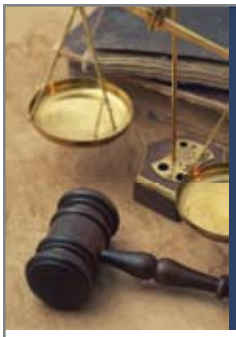

LEGAL INSIGHTS

A Publication of Havkins Rosenfeld Ritzert & Varriale, LLP

INSURANCE COVERAGE CORNER

In this issue, we discuss two recent decisions from New York's highest court on consequential damages and a recent case highlighting the importance of disclaiming promptly (see page 5).

New York Court of Appeals Allows Consequential Damage Claims to Proceed Against Insurers

By Abbie Havkins and Matthew Kraus

The New York Court of Appeals, in two dramatic and divided opinions issued on the same day, has upheld an insured's claim for consequential damages in a breach of contract action against its insurer. These holdings, which seemingly overturn twenty years of settled jurisprudence, could potentially increase an insurer's ultimate liability in breach of contract actions, provided that the insurance policy does not outright preclude consequential damages in the first place.

The Court of Appeals has historically refused to allow an insured to recover extra-contractual damages arising out

▶ continued on page 4

Two Guys Walk Into a Bar . . . and an Altercation Ensues—Not the Old Joke, But a Liability Reality

By Steven H. Rosenfeld

Two guys walk into a bar—or so the old joke begins. Usually, it continues with one or both saying something amusing and ends with a crowd-pleasing punch line. In the modern world of bars and nightclubs, however, the two guys are more likely to end up fighting with one another or another group of patrons. Rather than throwing a punch line, they throw punches, or maybe a glass, a bottle or a piece of furniture.

Invariably, someone wins, someone loses, and maybe someone has an up close and personal encounter with the local law enforcement authorities. Of course, someone is almost always injured, whether it be one of the ill-behaved patrons or an innocent third party. As sure as there is a long line outside the hot new club on a Saturday night, the injured party will bring a lawsuit against the bar or club alleging that the failure to provide adequate security facilitated the skirmish and was the direct cause of his or her injuries.

▶ continued on page 6

Spring 2008

Architects, Design Professionals, and Their Insurers Beware: There's More to Green Building Risk Than Meets the Eye

By Sean P. Dwyer

Not too long ago, the concept of the "green" building was dismissed as impractical—something that might be good for nature's climate but not necessarily for the business climate. To those in the business world, the word "green" itself invoked the "hippie" image of tie-dyed T-shirts, wind chimes and beads. But that mind-set has changed: green building has firmly established itself as the new frontier in the construction industry.

Green liability risks are important but largely unexplored. Because of the added design parameters of a green building project, parties to the construction process—owner, contractor and, most particularly, design professionals—face potential risk in ways that would not ordinarily be encountered in conventional projects. For this reason, it is critical for the design team and stakeholders to discuss the fair allocation and management of construction liability.

One traditional strategy borrowed from conventional construction projects for minimizing risk in a green construction project is insurance and the utilization of hold harmless agreements in the construction contract. As a form of indemnification, insurance shifts risk from one party to another. As a result, insurers assume liability in the event of a loss, but, in order to do so, the claimed loss must fall within the coverage protections afforded by the applicable insurance policy.

Within the green building context, however, standard insurance policy exclusions can raise difficult questions. While a contractor or owner may be able to secure coverage protection for an agreement of this nature under builder's risk insurance or a bonding process, an architect's professional liability policy may not necessarily cover the new contractual risks emerging in green building.

Design professionals traditionally render specialized services that do not invoke control of the manner and method of construction. Their duty lies in providing competent professional service in a non-negligent manner. They are generally not required to indemnify damages created by third parties. Moreover, design or architectural services are not products subject to guarantees or warranties. Simply put, there is no legal obligation on the design professional's part to guarantee performance.

Thus, because of the added factors of green certification, supplemental costs and novelty of method, in green building projects there may be a temptation for the owner to require a guarantee from the design professional that far exceeds any duty under law or under a professional liability policy. A typical professional liability insurance policy provides payment for all sums, in excess of the deductible, for which an architect becomes legally obligated to pay as damages and claims expenses as a result of an act, error or omission (negligence) in the performance of his or her professional services. The professional liability policy is unique, specialized and carefully tailored to remain within the limits of the design professional's obligations under the law—nothing more, nothing less.

