

LawUpdate

News From Gersowitz Libo & Korek, P.C.

Spring 2009

TERROR ON LONG ISLAND

A Family Fights for Justice
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A photograph of a Walmart store exterior. The building has a blue sign with the Walmart logo and the word "WALMART" in white. The sky is overcast and grey. The store has large glass windows and doors. There are some trees and a car visible in the foreground.

WAL★MART

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Gersowitz Libo & Korek, P.C. of
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Edited by Jennifer Fink & Eugene C. Trager
Designed by The Parkside Group

GERSOWITZ LIBO & KOREK, P.C.
ATTORNEYS AT LAW
111 BROADWAY - 12TH FLOOR
NEW YORK, NY 10006
TEL: (212) 385-4410 • FAX: (212) 385-4417
EMAIL: INFO@LAWYERTIME.COM

157 ENGLE STREET
ENGLEWOOD, NJ 07631
TEL: (201) 541-8840
A PROFESSIONAL CORPORATION
INCORPORATED IN THE
STATE OF NEW YORK

Dear Readers,

For the past 25 years, Gersowitz Libo & Korek, P.C. has been dedicated to providing our clients, friends and peers with up-to-date information about our firm and the issues facing the legal community. We hope to serve you even better with this newly redesigned version of *LawUpdate*. Printed on recycled paper to reduce our carbon footprint, this publication has been reorganized to make it easier for you to find the articles that matter to you.

We have also expanded the publication to include a "News Brief" section that will offer an inside look at our Partners and update readers on our firm's involvement in the legal community. At the same time, we will continue writing many of the articles you have become familiar with over the past few years.

We are eager to hear your response to the new format and welcome any suggestions you may have to make it even better.

Sincerely,
Gersowitz Libo & Korek, P.C.



Jeff S. Korek photographed with Congressman Charles Rangel at NYSTLA's Law Day in 2008

OF NOTE

Jeff S. Korek Joins Melvin M. Belli Society

As a member of the prestigious Melvin M. Belli Society, Partner Jeff S. Korek has proven his dedication to reaching out to lawyers all over the world to exchange ideas and strengthen the international legal community. Through international seminars and meetings, the Society brings lawyers together from across the globe to discuss issues facing the legal community today.

The international society is by invitation only and all of its members are chosen based on strict criteria and held to the highest standards. It is an honor for one of our own to have been selected to join this elite group of legal professionals.

HAVE QUESTIONS?

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You can learn more about Gersowitz Libo & Korek, P.C. at www.lawyertime.com. Contact us at info@lawyertime.com with questions or concerns.

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New York Super Lawyers

For the 4th year in a row, Jeff S. Korek was named by Super Lawyers magazine as one of the top lawyers in the New York metro area. A publication of the journal Law & Politics, Super Lawyers conducts a rigorous analysis of lawyers across the country to find the best lawyers based on peer review, published articles and many other criteria.



GLK Supports the Sarah Jane Brain Foundation

GLK is proud to announce that attorneys Andrew L. Libo and Michael Fruhling have been appointed to the Legal Committee of the Sarah Jane Brain Foundation, an organization dedicated to creating a model medical system for children suffering from all types of Pediatric Traumatic Brain Injuries (PTBI). PTBI is the leading cause of death and disability for children under 15 years of age in the U.S.

Firm Plays Role at NYSBA Seminar

Jeff S. Korek teamed up with other New York lawyers to give a presentation at the New York State Bar Association's seminar on construction site accidents. The group gave a lively demonstration on the dos and don'ts of the direct and cross examination of a liability expert.



NYC Council Member Jim Gennaro with Michael Frubling from GLK

COVER STORY: **TERROR ON LONG ISLAND**

Family Mourning Loss Hires GLK for Justice

On the day after Thanksgiving 2008, tragedy struck a Wal-Mart department store in Valley Stream, New York. A horde of shoppers trampled Wal-Mart employee Jdimytai Damour in their eagerness to get to the store's Black Friday sales.

