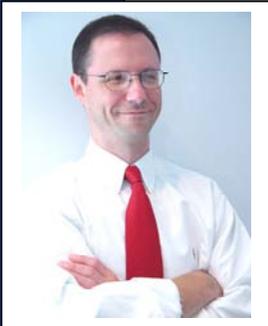


# New York Injury Times

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Gerry Oginski, Trial Lawyer

## SUMMER EDITION

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# In This Summer Edition, We Look At

## VICARIOUS LIABILITY

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Vicarious liability is a legal term used to mean that someone is responsible for the actions of another. Here's where it comes into play:

Let's say you work in a supermarket and while stocking a shelf you drop a jar of tomato sauce and it breaks. Instead of cleaning it right away, you linger and finish what you're doing, then go on your break. In the meantime, a customer strolling down the aisle and looking at the shelves (and not on the floor) slips on the sauce and falls suffering brutal injuries. Who's responsible?



In the purest terms, the employee is responsible. But since he's working for the supermarket, the store is ultimately responsible for the actions of their employee.

What does this have to do with leasing a car in New York? Plenty. In the early 1900's when there were chauffeurs to drive around wealthy people,

laws were developed to make not only the driver of a car



responsible for an accident, but also the owner of the car as well. Over the years, car companies have created leasing companies because they are so profitable.

In a car lease, you literally rent your car for a period of time, say 3 years. At the end of your lease, you can return the car, or you can buy it

for fair market value. If you give the car back, you're done and you have no further obligation with the car. If you buy the car, then you are now the proud owner of a used car (your own used car).

Here's the dilemma. While you lease a car, **YOU DO NOT OWN IT!** Instead, the leasing company owns it. It might be Ford Motor Credit, or some similar credit company. You never get the title to the car while you lease it. Only when you purchase it. So what does this mean if you're in an accident?

It means that as the driver, you will be sued. But who gets sued as the owner of your leased car? Your credit company! That's right. The Toyota Motor Credit Corp. will be sued as the owner of the car. If you are held responsible for causing someone's injuries your leasing company will be on the hook to pay those damages (as well as you).

Because of this scenario, all car leasing companies in



New York no longer offer leases for their cars, with the exception of Toyota and Nissan. Instead, these companies offer balloon-type payments which look similar to a lease but are really different. The difference is that while you're still making a monthly payment to your credit company, **YOU OWN THE CAR. YOU GET THE TITLE TO YOUR CAR.** At the end of your three years, you can make the remaining payment to outright purchase the car, or you can return it and move on to your next car.

The other difference is that you pay taxes on the full purchase price now, whereas before you were only paying sales tax on the amount you financed while you leased your car.

Toyota and Nissan have looked at the New York market and decided to stay in the leasing business, but have increased their costs to offset any added costs that might come their way from lawsuits arising out of car accidents.

In any accident where you are employed by a company and you were in the course of doing your business at the time of the accident, your employer is going to be held responsible for your actions.

This applies most often in accident cases involving car accidents, slip and falls on someone's property, and in a hospital or doctor's office where a patient received improper care by an associate or employee.

As a reminder, make sure your car insurance is up to date and you have the most comprehensive insurance you can afford. See if there's any way you can afford to obtain umbrella coverage (also known as excess insurance) to cover you in the event the damages exceed your insurance policy.

## SWIMMING POOL TRAGEDIES

It happens every summer. We sadly read in the newspaper about some toddler wandering off and a family member finding them floating in the pool. "It was only a second when I went inside..." "I took the trash out back, and by the time I got back, he was at the bottom of the pool..."



As most parents know, toddlers are naturally curious and very inquisitive. Not long ago I went to a family-friendly

hotel that had a pool and there were large prominent signs all around that said "THERE IS NO SUBSTITUTE FOR PARENTAL SUPERVISION."



I firmly believe that to be true. Even when you take your kids to your local pool that has multiple lifeguards, it boggles my mind that parents let their young kids into the pool on their own, without any parental supervision. Here's a parent's piece of advice that will come in handy every summer: **DO NOT RELY ON, OR TRUST A LIFEGUARD TO DO WHAT YOU SHOULD BE DOING YOURSELF.** Is it inconvenient? Sure. Does it take time away from you socializing with people at the pool? Absolutely.

But when tragedy falls and you look to question who was looking after your toddler, don't expect to lay full blame with the lifeguard or your 10 year old for not watching your youngster, especially while you were chatting away aimlessly on the other side of the pool.

In a public pool, lifeguards are posted at different points around the pool. Think about how many people a lifeguard must watch at any given time.



Look in the shallow end of any pool during a hot day and you're bound to see more kids in the shallow end than adults in the deep end. The point is that a lifeguard, no matter how good they are, can't watch everyone all the time. If you look carefully, you will actually see that many lifeguards are young and like to socialize themselves in an effort to avoid boredom while sitting high up on a lifeguard chair.

Being a parent means making certain sacrifices. Being ever vigilant at a pool is one of those

absolute sacrifices that you cannot compromise on. If socializing is your only concern, make arrangements for a responsible adult to watch your child while you enjoy some private time talking with your friends.

Let's go back now to a private pool scenario. You're invited to friends for a barbeque and an afternoon of summer swimming in their pool. You arrive and notice they have a regulation fence around their pool with a self-locking gate. You are glad that the pool looks secure and toddlers can't get into the pool on their own. They even have a pool alarm that triggers if anyone goes into the pool. The door from the house to the backyard is a sliding door that is easily opened.



