

# New York Injury Times

A monthly newsletter published by  
the law office of Gerald M. Oginski, LLC

MEDICAL MALPRACTICE  
& ACCIDENTS

[www.oginski-law.com](http://www.oginski-law.com)

516-487-8207  
February 05

**“We’re there for you when your insurance companies aren’t.”**

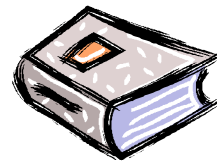
***Attorney Advertising...How do you  
know which lawyer to choose?.....page 2***



## **NEW MONTHLY FEATURES**

**You can't make this stuff up!.....see page 3**

**Question Time..... see page 3**



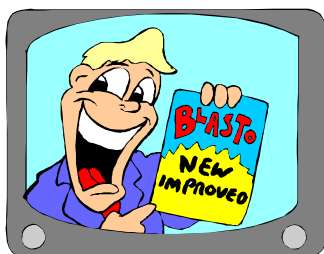
***Gerry's book continued...page 4***

***A note of sorrow-*** Recently my secretary's husband died of complications while awaiting a heart transplant. Most of you have come to know Frances when you call the office. She's an incredible person and now must raise three beautiful girls alone. If you call the office, just let her know that your thoughts and prayers are with her and her family.

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# In This Edition, We Look At

**A**ttorney advertising and how to choose an attorney from an ad. “Ooh, ooh, pick me,” “No, pick me,” yelled the ad in the phone book. “I needed an accident lawyer to find out what I need to do since I was hit from behind last week. I looked in the yellow pages in Brooklyn, and found over 40 pages of lawyer ads. Who do I pick?”



**T**he truth is, not all lawyers advertise. Those who do are required to list specific areas of law in which they practice. In New York, injury and malpractice lawyers are not allowed to call themselves ‘experts’ in their field of law. Nor can they misrepresent themselves in an advertisement. For example, they cannot stand next to a person with a cast on their leg, in a wheelchair and a pile of cash on the table claiming that since this person recovered all that money, he or she could do the same for you. That’s nothing more than a shameless sales pitch. The reality is that no lawyer can claim to get you “cold hard cash” because every case is different. Some lawyers claim that they can “Settle your case fast!” Sure they can, for a lower amount than your case might be worth.

Don’t you think the insurance companies that deal with law firms like those know they’re looking for a fast settlement? There’s no incentive for the insurance company to offer top dollar because they know that this law firm isn’t going to take the case to trial. They’re settlers!

**T**here are some yellow pages ads that proclaim the lawyers handle everything from criminal to real estate to injury cases to malpractice matters. Be wary of a firm that claims they can do everything. In today’s legal climate it’s rare that a general practice firm can do all that extremely well. That’s why there are firms that focus exclusively on one or two areas of law, such as medical malpractice and personal injury.

**INJURED? BEEN HURT?  
CALL NOW FOR  
IMMEDIATE CASH!  
FAST SETTLEMENTS.  
CALL 1-800-I SUE 4 YOU!**

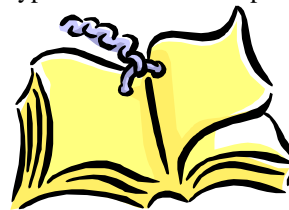
**I**f you call a law firm you’ve found in the yellow pages, ask these important questions: Who will be handling my case day to day? When will I meet with the partner? Who will be negotiating my case? Who will be trying my case? How quickly are my phone calls returned? What is your experience with my type of case? How many cases do each of your attorneys handle at one time?

**D**oes the size of the lawyer’s ad mean they’re a better firm

We handle all types of cases. You tell us your problem, and we’ ll handle it...somehow.  
*Dewey Cheatem & Howe*

than the one with a ½ page ad or smaller ad? No. It only means that the larger ad costs a lot more (The Verizon yellow pages charges lawyers about \$6,500-\$7,000 per month for a full page ad. In some counties, lawyers take out a double page ad, which can cost between \$12,000-\$15,000 PER MONTH!). That’s not a

typo. That’s per month.



We’ve all been trained to think that just because an ad is larger, that it must somehow correlate to how well that firm does for its’ clients. Not necessarily true. You must ask lots of questions and you must become an informed consumer before you choose to hire an attorney based upon an ad in the yellow pages. Ask the attorney you call whether they can recommend another colleague to get another opinion about your case. If they’re reluctant to do this, I suggest you look elsewhere. Why should the lawyer be afraid to recommend another good lawyer? In all likelihood the injured client will stay with them, especially when they’ve been so honest and willingly advised the client to get another opinion.