Jdimytai, 34, was hired as a temporary maintenance worker at the Wal-Mart in Green Acres Mall during the holiday season. In the early morning of November 28, Jdimytai was pulled away from his duties in order to control the crowd that had gathered in anticipation of the store's post-Thanksgiving bargains. Managers chose Jdimytai to guard the doors because of his imposing frame, even though he had never received any security training.

When Jdimytai opened the doors at 5am, the crowd of eager shoppers began to force their way in, pushing past Jdimytai and into the store. Alone facing the mob, Jdimytai fell to the ground and was trampled to death while trying to protect a woman who was 8-months pregnant from the crush of the crowd. Four other shoppers suffered injuries during the mob scene, including the 28-year-old pregnant woman, who was hospitalized with minor injuries, and might have died had it not been for Jdimytai's determination to keep her safe.

Marie Telismond, Jdimytai's mother, reached out to Gersowitz Libo & Korek, P.C. to help her family navigate the legal waters in the aftermath of her son's death. The Wal-Mart store in which this tragedy occurred had no policies in

place concerning crowd control, even during large sales events such as the one on Black Friday.

The store's inadequate security measures and safety protocols, coupled with their lack of regard for Jdimytai's inexperience in dealing with crowds, led to the untimely death of the young man. This tragic story was immediately picked up by news media around the country.

Ms. Telismond and the rest of Jdimytai's family were hounded for interviews by major broadcast companies who were interested in a headline that involved the nation's largest retailer.

In response to the tragedy, New York City Council Member Jim Gennaro and Nassau County Legislator Joseph Scannell introduced legislation to prevent stores from putting workers in the position Jdimytai found himself – the only barrier between an angry mob and the gadgets they desired. These bills impose safety precautions on stores that hold "door buster" sales like the one that ended in tragedy at the Valley Stream Wal-Mart.

Hopefully, with Gersowitz Libo & Korek, P.C. on the case and legislation at the city and county level, the story of Jdimytai's death will change the negligent culture of companies who have these kinds of sales and prevent a similar tragedy from happening again. Jdimytai's death.



CRUISE SHIP LITIGATION

Avoiding The Pitfalls

It is estimated that more than 9 million passengers travel on cruises departing North American ports each year.³ Cruise ships are not merely common carriers, they are virtual floating cities, and like any city, injuries and deaths occur due to negligence. The litigation of cases involving the cruise lines is replete with procedural and substantive pitfalls that can trap all but the most seasoned cruise ship litigators.

Special consideration must be given to a shortened statute of limitations and forum selection clauses. For injuries or deaths stemming from negligence associated with cruise ships, the contract, which is usually contained in the passenger ticket package, typically provides that a passenger must provide notice of a claim to the cruise line within six months of the date of the incident, and must file the lawsuit

within one year. In addition, the passenger ticket package typically contains a forum selection clause dictating where a claim must be made. It does not matter where the passenger resides, where the cruise ship departed, or where the injury occurred; the forum selection clause controls.

In addition to these procedural requirements, limitations on liability and damages often act to bar or limit claims. As it relates to medical malpractice committed by ship board physicians, the majority rule across the circuit courts is that a cruise line that otherwise employs a competent medical professional, is not liable for the negligence of the doctor. Pursuing these doctors individually is very difficult as most are from foreign nations and carry no insurance. Passenger deaths present their own

difficulties. Antiquated laws such as the Death on the High Seas Act (DOHSA), severely limit the ability to recover compensation. The DOHSA provides a wrongful death remedy limited to pecuniary damages for fatalities on the high seas. There is no recovery for pain and suffering.

For these reasons and many more, special consideration must be given to cases involving injury or death stemming from cruises. Gersowitz Libo & Korek, P.C. welcomes all inquiries concerning incidents involving cruise ships.

3: Cruise Lines International Association, 2008 CLIA Cruise Market Overview, available at <http://www.cruising.org/press/overview2008/#RecentGrowth>.

