FOSTER CARE ABUSES IN THE UNITED STATES

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Dear Readers,

What an exciting year it’s been for us here at Gersowitz Libo & Korek, P.C. We are so grateful for the many blessings we have been given this past year.

We had a very successful 2016 through settlements and jury verdicts, including a $14.8 million verdict in a labor law trial for a worker who suffered a traumatic brain injury while working on a movie set. We also worked on foster care cases representing the rights of foster children who have been abused and neglected. We are currently handling a case for an airplane pilot who was tragically killed in an airplane accident during the filming of a movie starring Tom Cruise.

We are so proud of Edward H. Gersowitz, who was elected President of the New York State Trial Lawyers Association (NYSTLA).

This newsletter will cover relevant topics regarding our firm and changes within the legal system that may affect your rights. Of course, we welcome all comments and suggestions to help us better serve you and our community.

We hope you and your family had a wonderful holiday season, and we wish you continued happiness in 2017.

Sincerely,

Gersowitz Libo & Korek, P.C.
The New York State Trial Lawyers Association (NYSTLA) is an integral part of New York and the civil justice system. NYSTLA advocates on behalf of victims’ rights on both the state and federal levels and provides trial lawyers with continuing education courses so they can stay up-to-date with New York’s legal system.

NYSTLA is an invaluable organization with which Gersowitz Libo & Korek, P.C. has been involved for over 20 years. Partner Jeff S. Korek is a Past-President (2008), and all attorneys in the firm are active members.

Mr. Gersowitz is a co-founding partner of Gersowitz Libo & Korek, P.C. and oversees many of the firm’s daily activities. He is consistently honored by Super Lawyers and Best Lawyers for his outstanding legal work.

“It’s an honor to be elected by my peers as the President of NYSTLA,” said Mr. Gersowitz. “I look forward to representing every New Yorker regarding the issues most important to them in the civil justice system.”

Congratulations to Edward Gersowitz for his achievements and continued dedication to fighting for the rights of those injured in New York and New Jersey.

NYSTLA President Edward Gersowitz spoke on behalf of Rowan Wilson at his Senate Confirmation Hearing as an associate judge on the state Court of Appeals, New York’s highest court. Nominated by Governor Andrew Cuomo, Wilson is a Harvard Law graduate with more than 25 years of legal experience. Gersowitz said on his behalf, “He’s what we would refer to as a mensch.” Wilson’s nomination was confirmed in a unanimous vote on February 6, 2017.

“The best way to find yourself is to lose yourself in the service of others.”

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Elevator accidents have become far too commonplace in New York and New Jersey. On New Year’s Eve 2015, a 25-year-old man was fatally crushed by an elevator in his apartment building after saving a female he had never met from being crushed. Just a few days later, a toddler was hospitalized after falling 20 feet down an elevator shaft in a catering hall during preparation for a family wedding.

Elevators are necessary for any building to have. While a requirement for those unable to easily walk up and down stairwells, many use elevators everyday as a time-saver and a way to escape the sometimes brutal heat. Passengers expect the elevators to be maintained and secure. Unfortunately, that is not always the case.

It’s difficult to find up-to-date statistics regarding elevator accidents because elevators are not regulated by the Consumer Product Safety Commission. A 2006 report from The National Institute for Occupational Safety and Health states that elevators and escalators kill about 30 and seriously injure about 17,000 people each year (http://www.cdc.gov/niosh/nioshtic-2/20039852.html).

The Elevator Safety Act (Senate Bill S1945) was sponsored by New York State Senator John Bonacic in 2011-12. It would require anyone designing, constructing or servicing elevators to be licensed and would create a board to oversee them (https://ny-senate.gov/legislation/bills/2015/s1945). It had wide support in the NY Senate and House, but somehow has not yet been brought to the floor to be voted on.

The attorneys at Gersowitz Libo & Korek, P.C. have seen first-hand the pain and devastation endured not only by the victims of these tragic elevator accidents but also by their families. “The tragedies that occur due to elevator accidents should be easily preventable, and it’s appalling that nothing is being done to help regulate the industry,” said Jeff Korek. “These families should not have to deal with the long-term suffering caused from this.”

