

Michaels & Smolak Gets Justice for Injured Migrant Farm Workers.

There is an old expression, “the wheels of justice grind slowly”. Even so, the lawyers at Michaels & Smolak are able to resolve most cases fairly quickly. In complex cases, however, even the most dedicated personal injury lawyers can feel like Sisyphus, the mythical Greek character who was condemned to roll a rock up to the top of a mountain, only to have the rock roll back down to the bottom every time he reached the top.

Such was the experience of M&S attorney Mike Bersani who spent 11 ½ years fighting for a group of injured migrant farm workers. They had come from Guatemala and Mexico to Upstate New York to work long and hard hours in our rich agricultural fields. They made little money by our standards, but quite a bit more than they could hope to make back home. They were sending almost all their earnings back home to feed their wives and children. Then tragedy visited them. A terrible farm accident. It was not their fault. Others were to blame. Most of them were terribly injured and forever disabled.

Throughout their long wait for justice, they suffered with dignity, patience and equanimity. They are all devout Christians, which served them well. They prayed to God to help them through the pain and the poverty and to bring them justice. Apparently, God came through for them.



(M&S ATTORNEY MIKE BERSANI WITH HIS CLIENTS IN GUATEMALA)

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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.

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.

New York Dog Owner Liability Law Needs Fixing

Michaels & Smolak lawyer David Kalabanka has handle many dog bite cases to successful conclusion. But he is not a fan of New York's dog owner liability law. "A dog may be a man's best friend, but New York dog law is not a victim's best friend. Far from it", Kalabanka says. By way of background, New York is one of only a few states where, to win your case, you have to prove the dog had a prior bite or attack or otherwise displayed "vicious propensities" and that the owner knew about these propensities. Otherwise, the owner of the dog is off the hook, even if the dog viciously attacks a victim.

"This rule 'bites'", jokes Kalabanka. But he knows it is really no joking matter. "The problem with this rule is that it doesn't allow victims to sue the owner of the dog for the owner's negligence. The owner might have a perfectly good dog with no vicious propensities, but the owner might nevertheless – through plain stupidity or negligence — cause even the Mother-Theresa-of-dogs to hurt people."



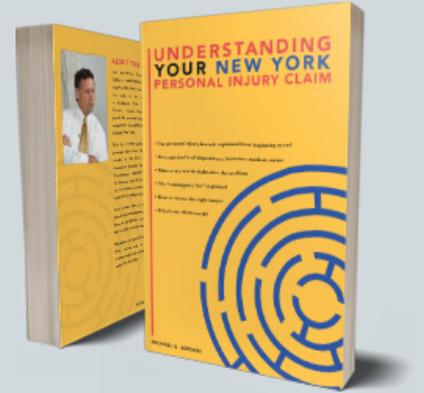
Attorney Kalabanka had many examples of this. "For example, in a case called *Doerr v. Goldsmith*, a dog owner signaled for his nice, obedient doggy to come to him. Bad idea. The dog was on the opposite side of a very busy street. The tail-wagging, happy-go-lucky pooch then bolted across the busy street to his loving owner, causing an innocent bicyclist to be thrown from his bike. Could the cyclist sue the dog owner for his negligence? No, New York's highest Court said, because the rule in New York is you can't sue a dog owner unless the dog has demonstrated "vicious propensities", which this saint-of-a-dog surely had not."

Similar examples abound, according to Kalabanka. "Here's another terrible case: In *Scavetta v. Wechler*, one of New York's four intermediate appellate courts – the First Department – ruled that a dog owner who tied his big, strong dog to a small, light-weight, unsecured bike rack and then walked away, could NOT be held liable when the dog dragged the rack around in a panic and injured a good Samaritan trying to help. The Court, while very critical of the rule as established by New York's highest Court, said it was constrained by the (bad) rule. So even our courts recognize that our dog rule is just plain terrible!"

