

IN  
THIS  
MONTH'S  
EDITION...

New York Medical Malpractice Attorney Gerry Oginski presents

# NY INJURY TIMES

MAY 2011

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**More frequently asked  
questions inside...**

- GERRY'S FAQ'S & ANSWERS**
- GERRY'S NEVER ENDING STORY**
- NEW TRIVIA GAME**
- PHOTO GALLERY**

## Happy Mother's Day!

I'm writing this on Sunday, May 8, 2011, Mother's Day. I hope all the moms that are reading this are truly appreciated for everything they do.

I often question why we only celebrate mothers once a year. Think about all the sacrifice and all they have done for us; from giving birth to nurturing us, to raising us to teaching us and protecting us. Their efforts deserve more appreciation than simply a once a year "Hallmark-style" Day of appreciation.

The same applies to Father's Day. Who determined that we are only to formally recognize our parents on one day during the year? Isn't the First Commandment to honor thy mother and father?

I have often had this philosophical discussion with my wife and have come to the consistent conclusion that these "celebratory days" are simply created by the greeting card companies to generate money so people will buy their cards to give to their parents. I would love to hear your thoughts about why this is only celebrated on one day out of the year.

In any event, I hope this day is truly memorable and enjoyable and hopefully you will get a gift certificate for an all day spa treatment and pamper yourself like never before. **Happy Mother's Day!**



David flying through the air.  
Sanibel, Florida

**Q: I've heard the phrase 'loss of enjoyment of life' - what does it mean?**

A: That is a concept that lawyers use to explain that your injuries caused you pain, suffering, and literally the loss of enjoyment of your daily life. This allegation of loss of enjoyment of life is included within any claim for pain and suffering you may have. We would point out to a jury how your injuries have affected your daily lifestyle, how you are physically disabled from doing those daily tasks that were once simple and easy, and how you no longer enjoy your life- as you once did, because of your debilitating injuries.

**Q: What does it mean when a lawyer is suing for 'damages'?**

A: Damages means your injuries. Your injuries include those which are 'visible'- that you can see; those that are invisible- those you cannot see; physical pain and anguish; emotional pain, sorrow, anxiety, humiliation, anger, fear, frustration; an inability to do those physical activities you used to do (sports, gardening, music, cooking, etc.); an inability to socialize with friends and family; an inability to interact with your family; changes in your daily

lifestyle; the need for medical treatment and visits to doctors; the need for future medical care; medical expenses; prescription medications; household help, and similar types of 'damages'.

**Q: What is 'vicarious liability'?**

A: This means that someone is responsible for your actions. It typically comes up when an employee has done something wrong during the course of his employment. The company he or she works for is naturally responsible for any of his actions done improperly, as long as the wrongdoing was done in the course and scope of his employment.

For example, a nurse in a hospital that gave wrong medication to a patient would be held responsible for any injuries that resulted from that wrongdoing. At the same time, the hospital is 'vicariously liable' for the nurse's actions. This means that an injured victim would be able to recover money from the hospital and need not worry whether the nurse had the ability or insurance to pay those damages.

## JIMMY CHANGA GOES ON A RIDE OF HIS LIFE

If you remember from the last episode, Jimmy rode a donkey in Mexico to a supersecret CIA hide out. While there, he encountered two of the sexiest spies imaginable and was startled to find the most secretive stealth fighter in the world hidden in his hideout.

He walked over to one of the fighter planes and there was a ladder leading right up to the cockpit. He couldn't help himself. He climbed the ladder and plopped himself right into the pilot's seat. He was amazed that there were less than five controls in the entire cockpit. There were two joysticks, one on the right hand and one on the left hand with multiple LCD displays in front of him.

There was a big button on the right side of the cockpit which said "Do not touch." Of course, being inquisitive, he had no choice but to touch the button. Immediately upon touching it, a loud siren emitted from the plane and the next thing he knew he was surrounded by an entire platoon of Navy commandos pointing their M-16 machine guns right at him in the cockpit.

He immediately put his hands up and said "Don't shoot, I'm one of you!" The only problem was that they were all deaf and only responded to sign language and signals. The two Israeli agents immediately motioned to them by putting the middle finger up and flicking it, giving the all-clear sign.

"If they are deaf, how did they hear the blasting siren?"

"They are trained to feel the vibration as well as the flashing red lights alerting them to an emergency."

Two hours later, Jimmy learned from the Israeli's that the stealth fighters were going out on a secret mission. They were to be flying cover for a mission deep into Pakistan. The details of the mission were sketchy. The Israeli's learned that a dedicated team of SEAL commandos had been training for weeks for an assault on a highly fortified target in Pakistan.

Jimmy asked if there was any way he might accompany the fighter pilots on their mission. The immediate response was "No." Jimmy persisted. The response was still "No."

