

NEW YORK INJURY TIMES



Gerry Oginski
*New York Medical Malpractice
 & Personal Injury Trial Lawyer*

IN THIS MONTH'S
 EDITION:

LAWYER SPOTLIGHT

GERRY'S TRIVIA GAME

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

FAQ's and ANSWERS YOU
 NEED TO KNOW

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 of Sanibel Island*

VIDEO UPDATE!

LAWYER SPOTLIGHT

In this month's Lawyer Spotlight I want to introduce you to two outstanding personal injury and accident lawyers practicing law in Brooklyn, NY.

Mike Meyerson and Pat Bisogno are two excellent lawyers that I have the privilege of calling my very good friends. Pat is an excellent trial lawyer who has a stunning record of successful verdicts in the Courtroom. Their waiting room is filled with certificates and jury awards showing their successes representing tragically injured accident victims. Mike is the master of his domain and is responsible for handling cases up to trial and running a very busy law firm. If you need to reach them, they can be reached at 718-745-0880 and are located in *Bay Ridge, Brooklyn* at 7018 Ft. Hamilton Parkway. If you speak to them, tell them I said "Hi," and that you saw them in my newsletter. (They're on my mailing list too!)

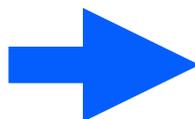


Mike Meyerson, Esq.



Pat Bisogno, Esq.

*Sign in restaurant
 in Sanibel, Fl.*



**I'VE GONE TO
 FIND MYSELF
 IF I GET
 BACK BEFORE
 I RETURN
 KEEP ME HERE!**



Q&A



Frequently Asked Questions & Answers

Q: If I'm on Medicare or Medicaid, and Medicare or Medicaid paid my medical bills for my injuries, why can my lawyer hold my settlement money until he knows how much has to be repaid to them?

A: In New York, Medicare and/or Medicaid must be repaid if they have paid your medical bills for your injuries. They hold what is called a 'lien' against the proceeds of your lawsuit. If you recover money in a settlement or a judgment, Medicare and/or Medicaid is entitled to know how much you will receive, how much your attorney will receive and how much your attorney has spent to prosecute your case. (Medicaid must notify you or us in a specific way in order for them to have a valid lien.)

Your attorney will hold onto your settlement money in a special attorney escrow account until he knows exactly how much must be repaid to Medicare and/or Medicaid. Often, the attorney will try to negotiate with those agencies to try and reduce the amount that they claim they are owed. Once the negotiation process has been completed, and the agency has agreed to a final number, then and only then, can the attorney make final payment to Medicaid and/or Medicare, and then make final payment to you- the client.

Q: Why are juries allowed to award money?

A: Our system of justice requires that a 'jury of our peers' evaluate our civil claims. The thinking behind a jury determining how much to award comes from the sense of community that each jury brings to jury deliberations. There will be high numbers and low numbers and many times there are no numbers, where a jury has rejected a person's damages claim. Jurors are told to use their common sense when evaluating a case, and to use the evidence as well. There are multiple types of damages that juries award.

The most obvious is economic loss. What the person has lost in income, and what they can expect to lose in income in the future. Economic loss includes not just your salary, but your fringe benefits, health insurance premiums, and your medical bills. Another element of damages is pain and suffering. This is a more difficult segment and jurors must determine whether the damages are significant and how they affect the person in their daily lives.

We usually say that damages are not what a person is left with, but what has been taken from them that is most tangible to put a figure on. What are the damages in the past? And, what type of pain and suffering can this person be expected to experience in the foreseeable future?

Judges do not set a range for what juries can or cannot award. Juries are told to use their common sense. The plaintiff's attorney (me) will usually suggest a number or a range in which to make an award. The defense will usually either not suggest a number and claim the injured victim doesn't deserve anything, or they will suggest an artificially low number to place this into the jurors minds as almost a 'high-low' scenario that the jury can choose from.

Regardless of what the jury awards, there are always requests to the trial judge to reduce an award, and there are always appeals that can and are made to reduce any award further.



