

# ZALMAN SCHNURMAN & MINER P.C.

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*Experienced. Aggressive. Compassionate.*

WINTER  
2022-2023



*Seasons Greetings*

*All of us at Zalman Schnurman & Miner wish you a happy and healthy holiday season and New Year. We look forward to continue working with you, and obtaining compensation for those injured due to the negligence of others. Do not hesitate to contact us if you have any legal questions or needs.*

## Negligence V. Assault & Battery

What is "negligence?" What is "Assault and Battery?" What is the difference and why does it matter? When you are an MMA fighter, you expect to get hit while in the octagon; but what about while trying to leave the arena in a bus?

Negligence is the failure to take proper care in doing something. For example, a driver may be negligent in hitting a pedestrian because: he failed to observe the pedestrian; was speeding, or failed to yield the right of way.

"Assault and Battery" is the act of intentionally striking another person. If you intentionally run someone over with your car, you have committed an assault and battery. If criminal charges are brought, the criminal charge would be called an "Assault". If the victim sued in Civil Court, the intentional act would be called a "Battery."

As stated in the case of Chiesa v. McGregor, "Although the same act may constitute battery or negligence depending upon whether or not it was

intentional, there cannot be recovery for both." "Negligence is distinguished from assault and battery by the absence of that intent which is a necessary ingredient of the latter."

Michael Chiesa sued Conor McGregor, both of whom are professional mixed martial artist (MMA) competitors, after Chiesa suffered injuries when McGregor threw a hand truck at a bus on which Chiesa was present, breaking a window and causing the handle of the hand truck and glass from the shattered window to strike Chiesa causing, among other things, facial injuries. The incident occurred at a loading dock of the Barclays Center in Brooklyn.

Because McGregor intentionally threw the hand truck at the bus with the intention to cause damage and injury, he committed an Assault and Battery. Besides the throwing of the hand truck that was the basis of the assault claims, Chiesa also alleged that McGregor threw other objects at the bus,

attempted to board the bus, prevented the bus from moving, kicked the bus, and yelled threats and expletives. Accordingly, a cause of action for intentional infliction of emotional distress was also proper.

There are consequences as to whether an act is found to be intentional or negligent. For example, most insurance policies provide coverage for a negligent act, but not for an intentional act. Also, punitive damages may be awarded as a result of someone intentionally causing harm, but not for a negligent act, unless the negligence was wanton or gross. An intentional act is far more likely to result in a criminal charge than a negligent action. Significantly, the statute of limitations—the time you have to start a lawsuit—is three years for a negligent act, but as short as one year for certain intentional acts.

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### Areas of Practice:

**Lawyers you can rely on and a law firm you can trust.**

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



# Why Are Automotive Recalls on the Rise?

The US saw a significant spike in automotive recalls in recent years. Earlier this year, the number of automotive recalls skyrocketed by 114.2% to 9.3 million.

To keep yourself and your loved ones safe, it's important to stay informed about potentially unsafe or defective components in your car and if your vehicle has been recalled.

## Reasons for the Rapid Recall Rise

Some reasons for the sharp spike in auto recalls include:

- ▶ **Supply chain disruptions:** When many automakers rely on a small number of suppliers for car parts, it can increase the risk of potential safety issues.
- ▶ **Technology:** Today, technological advancements move at the speed of light. Car manufacturers are having trouble keeping up. While technology can make cars smarter, greener and safer, it can also introduce potential points of failure, including electrical system problems.
- ▶ **Tightened regulations:** With an increased focus on customer safety, regulators have made stricter guidelines for automotive recalls and require companies to maintain and exceed these new safety standards.

## How to Protect Yourself

Wondering if your car has been recalled? Visit the recall portion of the National Highway Traffic Safety Administration's website and enter your vehicle identification number (VIN) to learn if your car has been recalled.

# Does Homeowner's Insurance Cover Personal Injury Claims?

Many of us visit multiple locations throughout the week. From office buildings and supermarkets to schools and playgrounds, accidents can happen anywhere. What if an incident occurs on your neighbor's or friend's property? An uneven sidewalk or icy driveway can quickly lead to a slip and fall, resulting in hefty medical bills and an inability to work.

If you've suffered a personal injury on someone else's property, you may be able to receive compensation from the property owner's homeowner's insurance.

## Homeowner's Insurance and Personal Injury Cases

Most homeowner's insurance policies will cover personal injury claims. If a homeowner is held legally liable for an accident, the liability provision of their insurance policy may pay for the claim. However, there must be verbiage in the policy that states it covers bodily injuries.

