



# HELPING HAND

A Monthly Update from the  
Special Needs Planning Practice Group



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## Upcoming Seminars

Where our attorneys will be presenting in the near future. For a full list, visit [www.ftwlaw.com](http://www.ftwlaw.com) under "Seminars & Events"

**Frederick Misilo, Jr. Esq.**  
October 28  
*Special Needs Planning for Extended Family Members*  
At: FTW's Framingham Office  
Sponsored by: Massachusetts Retirees United

**Theresa Varnet, Esq.**  
November 15  
*Legal Issues and Future Care Planning for your Relative with a Developmental Disability*  
At: Employment Options, Inc., 82 Brigham Street, Marlboro  
Sponsored by: Greater Marlboro Programs, Inc.

OCTOBER 2008



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### Special Needs Planning Practice Group

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**Early Intervention**  
Special Needs Planning  
Medical Malpractice

**School Age**  
Special Education Advocacy  
Transition to Adult Services  
Special Needs Planning  
Guardianship & Alternatives

**Adult**  
Special Needs Planning  
Adult Service Advocacy  
Special Needs Trust Admin.  
Guardianship & Alternatives

**Extended Family**  
Special Needs Planning  
Elder Law  
MassHealth Planning

**Probate and Family Court Practice**  
Estate Planning Petitions  
Adult Support Petitions  
Guardianship

## The Special Needs Planning Practice Group

*A Commitment that Lasts a Lifetime*

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## A MESSAGE FROM THE PRACTICE GROUP CHAIR

By Frederick M. Misilo, Jr., Esq.



As I write this message, I am mindful that we are in the midst of the worst economic downturn in recent memory. Everyone is worried about job security, retirement account balances, and what the future holds for all of us. On the national and international levels, we are witnessing the collapse and consolidation of traditional banks and investment firms. In Massachusetts, we are anticipating mid-year emergency budget reductions from Governor Patrick which will surely have a negative impact on the lives of individuals who receive state supported services. For most individuals, there is a sense of anger and powerlessness over protecting our assets. Due to this situation, I am providing an overview of what types of protection are available for deposits in a variety of settings.

### FDIC Insurance

The Federal Deposit Insurance Corporation (FDIC) insures deposits in most banks and savings institutions located in the United States. The FDIC protects depositors against the loss of their deposit if an FDIC-insured bank or savings association fails. FDIC insurance covers all types of deposits received at an insured bank, including deposits in checking, NOW, savings accounts, money market deposit accounts, and certificates of deposit (CD's). The FDIC does not insure stocks, bonds, mutual funds, life insurance policies, annuities, municipal securities, or U.S. Treasury bills, bonds or notes. The basic insurance amount was raised last month from \$100,000

to \$250,000 per depositor, per insured bank, and applies to all depositors of an insured bank. This increase, however, is temporary and lasts for one year from the enactment of the recent economic recovery bill signed by President Bush. There is some expectation, but no guarantee that it will be extended. You can calculate insurance coverage using the FDIC's online Deposit Insurance Estimator at [www.fdic.gov/EDIE](http://www.fdic.gov/EDIE).

### DIF Insurance

The Depositors Insurance Fund (DIF) is a private, industry-sponsored insurance fund that insures in full all deposit accounts at Massachusetts state-chartered savings banks above FDIC insurance limits. The combination of FDIC and DIF insurance provides customers of Massachusetts-chartered savings banks with full deposit insurance on all their deposit accounts.

### SIF Insurance

The Share Insurance Fund (SIF) is a private fund owned by member co-operative banks and insures all deposits at cooperative banks in Massachusetts above FDIC limits. The combined insurance coverage by FDIC and SIF provides customers of Massachusetts-chartered co-operative banks with full deposit insurance on all their deposit accounts.

### NCUSIF Share Insurance

The National Credit Union Share Insurance Fund (NCUSIF) is operated by the National Credit Union Administration, a federal government agency that charters and supervises federal credit unions. The NCUSIF

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# NEWS BRIEF

## State Has Authority to Close Fernald State School

The Federal First Circuit Court of Appeals ruled that the state has the authority to close the Fernald State School and that it has met all its court-ordered obligations to provide care to class members when transferring residents to less restrictive community settings.

The ruling by a three-judge panel overturns a district court decision, allows the Patrick Administration's "Community First Agenda" to move forward and gives the administration the opportunity to set a responsible timetable for closure of several of the state schools.

## Wingbo Swing Promotes Prone Position

The Wingbo swing, popular in Germany and Europe since 1994, is the first swing in the world that is self-propelled and has

an ergonomic design that promotes a healthy, comfortable, prone position. The swing has been shown to be of benefit to infants and

children up to age 6 with acid reflux, Plagiocephaly/Torticollis, Autism and other neurological conditions.

The Wingbo is made by Original Baby Co. and can be purchased online at [www.wingbousa.com](http://www.wingbousa.com) or by calling 774.289.2385. It retails for \$199.

*The FTW Special Needs Planning Practice Group provides legal counseling, advocacy and innovative solutions on behalf of individuals with differing abilities and their families. We strive to serve as a reliable trusted advisor committed to providing excellent service to our clients throughout their lifetimes. We recognize the importance of treating our clients with respect and dignity.*

## MESSAGE

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provides all members of federally insured credit unions with \$250,000 in coverage for individual accounts. These accounts include regular shares, share drafts (similar to checking), money market accounts, and share certificates. NCUSIF coverage does not cover losses on money invested in mutual funds, stocks, bonds, life insurance policies, and annuities.

