



MN 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:

231 Old Tower Hill Road, Suite 206
(401) 783-0000

WARWICK:

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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.

SOCIAL SECURITY LAW

Widow of Disabled Veteran Awarded 30 Years of Past-Due Social Security Disability Benefits

Richard Frusher was a Cranston resident and veteran of the 101st Airborne Division of the United States Army. In the summer of 1974, at age 33, Richard began to experience symptoms of mental illness, and was diagnosed with schizophrenia.

In 1975, he applied for Social Security Disability Insurance (SSDI) benefits. The Social Security Administration (SSA) denied his claim. His family could not understand why he was denied, and he re-applied in March of 1978. SSA again denied his claim. Richard's family reluctantly accepted SSA's decision and did not appeal.

Richard's mental health never improved. In 2003, when he became eligible for Social Security retirement benefits, his wife Cecelia applied on his behalf. While at SSA, she asked why he was never eligible for disability benefits, and she applied again on his behalf, alleging disability back to 1975. A hearing was scheduled in 2005. At the hearing, an independent medical expert testified that Richard had experienced "marked" limitations in multiple fields of functioning since at least 1975. The Administrative Law Judge therefore approved

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PERSONAL INJURY LAW

Medical Errors Ten Times More Common than Reported

New research indicates that the rate of medical errors in the United States may be ten times higher than previously reported by hospitals and some public health agencies. Medical errors considered by the study ranged from care complications, such as bedsores or infections, to major treatment mistakes, such as wrong-site surgery, failure to diagnose terminal conditions, prescription errors, and improperly performed surgeries.

The studies funded by the Robert Wood Johnson Foundation compared two older, common methods of detecting medical errors with a new one developed by the Institute for Healthcare Improvement. One study uncovered 10 times more medical errors than did the methods currently and commonly used by hospitals and public health agencies to detect and report medical mistakes. A different study estimated the cost of medical errors to be more than \$17 billion in a single year.

Medical malpractice claims can be very complicated, and all bad medical outcomes are not the result of medical malpractice. If you or someone you know needs a free, confidential case consultation regarding a medical malpractice issue, please contact us. We are always happy to help our clients identify and evaluate their legal options.





MEET OUR ATTORNEYS **Joseph P. Wilson, Esq.**

Attorney Joseph P. Wilson joined Marasco & Nesselbush in 2004, and he has extensive experience in Social Security disability law. He has represented claimants in 38 states before more than 100 judges. Attorney Wilson is a graduate of Boston University School of Law and also graduated *magna cum laude* from

Framingham State College. He is originally from Massachusetts, but now calls Rhode Island home.

Why have you chosen to practice Social Security Disability law?

I practice Social Security law to fight against the number one cause of poverty and bankruptcy in America—the inability to work due to a medical condition. The vast majority of our clients want to work, and if their condition improves, they do! However, without a steady income and access to health care, recovery is almost impossible.

Please describe a case that meant a lot to you.

A man with a terrible back condition came into my office a few years back, having already been denied by a judge. In the course of the hour-long hearing, the man’s “TV lawyer” had asked only one question. I appealed the denial to the Federal District Court, and I argued strongly for the Court to give this man another hearing. We won in the Federal Court and obtained a second hearing for our client. At the second hearing, Social Security’s medical expert again testified that my client was not disabled, so I cross-examined the doctor vigorously based on my client’s medical records, which I had submitted as evidence. At the end of my cross-examination, the judge called a recess and took me outside the courtroom. The judge told me it was the most effective cross-examination he’d heard in years, and that I had convinced him to pay this man the disability benefits he needed and deserved. My client was awarded nearly \$44,000 in retroactive benefits, plus ongoing, monthly cash disability benefits and health insurance.

NECESSITY MAY WELL BE CALLED THE MOTHER OF INVENTION,
BUT CALAMITY IS THE TEST OF INTEGRITY. ~Samuel Richardson

SOCIAL SECURITY LAW

Bipolar Disorder: For Disability Benefits, Treatment Is Critical

Bipolar disorder, once known as manic-depressive disorder, is a mental illness characterized by periods of unusually high energy or mood and periods of depression. It is estimated that between 1% and 5% of the population suffers from bipolar disorder.

Periods of high energy assume two forms, mania and hypomania. Manic symptoms may include lack of need for sleep, fast speech, racing thoughts, inability to focus or concentrate, poor judgment, and euphoria or irritability. In manic states, individuals may spend money unwisely, make sweeping life decisions without careful thought, or engage in impulsive or self-destructive behavior like gambling or substance abuse. Hypomania is a mild to moderate form of mania; the difference between hypomania and just being “happy” is that hypomanic states are uncontrollable and volatile.

People who experience manic or hypomanic symptoms at the same time as depression often complain of tearfulness during periods of high energy or racing thoughts while depressed. They may have “flights of ideas” and feel like a failure simultaneously.

Bipolar disorder is often treated with medications to level moods and psychotherapy to discover what activities, relationships or events might “trigger” or prevent episodes. Some respond well to medication and therapy; others do not.

The Social Security Administration (SSA) considers bipolar

disorder to be a potentially disabling condition. SSA considers how this illness impacts a person’s life in three categories: activities of daily living (shopping, cooking, cleaning, etc.), social functioning (getting along with others, responding appropriately to supervision, etc.) and attention, concentration, focus, persistence and pace (the ability to understand, remember, and carry out instructions, perform tasks, etc.).