**A**sk the attorney for references from clients he’s helped. Ask about cases he’s lost, and ask whether he’s ever had a client go to another attorney after he started their case. The lawyer you choose must be able to communicate with you and spend time explaining the legal process and what to expect down the road. I’ve never liked it when I’m handed off to a junior associate to handle my questions and the rookie has to go back to the senior partner with all of my questions. Like many of you, I appreciate personal attention- especially in a case where the injuries are severe and life altering. Having an attorney know your file as well as you do, if not better, is extremely important.

**W**hen you call the lawyer’s office for an update on your

case, do you really want to be asked "How do you spell your last name?" Or how about, "Uh, let me pull your file and see what the other five lawyers did on your case recently." Or how about, "I'm with another client now, and I'll call you back," and you don't get a return call for days. To me, that's not professional service. It's bad enough that you were injured through someone else's wrongdoing, but you shouldn't have to suffer the indignity of having your law firm figure out who you are when you call.?

district attorney submitted this case to a criminal grand jury. Thank goodness for common sense, because the grand jury returned a 'no true bill,' meaning that there would be no charges against these two men.—Can you believe the thin skin of the attorney on line? Come on. Telling lawyer jokes made him hot under the collar? Give me a break. It sounds like he certainly need to lighten up.

settlement are not revealed.

They do this for two reasons. Neither one of which is out of the goodness of their heart. The first reason is that they don't want publicity associated with a settlement. Publicity about an insurance company paying money to an injured victim is never good for them especially since they earn their money by KEEPING their money, not giving it away.

Second, is that other attorneys with similar cases will never learn that the insurance company paid out a certain amount in a specific type of case. So, when the next lawyer tries to negotiate a case with the insurance company, he or she won't be able to say "You paid 'x' dollars on the Jones case, so therefore you have to pay at least that amount on this case."

Sometimes, the only way an insurance company will offer such a settlement is on the condition that the terms of the agreement be confidential. Otherwise, there might be no settlement, and the case would proceed to trial. A client might be willing to agree to this restriction if it were in their best interests. Some clients want to publicize the damage and injuries they suffered as well as any compensation they received for their injuries. In that instance a confidential settlement agreement would not be advisable.

**Q: Do I have to pay taxes on a settlement for my injuries?**

A: No you do not. In New York, compensation for your injuries is tax free. The insurance company that paid you compensation will send you papers about your settlement. You need to give that to your accountant. However, there are no taxes to be paid on your settlement.

When you invest those monies in taxable investments, then any



### **NY Man Who Fell Down a Hill Inside a Portable Toilet Wins Day in Court**

A man who fell down a hill in a portable toilet may have a case against the contractor that leased it, a state court has ruled.

Looking to either buy or sell dirt, plaintiff Joseph A. Fascenelli stopped by a construction site in Katonah. He then asked to use the portable toilet. After entering, he felt the toilet tip and fall down a hill, causing injuries. In addition, "[e]verything was exhausted from the pot on top of me," Mr. Fascenelli testified.

### **Two Men Arrested Outside Courthouse for Telling Lawyer Jokes**

Two legal reform advocates were arrested last month after telling jokes about lawyers outside a Hempstead courthouse. A lawyer on line took offense to the jokes and asked a Court officer to arrest them. They were arrested, given a disorderly conduct ticket and given a date to appear. Amazingly, the

**Q: If a doctor left a foreign object inside of me during surgery, how much time do I have to start a lawsuit?**

A: In New York, you generally have only one year from the date of discovery of this foreign object in which to start a lawsuit. Importantly, if the foreign object was intentionally left inside of you during the procedure, you will probably not be able to start a lawsuit, even though you just learned about this foreign object now.

There are recent New York cases that have held if the object was NOT supposed to remain inside of you then you would have only one year from the date of discovery of the foreign object within which to file suit.

**Q: Why are some settlements confidential?**

A: In some cases, insurance companies may offer a settlement before trial. Sometimes, in an effort to resolve the case, as an incentive they will offer an amount of money that is acceptable to the injured victim. But, in some instances, the insurance company wants an assurance that the terms of the

profit or gain you achieve is obviously taxable. In a death case, an award for pain and suffering is generally taxable to the estate. In some instances there are legal ways to allocate the money to the wrongful death cause of action (which is not taxable to the estate) rather than the pain and suffering cause of action which is taxable.

