected lawyers in Maine and around the country.

Best Lawyers, Chambers USA, and other publications consistently rank Berman & Simmons and our individual lawyers as the best in Maine for the representation of plaintiffs in personal injury and medical malpractice cases. We have obtained some of the largest medical malpractice and personal injury verdicts in Maine history, and two of our landmark cases have been recognized in *The National Law Journal's* Top 100 U.S. Verdicts.

A Look Ahead: Building for the Future

Continuing our success into the future will not happen by accident. We must rely on the key ingredients we've refined to prosper in the midst of transition and a challenging environment.

Teamwork and Collaboration

We have a collaborative approach to lawyering that started with a principle Jack Simmons preached for many years – everyone at Berman & Simmons benefits when any lawyer achieves a great result. Jack's enthusiasm to celebrate the success of colleagues was infectious and resulted in a rare culture for a plaintiffs' law firm. For many years, Berman & Simmons lawyers have transferred interesting and potentially valuable cases to others within the firm when they believed that was in the best interest of the client. This practice not only has served our clients well but has nurtured feelings of camaraderie and a united purpose that bind us together.

This environment has also been cultivated by senior lawyers who are still active in the firm. Steven Silin and Jay Sweet continue to lead the most successful personal injury and medical malpractice groups in Maine. They pioneered new approaches to team building and collaboration that are now our mainstay.

Talent

We recognize that we can't achieve success without recruiting the right people, including lawyers, legal assistants, paralegals, and administrators. I am proud of the fact that many of them have



Team building and collaboration are integral to our success.

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Ready for the Next 100 Years, continued from page 2.

stayed with us for decades and that they are all dedicated to always providing the best representation and service to our clients.

With each hire, we look for people who are bright, energetic, and accomplished, and who want to represent clients against insurance companies and other powerful institutions. All have strong backgrounds that will allow them to contribute to our future success. All are committed to our model of teamwork and collaboration.

Mentoring and Succession Planning

At Berman & Simmons, we believe in the value of building for the future. Unlike other trial firms that circle around one or two “star” lawyers without paying attention to transition and succession, we put a lot of time and energy into training, mentoring, and developing talent. When seasoned lawyers retire, their partners are prepared to move forward with confidence.

Every Berman & Simmons lawyer participates in our system of mentoring and collaboration. Not only is this a smart investment in the firm’s future, but this approach also ensures that all of our clients consistently receive the highest quality representation.

Trial Culture

Trial culture and our track record of success at trial have been at the core of our identity for many years. We value the civil justice system, trust in Maine juries and believe that all our clients have a right to their day in court. We’ve seen enthusiasm for trial demonstrated by Bill Robitzek, Jay Sweet, and Steve Silin and the success they have achieved. Dan Kagan uses his decades of experience running a highly successful personal injury practice, along with a creative approach to lawyering, to obtain great results for his clients at trial. My contemporaries, Jodi Nofsinger and Ben Gideon, are leading the next generation of Berman & Simmons trial lawyers with proven ability to take on and aggressively present complex cases. Mike Bigos and Jim O’Connell continue to hone their trial skills in challenging cases. Over the last year, both have filed suit in very public cases involving catastrophic injuries or death.

Though fewer cases go to trial than did in prior decades, we are committed to maintaining and enhancing our ability to take any case to trial, even in the face of rigorous defense. Our attorneys develop advanced approaches and strategies for trial, share these techniques within the firm, and support their colleagues through the trial process.

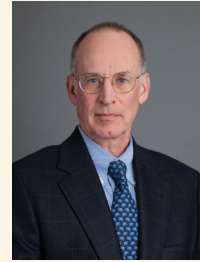
“We take pride in our ability to successfully prosecute even the most complex cases.”

Positioning Ourselves for Success

We are fortunate to have inherited a strong foundation for growth, built over the past century by skilled trial lawyers and highly accomplished leaders. But we also recognize that our firm, the legal landscape, and our society are constantly changing. We look forward to addressing these changes and the opportunities ahead with innovation and a commitment to service excellence while always staying true to our core mission of representing Maine people.

With this vision, we are confident that Berman & Simmons will continue to prosper for another 100 years and beyond. ■

Firm News



John Sedgewick, a longtime managing director at Berman & Simmons, retired on July 3.

Sedgewick played a key role in transforming Berman & Simmons from a small general practice trial firm to the leading personal injury and medical malpractice firm in Maine. Along with law partners including Jack Simmons, Steven Silin, and Julian Sweet, Sedgewick is credited with developing the supportive environment and collaborative approach to lawyering that have become hallmarks of Berman & Simmons.

