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## Assumption of Risk

An injured person in New York can sue for damages when another person or entity negligently causes the damages. There are exceptions to the rule however, and one such exception is based on a doctrine called "Assumption of Risk." The Assumption of Risk doctrine dates back to 1929 when New York's highest court, the Court of Appeals, held that "one who takes part in...a sport accepts the dangers that inhere in it so far as they are obvious and necessary."

If the Assumption of Risk theory applies to the case it will result in a total bar to recovery by the injured party, even if there was negligence on the part of the defendant. In effect, when a Court applies the Assumption of Risk theory to the case, the Court is saying that the defendant had no duty to protect the plaintiff. Thus, a plaintiff's case will be dismissed regardless of any fault or negligence on the part of the defendant.

The doctrine of Assumption of Risk has been limited to sports and recreational activities. For example, in the 2010 case of *Trupia*, the Court refused to apply the doctrine to a case in which a child was injured while involved in horseplay on a banister. In *Trupia*, the Court held that the application of the doctrine would have particularly unfortunate consequences. Little would remain of an educational institution's obligation to adequately supervise the child in its charge if school children could generally be deemed to have consented in advance to risks of their misconduct.

In the 2012 *Custodi* case, the Court also narrowed the scope of potential risks assumed by plaintiffs such that "participants are not deemed to have assumed risks resulting from the reckless or intentional conduct of others, or risks that are concealed or unreasonably enhanced." The Court also stated that a defendant has "a duty to exercise care to make the conditions as safe as they appear to be."

On April 27, 2023 the Court of Appeals decided two cases, *Grady* and *Secky*, involving the Assumption of Risk Doctrine. The Court issued three separate decisions. Four judges agreed to apply the Assumption of Risk doctrine to one of the two cases. One judge wanted to apply the doctrine to both cases. One judge wanted to abolish the Assumption of Risk doctrine altogether, as being difficult to harmonize with the rule, put into law in 1975, that comparative fault or negligence is to apply to all cases.

Both *Grady* and *Secky* were high school athletes injured during practice drills, which used different rules from the normal game. *Grady* involved a baseball drill where coaches simultaneously hit balls to the third baseman and shortstop. The third baseman would throw the ball directly to the first baseman, whereas the shortstop would throw the ball to the second baseman who would then throw the ball to a "short first baseman." *Grady*, playing first base was injured when the second baseman through an errant ball meant for the "short first

baseman," struck *Grady* in the face and causing a loss of vision. The majority of the Court allowed *Grady's* case to proceed to trial because the drill was "unique and created a dangerous condition over and above the usual dangers that are inherent" in baseball."

*Secky's* case was dismissed. *Secky* was injured in a basketball rebounding drill, where the coaches announced that boundary lines of the court would not apply during the drill, and that only major fouls would be called. At the time of the drill, bleachers stationed near the court were retracted. *Secky* was injured when, pursuing a loose ball from the top of the key towards the bleachers, another player collided with him, causing *Secky* to fall into the bleachers and sustain an injury to his right shoulder. The Court dismissed *Secky's* claim, holding that "The drill assigned to plaintiff and his teammates did not unreasonably increase the risk of injury beyond that inherent in the sport of basketball."

In summary, anytime an athlete is injured while playing a sport or recreational activity, the Assumption of Risk Doctrine may be applied. Each case must be evaluated on its own merits. While in many cases it will be impossible to predict how the Courts will rule, an experienced personal injury lawyer is in the best position to make an early evaluation on the merits of a potential injury case arising out of a sport or recreational activity.

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### Areas of Practice:

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Personal Injury | Car Accidents | Premises Liability | Construction Site Accidents | Medical Malpractice  
Trips, Slips, and Falls | Wrongful Death | Dog Bites | Traumatic Brain Injuries | Other Types of Accidents

# Distracted Pedestrians Are Injuries Waiting to Happen

With most people owning smart phones, an epidemic of walkers being distracted is upon us. Pedestrians should be aware of their environment. They sacrifice their own safety when they become engrossed in their smart phone or use headphones when listening to music.

Government agencies that keep track of pedestrian injuries are seeing a huge spike in pedestrians injured while walking, texting or listening to music on headphones. In the past few years, it is clear that there are more people getting hurt every day. One of the most serious risks while being a distracted walker is the possibility of being hit by a car. It is essential to be alert when crossing the street or using a sidewalk. Pedestrian accident victims often sustain injuries, such as cuts to the face and head, brain injuries or bone fractures.

