



SAFETY CORNER

Tips for Avoiding Zipline Injuries

If plunging toward the ground at rollercoaster speeds, like a hawk swooping toward a rabbit, is your idea of fun, then a zipline adventure might be for you. But if you'd rather end up like the hawk (happy and satisfied) than like the rabbit (dead), read on!

Zipline popularity is on the rise! And as with other adventure sports on the rise, serious injuries are rising along with it. Falls account for three quarters of the injuries, and collisions with trees or other structures make up most of the others. How to keep you and your family safe? Here are some "zip tips" for safety:

1. Visit Only "Legit" Zipline Parks

Research and then call the zipline operation you plan to visit. Any legitimate operator should adhere to the standards set by the Association for Challenge Course Technology or the Professional Ropes Course Association. So ask to make sure they do! If they say, "what's that?" hang up, stay away!

2. Look around

Once you get there, does the place look legit? Is a safety demonstration included? Look at the equipment provided, including carabiners, ropes, harnesses and helmets. Do they

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.

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).

For Serious Cases

forseriouscases.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.

look well maintained? If the answer is “no”, get out! Go play badminton or something.

3. Watch Out On Takeoff

Many accidents happen on the elevated platform where you start out. The platform should have safety rails. If not, it's a slipshod operation. Get out! And there should be someone up there helping you out and giving you instructions. If not, listen to our instructions: Get out!

4. If You Are Big, Beware!

Most ziplines have a weight limit. Believe us; you don't want to test the limits of that zipline.

5. No Backyard Ziplines

You can't trust your neighbor. At least not with your kid's life. So don't let your kids use his zipline (unless he happens to be a professional).

Have (safe) fun!

ATTORNEY SPOTLIGHT

Mike Bersani to Lecture Other Lawyers across NY State about Suing Government for Personal Injuries

Mike Bersani is in a class of his own when it comes to knowing about how to represent victims of government's negligence in New York State. His articles on the subject have been published in New York's most important law journals and magazines. Those articles are cited by New York State judges when they decide cases. He is widely recognized throughout New York State as an expert on the topic.

“Suing governmental entities and agencies such as New York State or its cities, counties, school district, villages and towns is very different from suing a private wrongdoer such as a car driver or a hospital or a business” said Bersani. “The procedure is different, the time deadlines are different, the things you can sue

for are different, and the defenses that can be raised are different. You name it, it's different."

Bersani considers it his civic duty to teach other lawyers to avoid the pitfalls and mistakes of bringing claims against government. "This area of the law is one where many lawyers commit legal malpractice. It's not that they don't try hard to represent their clients, it's just that there are so many procedural land mines a lawyer can step on in this field of the law. Essentially, I try to teach lawyers to avoid blowing themselves, and their clients, up!"

So that's why Bersani is "hitting the road" again. In September and October he will be lecturing to rooms full of lawyer in Syracuse, Rochester, Buffalo and Albany. "I'll be talking about new developments in this area of the law", Bersani said. "This area of the law is a moving target. It just keeps evolving, and we lawyers have to evolve with it."

Bersani's lecture itinerary can be found at www.trialacademy.org.



MIKE BERSANI

Who: Partner, Michaels & Smolak Law Firm. Joined firm in 1995.

Education: Law degree: Magna Cum Laude, Syracuse University 1993

Family: Wife: Alejandra Molina, assistant professor at Hobart & William

Smith Colleges; Sons: Sebastian, 19, sophomore at University of Pennsylvania, and Nico, 17, Senior at Geneva High School.

Fun Fact: Speaks fluent Spanish and French.

Hobbies: Bicycling, running, traveling, reading.



STAFF SPOTLIGHT

Mary Jones—Super Paralegal!

Who: Paralegal, Michaels & Smolak Law Firm

Joined firm: in 2013

Education: Syracuse University Paralegal Studies (certified 1982)

Family: Husband Michael teaches in Auburn School District. Daughter: Stacey.

Fun Fact: Is Italian but hates to bake!

Hobbies: Golf, Golf, Painting, Pretending she's a meteorologist!

Mary Jones has been a paralegal with Michaels & Smolak for more than 3 years now. She had some big shoes to fill: Ellen Williams retired after working for the firm for 30 plus years. How's she doing? We thought we'd check in on her...

CONTINUED ON NEXT PAGE >>>

»» CONTINUED FROM PAGE THREE

All the lawyers at the firm agree: Mary's most important contribution to the firm is her strong ties to the clients. She feels an emotional reaction when she works with many of the firm's clients.

