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## New York personal injury lawyer Kenneth A. Wilhelm weighs in on appellate court's limits on lawyer's fee after \$1 million initial settlement

A New York appellate court ruled that a lawyer whose client replaced him after a \$1 million personal injury initial settlement cannot collect his full contingency fee. According to a Jan. 10 Reuters news report, the court decided that the settlement for the victim who was injured in a bus accident was not finalized because her acceptance of the offer had not been formally communicated to the defendant.

**New York, N.Y., Jan. 16, 2013**—A lawyer who was replaced by his client cannot collect his contingency fee after negotiating a \$1 million personal injury settlement, a New York appeals court recently ruled. A Jan. 10 Reuters news report stated that the plaintiff, Adwoa Gyabaah, was struck by a bus owned by Rivlab in August 2010. She retained a personal injury lawyer on a one-third contingency fee basis, according to the report. Rivlab's insurance carrier offered to pay the policy limit of \$1 million to settle the injury claim, the article states. Gyabaah signed a release and other documents in October but had not accepted the deal, as she felt she needed more time to decide, the report states.

She then retained the **Law Offices of Kenneth A. Wilhelm** and the prior attorney moved for an order enforcing the settlement and his fee, Reuters reported. A Bronx Supreme Court judge ruled that although Gyabaah had not agreed to the settlement, the prior attorney was entitled to his one-third contingency fee. The appellate court disagreed with the trial court's decision and determined that the settlement was not finalized, according

to the ruling. However, the panel ruled that the other attorney will be allowed to place a lien on Gyabaah's recovery and will receive a pro rata fee based on the amount of work he contributed to the case, the article states.

New York personal injury lawyer Kenneth A. Wilhelm, whose firm now represents Gyabaah, said he was pleased with the appellate court's decision. "The Appellate Division made the right call here. There was no settlement in this case because the defendant was not sent the release and other closing papers, etc., and the settlement was not formally accepted by Ms. Gyabaah."

Wilhelm said personal injury victims should not rush to enter into a settlement. "These are decisions that have a significant impact on people's lives. These are not decisions that should be made in haste. If the plaintiff needs more time to mull over a decision, he or she should get that time. Often, these are decisions people must live with for the rest of their lives. It should not be taken lightly."



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# About the Law Offices of Kenneth A. Wilhelm

The **Law Offices of Kenneth A. Wilhelm** is a personal injury litigation firm with an unwavering dedication to its clients. With more than 41 years of experience, our firm strives to obtain the best compensation for those who have been injured or those who have lost a loved one due to an accident or by someone else's negligence. We handle cases dealing with personal injury, medical malpractice, wrongful death, workers' compensation, dental malpractice, motor vehicle accidents, rape, paralysis, comas, seizures, false arrest, lead poisoning, trips and slips and falls, elevator accidents, construction accidents, Erb's palsy, cerebral palsy, brain damage, blindness, hearing loss, dog bite cases, fire and smoke inhalation accidents, bicycle accidents, falls from windows or scaffolds, and many other types of accidents and injuries.



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## **New York personal injury lawyer Kenneth A. Wilhelm obtains \$5,600,000 for injured bicyclist who was rendered paraplegic and suffered brain damage**

New York personal injury lawyer **Kenneth A. Wilhelm** was able to get \$5,600,000 out of a \$6 million insurance policy for an injured bicyclist who was rendered paraplegic and suffered brain damage after being struck by a vehicle. The case was settled on Jan. 16, shortly before the scheduled trial date.

**New York, N.Y., Jan. 31, 2013**—The Law Offices of Kenneth A. Wilhelm settled a case for \$5,600,000 on behalf of a client who was hit by a motor vehicle while on a bicycle. The case, which was filed around Jan. 5, 2010, in the Queens County Supreme Court, was settled on Jan. 16, 2013. The police report stated: "Witness, who is bicyclist's brother, states they were both traveling S/B [southbound] on Jun. Blvd. [Junction Boulevard] on their bikes when bicyclist made quick left, causing him to be struck by vehicle 1."

According to Kenneth A. Wilhelm, lawyer for the plaintiff, the injured person's blood-alcohol level exceeded the legal limit, based on a blood-alcohol test that was administered to him at the hospital. The victim suffered severe brain damage and was rendered paraplegic as a result of this incident, Wilhelm said.

The defense claimed that the victim did not wear a helmet. Mr. Wilhelm said his firm hired a biomechanical expert who determined that a helmet could not have prevented the victim's injuries because it would not have extended down to cover the area of his skull that was fractured in the incident. "The expert also determined that the fracture in the back of the skull meant he was hit in the rear by a motor vehicle," Wilhelm said. "The hospital record also showed no injuries to the left side of his body, which, we said, would occur if the injured person had made a quick left in front of the van. If that were true, there

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would have been injuries to the left and also the right side of the body when he hit the ground."

Wilhelm said there were several challenges he faced in this case, including the fact that the police report faulted his client. "The other side would have claimed that the accident was not foreseeable or preventable because the injured person made a sudden left in front of the motor vehicle. The driver said he could not have avoided the accident. Secondly, the defendants retained an alcohol expert who said that when someone is under the influence, he or she would be more likely to act in a careless way."

Wilhelm said he considers this a significant victory because of the major challenges involved in this case with regard to the plaintiff. "This type of case requires not only a significant investment of money, but also of time and effort. In spite of the challenges in this case, we were able to obtain a settlement of more than 93 percent of all available insurance."