

RINGLER RADIO

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Hosts: Larry Cohen
Guest(s): Ken Kolpan, Arlene Korab
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Now join Ringler Radio host, Larry Cohen.

COHEN: Welcome to Ringler Radio. I'm your host, Larry Cohen, and thanks again for joining us. We cover topics here at Ringler Radio of interest to the legal community and the settlement industry. And you can find all of Ringler Radio shows on our website, RinglerAssociates.com, or on the LegalTalkNetwork.com.

Well, today we're going to explore the topic of traumatic brain injuries. We're going to speak to the litigation involving cases of brain injury, and also talk about a great organization in 46 states that helps families and injured persons cope with all of the fallout from brain injuries. And to do all that, we have with us today one of our very favorite guests, the Executive Director of the Brain Injury Association of Massachusetts, Arlene Korab.

Arlene became involved 25 years ago in this issue when, sadly, she couldn't find services for her own son who suffered a brain injury and who was severely disabled. Well, under her leadership, the BIAMA has become a national leader in ensuring that persons with brain injury and their families have adequate services. They also advocate for funding to help prevent brain injuries. And just last year, the organization served more than 30,000 children, teenagers, and adults in Massachusetts and opened two new regional offices. A pilot program is now being launched to assist veterans returning home from Iraq and Afghanistan with brain injuries.

And we're also going to take a slightly different perspective on the brain injury area by talking about it from a litigation standpoint with a Boston attorney who knows all about this subject, and that's Ken Kolpan, who's represented individuals with traumatic brain injuries and other catastrophic injuries for a number of years. He's been a long time advocate for the rights of persons with TBI, working closely

with medical experts from the Boston medical community and other nationally renowned teaching hospitals. He's a prominent speaker on the subject and also serves on the Executive Committee as the Treasurer of the Massachusetts Brain Injury Association.

Well, Ken, welcome to Ringler Radio, and Arlene, welcome again.

KORAB: Thank you, Larry.

KOLPAN: Thank you, Larry.

COHEN: Well, obviously Ken, it takes a special expertise to represent someone with a brain injury. Why don't you tell us a little bit about that from your practical legal experience?

KOLPAN: Sure. Thank you. What is very challenging about representing a person with a brain injury is that usually you cannot see this injury. It's known as a silent injury by many, and often the person who has been injured, despite the seriousness of their injury, can walk, talk, appear to be rather normal, and that's one of the challenges. So one has to work very closely with experts who treat people with brain injuries, who understand how these occur, what treatment is appropriate, so that the rest of us can better understand what has happened and what their future needs are.

COHEN: That's interesting. There's a lot of statistics on brain injuries that a lot of us are learning about, and I was struck by one of them that I was reading, and that was that the number of traumatic brain injuries occurring each year is eight times higher than the number of people diagnosed with breast cancer. And that was kind of amazing to me.

Arlene, can you give us a little bit more about these facts and figures on brain injuries?

KORAB: Sure, Larry. Be happy to. The facts are really astounding. According to the Centers for Disease Control, each year an estimated 1.5 million individuals in the United States sustain a TBI, traumatic brain injury. This represents eight times the number of people diagnosed with breast cancer and 34 times the number of new cases of HIV AIDS. Approximately 50,000 of those sustaining a TBI will die of their injury and another 80,000-90,000 experience the onset of long-term or life-long disability. And it doesn't end there, because on the financial side TBIs requiring hospitalization cost the nation about \$56.3 billion each year. Included in this cost are decreased tax revenues and increased Welfare costs that result when injured persons, or their care givers, are unable to return to work.

COHEN: That's interesting. We often think about brain injuries as – I think we all do – as the result of tragic, unavoidable accidents, but, Arlene, I understand that studies

have shown that brain injuries most often occur in more predictable ways, with distinct patterns of more risk-taking behavior, for example. Tell us about that.