WHAT A YEAR

Jeff S. Korek Ends Successful Tenure as NYSTLA President

When we sat down a year ago with Governor Eliot Spitzer, it was clear that what he had in mind for our clients were health courts, a neurologically-impaired baby fund that failed in every state that put it in use, and the elimination of awards for future damages in medical malpractice cases. Governor Spitzer's cure was Medicaid: "After all, Medicaid was not like it was ten years ago – everybody takes Medicaid." These were Governor Spitzer's own words.

Even right down to the last day of the session – Majority Leader Senator Joseph Bruno (who in many ways has been a friend to our organization) steps down, throwing the capital into a spin that was only fitting for the last days of my administration.

I regret that judicial pay has not been righted. I have come to learn, however, that the solution is not in our hands. Yet I assure you that NYSTLA has not missed an opportunity to voice where we stand on the issue and to express our dismay that this travesty continues.

Well, we did okay; better than okay. Through our efforts, citizens of the State of New York are soon to receive the benefits of a new no prejudice law that will prevent insurance carriers from disclaiming on purely technical reasons. Trial attorneys in our courts throughout the state, under the guiding hands of Chief Judge Judith Kaye and Chief Administrative Judge Ann Pfau, are soon to receive rules that will allow additional safeguards to be put in place that will inure to the benefit of bench, bar, jurors, and the parties to litigation.

With regard to medical malpractice there are still some obstacles ahead of us, but clearly we have been meaningful participants at the table. We joined with Governor Paterson, Senator Bruno, and Speaker Silver to afford physicians premium relief while honoring our longstanding tradition to safeguard patients' rights. In many respects, we have come

a long way in uniting with doctors this past session to shepherd through legislation that is sensitive to each of our concerns. This piece of legislation is still active as we speak – I am hopeful that we will soon be able to announce that a solution is at hand.

Our LawPAC remains the largest in the state and our PAC remains one of the state's perennial leaders in terms of protecting our constituency: victims. I can think of few better causes.

We as an organization have much to be proud of. As my successor guides NYSTLA through its critical 55th year, he will confront unprecedented challenges to the rights of victims here in New York State and around the country. The hours will be long. The work will be hard and often frustrating. I'll confess there were moments when I wondered if the battle was worth the effort and aggravation.

But I always managed to keep the faith.

I kept it by remembering an individual I'll call Rhonda Smith. A beautiful and talented young woman of 24, Rhonda had struggled her whole life against epilepsy. But she had triumphed against the



odds. Rhonda, reputed to become one of the greatest scholars ever to have graduated from the political science department at the National University of Singapore, earned a scholarship in East Asian studies. She earned a second scholarship for a Masters Degree at one of our city's more prestigious universities. At the urging of her physician, Rhonda submitted to observation of her seizures at one of our city's better hospitals. Rhonda died four days later, suffocated by her pillow and ignored by medical staff. When doctors finally attempted emergency resuscitation, she had been dead for an hour.

I kept the faith by remembering another individual I'll call Joseph Marks. An immigrant from Belize, Joe had earned his citizenship, married, and become a wonderful father to five children, ages four to thirteen. Though his first love was music, Joe worked as a construction laborer to support his family. On a building site, Joe had been asked by his foreman to serve as a human counterweight on a construction machine known as a Bobcat. The machine catapulted him into the air and broke his spine. He languished as a quadriplegic for 45 days before succumbing.

I kept the faith by remembering a third individual I'll call Arias Jones. Arias, then seven years old, was walking from elementary school to his parent's bodega, when – in a tragic irony – he was struck by a two-ton Mack truck carrying coffins. It was three o'clock in the afternoon. Seven year-old Arias was in a pedestrian crosswalk. The light was in his favor. And he was dead by the time his father rushed from the bodega just two blocks away.

Of course, these are just three stories among dozens, even hundreds, that I could tell of similarly heart-wrenching poignancy. Every trial lawyer has his or her own stories. These stories – and the individuals whose tales they tell – are what give our professional lives purpose and our personal lives meaning.