If you or someone you know has been the victim of elevator negligence, please contact the experienced attorneys at Gersowitz Libo & Korek, P.C. to learn your legal rights at (800) LAW-9997.
Gersowitz Libo & Korek, P.C. filed a wrongful death lawsuit against several production companies involved with the movie *American Made*, formerly known as *Mena*, starring Tom Cruise. *American Made* tells the story of Barry Seal, a pilot hired to fly for the Medellin drug cartel of notorious Colombian drug lord Pablo Escobar.

On September 11, 2015, a twin-engine plane, a Ted Smith/Piper Aerostar 600, took off from a remote dirt airfield near the jungle filming location of the movie. Carlos Berl, Alan Purwin and pilot in command Jimmy Lee Garland were all on the plane. The plane crashed shortly after takeoff, killing Berl and Purwin and seriously injuring Garland.

Tom Cruise was in another helicopter, travelling the same path through the Andes Mountains. Cruise’s helicopter arrived safely in Medellin, while Berl’s plane did not. Authorities received calls from local residents about the crash approximately ten minutes after the Aerostar plane that was carrying Berl departed.

Gersowitz Libo & Korek filed a lawsuit on behalf of the estate of Berl. The suit alleges that the production companies permitted the dangerous flight to go forward without proper supervision or training, resulting in the deadly crash that killed two of its occupants.

“We are continuing to investi-
When biological parents are unable to care for their child or children, the children are placed in a foster care home. These homes are state-certified, meaning that the homeowners, the family members and the home itself must meet the minimum requirements provided by each state.

In New York, full criminal background checks of the prospective foster parents are performed. A home study and evaluation of the parents, family members and residence are also taken into account before a home is deemed certified. If approved, foster families will receive reimbursements from the state to financially support the child or children. (http://ocfs.ny.gov/main/fostercare/requirements.asp)

Foster homes are supposed to be safe for children — a place where they will be protected from abuse and provided a loving, nurturing environment. Unfortunately, that is not always the case. There are some foster cases where abuse has taken many different forms (https://www.lawyertime.com/practice-areas/foster-care-abuse/), such as:

- Physical abuse, causing broken bones, swollen skulls and even shaken baby syndrome
- Sexual abuse by the foster parents or someone else in the household
- Negligence, including lack of basic necessities such as food, water and medical care

A class-action suit filed in New York City in 2015 claims that over 11,000 foster children are stuck in “one of the most dangerous foster care systems in the country” (http://nypost.com/2015/07/08/lawsuit-says-nyc-has-one-of-the-worst-foster-care-systems-in-us/), and this horrific abuse is costing taxpayers more than $2.4 billion.

The Administration for Children’s Services (ACS) and the Office of Children and Family Services have been formed to oversee the foster care system in New York— both are named defendants in the class action suit. Similar suits have been filed across the country, many by a New York based child advocacy group known as Children’s Rights.

A recent suit filed against the Texas Department of Family and Protective Services alleged delib-
erate indifference to the abuse of over 12,000 kids. The U.S. District Court Judge Janis Jack agreed in December of 2015, noting that “the state had for years turned a blind eye to internal failures in the system, leaving the kids in its care in repeated exposure to physical, sexual and psychological abuse.” Evidence provided at the trial quoted a 75% error rate in investigating abuse claims. (http://www.houstonpress.com/news/there-s-little-outrage-for-12-000-kids-suffering-in-the-texas-foster-care-system-8161341).

Abuse in foster care homes and mismanagement by the government agencies created to protect foster children go widely unreported by the media. Some agencies have claimed that there are too many cases and not enough case workers to keep up with all of the alleged abuse complaints. Regardless of the reason, the extent of abuse is outrageous and serious changes need to be made to protect foster children and make the public more aware of these important issues.

Gersowitz Libo & Korek, P.C. has represented victims of foster care abuse. Many victims of foster care abuse are not aware of their legal rights. Not only are child abusers subject to criminal charges, but the agencies who are responsible for overseeing foster homes can be held liable in a civil court for not protecting them. Please report any signs of abuse to the authorities immediately. Contact Gersowitz Libo & Korek, P.C. to learn what rights you have to be protected as a foster child.
Gersowitz Libo & Korek, P.C. has been working hard for more than 30 years to ensure that victims in New York and New Jersey have a voice in this ever-changing legal system. We are always honored to be recognized for our hard work through publications and awards.

