

New York Medical Malpractice Attorney Gerry Oginski presents

# NY INJURY TIMES

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THE LAW OFFICE OF:  
**GERALD OGINSKI, LLC**  
25 Great Neck Rd., Suite 4  
Great Neck, NY 11021

TELEPHONE  
516-487-8207

FAX  
516-487-8472

**BREAKING  
NEWS:**  
White Plains, NY

## Westchester Jury Awards Woman \$1.5 Million in Foot Surgery Case

**Gerry Obtains  
Jury Verdict:  
\$1.5 Million**

### PODIATRIC MALPRACTICE CASE RESULTS IN UNANIMOUS VERDICT

#### MY CLIENT

was 37 years old when she went to have her bunion surgically corrected. The podiatrist lulled her into a false sense of security, telling her that he had done many of these lapidus bunionectomy surgeries and that none of his patients had any complications.

*Continued on Page 2*

### COST CONTAINMENT IS THE NEW CRY FOR HEALTH CARE REFORM

A continuation of last month's reply to the article in the medical journal Obstetrics & Gynecology, March 2010 edition, written by a lawyer who was trying to find ways to change the health care system in the U.S.

*Continued on Page 5*

### GERRY'S PHOTO GALLERY- SOME STUNNING PHOTOS

*Continued on Page 3*





**DATELINE: WHITE PLAINS,  
NEW YORK**

On July 23, 2010 a six-member jury awarded \$1.5 million dollars to my client for a failure to properly perform foot surgery.

The jury was presented with a series of questions on liability that they need to answer before they reached question of whether they could award compensation. The first question was “Did the defendant podiatrist Park from good and accepted podiatric and surgical care?” They answered “Yes.”

Since they answered yes, they were required to go to the second question which was, “Was that departure a substantial factor in causing injury?” Again, they answered “Yes.” now they went on to the question of damages to determine how much money toward my client for her injuries.

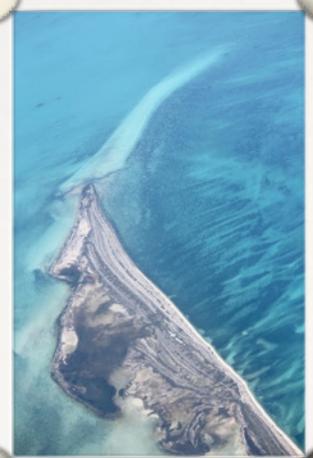
They were then asked how much money to award to my client for her pain

and suffering from the date of surgery in March of 2005 to the present time. They awarded her \$375,000 for the past five years of her suffering. The next question was how much money to award for the future?

The jury determined that she was entitled to receive \$1,125,000 for pain and suffering that she could be expected to have for the next 30 years of her life. In addition, the jury made an award for her husband of \$50,000 that represents his claim for loss of services. A loss of services claim means that he had to do those things that his wife normally did during the time that she was incapacitated and recovering.

As with any large verdict, the defense has asked the court for time to prepare papers, known as a post-trial motion, to attempt to convince the judge to either reduce or throw out the verdict on legal grounds. The defense attorney was an experienced trial lawyer who put up a vigorous defense. Justice Mary Smith presided over the trial in Westchester country Supreme Court, here in New York.

*The jury determined that she was entitled to receive \$1,125,000 for future pain and suffering.*



# GERRY'S PHOTO GALLERY



On vacation with the family in the Caribbean. Swimming with the dolphins was the highlight of that trip. So was scuba diving for David.



David is discussing the Bernoulli principle with the pilot, and is explaining to the pilot how a plane is able to use its wings to create lift. David is telling the pilot that he knows all about this.





What you see here are 2 separate action photos of David diving into the pool. The shutter on my new Canon dSLR takes 3 frames per second. Combine that with a fast shutter speed and you get stop-action photos that look stunning. You can feel the energy in the photo and our mind fills in the blank about what happens next.

We know he'll enter the water in a fraction of a second. The fact that a photo can stop the action in mid-air is just amazing. Who said kids couldn't fly through the air without a cape that had the letter "S" on it? You don't need x-ray vision to see that thrill on his face when he comes up from his dive.



## “Cost-Containment and the Need for Medical Justice Reform”

is an article published in the March 2010 medical journal *Obstetrics & Gynecology*, vol. 115, No. 3 written by Philip K. Howard.

This is a and a continuation from last month’s reply.

Stop focusing on lawyers who are trying to right a wrong. Focus instead on the physicians who are causing the medical errors. Eliminate that and you will have solved medical malpractice in the United States.

The author states that an early offer program is a useful idea because it limits attorney’s fees to 10%. Since this is a ‘cost-containment’ study it is odd that the focus of cost-containment focuses on the fee an attorney receives for achieving full and fair compensation for the injured victim. He then says that many observers like this efficient way to resolve cases. His next statement is troubling: “But it does not address the problem of judicial unreliability that is the main driver of defensive medicine- early offers do not protect the doctor who did nothing wrong.”