▶ continued on page 3

Green liability risks are important but largely unexplored. . . . While a contractor or owner may be able to secure coverage protection under builder's risk insurance or a bonding process, an architect's professional liability policy may not necessarily cover the new contractual risks emerging in green building.

Green Building Risk

FROM PAGE 2

All professional liability insurance policies on the market today contain similar exclusion provisions with wording to the effect that "the insurance does not apply to liability assumed by the professional under any contract unless the professional would have been liable in the absence of such contract, due to his or her own error, omission or negligent act." In other words, if the design professional, by contract, assumes the risk of another, and liability is incurred, the insurer is excused from the requirement for coverage. This provision specifically makes all but the narrowest of indemnification clauses effectively uninsurable.

More specifically, in regard to guarantees, a second provision similarly found contains wording that excludes "express warranties or guarantees." The intent is clear and unmistakable, and is again derived by exposure that the professional assumes by contract, which is in excess of what is required by law.

Therefore, in drafting indemnification and hold harmless agreements in green building contracts, a careful line must be drawn between what can be legally enforced and insured and what effectively may amount to an empty promise. Indemnification and guarantee provisions in a professional services agreement between an owner and design professional must be drafted with a sense of balance and must protect the insurability of the green project. Design professionals should ensure that language in green building contracts for professional services clearly indicates that the signing of documents to obtain green certification is solely for the satisfaction of the particular rating system used on the project and does not constitute any warranty or guarantee on behalf of the design professional.

Construction documents that allocate risk within the green building setting should "think outside the box" and not just follow the route covered by conventional indemnification clauses. Contract documents should anticipate potential liability scenarios that may take shape at each phase of the process. Some scenarios, like the failure to achieve green building certification, are self-evident. Others, however, may require careful foresight to identify and consider. The following issues should always be entertained by the design professional when making determinations on the allocation of risk within the construction document:

- Is the design team making guarantees that exceed the professional standard of care or professional liability coverage protections?
- Are there novel design aspects to the construction, which are untested or may create unique liability exposure if improperly manufactured, installed or found to be defective?
- Are there design methods that will be utilized that may be proprietary or subject to intellectual property protection? Along these same lines, will the design professional be exposed to confidential business information that may invoke added fiduciary duties?
- Are there design methods, materials or unusual construction procedures that may create a delay in the performance schedule?
- Are there potential revisions or changes to existing green building standards underway that may adversely affect the construction process or the professional standard of care after work commences?
- Will the contract documents encompass the entire universe of conditions and obligations among all principal players or will there be a group of contracts between parties depending on their relationship? Will the contract documents incorporate by reference other agreements or specifications that each party may not have necessarily negotiated?
- Do the contract documents create unintended vicarious liability for the design professional?
- Do the contract documents call for specific products and construction methods that will require the design professional to exercise due diligence to research and verify?
- Do the contract documents provide a method for resolving disputes in a competent forum, i.e., arbitration, mediation and utilizing objective neutrals that are skilled and knowledgeable in the green building field?

These questions mark only the beginning of the analysis. In all, design professionals and their insurers are well advised to be vigilant in assessing the potential risks and coverage issues raised by any green building project. As the green building industry grows, the need for architects and carriers to develop a proactive risk management strategy will also grow. Failing to do so may result in adverse consequences.

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INSURANCE COVERAGE CORNER

FROM PAGE 1

of the insurer's purported breach of contract. See *Rocanova v. Equitable Life Assur. Soc'y*, 83 N.Y.2d 603, 615, 612 N.Y.S.2d 339, 344 (1994). The underlying rationale was that an insurer could only be liable for extra-contractual damages if it was also liable for a tort independent of the contract. See *New York Univ. v. Continental Ins. Co.*, 87 N.Y.2d 308, 662 N.E.2d 763, 639 N.Y.S.2d 283 (1995). In other words, extra-contractual damages were unavailable in breach of contract claims absent a claim that the insurer engaged in tortious conduct. Nevertheless, in *Panasia Estates, Inc. v. Hudson Ins. Co.*, 2008 NY Slip Op 1419 (2008) and *Bi-Economy Mkt., Inc. v. Harleysville Ins. Co. of N.Y.*, 2008 NY Slip Op 1418 (2008), the Court of Appeals abandoned its reliance on its prior holdings and refused to dismiss an insured's consequential damages claim even though the insured failed to allege a tort independent of the contract.

