

# NEW YORK INJURY TIMES



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**HAPPY HOLIDAYS & HAPPY NEW YEAR 2008!**

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## “\$1 MILLION DOLLARS FREE!”

THE CLASSIFIED AD SAID



If you thought the ad was true, wouldn't you race out the door to be the first one on line asking for the promised money?

What if the ad said that before you

could get your “Free \$1 Million Dollars” you first had to be involved in a head-on car crash? How many people do you think would still wait on line for that free money? I'll bet you there would be some desperate people waiting for that money, regardless of what it took to get it.

What if there were more conditions that you had to meet before you could get that money?

Let's say in addition to getting hit by a car head-on, you had to have

been ejected from your car, airlifted by helicopter to the nearest trauma center where you fractured your pelvis, both your legs, were on a respirator for 20 days, you needed surgery to put the broken bones back together with hardware, pins and screws, and were hospitalized for 4 weeks. How many people do you think would still be on line asking for that “Free \$1 Million Dollars?” Not many. Yet I'm sure you'd still find a few very desperate souls willing to do most anything for that kind of money.



But wait! Suppose there were even more conditions before you could get your hands on that \$1 Million Dollars. Suppose that in addition to the horrendous trauma, lengthy surgery, complications from surgery, being in a medically-induced coma

## Gerry's (Never Ending) Fictional Book Continued...

New York Magazine got wind that Jimmy had agreed to endorse the Democratic candidate for president. Time magazine learned from a different source that he was endorsing the Republican candidate.

Both magazines decided to run their stories without first confirming it with Jimmy's security chief. The magazines hit the newsstands the same day. When the editors of both magazines realized they had totally opposite stories they fired *themselves* for such stupidity.

In the meantime, Jimmy's 'touch' had helped cure thousands of terminally ill cancer patients. Mrs. "X" sent Jimmy 100 pounds of watermelon. She had no money, but lots of watermelon.

...continued at p. 3

and hospitalized for an entire month, you needed three weeks of rehabilitation therapy where you learned to walk again. Suppose you also couldn't return to your job earning \$60,000 per year, and you couldn't play with your children because you could barely walk. Your six-year-old wonders why you can't play soccer and baseball with him, and your 11 year-old asks why you're home during the day instead of being at work. You spend your days watching ridiculous daytime soap operas thinking how you'll support your family since you can't work. Suppose your doctor tells you that you'll never be able to play sports again, and you'll be lucky to walk without a limp. Your job at the loading dock required heavy lifting and there's no way you can lift more than ten pounds now. Your doctor says that if you go back to the type of work you were doing before, there's a good chance you'll never walk again.



How many people, given those conditions do you think would stick around asking for that "Free \$1 Million Dollars?" I don't think anyone would.



In certain cases, we use this argument in summation to explain to a jury how significant a victims' injuries are and how the money that we're asking for is justified. If a lawyer simply asks a jury to award \$1 Million Dollars without providing a background or evidence to support the award, a jury is unlikely to give away such a large sum of

money. However, when presented with a reasonable explanation such as the one above, it becomes much easier to understand how such an award can be appropriate.

Importantly, a good attorney will usually *understate* the value of their case, and once the extent of the injuries become apparent, the jury will (hopefully) recognize that the amount asked for is *not sufficient* to cover all of the medical expenses, lost wages and pain and suffering that the injured victim has suffered. You think you want a million dollars? Sure, who doesn't. But if an injured victim asks for that compensation (Remember from my previous newsletter where we discussed *compensation* as being an obligation to repay a debt that's owed?) look to see what injuries they've suffered. Only by looking carefully do we see that this certainly isn't a 'windfall' or a 'winning lottery ticket'. Instead it's full and fair compensation.



## TRY OUR TRIVIA GAME!

**Test your knowledge of New York medical malpractice and personal injury law. Answers appear at the end of this newsletter.**

1. If you were a passenger in a car driven by your mom or dad and were injured in an accident, you may have no choice but to sue your parent.  
TRUE OR FALSE?