Two days later, Jimmy met the pilots of these super-secret stealth fighters. He asked if he could join them on their mission. "No," came the immediate reply. They had no time for some military hero wannabe.

He did however get to know the pilot of a funky looking stealth helicopter; the likes of which he'd never seen before. This time he was more successful. He actually got approved by the Secretary of Defense to accompany the team being inserted into Pakistan.

"Mr. President, Jimmy Changa is requesting that he ride with the insertion team in their chopper. Are you OK with that?"

"Let him go. It'll be good for him. He's done a lot for our country. What's the worst that will happen?"

Jimmy was not given any weapon. He was briefed on what he was to do...which was to stay in the chopper.

He listened until the chopper stalled just as they were landing and everyone was ordered out.

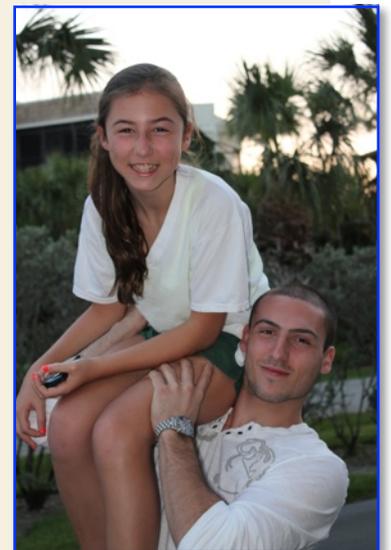
*Continued, next page...*



At our Passover seder



Sanibel Seashells



Joseph needed to work out so he grabbed the first person he saw

They had jumped out of the helicopter inside the target's compound. There were high fortified walls and the chopper was the only way in or out.

Since Jimmy had no weapon, he followed the crowd toward the main house. The next thing he knew, there were missiles and bullets flying toward them.

"Shoot!" He thought. "What did I get myself into?" He quickly followed the commandos into the house. Out of the corner of his eye, he saw his ride get blown to pieces. "How the heck am I getting out of here?" he asked himself.

Inside the house there were women and children wandering around. They were ordered to the floor. Jimmy decided to follow "Pac Man," a 220 pound gorilla of a man who was all muscle. Dressed head to toe in black and carrying two machine guns, grenades and two pistols, he looked like a tricked-out killing machine.

Jimmy decided to wander off a bit. He asked "Pac Man" to loan him one of his weapons and "What the heck are we looking for anyway?" The Navy SEAL commando figured "What the hell." "Here's a machine gun. We're looking for a tall, turban headed guy with a beard. If you see someone who looks like that order him to put his hands up and call for us immediately. If he breathes funny, shoot him."

Jimmy had never held an assault machine gun before. It was heavy. It was deadly. For a split

second he said to himself "What have I gotten myself into here?"

That thought evaporated when he aimlessly wandered up the stairs to the third floor. He wanted to get a better view out the window to see how he might be able to get home, now that his helicopter ride was gone.

He found the bathroom. Nothing exciting there. Next was a bedroom. Nobody in there. The next door he opened he found some smelly turban-headed old guy with a grey beard sitting on the floor watching TV. "Get up old man, Now!"

The man calmly looked at Jimmy and began to get up. A middle aged woman burst into the room from another door screaming something Jimmy couldn't understand. Then she saw Jimmy and yelled louder and began gesturing to the old man to head to the corner of the room.

"Holy canoli!" Jimmy yelled. "IT'S YOU! YOU! Don't move!"

"Pac Man, get up here now!" Jimmy tried to yell. His voice failed him. Jimmy was pointing the machine gun at the tall, thin, bearded, smelly man. He recognized him immediately. The man took a step toward Jimmy. He put his hands in front of him, asking for Jimmy's deadly weapon.

Jimmy backed up. He pointed the weapon at the man. The man grabbed the woman.

*Find out next month what happened to Jimmy and the tall, smelly, turban-headed man.*



Getting ready for dinner



Inside of a flower. Just beautiful.



She was walking down 1st Ave. at about 6:30 in the morning. She just left her apartment and was headed to work. It was still dark outside and was raining. The walk to work normally took less than 10 minutes. It was just a few short blocks away.

She lived in a one bedroom apartment in a large apartment building on the corner of 21st St. and 1st Ave. in Manhattan. After taking the elevator downstairs and heading out the main lobby door it was a 30 second walk to get to the sidewalk along 1st Ave. She took this route every single day.

As she approached the intersection for 21st Ave. she had to stop at the corner because the light was red.

When the light turned green she proceeded, along with other people, to step into the crosswalk and begin to walk across 21st Ave. In an instant, she noticed a flash of bright light to the left of her. The next thing she knew she was lying on the ground and there were people with uniforms standing over her.

