



Client Tell

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FROM THE LAW OFFICES OF  LEVIN & PERCONTI

Fall 2009



Levin & Perconti: Attorneys seeking justice for victims of injury and wrongful death since 1992

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Representing clients who have suffered serious or catastrophic injuries

Birth Injury Case Settled for \$1.35 Million

On July 19, 2000, Carolina Fuentes, accompanied by Armando Juarez, checked into Evanston-Northwestern Hospital as she was about to give birth to their second child, Denise. While pregnant with her first child, a son, Carolina had been diagnosed with gestational diabetes. He was born macrosomic, having a very high birth weight, but she experienced no complications during her first labor and delivery. Carolina suffered gestational diabetes again during her second pregnancy, but she had no reason to expect any complications as she prepared for the birth of their daughter.

Following the check-in process at Evanston-Northwestern Hospital, Carolina was assigned to a second-year obstetrical resident, Dr. Susan Kramer, and an attending obstetrician, Dr. Anthony Cirrincione. During delivery, the baby's left shoulder became stuck on Carolina's pubic bone, causing a shoulder dystocia. A shoulder dystocia is a medical emergency that requires a series of careful maneuvers to disimpact the baby's shoulder. If a doctor or nurse applies too much force while performing these maneuvers, damage to the baby's brachial plexus nerves can occur.

Labor and delivery teams can anticipate dystocias based on a mother's history, so they are prepared should one occur during delivery. Additionally, doctors and nurses are armed with a number of maneuvers to perform if shoulder dystocia occurs. In this baby's case, a nurse attempted two maneuvers to disimpact the shoulder. However, the nurse performed both maneuvers incorrectly and consequently did not free the shoulder.

After the nurse's failed attempts, Dr. Cirrincione placed his hands over Dr. Kramer's to demonstrate the appropriate amount of force to use to disimpact the baby. Past experience dictates that anything more than gentle downward traction is excessive and can cause permanent nerve injury. While they were trying to disimpact the baby, the doctors applied excessive traction on Denise's head with her shoulders locked in place. These errors by both doctors and the nurse



Denise Juarez, age 9

caused Denise to suffer a severe and permanent brachial plexus injury, and ultimately Erb's palsy, which is the weakness or loss of movement caused by damage to the nerve bundles at one's shoulders.

Throughout the delivery, Armando sensed there were problems, but was reassured everything would be fine. Like any proud father, he cut the umbilical cord and reveled in the excitement of his new baby girl, but when the staff handed Denise to her father, he noticed her left arm was not moving.

"I immediately asked the doctor why Denise was not moving her arm," Armando recalled. "The doctor told me not to worry, that in three days she would be able to move it. I was not worried; I trusted his word since he was a doctor."

The family left the hospital and returned home, but after one week Denise still had not moved her arm. Armando took Denise to a local hospital where staff recommended he take her to Children's Hospital of Wisconsin in Milwaukee. There, doctors informed Armando and Carolina that the nerves in Denise's shoulders were damaged during birth and would require therapy and surgery to repair the nerve damage in order to try to restore some function in the arm.

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At 3 months old, Denise began physical and occupational therapy to encourage movement in her left arm. When she was 8 months old, doctors at Children's Hospital performed surgery to try to repair the damaged nerves, but her family saw no positive change. Since her birth, Denise has undergone countless hours of therapy and had a second surgery on her shoulder in 2006.

Doctors have told Denise's parents that she may need a third surgery in the future. Through all of these treatments to repair the nerves in Denise's shoulder, Armando and Carolina have seen little progress, and Denise remains limited in the things she can do.

Like most 9-year-old girls, Denise loves playing with her siblings and their dog, Duke. The family has a trampoline where she spends much of her time in the summer. She is now in fourth grade and enjoys painting and writing stories at school. According to her parents, Denise finds the most trouble with everyday tasks. Her limited movement makes it difficult to do things like brush her hair or pull up her pants by herself. She also has trouble feeding herself because it is hard for her to lift food to her mouth.