2. The majority of medical malpractice cases in New York are won by doctors & hospitals.  
TRUE OR FALSE?

3. A podiatrist (foot doctor) can testify as an expert against an orthopedist regarding the standards of care applicable to an orthopedist.  
TRUE OR FALSE?

4. In New York, if an anesthesiologist is found to have re-used syringes to give injections to multiple patients, he will lose his medical license.  
TRUE OR FALSE?

5. In a civil lawsuit in NY, the parties can agree to a high/low agreement which limits the maximum possible award and also the minimum amount that will be awarded.  
TRUE OR FALSE?

6. A jury award made at trial can be appealed to the Appellate Division of the State of New York.  
TRUE OR FALSE?

7. If a litigant is unhappy with the result of their appeal, they have an absolute right to have their case heard by the Court of Appeals.  
TRUE OR FALSE?

8. In a death case, the family member who is named as the representative of the estate is known as either the "administrator" or the "executor."  
TRUE OR FALSE?

9. In a civil trial involving claims of medical malpractice or personal injury in NY, it is common to have the case decided only by a judge and not a jury.  
TRUE OR FALSE?

10. If you bring a lawsuit against the City, or County, the Judge hearing your case will feel compelled to deny your case because he most likely is paid by the City or County, and would fear losing his job if he ruled in your favor.

TRUE OR FALSE?

11. An undocumented alien (illegal alien) can bring a lawsuit in New York and receive compensation for their injuries.

TRUE OR FALSE?

12. If a criminal, in the course of committing a crime, injures himself, he can bring a lawsuit and seek compensation for his injuries.

TRUE OR FALSE?

13. Firemen in Nassau County & Suffolk County get paid for their service to the community.

14. The cost for a NY doctor to buy medical malpractice insurance is going up.

TRUE OR FALSE?

15. The 'American Association of Justice' used to be known as the 'Association of Trial Lawyers of America'.

TRUE OR FALSE?

16. NYSTLA is a religious organization.

TRUE OR FALSE?

17. The bar exam is a test police use to see how many drinks you've had and if you're over the legal limit.

TRUE OR FALSE?

18. An 'EBT' is a lawyer's secret code for a witness who's good for the other side.

TRUE OR FALSE?

19. The 'character & fitness committee' looks to evaluate whether an attorney is physically fit to practice law in New York.

TRUE OR FALSE?

20. The Appellate Division is lower than the Court of Appeals in New York.

TRUE OR FALSE?

21. A trial level court is required to follow a decision rendered by a trial level court in a different county- all within NY state.

TRUE OR FALSE?

22. An 'IME', also known as an independent medical exam, is an unbiased physical examination for the defense.

TRUE OR FALSE?

23. Telling a "Little White Lie" can ruin your medical malpractice or injury case.

TRUE OR FALSE?

24. Most medical malpractice cases in New York are won by injured victims.

TRUE OR FALSE?

25. Gerry's fictional never-ending story is about a young boy who grows up to become leader of the free world.

TRUE OR FALSE?

26. Gerry's video tips appear on Google Video, YouTube, Blip TV, AOL, Metacafe and many other web video sites.

TRUE OR FALSE?

#### **BONUS QUESTIONS:**

**1. In New York, the burden of proof in a civil lawsuit is the same as in a criminal case.**

TRUE OR FALSE?

**2. "Judgment non-obstante verdicto" (JNOV) means 'The verdict should be thrown out regardless of the judge or jury's decision'.**

TRUE OR FALSE?

Answers appear at the end of this newsletter.

## **GERRY'S (NEVER ENDING) FICTIONAL STORY**

...continued from page 1

The cancer doctors that Jimmy relied on took extensive tests every month to

make sure he still

was able to cure

cancer. Yet despite these brilliant

minds recognizing his special touch,

no one could explain

it. Was it permanent? Temporary? Did

other people have this touch? Who

knew? How would someone find out if

they had the touch anyway, except by

pure coincidence- which is exactly how

Jimmy's gift was realized. Going to the

hospital with his wife was the triggering

event for this discovery.

