

SUBSCRIBE
And Get Web Benefits

REGISTER HERE
For Website Benefits

SUBSCRIBER ONLY

(🔑 = Subscriber Only areas)

- 🔑 Archives
- 🔑 Daily Alert
- 🔑 Practice Area Alert
- 🔑 OH Supreme Ct.
- 🔑 Specialty Pages
- 🔑 Bankruptcy Law
- 🔑 Business Law
- 🔑 Criminal Law
- 🔑 Employment Law
- 🔑 Family Law
- 🔑 Personal Injury Law
- 🔑 Practice Management
- 🔑 Tax & Estate
- 🔑 Financial Directory
- 🔑 Judicial Interviews
- 🔑 Important Documents
- 🔑 Ohio
- 🔑 USA
- 🔑 OH Ct of Apps Opins
- 🔑 OH Sup Ct Docket
- 🔑 U.S. Sup Ct Decisions
- 🔑 Certiorari Granted
- 🔑 Important Ohio Opinions
- 🔑 Important Congress.
- 🔑 New National Laws
- 🔑 Law Reviews
- 🔑 \$ Judgment Int. Rates

COURTS

- Ohio Supreme Court
- Ohio Court of Appeals
- U.S. Supreme Court
- 6th Circuit
- Other Ohio Courts
- Local Court Rules

LEGISLATION

- Ohio Code
- Ohio Legislature
- Ohio Ordinances
- U.S. Code
- U.S. Congress

OTHER RESOURCES

- Law Library
- Desk Reference
- Verdicts & Settlements
- New Suits
- Top Web Picks
- Technology

COMMUNITY

- Online Forum
- Today's CLE
- Ohio Law Firms
- Ohio Bar Associations
- Ohio Law Schools
- Law Student Page

LAWYERS WEEKLY

OHIO LAWYERS WEEKLY



— WITH LAWYERS WEEKLY USA —

Ohio's only source for local and national legal news



PAUL W. FLOWERS and W. CRAIG BASHEIN

W. Craig Bashein / Paul W. Flowers

Cleveland

W. Craig Bashein

Born: Oct. 5, 1960, Cleveland, Ohio

Education: The Ohio State University College of Law, 1986; The Ohio State University, 1983

Ohio bar admission: 1986

Legal experience: President, Bashein & Bashein (1986-present)

Paul W. Flowers

Born: Oct. 2, 1964, Grand Rapids, Michigan

Education: The Ohio State University College of Law, 1990; University of Kentucky, 1987

Ohio bar admission: 1990

Legal experience: Private Practice (1998-present); Associate, Law Office of Gary B. Garson (1992-1998); Law Clerk to Judge John W. Reece, 9th District Court of Appeals (1990-1992)

Two Cleveland attorneys accomplished the exceedingly rare feat of having all seven justices on the Ohio Supreme Court agree to recognize a new avenue of recovery for personal injury plaintiffs.

W. Craig Bashein and Paul W. Flowers convinced the state's highest court to recognize a claim for loss of parental consortium brought by the adult emancipated children of a man who sustained permanent, disabling injuries in an automobile accident. The decision in [Rolf v. Tri State Motor Transport Company](#), Lawyers Weekly No. 100-126-01, answered a certified question presented by the U.S. District Court for the Northern District of Ohio where the two lawyers filed the case.

Bashein called the decision a "great victory for the families of injured people in Ohio."

According to Flowers, the case sets the stage for a further expansion of tort liability with the next step being the recognition of claims brought by parents who seek compensation for loss of consortium occasioned by injuries sustained by their adult children.

"Everyone now is beginning to understand that adult consortium claims will work both ways as the result of Rolf," Flowers said.

