

NEW YORK MEDICAL MALPRACTICE LAWYER GERRY OGINSKI PRESENTS

SPORTS CAR
EDITION

NEW YORK INJURY TIMES

DECEMBER 2013



Gerry's informative book at a Legal seminar at the Bellagio Hotel, Las Vegas

Americana Car Show, Manhasset. Bugatti Veyron (Car costs \$1 Million+)



INSIDE:

THE DEFENSE ADMITS WRONGDOING AND THAT THE WRONGDOING CAUSED INJURY | ARE YOU QUALIFIED TO SIT AS A JUROR | WITNESS BREAKS DOWN UNDER HARSH QUESTIONING ON THE WITNESS STAND | SECRETS OF A NY MEDICAL MALPRACTICE ATTORNEY



Gerry in Colorado visiting his daughter

There are times when it is obvious to all litigants who caused the accident.

There are times when it is obvious that the accident caused an injury. What may not be so obvious is what the value is of the injuries you suffered because of the wrongdoing.

When litigants recognize that they have no choice but to admit responsibility for the accident the attorneys may come to a decision and agree that they are responsible for the accident and the fact that they cause some type of injury. That's known as conceding that liability and causation.

THE DEFENSE ADMITS WRONGDOING AND THAT THE WRONGDOING CAUSED INJURY. THE PROBLEM IS THAT THEY DON'T ADMIT HOW MUCH YOUR CASE IS WORTH.

What happens next?

In a lawsuit in New York, an injured victim must show to a jury that there was wrongdoing, the wrongdoing caused injury and that the injury is significant and/or permanent. **Legally, that is known as proving liability, causation and damages.**

When the attorneys eliminate the first two elements, liability and causation, then the only remaining issue to be determined is damages.

Believe it or not, you can have a trial solely to determine how much money to award to you. That is known in legal circles as having a trial on damages.

That is a highly focused trial

where the jurors are told that the defense has admitted wrongdoing and their only function in this trial is to determine how much money to award to you. There is no decision for them to make about whether to award you compensation, instead the only question for them to determine is how much money to award.

As part of the decision the jury will have to evaluate different subcategories of damages you suffered. This would include past pain and suffering, future pain and suffering, medical expenses you incurred in the past, medical expenses in the future, lost earnings, future lost earnings as well as other types of economic and noneconomic damages.



Pumpkin picking in Boulder, CO



Mia, Joseph, Shari & David walking around Boulder



Joseph & David watching a very flexible street performer putting himself into a lucite box.

IF YOU OWN STOCK IN A LIABILITY INSURANCE CASUALTY COMPANY ARE YOU QUALIFIED TO SIT AS A JUROR IN AN ACCIDENT OR NEW YORK MEDICAL MALPRACTICE LAWSUIT?

The answer is no and here's why.

If you own stock in an insurance company that insures against accidents, there is the belief that a juror may not want to award money to an injured victim, somehow believing that such a verdict would affect his stock performance.

We need not prove this would actually occur.

There is the presumption that since someone has invested in an insurance company that protects against liability and casualty, meaning accidents or negligence, a potential juror who has a vested interest in this type of company would not be qualified to sit on an accident case or a medical malpractice case here in New York.

Some people believe that we would need to use one of our challenges, known as a peremptory challenge in order to remove this particular juror. That would be inaccurate.

In fact, if someone is not qualified to sit as a juror for a particular legal reason, then there is no need for an attorney to use up one of his three limited peremptory challenges to remove a juror for any particular reason.

Nor do we need to ask the court to challenge a particular potential juror 'for cause' since there are certain instances, as here, where a potential juror would be immediately disqualified and not be permitted to sit on this type of case.



The fountains at the Bellagio hotel from inside a club overlooking the water

- LOCAL BUSINESS OWNER PROFILE -



Mart Valet Dry Cleaners

35 Great Neck Rd, Great Neck, NY

I needed a new dry cleaner. The one near my house was obnoxious, had no personality, never smiled and never had my shirts ready when promised.

I decided to try a dry cleaner next-door to my office.

The moment I walked in, the owner Connie was lovely. Big smile. Pleasant. Called me by my name. Always reliable. Special request? No problem. Always on time. No excuses. It became such a pleasure to bring my laundry in that she waves to me every day when I walk past her store. She knows which shirts get what type of cleaning.