Yet there are those, here in New York State and across the country, who want to tell the victims of injustice that “stuff happens,” that they should “get over it,” that they should move on as though nothing had happened to them. Well-paid lobbyists hired by special interests agitate night and day to remove what little legal recourse victims still retain. And a concerted national campaign is underway to slander our profession – and not the actual perpetrators of injustice – as the cause of society's ills.

Remember always that you will have justice on your side. Justice for the families of Rhonda, Joe, Arias, and countless others like them who will look to the members of NYSTLA to tell their stories and plead their cause when no one else will.

If you remember that – if we all remember that – we cannot fail.

I'd like to thank each and every member of NYSTLA for the privilege of serving you during the last year. It's an experience I will never forget and a debt I look forward to repaying. Thank you and God bless.



Jeff S. Korek photographed with Attorney General Andrew Cuomo at a 2008 NYSTLA Gala

TORT REFORM

Threatening the Rights of Medical Malpractice Victims

In recent years, proponents of tort reform have lobbied to enact laws which limit the rights of individuals to seek redress in our courts. Such legislation has often been geared towards the area of medical malpractice litigation. Tort reform advocates claim that frivolous lawsuits and out of control jury verdicts are overwhelming our courts. Proponents further argue that medical malpractice suits are responsible for driving up doctor's insurance rates and driving doctors out of business.

In response to these claims, states across the country have enacted laws which limit the rights of individuals in their personal injury lawsuits. Tort reform measures include placing caps on the amount of non-economic damages an individual can recover and enacting procedural barriers for plaintiffs attempting to commence a lawsuit.

While tort reform advocates argue that these limitations are necessary and beneficial, just because you say something enough times doesn't make it true.

In fact, in a 2006 study published in the New England Journal of Medicine, researchers from the Harvard School of Public Health concluded that "[P]ortraits of a malpractice system that is stricken with frivolous litigation are overblown."¹ Additionally, a study by the Congressional Budget Office found that malpractice costs account for less than 2% of healthcare spending.²

At Gersowitz Libo & Korek, P.C., we believe that limiting individuals' rights through tort reform is not the answer.

Personal Injury lawsuits compensate individuals for real losses, including medical expenses and lost wages as well as for pain and suffering. In a country with rapidly rising health care costs, being compensated through a personal injury lawsuit should not be equated with winning the lottery. Legislation should not be enacted which benefits insurance companies, corporations and health care providers at the expense of patients and consumers.

Anyone can be a victim of medical malpractice or someone else's negligence. If you think you or a loved one has been the victim of medical malpractice please contact Gersowitz Libo & Korek, P.C. at **(212)385-4410** or visit us online at **www.lawyertime.com**.

1: David M. Studdert, et al., Claims, Errors and Compensation Payments in Medical Malpractice Litigation, 354 New Eng. J. Med. 2024, 2031 (2006).

2: Congressional Budget Office, Limiting Tort Liability for Medical Malpractice, available at <http://www.cbo.gov/ftpdocs/49xx/doc4968/01-08-MedicalMalpractice.pdf> (2004).

DENTURE ADHESIVE CREAMS

Knowing The Risks



Denture Adhesive Creams like Fixodent and PoliGrip are used by millions of individuals to help keep their dentures in place. However, what many people don't realize is that chronic use of denture creams may lead to zinc poisoning and other related health problems. Since the Food and Drug Administration (FDA) has branded these products as low risk, manufacturers of these products have been exempt from printing ingredients, instructions and warnings on the labels of these products. Due to inadequate labeling, many denture cream users ingest levels of zinc which far exceed recommended daily doses. Potential health risks related to the ingestion of excess zinc include anemia, neuropathy, lack of balance and coordination as well as numbness and tingling in the hands and feet.

Please call us at Gersowitz Libo & Korek, P.C. at **(212)385-4410** if you or loved one has suffered zinc poisoning or other side effects as a result of the use of denture adhesive creams.