Bi-Economy Mkt., Inc. involved the insurer's breach of a business-interruption policy following a fire on the insured's premises. After the insured's breach of contract claims were sustained in alternative dispute resolution, the insured commenced an action for bad faith claims handling, tortious interference with business relations and consequential damages. The insurer moved to dismiss the consequential damages claim on the basis that the policy excluded consequential losses. The court, in overturning the Supreme Court and the Appellate Division, reinstated the consequential damages claim. The court noted that under New York law, the non-breaching party may recover consequential damages that are the natural and probable consequences of the breach. Since the policy at issue was a business-interruption policy, the court held that the insurer should have been aware that it would have to respond in damages to the insured for the loss of the insured's business if it breached the policy. The court stated as follows:

> When an insured in such a situation suffers additional damages as a result of an insurer's excessive delay or improper denial, the insurance company should stand liable for these damages. This is not to punish the insurer, but to give the insured the bargained-for-benefit.
> *Bi-Economy Mkt., Inc. v. Harleysville Ins. Co. of N.Y.*, *supra* at 12.

The court rejected the insured's reliance on the consequential "loss" exclusion, which is a standard clause in most insurance policies. It held that the consequential losses refer to delay caused by third parties or by the suspension, lapse or cancellation of any license, lease or contract. Consequential damages are in addition to the losses caused by a calamitous event and include damages caused by a carrier's injurious conduct. The court stated that its decision follows long-established New York law to justify its decision. However, it primarily relies on case-law from Utah, Hawaii, Arizona, Nevada and Mississippi, in noting that insured bargains "for peace of mind, or comfort, of knowing that it will be protected in the event of a catastrophe."

In *Panasia,* the court affirmed the Supreme Court and the Appellate Division's denial of the insurer's motion to dismiss the insured's consequential damages claim. The *Panasia* court similarly rejected the insurer's reliance on the policy's consequential loss exclusion. For the first time, the court also expressly stated that an insured *could* recover consequential damages for the insurer's breach of the implied covenant of good faith and fair dealing. The court held as follows:

> [C]onsequential damages resulting from a breach of the covenant of good faith and fair dealing may be asserted in an insurance contract context, so long as the damages were within the contemplation of the parties as the probable result of a breach at the time of or prior to contracting.
> *Panasia Estates, Inc. v. Hudson Ins. Co., supra* at 2,3.

There was a vigorous dissent in both decisions. The dissent argued that *Panasia* and *Bi-Economy* essentially abandon the court's previous holdings, which prevented insureds from asserting bad faith claims and seeking punitive damages against insurance carriers absent "egregious tortious conduct." The dissent asserts that consequential damages authorized by the majority are punitive in nature since they are not triggered by a simple breach of contract, but only by a breach committed in bad faith. The dissent warned as follows:

> The majority's bad policy choice is more important than the flaws in its reasoning. This attempt to punish unscrupulous insurers will undoubtedly lead to the punishment of many honest ones. Under today's opinions, juries will decide whether claims should have been paid more promptly, or in larger amounts; whether an insurer who failed to pay a claim did so to put pressure on the insured, from legitimate motives, or from simple inefficiency; and whether, and to what extent, the insurer's slowness and stinginess had consequences harmful to the insured. All these very difficult, often nearly unanswerable, questions will be put to jurors who will usually know little of the realities of either the insured's or the insurer's business. The jurors will no doubt do their best, but it is not hard to predict where their sympathies will lie.

This is the rare decision that has claims and underwriting perspectives. From

▶ continued on page 5

INSURANCE COVERAGE CORNER

FROM PAGE 4

an underwriter's perspective, both decisions strongly suggest that had the insurance policies included a provision excluding "consequential damages," that the consequential damages claim would have been dismissed. As such, insurers seeking to avoid consequential damages should include a provision that explicitly excludes "consequential damages" resulting from any breach, whether negligent, intentional or in bad faith. Of course, the marketing impact of including such a provision must be considered.

From a claims' perspective, in assessing coverage issues involving policies without such language, some additional factors have been added to the mix of variables that must be considered in assessing whether to disclaim coverage. In coverage situations that present a close question or a new and novel situation, an insurer must also consider the potential impact of an award of consequential damages *before* disclaiming coverage. We are not suggesting that when an insurer believes that coverage does not exist it should simply raise the "white flag" and surrender and provide coverage. However, insurers must be wary that they could be held responsible for the insured's consequential damages if their coverage position is not sustained.

