

NEW YORK INJURY TIMES



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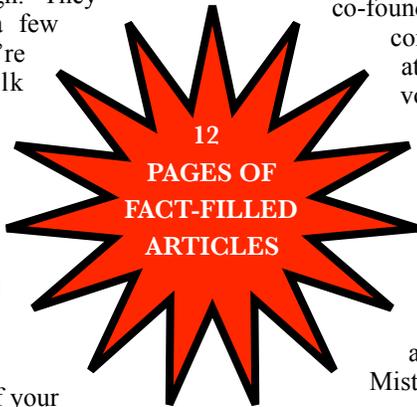
REFERRALS- A "Win-Win" Situation

THE POWER OF PERSUASION; HOW TO GET WHAT YOU WANT

Think you can persuade someone to realize that they're wrong? Can you do it while making the other person feel good about themselves at the same time?

Have you been in Chinatown where you get to "bargain" with the merchant, selling fake pocketbooks, or a fake watch? They quote you a price, then you say "No, too high." They lower their price a few dollars, and if you're lucky, you'll walk away with your chosen prize for a few dollars less than their bottom line number. You feel like you got a great bargain, and the merchant just made a sale.

You feel so proud of your bargaining ability that you spend the next week telling all your friends about how persuasive you were with the merchant. That's a great feeling.



I had a chance to witness the incredible power of persuasion last week when I went to the car dealer last week with my 17 year old son. You see, my son is graduating high school this year and is eager to get a car. He works and wants to buy the car with his own money- a very admirable thing to do at his age.

I should preface this story with the fact that my son is a born businessman, an entrepreneur. By age 14, he was the co-founder of a website design company; he currently works at a local gym and is a volunteer firefighter.

He asked me to go with him to the car dealer to get prices on a new Nissan Altima. From the moment the salesman saw us walk in the door, he incorrectly, pegged us as 'a sure thing'. Salesman

Mistake #1: *He underestimated my son.*

My son's first words were "Hi, I'm Joe, and I'm in sales, so you can save the sales pitch." This threw off the young salesman to the point where he didn't

know how to start the conversation. It was downhill from there for the salesman. Salesman Mistake #2: My son had immediately taken control of the conversation and the negotiation.

"How much is the base model Altima?" asked my son. The salesperson came back with a number that, we were told, was the best number he could do. My son's response was "You must be kidding me! You're trying to rip us off with your first offer?" Then he landed a one-two punch by telling him he'd done his research and visited other dealers and the base price was thousands less than his initial offer.

Remember what happened when you were in Chinatown and you got your first offer? You said "No way," and pretended to walk away. You can guess where this is going, right?

Within the space of no more than two minutes, my son was able to get a second offer that was thousands of dollars less than the initial offer, without any effort. My son and I both knew the game the salesman was trying to play. He'd say he had to get approval from the sales manager, then saunter over to

the main sales desk where they would huddle and discuss everything except the price of the car. After two more times of this trip to the sales desk my son was getting fed up with the salesman wasting our time.

My son realized that this game was bullsh**. If the salesman had to keep going to the manager to get approval, why doesn't he just deal with the head honcho to speed things along?

When the salesman returned, my son said he wanted to deal directly with the manager instead of with the salesman. The salesman confidently replied "You don't want to deal with the manager, because he is very intimidating, aggressive, and in your face."

My son replied with a smile "So am I." Reluctantly, the salesman returned to the sales desk, to inform his manager of my son's desire to speak to him. A few minutes later, the sales manager came over, introduced himself, and asked if we were ready to buy the car today. My son replied that not only were we ready to buy the car today, but he was well aware of each sales pitch that was being thrown at him.

Amazingly, my son had no fear and was not intimidated by the manager's attempts to make him buy a car at a higher price than my son was willing to pay. I was having such a good time watching my son negotiate that I decided to let him continue on his own to see what he could accomplish.

After a few more minutes of this negotiation dance, I had the distinct impression that the manager recognized that he would not be making much profit, if any, with my son. Finally, my son gave the manager an ultimatum together with a sense of time urgency, telling him that we had to leave in the next 5 minutes to pick up his sister. Although I was on the phone with a potential client at the time, I knew full well that we had no plans to pick up anyone.

Two minutes later, the manager returned, somberly nodding to the salesman that my son's bottom line price was acceptable. The salesman turned to my son and said that they

would not be making any profit on the car at that price, and in fact would likely lose money on the deal. My son replied with a broad smile "That may be, but with this sale you will at least make your sales quota for the month." With that comment we shook hands, promising to return after a trip to the bank. ☆

**A WONDERFUL THANK
YOU FROM A GRATEFUL
CLIENT**

This thanksgiving, after finishing our family meal, I received a text message from a wonderful man I recently represented. I want to reprint the text message in its' entirety:

"Happy Thanksgiving to you and your family. My family will never forget you. You are the best. Thanks, Joe Uzoma."