Using your cell phone in a pedestrian accident could negatively impact legal action related to the incident. If an insurance company knows that you were distracted during the accident, they could reduce your compensation.

Like driving, it's best to keep your eyes off your cell phone when walking. If you are injured, please contact our office today. We want to help.



# New Notary Rules

The Department of State, Division of Licensing Services, announced that beginning in February 2023, they would start adding electronic notary registration to go along with traditional notary registration. A notary is a certified signee/witness to documents that is often required in order for many legal documents to be filed. The difficulty in ensuring a notary is physically present when a document is signed has often caused logistical issues. For example, if the only notary at the office had to work from home because he was sick, nothing could get notarized. Thus, it is with these issues in mind that the State has started registering Electronic Notaries.

According to the Division, "Electronic Notaries are Notaries Public who are registered to electronic notarial acts. Electronic notarial acts are notarial acts performed remotely whereby the notary and the customer are physically separated but able to communicate with each other simultaneously by sight and sound using means authorized by the Secretary of State." The "means of communication" for the use of electronic notaries will likely take place using audio video communication software like Zoom.

The Division further stated that receiving an electronic notary commission will also grant the holder the ability to provide traditional notary services as well. This means they can notarize documents in person as well as electronically.

The Division announced a few other changes, requiring that every notary, both traditional and electronic, maintain a journal of their notarial acts performed over the past 10 years. Electronic notaries will have to maintain audio and video recordings of all the electronic notarial acts they perform. One piece of good news announced by the Division is that they are in the process of implementing a new online filing system to allow better and quicker processing. Among other things, the new system will allow notaries to schedule exams and apply for commissions.



# Why Raising Federal Trucking Insurance Minimums Will Boost Safety

According to the Federal Motor Carrier Safety Administration (FMCSA) truck crash and fatality rates have more than doubled over the last decade. That's a frightening statistic. However, the minimum insurance levels have not changed since 1980 and are insufficient.

Most of those killed in accidents involving commercial vehicles are the drivers of the cars that are hit. A person in a car that gets into an accident with a truck is four times more likely to die than the truck driver. Injured victims and the loved ones of those killed face challenges following the crash, including lost wages and hefty medical bills.

Under federal and state laws, commercial vehicles must maintain certain minimum insurance limits. These often don't provide enough compensation to cover the pain and suffering of the accident victims.

Raising minimum levels of insurance can help crash victims cover their medical expenses and other bills associated with the accident.

If you have been the victim of an auto accident involving a commercial vehicle, you need an experienced attorney in your corner. Contact us today. Our team will help you get the compensation you need and deserve.

# Start Spring Safely: Playground Safety Tips for Parents

Flowers are blooming, the days are longer and the weather is warmer. This means one thing: spring has officially arrived! Sunny springtime days are the perfect time to get fresh air and take your kids to the playground. However, playgrounds can pose many safety risks.

Follow these simple tips to keep your children safe this spring.

## Inspect the Equipment

More than 200,000 children are treated for playground-related injuries in ERs every year. One of the leading causes of these injuries is faulty equipment. Carefully inspect swings, slides and other equipment before your kids use them. Look for things like rust, cracks and loose components.

## Supervision is Key

Always keep a watchful eye on your kids. This goes for both toddlers and older children. Older kids like to test their limits but don't let them wander too far away.

## Teach Kids Proper Playground Etiquette

Every child should know proper playground safety etiquette. Take a zero-tolerance approach to roughhousing. Teach your kids to avoid pushing other children and how to use playground equipment properly. Make sure they never leave their belongings unattended.

Practice these playground safety tips to have a safe and enjoyable spring.

## Sudoku

	5					9	2
			5	7		4	
4	7		8	3			
			9				7
1	9		5		4		
			1		2		
	3	5	1			7	
	8	1		7			2
			8		9	1	3

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# Wrongful Death

Accident victims have the right to pursue a personal injury claim and recover compensation for losses. But what if an accident is fatal? In these tragic circumstances, a wrongful death claim can help surviving family members recover compensation from those who are to blame.

## What is Wrongful Death?

Wrongful death occurs when a person or entity fails to fulfill a legal duty and causes a death to occur. In a wrongful death lawsuit Plaintiffs must prove:

- ▶ A person or entity behaved negligently or committed an intentional wrongful act
- ▶ Their actions were the direct cause of a death

- ▶ There are damages associated with the death

If proven, surviving family members or the estate could be awarded compensation or could be offered a settlement by the party who caused the death to occur.