After lunch and an afternoon of good safe fun in the pool everyone heads into the house to relax. While busy talking and mingling nobody recognizes that the adorable little 2 year old is not around. Further investigation by a curious mother reveals the child is not anywhere in the house. Returning to the back door she finds the sliding door open a few feet. Looking around the backyard quickly she realizes her child isn't there. Frantic thoughts immediately enter her mind as she races toward the pool. She notes the pool gate is not fully latched and is only resting against the locking bolt. She races into the pool area and quickly scans the pool to see if her fears are justified. She knows the pool alarm hasn't been triggered, but looking closer, sees something at the bottom of the pool that makes her heart drop.



The police investigate to find out how the 2 year old managed to bypass all the people in the house. They look to

see how a toddler was able to operate a self-locking gate. They question why the pool alarm never triggered. The guilt, the sadness, and the torture that all family and friends will endure for this tragic episode will last their lifetime.

Who's to blame? Obviously, no amount of money is ever going to restore the health or life of an adorable little 2 year old to his or her family. But what's the purpose of a lawsuit then? Ideally, it's to compensate the victim and their family for the injuries that they suffered and for the losses they've endured. I guarantee you that nobody thinks about a lawsuit during the first few days and weeks after such a tragedy. But gradually, someone asks "Could this have been prevented?" and if so "How?"



Can a parent be sued for failing to properly supervise their child? In New York the answer is no. Can the homeowner be sued for failure to supervise the pool area? Maybe, but the facts would need to be examined. What about the self-locking gate? Did it malfunction or was it simply that the last person didn't make sure it fully clicked closed as they headed to the house?

What about the pool alarm not triggering? That is the more interesting theory of liability. Here, you have a device that is designed to prevent this exact scenario. Was it properly tested and working before company arrived? Did the battery wear out? Did the unit fail to work? All of these questions raise valid issues that must be examined thoroughly to evaluate a case. Make sure the police retain the pool alarm so that you can have it professionally tested. Do not let anyone destroy any piece of evidence. Doing so could well destroy any ability you have to successfully prove your case.

Common sense and a little precaution go far in preventing tragedy.

### Gerry's Book continued...

"I'll have silence in my courtroom," bellowed the tiny, feisty judge of the Supreme Court of the State of New York. His hand barely rising above the table top. It seemed as if the chair he was sitting in would swallow him whole. "Bring your next witness," he squealed.

Jacob was called to the stand and before sitting in the chair, he stuck out his hand toward the judge to say hello. The judge, not wanting to seem like too much of a ninny, shook Jacob's hand like a wet fish, and gave Jacob's hand a little squeeze. That was all it took. Jacob knew this phony little acerbic Judge had just three weeks to live.

Jacob was called to testify by the lawyer for Julie's family- the one who had died while rollerblading on campus. The lawyer was trying to show that the school knew about her impending death, because of Jacob, and they failed to act on it or prevent it. As expected, the trial turned into a circus once Jacob was asked about his ability to predict the future. The lawyer for Julie's family asked him to try his predictions in the Courtroom. He agreed and said he'd already done so.

"Really?" asked the plaintiff's attorney. "Who?"

"The Judge," said Jacob.

"What?" yelled the puny little Judge.

"Yes Judge, you have only three weeks to live," responded Jacob.

With that statement, pandemonium broke out in the Courtroom. Once the yelling stopped, the Judge stood up on his chair making himself just the same height as the top of the chair. He looked with disdain upon Jacob and said "prove it."

"I can't. You'll have to wait 3 weeks," answered Jacob.

"Prove it," said the lawyer. "OK. GE will go up 2 1/2 points today, IBM will be up 1 1/4 points, Ford will go down 3 points, Microsoft will go up 1/4 point," commented Jacob authoritatively.

The next day the Judge and every person on the jury walked into court with the newspaper turned to the stock market section. Every one of Jacob's predictions came true. Every juror had his mouth open and was staring at Jacob. Julie's family lawyer knew then that he'd win this case. "Jacob Morgan, retake the witness stand," yelled the Judge.

Predictably, Julie's family won their case. Millions of dollars in compensation for her untimely and preventable death. As predicted, the old fart of a judge who presided over the case died on the day Jacob said he would. As befitting the Judge's demeanor, a chair was thrown out a 6<sup>th</sup> floor window by a convicted felon trying to escape from Court. Unfortunately for the Judge, he was returning from lunch and had the displeasure of being crushed to death by a chair.

Back at the White House Jimmy the Hack asked Jacob to accompany the President to every single political reception of foreign leaders. He also told him he's being put on the payroll of the U.S

. government- under a black-line item of the National Security Agency. That means he's a covert operative and vital to the national security of the United States. He'd be afforded all the protection of the government, military and secret service if needed. He could finish his school work in his spare time.

"How much are you paying me" asked Jacob?

"How much do you need" answered Jimmy the Hack?

"We've had this conversation before. Give me \$1 million dollars per month," said Jacob.

"OK. Done," said Jimmy. "Where's my contract?" asked Jacob. "No contract. Verbal only," said Jimmy. "I want a written contract. I want to know my account and how to access it," responded Jacob. "Fine," said Jimmy. He took a napkin and wrote on it "The US Government hires Jacob for his special services at a rate of \$1 million/month. Either party may cancel this agreement with 30 days notice." Signed Jimmy Vargas, National Security Advisor. Just before handing Jimmy the napkin, Jimmy sneezed and grabbed the napkin with the writing, and proceeded to wipe his nose with it. He then handed the wet snot rag to Jacob. "Go screw yourself," said Jacob.

"No contract, no deal," he added. Fed up and frustrated with the chance of a paper trail, Jimmy realized he had no other choice. His secretary was called in, and took dictation from Jimmy. She had it typed in two minutes. They both signed it. "Good, let's get started," said Jimmy.

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