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**Children's Hospital and Colonial Parking Refuse to Pay Jury Award
to Boy who Fell Down Air Shaft in Hospital's Garage, Managed by Colonial Parking, Inc.**

Washington, D.C. -- On April 22, 2013, in the case of *Destefano v. Children's National Medical Center and Colonial Parking, Inc.*, a jury awarded 10 year old Giovanni Ibanez-Destefano \$1.56 million, for his past pain and suffering, resulting from his 24 foot fall down and open air shaft adjacent to a designated parking space in the garage at [Children's National Medical Center](#), managed and operated by the largest parking company in the Washington, D.C. area, [Colonial Parking, Inc.](#) The jury also awarded \$26,000 to Giovanni's 8 year old sister, Valery, who was 4 years old at the time of the accident and was holding his hand just before he fell.

This case poses serious implications for safety in parking garages in D.C. and surrounding areas. Colonial operates more than 225 parking garages in the D.C. area and even has its own [I-phone app](#) to locate its garages. The President and CEO of Colonial Parking, [Andrew Blair](#), testified, [in a deposition](#), that Colonial's website stating that customers can expect "the same level of ["safety" in all of Colonial's garages](#), refers to keeping the *cars safe -- not people*. Mr. Blair is also the Chair of the Board for the [Children's National Medical Center Foundation](#). The hospital and Colonial are attempting to shift the responsibility of safety hazards from the garage owner and manager to *customers* who have paid to park in the garage -- even when that garage is in a hospital for sick children. This argument poses a real danger to the public if it is adopted.

The trial was covered in The Washington Post, April 1, 2013, front page, Metro Section (reporter [Petula Dvorak](#)), in an article entitled, ["After Son's Fall in Hospital Garage, the Nightmares Continue in the Courtroom."](#) Due to the public safety issues involved, particularly in a Children's Hospital, there was substantial media coverage when the accident occurred in 2009 and again, in 2010, when the lawsuit was filed, including both NBC, Channel 4 <http://www.nbcwashington.com/news/local/Childrens-Hospital-Sued-Over-Accident-Waiting-to-Happen.html> ([Derrick Ward](#), highlighted by anchors [Jim Vance](#), [Doreen Gentzler](#) and [Wendy Reiger](#)) and CBS, Channel 9 ([Lindsey Mastis](#)), news aired stories on this case in 2009 and when the lawsuit was filed in 2010. On the morning that the April 1, 2013 Washington Post article was published, D.C. Superior Court Judge Anita Josey-Herring issued a "gag" order, prohibiting the attorneys or the parties from speaking to the press for the duration of the trial; however, the gag order was lifted after the trial ended.

After falling two stories through the uncovered air shaft, Giovanni was trapped at the concrete bottom, among trash and a decomposing dead rat, for 15 minutes, awake and crying, "Mommy." His scalp was split open in several places, which his doctor described in a deposition as "de-scalped." His blood was splattered on the walls of the airshaft and in puddles on the floor. Both of his wrists were fractured and he had to wear casts on both of his arms, through his hands, for months. He had soft muscle tissue damage and cuts and bruises throughout his body. He bears a permanent scar from the many stitches across his head. He suffered a concussion, which worsened his pre-existing condition of epileptic seizures. He continues to suffer from post concussive syndrome -- the same condition suffered by many football players and other who suffer concussions in contact sports. It has changed his behavior, so that he has violent outbursts, which caused him to be removed from the school where he was flourishing and transferred to a special school for children who pose a danger to themselves or others. Both Giovanni and Valery also suffered post traumatic stress disorder (PTSD) resulting from the accident. Hours after the accident, a building inspector from the D.C. Regulatory Agency (DCRA) inspected and issued the hospital a Notice of Violation for the open air shaft and for other vent covers in the garage that were in danger of falling off the walls; yet *both* the hospital and Colonial argued that they should *not* be held responsible for the open air shaft and that they should pay nothing to either of the children. The jury rejected their arguments and held both Defendants liable for the children's injuries; however, both Children's Hospital and Colonial Parking have filed refused to pay the judgment.