Liability coverage will pay for all losses associated with the plaintiff's injuries up to the limits of the coverage. These can include lost income, pain and suffering and medical bills. Additionally, if a lawsuit is filed against the homeowner, their homeowner's insurance may also provide legal defense for them.

## Common Claims Covered by Homeowner's Insurance

Some common types of personal injury claims that homeowner's insurance covers include:

- ▶ Trip and falls on broken or uneven pathways
- ▶ Dog bites
- ▶ Falls due to poor lighting or slippery conditions
- ▶ Falls that occur because of broken stairs or railings

If you suffered a personal injury on someone else's personal property, you could be entitled to compensation for your pain and suffering. To learn more, contact one of our personal injury attorneys. Call our office today.

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# Laws Protecting Pharmaceutical Companies from Liability

Are you thinking about filing a claim against a pharmaceutical company? If so, it's important to know about the laws that protect these companies from liability. While there are numerous rules and regulations in place to promote consumer safety, one law protects pharmaceutical companies from liability for vaccine injuries and fatalities.

## The National Childhood Vaccine Injury Act

The National Childhood Vaccine Injury Act (NCVIA) became law in 1986. This law waives any liability for vaccine manufacturers and pharmaceutical companies for deaths or injuries caused by vaccines. If a person becomes injured or dies after getting a vaccine, compensation can be pursued through the federally-funded National Vaccine Injury Compensation Program.

This means that if you or a loved one was injured as the result of a vaccine, you cannot hold the pharmaceutical company or vaccine manufacturer responsible. Instead, you need to submit your claim to the National Vaccine Injury Compensation Program that is operated by the federal government.

## Recovering Compensation from Pharmaceutical Companies

To get the compensation you deserve after an injury due to a vaccine, your claim must fall within a set of pre-approved injuries. There is also a cap on the amount of compensation you can receive.

It is in your best interest to contact an attorney who has experience in pharmaceutical company claims. To learn more, contact our office today.

# Will My Pre-Existing Injuries Affect My Accident Claim?

Were you already injured or experiencing health problems prior to being involved in a car crash, slip and fall or other type of accident? If so, you may be wondering if your pre-existing condition will affect your current accident claim.

## What is a Pre-Existing Medical Condition?

A pre-existing medical condition is any injury you suffered before the injuries you are claiming in your current accident lawsuit. Examples of pre-existing injuries include:

- ▶ Injuries you sustained prior to the new ones caused by an accident, such as broken bones, traumatic brain injury and muscle or soft tissue tears
- ▶ Medical conditions that only surface during stressful situations, like asthma
- ▶ Birth defects

## How Will It Impact My Current Claim?

Pre-existing injuries or conditions don't disqualify you from receiving compensation in your current accident lawsuit. However, they can affect the validity of your claim. During the trial, your pre-existing injuries will definitely be a hot topic.

The defense has to prove that your pre-existing medical conditions are linked to your current injuries. Your insurance company might also try to discredit your current injuries by bringing up pre-existing ones. To combat this argument, your attorney might cite the Eggshell Doctrine.

## What is the Eggshell Doctrine?

According to the Eggshell Doctrine, a plaintiff is qualified for full compensation even if their pre-existing conditions made their current injuries worse. For example, a person with a bad back could experience worse back pain after an auto accident.

Under this legal principle, the defendant is not only responsible for any new injuries caused but also exacerbating, or worsening, pre-existing conditions.

## How an Accident Attorney Can Help

Did you or a loved one suffer new injuries after an accident? If so, our experienced attorneys can help you with your claim. Contact our office, we are here to help.

# Dash Cam to the Rescue

More and more drivers are taking advantage of the low cost and convenience of dash cam cameras while driving. In the case of *Vigdorchik v. Vigdorchik* the plaintiff was a passenger in a car driven by her mother when there was a collision with a commercial van. The accident occurred as the traffic lane widened to become both a travel lane and exit ramp. Normally, this would be a "he said, she said" situation, with each driver claiming they had the right of way and the issue of who was at fault being decided by a jury. Here, however, the car the plaintiff was in had a dash cam camera which revealed that that the van driver suddenly swerved into the car's lane of travel and, within seconds, collided with the driver's side of the car as the car was entering the exit ramp lane. Thus, the evidence submitted by the occupants of the car established, prima facie, that the defendant van driver's failure to yield was the sole proximate cause of the collision and that the car was free from fault. Accordingly, the driver and owner of the van were found to be liable for the accident as a matter of law. Now, the only issue for the jury will be the amount of compensation the injured passenger is entitled to.

