

# Inside

Blume Goldfaden Berkowitz  
Donnelly Fried & Forte

Attorneys at Law

Winter 2008

Published for Clients and Friends of the Firm

ESTABLISHED 1929

## Two Verdicts for Failures in Prenatal Screening: Fourteen Million and One Million Five Hundred Thousand Dollars



New Jersey law recognizes that when sub-standard obstetrical or radiological care deprives prospective parents of knowledge about a severe birth defect and their constitutional right to choose to terminate the pregnancy, the negligent prenatal caregivers are responsible for the parents' emotional distress and the substantial lifetime care costs associated with such birth defects. Blume, Goldfaden has successfully handled hundreds of such cases of negligent prenatal screening. As with many other areas of medical negligence, our firm has developed sub-specialized expertise in failed prenatal screening claims. For the past twenty years our partner, Dennis Donnelly, has been one of the few legal sub-specialists in the country in these cases.

Dennis has won 5 multi-million dollar verdicts in wrongful birth cases in New Jersey and a \$3,600,000 verdict in New York State, which was featured in a New York Times Magazine article. He has also settled many other cases involving failure to diagnose profound defects like Down syndrome, spina bifida, sickle cell anemia, thalassemia, Tay-Sachs and Canavan's disease, cystic fibrosis, fragile X syndrome, Dandy Walker syndrome and many other chromosome and inherited gene defects.

Dennis has been invited to give continuing medical education lectures to obstetricians and obstetrical residents, and has authored an article on the legal remedies for negligent prenatal screening.

Dennis' verdicts in Spring 2006 and Winter 2007 for \$14,000,000 in a missed diagnosis of thalassemia, and for \$2,500,000 (including a one million dollar settlement with one defendant) for a missed diagnosis of spina bifida are digested on our web page at <http://www.njatty.com/articles/medmal/WrongfulBirthSpring06.htm> and <http://www.njatty.com/articles/medmal/WrongfulBirth07.htm>.

In addition, you can read an educational article about prenatal Screening techniques and issues on our web page at: <http://www.njatty.com/groups/wrongbirth.html>

Please visit our Spanish website at:  
[www.njatty.com/espanol](http://www.njatty.com/espanol)

**“Seek justice for all...  
Champion the cause  
of those who deserve  
redress for injury to  
personal property...  
Promote the public good through  
concerted efforts to secure safe  
products, a safe work place, a clean  
environment, and quality healthcare...  
Further the rule of law in a civil  
justice system... Advance the common  
law and the finest traditions of  
jurisprudence... and, uphold the honor  
and dignity of the legal profession  
and the highest standards of ethical  
conduct and integrity.”**



~ Excerpts from the Mission Statement  
of the Association of Trial Lawyers  
of America



## Delayed C-section

Carol Forte recently settled a case for a child who was left brain damaged from a mishandled labor and delivery. The child lives in a state institution in Connecticut, as her mother, a teenager at the time of her birth, was unable to keep her at home because of the amount of care she requires. The mother arrived at the New Jersey hospital in labor. An electronic fetal monitor showed the baby's heart rate would diminish substantially with each contraction. The pattern continued all day and gradually worsened. The Plaintiff claimed that the pattern demonstrated that the baby was not tolerating the labor, and a cesarean section should have been done. The mother was examined by two different residents (doctors in training in obstetrics) during the morning, afternoon and early evening, and also by several nurses. There was an attending physician, employed by the hospital, on the maternity unit for the purpose of supervising the residents, but his practice was only to visit the patient and actually check on what the residents were doing, if they asked him to. There is no evidence that he saw the patient, or was asked to see the patient, until minutes before the actual delivery took place. The baby had no heart beat and was not breathing at the time of the birth. The case was resolved for \$6,500,000. Much of it will go to the purchase of several annuities, which will provide for the child's care for the rest of her life.

Carol Forte has received the State Bar Association's 2007 Annual Distinguished Legislative Service Award, for her work on the Governor's Medical Care Availability Task Force. This group, created by statute, completed its two year project this past September. One of the recommendations of the task force was that no changes be made to malpractice laws in this state.