The hospital filed a [motion to vacate the \\$26,000 jury verdict for Valery](#). The hospital further argues that this pending motion regarding Valery's claims entitles it to withhold payment of the \$1.56 million dollar judgment, plus costs, for Giovanni. Colonial has filed its own post-trial motion, again arguing that it has no duty to its customers to maintain the garage in a reasonably safe condition -- despite the fact that the trial court has repeatedly rejected this argument and expressly held that Colonial has a legal duty to its customers to maintain a reasonably safe business premises. See Colonial's [Motion for Judgment, Notwithstanding the Verdict](#). Our firm has filed Oppositions to both of these motions, arguing that the motions are frivolous and filed for the sole purpose of delaying payment on the judgment and pressuring the Plaintiffs into withdrawing their appeal of the dismissed claims. See [Plaintiffs' Opposition to CNMC's Rule 50 Motion for Judgment and Exhibits](#), as well [Plaintiffs' Opposition to Colonial Parking, Inc.'s Rule 50 Motion for Judgment and Exhibits](#). On June 12, 2013, our firm filed, in the D.C. Court of Appeals, a [Motion to Lift the Stay on the Collection of G.I.'s Judgment against Children's National Medical Center](#), See also [Exhibits to Motion](#).

On April 29, 2013, our firm filed an appeal of several rulings of the trial court that would not disturb the judgment already awarded, including: 1) the court's instruction to the jury *not* to award Giovanni any damages for his ongoing post concussive syndrome; 2) the dismissal of Giovanni's mother's claim for emotional distress; 3) Judge Josey-Herring's refusal to allow the jury to consider awarding punitive damages. Judge Josey-Herring held that, in order to obtain punitive damages against a corporation, the Plaintiff would have to prove that a director or officer of the corporation committed an intentional act or omission to cause the injury to the Plaintiff. Our firm argued has consistently argued that each defendant acted with reckless disregard for the safety of others and that each maintained a corporate culture of reckless disregard for safety, by managers at various levels, exhibited by the lack of policies, procedures or training to inspect the garage. See [Plaintiffs' Notice of Appeal, Exhibit List](#) and [Exhibits to Notice of Appeal](#). In response, the hospital and Colonial Parking filed a [Joint Motion to Stay the Judgment](#), to prevent Giovanni from collecting on the judgment that he was awarded for his undisputed injuries, while the appeal on the other issues is pending. Our firm filed an [Opposition to Defendants' Joint Motion to Stay Collection on Judgment](#), arguing that this compensation should not be held up another minute, after waiting four years for some relief.

Punitive damages are intended to deter wrongful, or dangerous conduct, in the future. See also [commentary regarding the case by the Law Firm of Greenberg and Bederman](#). The standard for punitive damages applied by Judge Josey-Herring would result leave few, if any, corporations being held liable for punitive damages; therefore, decreasing a major deterrent of such reckless disregard for the safety of their customers. From the bench, on April 22, 2013, Judge Josey-Herring said:

While caution may dictate permitting the claim of punitive damages to go to the jury and then address it in post-judgment motions or on appeal, the court, I acknowledge, as counsel for Children's National medical Center has indicated, that punitive damages carry a stigma, even when they are later addressed by the Court of Appeals or the Court after the fact of sending the matter to the jury.

Judge Josey-Herring thereby deemed the "stigma" that might be attached to Children's Hospital and Colonial by allowing the jury to consider imposing punitive damages on them, to outweigh the financial and emotional and burden on Plaintiffs and their counsel, as well as the taxpayers, the court, and jurors in a second trial, if the Court of Appeals reinstates the claim of punitive damages. Apparently, the Defendants are not concerned about the stigma of children being injured on their business premises, due to a D.C. Building Maintenance Code violation, in a *children's hospital*, and arguing that they bear no responsibility for it. Our firm seeks a reversal by the D.C. Court of Appeals, on behalf of the Ibanez-Destefano family, as well as the public interest in customer safety while on business premises in D.C., particularly garages and hospitals. For details see <http://www.dvmartinlaw.com/PersonalInjury>.