Rather than leave things to chance, one creative oncologist in Idaho set up a program in his small-town hospital. He put an ad in the newspaper asking for

volunteers to comfort the cancer-stricken patients. All they had to do was hold hands with these very ill patients.

He'd even given them a free meal in



exchange for their time. His hope was that using scientific methods, he'd be able to test if anyone else had Jimmy's special gift. The only problem was that he had no clue how to scientifically test his theory.



His name was Dr. Lyon Sinik. He just didn't believe that Jimmy was the only great-one in this life. He was so envious of Jimmy, that he created rumors in his little 500 person town about Jimmy, like the one that said he was the Devil's own son. Or how about the rumor that Jimmy was nothing more than the Jews' hoax to get people to part with their hard earned money. On top of that nasty rumor, he also mentioned to the local reporter, who happened to be his brother-in-law, that Jimmy consorted with those loose women in those fancy 'Red-light' districts in Nevada and other foreign places.

Shortly after Dr. Sinik's brother-in-law printed a lengthy piece in the local rag called "Stink-hole Devil Worshiper Steals Dreams of 12 Year Old Girl" did the major news wires pick up on the story. The fabricated story told how this young girl stricken with bone cancer went to Jimmy for a cure. Jimmy took all her money, and 'cured' her, for all of 1 week. She then returned to the hospital for the next 10 months where she currently remains in the intensive care unit.



The story had good bite. It picked up traction as the days passed. The only problem with the wire news was that

nobody was researching or investigating the facts of the story. They were merely picking up the news and putting it on page 1 of every national newspaper and internet news site possible.

Jimmy got word of the story from his wife, when she called him in between delivering babies. She saw a news report on the evening news and wanted to make sure he knew about it. He didn't. That prompted an immediate call to his security chief. The chronology of what happened next was impressive.



The security chief called the chief oncologist at Second Opinion Hospital. He wanted him to find this 12 year old girl, fly her to New York at our expense and run every test possible on her. Confirm (1) that she had bone cancer, (2) that Jimmy treated her, (3) that Jimmy charged her a dime, and (4) that her cancer recurred. At this point, he didn't even know the girl's name.

The next call was to the editor of New York magazine- someone whom he had gotten very friendly with recently. He requested a top-notch investigative reporter dig into this story. If it was true, he'd give them an exclusive to the story. If it wasn't true, he'd be holding a press conference and filing suit against the little newspaper and the reporter who wrote the story.

The call after that was to the owner of the little town paper, Duff Flufanagehn, a 52 year old Dutchman who let his reporters do basically whatever they wanted. The paper was a vehicle for

every hate-mongering local in the small, puny little town. Duff clearly had no idea who the article referred to, and in Duff's drunken stupor, quickly told Jimmy's chief that he didn't even know if the story was true, nor did he care.

In the meantime, Jimmy received word from the Prime Minister of Israel asking for a personal favor. The security chief was insistent on relaying a detailed message rather than interrupting Jimmy. The message asked him to help participate in creating peace in the Middle East. This was an intriguing message, and Jimmy asked his security man to get more details. At the same time, he had his security chief call the



C I A  
chief  
and the  
F B I  
i n t e l l i -  
g e n c e  
u n i t



to see if this was kosher. It turned out that the Israeli prime minister wanted information about the Palestinian president. They had information from an Arab doctor who apparently treated the Palestinian president that he was receiving chemotherapy treatments. Further intelligence gathering revealed that a pharmaceutical company was providing the treatments directly to him. The Israeli prime minister wanted Jimmy at



next month's Mid-East Peace Summit. Condi Rice would be there as would the democratic and republican candidates. The prime minister was unsure if the Palestinian knew who Jimmy was. If he knew, he'd never agree to meet him, since any in-

formation he obtained about his life expectancy would clearly be relayed to the Americans who would then relay it to the Israeli's. The Israeli prime minister was willing to bet that the Palestinians didn't know who Jimmy was.