## Medical Malpractice ~ Failure to Properly Guard Against Blood Clotting During Surgery

Ron Goldfaden recently settled this claim for a 64 year old man who underwent an amputation of one of his legs following surgery to repair an aortic aneurysm. Our client informed his doctor prior to the aneurysm surgery, that he was having pain in his leg. This symptom should have alerted the doctor that the patient had poor circulation, putting him at high risk for vascular obstruction during the aneurysm surgery. The man did sustain a clot in his leg during the surgery, which

was not timely diagnosed or treated, and ultimately led to the amputation. The claim settled for \$1,000,000.



## Inadequate Security

At a pre-trial settlement conference, David Fried secured a \$2,750,000 recovery for a 25 year old web site design student who was shot outside of a Newark New Jersey fast food restaurant in 2002. Despite a prior history of criminal activity at the property, the corporate defendant owner of the property failed to provide adequate security at that location. Before the shooting, the restaurant did have security guards to protect its patrons, but it had let those security measures lapse for a few months, during which time the shooting occurred. The treatment for the man's injuries will cost millions of dollars over his lifetime. He is paralyzed from the level of his mid-chest downward. He has no bowel or bladder function. He developed fused hips as a complication of his paralysis, and underwent surgery to improve hip movement. He has had pressure sores (bed sores) and wounds at the area of his hip surgeries. He has had numerous hospital admissions and surgeries to address these issues.



## Medication Error

After a two and a half week trial, Kenneth Berkowitz secured a \$2,100,000 settlement on behalf of a 67 year old woman. A cardiologist and a nurse failed to give her an aspirin to prevent her blood from clotting during an angioplasty performed to treat her coronary artery disease. Due to a clot, the woman suffered a heart attack requiring a transplant, and lost all of her toes to gangrene.

## Construction Accident

Ken also obtained a \$1,430,000 settlement through mediation for an injured construction worker who could not work for 2 years due to his injuries. Our client fell 40 feet when the building he was working on collapsed, causing him to sustain multiple fractures of ribs, vertebrae, and a shoulder blade, as well as a lung condition and a closed head injury.

**We handle all types of injury cases including car accidents and slip & falls.**

*For additional information on these and many other Blume Goldfaden settlements and verdicts, please visit our website at [www.njatty.com](http://www.njatty.com)*



### Brachial Plexus Injury

Daryl L. Zaslow settled a case for a young girl with a permanent brachial plexus injury (injury to the nerves controlling the muscles of the shoulder, arm, wrist and hand). Studies indicate that permanent brachial plexus injuries (Erb's and Klumpke's palsies) are associated with "shoulder dystocia" at delivery (where the baby's shoulder gets stuck behind the mother's pubic bone). However, the obstetrician who delivered her insisted there was nothing unusual about the delivery. Daryl argued the delivery was in fact complicated by shoulder dystocia either not reported by the obstetrician, or that he failed to recognize this obstetrical emergency, and caused the nerve injury by applying excessive force in his attempt to deliver the baby. The child required surgery to treat her condition, and arm function remains impaired. The settlement will result in periodic payments to the child exceeding \$1,200,000.



### Medication Error ~ Failure to Timely Diagnose and Treat Intracranial Bleed

Mitchell J. Makowicz represented the spouse and estate of a man who died from improper treatment. A cardiac catheterization showed blockage of heart vessels and the need for a stent angioplasty. To reduce the risk of clotting of the heart vessels, the defendant doctor ordered anticoagulant therapy (Blood thinners) which increases the risk of bleeding, and requires that the patient's clotting status be monitored. The defendant failed to order any such tests. Despite numerous symptoms of bleeding, the doctor failed to request consultations and order tests which would have detected a severe intracranial bleed which the decedent suffered causing brain death. The jury returned with a verdict in favor of the plaintiffs, with a total recovery of \$1,165,250.



