

# Inside

## Blume Goldfaden Berkowitz Donnelly Fried & Forte

Attorneys at Law

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### Medical Malpractice: Two Clients With Seizure Disorders



Michael Zerres obtained settlements worth more than \$2 million for two women, aged 19 and 22, as a result of seizure disorders they suffered shortly after birth.

In the first case, a child had developed normally until 3 months of age, when she started to exhibit unexplained instances of doubling up. On at least two occasions, this symptom was brought to the attention of her pediatrician, who incorrectly diagnosed the child with lactose intolerance and irritable bowel syndrome. Two months after the symptoms began, the parents switched pediatricians. When symptoms continued, the child was brought to the hospital where a pediatric neurologist made the diagnosis of idiopathic infantile spasms. ACTH was started and the seizures improved, but as an adult the woman was left with developmental disabilities caused by damage to the brain from the seizures. Had the diagnosis been made sooner, ACTH could have been started sooner, reducing the likelihood that any long-term harm would have occurred.

In Mike's second case, a child was normal at birth but at the time of discharge from the hospital after birth had a solitary dried blister on her head. At the time of her first visit with her pediatrician, there were three dried scalp blisters present. Both the pediatrician at the hospital and the private pediatrician failed to consider that the child's blisters might

be from the Herpes Simplex Virus. At around the age of 3 weeks, at a hospital admission for fever and seizures, the child was diagnosed with viral meningitis. She was started on Acyclovir, and her symptoms improved. However, she was left with a permanent seizure disorder and has experienced ongoing developmental disabilities. Mike proved that if her pediatricians had recognized the possibility that her scalp blisters were from the virus, Acyclovir could have been started before the virus progressed to the central nervous system, averting any seizures and potential harm to the brain.

The two claims settled for a total of \$2.26 million.

### Medical Malpractice: Failure to Diagnose Compartment Syndrome

Kenneth Berkowitz was able to recover a settlement of \$950,000 for a man who fell on his right elbow, dislocated it, and ended up with a permanent injury because of the failure of the emergency room doctor to recognize that he was developing a condition known as a compartment syndrome in his arm. A compartment syndrome is a build-up of pressure that can occur after an injury and can lead to permanent damage of muscles and nerves if it is not properly addressed. Our client had several operations, and now has difficulties using his right arm because of the delay in recognizing and treating the compartment syndrome.

Ken was honored to be the recipient of the Essex County Bar Association's Civil Trial Attorney Award for 2013.



**Blume Goldfaden has  
12 Certified Civil  
Trial Attorneys**

*The New Jersey Supreme Court designates lawyers "certified" only after they have completed the mandatory number of trials, submitted peer and Judicial references, and passed a written exam.*

**Our staff includes  
a Board Certified Physician and  
two Registered Nurses.**

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

## Multiple Medical Negligence Cases



Every week our law firm deals with grieving loved ones who ask the same question: “Did my wife, husband, son, daughter, mother or father die or suffer serious permanent injury needlessly as a result of medical negligence, rather than the natural course of a disease or illness?” We review such cases carefully with our in-house physician and that helps grieving families in two ways. Many times, we are able to resolve their fears and reassure them that the medical care was proper and therefore there is no basis for a claim. This provides closure.

However, we also do find many cases where a negligent failure to diagnose or error in surgery or treatment was the needless cause of death. That finding begins a long relationship with the survivors that most often, as in these three cases, only ends after extensive work over several years including consultation with multiple outside expert witnesses, the taking of depositions of all of the parties and experts. The three successful conclusions below, all of which were handled by Dennis Donnelly, illustrate the time and effort involved in pursuing claims of this nature, and how in the end we can help families hold those responsible for their loss accountable and also achieve an understanding of what went wrong.

**Settlement \$1 million.** Two general surgeons unqualified to deal with a splenic artery aneurysm, a life threatening surgical emergency, nevertheless performed surgery and failed to close and seal off the source of the bleeding, leading to a fatal hemorrhage in their 60-year-old patient just after surgery. In this case, as in almost every medical malpractice case, the surgeons offered a host of excuses and meticulous discovery was required to debunk all of them. For example, the surgeons tried to excuse their failures by the lack of definitive CT scan results before surgery. They also claimed that prospectively, their error was justified in assuming the problem was a cyst which could await repair the next day rather than an aneurysm which had already ruptured and thrombosed but was a time bomb waiting to burst again. Only after 3 years of litigation, expert reports

and depositions from two supporting surgeons and one rebutting radiologist, as well as two damage experts, deposition of the defense’s surgical expert, and the setting of a trial date, did the defendants and their insurers finally agree to a fair settlement.

