

New York Injury Times

a monthly newsletter published by the law office of gerald m. oginski, llc

www.oginski-law.com

May 05

Our Website's A Hit!



Gerry Oginski, Trial Lawyer

If an insurance company doesn't make a good faith offer to settle my case, can I sue them for bad faith?

Great Neck, NY-

The answer is maybe. If there's a limited insurance policy, say \$25,000 coverage, and your injuries and economic loss are clearly worth more than \$25,000, and the insurance company fails to pay the full amount of the policy, there is a possibility you could bring a claim for bad faith against that insurance company. Why aren't they paying the full policy? Is there something else going on that they think merits a settlement for less than the full value of your insurance policy? What if your injuries are minor and your case is worth only a few thousand dollars? Just because the insurance company refuses to pay in that case, does not mean that you have a valid claim for bad faith against them in that instance. The real question is why, and what are your injuries?

Should I ever sign a release at the accident scene?.....page 2

Question

Time.....

page 3

- If an insurance adjuster calls me after my accident to ask me questions, can I talk to him?
- What is surveillance video, and why do I need to know about it?
- How much am I suing for?

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

Visit our website

Oginski-law.com had over 73,000 hits in the last 4 months! Read our **FREE** special reports. Read actual testimony of doctors in real malpractice cases. Learn answers to your legal questions. Don't you

In This Memorial Day Edition, We Look At

RELEASES

WHAT IS A RELEASE, AND SHOULD I SIGN A RELEASE AT THE ACCIDENT SCENE?



A release is a piece of paper that basically says "I agree to release you from any harm

or damage you caused to me. I also agree not to sue you or seek money from you because of any accident, injury, neglect or mistake you may have made." A release is usually given to a person or an insurance company in exchange for money (compensation).

Here's how it works in real life:

Mr. Careful is driving his car down Main Street enjoying a nice spring day. Young Mr. Reckless decides to make a left turn in front of Mr. Careful while answering his cell phone, eating pizza, doing the crossword puzzle and looking for the lighter on the floor of his car. The resulting crash is heard for blocks. Young Mr. Reckless immediately calls his insurance agent and asks for advice. He's told to sit tight and not say a word to anyone, not even "I'm sorry."



Within ten minutes an insurance company SUV pulls up to the accident scene even before the police arrive. The company rep surveys the damage, takes photos, and goes over to Mr. Careful with a gauze bandage and ice to apply to his clearly bruised forehead. "Mr. Careful, I'm Mr. Fast-on-my-feet from the Emergency Response Insurance Company. I've

evaluated the accident, documented the damage to the cars, and see that you're pretty banged up. An ambulance is on the way. Before you go, we can wrap this up and I can cut you a check immediately for \$2,500. All you have to do is sign this paper here."

THAT'S YOUR SIGNAL TO RUN AWAY, FAST.

This is an attempt to limit the insurance company's exposure. They will try and entice you to sign a release form agreeing that you will never bring a lawsuit for any injuries you may have or will have in the future from your accident. Their incentive works well on many people, especially folks whose injuries are not that evident immediately following an accident. You might be banged up and bruised, but your pride prevents you from really admitting that you were hurt. You're thankful that you have no obvious broken bones and that you miraculously survived this horrible crash. At this point you just want to go home and rest, or maybe go to your doctor to get checked.

The problem with signing a release at the accident scene is that you don't know the full extent of your injuries at that immediate moment. Signing away your rights are foolish and nothing more than a cost savings to the insurance company. Don't you think that if they're offering you money immediately at the accident scene that the same offer, if not a better offer will be available days, weeks or even months later? I can't say it simply enough: NEVER, EVER SIGN A RELEASE AT AN ACCIDENT SCENE. NOT FOR YOU OR YOUR CHILDREN OR ANYONE! There's simply no good reason to do so. How do you really



know that the insurance company rep who evaluated your car at the scene has given you a realistic estimate of the cost to fix the damage to your car? Don't you think it would be prudent to get another independent opinion and estimate for the repair costs? I do. How do you know that the company rep accurately evaluated your injuries and the fact you might be out of work for days or weeks? You don't.

