Zalman Schnurman & Miner P.C.

1430 Broadway, Suite 1802, New York, NY 10018

Toll Free: 1-800-LAWLINE
Phone: (212) 668-0059
Email: info@1800lawline.com
Website: www.1800lawline.com

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WINTER
2021

HAVE A

Wonderful Holiday

AND

Happy New Year!

From all of us at
Zalman Schnurman & Miner P.C.

Icy sidewalks are a slippery situation

Winter weather means snow and ice, which means slick sidewalks. While we hope that sturdy footwear and sure footing keep you upright, if you do slip and fall on the ice you may be able to hold the property owner accountable if they neglected to clear the walkway in a timely manner.

In general, proving fault in a slip-and-fall case can be difficult. First, it must be shown that the injured party did everything that a "reasonable" person would have done to be safe. We are all responsible for being aware of our surroundings and doing our best to avoid dangerous conditions. Second, it must be shown that the property owner/possessor did one of the following:

- Knew about a dangerous condition on the property and did not fix it,
- Caused a dangerous condition and did not fix it,
- Should have known about a dangerous condition because another "reasonable" person in their position would have known about it.

Proving that the property owner is liable for a slip-and-fall in icy or snowy conditions can be especially tricky. Most jurisdictions give property owners a certain amount of time after a storm to clear sidewalks and parking lots. In the dangerous case of melting/refreezing, leeway may be given to allow for time to address the danger. The injured party must also be able to show that they took appropriate precautions to avoid the injury – for example, wearing proper footwear.

If you or a loved one fell in icy conditions and sustained an injury, contact our office for a free consultation and we can help you determine the best course of action.

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

Areas of Practice:
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

New dog bite ruling

In New York the rule has been that a dog gets one free bite. More, specifically, if someone is injured by an animal, the victim is required to prove that the animal had previously shown a "vicious propensity" in order to recover from the animal's owner. Likewise, when suing a landlord for harm done by an animal owned by a tenant, the injured victim had to show that the landlord was previously aware of the animal's vicious propensity in order to recover. If the injured party could not prove a prior known vicious propensity, the case would be dismissed.

The courts have denied recovery to persons injured by dogs who were off their leash in violation of leash laws. The courts dismissed a case where a child was bitten by store owner's dog in a store. The courts have dismissed cases where dogs have escaped their owners' yards and ran into traffic causing car accidents, and injuring bicyclists and pedestrians. In each of these cases the courts ruled that there could be no recovery because the dog had not shown a prior propensity for such actions.

A prior vicious propensity can be tough to prove where the victim is a stranger to the dog and the owner claims there was no prior bad behavior. One must conduct a thorough investigation to uncover witnesses to testify about the dog's behavior, or find proof of the behavior via records of the dog's veterinarian, or a prior complaint to the Board of Health.

In the Case of *Hastings v. Suave* (2013) the Court of Appeals somewhat loosened the prior vicious propensity rule by holding that the owner of a farm animal "may be liable under ordinary tort-law principles" when that farm animal is allowed to stray from the property on which it is kept. So if a cow or horse wanders off a farm into a roadway which causes a car accident, the occupants of the car do not need to show a prior propensity of that animal to wander off to recover for damages.

Now, in the case of *Hewitt v. Palmer Veterinary Clinic PC* (2020), the Court has carved out another exception to the prior propensity rule. In this case, Vanilla, a dog, was being treated at the veterinary office. The veterinarian brought Vanilla into the waiting room when his treatment was finished, Vanilla got loose and went after a cat in the waiting room, causing Ms. Hewitt to be injured. There was no evidence that Vanilla had ever shown a prior propensity for similar or vicious behavior. However, the Court of Appeals refused to dismiss the case. The Court ruled that "[The veterinary clinic] is in the business of treating animals and employs veterinarians equipped with specialized knowledge and experience concerning animal behavior—who, in turn, may be aware of, or may create, stressors giving rise to a substantial risk of aggressive behavior. With this knowledge, veterinary clinics are uniquely well-equipped to anticipate and guard against the risk of aggressive animal behavior that may occur in their practices—an environment over which they have substantial control, and which potentially may be designed to mitigate this risk."

While this ruling only applies to a very specific set of circumstances it is a step in the right direction. New York is still the toughest state in New York when trying to recover for injuries caused by an animal. A better rule would be one such as California's, where the rule is that pet owner is strictly responsible for most dog-bite injuries, without the need to prove a vicious propensity. That means that owners can't argue that they didn't know their dogs could be dangerous, or that they took care to prevent the animals from hurting someone. There are exceptions, to the rule such as trespass, or if the victim caused the dog to bite.