Well Joe, thank you for your kind words on a day where we give thanks for what we have and recognize those who are less fortunate than ourselves. I am glad I had the privilege to get to know you and your family and I'm proud of the result I was able to achieve for you. Knowing you and your family has enriched my life.

**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. An injured victim must prove that his version of the case is more likely right than wrong in order to prevail in the State of New York.

TRUE OR FALSE?

2. A motion for summary judgment asks the Court to halt all proceedings until the bankruptcy has been finished.

TRUE OR FALSE?

3. In a civil lawsuit seeking compensation for personal injuries, a jury is made up of 12 people in the State of New York.

TRUE OR FALSE?

4. Jury duty now applies to doctors, lawyers, politicians and all professionals.

TRUE OR FALSE?

5. In a child's accident case, the Court must approve a final settlement even if the parents and all attorneys agree to the settlement.

TRUE OR FALSE?

6. The best way to find the best lawyer in New York is to find the biggest and most colorful yellow pages ad.

TRUE OR FALSE?

7. An educational online video by a lawyer explaining how a lawsuit works helps an accident victim get to know the attorney before they ever pick up the phone to call him.

TRUE OR FALSE?

8. "Continuous treatment" means that you return to your doctor once a year for routine care, without any problems, complications or communications with your doctor in between.

TRUE OR FALSE?

9. If a driver of a car claims that his brakes somehow didn't work moments before impact, there is nothing wrong if the driver destroys the car before giving the victims' attorney a chance to have an expert examine the car.

TRUE OR FALSE?

10. If a treating doctor in a personal injury case refuses to come to trial to testify about their treatment of you, your lawyer can compel the doctor to give a deposition, also known as an examination before trial, to discuss his treatment of you. That testimony can then be read (or if videotaped, shown) to the jury at trial.

TRUE OR FALSE?

BONUS QUESTIONS:

1. A defense lawyer who suggests mediating your case means that they have no intention of trying your case.

TRUE OR FALSE?

2. If the defense offers you money to settle your case, your lawyer is legally and ethically obligated to inform you of that settlement offer.

TRUE OR FALSE?

Answers appear at the end of this newsletter. ★



THE LARGE LAW FIRM TRAP

THE SEDUCTION

You suffered a terrible accident. You have been in the hospital for weeks now. Your family is angry that you are now physically disabled. You wonder when, if ever, you'll be able to return to work. Physical therapy is not helping much. Your treating doctors are not that encouraging. You fall into a state of despair.

You know you want to sue the driver of the car that hit you and caused all these ailments, but you do not know a New York accident attorney. Nor do you have any friends who know a good attorney they could recommend. When you return home you start searching for a lawyer in the yellow pages. Finding useless ads that simply scream at you, you go online to start looking for a personal injury lawyer in Manhattan with lots of experience handling car accidents. Why New York City? You feel that a Manhattan lawyer is better able to handle your case, even though you live in Queens and your accident happened on Long Island.

Each website you visit tells you how great their lawyers are. Those websites tell you that they have achieved great results in the past for their injured clients. Yet these same lawyer websites are not giving you information you need to know about your case.

On most of the websites, you see pictures of New York City with tall buildings and fancy libraries, but none of those lawyers are giving you information about how a car accident lawsuit works. You have the perception that a large law firm is the right one for you, but choosing the right one seems very difficult. There are so many to choose from. How do you know whether one large law firm is better than another large law firm?

THE REALITY

Each website you visit has beautiful pictures of New York. Some have pictures of scary looking lawyers standing in front of a bookcase. Some websites have "class pictures" showing everyone in their entire firm. There are so many people in the picture, you

cannot tell one person apart from another. "OK," you think, "But how do I tell one large Manhattan law firm apart from the other?"

The reality is that you probably cannot. One law firm boasts having more staff; another claims to have more attorneys; another claims to get better results; another says they have casual Fridays. One law firm says you get to deal directly with a junior associate on a daily basis. Yet...you want to know how negligence lawsuits work in the State of New York.

You need to know what will be expected of you as you go through the litigation process. Will you have to show up for a question and answer session known as a deposition? Will you have to be examined by a doctor for the insurance company representing the driver who caused your accident? Importantly, you want to know who will be working on your case.

You ask yourself "Why are there no educational lawyer videos explaining how the legal process works? I know these lawyers cannot give out legal advice online, but I'm starving for information. I want to know more than what each of these lawyers are giving me on their website."

THE TRAP

You are seduced with the perception that only a large Manhattan law firm can handle your car accident case. You think that only a firm with nice wood paneling and French furniture in the waiting room will do. Fancy furnishings aside, you do not have any information about what a small law firm can do for you or even what a solo practitioner could do for you that a large law firm could not do. Yet the more you search online, you realize that the small firms appear to be able to provide a more personal and attentive touch than many of the large firms.