*Seagull in flight.
Sanibel, Fl.*

Photo notes: All photos in this edition were taken by me while on vacation in Sanibel, Florida (except for the photos of Mike and Pat on page 1). The photo of my son in the cockpit was taken as we were leaving the plane.



Q&A



Frequently Asked Questions & Answers

Q: At a civil trial, when a judge says "Objection Overruled," what does that mean?

A: It means that one side has objected to the question being asked. It also means that the judge has rendered an immediate decision on the objection and decided that the question can be asked and answered.

Q: At a civil trial, when an attorney objects to a question with the following comment "I object. It assumes facts not in evidence," what does that mean?

A: It means that the attorney raising the objection believes that the witness is being asked a question that asks him or her to assume facts that have not been introduced into evidence. If true, then the witness would be answering questions based on speculation or guessing. To remedy this problem, an attorney can ask a witness hypothetical questions.



*Seagull in flight.
Sanibel, Fl.*

"Assume Mr. Witness that the car was 10 feet away and also assume that it was a blinding snowstorm. In that circumstance is there any way you would have seen that car..." Or in a malpractice case we ask the accused doctor whether there were departures from good care with hypothetical questions. These hypothetical questions bear directly on our case, since our client has testified (or will) that these facts are true and existed at the time of the event.

Q: What happens when a case is "settled" while the jury is deliberating and moments later the jury announces they have a verdict?

A: This medical malpractice case, tried in Kings County Supreme Court, also known as Brooklyn, NY had a bizarre twist.

The case involved a man who underwent knee surgery and suffered permanent injury. The first trial resulted in a verdict of \$1.5 million for the patient. After appeal, the case had to be re-tried. During the second trial, as the jury was deliberating, the parties agreed to settle the case for \$150,000. (Don't ask me why, the case report didn't say.) The jury, almost simultaneously, announced they had reached a verdict.

The patient's attorney advised the Judge they had reached a settlement and wanted to record the settlement with a court reporter to take down the agreement. The judge refused to allow the parties to put the settlement on the record. Instead, she wanted to hear what the jury decided, and then the parties were free to settle the case as they wished. Unfortunately for the defense, the jury awarded \$1.4 million for the injured victim. Needless to say, the defense attorney was quite upset. The

doctor's attorney appealed and lost. The case was heard in the Court of Appeals, New York's highest court.

Here's what our highest court said:

Sorry defense attorney. You lose. You never had a settlement even though both attorneys agreed, in principle, to settle. You see, in order to formally settle a case in court, the attorney must put the settlement "On the record" in open court.

"But that's exactly what the attorneys were trying to do before the jury came back with their award!" True, but the judge has the ability to control his or her court room. It's known as the exercise of 'judicial discretion'.

Moral of the story: Don't wait till the last minute to settle your case, and if you do, make sure it's on the record, in open court.



NEW FEATURE!

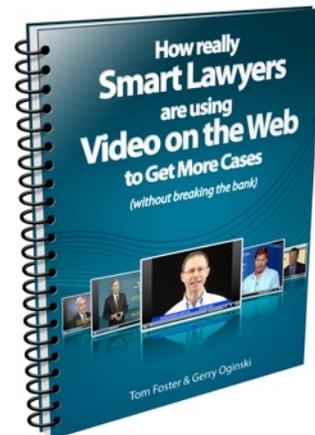


VIDEO UPDATE

The following videos went live last month on my video blog:

<http://nymedicalmalpracticevideoblog.com>

1. Death From Uncontrolled Diabetes
2. My Case is the Same! Exclaims NY Medical Malpractice Caller
3. Failure to Diagnose Cancer
4. Arrogant Doctors
5. Disfiguring Scars
6. Client Testimonial
7. Colostomy-A Disgusting Topic
8. Failure to Give Blood Thinner Leads to Death In NYC
9. Depositions-The Most Important Question to Ask
10. Birth Injuries in New York



Want to jump onto Video but don't know where to start?

Start with my book. The first 5 people to call me about getting onto video, get the book **FOR FREE, a \$16.95 value.**

If you are a *former client*, call me at **516-487-8207** to schedule a video shoot to talk about what happened to you and how I was able to help you.

