

## **\$16.2 Million Drowning Death Verdict Sends Strong Message to Summer Camp Operators: Protect The Kids in Your Care**

SANTA BARBARA, CALIF.--A Santa Barbara County Superior Court jury returned a \$16.2 million verdict on behalf of the parents of a 4-year-old boy who drowned while attending his first day of summer camp at a Goleta, California athletic club (Gottesman v. Cathedral Oaks Tennis, Swim and Athletic Club, et al., Santa Barbara Superior Court Case No. 1246093). With summer right around the corner, the size of the verdict should send a strong message to summer camp operators to protect the kids in their care, says A. Barry Cappello, managing partner of the Santa Barbara law firm of Cappello & Noël, and one of the lead attorneys who represented the boy's family.

The verdict ends a three and one-half year struggle for accountability in the August 15, 2005 drowning death of Jonathan "Yoni" Gottesman in the pool at the Cathedral Oaks Athletic Club in Goleta, just outside the city of Santa Barbara. After repeatedly being "dunked" by a male counselor in the pool, Yoni could not make it back safely to the side of the pool. The lifeguards on duty, counselors and staff did not notice as the boy struggled and then floated face down in the water for over eight minutes. The scene was captured on a security video and was viewed by the jury.

The lawsuit against the athletic club noted that Yoni had barely passed a swim test earlier in the day and he was to remain in the pool's shallow end. He was taken out to the middle of the pool by the counselor, and then left to drown. The complaint also charged that the lifeguards and counselors were not properly trained, that the facility failed to establish required protocols and procedures, and that the facility was operating without a daycare license. "Yoni had a chance to survive even after he was pulled from the pool, but the staff was not certified in child CPR and attempts at CPR were done improperly," says Leila J. Noël, who also represented the family.

"The verdict will never bring Yoni back, but it does hold those responsible for his death accountable for their actions," says Cappello. "This verdict is a wake-up call for all daycare providers to make sure their staff is fully trained and procedures are in place before they let even one child through their doors."

Oded and Anat Gottesman, Yoni's parents, sought criminal charges against Cathedral Oaks but the Santa Barbara County Sheriff's Department and the Santa Barbara County District Attorney's Office refused to prosecute. "The decisions not to prosecute were made despite DAs in other California counties having prosecuted drowning cases on much less onerous facts," says Cappello. "Yoni's parents appealed to the California Attorney General and finally to Governor Swartzenegger but all refused to get involved. Since no criminal charges were filed, the parents filed a civil lawsuit."

The Santa Barbara jury returned a verdict of \$13,885,466 in compensatory damages on April 27 and an additional \$2,341,039 in punitive damages on April 29. Ten of the eleven defendants in the case, including Cathedral Oaks, pool lifeguards, counselors and club managers, admitted negligence. The corporation that operated Cathedral Oaks, Cal-West, did not admit negligence, but the jury found it to be negligent as well. The jury also held that Cathedral Oaks and three managers were guilty of willful misconduct, and that they acted with malice, oppression or fraud in the little boy's death.

In the punitive damages phase, as a result of what the jury found to be Cathedral Oaks' "despicable conduct," the jury rendered a punitive damage verdict against the corporation in the amount of \$2,297,266. Two managers at the club and its aquatics director also were held liable for \$43,773 in punitive damages as a result of their conduct.