There's something special about an owner who takes a personal interest in who you are, what you do and exceeds your expectations. For this month's small business owner profile, I congratulate Mart Valet, Connie and her husband on amazing customer service here in Great Neck.



Amazing and huge bike store in Boulder



Pawn Stars TV show store-downtown Las Vegas



Pawn Stars TV show store-downtown Las Vegas

NEW YORK INJURY TIMES - ARE YOU QUALIFIED TO SIT AS A JUROR?

WITNESS BREAKS DOWN UNDER HARSH QUESTIONING ON THE WITNESS STAND: FACT OR FANTASY?

NEW YORK INJURY TIMES - WITNESS BREAKS DOWN

The reality is that it doesn't happen.

It happens on TV.

It happens in the movies and it's very dramatic when it happens in the movies.

Remember the movie "A Few Good Men" with Tom Cruise and Jack Nicholson? Remember the pivotal courtroom scene where Tom Cruise is cross examining Jack Nicholson about the fact that he cannot handle the truth? Remember how Jack Nicholson breaks down and blurts out that he clearly did something wrong but it was for the benefit of his unit and country?

You remember the movie "The Verdict?" with Paul Newman as a down and out drunk lawyer who is trying a medical malpractice case in Boston? The key dramatic scene is once again in the courtroom when he is cross examining a medical witness.

These dramatic movies clearly make it seem as if witnesses break down on cross examination all the time. The reality is just the opposite.

Lawyers who aspire to become trial attorneys will often have visions in their mind about how to conduct a great cross examination that gets the adverse witness to admit everything they're trying to prove. **Once again, this is fantasy and not reality.**

(continued on page 5)

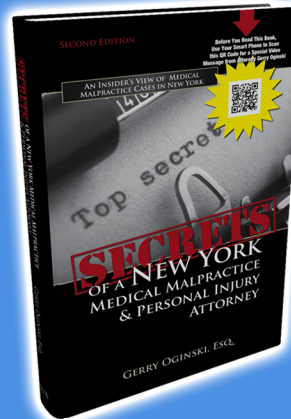
SECRETS OF A NY MEDICAL MALPRACTICE ATTORNEY

Want to learn how accident and medical malpractice cases work in NY...for Free? It's simple to get your copy of Gerry's educational and informative book. (Or you could always buy it on Amazon.com for \$16.95.)

To get your free copy, simply send an email to Frances@Oginski-law.com and she'll be happy to send you the electronic pdf version of the book...for Free.

Some things you'll learn...

- How to choose a lawyer for your case,
- 4 things an attorney looks for when evaluating your case,
- Why you shouldn't rely on an attorney who tells you your case is worth millions, and much, much more!



Coming out of the corn field while pumpkin picking in Boulder; Mia, Joseph, David & Shari

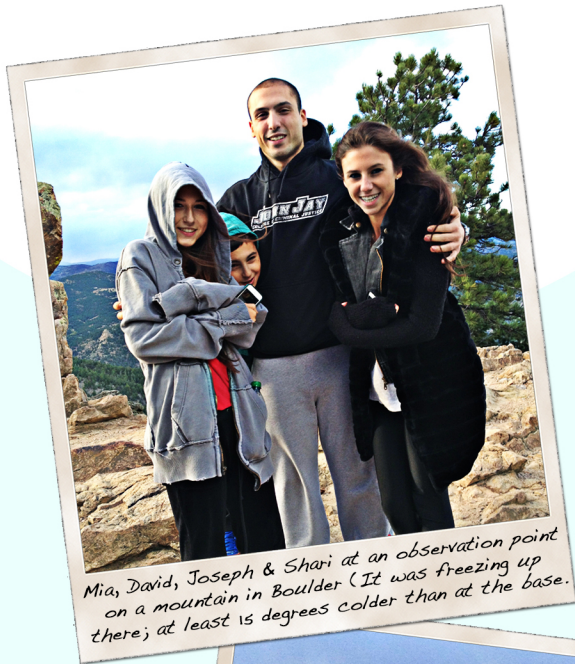
WITNESS BREAKS DOWN UNDER HARSH QUESTIONING ON THE WITNESS STAND: FACT OR FANTASY?