Through these difficulties, Denise's family stands by her, finding inspiration in her positive outlook. "She does have her share of difficulties, but it never stops her from trying something," said Armando. "Recently, she was struggling to ride her bike and I asked her if she wanted to quit. She looked at a group of other

girls riding their bikes and said to me 'If they can do it, I can do it,' and kept on working until she got it. I admire her for her strength and perseverance."

Denise's lawsuit against the hospital was filed in January 2005. "The family brought the lawsuit against Evanston-Northwestern Hospital and Drs. Kramer and Cirrincione to seek justice for the negligence that caused Denise's lifelong injuries," said John Perconti. "The hospital and its staff were negligent in a number of ways. They failed to perform an ultrasound prior to delivery to determine the size of the baby, given the fact that Carolina previously delivered a large baby. In addition, they failed to inform Carolina of her increased risk for shoulder dystocia and failed to offer a Caesarean section as an option to reduce these risks. Finally, during delivery, the labor and delivery team failed to perform the proper disimpaction techniques, and the doctors applied excessive force, causing the permanent nerve injury."

After mediation with the hospital and its attorneys, John Perconti and Patricia Gifford successfully reached a structured settlement with Evanston-Northwestern Hospital for \$1.35 million.

"I am happy our firm could help to ensure that Denise will continue to receive the best care possible for her injury," said Patricia. "The settlement will allow Denise's family to pay for future therapy and medical expenses, and will also help Denise financially as she comes into adulthood." ■

Family Receives Settlement in Nursing Home Bedrail Entrapment Death



Attorney Steven Levin

A nursing home in the south suburbs of Chicago and an unnamed distribution company recently agreed to pay \$570,000 (\$550,000 and \$20,000, respectively) to the adult grandchildren of a 99-year-old resident who died when her neck became entrapped between her bedrail and mattress at the nursing home. Steven Levin and Michael Bonamarte represented the family in the case.

Our client's grandmother was admitted to the facility on December 6, 2007, after being hospitalized with seizures. Prior to moving into the nursing home, she had lived in her own home with the help of a live-in caretaker. When she was admitted to the nursing home, the staff placed bedrails on her bed.

On January 27, 2008, as a nurse was making her nightly rounds, she discovered our client's grandmother on the floor next to her bed with her head entrapped between the bedrail and mattress. Healthcare professionals responding to the incident attempted to revive her but her injuries were too severe to overcome. She died hours later.

An autopsy confirmed that our client's grandmother died from compressional asphyxia when her neck became entrapped between the bedrail and mattress. The compression from the entrapment was so severe that in addition to cutting off her oxygen supply, it fractured a bone in her neck. The Cook County coroner who performed the autopsy stated that the manner by which our client's grandmother died was similar to strangulation or hanging.

The complaint alleged it was improper for the nursing home to use bedrails on our client's grandmother's bed. The nursing home placed her in danger of serious harm by using bedrails.

"This was a terrifying way to die. Sadly, this death could have been avoided," said Michael. "For years, the FDA has been warning nursing homes about the risks associated with the use of bedrails, including the risk of entrapment. When bedrails are medically indicated, the family and/or resident have consented to their use, and the resident understands how to use the bedrails. Then the nursing home must take steps to prevent suffocation by entrapment. This includes making sure that there is no space between the bedrails and the mattress, and making sure that if an air mattress is being used that it is properly inflated. What makes this case particularly disturbing is that the bedrails were not providing any medical benefits to the resident. Due to her advanced age and limited mental capacity, she did not have the cognitive capacity or physical ability to use the bedrails."

Steven added, "In addition, the nursing home failed to consult the decedent's family members regarding the use of bedrails. As a result of these failures, our client's grandmother became entrapped between the mattress and the bedrail, and she suffered a horrific death. After living 99-plus years, she suffered needlessly during the last conscious moments of her life."

