

Hot  
Summer  
Edition!

New York Medical Malpractice Attorney Gerry Oginski presents

# NY INJURY TIMES

JULY 2012

THE LAW OFFICE OF:  
**GERALD OGINSKI, LLC**  
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Yankees v. Braves at Yankee Stadium



Bat breaks on impact- wild to watch



David waiting for the pitch

- ✓ **MED MAL-WHAT'S IN THE NEWS?**
- ✓ **BIG VERDICT-CLIENT GETS WHAT?**
- ✓ **NEW HAMPSHIRE EXPERIMENT**
- ✓ **PHOTO GALLERY**
- ✓ **NEW! WORD SEARCH GAME**

## Credibility-The Most Important Part of Your Lawsuit

**Some people think that facts are the most important part of a lawsuit.**

don't believe you, then you will have lost your case even before the jury renders a decision.

**Others think that the law is the most important part.**

An injured victim's credibility is judged at the following times in the lawsuit process:

The reality is that your **credibility** is the most important part of your case. Obviously the facts are important as is the law that applies in your case.

- When you walk into your attorney's office to talk about your new potential case;
- When you are at your attorney's office to give pre-trial testimony in a deposition, also known as an examination before trial;
- At trial, from the

However, all other things being equal (which they're not), your credibility is the key. If you are not believable, then a jury will not believe what you have to say. If they

*continued on page 3*

### **How much did the attorney and the client actually walk away with?**

You are searching for a lawyer and you find his website filled with claims he achieved many multimillion dollar verdicts. That's a great testament to the trial lawyer and the law firm.

However, one important point to note when you read about a lawyer achieving dramatic verdicts is that in most cases, the client does not actually get the amount the jury has awarded.

Large verdicts make for great publicity. It makes great fodder for the news media as well. Take for instance the \$3 million awarded to Stella Liebeck when the McDonald's coffee she purchased caused her to suffer significant burns to her thighs.

### **The reality is that in New York, after a large jury verdict, here's what happens:**

First, **the defense lawyer immediately asks the judge to throw out the verdict** as being against the weight of the evidence. Then, when the judge refuses to dismiss the verdict, the defense

attorney will ask the judge in a formal request to either throw out the verdict or significantly reduce it claiming that the evidence does not support the result.

The winning attorney then has an opportunity to put in reply papers explaining why the jury verdict was fully supported by the evidence. The court will usually hear oral argument and then make a decision months later.

**The judge has at least three options to consider.** The first is that he can let the jury verdict stand as it is. The second is that he can reduce the jury verdict and explain his reasoning for doing so. The third, is that he can increase the award claiming that the injuries are worth far more than what the jury has awarded.

Typically, no matter what the trial judge does on this post-trial motion, the defense will usually appeal the judge's decision. That means that even if the trial judge reduces the award, **the defense lawyer will attempt to appeal the award to either reduce it or throw it out.**

On appeal, the defense will make similar arguments claiming that the verdict is not supported by the

evidence and that the trial judge made errors of law during the course of trial and in his post-trial decision.

### **The appellate court has multiple options when evaluating a large award.**

**First**, they can agree with the original jury award and let it stand.

**Second**, they can agree that the award was excessive and reduce it to a number they feel is more appropriate.

**Third**, they can increase the award to what they feel is appropriate based upon the evidence presented.

**Fourth**, they can agree that there were errors made and direct that a new trial on damages be held so a new jury can determine how much to award the injured victim.

Even after a large jury award, both sides recognize that there is a significant outlay of money, time, energy and resources put into these post-trial motions and appeals. The risks and benefits of going forward versus the risk of having any one of these outcomes occur constantly weigh on the



## How much did the attorney and the client actually walk away with?

*continued from p. 2*

minds of all parties as this proceeds forward. When a case is appealed, there is significant uncertainty of the outcome.

**That is why many large jury verdicts are often settled at some point in the appeals process, and settlement amounts are often not disclosed.**

That is why it is so important to ask the attorney who achieved a large verdict what the case actually resolved for. Did the case ultimately settle or did it play all the way out with the appeals court rendering a final decision?

It's nice for an attorney to be able to tell the world about significant million dollar and multimillion dollar awards they have achieved. However, many of these significant awards are reduced on appeal and often settled for a fraction of what the jury awarded. Don't be afraid to ask the attorney what he actually received.

*continued from p. 1*

- moment you walk into the courtroom until you testify and as you sit in the courtroom during the trial.

The lawyer you meet with will consciously determine if your story is credible. He will have questions in his mind during your initial consultation that you must answer in order to make him comfortable that you are credible. Some people, for whatever reasons, may not be believable. Their story may be incredible. The facts may not sound plausible. The facts may not jive.

