

Merry Christmas from your lawyers:

We wish you ^{but in no way guarantee}
a Merry Christmas, ^{and/or festive period}
and a happy new year. ^{including but not limited to} ^{reasonably} ^{twelve (12) months from the date hereof.}



But seriously, Merry Christmas from all of us at Michaels & Smolak!

Suing the Rich and Powerful (and not-so-rich and powerful) for Sexual Abuse



What 3 things do Bill O'Reilly, Roger Ailes, Bill Cosby and Harvey Weinstein all have in common? Answer: They are (1) rich (2) powerful (3) alleged sex offenders. Some might want to add Donald Trump or Bill Clinton to the list, but let's stay clear of politics.

The truth is that many powerful men are sexual predators. But so too are many not-powerful men. In fact, poor men may be even more prone to committing sexual assaults. That's because, in the words of Janice Joplin, "when you ain't got nothing, you got nothing to lose". The guys at the top of society's pyramid have a lot to lose. It's a long fall to the bottom. The guys who are already

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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



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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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down low have nowhere to fall.

Historically, men usually got away with it. Not any more (we hope). Thankfully we live in more enlightened times. Now women can not only press criminal charges, but also sue the offenders for money damages.

When it comes to suing sex offenders, there's a big difference between suing the rich and powerful versus suing some guy with a GED and a job at Wendy's. The difference stems from the fact that the rich man has money and the poor man does not. Suing a poor sex offender is like trying to get water from a rock. That's why lawsuits against a poor assailant don't make any sense.

To get any recovery at all when you are assaulted by a poor offender, you are better off if he was on the job when he chose to assault you. For example, if a pizza delivery guy assaults you, you may be able to sue the pizzeria employer, who would have insurance or deep pockets.

But an employer is not automatically liable for the sexual (or other) assaults committed by its employees while on the job. That's because there is generally no "vicarious liability" for intentional torts. However, if you can show that the employer knew or should have known that the employee had committed sexual offenses in the past, but that the employer hired him or retained him anyway, then the employer may be guilty of "negligent hiring" or "negligent retention".

Take the O'Reilly case as an example. He was fired after it came to light that 21st Century Fox, his employer, had paid out about \$13 million to five women who claimed they had been sexually assaulted or harassed by him. In addition, Riley himself had paid out \$32 million for a single victim. Fox admitted that it renewed O'Reilly's contract right after O'Reilly had settled this last claim. Fox defended its decision to keep O'Reilly on because he had "settled the matter personally". The company also defended its decision by pointing out that O'Reilly's new contract allowed Fox to dismiss him if "other allegations" surfaced.

But this contractual provision does nothing to shield Fox from liability. The women O'Reilly raped or groped or pressured for sex can sue Fox based on a theory of negligent retention. Fox clearly knew what O'Reilly was up to but they nevertheless renewed his contract, thus giving him the opportunity to rape or grope and harass again and again.

If a victim of O'Reilly's assaults is also employed by Fox, her claim would be brought under Federal and State Statutes that protect women and other minorities from a "hostile work environment". If the victim is not employed by Fox, then the claim against Fox would be for negligent hiring, retention and/or supervision.

The claim for negligent hiring or retention is pretty much the same regardless of the type of assault. For example, if a pizza delivery guy delivers a pizza to your home and then punches you in the face because your tip was too small, you can sue the employer for negligent retention or hiring and will likely prevail if the employer knew or should have known about prior assaults or threats.

We should be very grateful to live in an era and in a country when sexual assaults on women (or men) are redressed not just by criminal sanctions, but by money lawsuits. Those who commit sexual assault should not only be caged up, but bled dry.

COMMUNITY SPOTLIGHT: **Angelo's Pizza**



We're Auburn's homegrown personal injury law firm. And although we're 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. Angelo's Pizza is another. So M&S attorney Jan Smolak stopped in for a visit and talked with owner Matt Bartolotta:

JAN: So Matt, Angelo's Pizza has been an Auburn landmark as long as I can remember. What's the history of it?

MATT: Angelo D'Angelo started it back in 1960. So it's been around a long time, almost 60 years now.

JAN: How did you get involved in the business?

MATT: Actually, I'm the owner. I bought it from Angelo back in 2002.

