

# NJ LAW PAGE

**ROSSETTI & DEVOTO PC**  
ATTORNEYS AT LAW

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20 Brace Road, Suite 115 • Cherry Hill, NJ 08034  
Phone: 856.354.0900 • Fax: 856.354.0920

Volume Seven

## CAMDEN PAYS \$2,225,000 FOR BOYS FOUND DEAD IN TRUNK

The parents of Daniel Agosto (6), Jesstin Pagan (5) and Anibal Cruz (11) settled a lawsuit against the City of Camden after their children tragically and needlessly suffocated to death in the trunk of a 1992 Toyota Camry on June 23, 2005. The children, who were last seen playing in and around a parked car of one of their parents, suddenly disappeared according to the parent. Unknown to anyone at the time, the kids got into the trunk of the car and closed the trunk. The parent quickly called 911 when she could not locate the children.

Camden Police came to the scene immediately but failed to check the interior or trunk of the car. Had they checked, the boys would have been discovered and could easily have survived the ordeal.

The Agosto case was handled by Andy Rossetti whose lawsuit alleged that inadequate training and supervision of the Camden police officers conducting the search caused the tragic and preventable death. Rossetti stated "The Camden Police Department failed to follow proper police procedures and protocols for conducting a missing child search."

According to Rossetti, "the boys were still alive during the search based on the testimony of the Camden County Coroner. Rather than doing a proper search, the officer's



Andrew J. Rossetti

only action was to shine a flashlight into the car. The officer also failed to notice that the shoes the boys were wearing when reported missing were laying in plain view on the front and rear seats of the vehicle. Despite the deficient search, the officer reported to her supervisors that 'the car was clear' and no other officer ever searched it again."

More than 50 depositions were taken in the case. Those depositions revealed many inconsistencies between what was done and what should have been done according to the police policies. Other cities in New Jersey and the rest of the country were following a much more comprehensive search policy for missing children. Rossetti stated "there has been a longstanding deficiency in the policies, procedures, training, and supervision in the Camden Police Department. It dates back to 1996 when the Division of Criminal Justice first criticized the operations of the Camden police. The original Division of Criminal Justice report as well as subsequent reports in 1998 and 2002 were virtually ignored by this police department."

The City of Camden defended the case by blaming the parents for not watching the kids more closely. In order to test the theories and cases of both parties, Rossetti conducted a mock jury trial. The mock juries did not place blame on the parents which allowed RD to continue to pursue the case toward trial until the family was fully compensated. Said Rossetti, "While the families will never fully recover from the emotional tragedy, they do feel vindicated by settlement." The \$2,225,000 settlement was reached after years of litigation. The families previously settled with Toyota Motor Corporation for a confidential amount.

Rossetti & DeVoto

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# NURSING HOME PAYS \$400,000

The widow of a 78 year old man who had his leg amputated as a result of poor care at a South Jersey nursing home has settled her claim for \$400,000. The settlement was achieved after a full day of mediation conducted by the Honorable L. Anthony Gibson, a retired Superior Court Judge from Atlantic County. It was alleged by RD that our client's amputation resulted from an orthopedic boot that was improperly fitted and which resulted in an ulceration that went undetected and untreated until it was too late to correct. "According to Lou DeVoto the skin ulceration was allowed to advance all the way down to the bone, causing a severe infection that lead to the amputation. The amputation then caused other problems including a decrease in mobility, which then subjected our client to pressure sores and repeated falls." RD's client, who had been living at home with his wife, died just six months after being admitted to the nursing



home. The defense claimed that the plaintiff was elderly and that our client's problems were all as a result of his underlying health conditions and not due to poor care. However, after investigating the case and taking many depositions including the director of nursing and other nurses and aides, RD was able to prove that significant delays in treatment occurred including failing to obtain tests in a timely manner and failing to refer our client to a hospital when his wound got too severe to treat at the nursing home. It was also discovered that the nursing home had a high rate of employee turnover and was cited repeatedly by the Department of Health for violations of the Nursing Home Act regarding other patients in the two years preceding. While it was conceded that plaintiff was in the early stages of dementia, plaintiff's nursing home expert opined that it was poor care and neglect, and not any of his underlying health conditions that led to the amputation and death.