If you are an *attorney* who wants to get onto video, then check out my Turn-Key video incentive program for getting you onto video and starring in your very own video today!
<http://lawyersvideostudio.com/turn-key-system/>

If you're a *business owner* and want to get people to trust you; you need to star in your own video. Call me to get you onto video today.
516-487-8207.

GERRY'S NEW BOOK

by Gerry Oginski, Esq. and
(my World Famous Webmaster) Tom Foster of
Fosterwebmarketing.com

JUST PUBLISHED THIS WEEK

available at Amazon.com for
\$16.95. How cool is that?

GERRY'S TRIVIA GAME

TEST YOUR LEGAL KNOWLEDGE

1. Pecuniary loss in a death case means "The financial loss to the family." TRUE OR FALSE?
2. An autopsy is required to prove the cause of death. TRUE OR FALSE?
3. Your failure to wear a seatbelt in an accident case may result in your jury award being substantially reduced. TRUE OR FALSE?
4. A bad surgical outcome means that the doctor or hospital did something wrong. TRUE OR FALSE?
5. An experienced trial attorney can guarantee your result. TRUE OR FALSE?
6. A jury will often decide a case based upon which attorney they like better. TRUE OR FALSE?
7. In a slip and fall accident case, your attorney must always prove "Notice." TRUE OR FALSE?
8. Negligence means lack of ordinary care or carelessness. TRUE OR FALSE?
9. A fractured leg qualifies as a "Serious Injury" in a car accident case. TRUE OR FALSE?
10. A doctor who is sued is permitted to testify as an expert and about the standard of care for his or her specialty. TRUE OR FALSE?

BONUS: When calculating speed, time and distance in a car accident case, you only need only two elements to accurately calculate the third. TRUE or FALSE?



Look closely at the photo. Notice the bird holding up the boat? It's a real bird too. How did I do this? Send me an email if you think you know. Email address below.

GERRY'S NEVER-ENDING FICTIONAL STORY

continued from the Back page

They could hear the helicopters searching for them. They decided not to head to the U.S. embassy since that would be the first place the Russians would look for them. Instead, they headed for the Russian tea room. No, not the one in Manhattan, the one in Russia.

Jimmy received a reply from his boss via Facebook. It said "Hide." Jimmy typed back "2 years and 3 days."

That was the time remaining for the Russian president on this earth. The text message was greeted with a smiley face.

In the next ten minutes Hillary and Jimmy changed into dirty, grimy fisherman's clothes they found in a closet below deck. Five minutes later, the chugging boat engine came to a halt and the boat drifted to a stop. Umberto came down and said "Time to leave. Let's go."

At first glance, the pier looked deserted. At second glance you could see it was occupied by vagrants and hoodlums, although it was hard to tell one from the other.

