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ATTORNEY MAKES IMPROPER COMMENT DURING OPENING ARGUMENT...DO I JUMP UP & OBJECT?

During opening arguments in a civil lawsuit here in New York if the defense attorney makes argument or makes a comment that I think is improper can I jump up of my seat and say, "Objection judge. That's improper"? You want to know the answer? Come join me for a moment as I share with you some terrific information.

Hi, I'm Gerry Oginski, I'm a New York medical malpractice and personal injury attorney practicing law here in the state of New York. The answer is I can. Should I do it? The answer is maybe not. You want to know why? During the course of trial each side has an opportunity to make opening remarks. That can happen in an accident case, or in a medical malpractice case, or even in a wrongful death case.

Now after the judge gives preliminary instructions to the jury he'll then tell me to go ahead and make my opening remarks. Then after I sit down the defense attorney will have an opportunity to get up and make his opening remarks. Now if he says something that I feel is improper I have an obligation, an ethical and a legal obligation to stand up and yell out, "Objection judge. That's improper."

Now the judge will have to rule on whether or not he agrees with me or disagrees with me. If he agrees with me he's going to say, "Objection sustained," meaning that the defense attorney cannot talk about that issue. If he doesn't agree with me he's going to say, "Objection overruled," and allow the defense attorney to continue on.

But now here's the question, and it's a strategic one: should I go ahead and make an objection if it's not a big deal even though it may be legally improper? The answer is maybe yes and maybe no. I have to make an instant decision when I hear those improper things come out about whether or not I should object. I know that if I get up and yell objection I'm going to highlight to the jury something that I think is wrong. Now there may be instances where I don't want to highlight it at that point. Instead, I might want to wait for one of the witnesses that I know is coming to testify to talk about it and cross examine him about that issue. So I may decide to wait and not make any objection at all.

The other option I have is to go ahead and make that objection because if I don't what will happen, what will happen is I might be giving up my client's legal rights. That would come up if we lost the case and now we go to appeal it and the higher court who's now evaluating the legal issues that arose, they may say, "Hey listen, you didn't make any objections during the course of trial even though it was opening argument, and because of that you've waived your right to now on appeal raise that issue." It's a very fine balancing line that a trial attorney has to make instantly to determine whether or not to go ahead and make that objection in the middle of opening arguments or let it slide and then bring it up during the course of the witness' testimony and now address it.

So why do I share this quick information with you? I share it with you just to give you an insight and an understanding into what goes on in these accident cases, these medical malpractice cases, and even these wrongful death cases here in New York. I recognize and I understand you're watching this video because you likely have questions or concerns about your own particular matter.

Well if your matter did happen here in New York and you're not getting bitten up with mosquitoes like I am, no really, if your matter did happen here in New York and you're thinking about bringing a lawsuit but you have questions that need to be answered what I invite you to do is pick up the phone and call me. I can answer your legal questions. This is something I do every single day and I'd love to chat with you. You can reach me at 516-487-8207 or by email at Gerry@oginski-law.com. That's it for today's video. I'm Gerry Oginski. Have a wonderful day.