If someone with bipolar disorder has not been treated by mental health professionals, the SSA probably won’t approve disability benefits; the record won’t contain enough expert information about how the condition impacts the claimant’s ability to function. Without records that verify the degree of disability, SSA cannot be sure that a claimant could not work given the proper medications and/or therapy.

Some with bipolar disorder rely on alcohol or take illegal/non-prescribed drugs to level their moods. Substance abuse makes it much more difficult for the SSA to evaluate a bipolar disorder claim. To Social Security, the “highs and lows” could be caused by illness or by the use of substances. Getting treatment and staying clean and sober are critically important.

Marasco and Nesselbush attorneys have successfully obtained Social Security benefits for hundreds who suffer from bipolar disorder. If you or someone you know cannot work due to bipolar disorder, please contact us. We can identify the unique steps needed to win a disability claim based on this condition.

Award - continued from page 1

the case, issuing a decision awarding benefits, but only since the most recent application in 2003. The judge denied benefits back to 1975. Therefore, although medical evidence established disability back to 1975, Richard was only awarded SSI benefits dating back to December 2003, the month after his final SSI application. Richard died in a veteran's home in 2005.

Richard's grieving widow consulted with Marasco & Nesselbush partner Donna Nesselbush to inquire whether she had any appeal rights regarding his prior disability applications. Citing a little known Social Security law, Attorney Nesselbush appealed the ruling, arguing that Richard was, in fact and in law, entitled to disability benefits dating back to 1975. The Appeals Council denied the claim, as did the United States District Court. Loyal to her client and believing in the case, Attorney Nesselbush appealed to the First Circuit Court of Appeals. In September 2010, the First Circuit Court of Appeals ruled in Richard's favor, remanding the case back to Social Security for another hearing.

At that hearing, Marasco & Nesselbush Associate Attorney, Joseph P. Wilson, represented Richard's widow. After reviewing all of the evidence, an independent medical expert agreed with Marasco & Nesselbush that Richard's schizophrenia was totally disabling all the way back to 1975, and the judge awarded Richard's widow his retroactive benefits dating from 1975. Finally, 36 years after his initial application and after six long years of litigation, we are very pleased to report that Richard's family has seen justice done.

For Cecelia Frusher, this marks the end of a long and difficult journey. "This decision finally honors my late husband, and he deserves it. Marasco & Nesselbush walked with me through the unjust times until we turned it into justice, and never once did this firm lose their confidence or give up on my husband's claim. For this, I thank them."



MARASCO & NESSELBUSH IN THE COMMUNITY:

Staff members and friends participated in the annual "Let's Move Together" walk to benefit the Arthritis Foundation, May 14, 2011.

RECENTLY SETTLED...

Below are some recent personal injury and medical negligence verdicts, settlements and awards which our attorneys have achieved on behalf of our firm's clients. For more representative case highlights, please visit our website: www.M-N-Law.com

A confidential award for the family of a young woman who died at home after receiving anesthesia for an out-patient procedure.

\$900,000 settlement for a young man who was very seriously injured by an intoxicated hit and run driver.

\$280,000 settlement for a woman who slipped on the basement stairs of her rented apartment and badly injured her leg; the railing broke and the stairwell was poorly maintained, and our firm successfully contended that the landlord was negligent.

\$60,000 recovered for a young mother, a passenger, who sustained a serious head injury after being thrown from a car when the driver hit a utility pole.

\$75,000 recovery after binding underinsured motorist arbitration for a woman who sustained a soft tissue injury after another motorist, exiting a parking lot, pulled directly into her path.

\$120,000 recovery on behalf of a woman who fell on ice in a poorly maintained parking area.

\$40,000 settlement for a young woman injured when the car she was driving was sideswiped at an intersection; she was then falsely accused of being at fault, but our firm proved otherwise.

\$33,000 achieved via mediation for a disabled woman who was rear-ended, and whose injuries increased the severity of her pre-existing medical conditions.

A \$275,000 pre-trial settlement for a young man who slipped on wet paint on a stairwell in his apartment complex, severely fracturing his elbow.

A confidential award for the family of an elderly woman who died of injuries sustained in a hospital fall due to improper post-surgical monitoring.

\$24,000 via arbitration for a woman who was rear-ended at a stop sign and initially offered less than half of the final settlement by the insurer of the person who hit her.

\$21,500 via arbitration for a young woman who was rear-ended and injured, and subsequently had substantial lost wages from her job.

\$100,000 settlement on behalf of auto accident victim who injured his shoulder when a driver traveled through a red light.

Award of five times the insurance company offer via arbitration for a homeless man who was hit by a car and injured in Providence.



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We Thank You for Your Trust

SOCIAL SECURITY FACTS AND STATS...

The number of Rhode Islanders collecting disability benefits from the Social Security Administration has grown by 38% in the last 10 years. An analysis also found that:

- The number of Social Security Disability *claims* filed nationally increased by 24% in two years
- The poor economy is leading some who would rather work and might be able to obtain a suitable job in a good economy to apply for benefits
- Nationally, the number of Social Security disability *beneficiaries* increased by 47% between 2001 and 2010
- About 34,000 Rhode Islanders receive SSD benefits

The Providence Journal, May 22, 2011

OUR TEAM

LEGAL ASSISTANTS

We are very proud of our legal assistants and paralegals. 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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Client Testimonial

*"Good reference from another attorney—I was told your firm is #1."
 ~ Note from Client, 2010*