In New York though, in most instances a dog still gets "one free bite."

Medical liens and personal injury cases

You won your case. Part of the money you were awarded was meant to cover the cost of medical bills. Now you find there is a medical lien filed against your settlement and you don't know why. This situation is relatively common so we would like to take a few moments to explain what a medical lien is and why one could be filed against a personal injury settlement or verdict.

Before we get into it, we should mention that the rules regarding medical liens and personal injury cases are complicated and vary by state and circumstance. We will stick to generalities here. If you or a loved one are dealing with a situation similar to what we describe below, contact our office for a personal consultation.

A lien is a demand for repayment of a debt, in this case held against a personal injury settlement or jury verdict. If you were injured in an accident, a medical lien can be filed against your settlement by parties that paid the medical costs related to your injury. Depending on your plan, your health insurer can file a lien for monies spent on your injury. Medical providers and hospitals can too. If your injury was work-related, a workers' compensation lien may be issued if your medical bills or lost wages were paid through your state's workers' compensation fund. The government has the right to use a lien to recover money spent through programs like Medicare, Medicaid, and VA health care.

This may seem unfair, but the good news is that it is possible and common to negotiate with a lien holder to accept less money than they are asking for. An experienced attorney can help to sort through the details specific to your case and come up with options to settle any medical debts.

New Seat Belt Law

As of November 1st, 2020, New York has a new seat belt law, which requires all occupants of all motor vehicles to use seat belts no matter where they are sitting in the vehicle. Previously passengers 16 years of age or older were not required to wear seat belts when in the back seat.

The seat belt law applies to all motor vehicles, including personal vehicles, taxis, and ride share vehicles such as Uber and Lyft.

The purpose of the law is to reduce injuries to occupants of both the front and back of vehicles. Wearing a seat belt in the back seat protects the front seat occupants, because if the backseat passenger is not wearing a seatbelt that person can be "launched" forward in an accident.

In personal injury lawsuits a victim's recovery can be reduced due to the failure to wear a seatbelt. If a defendant is able to establish that the victim's injuries would have been lessened by the wearing of a seat belt, the jury can reduce the damages recovered so that the victim would only recover for the amount of injuries which would have been sustained had the victim been wearing a seatbelt. Such has been the law for many years.

There are thus many good reasons for all occupants of a vehicle to wear a seat belt. It is the law. Doing so protects the person wearing the seat belt. Wearing a seat belt protects the other people in the vehicle. Buckle up!

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2021 calendar magnet inside!

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What our **CLIENTS** are saying:

I was in a hit & run car accident with my son. When I heard about Zalman, Schnurman & Miner, I knew little about personal injury cases and no fault law. My attorney, Marc Miner and his team worked with me from the time I entered their office until the time we won my case. I highly recommend their services, as they proved to be caring professionals who truly do work for you.

— **Tanya M.**

I am a client who has extremely high expectations... However I must say attorney Marc Miner and his staff exceeded ALL OF MY EXPECTATIONS, This law Firm did a superb job with my case and always kept me in the loop by written or verbal correspondence... Thank you so much for fighting hard and making sure that I get every penny that was due to me

— **Regina M.**

Workers may collect workers' compensation for injuries incurred while working from home

An employee who is injured while working is entitled to receive workers' compensation benefits. These benefits pay for medical costs, lost earnings, and other out of pocket expenses. The injured employee may also qualify for a lump sum payment for a permanent injury. It is important to remember, that these benefits apply equally to employees who are injured while working at home, as to those who are injured in a traditional office.

A few factors to remember. To be compensable under the Workers' Compensation Law, an injury must arise both out of and in the course of a claimant's employment. There is no requirement that the underlying activity be done at the employer's direction or directly benefit the employer for the resulting injury to be compensable, and accidents that occur during an employee's short breaks, such as coffee breaks, are considered to be so closely related to the performance of the job that they do not constitute an interruption of employment. Nevertheless, purely personal activities are not within the scope of employment, and whether an activity is within the course of employment or purely personal depends upon whether the activity is reasonable and sufficiently work related.

In the case of *Capraro v. Matrix Absence Mgt.* (2020) the claimant was hired to work from home and was supplied with a computer but no other equipment. He purchased office furniture to use at home and was injured while carrying the furniture into his home on a lunch break. The Court held that although claimant was injured during his lunch hour, that fact alone does not render injuries non-compensable provided other facts requisite to recovery exist, and recovery may still lie if the injurious act of moving furniture acquired for work use was sufficiently work related and, therefore, not purely personal.

In theory, any injury incurred at home, for any reason, while employed and working, should be compensable under the Workers' Compensation Laws.

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