Kalabanka also finds that New York’s dog law is inconsistent with the way New York treats harm caused by other animals. “Weirdly, this silly ‘vicious propensities’ requirement does not apply to farm animals. For example, in *Hastings v. Sauve*, the Court held that an owner of a cow – or other farm animal — can be liable for negligently allowing the cow to roam onto a road and cause an accident. Obviously, a cow is not vicious, but still the owner can be held liable. So why not the same rule for dogs? Why can’t a dog owner be held liable for allowing his/her dog – even a friendly non-vicious one — to run loose and cause a car or bike accident or some other accident?”

Kalabanka wants the State’s highest Court or legislature to change the rule: “It’s time to unleash New York from this horrible rule”, Kalabanka said. “Our courts should be in the business of administering justice, and New York’s current dog owner liability rule is simply not just or fair. I am optimistic that eventually our legislature or courts will correct this injustice.”

Let’s hope he’s right.



ATTORNEY SPOTLIGHT
Attorney Mike Bersani’s
New Book: “Understanding
Your New York Personal
Injury Claim”

M&S attorney Mike Bersani has written a book (shown above). Why? We tracked Mike down to find out:

INTERVIEWER: So why did you write a book?

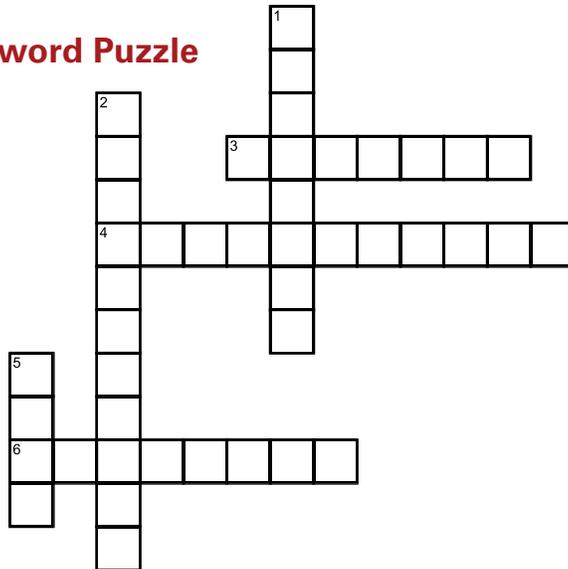
MIKE: For years now Michaels & Smolak has made it one of their goals to clearly explain even the most complex concepts of the New York personal injury claim process to their clients. And over the years we’ve gotten pretty good at it. I personally love it when my clients call me bewildered and confused with a question about their claim, and five minutes later say, “now I get it, Mike, thanks!”. Some have even said, “hey Mike, you ought to write a book”!

INTERVIEWER: So did that make you want to write a book?

MIKE: Actually, no! I didn’t want to write a book. I was too busy representing my many clients injured in New York accidents.

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Legal Crossword Puzzle



Across

- 3 The parent or guardian who can make decisions for the child has legal _____
- 4 Appearance before a judge to plead guilty or not guilty
- 6 A right of way is a type of _____

Down

- 1 When you sue the State or a Governmental agency, you are often confronted with the defense of sovereign _____.
- 2 The owner of a vehicle that causes an accident, or the employer of a wrong-doer who causes the injuries, is _____ liable to plaintiff for his injuries.
- 5 Insurance companies that pay for the medical treatment of an injured plaintiff often have a _____ against any settlement or judgment.

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So instead I looked online and in book stores for a book that would explain what all my clients should know about their New York State personal injury claims process. Guess what. I didn't find one. Well, there were some, but they were either inadequate or just plain wrong.

INTERVIEWER: So is that why you wrote the book?

MIKE: Yup. Because the book I wanted for my clients did not exist.

INTERVIEWER: So how much is it selling for?

MIKE: Nothing. It's free! We hand the book out to all our new clients. But anyone can get it for free by going to our website and filling out a form.

