

New York Injury Times

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We're in color!



Gerry Oginski, Trial Lawyer

Lawyers stop suing doctors! Doctors' malpractice premiums drop, and world peace is achieved!

Great Neck, NY-

If this were all true, this would be a perfect world. Just imagine, if there was no malpractice, patients wouldn't have anyone to sue. Lawyers would have to find some other way to earn a living. If the insurance companies charged doctors less money for their insurance policies, they'd have to make up their profits elsewhere, maybe through auto insurance or homeowners' insurance. Unfortunately, we don't live in a perfect world. Accidents do happen. Mistakes are made, and those injured victims should be properly compensated for their disability and for what has been taken from them - their dignity and their freedom.

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We're having a contest!

Find the most interesting lawyer's ad you can and send it in to us. Tell us why the ad is compelling and would cause you to call them over someone else. The winner, to be announced in June, will receive a copy of the new John Grisham novel!

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In This Edition, We Look At

SETTLEMENTS

WHEN IS A SETTLEMENT NOT A SETTLEMENT?

When it's not recorded in 'open court', or when the injured victim dies before he receives the settlement check, and the terms of the settlement were never clearly laid out by either side.



Usually a settlement is reached among the attorneys or in Court with the assistance of the Judge. Where there is a verbal agreement between the attorneys as to the terms of the settlement, the victim's lawyer will usually confirm those details in a written letter to the defense attorney. If a settlement is reached during trial, or at a pre-trial conference, the preferred method of settling the case is to 'put the settlement on the record'. This means that a court reporter is called to the courtroom or Judge's chambers, and the terms of the settlement are recorded and agreed to by all parties and later transcribed by the court reporter.

Why is this important you ask?

Because a settlement is not a settlement until and unless these rules are followed. Many attorneys are guided by principles of fairness and doing what's right for their clients. However, let's look at the following case where all sense of fairness was discarded.

A lawsuit was brought for a child who was injured at birth. At some point during the lawsuit an offer was made by the defense, and the offer was accepted by the child's parents. In a child's case, a Judge must always approve any settlement involving a child. Let's also assume

that the attorneys confirmed their intention to settle in writing subject to the approval of the Court.



This would be just fine if the Court had processed the paperwork quickly and a settlement check had been forwarded without delay. Unfortunately in this case, the Court delayed (unintentionally) processing the paperwork. Also, because the child was so severely injured his life expectancy was very limited. Between the time that the attorneys reached an agreement to settle the case and the time that the Court actually approved the settlement, the child died.

You would think that this story has a happy ending, but it doesn't. The child's lawyer notified the defense that the child died, and also sent the Courts' approval of the settlement. Now here's the worst part: the insurance company recognized a way out of having to pay this large settlement by claiming that there was never any proper settlement in the first place!

The insurance company refused to pay, claiming that since the child had died, the agreement that was reached at the time was no longer valid, and absent a Court order, they were not paying a dime!

If that type of tactic doesn't outrage you, it should. Remember, an insurance company isn't in business to pay claims. Rather, they're in business



to make profit. Here's a case where the insurance company had an agreement to settle a case and pay the child and his family money to compensate him for his injuries; the attorneys acknowledged in writing to each other the offer and acceptance; and the Court was in the process of approving the settlement. Isn't that enough to confirm there was a settlement?

Not according to the Court. The decision made it clear that although there was an intent to settle the case, the fact that the parties did not follow the 'rules' to settle a case and make the settlement legally binding meant that the insurance company was now totally off the hook.

This is an unbelievable and unjust result for an injured victim and his helpless family. This decision means that the family must now pursue a legal malpractice claim against their own attorney for not settling their case in open court, or setting out the specific details and terms of the agreement in proper form signed by all parties.

What's the moral of the story? If you settle a case make sure your attorney does it in Court, and makes a record of it. If it's not done in Court, make sure all the specific terms of the settlement are clearly spelled out in a written document signed by all the lawyers. Finally, make sure there is a clause in this agreement that says that the terms of the settlement are binding regardless of whether the injured victim is alive, or has died in the interim. If the plaintiff's lawyer had confirmed all the settlement details in his letter, and included this clause, he likely wouldn't have had a problem.