After the accident, the Illinois Department of Public Health cited the facility for improper nursing care and resident injury, and fined the nursing home \$10,000. ■



Attorney Michael Bonamarte IV

Settlement Worth \$607,500 Awarded to Girl for Loss of Finger

On June 4, 2004, Jessica Rosu was born to Laura and Daniel Rosu of Mt. Prospect, IL, at Evanston-Northwestern Hospital. Jessica was 10 weeks premature, so she was placed in the hospital's Special Care Nursery Unit. Unlike many premature babies, Jessica was able to breathe on her own although she had to be fed intravenously through a peripheral intravenous (IV) line inserted into her hand.

According to Laura, "We were so happy that Jessica was doing so well in spite of being born prematurely. She was very healthy."

Two days after Jessica was born, Laura got the chance to hold her newborn daughter for the first time. Jessica's right hand was wrapped in a bandage to hold her IV in place. Though much of her hand was covered by the bandage, Laura noticed the area around the insertion site of the IV was swollen. At 10 a.m., Laura alerted a nurse about the swelling who told her that it was caused by the bandage holding her IV. Although Laura was concerned, she trusted the nurse's experience in assessing the condition of high-risk infants.

At approximately 3:00 p.m., a second nurse examined Jessica's hand, and noted that the site was red and swollen. When she removed the dressing, she found the infant's little, ring and middle fingers were becoming black in color. The nurse stopped the IV fluids flowing into Jessica's right hand, removed the IV line, and placed a new peripheral IV in Jessica's left hand to administer the fluids.

Jessica's doctor evaluated her and determined that the IV had infiltrated into her right hand. Infiltration occurs when IV fluid escapes out of a vein and into the surrounding tissue. When the nurse removed the IV, she failed to dilute the infiltrated fluid. Consequently, the caustic fluid continued to burn through the bone in Jessica's little finger. When her doctor examined Jessica, the back of her right hand was swollen and her little, ring and middle fingers were black.



Attorney Jeffrey Martin

During the following weeks, Jessica's doctors worked to treat Jessica's fingers by using oxygen therapy and a medicated ointment. However, her fingers had sustained serious burns during the infiltration and the tissue of the little finger became necrotic (prematurely dead). Six weeks after she was born, Jessica's little finger fell off on its own (self-amputated).

"The nurses deviated from the standard of care when they failed to examine and document the condition of Jessica's IV site every hour," said attorney Jeffrey Martin. "Had they taken appropriate precautions to properly monitor the site and properly recognized what was occurring when Laura Rosu pointed the swelling out early on June 6, they likely would have been

able to diagnose the infiltration sooner and prevent the permanent damage. Additionally, they should have tried to dilute or neutralize the acidic nature of the fluid to reduce the severity of the injury. Jessica was a healthy baby despite being born early, but the nurses' negligence allowed serious injury to occur and led to the loss of her little finger."



Jessica Rosu, 5 years old

The site of Jessica's finger healed on its own and she did not require surgery or further treatment, but the area is still very sensitive and painful at times. "Jessica has to be very careful not to bump her hand or it will bleed because the end of the bone is so close to the surface of the skin," said Laura. "We also have to worry about the risk of bone infection when she scrapes or bumps it."

Recently, Jessica started kindergarten where she displays a great interest in reading and storytelling. Her mother notes that without her little finger, she has trouble writing; however, Laura is hopeful that she will be able to adapt to holding a pencil.

"Overall, she is a very smart and very happy little girl," Laura said. "While I am sad that she had to suffer and will continue to suffer due to the negligence of others, I am happy to see the progress she has made in coping with her injury."

The Rosus' medical malpractice lawsuit was filed in December 2005. Jeffrey Martin settled the case against Evanston-Northwestern Healthcare Corporation and Professional Nursing, Inc. (which employed one of the contract nurses working at Evanston Hospital) for \$607,500. A portion of the settlement will be distributed through a structured annuity and will provide for Jessica's college costs and living expenses, periodic payments into her young adult years, and monthly payments for life. Jessica is guaranteed \$1.16 million over 40 years with potential lifetime payouts estimated at \$2.9 million.