### Bus Strikes Pedestrian

John Molinari represented a 57 year old secretary who was hit by a bus and sustained injuries to her dominant left arm. Our client was visiting her husband at his place of business, a bus rental company. A bus driver, backing

up from the street to enter the rental company's garage, misjudged the angle of how he was to pull in, and struck the woman, causing multiple fractures including to the elbow. The injuries required six surgical procedures, and ultimately a complete elbow replacement with a prosthesis. Our client has extensive scarring, cannot lift her arm above her head, and continues to have physical therapy to help regain function. John settled this case on the eve of trial for \$675,000.



### Motor Vehicle Accident ~ Jury Verdict

Kenneth Elwood represented a 42 year old auto body repairman who was involved in a head on collision after being cut off by a car exiting a gas station. The man sustained a tibial plateau fracture to his right leg, which needed two surgeries to repair. This client lost six months from work, and will likely need future knee surgery and/or knee replacement. At trial, Ken utilized an accident reconstruction expert, and an orthopedic surgeon to establish liability and damages. A Union County jury awarded a gross jury verdict of \$1,100,000.



### 2.85 Million Dollar recovery for Hockey Injury Resulting in Paraplegia

Michael B. Zerres obtained a \$2,850,000 recovery for his 38 year old client who was injured while playing a pick-up hockey game at an ice skating rink. The spine injury left the man a paraplegic. While the rink denied any responsibility and claimed that the client's injury occurred as a result of an unexpected accident or possible contact from another player, the plaintiff proved that the ice on the arena's rink was not properly maintained and contained numerous ruts making the ice surface dangerous even for an experienced player. It was established through the client's testimony and statements of witnesses who were present when the incident occurred, that the player caught his skate in a rut, lost his balance, and then slid into the "boards" surrounding the rink. The unprotected contact with the boards caused a fracture injury to the spine at the T10/T11 level, permanently damaging the spinal cord.

*For additional information on these and many other Blume Goldfaden settlements and verdicts, please visit our website at [www.njatty.com](http://www.njatty.com)*



### A Question of Seatbelts

Harris Feldman represented the estate of a college student killed in a motor vehicle accident on New Years Day, 2003. The young man was a passenger in the back seat of a car, which crashed head-on into oncoming traffic. The police report indicated that the student was not belted because he was found lying across the back seat. The Medical Examiner relied upon the Police report and cited the failure to properly wear a seatbelt as a cause of death. The defense therefore argued that the death was due to a failure to wear a seatbelt and not the driver's negligence in crashing. Harris worked with a forensic pathologist, and was able to prove that the man was actually fully and properly seatbelted when the impact occurred. The case settled on the first day of trial for \$275,000.



### Slip and Fall in Icy Parking Lot

Norberto A. Garcia obtained a verdict for a 39 year old woman who slipped and fell on ice in a mall parking lot. While snow had been cleared, no salt had been spread for ice removal. The injury was a fractured tibia and fibula that required surgery. There was no offer to settle the case before trial. The jury found both the mall owners and their snow removal company liable, and awarded \$700,000 for pain and suffering, and \$129,000 for medical bills.

*“As long as the world shall last there will be wrongs, and if no man objected and no man rebelled, those wrongs would last forever.”*

*~ Clarence Darrow*

*“Justice denied anywhere diminishes justice everywhere.”*

*~Martin Luther King, Jr.*

## QUESTIONS?

If you'd like to make an inquiry of one of our attorneys, please e-mail us by logging on to:

[www.njatty.com/contact-us.htm](http://www.njatty.com/contact-us.htm)



Blume Goldfaden has numerous attorney affiliations nationwide. We can refer you to qualified attorneys to handle your case in any state.

**BLUME GOLDFADEN BERKOWITZ  
DONNELLY FRIED & FORTE, PC**

A PROFESSIONAL CORPORATION

ONE MAIN STREET • CHATHAM, NJ 07928-0924

PRSRT STD  
U.S. POSTAGE  
**PAID**  
Bellmawr, NJ  
Permit No. 64