You decide to call one large prominent trial law firm in New York City. The receptionist asks what your call is about and you are promptly transferred over to a paralegal to answer your questions. After a polite two minute discussion

about the types of law they practice you ask to speak to an attorney. A young woman answers the phone and you ask who handles your case on a day to day basis. "I do," comes the reply. "And you have how much experience?" you inquire. She proudly tells you that she's been in practice for three years now.

"When do I meet the senior partner, you know, the senior trial attorney who will try my case?" you ask.

"Oh, only if and when your case goes to trial. Otherwise the Junior partner will answer your questions if I can't."

"How often do you update me?" you ask.

"Only when there's been a new development in your case. If nothing is going on, and we're waiting for a deposition date, or we are waiting for trial, there's nothing to tell you."

"Do I have to call for an update, or do you automatically send me a letter?"

"Uh, you might want to call us to find out what's going on. We have a lot of cases and it is hard to call everybody with updates," she replies.



THE SOLUTION

Before deciding what type of law firm you think you need to handle your car accident case, make sure to ask these questions:

1. Who will handle my case on a daily basis?
2. Will the attorney I meet with on the first visit be the same lawyer who appears at my deposition? (In many large law firms it will not be the same lawyer.)
3. Which attorney will be going into Court to handle conferences on my case? (Again, in a large law firm it is usually a different attorney than the one you initially met).
4. How do you update me? By mail, email, phone, or do I have to come into the office for an update?

5. Do I have to call you to see what's going on with my case?

6. Will the attorney who is at my deposition be the one to handle my trial? (Most large law firms have junior associates or junior partners handle your deposition. The more senior trial lawyers usually will handle your trial).

7. Can the senior trial lawyer handle my case from start to finish?

8. Can I speak to the senior trial attorney if I have questions?

9. Am I imposing on the senior trial attorney with my questions even though he doesn't know anything about my case until we go to trial?

Then ask yourself if you would feel more comfortable with a more personalized approach to having a lawyer represent you. Now keep in mind that there are some large law firms that have dedicated trial lawyers and dedicated lawyers on their 'team' to assist you. However, there are many people who feel that they want a senior trial lawyer to handle their case from start to finish.

There are many people who do not care that their lawyer's office is not in Manhattan. They do not care that there are no fancy furnishings and fancy paintings in the waiting room. They are more interested in what the attorney can do for them and the results they have achieved for their injured clients. They like the small law firm that has a personal touch where only one attorney handles your case from the moment you call the office, to when you walk into his door, to when you have any question, at any time, to when you go for your deposition, to when you go to trial.

When you use a solo practitioner, the attorney does not need to ask three other lawyers what happened last on your case when they went into Court. Why? Because the only attorney who works on your case is the same lawyer you are dealing with day to day.

You also love the fact that the solo practitioner has tons of educational videos on his website that explain how lawsuits work. In his videos he takes you step-by-step through the litigation process. Watching the videos, you get to know how this solo attorney looks; how he sounds; what he knows, and how he presents himself. You notice he does not spend time talking about himself. Instead, he spends the time explaining how he can help you. You realize after watching his informative videos and reading his educational website that this solo attorney is the right one for you. The problem was that for a long time you fell into the large law firm trap. Hopefully, after doing your research, you will have enough information to choose the right lawyer for you.



NY Medical Malpractice Trap-Failing To Timely File a Claim; Medical Malpractice Lawyer Explains

YOU MISS THE DEADLINE TO FILE A CLAIM

You're still in the hospital. You were in a municipal hospital in the five boroughs of New York; Brooklyn, Bronx, Queens, New York City and Staten Island. You walked into the hospital for surgery. After you woke up, you could not walk.

The municipal hospital does not have the advanced medical care to treat you. They ship you off to one of the private uptown hospitals for further care. You are starting to recuperate and have begun rehabilitation therapy. You're worried about how long it is going to take you to walk again.

You suspect that a doctor did something wrong during surgery that caused your paralysis. You do not know a lawyer to ask questions and none of your friends have ever needed a lawyer to answer questions about medical negligence. You do not know where to turn.

Instead, you go about your business trying to get better. By the time you are discharged from hospital #2, it has been 6 weeks since you first had your surgery. While at home, a visiting nurse comes to check on you each day. Your family dotes on you. Your boss sends flowers and a get well card with a personal note inside that says, "Come back soon. We need you." The physical therapist that comes to your home says you're making great progress. For some reason, you do not exactly think that walking 10 continuous steps is "great progress." You still wonder how you'll get to work and function like you did before.



At bedtime each night, you wonder how you could have walked into the hospital on your own two feet, and after surgery could no longer walk. It does not make sense. No one at the hospital suggested something was done improperly. The doctors said it was a rare complication. Never in your wildest dreams did you imagine that a doctor or nurse was negligent in caring for you during surgery.

FURTHER MEDICAL TESTS

Your doctor sends you to more doctors to find out the root cause of your paralysis. Each doctor has a different opinion. One doctor suggests strongly that the only way to get this injury is if the surgeon literally cut the nerve controlling the legs. In fact, he claims to have seen this before. By the time you learn this information, it is four months since the original surgery. You finally get up enough guts to look for a New York medical malpractice lawyer online. You find a lawyer you think is right for you and start asking questions on the



phone.