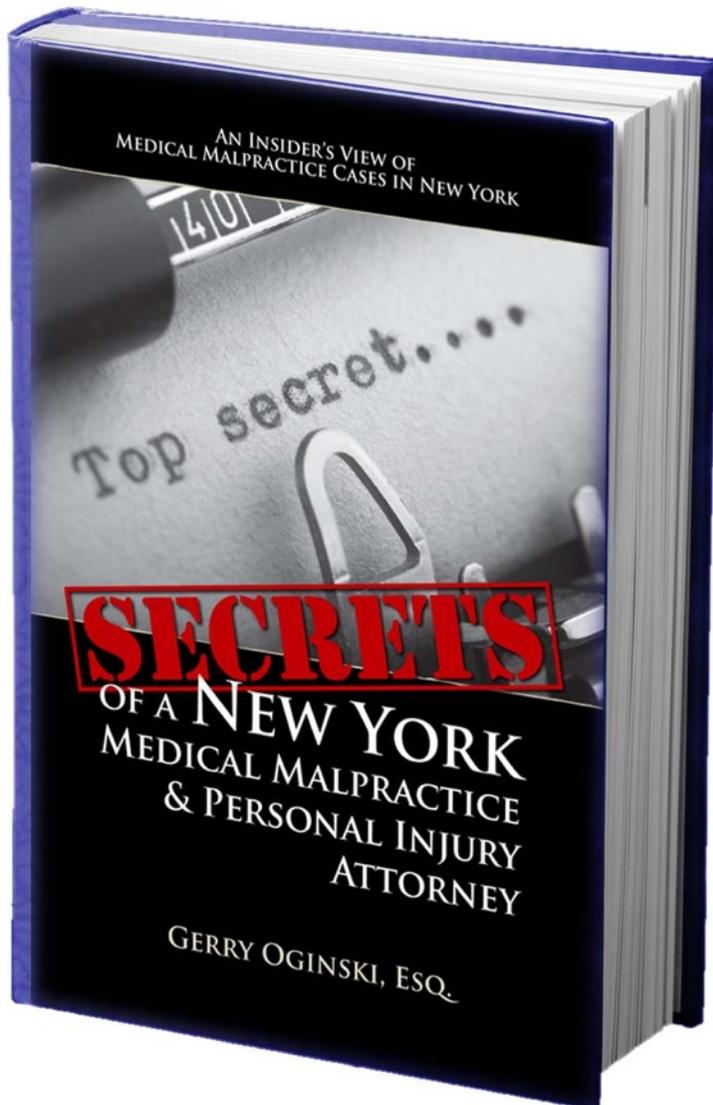
Umberto had his hand on his weapon as Hillary and Jimmy stayed very close. As they attempted to cross the street, a teenage thug popped out of hiding, seeing an easy mark. He openly brandished a 3 inch folding knife and held it menacingly in front of him, toward the threesome.

Umberto reached behind his back and pulled out a 10 inch bowie Army Green Beret hunting knife, holding it in attack position. He spoke to the street thug in quick Russian. The conversation went like this. "You have two seconds to drop the knife and leave. Otherwise, I will cut your eyes out alive and eat you for dinner." At the count of "1" the punk dropped his knife and ran like a gazelle.

The three crossed the street and entered the local tavern called "The Russian Tea Room" and pulled into a dark booth. They fit right in with the other riff-raff in the place. It was smokey and most were fishermen nursing their drinks. Nobody paid attention to them.

Ten minutes later, two burly men with crew cuts came in, eyed their targets and walked over to the group. "Nice to see you Maam," said the Chief of her security detail.

Till next time...stay tuned.



NEW BOOK available for **FREE** download

(for NY residents) by
**New York Medical
Malpractice Lawyer
Gerry Oginski.**

After reading this book, you'll learn:

- Ten reasons why you should **not** sue your doctor,
- Ten reasons why most victims **won't** recover a dime,
- What to look for when choosing an attorney,
- Why you **won't** find a lawyer in the yellow pages,
- What two questions a New York medical malpractice lawyer needs to know,
- How lawsuits in New York work,

- Deposition tips,
- The **answers** to hundreds of FAQ's,
- How a New York medical malpractice lawyer evaluates a case.

Gerry has 278 fact-filled pages of fascinating and interesting articles about accident cases and medical malpractice cases.