**BOTTOM LINE: Your credibility is everything!**

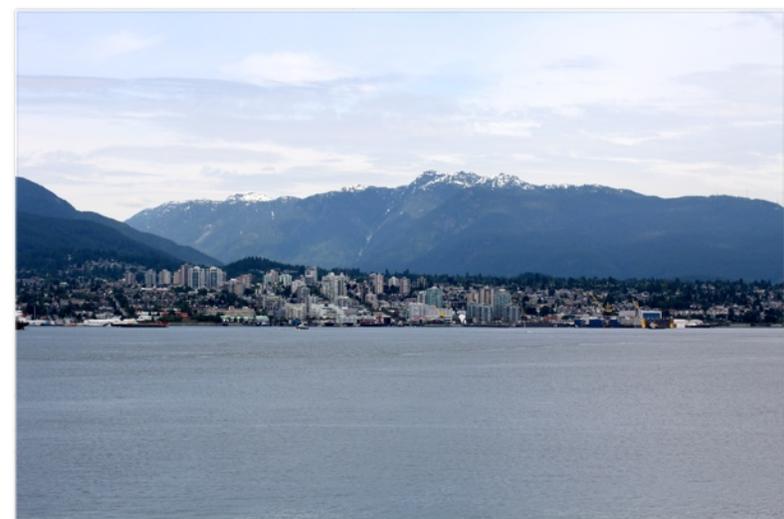
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Stanley Park, Vancouver, BC



Vancouver, BC- gave a lecture there to really smart lawyers



Vancouver, BC



Beautiful flowers in a park by the waterfront, Vancouver, BC

## [New Hampshire's New Medical Malpractice Experiment](#)

A development late last month in New Hampshire may have broad implications for the world of medical malpractice and tort law.

The state's legislature passed an "early offer" law over the governor's veto. The new law adds a voluntary reform to the legal process for slighted patients, who likely do not want the hassle of going through the normal lengthy court battles, which average 3.5 years in New Hampshire. The new system takes its cue from abroad and from academic circles, but has no precedent in any of the United States.

This voluntary system begins with the plaintiff's choice to pursue the early offer. He is encouraged to consult a

lawyer or an neutral advisor, who can be provided by the state at the defendant's expense.

The injured victim can still decide to go to trial. But if the early-offer process is activated, the defendant may ask for a physical examination within 90 days.

The provider's offer then follows. This offer must cover the standard losses: medical bills, foregone wages, and attorney's fees. A standard rubric of injury-severity will also be consulted, in lieu of pain-and-suffering.

The claimant may then accept the offer or go to trial. If plaintiff eventually wins in court, the award must match at least 125% of the original offer. If plaintiff loses, then he must pay for the defendant's legal fees.

New Hampshire trial attorneys have thus far opposed the law, which they believe limits what plaintiffs can win. On the other hand, proponents believe the more streamlined design is a net positive for patients.

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Attorney Gerry Oginski obtains \$1.5 million

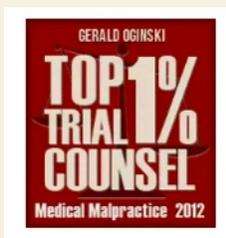
Nerve Injury Results in \$1 Million Settlement

Cardiac Malpractice in NY

How Does a New York Medical Malpractice

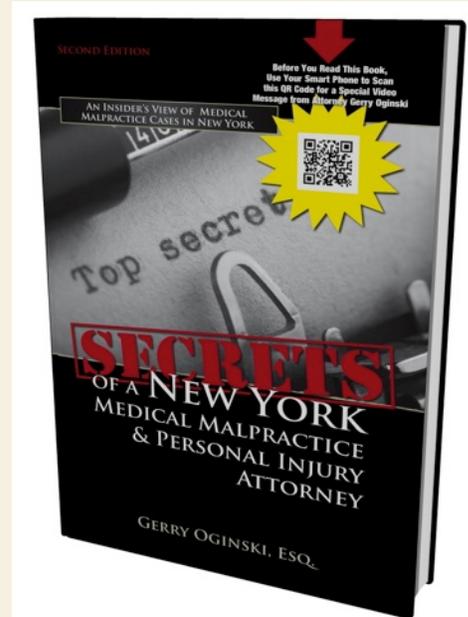
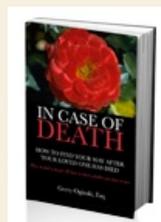
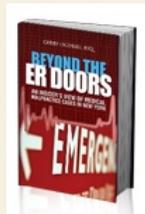
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This ‘badge’ was issued by an independent company after their own investigation. Unlike some companies who issue ‘badges’ this one does not require an attorney to buy a plaque, participate in an advertising program or in any way make a donation to the group who issues the award.