## Wrongful Death vs. Personal Injury Lawsuits

Wrongful death claims are similar to personal injury lawsuits in many ways but they occur when an accident does not just cause injuries but results in a death.

In a wrongful death claim the family or personal representative pursues a case against those responsible for causing the fatality. They can file a lawsuit or

negotiate a settlement and can recover compensation for medical bills and pain and suffering that the deceased experienced prior to death. They can also receive compensation for funeral bills and burial costs as well as for loss of the deceased person's future income and companionship.

If you are pursuing a wrongful death lawsuit, after a very serious accident has forever changed your life and has cost the life of a loved one, you should have an attorney. The compensation could be worth millions of dollars in some cases. You need an experienced attorney to help you navigate the legal system and protect your rights.

# Our website has been updated:

## Check it out at 1800LAWLINE.com

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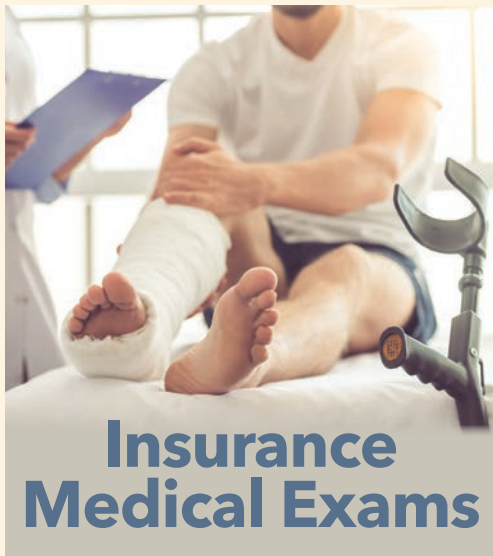
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## What **our clients** are saying:

In each newsletter we feature a five-star review one of our clients posted on social media. If you are a satisfied client and have not yet left us a review on Google, or another site, it's never too late. We would love to hear from you.

***"Marc Miner was a pleasure to work with. He made the process easy. I would highly recommend his service."***

**–Jaime R.**



When you bring a liability or no-fault injury claim, the respondent or defendant has a right to conduct a medical examination. These medical exams are usually conducted by doctors hired by insurance companies. The examinations are often called Independent Medical Examinations (IME) by those asking for them. However, there is nothing independent about them. These examinations are also referred to as Defendant's Medical Examinations (DME) or Insurance Medical Examinations.

If you are injured in a motor vehicle accident you are entitled to no fault benefits paid by the no-fault insurance company. The no-fault insurance carrier is entitled to require that you attend as many medical examinations as they deem necessary. They may require that you attend an examination by doctors in different fields of medicine. Failure to appear for a designated examination may result in not only the denial of future benefits, but the denial of payment of past treatment and benefits. The purpose of the examinations is to determine if future medical benefits are necessary. The insurance company will deny future medical treatment if the doctor opines that the patient has fully healed, or will no longer benefit from treatment. Because the insurance companies have a financial interest in terminating benefits, they tend to use doctors who are more likely to write reports that will find benefits are no longer necessary.

A defendant during the course of a personal injury lawsuit also has a right to conduct a medical examination by doctors of their choosing. The defendant's doctor will write a report and testify at a trial. The defendant attorney will call the defendant's doctor to testify at trial to try and convince a jury that the plaintiff has made a greater recovery

than claimed, or that the injuries claimed are not as a result of the subject accident. These doctors are paid by the defendant's insurance company.

Because these doctor exams are adversarial in nature the injured party has a right to have a representative present. This representative can be a friend or family member, the injured party's attorney, or any other person. Often, our office sends an independent party, often called a Watchdog or Companion, to take notes about the examination and make sure that the doctor does not go beyond the appropriate scope of the examination. The representative may later become a witness at the trial, especially if the examining doctor writes a report which is believed to be untruthful. While there has been much litigation on the subject, the Courts have routinely upheld the right of a litigant to have a representative present at a defendant or insurance medical examination.

When attending a no-fault insurance examination, or a defendant's liability medical examination, it is important to understand the purpose of the examination, the adversarial nature of the examination, and your right to have a representative at the examination.