Legal News in Brief

News in a flash for Subrogation and Defense Adjusters

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Defendant May Be Found Negligent For Causing an Automobile Accident, Even Without Actual Contact between the Vehicles

Tutrani v. County of Suffolk
New York Court of Appeals
2008 NY Slip Op 05349
(June 12, 2008)

Defendant Lee Weidl, a police officer, while operating his police vehicle during morning rush-hour traffic, sharply decelerated his vehicle as he changed lanes. Plaintiff, immediately behind Weidl's vehicle, braked quickly and was able to avoid collision with him, but was rear-ended by the vehicle behind hers, belonging to Defendant Darlene Maldonado. The jury at trial determined that Defendants Weidl and Maldonado were each 50% negligent. On appeal, the Appellate Division held that the verdict was erroneous. The Court of Appeals reversed the Appellate Division's holding, disagreeing with the lower court's rationale that Weidl was not a proximate cause of the accident as Plaintiff never actually collided with him. According to the Court, a jury could reasonably find as foreseeable Weidl's changing lanes abruptly in a busy highway resulting in the nearly-immediate collision by a party behind him in response to his conduct. Although a rear-end collision establishes a prima facie case of negligence on the part of the rear vehicle's operator, it does not exonerate others from liability.

Prior Instances of Similar Conditions Raise a Triable Issue as to the Existence of Constructive Notice

Mazerbo v. Murphy
New York Court of Appeals
2008 NY Slip Op 05605
(June 19, 2008)

On his first day of work at a building owned by Defendant, Plaintiff tripped over a protrusion on concrete flooring covered by carpeting. Defendant moved for summary judgment in Plaintiff's negligence action; the motion was denied. The Court of Appeals upheld that denial, finding that a triable issue of fact existed as to whether Defendant had constructive notice as to the condition causing the accident. Although no evidence existed that Defendant either created the dangerous condition or had specific knowledge of same (i.e. actual notice), the Court found that constructive notice may apply where the defendant "was aware of an ongoing and recurring unsafe condition which regularly went unaddressed." The evidence showed that others had previously voiced

complaints to Defendant as to unevenness of the concrete flooring in the approximate area where Plaintiff had tripped. Judge Rose dissented from the Court's opinion, arguing that the prior conditions complained of in the building were not similar enough to Plaintiff's accident nor located in the same place. A co-worker testified that the particular bump on which Plaintiff had tripped was more prominent than other instances of unevenness in the floor and was first noticed by others one or two days previously, without anyone reporting the bump to Defendant. Notwithstanding the dissent's arguments, the Court precluded summary judgment on the issue of constructive notice.

Consequential Loss, as Described in an Insurance Policy, Does Not Equate or Preclude Consequential Damages

Bi-Economy v. Harley.
New York Court of Appeals
10 N.Y.3d 187
(February 19, 2008)

Bi-Economy Market, a Rochester meat market, sustained substantial damages from a large fire in October, 2002. Pursuant to its insurance policy with Harleysville Insurance Company of New York for replacement cost coverage, business property coverage, and lost business income, Bi-Economy submitted a claim to Harleysville. The insurer disputed Bi-Economy's claim for actual damages, offering to pay the corporation only seven months' lost business income, even though the policy provided for coverage of twelve months' income. Over one year later, Bi-Economy was awarded an additional sum. Bi-Economy sued Harleysville in October, 2004 for bad faith claims handling, tortious interference with business relations, and breach of contract, seeking consequential damages for "the complete demise of its business operation in an amount to be proved at trial." Harleysville moved to dismiss because the insurance contract excluded consequential loss.

The Court of Appeals reversed the lower court's dismissal of the action. Bi-Economy could reasonably expect its coverage to revive its business operation in the event of disaster, the Court determined; where the defendant breaches its obligations under the contract to investigate in good faith promptly and pay the covered claim, it must compensate the plaintiff for its loss of business. Consequential loss, as contradistinguished from consequential damages, only refers to "delay caused by third-party actors or by the suspension, lapse or cancellation of any license, lease or contract." Where the insurer itself fails to promptly investigate, adjust and pay the claim, however, consequential damages - damages additional to the loss caused by a disaster and arising out of an insurer's tortious conduct are recoverable.

Judge Smith dissented, arguing that the reputed "consequential damages" was in reality punitive in nature, and should not have been permitted. The Court in its holding noted that the dissent blurred the distinction between consequential damages and punitive damages. Consequential damages can be quantified and are aimed to compensate rather than penalize; therefore, such damages are available to a party under such circumstances.

Expert Witness Entitled To Payment for Services Rendered Despite His Poor Quality as a Witness

Zahl v. Grossbart
Superior Court of New Jersey,
Appellate Division
A-5771-06T2
(May 19, 2008)

An expert medical witness who testified at a medical malpractice trial sued the defense attorney in Special Civil Part for $4,000, which he claimed for his services. Defendant argued that Plaintiff omitted that his license had been revoked for dishonesty, which impeached Plaintiff's credibility as an expert witness. The Appellate Division upheld the Special Civil Part's decision inasmuch that although no express contract existed in this case, Plaintiff was nonetheless entitled to the reasonable value of his services, determined as $375 an hour. The case was remanded, however, to award Plaintiff costs of suit.