



# MARASCO & NESSELBUSH LLP

## LAW OFFICES

*Rhode Island's Trusted Personal Injury & Social Security Disability Law Firm*

### AREAS OF PRACTICE

#### Personal Injury Law:

- ☞ Auto Accidents
- ☞ Medical Malpractice
- ☞ Motorcycle Accidents
- ☞ Wrongful Death
- ☞ Uninsured Motorist
- ☞ Premises Liability
- ☞ Alcohol Related Accidents

#### Social Security Disability Law:

- ☞ Social Security Disability Insurance (SSDI)
- ☞ Supplemental Security Income (SSI)

### FOUR CONVENIENT LOCATIONS

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(401) 274-7400

#### WAKEFIELD:

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(401) 783-0000

#### WARWICK:

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(401) 738-7700

#### WOONSOCKET:

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(401) 762-9800

Free Parking, Easy Access

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*This newsletter is intended for current and former clients of Marasco & Nesselbush. We thank you for your many kind referrals, and for placing your trust and confidence in our firm.*

## MARASCO & NESSELBUSH Winning Cases... Making New Law in the United States District Court

In 2009, Marasco & Nesselbush litigated several cases in the United States District Court, winning “remands” on 10 cases. We appeal cases to the United States District Court only after the Social Security Administration (SSA) denies disability benefits at all lower levels. However, if the attorneys at Marasco & Nesselbush still believe that a client is disabled and has been unjustly denied, we will file a legal appeal in the United States District Court. This is not “sport for the short-winded.” The attorney must prove, through a written Memorandum of Law and possibly Oral Argument, that the Social Security Administration committed “legal error.”

A recent case involved a client who was represented by a national law firm, which lost. He was only forty years old, but he had undergone two back surgeries, and was suffering signifi-

cant pain. For legal reasons, we needed to prove that he was disabled prior to the summer of 2007. If we did not, he would have been unable to receive disability benefits, and he would have to wait until 2033 to be eligible for Social Security Retirement benefits. Because the client was unable to work, his Social Security disability claim was his only hope for a source of income and access to health insurance. Lawyers from Marasco & Nesselbush immediately filed a complaint in the United States District Court, alleging that Social Security had violated federal law in denying him the benefits he so clearly needed and deserved. After litigation lasting nearly one year, the District Court agreed with Marasco & Nesselbush, ordering SSA to provide our client disability benefits and health insurance all the way back to February 2005!

## MARASCO & NESSELBUSH Medical Malpractice: Protecting Patients' Rights

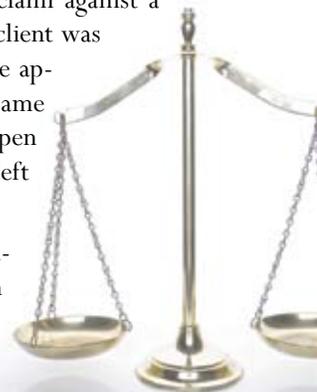
Most medical procedures are performed successfully and without complications. We all are grateful for the caring, compassionate medical providers who give us care in times of need. However, when something goes terribly wrong as a result of negligent medical care, the patient and her or his family members deserve compensation.

Here are two examples of medical malpractice claims recently resolved by Marasco & Nesselbush.

A confidential settlement was reached in a medical malpractice claim against a surgeon who failed to properly remove a patient's appendix. Our client was diagnosed with appendicitis, and an appendectomy (removal of the appendix) was performed. Three months later, the patient had the same symptoms. She was again diagnosed with appendicitis. A second “open procedure” was performed to remove a ‘stump’ of the appendix left after the first surgery that had become inflamed.

The defendant doctor argued that leaving the ‘stump’ was not malpractice, as some portion of the appendix is ordinarily left after an appendectomy. Through expert opinion, Marasco & Nesselbush

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## What Every Tenant and Landlord Should Know

**W**e all find ourselves on other people's property. Normally we don't even think about this, but in the event of an accident, we are forced to consider issues of liability. Landlords and property owners generally have a duty to maintain the property they own in a reasonably safe condition. Premises liability cases are decided based upon what a reasonable person would do to protect the health and safety of those on his or her property.