A STARTLING DISCOVERY

One of the first questions the trial lawyer asks is "Which hospital was it that you had your first surgery?" When you tell him it was at Coney Island Hospital in Brooklyn, his response is "You have a problem." "What's the problem?" you reply.

The lawyer explains to you that Coney Island Hospital is a municipal hospital. So is Jacobi Hospital, Bellevue Hospital, Queens General Hospital, Elmhurst Hospital and others. If you have suffered injury in a municipal hospital, then you are required to file a 'Notice of Claim' against the corporation that technically owns and maintains the hospital. This legal entity is known as 'New York City Health & Hospitals Corporation'.

Generally, an adult has only 90 days from the date of the malpractice to file a Notice of Claim. That date may be slightly extended if you remained in the hospital for a period of time recuperating from your injury that was caused by the doctors or nurses at that hospital.

The lawyer tells you that the time to file your Notice of Claim has expired. You are naturally devastated. "Isn't there anything that can be done?" you ask.

Actually there is. The lawyer can ask a judge in the Supreme Court of the State of New York [the trial level court] for special permission to file a late claim. There are many hurdles that must be overcome to successfully accomplish this.

THE SOLUTION

If you suspect that you have been the victim of medical neglect at a municipal hospital in New York, you must start looking into your legal rights immediately in order to protect them. Ignorance of the law is unfortunately no

excuse to a Court. You must make an effort to get answers to your legal questions earlier rather than later. Only by understanding your legal rights can you make an intelligent decision about what steps you need to take should you seek compensation for your injuries.



New York Medical Malpractice-More Examples of Malpractice

Is it malpractice if a patient has a routine chest x-ray and is told it is normal, only to learn two years later that the x-ray was misread. Had it been correctly read, the patient could have had a minimal surgery to remove the cancer, except now the cancer has spread throughout her entire body.

Is it malpractice if a radiologist fails to tell a patient about a brain tumor that he clearly observed? What if the delay in telling the patient caused this patient to lose total vision in her eye that could have been prevented had she been operated on before the tumor cut off the blood supply to the optic nerve.

Is it medical negligence if a doctor in an emergency room ignores a patient's complaints of belly and back pain and never takes a pregnancy test and fails to recognize a pregnancy in the woman's fallopian tube causing it to rupture two days later?

Is it a medical mistake for a doctor doing laparoscopic surgery to fail to recognize that he perforated the patient's intestines during the surgery. Had the hole been recognized during the initial surgery, the patient would not



have needed additional corrective surgery a week later.

What do you think about an emergency room doctor who, while sewing up a large laceration, ties off the patient's nerve instead of his artery, and fails to recognize the nerve injury until the nerve had died off.

Maybe this one will cause you to pause—a patient on dialysis complains to the nurse that he thinks his shunt (the place where they attach the dialysis tubing to his arm) is infected. The nurse poop-poop's the patient, and goes about her routine of setting the patient up for his three-hour dialysis treatment. The patient returns home and upon entering his home, his shunt, which is connected directly to his artery bursts open. Despite every effort to apply pressure to the open wound, the pumping artery is so forceful that the patient bleeds to death in minutes. Police arriving at the home thought they stumbled onto a murder scene. The unfortunate reality was that had the infection been recognized, the patient would have been admitted to the hospital, treated, and the shunt never would have ruptured leading to his death.

Is it malpractice for a doctor to fail to recognize fetal distress? Where a baby is about to be born, is it medical error for the nurses and doctors to ignore a patient to the point where the baby is not getting enough oxygen prior to delivery and no effort is made to get the baby out emergently?

How about the case of a woman who was told she would die from cancer if she did not have a hysterectomy? She was only 29 years old at the time. Unfortunately, after the surgery, the pathology showed no evidence of cancer anywhere. In other words, her hysterectomy was totally unnecessary.

Is it malpractice when an orthopedist continues to give medication to a patient for back and hip pain and never tells the patient the risks or side effects of the medication? The patient suffered a massive rupture of his gastric ulcer causing him to bleed to death. Had he known these side effects, he never would have taken this medication.

Do you think it is medical neglect when a young man goes for "simple, routine" hernia surgery and the patient dies because the anesthesiologist fails to recognize that he gave the patient too much anesthesia?

What common recurring theme is found in each of these cases?

Carelessness by a doctor or nurse. Naturally, the doctors and nurses did not intentionally make these mistakes and errors, yet they occurred because of inattention and carelessness. Each of the cases discussed above are real cases that happened in New York. Each victim had a story to tell. Each injury was different and affected each person differently. When asked, every injured victim would rather have their health than have to resort to a medical malpractice lawsuit seeking compensation.



Wal-Mart Stampede in New York-Who's At Fault?



Early morning shoppers on Black Friday, at a Walmart in Valley Stream, NY turned their desire for discounted price shopping into a deadly stampede.

