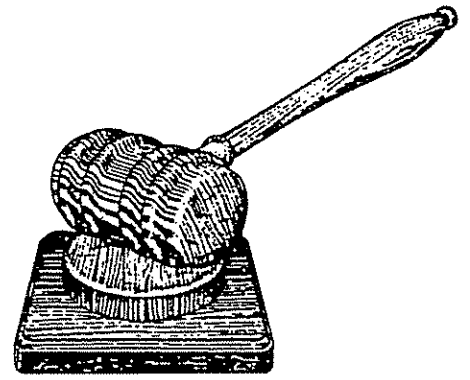


# L • A • W

# UPDATE

AN EXCLUSIVE PUBLICATION FROM  
GERSOWITZ, LIBO & KOREK P.C.



VOLUME 1006 • WINTER 2000

## Questions Frequently Asked of Gersowitz, Libo & Korek

*Q. Will I have to go to Court?*

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

*Q. Why do we so frequently win favorable settlements?*

A. 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.

*Q. Can I afford your services?*

A. 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  
*(Continued on Page 4)*

## WHAT'S INSIDE?

- Our Opinions
- Recent Settlements and Verdicts

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## Dangerous Drugs: PROPULSID

This year, an unprecedented number of drugs have been recalled by the Food and Drug Administration than in any year previous. In view of our country's continuing progress on the medical and pharmaceutical fronts, this is especially disconcerting.

Jeff S. Korek recently returned from travels around the country following meetings with other attorneys and health care professionals. Our communal interest has been piqued by the unprecedented amount of pharmaceutical recalls in the past year. The cover page of our newsletter addresses some of the drugs that have been marketed in the recent past which are, even more recently, the subject of recalls prompted by the manufacturers themselves or in most cases at the urging of the Food and Drug Administration.

Propulsid, a drug to prevent gastroesophageal reflux disease (GERD) was taken off the market by its supplier, Janssen, March 23, 2000, because of reports of 341 heart rhythm disturbances, including 80 deaths. The heart conditions have been reported to include arrhythmias, ventricular tachycardia, ventricular fibrillation, and QT prolongation.

As detailed in the enclosed insert, many adults were prescribed Propulsid for nighttime heartburn symptoms. Children, particularly infants, were prescribed this medication as a treatment for colic.

Most troubling about Propulsid is the fact that since the drug hit the market in 1993 thirty million U.S. residents are reported to have taken the medication.

It is difficult to comprehend but doctors are still prescribing Propulsid and thousands of patients are still taking it. The distribution of the drug was to have ceased July 14, 2000. While these actions are appropriate, they were much too slow in coming about. The truth is that the deadly effects of this drug are still harming people today.



If you have any questions for us to answer in the next edition of  
*Law Update*

please forward them to our office:

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# In Our Opinion...

## REZULIN – GOOD DRUG, BAD RESULTS

Rezulin is a drug that started out with good intentions – to help individuals with diabetes live better quality lives. However, no matter how well it was originally intended, no matter how much good the company had hoped to achieve, this drug produced bad results.

Rezulin is used to treat adult onset or Type II diabetes. It is taken orally and used either in conjunction with or in lieu of insulin. It works to control the blood sugar level. Rezulin went on the market March 27, 1997.

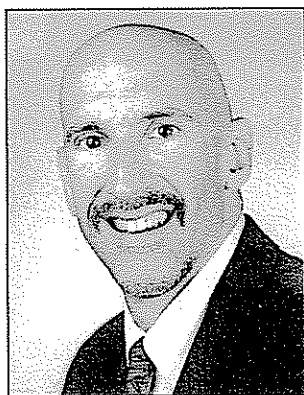
Warner-Lambert, with full knowledge of the dangers of this drug, continued to manufacture and market Rezulin, misled the public, and endangered the lives of millions of Americans.

Marketed by Warner-Lambert and Parke-Davis, it was pulled from the market on March 21, 2000. Over the months leading up to its recall, there was considerable medical press about damage to the liver

that was occurring. The manufacturers had tried to keep the drug on the market by including ever increasing warnings about this risk, but the only proper solution was withdrawal especially since there are other drugs on the market affording the same treatment more safely.

Some of the problems associated with this drug include abnormal liver function tests which are most often reversible. For those less fortunate, the drug has required patients to undergo liver transplants as the only form of treatment. A number of deaths associated with sudden liver failure have also been reported.

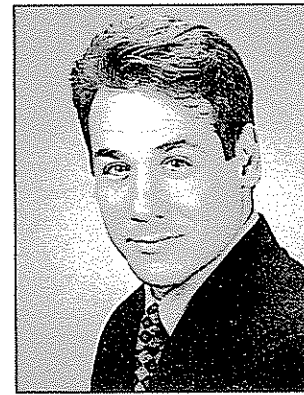
Rezulin was withdrawn on March 21, 2000. During that three year time period, there have been over 200 deaths, about half of them from liver failure, according to the Food and Drug Administration. There have been over 3,000 adverse reactions to Rezulin. While the original intent may have been good, the results have been far from good.



EDWARD H. GERSOWITZ, ESQ.



ANDREW L. LIBO, ESQ.