It is important that property owners, landlords and tenants understand their basic responsibilities. Generally, a landlord's responsibilities include the duty to inspect the premises to ensure that no unsafe conditions exist. In addition, there is a duty to provide maintenance and repair. The extent of this responsibility is defined by what a "reasonable person" would do to maintain property.

Many cases in this area of law involve notions of reasonableness on both the part of the landlord and the injured party. For example, in the context of ice and snow, a landlord has a "non-delegable" duty to maintain "common areas" (walkways, steps, driveways, sidewalks, etc.) in a reasonably safe condition. The landlord has a reasonable time after inclement weather to make the common areas safe. Often, lease agreements will contain provisions requiring tenants to maintain common areas. Although this type of agreement may be effective against a tenant who has signed it, it does not insulate the property owner from liability relative to third parties. A tenant's guests, someone delivering a package or mail, or any other pedestrian could all conceivably sue a property owner if they suffer harm as a result of the unsafe condition.

Landowners and their insurance companies frequently argue "comparative fault" or "assumption of the risk." Simply put, they will claim that the injured party's own actions should reduce their damages or

eliminate the right to recover. Here is an example drawn from an actual case:

Marasco & Nesselbush partner Joseph P. Marasco obtained \$280,000 on behalf of the client who fell, injuring her leg on a basement stairway. Our client was a tenant on the property which we alleged was poorly maintained. The property had a common stairway, meaning a stairway available for use by all tenants in the multi-family dwelling.

Our client lost her balance on uneven stairs, reached for the handrail to support herself, the handrail broke, and our client then fell. We alleged that the stairway failed to comply with existing building codes and was negligently maintained. Our engineering expert observed that the stairs failed to have a consistent height, the handrail was poorly maintained, and was incapable of providing support.

The Defendants (landlord and landlord's insurer) argued that there was an alternate access to the basement; that the tenant (our client) was aware of the condition of the stairs and chose voluntarily to encounter this known risk. Among other considerations weighing heavily upon the outcome of the case were investigative reports demonstrating that the landowner, who owned many properties, had numerous housing code violations, some of which were consistent with the alleged defect in this case. Attorney Marasco established that the landowner professed to maintain this property as he had all of his properties. However, Marasco & Nesselbush had amassed evidence of a pattern of neglectful property management.

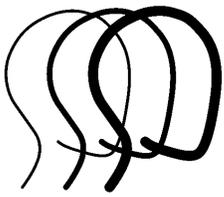
Cases like this show that tenants need to be aware of their legal rights and that property owners should be diligent in the maintenance of their property and should carry substantial liability insurance. For other representative premises liability cases we have settled or won at trial, please visit our website: [www.M-N-Law.com](http://www.M-N-Law.com)

### Common examples of property owner liability:

- Failure to install or maintain fire safety devices (smoke detectors, carbon monoxide detectors, sprinkler systems, etc.)
- Improper or insufficient lighting of common areas
- Structural maintenance deficiencies (handrails, porch rails or stairways unsafe, or similar issues)
- presence of environmental toxins (lead, toxic mold, etc.)
- parking lot or walkway maintenance deficiencies (tripping or slipping hazards)

Success is to be measured not so much  
by the position that one has reached in life as  
by the obstacles which (s)he has overcome.

~ Booker T. Washington



## Feature Organization: Brain Injury Association of Rhode Island

**D**id you know that 5,300 Rhode Islanders will suffer some level of brain injury each year? Sports concussions, trauma caused by falls or auto accidents, assaults and military service can all lead to serious brain injuries.

For a number of years now, Marasco & Nesselbush has been pleased to support the fine work of the Brain Injury Association of Rhode Island (BIARI), a statewide organization dedicated specifically to providing emotional support, guidance, and education to those who are suddenly faced with the effects of brain injury. Marasco & Nesselbush wishes to make our clients aware of the many resources that BIARI can offer people affected by brain injuries.

BIARI seeks to increase public awareness of traumatic brain injury and its consequences. It encourages appropriate rehabilitation and services for survivors of brain injury, and it disseminates information about brain injury.