**Settlement \$1 million.** A 56-year-old husband and father of three was being monitored by his elderly osteopath for many years because he suffered from both with hepatitis C and cirrhosis of the liver. That combination makes liver cancer a much greater risk. Despite that fact, the osteopath ignored an ultrasound report of a liver mass and only acted on its other recommendation for gall bladder surgery. The general surgeon made the same mistake. The surgeon claimed it was only his job to deal with the gallbladder. Both doctors tried to excuse their failures or minimize the damage from those failures by claiming that the ultrasound findings were inconclusive and liver cancer could have killed the patient anyway, even with earlier diagnosis. After 3 years of litigation and supporting opinions from both a surgeon with specialized liver cancer experience and a same specialty osteopath, and again with a scheduled trial date, the defendants finally agreed to a fair settlement.

**Verdict totaling \$1.85 million including interest after 5 week trial in February 2013.** Sometimes, despite death under suspicious circumstances and all our efforts with multiple supporting experts, treating doctors or their insurers decline to offer any settlement. Then, a trial is required to do justice to the fault and damage questions in wrongful death cases. In 5 weeks of trial, we spent \$90,000 calling five different liability experts and multiple damage experts. Dennis and his partner Harris Feldman, and Julie Wilson, the paralegal who had prepared the case for trial, were in court every day. After all that trial evidence, the jury agreed that both the cardiologist who managed the care of the deceased, and the radiologist who read one of his imaging studies, negligently failed to diagnose his evolving aortic dissection over a 2 week period when it could have been successfully surgically repaired. At trial, all five defendants had multiple excuses for the failure to diagnose and the full trial involving thousands of hours of work was required to overcome those excuses.

### Medical Malpractice: Failure to Administer Antibiotics

Carol Forte obtained a \$5.92 million settlement for a 56-year-old patient who had osteomyelitis in her spine, and who was sent to a rehab center where she was supposed to receive at least 6 weeks of IV antibiotic therapy for the infection. After 10 days however, she was inexplicably discharged from the center with no orders for antibiotics at home. There was an 8 day hiatus in the antibiotic therapy before the error was recognized and she was readmitted to the hospital for further antibiotic treatment. Because of the interruption in the treatment she eventually became a paraplegic because of the damage to her spine from the infection, which worsened during the time the antibiotic was discontinued.

### Medical Malpractice: Chiropractor Negligence

Carol tried a case in Sussex county this past fall, in which she represented a man who was injured by chiropractic adjustments to his neck. He had been referred to the chiropractor by his primary care physician, when he complained of neck pain. The primary care doctor concluded that he had a neck sprain, and sent him to the chiropractor who was part of the same medical practice. On the third day of treatment, after his neck was rotated, the patient became a quadriplegic. The jury returned a verdict in favor of the plaintiff, finding that the primary care doctor was 5% responsible for the patient's injuries, the chiropractor was 95% responsible, and awarded total damages in the amount of \$14.596 million.

### Medical Malpractice: Medication Administration and Patient Monitoring



Mitch Makowicz represented a 71-year-old retired gentleman who was treated by a cardiologist for an irregular heartbeat. The doctor prescribed medication to regulate the heartbeat in the highest recommended dosage and with refills. The drug was known to have a significant risk of organ toxicity with prolonged use. Mitch knew that the cardiologist did not properly monitor his patient, and did not re-assess his condition over the months that he was taking the medication, to determine if he had any side effects from it. The medication did cause pulmonary fibrosis, a severe lung condition, and Mitch's client now needs oxygen around the clock. The claim was resolved for \$575,000.

### Motor Vehicle Accident: Limitation on Lawsuit Threshold

Many New Jersey residents select the limitation on lawsuit option when purchasing automobile insurance, without realizing the consequences of that selection should they be injured in an accident. If a person has chosen the limitation on lawsuit option, they cannot recover damages in a lawsuit for a broken bone, unless the fracture is a "displaced" one. Attorney Abe Milgraum's sharp-eyed review of his client's medical records, led him to realize that a radiologist who read an x-ray of his client's sternum, injured in the accident, described the resulting fracture as "offset." Abe tracked down the radiologist, who confirmed that his term "offset" was synonymous with the term "displaced," thus allowing Abe's client to obtain a significant settlement despite the limitations on lawsuit option she had chosen.

