

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF RICHMOND  
PART DCM 3**

Index No.:104672/2007  
Motion No.:001, 002

**MOHAMED KEITA and  
MASSA KEITA (Infant),**

*Plaintiff*

*against*

**UNITED PARCEL SERVICE,  
LIBERTY MUTUAL INSURANCE GROUP,  
PEERLESS INSURANCE, and  
KUTRY B. JERZY,**

*Defendants*

**DECISION & ORDER  
HON. JOSEPH J. MALTESE**

The following items were considered in the review of these motions to dismiss

**Papers**

**Notice of Motion and Affidavits Annexed  
Answering Affidavits  
Replying Affidavits  
Exhibits  
Memorandum of Law**

**Numbered**

**1, 2**

**Attached to Papers**

RICHMOND COUNTY CLERK  
2009 MAY -7 P 1:18  
FILED IN COURT & EQUITY

Upon the foregoing cited papers, the Decision and Order on this Motion is as follows:

Defendants motions to dismiss are granted in their entirety.

Plaintiffs allege that they were involved in a motor vehicle accident on May 1, 2003 that caused them both to sustain personal injuries. Plaintiffs filed a summons and complaint based on this incident on December 12, 2007. Mohamed Keita ("Mohamed") appeared pro se and on behalf of his daughter Massa Keita ("Massa"). Defendants now move to dismiss plaintiffs' complaint.

Mohamed's complaint is dismissed pursuant to CPLR § 214(5) in that an action for personal injuries shall be commenced within three years. Additionally, Mohamed's complaint is defective in that it fails to articulate a cause of action for negligence. As such, Mohamed's claim for negligence is dismissed.

Defendants, Liberty Mutual Fire Insurance Company s/h/a Liberty Mutual Insurance Group ("Liberty Mutual") and Peerless Insurance Company s/h/a Peerless Insurance ("Peerless") argue that plaintiffs cannot maintain a direct cause of action against an insurance company.<sup>1</sup> This court agrees and dismisses plaintiffs' claims against Liberty Mutual and Peerless.

In addition, this court agrees with defendants Liberty Mutual and Peerless in that Mohamed, a non-attorney, may not pursue a claim on behalf of his daughter. Since Massa Keita is a legal infant under the age of 18 years, a guardian ad litem, other than her father, who was the driver of one of the automobiles in which she was a passenger when this accident occurred, shall be appointed to evaluate this case on her behalf.

Accordingly, it is hereby:

ORDERED, that the motion to dismiss is granted and the complaint of Mohamed Keita as to all parties is dismissed; and it is further

ORDERED, that the Clerk is directed to enter judgment accordingly; and it is further

ORDERED, that defendants Liberty Mutual Insurance Group and Peerless Insurance are also dismissed; and it is further

ORDERED, that the action by Massa Keita, an infant under the age of 18, shall survive as against United Parcel Service and Kutry B. Jerzy; and it is further

ORDERED, that John M. O'Dowd, Jr., Esq., having offices located at 1164 Victory Blvd., Staten Island, New York 10301, telephone number (718) 273-2500 is hereby appointed guardian ad litem for the infant, Massa Keita, to commence and maintain an action for the infant

---

<sup>1</sup> Insurance Law § 3420(b).

who was a passenger in an automobile accident, which occurred on May 1, 2003. An action shall be commenced by the Guardian ad litem on behalf of Massa Keita against the owner and driver of the vehicle she came into contact with, namely, United Parcel Service, Inc. and Kutry B. Jerzy, as its driver, and Mohamed Keita, her father, who was the owner driver of the vehicle in which she was a passenger, and any other appropriate party, and it is further

ORDERED, that upon service of all parties the action shall be amended to read:

-----X  
Massa Keita, an infant under the age of  
eighteen, by Guardian ad litem,  
John M. O'Dowd, Jr., Esq.,