INTERVIEWER: Free? Why are you giving your book away? And why to anyone at all, even if they are not your clients?

MIKE: Look, we are in this business to help people. And I think the book really helps injured victims who want to pursue justice. The book explains just about everything personal injury victims need know about the New York personal injury claims process.

INTERVIEWER: Why does it matter whether a personal injury victim understands the New York personal injury claims process? Doesn't the lawyer handle everything?

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SAFETY CORNER:

Amusement Park Industry's Bigger, Taller, Faster Competition Can Lead to Bigger Injuries, Too.

Summer is here, and so many Central New York families will be planning a trip to local, or even far away, amusement parks. Generally, amusement parks are reasonably safe. But accidents – tragic ones – do happen. Why? For one thing, the industry has become very competitive in trying to get the “highest”, “fastest”, or craziest rides. That kind of competition can lead to dangerous results.

Case in point: Last year a 10-year old boy was killed on the “tallest” water slide in the world located in Kansas City (see photos above). The slide had opened to much fanfare in 2014 as it surpassed the then-tallest water slide in the world located in Brazil. The slide – christened the “Veruckt” (German for “insane”) — consisted of a 168-foot, 17-story drop followed by a bump and then a final descent into the pool below.

The boy was found dead in the raft at the bottom of the ride with a fatal neck fracture. His neck had apparently snapped as he hit the “bump” traveling 60 miles per hour. Two unrelated passengers – both heavy women weighing an average of 230 pounds each – had been seated behind him in the three-person raft. It appears that the high speed, followed by the lift of the bump, made the lighter weight front of the raft whip up and down while the back of it was weighted down by the two women.

It was clearly a poor design, an “accident waiting to happen”. Before this tragic accident, others had complained about being thrown into the air on the “bump”, and there were complaints about the safety harnesses coming undone.

A few months ago, personal injury lawyers representing the boy's family settled his wrongful death case against the Amusement Park for a confidential amount. More lawsuits are contemplated against the designer and manufacturer and others.

It is not a coincidence that Missouri, where this ride was built, has some of the most lax amusement park safety regulations in the nation. So much for deregulation!

Here's some advice from the lawyers at Michaels & Smolak about amusement parks: Before taking your family to an amusement park, especially one that you are unfamiliar with, google it online to see if users have complained about unsafe or unsettling aspects to the rides. See if claims have been made, or if other users had concerns about the ride. And if you or your family are unfortunately injured at an amusement park in New York State, call us. We can help.

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After a decade-long legal battle on behalf of these crushed, burned, broken and maimed men, and after more than thirty depositions, countless court motions and court appearances, and three appeals, Michaels & Smolak was finally able to obtain justice for them. Why did it take so long? It was a very complicated case involving about a dozen defendants. And there were long and difficult legal battles. For example, because the men were deported after their accident, and because Mike could not get visas for them to come back in, even for trial, he had to ask the judge to allow him to go to Guatemala and Mexico to take their deposition and trial testimony by video-conferencing. The judge was having none of that. "If they can't get to trial, case dismissed". The judge reasoned that the plaintiffs had only themselves to blame for their predicament since their visa applications were denied based on past immigration violations. There was case law supporting this ruling. But Mike took an appeal, won, and "made law" by getting permission to take plaintiffs' testimony in Guatemala and Mexico by video conferencing, which he then did. The appellate court's decision made the front page of the New York Law Journal.

Mike recently flew down to Guatemala to help the men open bank accounts, sign resolution papers, and to commiserate with them for their losses and celebrate finally obtaining justice for them. (The photo on the front page was taken at the hotel in Guatemala Michaels & Smolak rented for the occasion).

This was one of the largest settlements Michaels & Smolak has had in recent years. The exact amount is confidential. What is not confidential is this: Michaels & Smolak is proud to represent deserving victims of the carelessness of others, and will do whatever it takes to obtain justice for their clients.

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!