BIARI actively collaborates with state and private entities to educate survivors, family members and professionals on all aspects of brain injury prevention, treatment and support needs. It offers support groups, a resource guide, professional referrals and other services to people dealing with the aftermath of brain injuries. Its membership includes brain injury survivors, their families and friends, health-care professionals, physicians, providers of brain injury rehabilitation, and other advocates. BIARI's Brain Injury Resource Center improves access to information on traumatic brain injury and enhances the effectiveness of agencies and service providers who work with survivors of brain injury. For more information, please visit [www.biausa.org/RI](http://www.biausa.org/RI) or call (401) 461-6599.

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attorney Mark H. Grimm established that the 'stump' left behind was too large. The surgeon's insurer ultimately agreed to settle the case.

Our client was compensated for the pain, surgery and additional scarring endured as a result of the defendant surgeon's negligence.

Fortunately for all of us, most surgeries are successful in resolving the targeted problem. In those that do not, the critical factor is whether the medical provider acted within the "standard of care." Below is another example of a negligent surgical procedure recently resolved by our firm.

An elderly woman went to an eye doctor for cataract surgery. During the procedure, the surgeon allowed a portion of the patient's lens material to fall into the eye. The surgeon tried to remove the material but failed. The patient's vision worsened after the surgery, yet the ophthalmologist did not refer her to a specialist for nearly a month.

When corrective surgery was finally performed by a specialist, the retina had detached and had to be repaired. Our client's vision was worse after the surgery; she now wears glasses all the time and is unable to do simple things such as reading and knitting.

Our firm demonstrated that the original surgeon was negligent. After lengthy litigation, the defendant doctor agreed to a confidential settlement to avoid trial.

While we sincerely hope that our clients and their loved ones will never experience the traumatic and life-changing events associated with medical malpractice, we are proud to seek justice for those who do require assistance in this complicated field of law.



Clip this and keep in the glove box of your vehicle

## WHAT TO DO If You Are In An Auto Accident



Call 911 right away.

Do NOT move your vehicle until a police officer says it's OK, unless it's necessary for safety reasons.



If you or your passengers are hurt, get medical help right away. If paramedics, EMTs, or police officers advise you or your passengers to take an ambulance to an emergency room, do it.



Get the names, addresses, and phone numbers of everyone who saw the accident happen (including other drivers and people walking on the street).



Get the names, addresses, drivers' license numbers and insurance information from all the other drivers involved in the accident.



If the person who hit you flees the scene before the police arrive, try to get the license plate number. Write down the plate number, state, color and model of car, if possible.



If possible, take pictures of the accident scene and damage to all vehicles with a camera or cell phone.



Never talk with an insurance company (even your own) before you talk with your attorney.

Please visit our website

[www.M-N-Law.com](http://www.M-N-Law.com)

or call us at

**(401) 274-7400**

for more information or a free legal consultation about a car, truck or cycle accident.



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# We Thank You for Your Trust



## SOCIAL SECURITY FACTS AND STATS...

### The Social Security Administration and President Obama's 2011 Budget Request

The Social Security Administration (SSA) will fare better than many federal agencies under the President's proposed budget for fiscal year 2011. While other departments face freezes, SSA is projected to receive an 8 percent increase "to provide services faster with a focus on key service delivery areas, such as processing initial retirement and disability claims, and disability appeals."

### New SSA Data Available Online

Due to recent federal initiatives, SSA is making more data and statistics available online at [www.ssa.gov](http://www.ssa.gov). The available information includes:

- estimated wait times for hearings and decisions for claimants who have requested a hearing;
- information about hearings and decisions made by Administrative Law Judges;
- general information requested under the Freedom of Information Act.

### Providence ODAR: Hearing Request Processing Time

The Providence Office of Disability Adjudication and Review (ODAR) is currently running at approximately 415 days (slightly over one year) from the filing of a Request for Hearing to the actual Hearing date.

## OUR TEAM

We are very proud of our legal assistants. We have chosen them because of their intelligence, skills and abilities, attention to detail, and ability to help win cases. If you are changing addresses, health insurers, doctors or phone numbers, or if you are going back to work, please contact your legal assistant.

All of them can be reached at  
 (401) 274-7400,  
 or by email.

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*Marasco & Nesselbush recently fielded a team of walkers in the Arthritis Foundation's Let's Move Together 5K. Each year, we are very pleased to support the work of many nonprofit organizations making a difference in the lives of our clients!*



Marasco  
 and  
 Nesselbush  
 is now on Facebook!  
 Find us there  
 the next time  
 you're online...