The plan, if Jimmy agreed, was to put him in disguise. Give him a fake wig, put on some special effects makeup, and literally give him a hollywood makeover so nobody could recognize him. Would he agree to the plan? What would he charge for his time? Would it work?



Join me next month when we continue our never-ending fictional story!



## Recent Articles & Video Tips

by Gerry Oginski

(You can see these on my website, [www.oginski-law.com](http://www.oginski-law.com))

### 10 Misconceptions About New York Medical Malpractice Lawyers:

Read what's fact, and what's myth. Crucial reading for anyone interested in malpractice, and for anyone looking to hire a malpractice lawyer in New York State.

### 2 Questions Every New York Malpractice Lawyer Needs To Ask:

Learn what two questions every experienced medical malpractice lawyer in New York needs to ask a potential client.

### A MEDICAL MALPRACTICE VICTIM'S GUIDE TO COMPENSATION IN NEW YORK:

Learn how a medical malpractice victim obtains compensation for their injuries in the State of New York.



## CASES OF INTEREST WE'RE HANDLING

A woman had foot surgery, and got recurring infections that were not properly treated. She died a year later from the massive infection that went from her foot throughout the rest of her body.

A young woman was walking across the street when she was hit by a Mack truck. She suffered fractures, lacerations and a loss of her sense of smell. She needed surgery with pins, hardware and screws to put the bones back together.

A dentist removed good healthy teeth with promises that he was going to put implants in the man's entire mouth. One of implants went into the sinus without being recognized. Complications arose and the dentist abandoned this man and his entire practice. Now he has no teeth and he can't afford to get his mouth fixed.

**If you have an interesting case you think we should know about, please call and let me know.**

## DEFYING GRAVITY

### OUT OF THE BOX THINKING:



I was looking out the window in my office the other day, and I saw a bird defy gravity. No,

I'm not talking about flying, I'm talking about a woodpecker that walked up a tree. It seems that someone forgot to tell him that gravity propels objects down toward the ground. Watching this woodpecker hunt for insects on this tree was fascinating. This little, bright-colored bird, with a sharp beak simply kept his feet attached to the bark of the tree. His feet were at a 90 degree angle to the tree, but his body was parallel to the tree. Each time he moved positions, he simply walked up and never once used his wings. He used great speed when going up the tree.

Why is this important? Two reasons: (1) Who ever said a bird needed to fly to get up a tree? (2) Who ever said that you have to do things in a conventional way? By thinking outside the box you can often come up with creative ways to accomplish your goals. Whether that means making a list of "To Do" items that must get done, or sitting down to do homework with your 10 year old, thinking outside the box may help you do things differently and with a fresh perspective.



Here's a great example: When I was thinking about the video tips I wanted to create I wondered what exactly someone searching the web would look for. Before I even started to film any video, I actually searched the web for weeks looking for other lawyers and people in other professions to see if they had any brilliant ideas. I'm sorry to say that many of the video clips I watched had terrible content. Most of those lawyers who were using video simply were interested in telling the world how great they were.

I thought that if I'm a potential client and have questions about an accident case, I really don't want to hear someone brag about what a great lawyer they are. Sure, I'd want a really good attorney, but most people searching on the web want **ANSWERS TO THEIR QUESTIONS**. Would a potential client get answers to their questions from those video lawyers who say "Come to my law firm, because we're great and we know all the Judges and key players in the business"?

So, how did "Out of the box" thinking help me when deciding what to put in my videos? I'll tell you my secret...but please don't tell these other lawyers, because I'm worried they're going to wake up and realize that the information they're giving people is not really helpful when someone is looking for an answer to their problem.

I realized that the only reason someone will come to my website is to obtain

information about medical malpractice and accident lawsuits in New York. They're not coming to [www.oginski-law.com](http://www.oginski-law.com) to get cooking recipes, or to buy a t-shirt, or to participate in an ebay auction. Since they're looking for information, that's what I'm going to give them.