COMMUNITY SPOTLIGHT: **Eliminator Automotive**

We're Auburn's homegrown personal injury law firm. And although we are from a small town, we get big city results. Our clients come from all over, including Syracuse and Rochester, because of our reputation. But we are not the only bigtime homegrown business in this small town. Eliminator Automotive is another. So M&S attorney Dave Kalabanka stopped in for a visit and talked with owner Mike Antonacci:

DAVE: So Mike, let's start from the beginning. How did Eliminator Automotive get started?

MIKE: Well, I had enjoyed doing car repair work since I was about twelve years old, and I also knew I wanted to be my own boss and not work for someone else. So in 1991, after working for years for other vehicle repair joints, I finally took the plunge and opened my own shop.

DAVE: On your own?

MIKE: Yes, I was and am the sole owner. But I have five great full-time employees who help me out.

DAVE: So what exactly does "Eliminator Automotive" do. Do you "eliminate" cars?

MIKE: Ha ha, ha. No. Quite the opposite. We "eliminate" car problems. We do everything from normal maintenance, to oil changes, to tire rotations, alignments, computer diagnostics, suspension work troubleshooting, performance issues, electronics, brakes. Pretty much anything mechanical.

DAVE: I can see it's busy in here. How do your clients find out about you?

MIKE: The good old fashioned way: Word of mouth. We don't advertise much. People come to us because of our reputation for standing behind anything we do. If a customer has a complaint or problem, we fix it.

DAVE: Downstairs in the shop I saw about 70 or 80 Harleys and some other bikes. That's a lot of bikes. What's up with that?

MIKE: That's a major part of our business. We started with bikes more than a decade ago, and we got really, really good at it. There are other motorcycle shops around, but we probably have the biggest volume of motorcycle repair work. We are also a dealer for most motorcycle parts. Our prices are as good as or better than anywhere. Lots of bikers buy their parts and equipment online because they think it is cheaper. But often they get cheap, defective parts at a steeper price. My pricing is incredibly competitive, and it's all quality parts, and I stand behind them.

DAVE: Ok, but I still don't get it. Why do you have eighty bikes here in April? Isn't that a little early for bike repair work?

MIKE: Well, we store them all winter and then get them prepped by springtime so they are ready to go. Motorcycle season is short and smart bikers don't want to get their bike out of storage and then have to take it to a shop for service work and be tied up. So they kill two birds by storing them here for the winter where we get them road-ready by spring.

DAVE: Great idea! You guys have been incredibly successful here in Auburn. What's your secret? How do you keep ahead of the competition?

MIKE: Bottom line is you have to treat the customer like a customer and not an invoice number. You have to provide service, the real old-fashioned kind. Anybody can fix cars, but the trick is to make sure you are doing it correctly, fairly and stand behind what you do. When you work on grandma's car, if grandma isn't happy, then the rest of the family is not happy. Keep grandma happy. Keep them all happy.

DAVE: So have you got grandma's Harley road-ready for spring riding yet?

MIKE: You bet. Grandma's Harley is good to go!

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MIKE: Not really. A personal injury case is not something you just hand to a lawyer and then wait for him to hand you a check a few months or years later. Your lawyer needs your help! Understanding the process empowers you. The "knowing" client often gets better results. That's why I wrote the book: To help my clients, and all New York personal injury claimants, bring their cases to a successful conclusion.

INTERVIEWER: So exactly what's in the book?

MIKE: Lots. Read the book and find out! For example, it explains the "do's and don'ts" of depositions and insurance required medical exams. How should the client behave at those important events? What should they say and not say? It explains in detail how the contingency fee really works. It's really more complicated than just "one third" of the settlement or judgment. It explains how we estimate what a case is worth for settlement purposes. It gives tips on how to answer questions under oath at depositions and trial. And it explains much, much more. I really do believe it's the perfect companion for any New York personal injury claimant.

INTERVIEWER: So can I have your free book?

MIKE: Sure! Here you go. Happy reading . . .

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