KORAB: Yeah. We talk about accidents, but in most cases they aren't accidents at all. They are results of careless or risky behaviors. We do have choice. For example, wearing seatbelts and helmets can reduce the risks of brain injury by 50%-80%. It's as simple as that. According the National Highway Traffic and Safety Administration, a 15% increase in seat belt use would prevent 3000-4000 injuries each year and save Massachusetts an estimated \$80 million in healthcare, taxes, and insurance costs alone.

COHEN: Well, let me ask you this. Does the organization that you represent, do they lobby for, let's say, helmet laws in certain states?

KORAB: Absolutely. In Massachusetts, we have a secondary law, not a primary law, for seat belts, and every year we're back out there trying to make this a primary law, because as you know, under a secondary law, they can't stop you just because you don't have a seat belt on.

COHEN: It's funny talking about helmets, motorcycles. I'll be driving along in certain states and I'll see motorcyclists coming by with no helmet on and it always makes me cringe, and I'm wondering, where's the risk-taking factor in these people's lives. I guess there must be, what, they want to feel the breeze on their hair?

KORAB: They want to feel the breeze on their hair and they feel that by having the helmet on, they can't hear the traffic behind them. Well, that's all well and good, but it's not exactly a reality. I mean, there's no comfort in sitting in a wheelchair.

COHEN: No, absolutely not. Ken, many in our audience deal with claims and lawsuits. Why don't you give us an example that'll help our audience understand some of the issues inherent in a brain injury case that you might handle?

KOLPAN: Sure. As I mentioned earlier, it's very difficult for those of us not familiar with this type of injury to understand truly what has happened. I'm thinking about a 60-year-old woman I recently represented who was electrocuted when she plugged an oxygen concentrator into a wall and it was a defective outlet. She sustained a serious brain injury, it's well-documented, and unfortunately totally disabled her for the remaining portion of her life. At the end of the trial, she walked into the courtroom. She walked in, she understood the questions that were asked of her, and one wondered whether the jury fully appreciated the devastation that was brought upon this woman, despite her normal appearance. And it's challenging. You have to find the questions that really elicit the type of problems that she has so jurors, insurance adjusters, judges, and the rest of us can appreciate what has happened.

COHEN: Yeah. They don't see broken bones or bleeding sores. It's a little more difficult for some people to comprehend. Well, there are special questions that come up in a brain injury-related lawsuit or a settlement. Let's discuss just a few of the topics or the aspects of those special situations. For example, I know with brain-injured folks, you're dealing with guardians or conservators. Why don't you talk a little bit about how you deal with those individuals and what the difference is between a guardian and a conservator?

KOLPAN: Sure. Both of those are very important. And it's not to say that a brain-injured person cannot be their own person. But some injuries result in poor judgment impulsivity, so you might need a guardian. And a guardian has the authority to make decisions for that person, although those decisions can be circumscribed. They can run the range from every decision is made by the guardian to those particular decisions about medical treatment. A conservator, however, is someone who deals with the money, the property, and their authority and power is limited to those decisions.

COHEN: Do you find mostly that the guardians are family members and the conservators are outside individuals, or is it not that clear cut?

KORAB: Every family is different. Every situation is different.

COHEN: Interesting. What about what I find to be some of the more difficult aspects of any of these injuries, and that's trying to get benefits – public and private benefits. Getting Medicaid and those other sources of dollars. Arlene, tell me about some of the frustrations that you must be facing in those areas.

KORAB: Well, in order to receive Social Security benefits, you have to prove that you've been disabled for or will be disabled for at least one year. And that leaves an individual with a whole year of no income, and that's very difficult. Most of our people when they go in and apply for Social Security, after that year, if they walk in and can fill out their own form, they're automatically denied because again, as Ken said, you can't see the disability. So it's a challenge to keep on going back. And we encourage people and we tell them when they call our office upfront when they're going in to apply, don't be discouraged. You're going to be turned down because you look so good. Go back again. And make sure you're very well-documented as you go back.