The crowd rushed through the Walmart doors without regard for human life or safety. A 34 year old man, Jdimytai Damour was crushed to death in the massive stampede.

Importantly, Newsday reported today, November 29, 2008 that Walmart defended their security at the store claiming that they had hired extra security staff as well as hired additional store employees and placed barricades.

Even before the young man was buried, finger pointing started. The president of the Nassau County Police Benevolent Association was quoted in Newsday saying that the Nassau County Police Department should have planned better

and should have assigned more officers to patrol high-traffic shopping areas. Countering that statement was the NCPD spokesman who clearly stated that it is the stores' responsibility to provide store security. Compounding the finger pointing, the president of Union Local 1500, Bruce Both of the United Food and Commercial Workers Union is quoted by CNN.com as saying "Where were the safety barriers? Where was security? How did store management not see dangerous numbers of customers barreling down on the store in such an unsafe manner? This is not just tragic; it rises to a level of blatant irresponsibility by Wal-Mart."

OK, so here's the crucial question:

Who's at fault for this horrible display of greed causing total disregard for human life?

Is it Walmart?
Is it the extra security hired by Walmart?
Is it the Nassau County Police Department?

The answers may not be clear-cut and here's why.

(1) In New York, negligence is defined as lack of ordinary care. Was Walmart at fault for not anticipating large and rowdy crowds at their 5:00 a.m. opening on the day after Thanksgiving? According to another report in Newsday, Walmart is quoted as saying that they did expect large crowds and appropriately hired additional staff to deal with the crowds. Another story in Newsday by reporter Ellen Yan stated that "Several major chains have adopted crowd management, which can range from barricades to bargain information." A security expert, Lou Palumbo was quoted as saying that "You don't wait until [the crowds] are at your door. You push out your perimeters and start to orderly allow people onto your property."

(2) Did Walmart hire these additional security personnel as independent contractors from



an employment or security agency or were they considered Walmart employees. The distinction is important for determining whether Walmart is legally responsible for the actions of their employees.

(3) Was the security in place at Walmart sufficient to allow for the orderly processing of shoppers into the store? The answer appears to be an obvious "No," based on the facts as reported in the newspapers.

(4) There is also a report coming out of news reports that a Walmart employee seems to have antagonized the crowd by telling them that the store would open before 5:00 a.m., and then immediately telling them that it was a joke and would not open before 5:00 a.m. It is not yet clear whether this was a root cause for the pushing that led to this disaster.

(5) Is the police department responsible? Well, we know that the stores are responsible for store security, however, these lines and barricades are taking place outside the store. The other question is whether the owner of the property bears any responsibility for this disaster in failing to properly plan and execute security and control for the stores on its' property.

(6) Were the additional security staff properly trained for dealing with such large and unruly crowds? Only a lawsuit and discovery of what these people knew will give us the answers to that question. If they were 'rent-a-cops' hired to temporarily staff the parking lot and store for this day only, an argument could be made that their training was totally insufficient to deal with the tragedy that took place on Friday.

Let's assume that negligence can be proven against at least one of the groups

listed above. The next important question is what is the value of this young man's life?

DAMAGES

The value of human life is incapable of an exact number. If you ask a mother what the value of her son is, her reply will be that he was "Priceless." If you ask an economist the value of human life, he will look at what that man was earning, whether he was supporting a family, what his personal yearly expenses were, what benefits he was receiving from work, including health insurance and a pension plan. The economist will come up with a range of numbers taking into account inflation. Inflation is a change in the amount of money you have today compared to the value of that money years from today.

In New York, when a family brings a negligence lawsuit for someone's untimely death, this is known as a "Wrongful death" lawsuit. Typically, the damages in a negligence and wrongful death lawsuit include (1) pain and suffering from the time of the incident until his untimely death; (2) pecuniary loss-which is a fancy term for "economic loss" to the victims' family; and (3) the loss of a parent or child.

In cases where the victim was not working, then it is impossible to claim that the victims' family suffered financial loss as a result of their loved ones' death.

In this case, it is also not clear yet what the precise cause of death was, as the medical examiner has not yet completed an autopsy. However, if it can be shown that the victim experienced seconds or even minutes of pain and suffering before his death, also known as fear of impending doom, then a claim for pain and suffering can usually survive an attempt by defense lawyers to dismiss that claim prior to trial.

THE BOTTOM LINE

If in fact this tragedy was preventable and could have been avoided, then Mr. Damour's family is entitled to be compensated for the horror that their son suffered. When trying to find an attorney to handle this type of wrongful death case make sure you find an experienced personal injury and accident lawyer that handles negligence cases and wrongful death lawsuits in the State Of New York.