I was humbled to learn of this really cool distinction.



To get your FREE books, simply head over to [Oginski-Law.com](http://Oginski-Law.com) and enter your name & email for an immediate download. Start reading in seconds!



Sanibel, Florida; Scenes from the pool and beach. Notice the mid-air photos. Really cool action shots.

# Gerry's Trivia Game

# New Word Search!

TEST YOUR KNOWLEDGE OF NY LAW

FIND ALL WORDS AND WIN A GIFT CARD!

## TRUE OR FALSE?

1. A 'motion' is a formal request that the Court do something.
2. An 'affidavit' is a sworn statement.
3. A 'little-white-lie' can destroy your credibility and your case.
4. A 'process-server' is someone who takes your lunch order during a trial.
5. A 'motion in limine' is when an attorney asks the Court for an adjournment to postpone a trial.
6. In an accident case in state court in NY, there are only six jurors who will deliberate and decide your case.
7. In a car accident case in NY, there are two phases to your trial. Liability is tried first and only if successful, do you move onto damages.
8. In a trip & fall case, you must prove actual or constructive notice of a defect to show the property owner is responsible.
9. 'Voir Dire' is a fancy legal term that means "Pick up your laundry on the way home from work."
10. In a medical malpractice trial, jurors are sequestered (kept secluded) during deliberations.

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- |              |            |
|--------------|------------|
| AWARD        | INSURANCE  |
| COMPENSATION | JUDGMENT   |
| DEPARTURE    | JURY       |
| DEPOSITION   | LAWSUIT    |
| DOCTOR       | MOTION     |
| HOSPITAL     | NEGLIGENCE |
| IMPROPER     | SURGERY    |

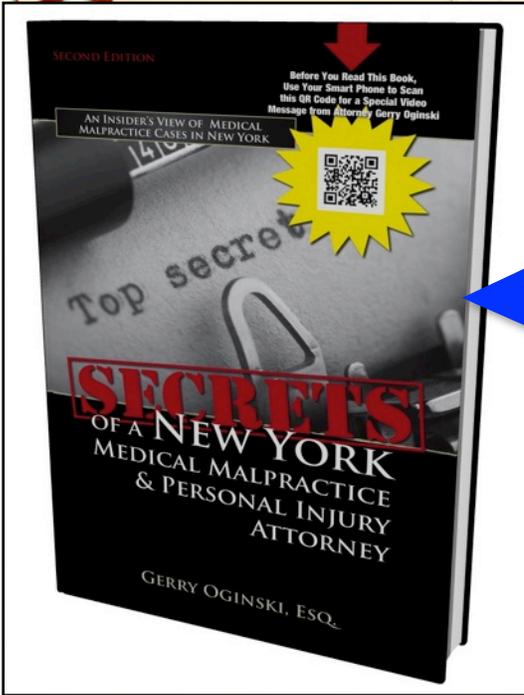
**Word search challenge: Find all 14 words correctly, and fax it in with your name & address filled out for a \$10 gift card to Dunkin Donuts. ONLY 15 GIFT CARDS AVAILABLE...so send it in quickly!**

NAME: \_\_\_\_\_  
 ADDRESS: \_\_\_\_\_  
 CITY: \_\_\_\_\_ STATE: \_\_\_\_\_  
 ZIP: \_\_\_\_\_  
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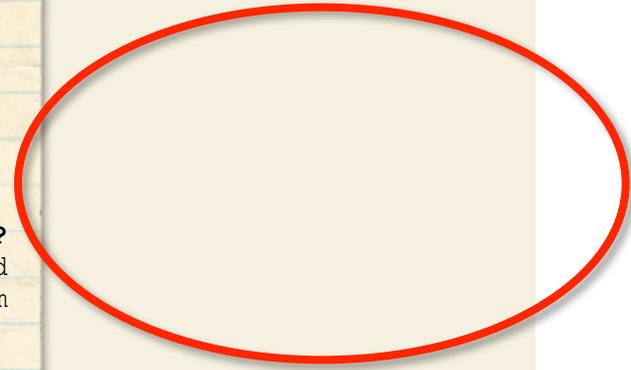
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I welcome your call.

# NEW YORK INJURY TIMES

JULY 2012

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

----- *Answers to Trivia Game* -----

1. True, 2. True, 3. True, 4. False, 5. True, 6. True, 7. True, 8. True, 9. False, 10. False

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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