COHEN: It must be tough. And, Ken, as you deal with these lawsuits and this litigation, obviously you're looking for those kinds of funds that can help these people live a more normal life. And obviously when someone is involved in a Medicaid situation or they're on an asset-sensitive state benefit deal, you're probably looking at special needs trusts and some of those aspects.

KOLPAN: Well, I'm glad you brought that topic up. Because it's very important when we start looking at some governmental benefits. People can be automatically

excluded from some, because they have certain assets. And there has developed over the years a special needs trust, which are drafted by lawyers who deal specifically in trusts. Many personal injury attorneys like myself hand the client over to a trust attorney to do that. That protects them so they can receive money in their trust while maintaining their government eligibility.

COHEN: Absolutely. And for those of you who are more interested in learning more about special needs trusts, I might say that we do have several shows on Ringler Radio that we spoke directly on the issues of special needs trusts. So take a look at the shows on RinglerAssociates.com and you'll learn more about it.

Well, I'll never forget a case that I had, and we all remember certain cases, and this was a case some years ago of a little girl, a small girl who was in a go cart on one of these little tracks. And he go cart hit a rubber tire that was part of the barrier inside of it. Unluckily, she flipped onto a steel rod that was holding the tire in place and it was quite gruesome, but it struck me that in a second, in a split second, here's a family that was on a family outing having a good time and in that split second now they are dealing with years of uncertainty relating to that child's ability to ever be normal again. And it devastates the family. Arlene, talk about how the families get impacted when these individuals have these brain injuries.

KORAB: Yeah. As you said, Larry, it does happen in a second. You don't go out and plan it. It is one of those things that when you get that initial call from the hospital and you go running down there, you don't know what you're going to find. And most families think, well, as we did, when –

COHEN: As you did with your son –

KORAB: Yeah. We got that call. We thought, well, maybe he broke his leg or his arm or something, because they didn't tell us too much except your son was in an accident. Come on down. We got down there and found that he was in a coma and he had remained in a coma for six months. And it's pretty devastating because the language that's coming out of the doctors is like foreign to us. We don't know these medical terms. You have to make very quick decisions. In some cases, it's a matter of life or death whether you allow the doctor to start proceeding with the medical treatment that they know will help to sustain the life. And you as a family member are so used to doing research on who's the best doctor, what's the best treatment. You don't have time for that. You have to have faith in the doctor to go ahead and let them do what they do. They're professionals in this, and you have to have faith that they're going to do the right thing. And after that, you can take your time, once they've stabilized them and you can see where you're going to do some research and find other physicians that you may feel more comfortable with or perhaps move to another hospital that you feel has a better brain injury unit. But initially, it's just all very frightening. Very frightening.

COHEN: Yeah. And I'm sure your organization has a list of the good hospitals and the good doctors and some of those resources.

KORAB: We do. We have many, many resources for families to call. And the resources that we have are people that, and facilities we know, that specialize in brain injury rehab and treatment, as well as the attorneys. It's very important that you have the right attorney if you feel you have litigation pending here, because you wouldn't go to an attorney who passed papers on your house. But a lot of families think, well, I don't want to hurt his feelings. And then they wonder why they didn't get the right services at the end.

COHEN: Well, it's good to have a good list of resources. By the way, is Ken on your list of lawyers?

KORAB: Yes, he is. (laughter) He's the top of our list.

COHEN: Well, that's good. Ken, with the complex nature of lawsuits involving these brain injuries, you must see families that absolutely rely on your expertise, and, as Arlene said, because at this point they have to rely on it, and the second thing, you as a lawyer, need to draw on the resources of the Brain Injury Association. Tell me how you do all that with your clients.