Queens Bicycle Rider Hit By Car at a T Intersection-New York Accident Attorney Explains



My client was out riding his bicycle on a beautiful sunny Spring day this year, on a quiet stretch of road

in Queens. He was approaching an intersection where cars were coming off of the Grand Central Parkway exit ramp. As a driver coming from the Grand Central heads down the exit ramp, he is left with one of two choices as he approaches the T intersection:

Either turn left, or turn right. If you are going to make a left turn, you must get into the left-hand turning lane. There is a stop sign at that T intersection for cars just getting off the GCP exit.

In this case, a driver coming off the Grand Central Parkway exit ramp got into the left-hand turning lane and proceeded to stop at the Stop sign. A good thing he did. However, instead of looking to his left, which is where he was intending to turn, to check for oncoming traffic, he looked to his right and removed his foot from the brake and applied the gas. As he did so, he proceeded to hit my bike-riding client-who by the way was in the middle of the intersection, on the right side of his body, throwing him to the pavement.

A trip to the emergency room revealed a fractured finger, that days later required surgery to correct. An MRI of the knee revealed damage to a tendon, which



required arthroscopic surgery to fix. In addition, my client suffered a significant shoulder injury requiring extensive physical therapy. This young man, who was wearing his helmet at the time of impact, was a computer programmer and because of the injury to his finger and surgery, had great difficulty typing and performing his job duties. Recuperation and physical therapy has helped him regain function to his finger and hand, and he performs strengthening exercises each day.

This accident was preventable. The careless and negligent driver had only to look to his left to see what he should have seen. Had he merely looked to his left, he would have seen my client riding his bike peacefully on a beautiful Saturday morning. Instead, through the negligence of this driver, my client's day was turned upside down.



NY TRIAL LAWYER EXPLAINS APPLES v. ORANGES



I received a call today from a potential client who was in the middle of an active medical malpractice case in Brooklyn, N.Y. He had an experienced attorney handling his case, yet for some unknown reason, he was calling me to see if I would take over his case. After a few minutes of talking with this man, it became clear he was talking apples instead of oranges.

What do I mean? His case was ready for trial and was waiting to be called for jury selection. His attorney had told him about a very encouraging settlement offer made by the defense attorney. This man was outraged. He told his lawyer in very specific terms that he wanted to go to trial because his injuries were worth much more than the defense was offering. So far so good.

The problem arose when this man started doing his own research into the value of his type of injury. He scoured the internet for cases that had similar injuries and found one. Here's the where the problem started. The case he found was in New Jersey. He even went so far as to speak to the New Jersey lawyer who handled the case with the similar injury, and with that new-found information, went back to his own attorney to demand that additional settlement negotiations take place and demanded that under no circumstances would he accept anything less than what this New Jersey client received for his injury.

What this potential client failed to understand is (1) The venue (the place where the case is pending) is different; (2) The age of the injured victim in the NJ case was different and (3) The extent of the injury was totally different. Hence the apples and oranges.

When comparing an injury in similar cases, there are many factors for an experienced New York accident lawyer to evaluate to determine the true value of your case. Some factors include your age; whether you were hospitalized; if you had surgery to correct the problem; how long you remained out of work; what physical therapy and rehabilitation you received during your recuperation; what medical care and treatment you will need in the future; the extent and type of your permanent disability and how your injuries affect you on a day-to-day basis. Other factors include medical bills that you had to pay out of your own pocket and lost opportunities because of your ongoing disability.

The reality is that every case is different, and every injury affects different people differently. If you compare your injury with someone else, make sure you're comparing apples to apples, and not apples to oranges.



NY ACCIDENTS-Are you in the 'Zone of Danger'?

I was bike riding today on Glen Cove Road in Roslyn, NY, during a twenty mile ride. While riding with traffic on the extreme shoulder of the road heading South, I was struck with the realization that the cars and trucks driving within two feet of me was totally unnerving. Some might think that a 'buffer-zone' of only two feet is a zone of danger, and I'd agree. That's the last time I'll be bicycle riding on that road.

The reason I mention the 'zone of danger' is because it is a legal principle that allows a family member to recover money when their loved one suffers a horrific accident, provided you are within a 'zone of danger' to observe the terror and horror of the accident and the injuries that flow from that trauma.

If you get hurt while bike riding, the driver of the car, bus or truck that hit you might be totally at fault for causing your accident. While it may also be true that you were in a dangerous area of roadway, that legal principle of being in a 'zone of danger' would not apply to you. Instead, you may seek compensation for your injuries for the negligence of the driver who hit you.

However, the 'zone of danger' rule applies to someone who is with you, within sight of you; within touching distance of you who witnessed the tragedy. This legal concept allows that family member to recover money for the emotional horror and psychological injuries they may endure as a result of watching their loved one become terribly mangled and permanently injured.

WHAT IS 'FEAR OF IMPENDING DOOM'?

That is another legal concept that lawyers use to show that someone who was in an accident was able to know, in minutes, seconds or moments before the impending accident that the impact was inevitable. It is that moment in time when your life flashes before you and you want to say everything you never

had a chance to say to your loved ones; when you know you may not survive; when you realize that your time has come and you may not be going home.

