



## WHAT WE ARE READING . . .

### Beware Of Personal Injury “Settlement Mills”

An interesting article by a Stanford law professor, Nora Freeman Engstrom, has been circulating among the lawyers at Michaels & Smolak. In the article, titled “Run of the Mill justice”, Professor Engstrom studies the effect of high volume “settlement mills” on personal injury case results.

What is a “settlement mill”? In the words of Professor Engstrom, it’s a “high-volume personal injury law firm that aggressively advertises and mass produces the resolution of claims, typically with little client interaction and without initiating lawsuits, much less taking claims to trial”.

“Settlement mill” law firms make money by quickly processing a huge volume of cases (like a “mill” churns wheat). The cases are under-worked because preparing a case for trial takes too much time. The insurance companies often offer less to the perceived settlement mills. The settlement mills often accept much less in settlement than the client would get if she had hired an

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WELCOME TO THE

## Michaels & Smolak newsletter!

Don’t hesitate to send your comments (*the good, the bad and the ugly!*) to Mike Bersani at [bersani@michaels-smolak.com](mailto:bersani@michaels-smolak.com).

And if you like what you see, please add us on Facebook, follow us on Twitter ([@cnylawyers](https://twitter.com/cnylawyers)) and subscribe to our blog ([centralnewyorkinjurylawyer.com](http://centralnewyorkinjurylawyer.com)).

## Our Team



Lee Michaels



Jan Smolak



Michael Bersani



David Kalabanka

*the*

MICHAELS

*&* SMOLAK

*pledge*

we deeply appreciate the trust our clients have placed in us and we will strive to uphold that trust by working hard and fighting for our clients' rights.

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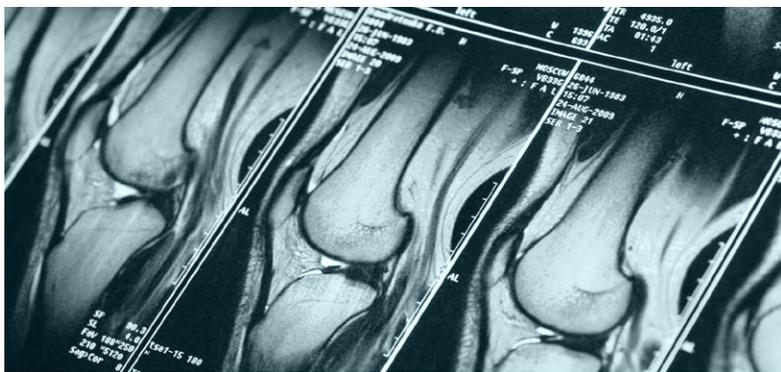
aggressive small-firm lawyer prepared to fight for her all the way to the courthouse doors. The settlement mills make their money on the quantity, not the quality, of the cases they work up.

The “settlement mill” way of doing business differs markedly from the traditional personal injury lawyer’s approach. In the traditional approach, personal injury lawyers take the time to build each client’s case. Even though it is time-consuming, and doesn’t bring in the fast buck, in the end the client usually fares far better. That’s because the insurance company sees that the lawyer is prepared to try the case to a jury, which could lead to a considerable verdict, and because the lawyer has taken the time to build arguments and uncover facts that are overlooked by the “settlement mill” lawyers.

Here at Michaels & Smolak we do things the old-fashioned way (albeit with high-powered computers and technology!). We spend a lot of time on each case because we care about our reputation among the clients and the attorneys who refer us the cases. That’s because most of our cases come from referring attorneys and former clients, so we need to continually “prove” ourselves to them. We have a smaller case load than the “mills” do, but we work up each case more carefully and thoroughly.

In contrast, many big-advertising “settlement mill” lawyers don’t care too much about word-of-mouth reputation. They get their cases not from former clients or attorney referrals, but by bombarding the airwaves and billboard with their ads. To them, a dissatisfied client or referring attorney is no big deal — the bulk of their new cases come from advertising, not word of mouth.

If you or a loved one is injured, think about whether you want a “settlement mill” or a tried-and-true personal injury lawyer to represent you. And if you want a copy of Professor Engstrom’s article, just call us and we’ll get it to you.



#### CLIENT QUESTION OF THE DAY:

### **“Do I need a lawyer to settle my injury case?”**

We get this question a lot. We at Michaels & Smolak sometimes do advise folks who call us to handle their own settlements without a lawyer. When? Usually when the case is quite small, or the insurance carrier has already made an offer that we feel is fair, or a combination of the two. Under those circumstances, you are sometimes better off taking the money and avoiding paying a 1/3 contingency fee to a lawyer.

But those cases are rare. If your injury is at all significant, the insurance carrier is almost certain to “low ball” you if you proceed without an attorney. You will almost certainly do much better — even after the 1/3 fee is deducted — with a reputable attorney who can put the fear of a well-presented trial into the insurance agent’s bean-counter head!