"We are truly thankful to have been able to work with Jeff to achieve this settlement—I am so happy that we found him," said Laura. "We filed this lawsuit to let others know that medical negligence happens. My husband and I hope to encourage parents to trust their own instincts in demanding quality care for their children." ■



Cases Throughout the State: Steven Levin and Michael Bonamarte Reach Record Coles County Nursing Home Settlement

Levin & Perconti is based in Chicago, but our attorneys file many cases against nursing homes and hospitals throughout the state. Some of the counties where the firm has prosecuted cases include:

- Bureau
- Champaign
- Coles
- DuPage
- Greene
- Kane
- Iroquois
- Kankakee
- Knox
- Lake
- LaSalle
- Macon
- McHenry
- McLean
- Moultrie
- Peoria
- Rock Island
- Vermillion
- Will
- Winnebago



The attorneys of Levin & Perconti frequently represent clients in cases across the state of Illinois. Steven M. Levin and Michael F. Bonamarte recently reached the largest settlement ever in a case against a nursing home in Coles County, IL. Prairie View Care Center in Charleston, IL, and Dr. Carl Johnson agreed to pay \$700,000 to the family of 43-year-old Donald (Donny) McCormick who died from injuries he suffered while he was a resident at the nursing home. The *Cook County Jury Verdict Reporter* confirmed the settlement was a Coles County record. The settlement was reached following settlement conferences between the parties and Cook County Circuit Court Judge John Ward.

Donny was admitted to Prairie View Care Center on March 19, 2002. When he entered the nursing home, he suffered from severe cognitive impairments and was dependent on nursing home staff for all activities of daily living including feeding, turning, repositioning and transfers. Donny’s impairments also made him unable to communicate his needs to the nursing home staff.

From his admission on March 19, to his discharge less than two months later, Donny became severely malnourished and dehydrated, and he developed a massive infected stage IV bedsore on his sacrum. The wound was so deep that his sacral bone was visible. These injuries caused Donny’s

overall condition to rapidly deteriorate and he was hospitalized on May 12. For the next six months, he struggled to bounce back, but his condition only worsened, and he died on November 24, 2002, at 43.

“Prairie View Care Center and Dr. Johnson both failed to prevent the progression of Donny’s sacral pressure sore, and he eventually died from complications related to his injury,” said Steven. “Under the Nursing Home Care Act, the nursing home was obligated to provide the adequate care needed to prevent Donny’s condition from deteriorating.”

“This is a tragic situation where the healthcare providers at the nursing home, who promised to provide Donny with the care and treatment he needed, completely ignored his needs because they thought he was too difficult a resident to care for,” said Michael. “To the extent that Prairie View and Dr. Johnson could not provide the care Donny needed because of his cognitive and behavioral deficits, they had an obligation to communicate this to his family and transfer him to a facility that could accommodate his needs.”

In 2006, Prairie View Care Center was bought by new owners who changed the name of the nursing home. The former owners of Prairie View are headquartered in Skokie, IL, and continue to operate nursing home facilities all over the state. Steven noted that it is common for nursing home owners to own multiple nursing homes, many of which are far from where they are located.

“This is a trend in nursing home ownership, and one that may affect the quality of care in nursing homes,” according to Steven. “When an owner is completely detached from a home due to physical distance, they cannot be in touch with the day-to-day happenings at the nursing home. Without this oversight, poor-quality care can go unnoticed.” ■

Recent Verdicts & Settlements

Special Administrator of the Estate of Jane Doe vs. Unnamed Hospital (\$3,300,000 settlement) Vermillion County Hospital staff was negligent in failing to prevent our 52-year-old client from falling as a nurse was walking her to the bathroom from her bed. Our client was recuperating from aneurysm surgery when she fell. The fall caused severe head trauma and death.

P.G. for R.G. vs. Lee Manor Nursing Home (\$1,000,000 jury verdict) Our client, a 54-year-old nursing home resident who suffered from schizophrenia and blindness, sustained fatal injuries when he exited a window on the fifth floor of the nursing home. The Cook County jury found that the nursing home was negligent in failing to prevent our client from exiting the window. Before trial, the nursing home’s insurance company offered only \$75,000 to settle the case.