### Motor Vehicle Accident: Limitation on Lawsuit Threshold Jury Verdict

Richard Villanova represented a 45-year-old woman who was a passenger in a motor vehicle that was struck by a livery cab on Bergenline Avenue in Union City, NJ. Our client reinjured her neck and back from a prior motor vehicle accident that had occurred 6 months prior to this accident. Because the client had selected the Limitation on Lawsuit Threshold in her insurance coverage, Rich had to prove that the herniated disc in her low back was caused by this accident, and that a herniated disc in her neck from her prior accident was made worse as a result of this second accident. Rich also had to prove that the injuries were permanent and related to the second accident. The defense contended that neither herniated disc was related to the second accident, that her injuries were not permanent, and they refused to make an offer of settlement.

The jury found that our client's injuries were permanent and related to the second accident and awarded \$300,000.

### Product Liability: Defective Hammock



Ken Elwood secured a \$505,000 settlement against a major retailer that sold a defective hammock through its on-line magazine subsidiary. The hammock, which was later recalled, collapsed while our client was sitting in it, causing a fractured skull.

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<http://www.martindale.com/Blume-Goldfaden-Berkowitz-Donnelly/law-firm-890301.htm>





### \$2.5 Million Settlement During Trial for Pedestrian Injuries



John Molinari represented a 26-year-old woman who was crossing the street and was struck by a township school bus that was making a left-hand turn. At first, the defense claimed that she was walking outside of the crosswalk and was distracted by using her cell phone. John took the depositions of numerous witnesses, police officers, the bus driver and several other employees of the bus company, and worked with an accident reconstruction expert, to prove that the bus driver was to blame. The client had a head wound, severe leg injuries, scarring about her eye and into her scalp and had several leg operations. She has a slight discrepancy in leg length, and her leg is also significantly scarred. After the accident, she began to have difficulty with short-term memory. A neurologist and clinical psychologist diagnosed a brain injury and resulting cognitive deficits. The defendants pre-trial settlement offer was insufficient, and the trial began. After 4 days they gradually increased the offer to the agreed upon amount of \$2.5 million.

### Accident Reconstruction

Harris Feldman recently represented a man who was a passenger in a car injured when the driver lost control in a heavy rainstorm. The driver claimed she was cut off by another driver who fled the scene of the accident. If that story had been true, there would have been much less insurance coverage available for Harris' client and a much smaller recovery. But through accident reconstruction, Harris proved that version was false, which resulted in more insurance coverage. Harris was able to resolve the matter for \$517,500.

### Honors



Blume Goldfaden is proud to announce that Laura Carney has been selected to serve on the Board of Governors for the American Association for Justice for the State of New Jersey and has been honored by the National Trial Lawyers Association by being named in their 2013 edition of "top 40 under 40."



### Medical Product Liability: Confidential Settlement



Jeffrey Zenna obtained a confidential six-figure settlement against a manufacturer of a prosthetic hip implant. The prosthesis would click, grind and cause pain. The claim was brought pursuant to the New Jersey Products Liability Act. If you have a prosthetic hip producing pain grinding, popping or increased levels of foreign metallic substances in your blood, please call Blume Goldfaden to investigate your potential claim.

### Medical Malpractice: Patient Care Policy Change

Jeff also recently obtained a six-figure settlement against a New Jersey hospital and two urologists. The urologists performed surgery and left behind in our client's body, a catch bag used to collect tissue during the procedure. The hospital did not have a written procedure in place to account for all of the bags at the conclusion of a procedure. The surgeons blamed the nurses for the error, and the nurses claimed it was the surgeons' responsibility to account for all of the devices. As a direct result of this case, the hospital changed its policy to specifically include that these surgical devices be counted at the end of any surgery in which they're used.

### Motor Vehicle/Pedestrian Accidents



Ron Goldfaden recently settled three accident cases for a total of nearly \$3 million. In the first case, a 73-year-old woman was hit by a NJ Transit bus while she was crossing a Camden street. She had orthopedic injuries as well as head trauma. In the second case, Ron represented a man whose car was hit from behind, and he suffered a subdural hematoma, requiring brain surgery. He was not able to return to his job in telecommunications because of his injury. In the third case, a 15-year-old was crossing the street when struck by a car driven by a young driver. Although the boy was crossing in the middle of the street and not in a crosswalk, Ron successfully argued that the driver still had sufficient opportunity to observe him and to avoid the accident. The boy suffered a head injury, and some residual cognitive problems.