Moreover, a good attorney can build your case. That’s right, his work can actually make your case worth more. How? He knows how to develop your case and to correctly understand and explain your injuries, and he knows how to package and present your case to the insurance carrier, and, if necessary, to a jury at trial.

Not only can an experienced and skilled attorney get you a lot more money in most cases, he or she can also tell you what is fair, and what you should refuse to accept. Remember, the insurance company’s goal is not to “be fair”; it is to make a profit. And how does the insurance carrier make a profit? By paying you, and every other injured person, *as little as possible*. But if you get the right attorney, the insurance company will instead have to pay you everything you are entitled to.

#### WHAT’S NEW IN THE FIRM? **Leonardo DiCaprio, move over! Make room for a new movie star: Mike Bersani**

OK, so maybe Mike’s not a movie star, but he is the “star” of Michaels & Smolak’s new personal injury informational videos. So far Mike has filmed about twenty videos, each running three to five minutes. You can check them out at our website home page (Michaels-Smolak.com). Just click the video link.

What are the videos about? Personal injury law issues, of course. Want to learn how a New York personal injury deposition works? Just click on the video. Want to know what your New York personal injury case is worth? There’s a video for that, too. Want to know how to win a motor cycle accident case? Just click it!

Mike decided to make these videos for two reasons: (1) to answer some of our clients’ most frequently asked questions about their personal injury and medical malpractice cases and (2) to showcase our intimate knowledge of New York personal injury law to web searchers looking for a Central New York personal injury lawyer.

So pop up some popcorn and check Mike out. Then email him (bersani@michaels-smolak.com) to tell him what you think. Please, no rotten tomatoes!

## LEGAL NEWS YOU CAN USE

## Bill In Albany Would Allow Lawsuits By Wrongfully Convicted Even If They Gave False Confessions

These days, thanks to the “Innocent Project” and advances in DNA testing, more and more victims of wrongful conviction are able to prove their innocence, even after many years behind bars.

This gets them out of jail, and under certain conditions, also arms them with a claim against the State of New York to compensate them for their nightmare behind bars. New York law (Court of Claims Act section 8-b) says the wrongfully convicted can seek compensation from the State if they prove they are innocent and “did not by their own conduct bring about the conviction.” Courts have interpreted this language to mean that someone who falsely confesses to the crime cannot sue for compensation. Makes sense, right? After all, if you tell the D.A. “yeah, I did it”, you arguably “brought about your own conviction”, so you have only yourself to blame for the hell-in-a-cage that follows.

But that begs the question of why people confess to crimes they did not commit. In fact, studies show that lengthy, tough interrogations do something to the human psyche.

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## SAFETY DEPARTMENT

## Nine Ways To Be Safe On Your Motorcycle

*Hey bikers, spring is here!* That means enjoying the open road, the engine roaring between your legs, and the pavement whizzing by under your feet. Yes, you know about the risks. But for you, the pleasure outweighs them all. Still, a few common sense strategies will help you avoid many of the risks so that you won't have to come and see us at Michaels & Smolak!

### 1. PROTECT YOUR MOST IMPORTANT ORGAN!

Your brain, of course! Looking cool is important (just ask any 14-year old!) but those skull cap helmets won't protect your brain when your head gets dashed against the pavement. Wear a properly certified helmet and your chances of surviving a crash go up dramatically.

### 2. BE “BLING BLING” ON WHEELS.

Wear bright clothing, a brightly colored helmet and keep that headlight on. Remember, the number one danger of being on a bike is that other motorists just don't see you. Make them see you! Your colors and your light should be **SCREAMING** at them!

### 3. LIKE YOUR BIKE.

More than with a car, a mechanical problem with a bike can cause a serious accident. Check your oil, tires, chain and brakes. Immediately investigate any unusual noises.

**4. BE AN “EASY” RIDER.**

What’s the rush? Enjoy the scenery. There’s no race. Your chances of getting into an accident go up with every mile-per-hour you increase your speed.

**5. DON’T PUT YOUR “SKIN IN THE GAME”.**

Wear clothing that is not only colorful, but that protects your skin. Nothing beats leather.

**6. BOOZE AND BIKES? — YIKES!**

Get your high from the freedom of the road. Don’t enhance it with alcohol or drugs because those things also dramatically increase your risk. And by the way, riding while you are sleepy is not much safer.

**7. BE A ZEN MONK.**

One of the best ways to prevent having to get peeled off the pavement is to be completely “there” on your bike. Observe everything and everyone around you. Don’t let your mind wander. Be a Zen monk out there. Better yet, be a prophet. Try to anticipate trouble before it happens. Expect cars to zip out in front of you. Expect them not to see you. Don’t take anyone or anything for granted.