It's bad enough being injured, and then having to bring a lawsuit to obtain proper compensation and

payments for your disabilities. Can you imagine the impact it would have if you then had to pay income tax on that money? Luckily, the government realized that injury settlements are not earned income. Rather, they compensate an injured victim for the pain, suffering, and disabilities they suffered at the hands of another's carelessness. Despite this, there are attempts, as we write this, to try and change this provision. Don't let it

happen! Write to your Congressman and Senator and let them know how you feel. ?



## Gerry's Book continued...



Jacob and the Hack walked to a wall in the East Wing that said "No Entry." Jacob smirked and said "Can't you read the sign?" The Hack didn't reply. Instead, he pushed a button above the door, and it slid open. They entered. From there, a secret elevator carried them down to the dungeons of the White House, about 50 feet deep in the bowels of 1600 Pennsylvania Avenue. At their destination floor, the door slid open, revealing three secret service agents who looked whiter than Casper the ghost. It looked like they never saw the sunlight.

"Hey, Jimmy, don't these guys ever see the sun?" "Nope," he replied. The first agent said to Jimmy, "Sir, your secret decoder ring please." Jimmy handed over his Cap'n Crunch secret decoder ring and plugged it into the flimsy piece of plastic that was its' counterpart. Then they put it into the Lucky Charms plastic lock, where it miraculously opened, and they were allowed past the secret service agents. Hmm. I can't believe that the security of this Country is controlled by a Cap'n Crunch secret decoder ring. What will they think of next, thought Jacob.

They entered a large windowless office with a sign that said, "Enter those who dare to walk in." "Nice sign," said Jacob. "Let me get right to the point," said the National Security Advisor. "You've got incredible powers. We need to see if you're on target before we start to give you assignments. My business is information. The more I have, the better off this Country is. Information is the game. Whoever's got it, is on top of the world. With the right information we can alter history, make history and change the outcome of the world."

"Aren't you being a bit melodramatic," said Jacob. "No, son. I'm not. I'm here to protect the president, and this Country. You've got what we want," replied Jimmy-the-hack. "Yes, so, I do. But do you have what I want?" asked Jacob. "What do you want?" asked Jimmy. "I'm not sure, but I want the world, I want power, love, and family," stated Jacob evenly. "What about money, don't you want that?" inquired Jimmy. "Sure, money's fine, but friends and family are more important. A good name and respect

are more important than material wealth," answered Jacob with a confidence he was surprised to feel.

The National Security Advisor said that he would be introduced to a number of high-ranking politicians. Each time he spoke with a politician and got those 'funny feelings' about when one of them would die, please let him know about it. Immediately. This way he could use that information to the President's advantage and leverage that politician's weaknesses. "What if I choose not to help you?" asked Jacob. "Jacob, nobody refuses the President of the United States. Nobody refuses me. It wouldn't be healthy if you did," came the veiled threat of physical harm.

"Jimmy, how'd you get the name 'The Hack'?" asked Jacob. Jimmy smiled and told him that one day he'd tell him. But right now, Jacob needed to get back to Chelsea because she's going to escort him to the guest bedroom tonight, since he's meeting Sebastian at the British Embassy tomorrow. "But I

thought I'd be going home tonight," argued Jacob. "Well, since you were invited to meet with the British Prime Minister tomorrow we felt it would be easier to just sleep over, instead of dragging you home tonight, and back again tomorrow," answered Jimmy easily.

"O.K. Jimmy. Whatever you say," replied Jacob. "Oh yeah, don't

call me 'The Hack' outside of this office, you understand what I'm saying?" inquired Jimmy Vargas. "Uh, no, I don't understand what you're saying, Mr. Whitey, sir. Could you please explain it to me," responded Jacob with a toothy grin. Jimmy saw he was being baited, and let it go. This time.

"Let's go, son," said Jimmy, the National Security Advisor, as they left the office with an official flourish, but no pomp or circumstance. The decoder ring was returned to The Hack and the secret elevator whisked the duo back to the main hall where they originally entered. None the worse for the trip.

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[www.oginski-law.com](http://www.oginski-law.com)  
Free accident injury reports, free information &  
great links to useful sites.

We hope you've enjoyed our [February 05](#) issue, and would greatly appreciate any comments or feedback about our newsletter.

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