For example, assume that an insurer insures a small but very profitable bakery (netting $300,000 in annual profit) that sustains a $50,000 fire loss but failed to provide notice until three months after the fire. Assume that the question of whether the notice was untimely has approximately an 80 percent chance of being resolving in the insurer's favor. From the claims/coverage perspective, the prudent insurer must now weigh whether paying a $50,000 fire loss is a better course then disclaiming coverage and having a 20 percent chance of paying the $50,000 plus the consequential damages that may result if the failure to pay the $50,000 puts the bakery out of business and the bakery seeks lost profit (consequential damages) of $300,000 per year. We caution that even when the insured's claim for consequential damages is permitted, the insured must prove that such damages were "reasonably certain and directly traceable to the breach, not remote or the result of other intervening causes," which can often be difficult to prove. See *KSW Mech. Servs., Inc. v. American*

▶ continued on page 7

Reminder: Disclaim Promptly or an Uncovered Claim Can Become a Covered Claim

By Aaron M. Schlossberg

In deciding *Sirius America Ins. Co. v. Vigo Construction Corp.,* 2008 NY Slip Op 01134, the New York's Appellate Division, Second Department reaffirmed New York's strict adherence to an insurer's obligation to disclaim on a timely basis by compelling the insurer, Sirius, to defend and indemnify Vigo in the underlying action. Sirius disclaimed thirty-four days after, which was not done in a "timely manner." According to the court, it knew or should have known of the basis for denying coverage and offered no explanation for the delay in disclaiming. Insurance Law § 3420(d) created the timeliness obligation by requiring insurers to provide a written disclaimer "as soon as is reasonably possible." See Insurance Law § 3420(d). The time period for providing a disclaimer is measured from when the insurer "has sufficient knowledge of facts entitling it to disclaim or knows that it will disclaim coverage." See *First Fin. Ins. Co. v. Jetco Contr. Corp.,* 1 N.Y.3d 64, 66, 801 N.E.2d 835 (2003). The court in the case at bar deemed Sirius' delay unreasonable and, therefore, deemed its disclaimer ineffective.

In fact, we may be in the midst of a trend toward a more restrictive attitude toward insurers' disclaimers in light of the state legislature's ongoing effort to reverse New York's "no prejudice" rule. This rule allows insurers to disclaim based on late notice of claim without demonstrating prejudice. See *Rekemeyer v. State Farm Mut. Auto. Ins. Co.,* 4 N.Y.3d 468, 474-475, 828 N.E.2d 970 (2005). Last year both houses of the legislature passed a bill that, among other things, required insurers to demonstrate prejudice to sustain a late notice defense. As those of you who are familiar with how the "prejudice rule" is applied in some states (for example, New Jersey), this burden is difficult to overcome. The bill did not become law because it was vetoed by then Governor Eliot Spitzer, who believed that the bill had not been subject to sufficient public debate, having been passed late in the legislative session. However, the legislation has been reintroduced and is supported by the State Insurance Department. If the legislation passes—which is likely—we do believe that it will be signed by the new governor.

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Two Guys Walk into a Bar

FROM PAGE 1

In our tiny hamlet of Manhattan, claims of patron-on-patron violence in bars and nightclubs are far more prevalent than claims of assaults by security guards, although the latter has been the recipient of far more attention from local government officials, community groups and the media. Bars and nightclubs are more likely to be on the receiving end of lawsuits based on negligent security than for assault.

Typically, the complaint will allege that the plaintiff, who was lawfully and peaceably on the bar's or club's premises, was caused to be physically struck and beaten by other patrons. It is usually further alleged that the bar or club owner was negligent, careless and reckless in the hiring, training and supervision of its security staff, and that it failed to provide adequate and safe security measures at its premises.[1]

As simple as it sounds, negligent security claims will generally boil down to two concepts—foreseeability of conduct and adequacy of security. A bar or club owner, like any other landowner, will only be responsible for conduct when the conduct was foreseeable. Even assuming foreseeability, adequate security will generally exonerate the owner.

