

Nomination of Jared Green for the Granite State Advocate Award

The Granite State Advocate Award is periodically given to attorneys who, while representing their clients, pursue and help achieve substantive changes in the law of the state which improve the civil justice system, enhance the rights of citizens' access to the courts, preserve the right of trial by jury or enhance the right of everyone to attain full, fair, and timely remedies for civil wrongs. Jared Green did that this year while representing Marc Chartier, Individually and as Administrator of the Estate of Lisa Chartier, by convincing the NH Supreme Court to finally apply the Corso v. Merrill standard for negligent infliction of emotional distress claims to allegations involving medical negligence, specifically a failure to diagnose DVT claim, in Chartier v. Apple Therapy of Londonderry, LLC on February 10, 2023.

In the Chartier case, Marc Chartier witnessed the sudden death of his wife from a pulmonary embolism, which was caused by deep venous thrombosis (DVT) that was never diagnosed or treated by her medical providers at follow up and therapy appointments in the weeks after she underwent a knee surgery. Jared brought claims not only for medical malpractice against the orthopedic surgeon and physical therapists who failed to diagnose and treat the DVT, resulting in Lisa Chartier's wrongful death, but for the negligent infliction of emotional distress inflicted on Marc Chartier, when he watched his wife throw the ultimately fatal clot while she was sitting next to him in their car.

Other than decisions on the collateral source rule, to my knowledge, no issue has generated more of a significant split across New Hampshire Superior Courts than that of allowing negligent infliction of emotional distress claims in medical malpractice cases.

Corso v. Merrill changed the law in New Hampshire for bystander claims for emotional distress in civil cases by removing the requirement that the bystander be within the "zone of danger" of an "accident" or negligent act to recover for their emotional distress and allowing recovery if a bystander with a close familial relationship had a "contemporaneous sensory perception" of the "accident" and the "accident victim," by being temporally and geographically close to the "accident scene" and "accident victim" when the "accident" occurred.

In medical malpractice cases, defendants have always argued that the Corso rule could never apply because a plaintiff can almost never contemporaneously and sensorially perceive the medical malpractice to their loved one, since most medical care happens behind closed doors; and, in cases involving a failure to diagnosis, the negligence is by omission, rather than commission, so there is no negligent conduct to perceive. Indeed, medical malpractice defendants have argued that these claims are never viable for plaintiffs to recover in medical malpractice cases.

In Chartier, the New Hampshire Supreme Court clarified once and for all that Corso's discussion of perceiving the "accident" and "accident victim" did not mean perceiving the negligent act causing the accident, but rather meant perceiving the "sudden, unexpected, shocking event involving serious injury to the plaintiff's daughter." The Supreme Court found that Marc Chartier satisfied this standard when he witnessed the "sudden, unexpected, and shocking suffering and death of his wife."

This decision is critical in expanding the claims available for injured plaintiffs in medical malpractice cases, but especially in wrongful death cases where damages recoverable by family members are capped for their losses of consortium and their familial relationship. This case allows surviving family members to have individual claims to pursue that are not capped and not only substantively changes the law, but it also improves the civil justice system, enhance the rights of survivors and injured family members ' access to the courts by allowing them to attain full, fair, and timely remedies when they are harmed by emotional distress.

Our office has been writing articles and motions about this issue for decades, since the Corso decision, and its progeny, were decided, and it has finally been resolved once and for all and Jared Green's dedicated advocacy is the reason it was.

Please award the granite state advocate award to Jared. He deserves it more than anyone for his decades of tireless advocacy of this issue and his dogged determination to get it decided.

Thank you for your consideration of this nomination.

Holly Haines