* * *

Q. *What's happened in your case since the Supreme Court answered the certified question concerning the viability of loss of parental consortium claims brought by adult emancipated children?*

A. *Bashein: The case was remanded back to the U.S. District Court and is set for trial in February. The parties are currently attempting to resolve the matter. However, at this point, we have not been able to do so. Given the fact that this is the first case of its kind, both parties are treading slowly because there is not a prior track record for where these cases fall in line in terms of value. We're sort of setting the rules as we go along.*

Q. *Did you have a feeling when this case came to your door that it had the potential for being a*

[Subscribe Now](#)
[Get 3 Free Issues](#)
[Student Offer](#)
[How to Advertise](#)
[Client Newsletters](#)
[About OLW](#)
[Contact Web Staff](#)
[Submit Letter](#)
[Submit Verdict](#)
[Press Room](#)
[Contacts for Story Ideas](#)
[LW in the News](#)
[Other LW Papers](#)
[Other LW Products](#)

MARKETPLACE

[Jobs](#)
[Experts](#)
[Lawyer Referral](#)
[Misc. Classifieds](#)

MY SUBSCRIPTION

[Lost Password](#)
[My Account](#)
[My E-Mail Alerts](#)
[My Benefits](#)
[Help](#)

landmark decision?

A. Bashein: The case was specifically filed knowing that eventually we would need the Ohio Supreme Court's recognition of this cause of action or approval for it to be a viable claim. When the settlement was reached in the underlying tort claim on behalf of both David Martin's and Bonnie Rolf's father and mother, the Rolf children were specifically excluded from the settlement. We refused to give the [defendants] a release.

Q. What was the state of the law before your case?

A. Bashein: Based upon the Ohio Supreme Court's 1993 decision in *Gallimore* [v. *Children's Hosp. Med. Ctr.*], causes of action for loss of consortium were recognized for children under 18 years old. A majority of the [state appellate] courts had refused to extend the cause of action beyond that age, although there were some trial court decisions recognizing loss of services for adults.

Flowers: There is a pretty even split among the supreme courts of the other states between those recognizing it and those that don't. There were perhaps a third of the states that hadn't addressed it at all. We liked our position when we took it, but there were cases going both ways — particularly in Ohio — that were defense-oriented. So it was a real challenge.

Q. What were your basic arguments before the Supreme Court in support of your claim?

A. Bashein: The main argument was that this was a logical extension of *Gallimore*. *Gallimore* addressed whether minor children have a loss of consortium claim. The court said that they did. There are dozens of examples you can think of suggesting why [loss of consortium claims for adult children] would be a logical extension. For instance, a parent who suffers a horrible catastrophic injury has a 19-year-old living at home and a 17-year-old living at home. The 17-year-old had a claim. The 19-year-old did not. It did not make sense to draw an arbitrary line at age 18 where one's right to present a claim would be cut off.

In addition, there are other areas of Ohio law which recognize one's right to have a claim beyond 18. For example, the wrongful death statute recognizes that all children of a decedent have a claim regardless of age.

We also indicated to the court that, in this day and age, a child who is in his early 20s may suffer an even greater loss when the parent suffers a catastrophic injury than when they were younger. Today, children live at home longer and they tend to get closer to their parents as they grow older. We felt that the quality and nature of the claim would necessarily improve beyond the arbitrary line of age 18.

Q. What was the toughest argument from the defense that you had to overcome?

A. Flowers: Their position — and the position of the courts that had rejected it — was that you have to draw the line somewhere and the 18th birthday was the place to do it. We made a lot of headway by pointing out the arbitrariness of that and the harsh circumstances that would be created if the court adopted that. That went a long way with the justices.

Q. How receptive to your case did the justices appear to be during oral argument?

A. Bashein: It was obvious to me that, not only did the four justices who you would think from past track records would be receptive to our arguments, but it was also obvious to us that the conservative justices — [Chief Justice Thomas J.] Moyer, who dissented in *Gallimore*, and Justice [Deborah L.] Cook — were showing some willingness to accept our arguments. When I walked out, I told Paul that I wouldn't be surprised if we got a 7-0 decision. I indicated to Chief Justice Moyer in oral argument that I recognized his dissent in *Gallimore* and understood the arguments that he had made in his dissent. However, I tried to convey to the Chief Justice that, once *Gallimore* became law, it made no sense to draw an arbitrary line at age 18.

Q. What is the significance of the decision?

A. Bashein: It's a great victory for families of injured people in Ohio. That's number one. Number two, there were some concerns expressed by the defense about this decision opening the floodgates to litigation. I don't think that's true. These claims are going to be confined to instances where you have a parent who has suffered either very serious or catastrophic injuries.