JEFF S. KOREK, ESQ.

## FIRM ANNOUNCEMENTS

Gersowitz Libo & Korek, P.C. is pleased to announce that Michael A. Fruhling, formerly an associate with the firm, is now a partner. We also welcome our new associate attorney Sonny Chehl.

Jeff S. Korek was recently appointed by Presiding Justice Guy Mangano of the Appellate Division, Second Department to the Office of Committee on Character and Fitness. Accordingly, Mr. Korek and other panel members are charged with the responsibility of interviewing new applicants to the New York State bar.

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### *A Personal Message to our Clients:*

## *Why We Do What We Do?*

In practicing trial law on your behalf, it is easy to lose sight of what we really do. The urgency of our daily practice, deadlines, trials, hearings, depositions, memoranda, research, evaluations, conferences, seminars, correspondence and meetings all conspire to prevent us from focusing sometimes on what we do and why we do it. And yet it is the simplest thing: we help injured people.

Sometimes those people are physically, emotionally or psychologically hurt; sometimes those people have lost a loved one.

Our job is to help them. In order to do that, however, it is essential that we never lose sight of what we do and why we do it. We cannot be good trial lawyers if we cannot feel the pain of others. There are easier ways to make a living. There are less stressful ways to make a living. But there is no better or more honorable way.

In order to do what we do, we must truly love helping people. We must get great satisfaction in taking on the tough case and representing the little guy because virtually every case we have or will have starts that way.

It begins with the balance of power resting with the defendants. It is not until we as the trial lawyers take on the cause that any power begins to shift. Somebody has asked us to right a wrong. It may be an economic wrong or an emotional wrong. It may have been through negligence or an intentional act. It may involve children or adults, but it always involves someone who has been hurt.

This is the only case you, the client, have. You depend on us exclusively. We sometimes forget that we depend on the clients too, both for our livelihood and our personal gratification.

To correct a wrong or obtain deserved compensation is a wonderful thing. The gratification may not be immediate (far from it), but the results are more permanent. To be a trial lawyer, we must have passion. A passion for long hours, hard work and challenges. But mostly a passion for seeing rights vindicated.

So the next time we feel a little beaten or pressured, or the deadlines seem like they are running at us like a freight train, we should remember why we do what we do.

# RECENT SETTLEMENTS AND VERDICTS

**Medical Malpractice** – A \$1,000,000.00 settlement was recently won in Supreme Court, Bronx County. The case involved a 34 year old Radiology Manager who had been admitted to Montefiore Medical Center for a collapsed lung. In treating the collapsed lung, a vent had been inserted which had struck an intercostal nerve. The nerve damage eventually resulted in Reflex Sympathetic Dystrophy (RSD) totally disabling this wonderful, young woman from continuing her occupation and/or attending to her family.

**Construction Accident** – A \$2,400,000.00 verdict was won following a five week trial in Supreme Court, Bronx County. The case involved a 50 year old Local 3 electrician who was working at John F. Kennedy Airport when he received an electric shock due to the Port Authority's failure to shut down the electricity in the area in which he was working. Injuries included nerve damage to the hands and permanent impotence.

**Medical Malpractice** – A \$2,000,000.00 settlement was won on behalf of a 38 year old wife and mother of two children who had reported to doctors with a long standing dripping nose. The drip turned out to be cerebral spinal fluid otherwise known as cerebral spinal fluid rhinorrhea. Although seen by allergists and otolaryngologists (ENT), the proper diagnosis was not made resulting in bacterial meningitis.

**Psychiatric Malpractice** – A \$700,000.00 settlement was achieved on behalf of the only child of a 20 year old who had been prematurely discharged from Bellevue Psychiatric Ward. Upon discharge, the patient immediately committed suicide.

**Truck Accident** – A \$152,000.00 settlement was achieved on behalf of the family of an 83 year old woman who was struck and killed by a 40,000 pound truck. The driver contended that the decedent had walked into the side of the truck.

**Elevator Accident** – A \$1,500,000.00 settlement was achieved during the third week of trial in a case involving a 33 year old chef who, while descending an elevator at Saks Fifth Avenue, was caused to sustain serious injuries resulting in a lumbar laminectomy and requiring future surgery. The chef was unable to return to work in his chosen occupation.

**Pharmaceutical Negligence** – A confidential settlement was entered into on behalf of a family of a child who was severely affected by Reyes Syndrome believed to have been linked to children's aspirin. Gersowitz Libo & Korek, P.C., in reviewing company documents, was able to prove that information was intentionally withheld from the public with regard to this particular product. Aspirin as opposed to Tylenol, as you may know, is no longer prescribed for children.

## WHY DO YOU NEED A LAWYER

When an injury occurs, the following questions arise:

- How can I make up for the loss of income?
- Who will pay the medical bills?
- Who will take care of the children?
- How can I be compensated for pain and suffering?
- What are my legal rights?

If you are injured, a lawyer will look at all potential issues that can affect you and your family. The answers to the previous questions are:

1. A lawyer will see to it that the income you have lost as a result of being injured is recovered. That means properly identifying all parties that are responsible for your injury.
2. All medical expenses need to be recovered. An attorney will make sure that every expense is itemized and recovered.
3. It is important to identify all the expenses, like child care, incurred as a result of your

injury. A lawyer will make sure that you and your family are cared for.