Another name for 'Fear of impending doom' is known as 'pre-impact terror'. These concepts are firmly entrenched in the personal injury area of law in New York. When there has been a serious accident or even a death from an accident, the facts may support a claim for 'pre-impact terror'. What do I mean?

When an ambulance attendant arrives on the accident scene and talks with your loved one, the bicyclist who now is crushed under the wheels of a truck, and they are crying, in pain, or gasping for breath with terror-stricken eyes, those factual observations allow a personal injury lawyer in New York to fairly claim that the victim had conscious pain and suffering, and knew that their life was about to end. The victim who blurts out in gasps to the ambulance attendant "He blew through that red light...I couldn't stop..." will allow an attorney to claim the victim had a fear of impending doom prior to the accident.

Both of these legal concepts allow a victim and their family to properly claim compensation for pain and the suffering they suffered at the hands of a negligent driver.



“They Laughed When I Told Them I’m Using a Solo Practitioner”

A former client of mine related this story to me recently. It was only after I had settled her case did she tell me what her friends said shortly after she told them she hired a solo practitioner for her injury case.

"How can you hire a one-man law firm?" one of her friends asked.

"What happens if he gets sick?" asked another.

"How does he have the resources that a large firm has?" said another good friend.

"What is it about him that made you choose him over the other law firms you looked into?"

The answers were revealing.

She told her well-meaning friends that I was the only lawyer who provided information to her before she ever came into my office. None of the other law firms she spoke to would give her any information about cases like hers. In fact, out of five New York law firms she contacted, I was the only lawyer who actually got on the phone to talk to her.

All the other calls were intercepted by receptionists who wanted to set up an appointment for her instead. She explained to her friends that on my website I gave free reports about how medical malpractice cases work. This was new to her and the information was very helpful to understand how a case works. She was also grateful to learn how a lawyer actually evaluates a potential medical malpractice case in New York. Before looking at my website, she had preconceived ideas about what types of cases are accepted by injury and accident lawyers in New York. My reports helped her understand the procedure a lawyer must go through to determine whether someone has a valid case.

This woman explained to her friends that she had spoken to a paralegal at one of the big law firms in New York City about how they communicate with their clients. This is what she was told: "You'll meet an associate when you first come to us. They'll gather all the information about your case. Once we get your records and determine that you have a valid case, your matter will be assigned to a team of lawyers consisting of a senior trial lawyer, an associate and a paralegal." When she asked when



she'd get to meet with the senior trial lawyer, she was told that only if her case went to trial would she meet with him. Otherwise she'd be dealing with the associate on day-to-day matters. The paralegal was very flip about how simple it was to get information from her and from the associate. "Don't worry, we know exactly what's going on with your case every day," was her comment.

When my soon-to-be client called this law firm later that day to ask the paralegal more questions, her conversation started out like this: "Thank you for calling _____ law firm. How may I direct your call?"

"I'd like to speak to the paralegal I was speaking to earlier about a potential case."

"Do you know her name?" "No."

"Well, we have over 20 paralegals here. How do you spell your last name?"

"Never mind," she replied, frustrated with being unable to speak to the person she spoke to earlier.

Another law firm she spoke to refused to tell her anything over the phone. This is understandable since there are many legal dangers that arise if an attorney

gives out legal advice over the telephone. First, there's no attorney-client relationship when someone calls with a question on the phone. Theoretically, anything that is discussed might be discoverable at a later time. Second, there are so many facts that may be missing that it would not be appropriate for a lawyer to give legal advice based on incomplete information. Ideally, the lawyer wants the person to come in, explain the problem, and then give the potential client an informed and educated decision based on their particular facts. However, many attorneys refuse to discuss anything with a potential client until they walk in the door of their office.

What this young woman found particularly helpful were the video tips on my video blog and my website that discuss different areas of medical malpractice, wrongful death and personal injury law. In my educational videos I offer useful general information to help a website visitor understand how the legal process works. In one video I explain in detail how a medical malpractice lawsuit works from start to finish. In another video I explain some of the interesting cases I have handled where I have obtained compensation for my clients who have been injured.

This woman also told her friends that she asked each law firm she called how often the lawyer communicates with her

about updates on her case. These were the replies she received:

"We send you a quarterly letter advising you what's going on with your case."
"Oh, we don't send written updates. If you want to know what's happening, you have to call us. If we sent updates to all of our clients on a regular basis, we'd spend most of our day writing letters."

When she came to my office, she was pleased to learn that I send written updates once a month. She also learned that I call my clients often and email them as well. She was even more surprised to learn that I answer my own phone often, and always promptly return my client's calls. There's no paralegal in my office who asks "How do you spell your last name?" My paralegal knows who my clients are, and gets to know them well. There's no associate who has to ask another attorney, "What happened on that case the last time you went on a conference in court?" There's no running to the file or checking the computer to find out what last happened on your case, because in my office, I am the only one who handles your case, start to finish. I know exactly what is going on with your case at any time, because I am the only one who handles it. Not a paralegal. Not an associate. Not a junior partner. Just me; a solo practitioner who has been in practice in New York for twenty years.