I'll bet the insurance company lawyer got a bonus for finding that loophole and outsmarting everyone on that case. How's that for a sense of fairness?

QUESTION TIME →

Q: Why do we need jurors to hear our case?



A: Because a jury brings various life experiences to the jury room, which we believe gives them the ability to understand the suffering each injured victim has sustained.

Q: My friends tell me that the lady who was burned by McDonald's coffee was awarded 3 Million dollars. My injury is worse, so why isn't my case worth more?

A: First, although the 'McDonald's lady' was awarded a large amount of money by the jury, that's not actually what she took home. The amount was reduced significantly following the verdict.

The value of your injury is evaluated by similar injuries in the community where you live or where your case is pending. A fractured foot in Rockland County will have a different value than a similar injury

in Brooklyn. Injuries affect different people different ways. Some people can ignore pain. Others complain about it constantly. Each injury causes different disabilities. There are many factors that go into the equation when we discuss the value of a case. Apples must be compared with apples. We cannot compare apples and oranges (or any other fruit you can think of).

Q: Why do I have to prove my case? Isn't it enough to show I was injured because of someone's neglect?

A: No, it's not enough. The law in New York says that if you claim you were injured because of someone else's carelessness, then you have the obligation to prove it. "Well, how much proof do I need?" Again, the law says you must prove your case by a 'preponderance of the evidence'. This has been taken to mean that you must show that your version of events is more probably true than not true. If your proof leaves the jury with a 50/50 split, and they cannot determine if you've proven your case, then they are obligated to return a verdict for the defense.

However, if you are able to prove your case, where you tip the scales of justice in your favor, ever so slightly, then you have proven your case, and you would be entitled to an award in your favor.

Q: I'm unhappy with my current treating doctor, can you recommend a doctor for me to go to?

A: I could, but I won't. If you read my free report on my website, "5 deadly sins that could wreck your injury claim," you'll see why I simply do not recommend physicians for my clients. There's a very important reason I do not do this. CREDIBILITY. Yours, mine, and the physician who comes in to testify on your behalf.

Jurors don't really like to hear that the attorney sent the client to a doctor for ongoing treatment. Why not? Because if the attorney has sent you there, there's a good likelihood he's sent other client's there as well. There's also a good chance other attorneys have sent their clients to that doctor also. Importantly, the defense will make sure to bring out the fact that this



doctor is a 'favorite' of plaintiff's attorneys because of what he says in

behalf of patients who have been referred to him by attorneys.

Does that mean its wrong?" No it doesn't. In some cases, there may not be any expert or physician willing to evaluate or treat your condition. In that case, you may have no other option. Remember, in a lawsuit one's credibility is of the utmost importance. If you are caught in a lie, the defense will argue that if you have lied about this fact, how can we believe you have testified truthfully to other facts? ☹

Gerry's Book continued...

Within days of starting at Morgan Stanley, he was a star within his department. Within one week he grabbed the attention of the senior vice president, former Governor Jim Johnson, III. "Jacob, it's miraculous that you've been dead-on about your

stock predictions...how do you do it?" "Just beginners luck, I guess," answered Jacob. Within one month, Jacob was called into the president's office of Morgan Stanley. The desk was currently occupied by none other than John Schwarzenegger, Arnold's younger

brother. "Ahhh, Jaaycobbb. So nice to meet you." "How have you enjoyed vorking here at Morgaaan Staaanleece?"

"Great. Nice people. Nice office. Nice food. Interesting job."

"Goot," replied Mr. Schwarzenegger. "You da' maaan. Not

da 'girly man', you da man!" "O.K., sure, whatever you say, sir," answered Jacob. "Leeesen...you make millions for our company in only one month. Pretty soon you'll want my job. That's a big no, no. My job is mine. Not yours. Understand?" "Yeah, sure," said Jacob. "If I didn't know any better, I'd say you're getting information from somewhere inside...yah?" asked Mr. Schwartzenegger. "Uh, no. The only place I get my information is from inside my head. Nowhere else," said Jacob.