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SAFETY CORNER

How to Avoid Becoming the Victim of Medical Malpractice M&S Medical Malpractice Lawyer Dave Kalabanka Explains

Can you avoid being a victim of medical malpractice? This is an important question because medical malpractice is now the third leading cause of death (after heart disease and cancer) in America. So we asked David Kalabanka, an experienced medical malpractice lawyer at Michaels & Smolak, to give us the lowdown.

US: David, so, let's have it upfront. Can the average Joe patient really *avoid* getting medically malpracticed? I mean, isn't that kind of out of the patient's hands?

DAVE: Good question. And the answer is, "yes and no". Obviously you can't avoid all malpractice, but you can reduce the risks of it happening to you.

US: How, for example?

DAVE: Well, one thing to keep in mind is that there is safety in numbers. So when you go in for a medical procedure, buddy up. Always bring a trusted friend or

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family member with you, especially for surgery. Having someone act as your advocate throughout your stay is crucial, especially if you will be medicated or anesthetized. Sign any legal paperwork needed so your “advocate” has permission to know the details of your treatment and to discuss it with your doctors and nurses.

US: What if you have to go into surgery alone? What if no one can go with you?

DAVE: There’s still a lot you can do to protect yourself. Make sure your healthcare professionals have your correct health information, including pre-existing conditions and allergies. Never assume they already know. Give them your prescription list. And here’s a trick for avoiding wrong-site surgery (yes, this still happens all too often!): Make sure they properly mark the area they are going to do surgery on (they are required to do it).

US: Ok. But so far you have focused on going in for a medical procedure. What about afterwards?

DAVE: Well, if you have had a test done, ask about the results. Don’t assume that no news is good news, and always ask for a copy of the results, and for an explanation of what they mean for you. And never hesitate to call the doctor’s office if your post-operative instructions are at all unclear.

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JAN: What happened to Angelo? Did he retire?

MATT: Yes, but believe it or not, he still comes to the pizzeria every day, seven days a week. He can’t get enough of it. It’s in his blood! He loves seeing his old customers, and the new ones, too. He walks in with a smile on his face and brightens up the whole place.

JAN: So has the place changed at all since you took over?

MATT: Yes and no. Same top quality pizza in the same building, 25 East Genesee Street. But we have grown. I started with just two employees and now we are up to twelve.

JAN: So what has spurred your growth?

MATT: Take out is now huge. We deliver throughout Cayuga County and sometimes as far as Wells College. We don’t say no to anyone, even at that distance.

JAN: Jeez, have you thought about expanding, maybe opening up another store?

MATT: In fact, yes, we tried that. In 2010 we opened another shop. But it did not really work out. It was hard to make sure we kept the same quality and standards with two separate sites. So we closed it in 2012.

JAN: The pizza business is obviously very competitive, yet Angelo’s has not only stuck it out for almost 60 years, it has thrived. What’s your secret to success?

MATT: It’s simple. We use the best ingredients, and produce top quality food with friendly service. I never skimp on ingredients. Everything is homemade including the sauce and dough. We use only top of the line Wisconsin cheese and the best Californian tomatoes. I have actually met the growers of the California tomatoes.

JAN: Matt, this has been very interesting for me. Thanks for your time.

MATT: Don’t mention it. Stop by for a slice soon, will you?

JAN: You bet!

TOOTIN' OUR OWN HORN:**Syracuse University College Of Law Honors
M&S Senior Partner Lee Michaels**

Lee Michaels is the senior attorney here at Michaels & Smolak. He was personally responsible for hiring and grooming the rest of us. To the other lawyers at our firm, he has been a mentor, teacher, friend, and role model. It's good to know that others appreciate Lee, too.

On October 20, Syracuse University's College of Law bestowed upon Lee a great honor. Why? Lee's list of achievements is too long to include here, but you can check it out on that SU Law alumni website. Suffice it to say Lee was a top law student at Syracuse, then because a top personal injury lawyer in the Syracuse area, and a top teacher of trial practice at the Syracuse College of Law, and has been a terrific community leader in many capacities.

As we said before, Lee has been a great mentor, teacher and friend to all of us here at Michaels & Smolak. We are not alone. One of Lee's former students (Lee has been teaching Trial Practice as an adjunct at the law school for almost three decades) had this to say about Lee on the College of Law website:

"Lee Michaels is one of the College of Law's most loyal supporters. He has been an adjunct professor for many years and has made lasting impressions on literally a generation of alumni. Lee Michaels was one of the biggest reasons I decided to become a personal injury lawyer. My very first personal injury case was referred to me by Lee. I have known Lee for over 25 years. I have worked on cases with him, helped him teach his class, sat on boards with him, and socialized with him on countless occasions. Lee Michaels has a tireless work ethic, takes his responsibility as an advocate for the injured very seriously, has a sense of compassion and caring for others, is an extremely loyal friend, and has a deep sense of pride in his law degree from SU."