KOLPAN: Sure. I think I want to echo what Arlene said in that the problems that clients with brain injuries have are life-long. There is research, unfortunately, which suggests that people with significant brain injuries are at increased risk for Alzheimer's, increased risk for seizures, increased risks for emotional problems including depression. These are problems that last a lifetime. So one has to really understand the medical issues here, because you want to be able to maximize the amount of compensation you can get for someone because they have lifelong problems, as a supplement to government benefits. Government benefits will not cover everything. It's limited, and if the problems are life-long, the expense is extremely high, and you want to make sure that you give your clients the best chance to obtain that.

COHEN: Well, let me get parochial here for a second. Talking about these long-term needs, financial needs of these brain-injured victims, what do you think about the concept of using structured settlements to provide that long-term, tax-free assistance to these people?

KOLPAN: I think that's a great question. Let me first say that the decision to do that obviously lies with the client or the client's representative, the guardian or conservator. Given the nature of this injury, that people can be impulsive and show poor judgment, that it may serve them well to have a structured settlement. It certainly should be part of the equation. It's not a lottery, but we know just from people who receive a lot of money all of the sudden, a high percentage of them, unfortunately, do not spend it wisely. A structure presumably is designed to, and

has that built-in protection. It may be appropriate in a brain injury case, if the structure is designed appropriately to meet the future needs and is consistent, for example, with a life care plan.

COHEN: Exactly. Exactly. And that's what we all do in the industry I represent, the structured settlement industry. That's what we think that we do well. And that is sit down and try to work out these kinds of plans so that people have this long-term care and it's not going to be dissipated.

Well, let's take a quick break and we're going to hear from the sponsors who help make Ringler Radio possible. And then we'll come back with a little more of our discussion on traumatic brain injuries. We'll be right back.

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COHEN: Welcome back to Ringler Radio. I'm your host, Larry Cohen, with my special guests Arlene Korab, Executive Director of the Brain Injury Association of Massachusetts, and Boston attorney Ken Kolpan, who specializes in cases involving brain injuries and serves as Treasurer of the BIAMA. Well, let's talk a little bit about prevention through education. And Arlene, what are some of the programs your organization promotes to help educate the public?

KORAB: One of the things I want to say first is that brain injury is one of those disabilities that doesn't go away completely, and the only cure that we know of for brain injury is prevention. And we rely very heavily on our prevention activities because we're very big in trying to prevent. My goal in life is to be without a job – if there's not another brain injury out there. (laughter) So put me out of business, please. But we do a lot with public awareness and we educate the public in many ways.

We have a program that goes into schools, grades 4-12, and we talk in there. It's very geared towards the age of the child. It's age-appropriate when we go in. And we educate them about wearing helmets and seat belts in the lower grades, how important that is. And when we get into the high school level, we talk a lot about not getting into cars with people who have been drinking and drugging and not to do that themselves, as well as reminding them to keep their seat belts and their helmets on, especially today with the sports that kids are involved in. It's very important to wear that helmet.

We also are very involved with the court system. We have a program called Brains at Risk. BAR for short. We get referrals from the courts. These offenders, these are people who have been convicted of drunken driving or drugging and they are sent to us to go through our Brains at Risk program. And it's a very intense program. It's a half-day program. They get a tour of a brain injury facility. They hear from two survivors of brain injury as to what their life was like before their injury and what it's like now. They also see a video and get some written literature.

COHEN: Well, that's got to be important, to educate, especially at the younger ages.

KORAB: Well, if you start them young, you've got a shot at it.

COHEN: I think we're all a little bit embarrassed, I think, that all of our kids are wearing bicycle helmets and seat-belted in. And I remember when I was a kid, nobody wore a helmet. We were laying in the back of the car. Somehow, I guess, some of us survived, but it was probably a crap shoot. So it's good that we're really concentrating on education.

You know what's interesting to me is that there've been some recent articles in the press regarding the treatment, or you might say, mistreatment of our veterans down at Walter Reed and some of those other institutions that you might have been hearing about. And so the spotlight now is on the issue of veterans' care, and I understand there's a new program targeting veterans returning from Iraq and Afghanistan. Let's talk about that a little bit, Arlene.