*The cases described here are a small sample of our recent results; for more, please visit our website at: [www.njatty.com](http://www.njatty.com)*

**Negligent Auto Maintenance and Repair**

David Fried represented the estate of a 75-year-old retired man and his surviving spouse. They were driving on the Garden State Parkway when a tire separated from another car travelling northbound on the Parkway. The tire collided with our client's vehicle causing an accident. The man died 3 days later, although he never regained consciousness. Eight days prior to the accident, the car which lost its tire had new brakes and rotors installed by the defendant automotive service center. Approximately 4 days before the accident, the driver of that car heard a clunking noise and felt a vibration, and brought the car to the dealer who found an axle problem. The needed replacement part was not available, and due to miscommunication between the mechanic and service writer, the owner of that car was permitted to continue to operate it. David retained an economist, who offered an opinion that the loss of services to the surviving spouse totaled \$750,000; and David settled this claim for \$1.05 million.

**Medical Malpractice:  
Failure to Diagnose Colon Cancer**

David also represented the family and estate of a man who died of colon cancer in his late 50s. The man had abdominal complaints. He had a barium enema with abnormal findings, there was no follow up or additional testing. He was diagnosed with Irritable Bowel Syndrome. Approximately 3 to 4 years later, the decedent was diagnosed with Stage Four rectal colon cancer. He lived for approximately 3 years before dying of complications leaving his wife and three children. During his lifetime, the decedent never retained counsel, and his widow only retained Blume Goldfaden after her husband's death. As a result, she was barred from pursuing certain claims, since more than 2 years had passed from the discovery of malpractice. However, Mr. Fried was successful in pursuing claims for wrongful death and for the loss of services, companionship etc. sustained by the widow and the couple's children.

**New Associate:  
Kelly M. Stoll**

Kelly M. Stoll has returned to Blume, Goldfaden's Chatham office after clerking for the Hon. Joseph L. Yannotti, J.A.D. in the Appellate Division. Kelly learned the ins and outs of the appeals process and honed her writing and research skills. Before clerking in the Appellate Division, Kelly served as a law clerk at Blume, Goldfaden, working closely with Carol L. Forte and Brian Mahoney on a variety of complex legal issues in multi-party medical malpractice cases. As an associate of the firm, Kelly is representing clients who are injured as a result of automobile negligence and premises liability, and assisting on complex medical malpractice cases. She recently helped Carol Forte win a jury trial on behalf of a client who became a quadriplegic from chiropractic treatment. Kelly received her law degree cum laude from Rutgers Law – Newark where she was a managing editor for the Rutgers Law Review and served as an Edward Saltzman Fellow. Upon graduating, she was named a Myron S. Harkavy Scholar for Excellence in Trial Advocacy and was admitted to the Order of the Coif, a prestigious national honor society. She is admitted to practice in the states of New Jersey and New York, and in the United States District Court for the Federal District of New Jersey.

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**NY Magazine 2012:**

[http://pdfserver.amlaw.com/nylj/newyork\\_TRL.pdf](http://pdfserver.amlaw.com/nylj/newyork_TRL.pdf)

**Super Lawyers Selection Process:**

[http://www.superlawyers.com/about/selection\\_process.html](http://www.superlawyers.com/about/selection_process.html)

**New York Area's Best Lawyers – 2011:**

<http://nymag.com/guides/bestlawyers/2011/70029/>

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Blume Goldfaden attorneys have donated their time to speak to various groups across New Jersey and the country. We can tailor presentations to meet the requirements and interests of your group or organization, and there is never a fee for our attorney presentations. To arrange a speaking engagement, please contact our firm Administrator Angelica Genovese (973) 635-5400.

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Designated as one of the Top National Law Firms by U.S. News & World Report. The firm has received National Tier 1 ranking for Product Liability Litigation for Plaintiffs, and New Jersey Tier 1 ranking for Medical Malpractice, Personal Injury and Product Liability Litigation for Plaintiffs. For more information and selection methodology, please log on to:

<http://www.bestlawyers.com/default.aspx> and

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Birth Injuries

Intraoperative Monitoring Issues

Hip Replacement Nerve Injury

Pharmaceutical Mass Tort Claims

Pap Smear Claims (cervical cancer)

All types of Cancer Claims

Podiatry Malpractice

Assault Claims (lack of security)

Dram Shop Claims (service of  
excessive alcohol to bar, restaurant and  
hotel patrons)

Construction Accidents

Lead Poisoning

Aviation and Watercraft Litigation

Water Heater Claims (burns and explosions)