"Leeesen to me Jacob. I know peeeple. I know dis' companee. People in this companee are starting to talk and ask questions about you, like; how does he know this? How is it possible he could be so accurate all the time?" "You could tell them anything you want. Or you could tell them the truth...that I'm an alien from another planet from another time, and I am all knowing and all seeing," replied Jacob with a big bright smirk on his face. With that comment, the president of Morgan Stanley stood and said "Jaaaycobbb. It was so nice to finally meeeet yoood. It looks like you'll be getting a biiiiigggg bonoooooos dis year. Just remember...this is my job, OK?" "OK," replied Jacob, who was totally confused by the entire interaction with the Morgan Stanley president.

What was that all about, he asked himself? Is he really afraid I'll take over the company? Is he worried I'm getting my info from an illegal source? Oy. What a character. I love his accent, thought Jacob.

Jacob returned to work that Monday, and upon entering his office, found John Schwartzenegger and two men in suits waiting for him. "Hello Jaaaaycob. Gut morning. My friends here from the Securities and Exchange Commission would like a few vurds wit you before you start vorking today, yah, ok?" "Sure," replied Jacob.

"In October of this year did you advise clients to buy Apple Computer stock for \$59 a share?" asked the man in the blue suit. "Yes," said Jacob. "One week later did you advise clients to buy Pfizer stock at \$84 a share?" "Yes," said Jacob. "OK. Thanks for your help. See you around," said the man with the yellow hat. When the suits left, Jacob asked Mr. Schwartzenegger what that was about. "Vell, they're looking into claims of insider trading vit your trades. Seeee. I told you someting feeshy was going on." "Well, nothing feeshy is going on. I'm telling you I can predict what a stock will do. I can make this company millions of dollars. But if you say anything to anyone, ever, I will leave immediately and go work elsewhere," said Jacob.

"Dees is bullsheet. You caaan't predickt da future. Nobody can," answered the CEO. Well, needless to say, Jacob proved him wrong for the next two weeks. Day after day, prediction after prediction was dead on accurate. The CEO couldn't believe it. He promoted Jacob to Senior Executive Vice President, the number two position in the entire company. Never before had anyone so young been promoted so rapidly. Jacob was actually tiring of the game. John Schwartzenegger's self-

esteem was so low that he asked Jacob every day whether he intended to take over his job as CEO and President. Finally, as a goof Jacob said "You know, it might be fun to be CEO and President of this company. Hmm. What do I need to do to get your job," he asked with a big smile. The only problem was that John Schwartzenegger didn't think Jacob was joking. He got very nervous and was ready to fire him, when Jacob intervned and said "Fooled you, didn't I!" "Ach du leeber! Don' do dat Jacob. You scared da be-jeebers out of me!"

In one month alone, Jacob earned the company \$30 million dollars in commissions. This was the highest amount of commissions ever earned by anyone in the history of the company. The Wall Street Journal got a whiff of the story from one of the traders on the exchange floor. The next day, Jacob's name was plastered on the front page of the Journal. "Young college graduate Jacob Morgan defies all common sense and becomes the highest paid employee at Morgan Stanley." The phone calls from television and news stations didn't stop all day. They all wanted interviews with this new wunderkind. "No interviews, thank you," replied Jacob.

The next day the Supermarket tabloids ran the following headline: "Jacob Morgan hooks up with Chelsea Clinton- Mega millionaire Jacob Morgan and former first child Chelsea Clinton are now reported to be a couple. They were last seen smooching at an eatery in downtown Manhattan where Jacob Morgan apparently left his wallet at home. Chelsea was seen picking up the tab for the twosome."

We hope you've enjoyed our [April 05](#) issue, and would greatly appreciate any comments or feedback about our newsletter. Write to lawmed1@optonline.net with your comments.

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