Partners Jeff Korek, Michael Fruhling and other members of the GLK team have been regularly published in the New York Law Journal. Here is a list of some of the articles published:

- Obtaining Cell Phone Records in Civil Litigation
- Medical Malpractice Litigation in New York and New Jersey
- Unconventional Lawyering Leading to Conventional Credibility
- Bringing Opening Statements to Life With Visual Aids
- Mitigating Potentially Damaging Evidence at Trial
- Drawing Negative Inference When Civil Defendant Invokes Fifth Amendment

Jeff Korek, Edward Gersowitz and Michael Fruhling were all selected as Best Lawyers and Super Lawyers for 2016 and 2017.

Jeff Korek was selected as “Lawyer of the Year” by Best Lawyers in 2016 for his personal injury work in New York City.

GLK has been recognized for its work in personal injury and medical malpractice by many different organizations, including:

- Best Law Firm, by Best Lawyers and U.S. News Litigators Award
- America’s Top 100 Attorneys
- New York’s Most Influential Law Firms of 2016, by Corporate Vision

To learn more about our publications and acknowledgements, please visit our website at www.lawyer-time.com or contact us at 212-385-4410.
The New York State Trial Lawyers Association hosted its annual Law Day in May 2017. NYSTLA President Edward H. Gersowitz in a “call to action” urged all members and guests to take an active role in protecting our justice system, especially worker safety law and legislation that would make insurance carriers accountable for unreasonably delaying or denying payments.

This year’s Law Day keynote speaker was Governor Andrew M. Cuomo introduced by NYSTLA past president Jeff S. Korek. The NYSTLA Law Day honoree was Rowan D. Wilson, Associate Judge, New York State Court of Appeals. Congressman Joseph Crowley (14th Congressional District) received the Champions of Justice award. (Photos by John Afrides.)

(L-R) Honorable Judge Rowan Wilson, Jeff Korek, Chief Judge Janet DiFiore (NY State Court of Appeals), Edward Gersowitz, and Congressman Joseph Crowley

A Decade Apart

(Left) June 2007 — Jeff Korek with then NY Attorney General Andrew M. Cuomo speaking about issues of importance to victims.

(Right) May 2017 — Ten years later, Edward Gersowitz, as NYSTLA President, has the ear of NY Governor Cuomo once again.
Gersowitz Libo & Korek, P.C. (GLK) has been involved with The Gardiner Foundation since 2009. Through playing basketball with Dexter Gardiner, partner Jeff Korek learned about the Foundation set up to honor the memories of Dexter’s twin brother and five other family members who tragically lost their lives in a horrific accident on the Bronx River Parkway. Since then, GLK has been the title sponsor of the Foundation and their events. 2016 was the biggest year to date with events and giveaways for the youth of the community.

The 11th Annual Gardiner Memorial Basketball Tournament provided food and entertainment over a two-day period for more than 3,500 people in St. James Park in the Bronx. During this event, four college scholarships were presented to local high school seniors. Over 500 backpacks filled with school supplies were handed out to the community youth. IPads, tablets and other electronics were given away to those in attendance. A prayer service was held for those in the community who recently lost loved ones.

The Gardiner Foundation hosted their Annual Turkey Giveaway at St. James Park, where 750 turkeys and Thanksgiving fixings were given away to those most in need in the community. Many showed up to volunteer at this event, including members of Oyster Bay High School’s JV and Varsity women’s basketball team, organized by Sandy Rossen.

Police officers from the 52nd precinct were not only present at both events, but volunteered to help hand out turkeys and chat with the crowds of people who came to the events.

The Gardiner Foundation also ran the 2nd Annual Gardiner Toy Drive this year, handing out more than 100 toys to the community youth. The Gardiner Foundation hosted its first free basketball clinic for more than 200 kids, with a coaching staff that included former college and NBA stars. The Foundation continues to run the Tru Talk program, which aims to provide the community youth with a safe place to go to discuss the biggest issues they face, including gangs and drugs. Dexter and his team utilize this program to teach children how to get off the streets, stay in school and attend college.