R.N. for C.N. vs. Advocate Trinity Hospital (\$750,000 settlement) Our client developed a stage IV sacral pressure ulcer that was not discovered until he was admitted into a nursing home following his hospitalization. The 70-year-old’s pressure ulcer caused an infection that led to his death.

E.W. for W.S. vs. Watseka Rehabilitation & Health Care Center (\$500,000 settlement) Our 64-year-old client was admitted to the Iroquois County nursing home after suffering a major stroke. During his residency, our client suffered multiple pressure ulcers, dehydration, malnutrition, weight loss, infection and sepsis, which led to his death.

Family Receives \$850,000 Settlement in Premises Liability Lawsuit



Attorney Susan Novosad

Susan Novosad achieved an \$850,000 settlement in a premises liability case against Jiffy Lube International in October. Susan represented the family of Robert “Bob” Kinzle of Chicago, who passed away on November 19, 2006, after sustaining critical injuries from a fall at a Chicago Jiffy Lube.

On October 16, 2006, Bob visited the Jiffy Lube service center located at 7200 N. Harlem Ave. in Chicago to get an oil change. Upon completion of the service, Bob left the service center and proceeded to his car, but fell after slipping on an arrow painted on the shop’s driveway. It had been raining that day and the surface of the arrow directing cars out of the service area was wet. The Jiffy Lube employees were aware that these arrows became particularly slippery when wet and had raised their concerns with the management. Instead of calling an ambulance when Bob expressed pain and struggled to stand up after the fall, an employee helped the 88-year-old to his car and drove him home.

Bob arrived at home where his daughter, Roberta Temkin, was waiting to take him to lunch. She immediately noticed he was in pain and took him to Lutheran General Hospital in Park Ridge, IL. Doctors diagnosed Bob with a fractured right pelvis, a fractured acetabulum (socket of the hip joint) and a fractured right shoulder, and determined that surgery would be necessary to repair these injuries.

As Bob was being prepped for surgery, he went into respiratory arrest, requiring intubation. He was transferred to the surgical intensive care unit where he remained for two weeks. Bob was unable to return home in his weakened condition and was transferred to a nursing home for care.

Prior to his fall, Bob lived in his Edison Park home with his wife, Rose. When his four daughters — Roberta, Rose Wagner, Rowena Kinzle and Ruth Marquez — realized that their father would be unable to return home, they were also forced to move their mother to the nursing home.

“When our father went into the nursing home, we had no choice but to move our mother as well,” said Roberta. “She suffers from dementia and as her condition progressed, our father became her primary caregiver. We knew she couldn’t live by herself.”

At the nursing home, Bob continued to endure great pain and suffering as a result of the injuries from his fall. He also began losing weight and developed a serious pressure sore due to his limited mobility. During this difficult time, his four daughters and their families visited Bob and Rose daily. Their room at the nursing home became a new family gathering place. Bob’s condition continued to worsen, and on November 19, four weeks after his fall, Bob passed away with all of his loved ones by his bedside.



Rose & Bob Kinzle

Bob was in good health prior to the incident. He had been an electrician for over 50 years and continued to help family and friends with home projects although he was well into his 80’s. He took care of all the household duties, including grocery shopping, cooking, cleaning and laundry, and he ably managed the finances. Bob loved spending time surrounded by his daughters, eight grandchildren and seven great-grandchildren.

“Our dad was the rock that brought, and kept, all of us together,” Bob’s daughter Ruth said. “He taught us loyalty to one another and to work as a team when times were tough. When our mother started showing signs of dementia, he was there for her and made sure she was taken care of. Now that he is gone, we continue to support each other. The values he instilled in us have helped us to cope with losing him.”

“It’s been three years since our father passed away, but he survives through our great memories of him,” Roberta added. “I never stop thinking of him and the wonderful stories we have. To this day, I continue to have revelations about what a great guy he was and how many people he touched.”