We at Michaels & Smolak agree. The award is most deserved. If you know Lee, don't hesitate to congratulate him.

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!

NEWS YOU CAN USE:

Uber Comes To Syracuse: Can Uber be Held Liability for its Drivers' Sexual Assaults on Passengers?



On a Saturday night this fall at Syracuse University, as on almost any Saturday night on almost any campus nationwide, it was party time. A female student – one of many -- was out imbibing, frolicking, and doing whatever young party-goers do these days, until 3:00 a.m. Then she needed a ride to her dorm. She hit an app on her smart phone to hail an Uber. An Uber driver showed up. She asked the male driver to take her to her dorm.

The driver had other ideas. Instead, he took her to an empty parking lot. He grabbed her and began to force his hand up her skirt. Fortunately, she escaped before the driver could “have his way” with her.

Assume the worst. Assume the student had been the victim of a full-fledged sexual assault. Could she successfully sue Uber?

Maybe. And we may soon find out. Right now, Uber is facing two separate lawsuits in different States brought by women who claim they were sexually assaulted by Uber drivers.

Both suits allege Uber used “negligent hiring” practices (did not screen its drivers carefully enough). Uber’s hiring process appears designed to allow it to hire drivers fast and cheap. Only a basic criminal background check is done, which goes back only seven years. So if a 35 year-old driver raped a women when he was 27, Uber wouldn’t know. A more thorough and complete search could be done, but at a greater cost.

The plaintiffs also argue that Uber should have an in-app panic button. Uber deployed this feature in India after a 2014 rape. Why not deploy it here? More expensive, of course. Uber would have to hire people to respond to the panic button.

Also, the suits allege, female riders should have the option of demanding only female drivers.

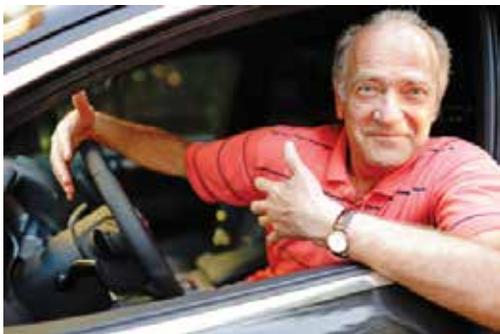
Finally, the lawsuits allege that Uber should require in-car surveillance cameras.

The plaintiffs will have to convince a Court or jury that these extra precautions are reasonable and likely would have prevented the assaults. Uber will fight these lawsuits to avoid the extra costs.

We are rooting for the women. Yes, Uber will suffer some loss of profits, and rides will be a bit more expensive, if Uber is forced to add the extra security measures. But as the old sayings go, safety first, and better safe than sorry.

And we believe that in the long run Uber will benefit from these safety features. More customers -- especially women -- will feel safe using Uber, which will trigger more frequent Uber use. Business up, assaults down. It's a win, win.

Uber has a choice. Either it can pay for these safety measures now or pay to defend expensive lawsuits later. Either way they're going to pay. But only one way will save more women from getting raped. Uber should do the right thing.



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US: One of the biggest areas of medical malpractice these days is prescription errors. Is there anything a patient can do to avoid being a victim of that kind of malpractice?

DAVE: Absolutely. Double-check with the pharmacist that the drug and doses she is giving you match the script your doctor wrote. And know Your Drugs. If you receive a prescription, don't just take it. Find out what it is for, how long you need to use it, and what the possible side-effects and contraindications are.

US: What else can the average person do to avoid become part of the extraordinarily high med mal statistics?

DAVE: One mistake I see a lot of folks make is failing to properly investigate their health care provider. It's ok to doc shop. Choose the hospital, facility and the doctor who have the most experience performing your procedure, and good track records. It's really easy nowadays with the internet. Compare hospitals' infection rates, complication rates, and much more on line. A great site to check out is medicare.gov.

US: Thanks Dave. Any last words of wisdom?

DAVE: Minimizing med mal is a question of staying vigilant and taking an active part in your own treatment. Don't be a passive patient. Stay on your toes. Ask questions. Research your treatment and your doctor online. Stay involved.

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