Generally, a plaintiff seeking to recover under a negligence theory must prove that (1) the defendant owed a duty to plaintiff, (2) the defendant breached that duty, and (3) the resulting injury was proximately caused by that breach. See *Huth v. Allied Maintenance Corp.*, 143 A.D.2d 34 (2d Dep't 1988); *McGill v. Caldor's Inc.*, 135 A.D.2d 1041 (3d Dep't 1987).

A landowner has a duty to take only minimal precautions to protect visitors from foreseeable harm, including foreseeable criminal acts. See *Mason v. U.E.S.S. Leasing Corp.*, 96 N.Y.2d 875 (2004). A possessor of realty, is, however, "not an insurer of the safety of those who use their premises and, even with a history of crime committed on the premises, cannot be held to a duty to take protective measures unless it is shown that they know or, from past experience, have reason to know that there is a likelihood of conduct, criminal or otherwise, likely to endanger the safety of those using their premises." See *Gross v. Empire State Building Associates*, 4 A.D.3d 45, 46 (1st Dep't 2004). The question of the scope of that duty is a legal issue for the court to resolve. See *Williams v. Citibank*, 247 A.D.2d 49 (1st Dep't 1998).

In *Maheshwari v. City of New York*, 2 NY3d 288, 810 N.E.2d 894 (2004), the plaintiff went to a concert to distribute pamphlets. While in a parking area, four unidentified young men assaulted him without provocation. When the attack occurred, officers were stationed at certain parts of the parking fields, but apparently none were in the parking area where the attack occurred. The plaintiff alleged that the City and the concert organizers failed to provide adequate security. In its decision, the New York Court of Appeals stated that:

> "[A]lthough landlords . . . have a common-law duty to minimize foreseeable dangers on their property, including the criminal acts of third parties, they are not the insurers of a visitor's safety. As we have noted, however, foreseeability and duty are not identical concepts. Foreseeability merely determines the scope of the duty once the duty is determined to exist. In cases arising out of injuries sustained on another's property, the scope of the possessor's duty is defined by past experience and the likelihood of conduct on the part of third persons . . . which is likely to endanger the safety of the visitor."

The Court of Appeals concluded that the record revealed no failure by the organizers of the event to provide adequate control or security and even assuming a lapse in the security in the parking lot, plaintiff's injuries were not the result of any such lapse, but were caused by an independent, intervening criminal act.

In *Djurkvic v. Three Goodfellows, Inc.*, 1 A.D.3d 210 (1st Dep't 2003), the plaintiff, a patron of the defendant club, was assaulted by another patron wielding a box knife. The Appellate Division, First Department held that although it was foreseeable that a large crowd of young individuals consuming alcohol at a "hip-hop" club made that type of criminal act possible, there nevertheless was no breach of duty, since the defendants had taken security measures by hiring state-licensed security guards, installing metal detectors and conducting pat downs.

New York's Appellate Division, Second Department has recently expanded the protections afforded to bar and club owners providing adequate security in *Logan v. 530 W. 28th Street, L.P.*, 849 N.Y.S. 2d 804, 2008 N.Y. App. Div. LEXIS 1117 (2d Dep't 2008). The case, in which HRRV represented the defendant, involved a claim of negligent security based upon a patron-on-patron assault. The plaintiff alleged that he

▶ continued on page 7

1. Negligent security claims are almost always advanced in conjunction with a claim that the bar or club served alcohol to a patron or patrons who appeared visibly intoxicated and/or were habitual drunkards, known to the bar or club, in violation of the Dram Shop Act (NY General Obligations Law § 11-101, which must be read in conjunction with N.Y. Alcohol Beverage Control Law § 65(2)). This claim is deserving of its own article.

Two Guys Walk into a Bar

FROM PAGE 6

sustained serious injuries when assaulted by other patrons while he was at the defendant's nightclub; and that the defendant failed to provide adequate security. The defendant submitted evidence that there were twenty-three New York State licensed security guards on duty on the night in question, seven of whom were assigned to the room in which the plaintiff claims he was assaulted. The defendant also established that upon learning of the incident, security guards immediately responded and broke up the altercation. Although the plaintiff argued that he never observed security guards stationed in the room in which he was assaulted, he admitted he had testified that he was not paying attention as to the presence of security since he was too busy dancing.