Plaintiff

against

United Parcel Service, Inc.,  
Kutry B. Jerzy and Mohamed Keita,

Defendants.  
-----X

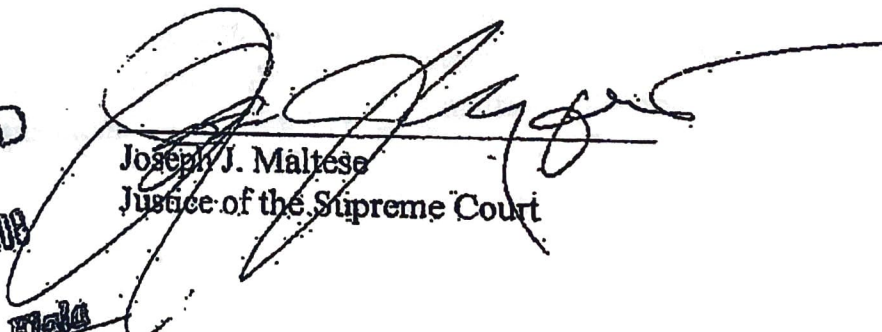
ENTER,

DATED: April 18, 2008

GRANTED

MAY - 2 - 2008

Stephen J. Field

  
Joseph J. Maltese  
Justice of the Supreme Court





Appellate Division  
Supreme Court of the State of New York  
Second Judicial Department

TEL: (718) 675-8880  
FAX: (212) 952-3072  
E-MAIL: jmaltese@nycourts.gov

JOSEPH J. MALTESE  
ASSOCIATE JUSTICE

REPLY TO CHAMBERS:  
26 CENTRAL AVENUE, SUITE 503  
STATEN ISLAND, N.Y. 10301

May 23, 2019

Mr. Mohammed Keita  
863 Father Capodanno Blvd.  
Staten Island, NY 10305

Re: Keita v. United Parcel Service, et al.  
Docket No. 104672/2007

Dear Mr. Keita:

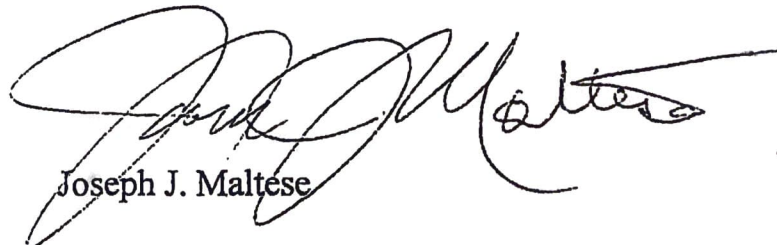
Please be advised that on January 17, 2014 I was appointed to the Appellate Division of the Supreme Court, Second Department, which handles appeals from the Supreme Court and other courts. Consequently, I cannot discuss any cases with former pro se litigants from the Richmond County Supreme Court.

However, I have reviewed my Decision and Order dated May 2, 2008, which is now over 11 years old. In that decision I dismissed your personal cause of action as untimely because it was filed more than three years after the accident in violation of the three-year statute of limitations for negligence actions. You had the right to file an appeal of my Decision and Order with the Appellate Division, Second Department. However, since it was dismissed for failure to file a case within the statute of limitations, that appeal would not meet with success.

I also stated that you, as a pro se plaintiff, could not represent your infant daughter, Massa Keita, in this negligence action and appointed John M. O'Dowd, Esq. as a guardian ad litem to represent her, because her causes of action had a longer period in which to sue since she was under the age of 18. I do not know what happened to her case. If it was settled or she obtained a verdict after a trial and received an award of money, I trust that money was placed into a bank account for her. Now that she is over 18 years of age, she may recover that money by demonstrating to a bank officer her birth certificate and a photo identification. She should consult with her attorney if she has any questions because as a judge I cannot render any legal advice to her or to you.

Thank you.

Very truly yours,



Joseph J. Maltese

cc:

Barack P. Cardenas, Esq.

Jaffe & Asher, LLP

600 Third Avenue, 9<sup>th</sup> Fl.

New York, NY 10016

Attorney for Defendants Liberty Mutual and Peerless Insurance

John M. O'Dowd, Jr., Esq.

1164 Victory Blvd.

Staten Island, NY 10301

Guardian ad litem for Massa Keita

Lester, Schwab, Katz & Dwyer, LLP

120 Broadway

New York, NY 10271

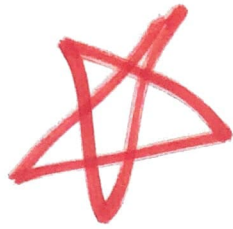
Attorneys for Defendants United Parcel Service and Kutry B. Jerzy

Hon. Desmond A. Green

Administrative Judge of Richmond County

26 Central Avenue

Staten Island, NY 10301



# What Are the 5 elements of Negligence?

Proving someone responsible for your expenses often means showing that they acted negligently in some way. An



injury you suffered does not automatically entitle you to file a personal injury

([https://www.americanbar.org/groups/public\\_education/resources/law\\_issues\\_for\\_consumers/personalinjury/](https://www.americanbar.org/groups/public_education/resources/law_issues_for_consumers/personalinjury/)) claim. To receive monetary awards, you will need to prove five elements of negligence

(<https://scholarlycommons.law.hofstra.edu/cgi/viewcontent.cgi?article=2282&context=hlr>) that resulted in damage.