This woman asked me during our first meeting "How can you compete with the big law firms in terms of legal research?" My answer shocked her. I told her I don't

need a big law library with musty old law books. Everything I need is on my computer. Legal research is all computerized now. The solo practitioner has the same legal research capability as the largest law firm. I told her that if a case was beyond my reach and required resources that I simply did not have, I would never accept it and would refer the potential client to another law firm that did have the ability to handle it.

Importantly, I mentioned that if she felt the need to go to a large law firm in New York City and help pay for their fancy offices and beautiful mahogany furnishings and gorgeous floor-to-ceiling windows with offices looking out over the city, then by all means she should go there. However, I also told her that those beautiful offices don't win lawsuits. It is the attorney who occupies a particular office that wins cases. Regardless of whether that office is in Manhattan or Long Island. "If you want to be another fish in the ocean, I'm sure you will be very happy with that law firm. If however you want to have personal attention every step of the way, then a small law firm is the one for you."

I am pleased to say that this woman was extremely happy with her choice of attorneys. After she finished explaining her reasoning to her friends, you didn't hear any more laughing over her choice of attorney for her case. The only comments she heard were "You know, you're right." "I'm sorry I doubted your choice of lawyers." "I didn't realize there was such a difference between law firms." ☆



REFERRALS A Win-Win for both of us

What is a “win-win” situation? One where you get a benefit and I get a benefit at the same time. In past newsletters I talked about how wonderful referrals are from friends and family. Getting that call where the voice on the other end says, “Your cousin John gave me your phone number. He said you could help me...” is really a great feeling.

It is also a fantastic feeling when a former client recommends their best friend or even their family member to me.

So how do you benefit from referring your best friend to me if they have a legal problem? You get the benefit of knowing that someone with over twenty years of legal experience will give your best friend the time and personal attention they deserve to answer their legal questions.

You know already that lawyers in New York are prevented by law from giving anything of value to someone who refers them a potential client. That means that I could not give you tickets to a Mets game as a way of saying “Thank You” for sending Mrs. Jones to me. I could not give you a vacation to Bermuda for you and your friend; nor could I send you a 50” plasma television as a way of saying thanks. As much as I would love to do all those things, the ethical rules for lawyers in New York prohibit me from doing that.

Just imagine if lawyers were allowed to give gifts in exchange for referrals. The lawyer who had the most money would have thousands of referrals lined up at his door every day. People with friends and family to refer could theoretically auction a potential client to the highest bidder. Imagine an entire section devoted on eBay to “Potential Medical Malpractice & Accident Cases.” The feeding frenzy would be awful. If that were to happen, the phrase “My lawyer is a shark,” might certainly apply.

“OK- I know that you cannot give any gifts but how then do I get a benefit from sending a friend or relative to you?”

The answer is simpler than you might think. Remember in my previous article when I talked about how good it made you feel knowing that you helped your friend with your recommendation about a service or a product? Remember when you told your best friend about this great new restaurant that opened in your neighborhood, and she just had to try it out? The next day, when your best friend called to tell you all about her dinner date with her husband and said what an amazing restaurant it was, didn’t that make you feel good, knowing that you did something helpful for your friend?

Guess what? Your friend will remember that simple piece of advice for a long time. You get the credit for making that recommendation. The same thing applies when your friend needs to talk to a lawyer who handles accident cases. “Aha!” you think to yourself. “I know just who you should call. Give Gerry a call. He’s a solo practitioner who even answers his own phone when his secretary is out. He’s an experienced New York personal injury trial lawyer who handles your case from start to finish,” you say with confidence. “Not only that, but you should take a look at his incredible educational website where you can learn all about how lawsuits like these work in New York. Best of all, take a look at his informative video tips about accident cases just like yours. Then, when you’re convinced he’s the right lawyer for you, call him and make sure to tell him I gave you his number.”

When your best friend calls, I promise to listen to them; to find out what legal issues they need help with. If their problem is something that I have experience with and know how to handle, I promise to do my utmost to get them the best possible outcome. I guarantee to answer their calls and return their calls when I’m not in. I will always answer their emails and personally respond to any questions they have about the legal process and their case. I make it a policy of updating each and every client on a regular basis.

Referrals: It’s a win-win situation for both you and I. Remember, if your best friend needs to speak to a lawyer, do not hesitate to give them my phone number, **516-487-8207**. They will thank you for it, and so will I.

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

Answers to Trivia Game: 1. True, 2. False, 3. False, 4. True, 5. True, 6. False, 7. True, 8. False, 9. False, 10. True, BONUS: 1. False, 2. True.

“A Fun, Informative and Creative Newsletter”

by Gerry Oginski

NEW YORK INJURY TIMES

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SEND TO:

Gerry Oginski, Your New York Medical Malpractice, Wrongful Death & Personal Injury Trial Lawyer

**Call me right now 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.**

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