This opinion asserts two points that show the author’s

bias. One, that ‘judicial unreliability’ is the driving force for doctors ordering defensive tests. That appears to be more anecdotal than anything else.

The second point is that the author is more concerned about physicians who did no wrong than the injured victim who is left to find a way to obtain compensation and seek corrective treatment and rehabilitation.

Clearly, the physician isn’t going to turn around at the time of the malpractice and make an immediate settlement offer. Malpractice cases are fiercely litigated and the value of every case is fought tooth and nail. The defense is always trying to limit the payout a victim receives and the plaintiff’s attorney is always trying to obtain the maximum value for the patient.

The author neglects to mention that early offers are

drastically discounted in an effort to contain costs. It’s offered as an incentive to save attorney costs, fees, court costs and 2-3 years to bring a malpractice lawsuit to conclusion. The only benefit to an injured patient to accept an early settlement offer is if they need the money now. It is also a guaranteed payment.

The author also says that the incentive to get physicians to apologize forms a bond with the patient, but again, *does nothing to help the doctor who is wrongly accused*. Guess what? It shouldn’t.

The early offer plan and the sorry works program isn’t designed to impact a physician who did nothing wrong. The writer’s priority is again misplaced.

Focus instead on the doctors who commit malpractice; limit their ability to practice; compel them to take remedial classes or practice under the

## ***“Cost-Containment and the Need for Medical Justice Reform” ...continued***

the direct supervision of a competent board certified physician. Doing so will likely reduce the common errors seen in hospitals and office-based practices, thus reducing costs for patients, insurers, hospitals and even Medicare and Medicaid.

Read this and tell me if this statement bothers you? “...we cannot afford to pay doctors for unneeded services.”

How could the author possibly know it’s unneeded? The author’s credentials indicate he is a partner in the law firm of Covington & Burling. How can he, as an attorney, determine what medical services are required? As a patient, the only person I want making decisions about my medical care is my physician, who is making decisions that is in my best interests without regard to reimbursement.

While this may not be true for all physicians, I believe that the treating physician is the only one qualified to determine what treatment a patient should receive; not insurers and certainly not lawyers.

The more I read of this article the more I realize that the author has an inherent bias. He says “But Congress is not responding to the real needs of Americans. Liability overhaul is supported by every legitimate health care constituency, including consumer and patient safety groups, as well as by an overwhelming 83% of voters.”

Where is the injured victim in this shout for overhaul? Aren’t those victims “Real Americans?” Aren’t those victims voters? Is the author suggesting that the remaining 17% of voters are injured victims and trial lawyers? Such a statement is nonsense.

The bottom line? The author correctly concludes that in the present political climate, health care reform cannot and will not change.



# Gerry's Trivia Game

## TEST YOUR KNOWLEDGE OF THE LAW

### TRUE OR FALSE?

1. Jury interrogatories are questions a jury must answer to determine if you are to win your case. TRUE or FALSE?
2. "Falsus in Uno" is a phrase the Pizzeria Uno uses when creating their deep dish pizza. TRUE or FALSE?
3. "Preponderance of the evidence," means that we must show that we are only more likely right than wrong. TRUE or FALSE?
4. The 5/6 rule requires that only 5 out of 6 jurors answer a jury question. TRUE or FALSE?
5. Lawyers can talk to jurors after the verdict. TRUE or FALSE?
6. When a New York jury renders a verdict and awards money, interest on that amount begins to run from the date of the verdict. TRUE or FALSE?
7. The trial judge instructs the jury that they are not to consider sympathy when deciding on their verdict. TRUE or FALSE?
8. The trial judge instructs the jury that they are allowed to consider how a jury verdict will affect the doctor's reputation or who the verdict will help or hurt. TRUE or FALSE?
9. The alternate jurors get to deliberate and render a verdict too since they spent the entire time in court, just like the regular jurors.
10. "Polling the jury," means that the judge will ask each individual juror after the verdict whether that is their decision. TRUE or FALSE?

### BONUS:

When an injured victim wins money compensation by a jury verdict it is always acceptable for the plaintiff's attorney to jump up and down and do an end zone football dance and scream out loud a big "YESSS!!"

The Law Office Of  
*Gerald M. Oginski, LLC*



Sanibel, Florida

# NEW YORK INJURY TIMES



The photos of the sunflower field were taken on visiting day in Pennsylvania. As we left camp, there was this gorgeous field of enormous sunflowers. It was magnificent. I had to get out and take pictures. Lots of them. Close-up photos and wide-angle photos. They came out beautifully.

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

**DO YOU HAVE LEGAL QUESTIONS?**

**CALL ME: 516-487-8207 OR**

**EMAIL ME:**

**[LAWMED10@YAHOO.COM](mailto:LAWMED10@YAHOO.COM)**

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THE LAW OFFICE OF :  
GERALD OGINSKI, LLC  
25 Great Neck Rd., Suite 4  
Great Neck, NY 11021

TELEPHONE  
516-487-8207

FAX  
516-487-8472

MAIL 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**