Shari & Mia heading to a party



Seeing Shari for first time in 1 1/2 months



Mia, David, Joseph & Shari at an observation point on a mountain in Boulder (It was freezing up there; at least 15 degrees colder than at the base.)



David taking a snapshot of the beautiful mountains of Colorado

(continued from page 4)

When an attorney screams and yells during cross-examination, the jury will take pity on the witness, no matter what he's accused of. Many times the jury does not understand why there's so much hostility by the attorney when questioning a hostile witness.

A lawyer who gets up to cross-examine a witness has an agenda to fulfill. Either he's going to show that the witness is not credible, and has inconsistencies in his testimony or he's going to use that witness to bolster the testimony of his own witnesses.

There are some attorneys who prefer to use kindness as a method to obtain information from the witness as opposed to being a pit-bull animal.

While it certainly can happen the witness will break down and reveal things they otherwise would not have said, that is a rare exception in civil cases involving medical malpractice lawsuits, accident lawsuits and wrongful death lawsuits here in New York.

Lawyers and litigants can fantasize as much as they want about what might happen during cross examination. The reality is that an attorney must be fully prepared and have a clear goal of what he wants to accomplish during cross examination of a key witness. If the questioning happens to lead to total breakdown, that's fine. However, that is rarely the goal of an experienced trial attorney.

GERRY'S PHOTO GALLERY

NEW YORK INJURY TIMES - PHOTO GALLERY



DeLorean



Ford GT



Aston Martin



Lotus



Lamborghini

GERRY'S TRIVIA GAME

TEST YOUR KNOWLEDGE OF NEW YORK LAW

TRUE OR FALSE?

1. Your case is coming up for trial. You tell your attorney you don't want to appear at trial. It's too inconvenient. Your attorney can still try the case without you being there.
2. The insurance company sends you a settlement check in the mail, without you ever negotiating or requesting a settlement check. If you cash the check you can still continue your lawsuit.
3. In a case against a municipal New York City hospital, if you have not filed a timely notice of claim, you can ask the court for special permission to file a late claim.
4. If you had surgery five years ago and now doctors find a retained lap pad in your belly, you would have only one year from the date of finding that within which to bring a lawsuit for medical malpractice.
5. The attorney's fee in a medical malpractice lawsuit in New York is different for every attorney.
6. 'Res Ipsa Loquitor' means 'The thing speaks for itself'.
7. Vicarious liability means that your employer is responsible for what you do as an employee.
8. Continuous treatment means that you can extend the time in which you have to bring a lawsuit if you have gone back to the doctor at any time for any reason.
9. In a wrongful death case, pecuniary loss is the amount of economic loss the family has suffered.
10. Before a case can be settled, the defense wants to know whether there are any Medicare, Medicaid or health insurance liens.

(ANSWERS ON THE BACK PAGE)

NEW WORD SEARCH

FIND ALL WORDS AND WIN A GIFT CARD!

G Z E M R A P V N X O R T T A
T N A D N E F E D Z A H N C D
R G I Y H W S Q C I V E M R J
D J P T T R U C R U M Y O E U
E F S S E M O X L U N T E V S
C N F Z D K I G G Z A I T Y T
E L A I Z Z R R R G I D A P E
P W W O T P A A I L U Z L R R
T U S T X N C T M W J H L B Y
I M G K B R I E F C A S E N R
V I V S D L V A Z W V K P O C
E D E F A U L T L L T C P A M
J U D G M E N T O P I Y A H U
Y F A Z R E N I M A X E G T J
N O I T A T N E S E R P E R I

ADJUSTER	DEFAULT	MARKETING
APPELLATE	DEFENDANT	PECUNIARY
ARGUMENT	EXAMINER	PLAINTIFF
BRIEFCASE	JUDGMENT	REPRESENTATION
DECEPTIVE	LITIGATOR	VICARIOUS

WORD SEARCH CHALLENGE : Find all 15 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 fax it in quickly!

NAME: _____

ADDRESS: _____

CITY: _____

STATE: _____

ZIP: _____

EMAIL: _____

PHONE: _____

FAX TO: 516-487-8472

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Attorney Gerry Oginski

Mail to:



NEW YORK INJURY TIMES

DECEMBER 2013

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. 516-487-8207

Give this newsletter to your best friend.

They'll thank you for it and so will I.

-----Answers to Trivia-----

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