The Gardiner Foundation has been an incredibly important resource to the St. James Park community for years. The work it has done has made the area a safer place to live, and has provided so many needy families with basic necessities. Members of the Gardiner Foundation and Gersowitz Libo & Korek, P.C. were issued official citations from the City of New York, presented by Councilman Fernando Cabrera, for the good work they have done for the community.

Some of the organizations we are proud to support:

- The Gardiner Foundation
- Hoops 4 Hope
- Memorial Sloan Kettering Cancer Center
- Southern Poverty Law Center
- The Craig Lensch Fund
- To the Tops with Laptops
- Montefiore Children’s Hospital
- Brooklyn PTA
- NYC Bombsquad Basketball Classic
- The Hagedorn Little Village School
- LuMind Romp for Research
- St. Jude’s Children’s Research Hospital
- Kips Bay Boys & Girls Club
- Billie, Inc.
Premises Liability — Slip and Fall — A 58-year-old woman out to dinner with her granddaughter sustained fractures to her knee and wrist when she slipped and fell. A restaurant employee had been mopping the floor but had not put out any visible warning signs. Both fractures had to be surgically repaired. The case settled in Richmond County for $800,000.

Car Accident — A 36-year-old woman was driving on her way to pick up her fiancé’s son from summer camp when her car was broadsided. The other driver admitted she had taken her eyes off the road. The plaintiff sustained a traumatic brain injury, resulting in symptoms that included cognitive difficulties, headaches, and balance problems. She was unable to return to work. Her case settled in Westchester County for $875,000.

Premises Liability — A 42-year-old building superintendent was badly injured when he fell off a ladder and down a flight of stairs. The owner of the building in which he was working was found liable under the Labor Law for failing to provide proper protection to an elevated worker. The plaintiff was compelled to undergo a spinal fusion, and suffered depression due to his severe pain. The case settled prior to trial in New York County for $1,450,000.

Car Accident — A 70-year-old female pedestrian was struck by a truck. Contrary to the driver’s testimony, independent eyewitnesses said that she was in the crosswalk and the truck took the turn too fast. The plaintiff suffered a severe head injury and part of her skull had to be removed to relieve pressure on her brain. She was minimally responsive and could not leave her long-term nursing facility. A settlement of $7,000,000 was reached to provide for her ongoing care.

Medical Malpractice — Erb’s Palsy — A settlement in the amount of $1,184,161.75 was won in Kings County on behalf of a baby boy who sustained a brachial plexus injury (Erb’s Palsy) during his delivery.

Medical Malpractice — Failure to Diagnose — A mother of two was diagnosed with a rare type of cancer after being informed for years by her gynecologist that the masses in her abdomen were benign. In 2007, a radiologist noted the possibility that the masses could be malignant, but the attending surgeon failed to order further studies and failed to inform the patient or her medical providers of the radiologist’s suspicions. The failure to diagnose in 2007 led to progression of the cancer and a much more severe prognosis by the time the tumor was resected in 2010. After weeks of trial, the case was settled for an undisclosed amount.

Motor Vehicle Accident — A $1,335,462.70 settlement was made in Middlesex County, New Jersey on behalf of a 55-year-old woman who sustained severe orthopedic injuries to her right leg and back when a vehicle attempted to make a left-hand turn in front of her vehicle.
Will I have to go to Court?
While nearly all cases are settled out of court and before a trial begins, some are settled after the start of the trial but before its conclusion. Sometimes, if we feel that the settlement offered is unfair to you, we will try your case. We will hold your hand every step of the way. Remember that you can put your trust in us – just look at the results we have achieved in past cases. We fight hard to get you results, whether the case is resolved before, during or after trial.

Why do you 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 just 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?
You pay the same contingency fee if we win your case, regardless of whether you were referred to us from another lawyer or if you came directly to us. There are cases where both law firms will share the contingency fee, but our clients are not charged an additional fee for that.