"I really feel for our clients," said Mary. "In the personal injury business, most of our clients walk in (or sometimes roll in) in a state of shock. Their world has been turned upside down because of somebody else's carelessness", she said. "They are in pain, they can't earn a living anymore, they have medical bills piling up. And they need someone to hold their hand through all this".

Dave Kalabanka, one of the lawyers at Michaels & Smolak, said, "Mary always puts our clients' interest first. They love her! She's a good listener. She fills them in on what's happening in their case, answering their questions or just hearing them out".

Jan Smolak, another M&S lawyer, said, "Mary's a great client advocate. She really feels for the client, and does whatever it takes to get things done for them".

Mary may be relatively new at Michaels & Smolak, but she has



SAFETY CORNER

Is Grandpa a Public Menace? Taking the Car Keys away from an Elderly Family Member Who Has Become an Accident-Waiting-To-Happen on the Road

One of the most difficult conversations to have is with a parent, grandparent or elderly spouse who has — through aging or age-related losses — become a danger to others on the road is the "give-up-the-car-keys" conversation. In the U.S.A., we have a deep emotional attachment to driving. Driving equals freedom. When the elderly consider this loss of independence, particularly in rural and suburban areas where good public transportation is lacking, they will resist giving up the keys even when they recognize their own physical or mental barriers to safe driving (which they often don't). When this happens, what is a son/daughter/spouse to do?

First, let's be clear on the legal duty. The family member of an elderly person who may be unfit to drive has no legal duty — or even the right — to take the keys away (unless they have legal guardianship of the elderly person). But family members have the right — but not the duty — to report the elderly family member's suspected inability to safely drive to the Department of Motor Vehicles (DMV). From there, DMV will take over.

But should you snitch on grandma?

Some family members of elderly drivers hope to get the elderly loved one's physician to do the dirty work for them. They bring mom or dad in to his or her physician, who may examine the patient and determine that indeed they are not fit to drive. But even if the doctor finds the patient to be blind as a bat, or unable to

CONTINUED ON PAGE 7 »»

move his arms, or suffering from severe Alzheimer's, the physician cannot report this to the DMV without his patient's consent. The patient-physician confidentiality rule prohibits the doctor from disclosing this information to anyone without his patient's consent. The physician can report it only with the patient's consent, but many patients who should not be driving won't consent.

On the other hand, the physician must warn a patient that he or she should not be driving, and should try to convince the patient to allow the physician to call the DMV. The physician is a good family resource to help convince the elderly driver it is time to "give it up". But again, the physician cannot make that call to the DMV without the patient's consent.

Let's be clear: Almost anyone EXCEPT the driver's physician can report a suspected "lack of qualification to drive" of any driver to the DMV, but generally the only person who is required to report this to the DMV is the person the least likely to do so: the elderly driver himself!

So if the elderly loved one refuses to report him or herself, or to give up his or her keys, what is the family to do? It's a tough decision for a son, daughter or spouse to make: Do you "blow in" your beloved but incapable driver into the DMV? Do you have an ethical duty — if not a legal one — to protect the public from this aging roadway menace?

In our view, yes, you have that moral obligation, even though there is no corresponding legal duty to do so.

Once you screw up the courage and do it, New York's Vehicle & Traffic Law 506 provides that, if the DMV has "reasonable grounds to believe that a person holding a license ... is not qualified to drive a motor vehicle, the commissioner may require such person to submit to an examination to determine his qualification".

One more thing to know: Although family members cannot be held liable for injuries caused by the elderly driver who drives his or her own car, family members — or anyone else — can be held liable for giving permissive use of their car to the elderly driver.

Thank you for protecting all of us — and your elderly family loved one, too — from harm.

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

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!



TOOTIN' OUR OWN HORN
All Four Michaels & Smolak Lawyers Are Once Again Selected as "Best Lawyers in America"

Once again all four of the lawyers here at Auburn New York's premier personal injury and medical malpractice law firm have been included in the highly selective legal directory "Best Lawyers in America", 23rd (2017) edition. They have been selected for both the "personal injury" and "product liability" litigation categories.

The American Lawyer magazine – one of the nation's preeminent law magazines – describes the Best Lawyers directory as "the most respected referral list of attorneys in practice." According to the publishers of "Best Lawyers in America", inclusion in Best Lawyers is "based entirely on peer-review and employs a sophisticated, conscientious, rational, and transparent survey process designed to elicit meaningful and substantive evaluations of the quality of legal services."