## PEDESTRIANS AND CARS

### Who Has The Right of Way at Crosswalks

Pedestrian safety is becoming a big problem. On average, 160 pedestrians are killed each year in New Jersey with many others seriously injured. At the core of the issue is the lack of communication and respect between motorists and pedestrians alike, each believing they have the exclusive right of way. The truth is that pedestrian safety is a shared responsibility. Pedestrians do not have the right to walk in front of moving vehicles regardless of whether a "yield to pedestrian" sign exists. Similarly, passing motorists do not have the right to speed past pedestrians caught in cross-walks regardless of why or how they got there. New Jersey law requires that pedestrians first STOP at all cross-walks. If the cross-walk has a traffic light, then the pedestrian must follow the traffic crossing signal that guides pedestrians across the intersection. If the cross-walk is not designated by a traffic signal, then the pedestrian is obligated to look both ways and enter the cross-walk only when it is safe to do so. That means crossing only when there is no traffic approaching or when the approaching traffic observes you and stops. Once a pedestrian stops at or enters a cross-walk, a motorist must yield to the pedestrian. Unfortunately, serious injuries and death have resulted when pedestrians, who often feel empowered by the "yield to pedestrian" signs, simply walk right in the path of oncoming vehicles without any regard for the traffic. Since pedestrians have the most to lose, here is a simple rule to follow: When in doubt, don't step out.



## JURY AWARDS \$525,000 AGAINST LA FITNESS

A Burlington County jury awarded \$525,000 to our Mt. Laurel client for injuries she sustained while being trained by a personal fitness trainer at LA Fitness in Mt. Laurel.

Our client was 45 years old when she was injured doing an abdominal exercise performed on a decline sit up bench while being thrown a weighted medicine ball. The exercise, selected and performed by the fitness trainer, caused her shoulder to sublux and tear. Expert testimony was presented in the case that showed the exercise to be one only appropriate for a high level athlete doing strength and force training but not one for casual "stay in shape" members. RD's expert was also highly critical of the gym and its trainer for failing to maintain trainer log books and for failing to do any fitness evaluation of the member (including health and fitness questionnaire's and range of motion, strength, and endurance testing prior to subjecting the member to an exercise regimen). "The marketing literature claimed that LA Fitness would do all of this but nothing was done," according to Lou DeVoto who represented the plaintiff. "Without this information, a proper exercise regimen could not have been formulated. "This was far below any reasonable standard of care for a fitness center and personal trainer." The defendant did not call an expert on liability choosing instead to rely on their trainer to act as the expert.

The plaintiff had arthroscopic surgery to her shoulder approximately one month later where 25% of her labrum was removed and other internal shoulder problems corrected. Our client then developed a frozen shoulder that caused her to lose another 6 months from work and had to move in with a family member while going to therapy 5 days a week. She now suffers ongoing pain, stiffness and limitations of movements all of which have reduced her activity level. The case was tried before the Honorable Patricia Richmond, JSC in Mt. Holly. The jury returned its verdict after deliberating for two hours.

# MEDICAL MALPRACTICE CASE SETTLES FOR \$950,000

A confidential settlement was reached in a medical malpractice action against a New Jersey Hospital when our client died as a result of nursing errors that caused a massive infection after undergoing major surgery. Our client, who was in his mid-50's, was on the road to recovering when he was transferred from a surgical hospital to a rehabilitation center with a feeding tube. Upon admission, his feeding tube was never checked and dislodged in his abdomen. Tube feeds were then administered directly into his abdominal cavity causing a massive peritonitis which could not be controlled and eventually led to sepsis and total organ failure. Our client left behind a wife and three older children. Lou DeVoto handled the case for RD. Said DeVoto, "we are pleased with the settlement. It certainly affirms our belief that the hospital committed malpractice but also reflects the fact that our client would not have enjoyed the same type of lifestyle after undergoing the original surgery."



## One in 5 Nursing Homes Rated as Poor

One in five of the nation's nursing homes have consistently received poor ratings for overall quality according to data released by Medicare. This is alarming as more than a quarter million people live in nursing homes getting poor scores. The ratings are derived from Medicare inspections, complaint investigations and other data collected in 2008 and 2009. The nursing homes receive grades of between one and five stars for quality, staffing and health inspections and an overall score. Nearly all nursing homes that received the lowest score were owned by for profit corporations. Nursing Homes must adhere to quality of care and treatment standards including proper staffing and training, adequate nourishment and hydration, prevention of bedsores and falls and maintaining the residents highest practical well being. If you are putting a loved one in a nursing home and wish get advice or see the ratings of all New Jersey nursing homes, contact us and we'd be glad to assist in any way possible. We can also advise you on how to protect your loved one from poor medical and nursing treatment, bedsores, neglect or other abuse.

## CAR INSURANCE

### Beware when you buy on-line

Lured in by those claims to save you 15%? Be careful! Many insurance websites automatically steer you to a designated selection to get you to choose what they want and what is most profitable to them. If you have any questions, we will gladly answers them or review your insurance policy for free. Here are some suggestions to help you get the best coverage.