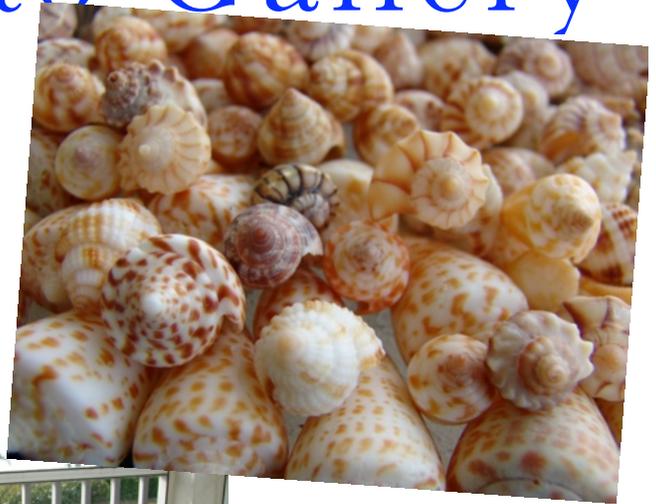
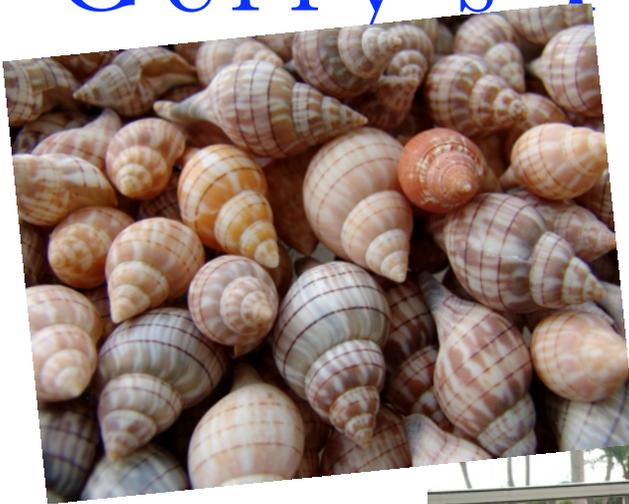
I guarantee that after reading my book you will learn at least five new things that you did not know before. Become informed, learn all that you can, and choose your attorney carefully. Only by learning about cases like yours can you, the consumer, make the right choices to help you and your family. Good luck to you in your quest for justice, and if you have questions I urge you to pick up the phone and call me since I can answer your legal questions. 516-487-8207.

TO DOWNLOAD THE BOOK, go to www.Oginski-law.com

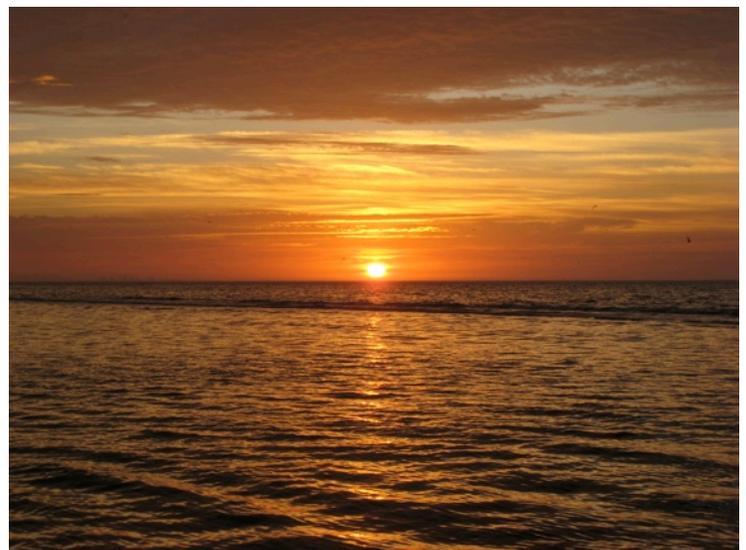
P.S. For those out-of-state residents who want to learn about the SECRETS, you can purchase this book on Amazon.com.

CALL ME: 516-487-8207 OR EMAIL ME: LAWMED10@YAHOO.COM I WELCOME YOUR CALL!

Gerry's Photo Gallery



The Shells of Sanibel Island, Florida



Date: New Year's Eve
View: Sunset overlooking the Gulf of Mexico

GERRY'S NEVER-ENDING FICTIONAL STORY

The boat pulled away from the dock. Umberto, the security guard, hated the smell of fish. Hillary and Jimmy were below deck trying to get a reply from their tweet to the National Security Advisor. Hillary suggested that Jimmy use Facebook to instant message him.

It was a common secret that the heads of all the intelligence agencies were on Facebook most of the day trying to figure out who to "Friend" and who to "Ignore." Jimmy sent a Facebook message and waited for a reply. ...*Continued on page 5*



Here's my son preparing to take off, going through his pre-flight checklist.

Trivia

Question:

If you can't reach the pedals, can you still fly the plane?

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. True, 4. False, 5. False, 6. True, 7. True, 8. True, 9. True, 10. True. **BONUS: True.**

NEW YORK INJURY TIMES

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SEND TO:

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.

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