*areas in which*  
**WE CAN HELP**

our attorneys can help with all personal injury & malpractice cases such as:

- Motor Vehicle Accidents
- Catastrophic Injuries
- Construction Accidents
- Slip/Trip and Falls
- Wrongful Death
- Medical and Legal Malpractice
- Defective Products
- Almost any Accident or Malpractice Case of Any Kind

**SE HABLA ESPANOL!**

Know any Spanish (or for that matter, French) speaking folks who need a personal injury lawyer? Attorney Mike (“Miguel”) Bersani is totally fluent in Spanish, having lived in Spain for a few years and having married a native Spanish speaker. He also speaks fluent French, having lived in Paris for five years. He’ll be happy to “hablar” or “parler” with his clients.

*attention attorneys*

## INJURY & MALPRACTICE REFERRALS

a lot of lawyers and law firms refer all their injury and malpractice cases to Michaels & Smolak. Why?

- (1) We are known for getting top dollar (in settlement or verdict) for the referred case
- (2) We carry all expenses of the case
- (3) We give personal attention to your clients

Consider referring your cases to us!



### STAFF SPOTLIGHT

#### Becky Kinney

Meet Rebecca Kinney, more commonly known as “Becky”. Becky started as a receptionist/ secretary with Michaels & Smolak way back in February 1993, twenty-one years ago (wow, time flies!).

Becky has a tough job. Transcribing four attorneys’ messy dictations, and then trying to interpret their chicken-scratch markups on the drafts, can’t be easy. Becky also files and serves our legal documents, both electronically and by mail, obtains accident reports, assembles our motion papers with exhibits, and schedules appointments. When the lawyers are under time pressures, so is Becky (the “trickle down” effect). The lawyers here appreciate her quick, sharp mind (and sometimes tongue!).

Becky has been married to her husband Ed “forever” (25 years) and together they have three boys, Brian (24) Ethan (13) and Logan (12). Although she looks far too young to be a grandma, she has a grandson, two-year old Braeden.

Outside of work, Becky enjoys spending time with her family, reading, watching her boys’ sporting events, camping and traveling (mostly to North Carolina where her son Brian and grandson Braeden live). Becky has been involved in the Cayuga County local Scout troop since approximately 2006. She started as a Tiger den leader in cub scouts and is now a committee member of the Boy Scout troop. Right now, she is busy building a new house. Where does she find the time!

Yes, Becky has been with us for twenty-one years, and with any luck, she will stay for another twenty-one.

## DEPARTMENT OF LEGAL TIPS

**Add SUM Coverage to your auto insurance policy**

First, what is SUM insurance? “SUM” stands for “Supplemental Underinsured Motorist”. It is a type of auto insurance. It is not liability insurance, which insures you against the risk of getting sued because of your own mistakes. Rather, SUM insurance insures you from other drivers’ mistakes that might injure you or your family. While “liability” insurance is mandatory in New York (\$25,000 minimum), SUM is not. ***But you really ought to get it anyway!***

Here’s how it works. Let’s say you have a \$300,000 liability auto policy. Another driver blows a red light and T-bones you. You’ve got your kid in the car with you. Your kid and you have serious injuries that really require about \$300,000 to compensate you both fully. But the guy who hit you had only the minimum liability policy of \$25,000. If you have no SUM coverage, you are stuck with just the \$25,000. That’s all! But if you had the foresight to purchase \$300,000 in SUM coverage, you get the \$25,000 from the other guy’s insurance, plus another \$275,000 from our own insurance, so that the total is \$300,000. Now you and your kid are fully compensated.

If you buy a \$300,000 *liability* policy only, you are really buying protection for the guy you might accidentally hurt. He will get the benefit of your big policy if you accidentally hit him. But if you buy a \$300,000 SUM policy, you are protecting yourself and your family from other drivers’ negligence.

And here’s the best thing about *SUM* coverage: It’s cheap! A real bargain. You can usually add it to your existing policy for just a few extra dollars a month.

Deciding whether to get SUM coverage is a no brainer. Do you love your family? Then get it!

Call your insurance agent and ask about SUM coverage. Or call us and we’ll tell you more.

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Sometimes the wrongfully accused “crack” and “confess” just to end the ordeal. Those who “crack” usually have underlying mental or psychological problems or are too young to understand the consequences of a “confession”.

This explains why, of the 27 people in New York who have had their convictions overturned by DNA evidence since 1991, ten — more than a third — had falsely confessed or pleaded guilty to a crime they had nothing to do with.

Now a new bill, the Unjust Imprisonment Act, would amend §8-b of the Court of Claims Act to allow the innocent who falsely confessed or pleaded guilty to sue the State for compensation for their time spent in jail.

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