According to *Hofstra Law Review*, these elements include:

- Duty: the ability to prove the defendant owed you a duty of care not to cause you or others harm.



• **Breach:** the ability to prove that a violation of standard care resulted in an injury for you or a family member.

- **Cause in fact:** the ability to prove a correlation between the negligent or harmful action that took place and the negative consequence you suffered.
- **Proximate cause:** the ability to prove a direct link between a negligent act and the injury that resulted from that action.
- **Harm:** the ability to prove you suffered injuries, loss, or other expenses because of someone else's negligence.

Understanding these five elements will provide some clarity as you proceed with a civil action.

## Types of Negligence Claims

Negligence

(<https://www.britannica.com/topic/negligence>) refers to a variety of injury cases. Depending on where you live, your state may have certain criteria demonstrating what constitutes acts of carelessness.

Some examples may include:

- Automobile collisions
- Medical malpractice
- Workplace accidents
- Defective products
- Premises liability
- Elder abuse or neglect

lawyer can help you determine if your claim meets the five elements of negligence required to prove your case. Afterward, your legal team can start the process of gathering evidence to bolster your account of events.

For a free legal consultation, call  
**800-641-8998 (tel:800-641-8998)**

## Understanding Your Potential for Compensation

Filing a claim for financial recovery in an insurance claim or lawsuit means you may want to understand the amount of the monetary award you can expect to receive. There are no data or statistics available showing the average cost of compensation for a personal injury or wrongful death claim. Each case of negligence will have unique factors that make up its potential for a financial settlement.

Some elements that play a role in the amount of your possible recovery may include:

- The type of negligence that led to your or your family member's injuries
- The type and severity of the injuries you or a loved one endured
- The short-term and long-term effects of your injuries on your life and lifestyle
- The loss of income created by the injuries you endured or by the death of a loved one



Because no two cases have the same factors, your potential for financial recovery will vary as well. A lawyer can help you evaluate your claim for the economic impact another party created through an act of negligence.

## **Your Timeline for Receiving A Financial Award**

Legal principles and guidelines will govern a case for financial recovery. In addition to proving that your case meets the five elements of negligence, you may also have to produce specific and detailed paperwork and documentation to support your claim.

Time matters in your ability to receive monetary compensation. Every state has different guidelines for how long an individual has to file a personal injury or wrongful death claim. For example, Florida Statutes ([http://www.leg.state.fl.us/Statutes/index.cfm?App\\_mode=Display\\_Statute&URL=0000-0099/0095/Sections/0095.11.html](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&URL=0000-0099/0095/Sections/0095.11.html)) allow up to four years from the date of when an injury or fatality occurred, while Tennessee only allows one year to pursue damages.

Your allotted time may pass quickly when you are healing from your injuries or helping to care for an injured family member. A lawyer may act as your advocate and can build your case while you concentrate on your physical health and wellbeing.

## **Get the Financial Award You Deserve**

Do you want to hold another party accountable for their negligent behavior? Doing so means you and your lawyer must prove the five elements of negligence: duty, breach of duty, cause, in fact, proximate cause, and harm.

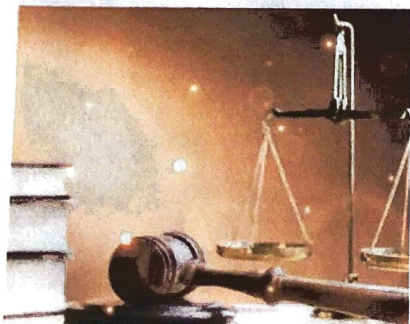
Your lawyer may help you meet the elements necessary to prove your claim, build a successful case, and help you receive the monetary award you deserve. The cost of legal representation should never stop you from seeking out professional services. Our team works on contingency, which means that we do not get paid until you accept a settlement offer. Call Ben Crump Law, PLLC at 800-641-8998 (tel:800-641-8998) for your free case evaluation.

Call or text

**800-641-8998 (tel:800-641-8998) or  
complete a **Free Case Evaluation  
form (/contact/)****

---

## Medical Malpractice FAQ:



Are Doctors Liable For Misdiagnosis?

(<https://bencrump.com/medical-malpractice/are-doctors-liable-for-misdiagnosis/>)

A doctor may be held liable for misdiagnosis if he or she deviates from accepted