# Who Is at Fault in a Changing Lanes Auto Accident?

Your risk of an auto accident can significantly increase on crowded highways. With so many cars merging or changing lanes, collisions are bound to happen. In fact, according to the National Highway Traffic Safety Administration (NHTSA), about 10% of all automotive accidents in America are lane change accidents.

In many changing lanes car accidents, it can be tough to prove who is at fault. To win your claim, you and your attorney must prove that the other driver made a negligent lane change which caused the accident.

## Who Is to Blame for a Lane Changing Car Crash?

When it comes to changing lanes auto accidents, the driver who leaves their lane without a clear path to enter another lane is at fault. It is a driver's responsibility to make sure a lane is clear before entering it. Drivers who fail to check their blind spots, don't check both mirrors, and drive while texting can be held liable for a changing lanes accident.

Were you injured in a changing lanes car accident? If so, contact the skilled attorneys at our office today. We'll help you win your case and receive compensation for your medical bills, pain and suffering, and lost wages.

# Winter Wonderland Word Search

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

BLIZZARD  
FIREPLACE  
FROSTY  
HOTCOCOA  
ICESKATING  
ICICLE  
POINSETTIA  
REINDEER  
SKI  
SLED  
SLEIGHBELLS  
SNOW  
SNOWBALLFIGHT  
SNOWSHOE  
SOLSTICE  
TWINKLINGLIGHTS  
WINTER  
WREATH





# Notable ZS&M 2022 Trip and Fall Recoveries

**\$450,000** for a trip and fall on a raised sidewalk.

**\$295,000** for a trip and fall due to a parking lot pothole.

**\$250,000** for a trip and fall over the stub of a bollard left on the sidewalk.

**\$250,000** for a slip and fall due to a broken subway step.

**\$200,000** for a slip and fall due to snow on subway steps.

**\$160,000** for a trip and fall due to a decorative brick extending from a tree pit into the sidewalk.

**\$100,000** for a trip and fall in the roadway in a hole created by construction milling.

**Zalman Schnurman  
& Miner P.C.**

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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 is highly knowledgeable in a broad range of legal matters. Despite his busy schedule, he makes himself available to discuss the case and provide valuable guidance. He clarifies the potential approaches to the case, performs research, and recommends the best solution. He has the interest of his clients in mind, be it a simple advice, guidance through the legal process, negotiations, or any necessary actions."*** –Anoosh T.

## Suing MSG? No Tickets for You!

In what at least one judge has called the "the stupidest thing I've ever read," the owners of Madison Square Garden have written to law firms to inform them that if they are suing Madison Square Garden Entertainment Corp. (MSG), all lawyers from the suing firm will be banned from any of the venues they operate.

MSG owns and operates Madison Square Garden, The Beacon Theatre, and Radio City Musical Hall, among other venues. As one can imagine, MSG is involved in litigation from time to time, including two different sets of minority shareholders asserting that MSG's controlling shareholders, members of the billionaire Dolan family, improperly orchestrated a merger for their own

benefit. MSG properties have also been sued by persons suffering personal injuries alleging negligent conditions.

In court, an MSG attorney argued that "I think people have the right, private parties, have the right to decide not to do business with people who sue them." MSG has been using facial recognition technology to identify lawyers from the banned firms and denying them entrance to their venues.

New York State Supreme Court Justice Lyle Frank, of Manhattan, ruled on November 14, 2022, that plaintiff lawyers, who sued over the MSG ban, "may not be denied entry into any shows where they possess a valid ticket." "There appears to be no rational basis for the policy instituted by the [MSG] except to dissuade attorneys from bringing suit," Frank wrote. Nonetheless, Justice Frank ruled that MSG was within their rights to not sell tickets to the lawyers, and can rescind tickets previously sold to the lawyers. The plaintiff's lawyers understood this to mean that as

long as they possessed a valid ticket when entering, whether purchased from MSG or a re-seller, they could not be denied entry.

Nonetheless, MSG persisted in their position, writing a letter to one law firm: "This letter shall again serve as notice to you and all of the lawyers at your firm ("Affected Attorneys") that they are subject to uniform Company policy and will not be admitted to MSG Venues until your firm's litigation against the Company is resolved." The letter went on to state that any tickets to MSG Venues they previously acquired – or will acquire in the future – whether purchased from MSG, a reseller, or a third party, are hereby revoked and deemed invalid.

Obviously, we can expect more litigation as to the rights of each side. First, the Dolans banned former Knicks star Charles Oakley from MSG. Now, they are banning lawyers from all of their venues. Who will be next, and should MSG be allowed to ban law abiding ticket paying customers from their venues?

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