If a person has more than \$250,000 at any single credit union, several options are available for additional coverage through separate insurance provided by NCUSIF. Therefore, it is possible to have deposits of more than \$250,000 at one insured federal credit union and still be fully insured. You can calculate insurance coverage using the NCUSIF Share Insurance Estimator at <http://webapps.ncuia.gov/ins>.

## SIPC Insurance

Cash held at brokerage firms is housed in a depository institution, and the deposits are covered by the FDIC insurance up to the \$250,000 per depositor. Securities are protected under the SEC Customer Protection Rule, which requires customer assets be segregated from brokerage firm assets in order to ensure their safety. In addition, securities are protected by SIPC insurance. SIPC was created by Congress in 1970 to protect customers of member broker-dealers that may fail or may be liquidated. The protection is limited to \$500,000 per customer, including up to \$250,000 in cash. SIPC does not protect customers against market risk. Most brokerage firms also offer additional brokerage insurance in excess of SIPC coverage, commonly referred to as "excess SIPC". The SIPC limit of \$500,000 per account does not mean that the account will receive only up to \$500,000. The account will receive a pro-rata share of all client assets recovered in liquidation and then will receive up to \$500,000 from SIPC to make up any difference that may still exist.

I hope you find this information helpful. Take care.

If you would like to communicate with me on any special needs planning issue, please feel free to contact me at (508) 459-8059 or [fmisilo@ftwlaw.com](mailto:fmisilo@ftwlaw.com).

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# Pregnancy and Birth: How Medical Malpractice Laws Can Help Provide For Children With Special Needs



By Ralph F. Sbrogna, Esq.



For most new parents, the birth and development of a child are joyous occasions.

However, when your child suffers from a developmental disability, brain injury or other serious birth defect, the joy is tempered with fear, concern, anxiety and a system of bureaucracy and red tape.

Even though most women today give birth in modern hospitals, surrounded by well-trained medical professionals and the latest medical equipment, recent statistics show that seven out of every 1,000 births in the United States result in birth injuries. Other studies have shown that nearly 2,000,000 children suffer a birth injury each year, yet only 1,500 birth injury claims are paid by medical malpractice insurers nationwide.

How do birth injuries occur? Some of these injuries occur naturally, through no fault of the obstetrician or other medical staff attending to the pregnancy, labor and delivery.

**Recent statistics show that seven out of every 1,000 births in the United States result in birth injuries.**

However, medical negligence (malpractice), or other unsafe practices or procedures, are responsible for many of the circumstances that can cause serious and permanent child development problems and injuries.

Pregnancy and childbirth are inherently risky medical events for both mother and child. Unborn children and newborns are fragile and sus-

ceptible to damage in many different ways: their bones and skulls are soft; their organs are newly developed and immature; they have weaker immune systems; and their small size means that infections and diseases that harm adults can harm babies much more seriously.

Medical malpractice is most likely to occur in the case of a difficult pregnancy or birth, but can also occur in the most routine pregnancies and deliveries. Some of the more common difficult conditions that increase the risk of doctor mistakes are: large baby; premature baby; prolonged labor; difficult labor; C-Section delivery; and breech delivery. However, doctors and other health care professionals are trained to handle challenging situations. But when they act negligently, inattentively or carelessly, the consequences can be severe and they can be held responsible for their conduct.

Because these injuries occur at a critical time in a fetus or child's development, pregnancy and birth injuries can have a number of devastating and permanent effects. Therefore, doctors should, and legally must, exercise extreme caution during the pregnancy and in the delivery room.

If a child's developmental difficulties, whether they be physical, neurological or cognitive, are caused by medical negligence on the part of the obstetrician, nurses, or other medical staff attending the pregnancy or birth, the child and its parents may be entitled to financial compensation to help with the past, present and future medical and care expenses related to the injuries or disabilities.

Pregnancy and birth injury medical malpractice cases are very complex and difficult to investigate and litigate. Because this is such a highly specialized area of the law

and because of the complexity of the medicine, it can be difficult to prove the cause of the child's disabilities. In most cases hospital personnel are less than willing to offer information and to assist or advise injured patients and their families.

It is vitally important that the families of children born with disabilities seek the advice of an experienced, obstetrical malpractice attorney as

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soon as possible. Medical malpractice cases that are not filed on time are forever barred. Also, as time progresses, important case information can be lost forever.

Medical malpractice attorneys work on a "contingency basis," meaning they are paid only if they win your case and recover compensation for their clients. In other words, it will cost the family nothing to explore or pursue the fair compensation it deserves.

You and your child may be eligible to recover compensation for medical expenses and extended care and therapies as well as for mental anguish and more. You may also be doing a service to others by protecting them from experiencing similar damages due to preventable medical errors.

*If you would like to communicate with me on any related legal issue, please feel free to contact me at (508) 459-8074 or [rsbrogna@ftwlaw.com](mailto:rsbrogna@ftwlaw.com).*

*Editor's Note: This article has been edited from its original version. To read the complete article including lists of conditions, signs & symptoms, and risks, please visit the articles section of [www.ftwlaw.com](http://www.ftwlaw.com) under "Newsroom"*