Recognizing that a property owner has a duty to take only minimal precautions to protect visitors from foreseeable harm, including foreseeable criminal acts, the lower court, in granting summary judgment, did not address forseeability. Rather, the case was dismissed based upon the adequacy of the security provided. In affirming the dismissal, the appellate court held that the defendant "established its prima facie entitlement to judgment as a matter of law by demonstrating that it satisfied its duty to take minimal security precautions against foreseeable criminal acts of third parties."

Whether an incident was foreseeable will generally be determined following an inquiry of the existence of prior similar incidents. Injured parties will seek a broad definition of similarity, to advance an argument that the bar or club owner was on notice of a potentially dangerous condition, supporting the need for additional security or some other preventative measures. Forseeability alone will not establish negligent security. As such, the defendant should be prepared to submit evidence that it afforded the requisite amount of security, discharging any duty it had to the injured party.

Bar and club owners are advised to regularly consult with legal and risk management professionals to ensure the adequacy of security procedures. Moreover, careful recordkeeping, use and maintenance of surveillance equipment and regular and thorough training of security personnel can be important weapons in the defense of lawsuits arising from unfortunate and often unpreventable interactions between patrons.

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INSURANCE COVERAGE CORNER

FROM PAGE 5

Protection Ins. Co., 40 A.D.3d 709, 711; 835 N.Y.S.2d 703, 705 (2nd Dep't 2007).

The potential impact of these decisions may be quite broad. We have previously suggested that an insurer disclaim coverage of uncovered claims and wait until the insured commences a declaratory judgment action to test the validity of the disclaimer (in order to avoid paying the insured's legal fees). However, the "wait and see" approach may no longer be preferable. Instead, it may be more prudent for an insurer to commence a speedy declaratory judgment action. If the court determines that coverage does not exist, the insurer will be able to walk away. In the event that the court finds coverage, then at the very least, the insurer will have seriously reduced its potential exposure to a consequential damages claim, which could often exceed the cost of the insured's defense in the declaratory judgment action many times over. Not only would such a strategy force the insured into a defensive posture, but the insurer may be able to strengthen its bargaining position and negotiate a favorable settlement of uncertain claims. The key to this strategy is speed—speed in commencing the action and speed in obtaining a judicial decision. Only in such circumstances will this strategy succeed.

It will be very interesting to analyze how New York's Appellate Divisions will apply the decisions in *Panasia* and *Bi-Economy*. The Appellate Divisions have previously dismissed consequential damages claims against the insurer under the reasoning that no claim lies where the insurance policy contained no affirmative provision or language indicating that parties contemplated recovery of consequential damages at the time of contracting. *See Brody Truck Rental, Inc. v. Country Wide Ins. Co.*, 277 A.D.2d 125, 717 N.Y.S.2d 43 (1st Dep't 2000); *Duratech Indus. v. Cont'l Ins. Co.*, 21 A.D.3d 342, 800 N.Y.S.2d 182 (2d Dep't 2005). However, in light of *Panasia* and *Bi-Economy* reversing this rule (a consequential claim can be maintained unless there is a provision in the policy barring the claim), the Appellate Divisions may have no choice but to allow such claims, at least at the pleading stage. We note that the *Panasia* and *Bi-Economy* decisions involve coverage of first-party property claims. A consequential damage claim in a third-party liability situation may be more unlikely.