4. Pain and suffering is a burden and detracts from the quality of life. A lawyer will attempt to win compensation for your loss.

5. Most importantly, you need someone to speak up for your rights amidst the tangle of insurance companies and their attorneys. Dealing with these people can be very difficult. Experienced attorneys will deal with insurance companies and corporate lawyers for you.

At Gersowitz, Libo and Korek P.C., our practice concentrates on injuries. Your first consideration after an injury and proper medical treatment is a phone call to our office. We don't charge for the initial consultation and there is no fee unless your case is resolved. Expenses are payable at conclusion. If you or someone you know has been injured, remember, you do need a lawyer!

## NEW CASES

We recently were made aware of a new phenomena among health care personnel. It seems that physicians, nurses and other health care workers are developing severe immune reactions to resins and powders from poorly made latex "rubber" gloves and other products.

The allergic reaction manifests itself as hives, facial swelling, difficulty breathing and anaphylactic shock. A number of deaths have been recorded as well.

A typical scenario involves a health care worker in a health clinic for several years. She changes her latex gloves many times a day. After several years she starts to get ill every time she comes to work. She is now totally disabled from working in the Health field. Her allergy is so extreme (as measured by high antibody levels) that she cannot take her children to the pediatrician, ride in a car with plastic seats, get near a balloon, use cosmetics, etc. The medical literature does, in fact, support this causal relation.

Should you know of anyone interested in obtaining or providing more information on this most curious phenomena, please contact Attorney Edward H. Gersowitz at Gersowitz Libo & Korek, P.C.

## Questions...

*continued from front page*  
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.

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

A. Absolutely not! Many of our clients are referred to us by other lawyers.

It is these lawyers who pay our fee.

*Q. Why don't my other lawyers handle these cases themselves?*

A. 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. We have a wide reputation as "lawyers' lawyers." They look to us for this work alone. You look to them for all your other legal needs.

*Q. Will I have to get on the stand? Will the other lawyer attack me and try to break me down in cross examination? I'm not sure I could...*

A. 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. Remember that.

Gersowitz, Libo & Korek, P.C.

## *Our philosophy on representing injured persons*

We strive to represent our clients professionally, individually and personally. Our lawyers keep our clients informed of the progress of their cases. You can speak with a lawyer if you call and, if they are not available, they will promptly return your call. Attorneys who refer cases are kept fully informed.

We put the time and money necessary into the full preparation of a case, but at the same time we try to avoid unnecessary expenses. We do not charge secretarial or overhead expenses to the clients. We work on the contingent fee system.

We have found that we can achieve the best settlements for our clients by not trying to work with the insurance

company on a claims basis. Rather, we generally place your case into suit and press it on for trial. We have found that the best settlement arises when your case is coming up for trial and it has been fully prepared. The insurance company or defendant can then see that you have the proof necessary to win and can see their exposure. We are also not hesitant about going to trial, if that is what you want and if doing so is likely to be better than any settlement which is offered. On the other hand, we do not try cases that should be settled just to add to our reputation, since that practice risks the client losing everything.

## *Could Four Hundred Million Cell Phones Be Wrong?*

It has been estimated that approximately Four Hundred Million cell phones will be sold this year. This number is astounding given the ongoing controversy with regard to a possible link between cell phone use and potential health risks. We found most interesting a letter to the editor written by Robert Tufel, Director of Patient Services at the National Brain Tumor Foundation, *New York Times*, August 3, 2000.

"...while the world health organization publicly acknowledges that current research has found no definitive link between cell

phone use and adverse health effects, it is still recommending guidelines that include limiting cell phone use, using a hands-free device and avoiding driving while using a cell phone. While not wanting to unduly alarm the public, the National Brain Tumor Foundation supports the WHO guidelines because we believe that they offer a simple and easy solution to avoiding potential health risks".

It is very interesting to learn that the Federal Communications Commission limit on close bodily exposure to radio waves is 1.6 watts per kilogram of human flesh.

## DANGEROUS MOLDS

Recently, Gersowitz, Libo & Korek, P.C., has become involved in litigation surrounding the presence of mold, known as *Stachybotrys atra*, in La Guardia Community College. This mold is greenish-black in color and usually grows on materials with a high cellulose content, such as wood, drywall sheetrock, and dropped ceiling tiles, that become chronically moist due to water damage or flooding. However, the mold that is commonly found on bathroom tiles is not *Stachybotrys atra*.

The presence of this mold often leads to health effects in people, such as allergic

rhininitis, dermatitis (rashes), sinusitis, conjunctivitis and aggravation of asthma. Some related symptoms are the inability to concentrate and fatigue. In some of the more severe cases, the presence of this mold has caused pulmonary hemosiderosis, a condition which causes bleeding in the lungs of infants.

For more information about the health effects of mold and what to do if you are concerned that you or your child has been exposed, please contact Gersowitz, Libo & Korek, P.C.

1-800-LAW-9997

OR CALL 212-385-4410

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