KORAB: We're involved with the state in a grant to identify the needs of the veterans coming back and to kind of support their families. Our portion of the grant is to

run support groups and to – for both the veterans and their families. Everybody forgets that veterans have families, and without that support system of the family, anything you do for the veteran is not the complete picture. It's not the complete thing. And we know that now brain injury is the signature wound of this war, coming back. It's very different.

Most of the people that have been identified through Walter Reed, I'd say a good 50%-60% of them, have sustained a brain injury through a blast. Blast injuries are very, very common. And their head is rattling around in that helmet, and that causes your brain to be injured. And they're not identified because they may lose a limb and that's what's being treated. Their brain is not being looked at until much later on down the road. And we always say that for every brain injury, timely and appropriate treatment is the best way to get the best result out of the rehab.

COHEN: Well, you know it's funny. In fact, I like to recommend to people a book my wife found fascinating and that was – on this issue. The book addresses the whole brain injury issue through the traumatic brain injury of ABC newsman Bob Woodruff, that recently happened. And the book, interestingly enough, is called *In an Instant*. And we talked about how quickly things change. And it really focuses on how his family came to cope with everything he was going through and how they dealt with all that. Have you read that book?

KORAB: I have. It is a wonderful book. And it is a family issue. It's not just the individual.

COHEN: Exactly. It's interesting and timely that unfortunately it had to happen to him, but it's going to be educational for a lot of others. Well, Ken, no doubt the BIAMA and attorneys like you, you go a long way to educate and help those with brain injuries and others to understand more about those challenges, especially when the litigation aspects come up. You also educate your clients a lot about this brain injury through the Association and other things that you deal with. Isn't that true?

KOLPAN: Certainly. There's a synergy that goes on. And I'm fortunate to be in the position to advise them and direct them to people that would be appropriate. Because not every physician, neurologist, or therapist specializes in brain injury. Not every hospital facility does. So I do help to educate clients and family as to where they can get the best treatment and hopefully the best rehabilitation.

COHEN: And I guess you work closely with Arlene's organization, as you're a key portion of that organization. You work together to try to make sure that everyone out there gets fully educated as to what the resources are, because that's what most people don't know until the time comes.

KORAB: They don't know where to go.

COHEN: They don't know where to go and they're really not looking for it until, unfortunately, that time comes. So those are great things, great services that you both provide. Well, Arlene, if someone wanted to contact you or the BIAMA, what's the best way to do that?

KORAB: I think the best way is to – if you live in Massachusetts, we have an 800-number, which is 800-242-0030. Or you can visit our website at BIAMA.org, or if you want to call our national, get in touch with our national organization, that's BIAUSA.org. And they have listings for all the states that have chapters. So if you don't live in Massachusetts, you would go to their web site and they will help you out.

COHEN: Well, that's good, because we have listeners all over the country and I'm sure they'll go to that website. And Ken, what about you? How would someone contact your law office if they wanted to talk to you?

KOLPAN: Sure, thank you, Larry. They could reach me at Kolpan.com. It's K-O-L-P-A-N.com or at 617-426-2558.

COHEN: That's great. Well, if anyone wants to contact Ringler Associates, you can go to RinglerAssociates.com and it lists not only a lot of information, but it lists the phone numbers and websites and e-mail addresses of all the Ringler Associates around the country.

Well, I'd like to thank our guests, Arlene Korab and Ken Kolpan, for sharing their thoughts and expertise, and I really want to thank all of you for listening. And I was thinking that after a topic like this, it wouldn't be a bad idea for all of us to sit back and count our blessings. So thanks again.

KORAB: And buckle up.

COHEN: (laughter) And buckle up, too, and put that helmet on. Well, once again, I'm Larry Cohen, your host. Now, all go out and have a great day.

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