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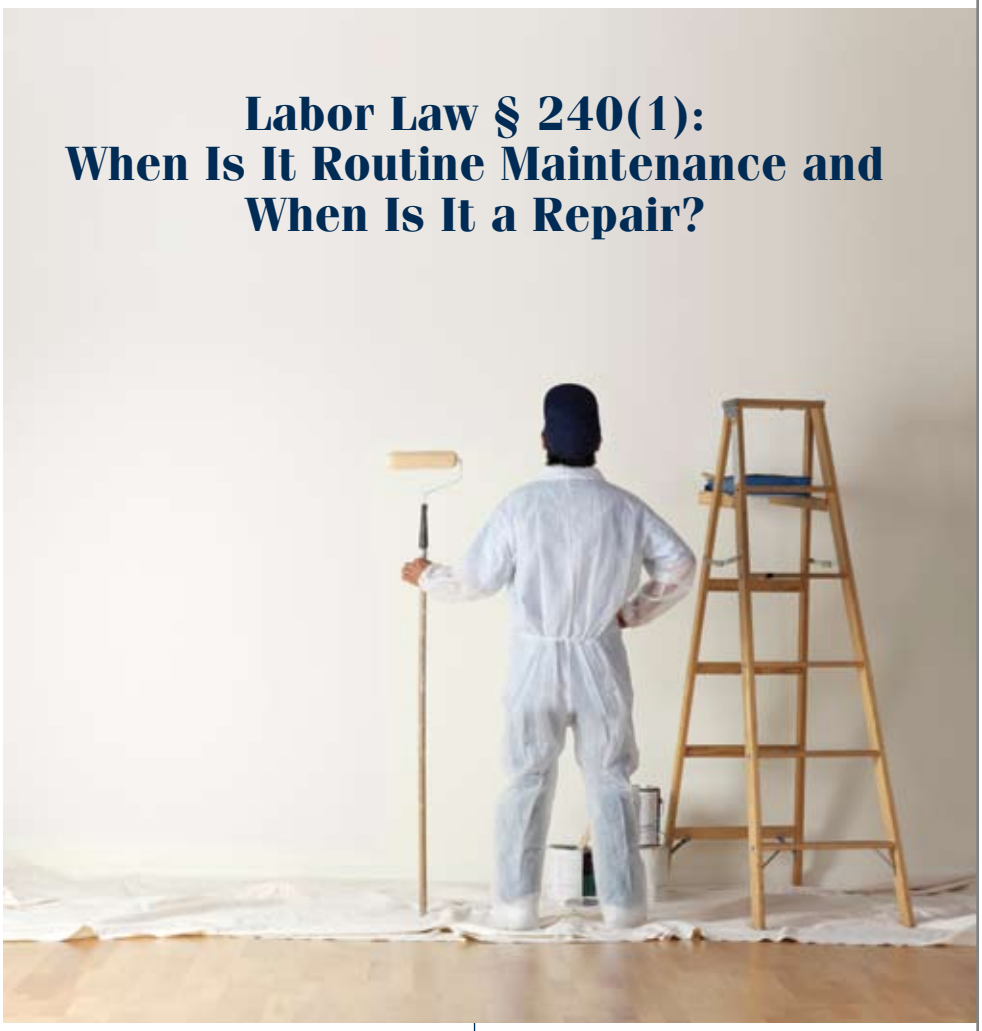
Labor Law § 240(1): When Is It Routine Maintenance and When Is It a Repair?

By Gail L. Ritzert



Building owners and managing agents often find themselves named in lawsuits commenced by maintenance workers and vendor employees seeking compensatory damages for injuries sustained while performing work in their buildings. Even when the plaintiff was not engaged in excavation, renovation or construction at the time the accident occurred, when the plaintiff's injuries resulted from a fall from a ladder or scaffold, counsel will allege in the complaint that the building owner or managing agent violated Labor Law § 240(1) in failing to provide his client with proper and safe equipment, including a ladder, hoist, scaffold and lanyards.

Since Labor Law § 240(1) only applies in construction, excavation and renovation cases, plaintiffs' attorneys go to great lengths to argue that their client's work fits into one of these activities so that the defendant is held absolutely liable regardless of whether the defendant was actually negligent. Labor Law § 240(1) imposes absolute liability on building owners, contractors and their agents for injuries a plaintiff sustained while the plaintiff is performing work enumerated in the statute.

Labor Law § 240(1) provides:

> All contractors and owners and their agents, except owners of one- and two-family dwellings who contract for but do not direct or control the work, in the erection, demolition, repairing, altering, painting, cleaning, or pointing of a building or structure shall furnish or erect, or cause to be furnished or erected for the performance of such labor, scaffolding, hoists, stays, ladders, slings, hangers, blocks, pulleys, braces, irons, ropes, and other devices which shall be so constructed, placed and operated as to give proper protection to a person so employed.

While Labor Law § 240(1) was designed to protect workers from the hazards associated with the "extraordinary risks" at construction sites, such as the dangers of falling from a height or having materials or loads fall on them from a height, the reach of the statute has been expanded to go beyond the boundaries of the traditional construction site. In particular, building maintenance workers injured on the job due to a fall from a height argue that they are entitled to protection under this statute since they were in the process of performing a "repair" when they were injured. However, not every injury sustained by a worker during the course of a "repair" is entitled to protection under Labor Law § 240(1).