I decided long ago to look "outside the box" and explain the process of how lawsuits work here in NY. How does a malpractice case get started? Why do we need an expert? What to do in case of death? Why do cases take so long? How do I choose one attorney over another? By explaining the secrets to people who want answers, it gives them the freedom to make intelligent choices about whether to hire an attorney, what to look for in an attorney, and to understand how the legal system in New York works.

Only by looking outside and thinking like a potential client was I able to figure out what to put in my videos: Helpful hints, useful information, and plenty of straight-forward explanations. Most people don't want to hear about "Me, me, me." They really want to hear how I can help them solve their problems.



**TONGUE TWISTERS:**  
Say the following phrases 3 times REALLY fast:  
1. LEMON LINIMENT  
2. GREEK GRAPES



Thanks to Mia for these great tongue twisters! I still can't say them more than once without tripping up.



## HEADLINES



## Actual news headlines from around the Country

Surgeon admits to photographing patient's tattooed genitals

Jury awards \$15.7 million to ex-cop in cycle-truck crash

Jury awards \$2.85M to child mangled by escalator

Tort-reform group says NJ Atlantic county courts a 'Hellhole'

Not A Good Idea For Judges To Give Gifts To Litigants

From delivery room to courtroom for Staten Island docs

Case dismissed-The right NY medical malpractice expert makes difference

Patient Had Surgery on Wrong Side of Brain-Rhode Island Hosp. Fined

New York's medical malpractice insurance troubles are self-inflicted: Report shows  
New York Public Interest Re-

search Group and the Center for Medical Consumers, released a report showing that New York's medical malpractice insurance troubles are self-inflicted - caused by the state's manipulation of insurance rates and its misuse of a rainy day fund.

Louisville Attorney is loser in malpractice lawsuit

To read the details of each of these stories, go to [www.oginski-law.com](http://www.oginski-law.com) and click on the NEWS section. It's fascinating reading.

## Some final holiday thoughts...

Once again we received many thoughtful holiday cards and new year's greetings. I appreciate every one of them. But tell me honestly...when you receive a pre-printed card from your bank or your dry cleaner, do you really get those warm and fuzzy feelings that make you feel really special? I don't. I mean, there's not even a signature attached to a card. Or how about those generic holiday scenes that I'm sure someone spent a few seconds looking at when deciding to sent out holiday greetings. I always tell my wife that the best holiday and birthday present she could ever give me is a personal letter describing all the wonderful things we did this past year. I don't really need another tie or t-shirt or cutesy electronic device from Brookstone. I know most people don't remember what they got from Aunt Silvia 5 years ago, or even what toy they bought for their daughter 2 years ago. But I do know that years from now, when I open those yearly letters, I'll be able to fondly remember every one of those fantastic events that were recorded in a letter by my wife and kids. Hallmark can't do that, nor can a material item you buy in a store or online. (By the way, I know that not everyone agrees with my holiday thinking, my wife included- and that's perfectly OK. But I like it much better than any gift from a store. That's what I call a personalized gift.)

## ANSWERS TO TRIVIA GAME

1. True 2. True 3. False 4. False 5. True 6. True 7. False 8. True, 9. False, 10. False, 11. True, 12. True, 13. False, 14. True, 15. True, 16. False (NYSTLA stands for New York State Trial Lawyers Association), 17. False, 18. False (EBT stands for examination before trial), 19. False, 20. True, 21. False, 22. False, 23. True, 24. False, 25. False, 26. True.  
Bonus: (1) False, (2) True.

# Give this newsletter to your best friend. They'll thank you for it, and so will I.

*Here's a well-kept secret...If you'd like to join our exclusive free online newsletter, just sign up at [www.oginski-law.com](http://www.oginski-law.com). Get free updates on New York malpractice & injury law, read fascinating and intriguing law-related articles, get free video tips, and best of all- you can opt out at any time.*

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New York Medical Malpractice & Injury Lawyer

*SEND TO:*

**Call me with any legal questions about injuries from any accident or medical care. I promise to give you a straightforward and honest answer. That's my guarantee.**

**Call me today with your questions at 516-487-8207**