A graduate of Tufts University and the University of Maine School of Law, Sedgewick joined Berman & Simmons in 1978. He built a successful practice in the areas of personal injury, products liability, and workplace injury. Sedgewick became known statewide for his expertise in automobile accident reconstruction, product design and defect, construction site safety, and other complex cases. He has been recognized as a top lawyer by *Martindale-Hubbell*, *SuperLawyers*, *Best Lawyers in America*, and other publications.

Sedgewick served as the firm’s managing director from 1988 until 2014. In that role, he oversaw business strategy, hiring, marketing, and other key aspects of operations for Berman & Simmons.

“John’s contributions are beyond measure. He mentored attorneys, connected with our staff, provided strategic vision, and managed major transitions, all while running a successful practice of his own,” said Craig Bramley, who assumed Sedgewick’s role as managing director. “Without John’s wisdom, guidance, and steady leadership, the firm would not be where it is today.”

About the Firm

Berman & Simmons, P.A., is a firm of 16 attorneys with offices in Portland, Lewiston, and Bangor, Maine. The firm has represented the people of Maine in a wide range of plaintiffs' cases for over 100 years and has obtained some of the largest personal injury verdicts ever awarded in Maine courts.

Berman & Simmons has been listed under all litigation headings in *Best Lawyers* since its first publication and has been cited in *Chambers USA* as "the best plaintiffs' personal injury and medical malpractice firm in Maine."

Referring Cases to Berman & Simmons*

We have a long history of working with Maine lawyers as referral counsel to help obtain fair compensation for their injured clients.

As a lawyer, if you have a complex personal injury or medical malpractice case in which our experience, expertise, and resources could make a difference, let us provide the support you need.

**To refer a case,
please call us at
800-244-3576**

See our referral video at:
bermansimmons.com/attorney-referrals

* We share fees consistent with the Maine Rules of Professional Conduct adopted by the Maine Supreme Judicial Court

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TRIAL ATTORNEYS

Prison Medical Malpractice Claims, continued from page 1.

Maine Tort Claims Act Immunity

Understanding who is involved in an inmate's negligent medical care is essential to analyzing whether the provider may be immune under the Maine Tort Claims Act (MTCA). Section 8102 of the MTCA defines an "employee" of a governmental entity as "a person acting on behalf of a governmental entity in any official capacity, whether temporarily or permanently, and whether with or without compensation from local, state or federal funds," but further provides that "the term 'employee' does not mean a person or legal entity acting in the capacity of an independent contractor under contract to the governmental entity" [14 M.R.S.A. § 8102(1)]. If a provider is employed by a local or state entity and does not have insurance, then he/she will likely be immune under the MTCA. Many of his/her decisions in rendering medical care could be central to carrying out the government's policy interest in providing adequate health care to inmates. Consequently, the employee's actions would be construed as an exercise of discretionary function and be immune.

***Navigating through
prison medical
malpractice can
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If a provider is employed by a private vendor who has contracted with the correctional facility, a copy of the contract should be obtained to fully understand the relationship between the two entities. If the vendor and its employees are independent contractors, they will not be afforded immunity. If the vendor has procured insurance and the policy does not specifically carve out exemptions for immunity, the vendor has waived immunity. However, even in the case of independent contractors, the defense may argue that the non-governmental employee should be an "employee" as defined by § 8102 because their role is central to effectuating the State's responsibilities.

In cases involving governmental employees, a 180-day MTCA notice of claim must be filed, and the case is subject to a two-year statute of limitations.

Privatized Correctional Healthcare Services

As more local and state governments attempt to find ways to save tax dollars and address their public health responsibility in prisons, they may increasingly turn to companies that specialize in providing prison health care. These vendors employ medical and mental health personnel who are trained to deal with the special health-care needs of inmates.

Organizations such as the American Correctional Association, the National Commission on Correctional Health Care, the American Medical Association, and the American Public Health Association have developed standards and policies to address clinical issues, treatment protocols, and safety and emergency procedures, to assist in the delivery of appropriate health care in correctional facilities. Reviewing the relevant standards from these organizations will be useful in understanding the level of service required in prison. Additionally, the contract may include provisions setting the standard of care. The vendor may also have their own internal policies and procedures to address matters such as medication reconciliation and sick/emergency calls.

Conclusion

Despite the challenges of balancing financial limitations with providing medical care to inmates, prisoners are protected under the law if they are denied adequate medical care. Navigating through prison medical malpractice can present unique difficulties. The decision to represent a prisoner in a medical malpractice case involves identifying defendants, investigating immunity, and understanding the applicable standards of care. ■

Berman & Simmons has the experience, expertise, and resources to get the best possible results. If you have a complex personal injury or medical malpractice case, we would be happy to help. For more information, call us at 800-244-3576.