Her next memory is of being in Bellevue Hospital emergency room where nurses and doctors were cutting off her clothes with scissors. She remembers being placed into a machine and being told to hold still and not breathe for a few moments.

She did remember being told that she had a small bleed in her brain and that the bones in her left arm were badly broken and she would need surgery to fix it. She also

remembered getting many sutures in her head.

So what happen here?

As she stepped into the crosswalk a Mack truck carrying demolition debris was making a left turn from 1st Ave. onto 21st St. The driver never saw the three prominent signs that said "Yield to pedestrians." This woman was hit by a Mack truck and suffered a massive fracture of her left arm requiring her arm to be surgically opened, and pins and hardware to be placed inside and outside her arm while it healed.

Photos of the intersection clearly show the large green signs that say "yield to pedestrians." This was a case of careless driver who caused harm to a woman in the crosswalk. This accident *could have* and *should have* been prevented.



In the pool in Sanibel, Florida



Mia at the Beach  
Sanibel, Florida



Our Passover Seder



Pelican in flight.  
Awesome wing span



David at the Beach  
Sanibel, Florida



Joseph playing  
volleyball,  
Sanibel, Florida



Two brothers just hanging out at the pool, until David gets  
propelled, as seen on page 2.



## TRIVIA GAME

# Gerry's Trivia Game

### TEST YOUR KNOWLEDGE OF NEW YORK LAW



Why does my wife think that going to the Mall is a "Holy Land Experience?"

## TRUE OR FALSE?

1. When a car insurance adjuster sends you a check in "Full payment of your injuries" without you asking for a check, you can deposit it and still go forward with a lawsuit seeking more money.
2. In a car accident case in NY, you must have an injury that meets the "Threshold" test.
3. If you are out of work for 90 out of 180 days, you would meet the "Threshold" test in a car accident case in New York.
4. If you have scarring from your car accident, that is considered an injury that clearly meets "Threshold."
5. In NY, a car accident lawsuit is tried in two parts; the first part is 'liability' to determine who, if anyone is at fault. You only get to the

second part, damages, if you can prove the person you sued is responsible for your injuries.

6. If you suffered a broken bone from your car accident, that would exceed the "Threshold" test.
7. The insurance adjuster is your friend and is looking out for your best interests.
8. The lawyers fee in a car accident case in NY is 33%.
9. The lawyers fee in a medical malpractice case in NY is the same as an accident case.
10. Defense lawyers bill for their legal services and are paid regardless of whether they win or lose.

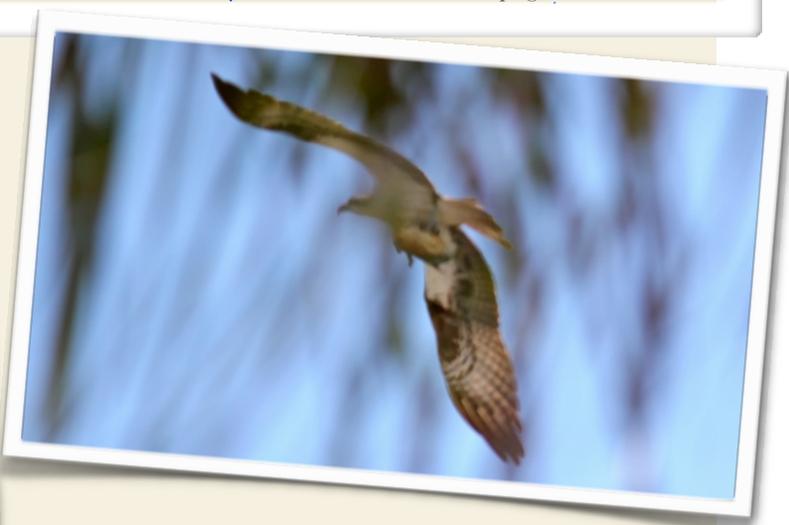
### BONUS QUESTION

A lawyer who represents an injured victim in New York always works on a contingency fee. That means that only if the victim is compensated, the lawyer gets paid.

Answers are on the back page:



Mia & I made a new friend at this restaurant



Bird of prey, with dinner in its' claws.

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Gerry Oginski, NY Medical Malpractice Trial Lawyer

**HAVE LEGAL QUESTIONS?**

**Call me: 516-487-8207 or**

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

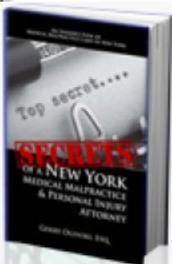
----- Answers to Trivia Game -----  
1. False, 2. True, 3. True, 4. True, 5. True, 6. True,  
7. False, 8. True, 9. False, 10. True, BONUS: True

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