If all you had was damage to your car, and you're willing to accept whatever an insurance agent offers you without any negotiation, then you are probably shortchanging yourself. By the way, you don't need an attorney to help you with this. Get a few different estimates for repair costs. Submit them all to the insurance company and argue that their own rep wasn't accurately evaluating the cost of your repair. Don't be surprised if you learn later that your damage was worth more than you were told, and the repair costs would be less if you used the insurance company repair shop.



Here's my advice: DON'T SIGN A RELEASE.

Instead, take down the company rep's name and contact information. Once you've had a few estimates and been to the doctors, send him (or her) all of your medical bills and copies of your medical records. Make sure you notify your own insurance company immediately of your accident and fill out a form they send you called an MV104 (Auto accident form). Then sit back and wait for the insurance company to send you a get well card...yeah right!

QUESTION TIME →

Q: If an insurance adjuster calls me after my accident to ask me questions, can I talk to him?

A: Of course you can, but we don't always recommend it following a serious accident. The insurance adjuster is calling to get you to make statements (usually is a recorded call) about the events leading up to and including the accident. They will also ask you about your injuries and whether you went to a hospital or a doctor following the accident.

The inherent problem with talking to an adjuster following a serious accident is that they're probing and trying to make a record of your statement. They can then use it against you at a later time should you bring a lawsuit against the driver or owner of the other car involved in your accident.

If an insurance adjuster calls to talk to you, tell them you'll be happy to speak to them, after you speak with your attorney.

Q: What is surveillance video, and why do I need to know about it?

A: In many car accident cases where victims claim they were injured, insurance companies for the other driver routinely send out private investigators to secretly videotape you doing some type of physical activity.

They do this to determine if your claims are genuine.

Naturally, if they are not, you deserve to be caught and brought to justice. However, when your claims are genuine, the insurance company surveillance videotapes can often help prove your disability. We show the video to the jury. We ask them to look at Mr. Jones walking with a limp. We see he needs assistance getting into his car. He's not laying bricks, or playing basketball. We told you he could walk...but look at how his limp affects his balance and gait. This puts stress on his spine..."

Importantly, if you claim you cannot do certain daily activities, or do them with difficulty, you must be truthful when you make such statements.

Q: How much am I suing for?

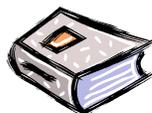
A: In a medical malpractice case, we are not permitted to set a specific amount of money that

you are suing for. That function is left to a jury to decide after a trial. During the trial we can suggest a number that we believe you are entitled to, and a jury can accept that number, reject it, award less, or even award more. In a negligence case, such as a car accident, we are permitted to place a number in the papers that start the lawsuit, called a complaint. Often, the number that one sues for is not a realistic number, and is not yet based on the actual damages you may have incurred. It is a prospective guesstimate of what your potential injuries and damages may be.

When we read in the paper about people suing for many millions of dollars for small injuries, you can easily see why so many people think that their cases are worth that claimed amount. The reality is that cases are valued not by what people claim in the complaint. It is common knowledge that those numbers are unrealistic. The only people who appear to rely on those numbers are the news media who like to blow this information totally out of proportion. ☺



Gerry's Book continued...



"Uh, Mrs. Clinton, could you do me a favor, before you get out of the car?" asked Jacob.

"Sure, Jacob, what is it?" inquired Hillary.

"Don't get out of the car," answered Jacob.

"Why not?" asked Hillary. "I'm not sure, but I really don't think you should get out," replied Jacob with finality.

Hillary picked up her bat phone and spoke to the secret service man in the front car. "Jim, it's me. I think something's up here. Can you scope out the place please?" asked Hillary.

"Sure thing, Maam. Agents 3, 5, 7 and 9 secure perimeter. Agents 2, 4, 6 and 8 form a circle around the target, then start dancing the Hora, use locals if necessary. NYPD contact secret service agent #1 immediately," stated Jim Marcus, the head agent assigned to the First Lady's security detail.

"NYPD here. Go ahead," replied the NYPD dispatcher.