GLK INVITES YOU TO JOIN US IN SUPPORTING THE GARDINER FOUNDATION



Gersowitz Libo & Korek, P.C. is the proud sponsor of the Gardiner Foundation, a non-profit organization that was established in 2006 by Dexter Gardiner in memory of the tragic and devastating loss of six of his family members to a horrific car accident. The Gardiner Foundation has embarked on a community outreach initiative that offers a variety of support to community members experiencing various social, spiritual and financial needs incurred after the loss of a loved one.

Since its inception, the Gardiner Foundation has been able to successfully raise enough money for three scholarship grants for students entering their freshman year of college, and each year hosts an annual charity basketball tournament, which includes live entertainment, food, music, media coverage, and appearances from community leaders and elected officials.

Save the Date!

Saturday, August 15th and Sunday, August 16th the Gardiner Foundation will be celebrating its 4th Annual Gardiner Foundation Memorial Basketball Classic Tournament at St. James Park, 2530 Jerome Avenue at 192nd Street, in the Bronx from 10 a.m. to 8 p.m. The event will include a memorial service in honor of those who have tragically lost a loved one.

Directions

Train: #4 or D train to Fordham Road or Kingsbridge Road.

Driving: Take the Major Deegan Expressway to Fordham Road exit. Make a right on Fordham Road. Continue east on Fordham to Jerome Avenue. You will see the elevated subway. Make a left on Jerome Avenue to 192 Street. Go about 1 1/2 blocks. The facility is on your left, located inside St. James Park.

SOCIAL NETWORKING SITES & YOUR LAWSUIT

What to Know, And What to Avoid



Social networking websites like “Facebook” and “MySpace” have become increasingly popular over the last several years. However, you should be aware that many insurance companies and their lawyers are utilizing these sites to obtain information about people who bring lawsuits and claims for personal injuries and medical malpractice.

It is important to remember that the personal information and especially the photographs that you post on-line may be viewed by not only your intended audience but also by insurance company representatives and their investigators. Any information or photographs that you post, no matter how innocent, can be accessed and potentially used against your interests during the pendency of your case including the trial.

Therefore, we urge you to exercise caution and prudence in posting information on the worldwide web.

GLK COMMUNITY OUTREACH

Some of the organizations we are proud to be affiliated with:

American Jewish Congress
Craig Lensch Scholarship Fund
Crime Victims Treatment Center (St Lukes Hospital)
Helen Keller Services for the Blind
Immaculate Conception School
Judges and Lawyers Breast Cancer Alert
Hoops 4 Hope
Make a Wish Foundation
Memorial Sloan-Kettering Cancer Center
Maryhaven Center of Hope
National Reye’s Syndrome Foundation
Norwegian Outdoor Exploration Center
Revlon Run/Walk
Saint John’s Episcopal Church
Seeds of Peace Youth Center
Southern Poverty Law Center
Strang Cancer Prevention Center
The NYC Chapter of Leukemia & Lymphoma Society
WORC Geraldo Rivera Tennis Classic

SETTLEMENTS & VERDICTS

Recent Wins from GLK

Construction Accident/Bobcat Machine-A settlement was reached in the third week of trial in the amount of **\$7.5 million** on behalf of the eight surviving children of a 38 year old construction worker. During the course of his employment, the construction worker was caused to fall off a Bobcat machine rendering him a quadriplegic. Subsequently, the construction worker died as a result of complications of his injuries.

Medical Malpractice/Obstetrical-A settlement in the amount of **\$1.1 million** was reached in Bronx County on behalf of a 15 year old boy who suffered mild cognitive delays as a result of doctors having failed to timely perform a caesarean section during the infant's birth.

Elder Care/Negligence- A settlement in the amount of **\$750,000** was reached after four weeks of trial in New York County on behalf of the family of a 69 year old man who was a resident of a long term care facility. The man died as a result of exposure to the elements after he was improperly discharged to his own care and not returned to the long term care facility for a period of 12 days.