1. Select the highest LIABILITY LIMITS you can afford but at least \$100,000. Why? Because almost all of your cost is on the first \$15,000 in mandatory coverage. In addition, you can then purchase that much in uninsured and underinsured motorist (UM/UM) coverage to protect your family. While the coverage is mandatory, your UM/UM limits can be no higher than your liability limits. Higher liability limits also protect your assets. Recently, many insurance carriers have been taking cases to trial and guessing wrong. When a jury awards more than the policy, you can be on the hook for the difference.
2. Always select the UNLIMITED RIGHT TO SUE option. I have never met a person who was glad they gave up their right to file a claim. It is not worth the alleged savings (it's less than they lead you to believe) and to forgo the right to make a claim if you or a loved one is injured by someone else's negligence.
3. Do Not select Health Insurance as Primary if you receive Medicare or Medicaid, if you cannot afford to pay the deductibles or if your health coverage is average or below. The safest choice if you are uncertain about your medical coverage is to select the PIP option over the Health option.



## ATTORNEY UPDATES

Lou recently spoke at the Camden County Bar Association seminar "What's New in Civil Practice"? The seminar was held at Tavistock Country Club in Haddonfield on October 21, 2010 and included Superior Court Judges Meloni, Schuck and Milenki from Camden County. Lou also lectured for the Institute of Continuing Legal Education-NJ in a seminar held at the Mansion in Voorhees titled "Keys to Jury Selection in a Civil Case." Lou was again listed in the Best Lawyers 2011 publication for personal injury lawyers in New Jersey and Philadelphia.



*Louis J. DeVoto*



*Andrew J. Rossetti*

Andy recently spoke for the Camden County Bar Association seminar entitled "Using Technology to Present Your Case to Jurors and Mediators," at the Mansion in Voorhees on April 27, 2010. Andy also attended the AAJ trial lawyer seminar in Atlantic City in July 2010. Andy was again listed in the Best Lawyers 2011 publication for personal injury lawyers in New Jersey and Philadelphia.

# WORKERS' COMPENSATION CORNER

## WHO PAYS FOR TREATMENT WHEN INJURED AT WORK?

Workers Compensation insurance coverage is mandatory for all employers in New Jersey. It is the responsibility of the employer or their workers compensation insurance carrier to pay for all reasonable and necessary treatment related to the work injury. If an injured employee is using health insurance, Medicare or Medicaid to pay for treatment following a work injury, the employee has either failed to properly notify the employer of the injury and request treatment, or the claim, for whatever reason, is being denied as being work related. In



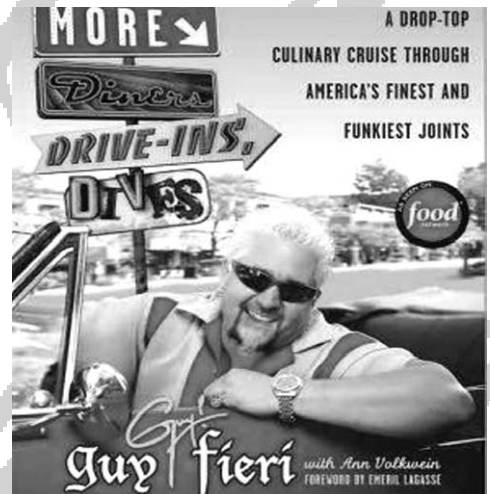
*Dave Nemeth*

either case, using health insurance, Medicare or Medicaid for treatment can expose the injured worker later to a claim for reimbursement! Why, because health insurance, Medicare and Medicaid are not required by law to pay for work related injuries. Unless treatment is in fact being paid under the workers compensation insurance of the employer, the employee should seek competent legal advice before proceeding with treatment and having bills sent to a health insurance company, Medicare, or Medicaid. If you have a work related question, please send it to me and I will be glad to address it in the next newsletter. If you have any questions about workers' compensation law or believe you or a relative or friend may have a case, please call me for a free, no-risk consultation.

## RD Client Featured on Diners Drive-Ins and Dives!



If you've been watching cable TV in the past few years chances are you've seen the popular show Diners, Drive-Ins and Dives, where host Guy Fieri drives around the country in search of great food served up by local chefs. Last month, RD client and chef Michael "Maui" D'Antuono and his wife Liz were featured for their North Wildwood eatery Maui's Dogs where they serve up only the finest dogs with amazing combinations and sides. If you are down the shore this summer, treat your family to some great food and fun and to say hi to Maui and Liz when you are there.



ADDRESS SERVICE REQUESTED

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