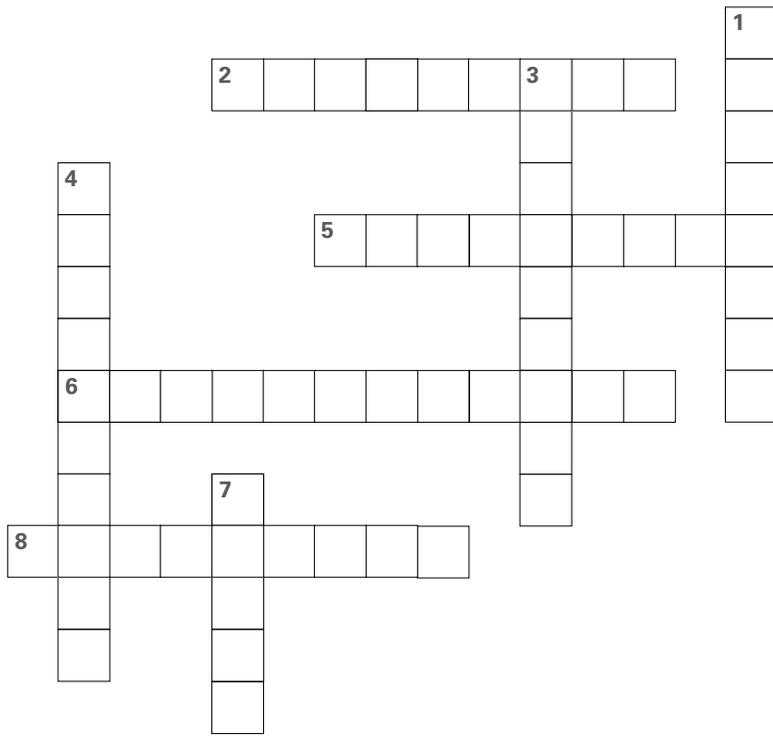
The Michaels & Smolak team makes up 4 of only 17 lawyers in all of Central New York honored in "Best Lawyers" for personal injury law.

"Best Lawyers" is only one of several nationally recognized highly selective peer-review (lawyers reviewing lawyers) publications in which the lawyers at Michaels & Smolak are listed. All lawyers in the firm are also listed in "Super Lawyers", which includes only those attorneys who are considered to be among the top 5% of all lawyers in their field the State of New York. The firm is also listed as a top tier firm in "US News & World Report".

What do these "listings" mean to our clients? Two things: (1) they can rest assured that they are represented by the best of the best in the personal injury field and (2) insurance companies will know it, and are likely to take this into consideration when negotiating our clients' settlements.

NEW M&S NEWSLETTER FEATURE

Legal Crossword Puzzle

**ACROSS CLUES:**

2. An unfounded lawsuit without any value is ____.
5. Personal injury victims sue for pain and ____ compensation.
6. Name for a legal entity such as a county, city, village or town.
8. Liability imposed by law upon one person for the failure of another, with whom the person has a special relationship (such as employer/employee).

DOWN CLUES:

1. When a family member is killed through someone's negligence, they can sue for ____ death.
3. A lawyer will shout this out in court when she feels an evidentiary rule is being violated.
4. A wrong consisting of saying untrue and harmful things about someone.
7. ____ negligence means almost reckless.

If you need help, email us for a "hint", or for the answer key:
 bersani@michaels-smolak.com

»» CONTINUED FROM PAGE FOUR

a long history in the "justice business". She was a paralegal in real estate law for seven years, in bankruptcy law for five years, and at the Cayuga County District Attorney's Office for twelve years. She was also clerk for the Cayuga County Legislature for five years.

"One thing remarkable about Mary is the number of emails, cards and gifts she gets from clients. This is very unusual for a paralegal", said Mike Bersani, another firm attorney. "Mary's work makes a big difference in every case. And the clients know it", he said.

"Representing injured clients is not the same as representing a business client", Bersani said. "There's a lot of emotion and hand-holding involved. Mary excels at that part of her job. It's just the way she is".

IN THIS ISSUE

SAFETY CORNER

Tips for Avoiding Zipline Injuries

TOOTIN' OUR OWN HORN

**All Four Michaels & Smolak
Lawyers Are Once Again Selected
as "Best Lawyers in America"**

ATTORNEY SPOTLIGHT

**Mike Bersani to Lecture Other
Lawyers across NY State about
Suing Government for Personal
Injuries**

STAFF SPOTLIGHT

Mary Jones — Super Paralegal!

SAFETY CORNER

**Who Can Take the Car Keys away
from An Elderly Family Member
Who Has Become An Accident-
Waiting-To-Happen On The Road?**