Premises/Sidewalk-A settlement was reached in New York County in the amount of **\$2.2 million** on behalf of a 60 year old secretary who was caused to trip and fall due to a unlevelled sidewalk subway grate. As a result of the incident, our client suffered a fractured neck requiring two surgeries as well as a fractured elbow.

Medical Malpractice/Erbs Palsy- A settlement in the amount of **\$885,000** was reached in Binghamton, New York on behalf of an infant child who suffered a left brachial plexus injury, also known as Erbs Palsy, during birth.

Construction Accident/Ironworker-A settlement in the amount of **\$2.5 million** was reached in Bronx County on behalf of the estate of a 44 year old ironworker's apprentice. The apprentice was performing work on the underside of a bridge when he was caused to fall to his death due to improper safety precautions at the work site including improper scaffolding and fall protection.

Medical Malpractice/Surgical- A settlement in the amount of **\$2.75 million** was achieved in New York County on behalf of the family of a 33 year old jeweler and musician who died after being shot in a holdup. The hospital where he was taken failed to timely perform surgery.

Gas Explosion- An arbitration award in the amount of **\$700,000** was reached on behalf of a 22 year old woman who was seriously injured as a result of a gas explosion. Our client was walking to work when she was hit by flying debris from the explosion. The woman underwent four surgical procedures to repair complex lacerations to her face and body. There was limited insurance coverage and many claims from other people who were injured as a result of the blast.

Premises/Faulty Construction- A settlement in the amount of **\$528,000** was reached in Bronx County on behalf of the family of a 33 year old barber and musician who was struck by a parapet wall which fell from the roof of a nearby one-story building. The barber tragically died as a result of his injuries. There was no insurance coverage for the building. As a result of the work of Gersowitz Libo & Korek, P.C., the proceeds from the sale of the building were confiscated to compensate the surviving minor children.

FREQUENTLY ASKED QUESTIONS

of Gersowitz, Libo & Korek, P.C.

Will I have to go to Court?

Possibly you will – but not necessarily. Nearly all cases are settled out of court, sometimes during a trial, often before it begins.

Why do we so frequently win favorable settlements?

Because we always deal from strength, never from weakness. We're always prepared to go to trial. The defendant knows about our years of experience and, sooner or later, understands how well prepared we are. There is no guarantee, of course, but at the right point a favorable settlement becomes more likely.

Why can't my other lawyers handle my case?

They know that the practice of our firm is focused entirely on personal injury law, on recovering damages for people who are harmed because of someone else's negligence. Lawyers know our reputation and our record of success. They have confidence that we will serve you well. Gersowitz Libo & Korek, P.C. has a wide reputation as lawyers' lawyers. They look to us for this work alone. You look to them for all your other legal needs.

Will I have to take the witness stand? Will the other lawyer attack me and try to break me down in cross examination?

Please understand; you are the victim in this case, and we will represent you. The process of winning compensation for what has been done to you should not be painful, and, for the vast majority of plaintiffs- it is not. Courtroom dramas on television are not real life. They are exaggerated for dramatic effect. Even actual televised trials are most often selected because they are sensational. In actuality, there is a plaintiff, a defendant, a judge and usually a jury in the courtroom. If the case is tried, the judge and jury are sworn to do what is right. Jurors are people like you, and they do not like lawyers abusing witnesses.

Can I afford your services?

You certainly can. We work on a contingency basis. What that means, in simple terms, is you pay no legal fees unless you win an award, either through settlement or trial. We make the full investment of money and time to win justice for you. If we succeed on your behalf, we are paid a percentage of the award-and that sum is regulated by Court rule. We are also reimbursed for our expenses. What is most important is this: We have never lost a case for lack of money or professional time, and we never will.

Suppose I've been referred by another lawyer or law firm. Does that mean my case is going to cost me more money?

Absolutely not! Many of our clients are referred to us by other lawyers. It is these lawyers who pay our fee.

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Gersowitz Libo & Korek, P.C.
111 Broadway 12th Floor
New York, N.Y. 10006