

SMALL HANDS BIG DANGERS



Brady Preston Gronlund PC

2735 1ST Avenue SE

Cedar Rapids, IA 52402

319.866.9277

Small Hands-Big Dangers

Our children are our most valuable resource and keeping them safe should be our first priority. It is the greatest tragedy when a child is seriously hurt or killed by negligence or recklessness. Accidents are the leading cause of death among children worldwide, including car accidents, drowning, falls and poisoning.¹ Even more children suffer from very serious, preventable injuries. Unfortunately, our children can be hurt by many of the products and people we count on to keep them safe. When a child is hurt or killed as a result of something preventable, the negligent person or company should be held responsible. Because children cannot stand up for themselves, it is usually the responsibility of their parents or other loved ones to bring a lawsuit on their behalf.

There are many different types of injuries that may be the basis for bringing a personal injury claim on behalf of a child. They include:

1. Lead poisoning;
2. Injuries from car accidents;
3. Playground injuries;
4. Daycare injuries;
5. Injuries from defective products, including cribs, car seats, toys and medicine;
6. Birth injuries; and
7. Injuries from bicycle accidents

There are a number of special considerations involved in child injury and death lawsuits and parents should be sure to choose a lawyer that understands them all.

Who Files the Lawsuit for the Child?

In Iowa all lawsuits for an injured child under the age of 18 must be brought by the child's parents or a guardian or conservator.² In cases involving a child's death, the parents of the child

¹ United Nations Report on Child Accidents
<http://www.un.org/apps/news/story.asp?NewsID=29244&Cr=child&Cr1=who>

² Iowa Rule of Civil Procedure 1.210

can bring their own claim for what is called loss of consortium and a claim for the lost value of the child's estate.³

What are the Damages that Can be Awarded?

The damages that can be awarded to an injured child include past and future physical pain and suffering, past and future loss of full function of the mind and body, future lost earning capacity and future medical expenses likely to be incurred after the child reaches the age of eighteen. Each case is different and so are the damages that the child has suffered. For example, the largest damages likely to be awarded to a child that has suffered loss of intelligence or other cognitive injuries from lead poisoning are the loss of use of their mind and lost future earning capacity. The largest damages likely to be awarded to a child who is injured in an automobile accident but largely recovers from may be the past loss of use of their body and past pain and suffering. While injuries and damages vary, all children deserve to be compensated for their injuries just as adults do and sometimes even more because they may be dealing with their injuries for a much longer period of time.

There are also damages available to parents of an injured child. These include loss of consortium damages (loss of services and companionship of the child) and expenses incurred by the parents as a result of the child's injury-these include past and future medical expenses until the child reaches the age of eighteen and educational expenses related to the child's injury. Parents oftentimes suffer a great loss as the result of an injury to their child and they are entitled to recover for the loss.

Most children are not able to fully describe how an injury has impacted them and therefore an attorney representing a child needs to interview a lot of witnesses. These witnesses

³ Madison v. Colby, 348 N.W.2d 202, 209 (Iowa 1984).

can include teachers, parents, doctors, counselors and family members. Attorneys representing older children should always make sure to talk with the child and to know as much about the child and their injury as possible.

When to File the Lawsuit?

Another special consideration for child injury cases is the statute of limitations. The statute of limitations is the time limit that you have to bring a lawsuit after either the date of the injury or after you reasonably discovery the injury and the cause of the injury. The statute of limitations for children is different from the statute of limitations for adults. Children have until one year after their 18th birthday to bring most types of lawsuits for injuries.⁴ However parents of an injured child only have two years to bring their claim for expenses and loss of consortium.⁵ In most cases both the child's and the parents' claims are brought in the same lawsuit. Sometimes it is in the child's best interest to wait longer than two years to bring their claim, for example if it will be easier to prove the child's injury at a later date, and then it becomes necessary to bring two separate lawsuits.

What Happens if the Case Settles or We Get a Verdict?

One of the most important things for any attorney representing children is understanding what to do with any money that the child receives. In Iowa, if a child receives less than \$25,000, the payment needs to be made to a custodian for the child and the payment needs to be made in accordance with the Uniform Transfers to Minors Act.⁶ This means that the money should be paid to the custodian for the child (often a parent) and used by the custodian for the child's benefit. The custodian generally does not have to report to the Court how the money was spent

⁴ Iowa Code Section 614.8

⁵ Iowa Code Section 614.1

⁶ Iowa Code Chapter 565B

unless the child (after reaching the age of 14) or another adult in the child's family asks the Court to require that the custodian itemize all of the expenditures made on the child's behalf.⁷

If the child receives more than \$25,000, a conservatorship must be established for the child and a conservator appointed.⁸ This requires the Court to approve who is appointed as the conservator and how the money is spent. Oftentimes the Court will require that the majority of the child's money be maintained until the child reaches the age of eighteen. Sometimes, however, the child may have immediate needs relating to the injury and the Court may allow some of the child's money to be used for those needs. It is very important for attorneys who represent to children to understand all of the legal requirements for establishing and maintaining a conservatorship. These requirements do not apply to damages awarded directly to the parents of an injured child for their own claim.

Another important consideration when settling lawsuits on behalf of children is whether the family receives public benefits. Oftentimes a child may receive Social Security Disability or Medicaid benefits and it is important, not only for the injured child, but for the entire family to make every effort to structure the settlement in a manner that allows the child and family to continue receiving as many public benefits as possible. It is important for parents of injured children to make sure that their child's lawyer fully understands all of the public benefits that the family receives and understands the complicated eligibility requirements for each benefit.

What is Most Important?

If you have lost a child or have a child that has been severely injured it is very important for you to find the best attorney for your child. You should consult an attorney with experience representing children and who is familiar with all of the complicated factual and legal issues that

⁷ Iowa Code Section 565B.19

⁸ Iowa Code Section 633.574

are involved in child injury and death lawsuits. You should also find an attorney that you are comfortable with, who understands how important your children are and cares enough to try and make things right. It is a grave injustice whenever a child is killed or injured-especially if it was preventable.