"We think we have a code red, we need the dogs, two choppers, and two sharpshooters," answered Jim Marcus.

"What's a code red?" asked the NYPD dispatcher?

"Look in the idiot's handbook that the Secret Service gave you this morning," was the reply from Jim Marcus.

"Ah, yes, now I see it...it says there may be bombs, terrorists, baby poop, dog poop, rain or snow, in or near a target," said the police dispatcher. "OK, we're on it. We'll call sanitation for the pooper scooper, bring out the snow shovels, get the seeing eye dogs, and call the TV stations to get more live TV news coverage for us and the mayor," said the dispatcher with great bravado.

"Listen, pickle lips. I want two helicopters. NOW. I want bomb-sniffing dogs. NOW. I want two eagle-eyed sharpshooters. NOW. If I don't get these things in fifteen minutes, I want your badge. Got it?" yelled Jim Marcus.

"Uh, could you repeat that again?" asked the dispatcher.

"NOW, I said!" answered Jim Marcus.

The head of the First Lady's security detail picked up the internal intercom and said "Maam, do not get out of the car. We're having our people check out the location. I spoke to our advance team, and they cleared the area yesterday. However, there was nobody to clear the area today, before our arrival. This will be dealt with later. In the meantime, stay put."

"Thanks, Jim. Let me know when it's ok to go," replied Hillary.

Fifteen minutes later, two New York City Police helicopters were hovering overhead. The two sharpshooters were sitting pretty on the rooftops of adjoining buildings scoping out the crowd waiting for Hillary. The German Shepard dogs were sniffing their way through the crowd, searching for bombs. The group of agents around the car was doing a great job of singing and dancing the Hora, and the black congregants from the Jesus Loves You Baptist Church had joined in, praising the Lord, and doing the two-step shuffle. The agents around the perimeter were going through the crowd to try and identify any suspicious people.

"Jacob, are you sure about this?" asked Hillary, noting that she was now twenty minutes late for her speech.

"No maam. I'm not sure. At that moment two of the K-9 bomb-sniffing dogs starting yapping and barking loudly. This attracted the

attention of the sharpshooters who focused on a bearded lady with a black backpack. She was wearing open sandals, had hairy legs, and was wearing a stocking on her head. On top of that, she wore a frilly pink shirt, with paisley flowers, and a white skirt. Her arms were unusually hairy for a woman, and one sharpshooter clearly recognized the bold tattoo on her right forearm. It was a prison-style tattoo, in the shape of a pineapple. This was the symbol of the Oppressed Brotherhood of Mormons, known throughout the world as the OBM's. The two dogs strained at their leashes with a fury. Their attention was drawn to the black backpack. Two agents on the perimeter approached the lady and demanded the backpack.

Inside, they found what the dogs were yapping about. Two unwrapped cases of salami, a ham sandwich, and a loaded 9mm semi-automatic Glock pistol. Whether anyone will ever be able to know whether it was the salami or the gun that attracted the dogs, nobody will ever know. For a reward, the dogs were given the salami, and the arresting agent was given the ham sandwich.

"Mrs. Clinton, its Jim Marcus. We've taken into custody a man dressed as a lady, who is a member of the Oppressed Brotherhood of Mormons. He claims he was sent here to kill you. The dogs found him (or the salami, we're not sure which) and we quickly dispatched him to the local torture chamber, where we'll interrogate him later. You're clear to go now."

"Good work, Jim," said Hillary. Before she got out of the car, she looked at Jacob fondly, touched his hand, and said "Thank you. You saved my life. I mean that, really. Thank you."

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

This newsletter is published by THE LAW OFFICE OF GERALD M. OGINSKI, LLC and is © Copyright protected. It is published for informational purposes only, and no legal advice is intended. We only practice law in the State of New York. Each case is different and you are invited to discuss any legal questions with Mr. Oginski, at no cost or obligation.

The Law Office of Gerald M. Oginski, LLC
150 Great Neck Rd., Suite 304
Great Neck, NY 11021

516-487-8207

PRSR STD
U.S. POSTAGE PAID
GREAT NECK, NY
PERMIT No.21