The family’s lawsuit was filed in 2007 and alleged that Jiffy Lube had a duty to warn their customers of any dangerous conditions. According to Susan Novosad, “Jiffy Lube employees at this location were aware of a hazard and complained to management that the surface of the painted arrow became exceptionally slippery when wet. The defendants were negligent when they failed to take action that would rectify the state of the pavement or, at a minimum, warn customers of the dangerous condition.”

“I am happy I was able to help Bob’s family seek justice for their father’s needless death,” added Susan. “The strength and unity they have exhibited through this process has been inspiring and a true testament to the kind of person Bob was.” ■

Recently Filed Cases

C.T. for C.T. vs. D.H., MD, and the University of Chicago Medical Center (Medical Malpractice) A pulmonologist failed to diagnose sarcoidosis in our client, a 38-year-old Chicago woman who exhibited symptoms of the disease. This negligence caused the condition to go untreated and our client subsequently died in her sleep.

K.B. for A.B. vs. Condell Medical Center (Medical Malpractice) The hospital was negligent in failing to treat our client’s subarachnoid hemorrhage in a timely manner. This caused the 55-year-old Chicago man to suffer severe brain damage and a brain stem herniation, which caused or contributed to his death.

J.C. vs. J.B. Hunt Transport (Personal Injury) Our client, a receiving manager at a construction supply store, sustained serious injuries while he was unloading a tractor-trailer. As our client stood on the forks of a forklift to unload boxes, the tractor trailer driver negligently pulled away from the loading dock without warning, causing the forklift to fall off the back of the trailer and propel our client into the ceiling of the truck.

I.R. and M.Z. for C.R. vs. Lieberman Center for Health and Rehabilitation (Nursing Home Fall) Our 91-year-old client fell to the floor while being transferred from her bed by staff using a mechanical lift. She suffered an ear laceration and a neck fracture that led to her death the following day.



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Levin & Perconti Attorney News

- On June 26, Jeff Martin, Mike Bonamarte, Margaret Battersby and Lindsay Mack attended the American Constitution Society's Chicago Legal Legends Luncheon.
- Mike Bonamarte was recently named to the River North Business Association's Board of Directors.
- Steve Levin was featured in the article "Lower Standards" in the July/August 2009 issue of *The Chicago Reporter*. The article highlighted the inequities between predominantly white and predominantly black nursing homes in Chicago.
- Mike Bonamarte coordinated and hosted the 2009 Michael F. Bonamarte III Foundation Charitable Golf Outing and Dinner held August 14 at the Highland Park Country Club. The event was held to honor the memory of Mike's dad, Mike III, who passed away in 2006 from a stroke. The event raised \$10,000, which was donated to the Northwestern Memorial Primary Stroke Center for research on the treatment and prevention of strokes.
- Bryan Waldman was selected for inclusion in the 2010 edition of the *Best Lawyers in America*[®] guide in the area of Personal Injury Litigation.
- Levin & Perconti sponsored the Community Renewal Society's Senior Power Leadership Awards on August 23 at the Greater Walters Church in Chicago.
- Bryan Waldman competed in the Chicago Triathlon on August 30.
- Jeff Martin participated in a charity golf outing in Lakewood, IL, in September to raise money for leukemia research. Jeff golfed with former clients whose 5-year-old son died due to medical malpractice in 2000.
- Steve Levin was quoted in *The Wall Street Journal's* Law Blog on September 11 regarding medical malpractice reform.
- On September 13, Margaret Battersby ran the Chicago Half Marathon and raised donations for Illinois Citizens for Better Care.
- Steve Levin presented "Moving from Medical Malpractice to Nursing Home—Differences to Watch For" on October 17 at the American Association for Justice's Litigating Nursing Home Cases Seminar at the Hotel Allegro in Chicago.
- On November 19, Patricia Gifford spoke to students in Professor Kandaras' Pre-Trial Civil Litigation class at John Marshall Law School. The following day, she shared some of her experiences as a trial lawyer with students of Professor Lasso's Torts course.

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