Q. *Does the Ohio Supreme Court's decision in your case set the stage for the recognition of additional causes of action?*

A. Flowers: It is my sense that *Rolf* is going to stand for the opposite conclusion as well. That is, when you're dealing with a situation where an adult child is injured catastrophically, the adult parents will have a claim. Everyone now is beginning to understand that adult consortium claims will work both ways as the result of *Rolf*.

Bashein: In fact, in oral argument, it was pretty clear to both Paul and I that the court, by announcing the *Rolf* decision in our favor, would be tacitly approving loss of consortium claims for the parents of injured adult children. Just as *Rolf* is a natural extension of *Gallimore*, we believe that a natural extension of *Rolf* is to recognize loss of consortium for parents of adult children who are injured.

Q. *Do you think that point will be conceded by the defense bar?*

A. Flowers: Even the most conservative justices signed on to the *Rolf* decision. I don't think insurance companies are going to be willing to spend money to draw a distinction such as that. The chances of them winning would be extremely remote.

Q. *Have you filed any other claims on behalf of adult children for loss of parental consortium?*

A. Bashein: I have already filed several of these types of claims and, in fact, reached a settlement for two adult children in a Geauga County case involving pretty serious injuries sustained by parents in a motorcycle accident.

Q. *What are the elements that go into valuing a claim for loss of parental consortium?*

A. Bashein: What we don't have is a track record of how jury verdicts come down on these claims, which is always a starting point. I start with how close was the relationship between the parent and the child. Did the child live at home? Did they spend time together? How often did they meet? What was the quality of their time together? You also have to look at how severe are the injuries of the parent. The nature of that loss dictates the nature of the impact on the child. If our plaintiffs' father had not been seriously injured, frankly, it might not have been a case that we would have pursued.

Q. *Do you see any potential for claims brought by adult children who were estranged from their parents at the time of the injury?*

A. Bashein: Obviously, the fact that they are estranged at the time of the loss is going to impact the value of that case compared to the value of a claim brought by a child who is not estranged from the parent. But I do recognize — and I think jurors would recognize — that 20-year-olds are 20-year-olds and that, as we get older and mature, we tend to get closer to our parents. So that situation can be covered. But that is what a jury is going to have to look at, both the relationship at the time and the potential for a relationship down the road.

Q. *What about a situation where a parent suffers serious injuries that may require lengthy rehabilitation but don't result in permanent disability? Would there be a compensable injury in that instance?*

A. Bashein: Absolutely. In fact, in the case that we recently resolved, there was some permanent injury to both parents, but the largest portion of the claim involved the mother who had multiple lower-extremity fractures that required her to be off her feet for a 12- to 16-week period. One of the daughters quit work and basically took care of her parents during the rehabilitation phase. Did the mother get back on her feet? Yes. Although she did have some permanent injury, the primary focus in that claim was the impact on the children during the rehabilitation phase.

Q. *What are the insurance implications of the *Rolf* decision?*

A. Bashein: The way policies are currently written and the way loss-of-consortium claims have been traditionally handled with spouses, it comes off the same limits on a per-person liability limit. If you're injured by somebody with a \$100,000 per-person limit on a claim, you're just cutting up the same pie into further pieces. So it's not causing any greater exposure to carriers that write traditional auto policies. Where the difference is to a carrier is when you have large policies with large umbrellas and catastrophic injuries. At that point, the insurance carrier obviously is going to be paying out a greater amount of money because they're now compensating additional parties.

Flowers: Insurance companies will also have to be mindful of adult consortium claims when they're negotiating a settlement and draft their releases accordingly.

[Help](#) | [Our Privacy Policy](#)

Send any questions or comments to comments@lawyersweekly.com

Circulation: 1-800-451-9998 **Technical Support:** 1-800-444-5297 ext. 8156

© Copyright 2002 Lawyers Weekly, Inc. All Rights Reserved

This site is best viewed with Internet Explorer 6 ([click here to download](#)) or Netscape 6 ([click here to download](#))