In a recent decision rendered by the Appellate Division, Second Department, we successfully argued that the plaintiff's claims under Labor Law § 240(1) were subject to dismissal because the plaintiff was not repairing a light fixture when he fell from a ladder. Rather, the work he was performing was routine maintenance. See *Deoki v. Abner Properties Co., February 13, 2008.* The plaintiff, Parbhu Deoki, was employed by the tenant who occupied the building owned by our client, Abner Properties. Mr. Deoki was in the process of changing the ballast within a fluorescent fixture when he fell from a ladder allegedly sustaining injuries to his back. Plaintiff's counsel asserted a claim under Labor Law § 240(1) alleging that his client was performing a

▶ continued on page 9

Labor Law § 240(1)

FROM PAGE 8

repair to the light fixture when the accident occurred.

Plaintiff's counsel argued that the work his client was performing constituted a repair because the light fixture was inoperable and the repair required his client to disconnect the power, remove the light bulbs, strip the electrical wires, reattach the wires and remount the ballast to the fixture. However, the testimony in the case established that the plaintiff, a maintenance worker in the building, routinely replaced light fixture ballasts as part of his duties, and the work did not require the plaintiff to remove the fixture, but merely to remove the light bulbs to gain access to the ballast. In addition, we retained an electrical engineer who explained, in an affidavit annexed as an exhibit to our motion for summary judgment, the steps required to replace the ballast, and that replacing an electric light fixture ballast is akin to changing a light bulb because ballasts routinely wear out.

Justice Taylor of the Supreme Court, Queens County agreed and granted the defendant's motion for summary judgment. In a decision dated February 13, 2008, the Appellate Division, Second Department affirmed Justice Taylor's decision. The Appellate Division reiterated the well-accepted principle that, when the plaintiff's work involves the replacement of a worn-out component part in a non-construction and non-renovation context, and does not constitute erection, demolition, repairing, altering, painting, cleaning or pointing of a building within the meaning of Labor Law § 240(1), the plaintiff is not entitled to the protection of that statute.

During oral argument, plaintiff's counsel attempted to bootstrap the facts of this case to fit within the decision of *Eisenstein v. Board of Managers of Oaks at LaTourett Condominium Sections I-IV*, 43 AD3d 987 (2d Dep't 2007), rendered by the Appellate Division in September 2007. In *Eisenstein,* the plaintiff was injured while repairing a parking lot light fixture. Since the court's decision did not shed any light on the facts of the case, we secured copies of the briefs submitted to the court. From the briefs, we learned that the work Mr. Eisenstein performed was far more intricate than that which Mr. Deoki performed. In fact, the repair of the light fixture Mr. Eisenstein was hired to perform required the disassembly of the fixture and the replacement of major component parts thereof. Therefore, during oral argument, we were able to distinguish the facts in *Eisenstein* from our case.

The Appellate Division decision rendered in *Deoki* follows a long line of cases which hold that the replacement of light bulbs and electrical ballasts constitute routine maintenance and not a repair. Specifically, the Appellate Division in *Sanacore v. Solla*, 284 AD2d 321, 321 (2d Dep't 2001), held that the task of replacing a ballast in a fluorescent light fixture falls within the category of routine maintenance. In *Sanacore*, the plaintiff was in the process of replacing a broken fluorescent light ballast when he was hit on the head by a falling object causing him to fall from a ladder. In that case, the court held that the plaintiff was merely involved in routine maintenance, which is not an activity covered under Labor Law §240.

Similarly, in *Gleason v. Gottlieb*, 35 AD3d 355, 356 (2d Dep't 2006), the Second Department held that the plaintiff was not entitled to protection under the statute, since he was in the process of replacing worn-out parts in a non-construction and non-renovation context. In *Anderson v. Olympia & York Tower B Co.*, 14 AD3d 520, 521 (2d Dep't 2005), the plaintiff, an air-conditioning technician, was injured while attempting to replace a worn-out bearing. The Second Department again distinguished the work the plaintiff was performing from a repair due to the fact that the work involved the replacement of worn-out parts in a non-construction and non-renovation context.

The rationale expressed by the Second Department follows the holdings of the Court of Appeals in *Smith v. Shell Oil Company*, 85 NY2d 1000 (1995); *Joblon v. Solow*, 91 NY2d 457 (1998); *Nagel v. D&R Realty Corp.,* 99 N.Y.2d 98 (2002); and *Esposito v. New York City Indus. Dev. Agency*, 1 N.Y.3d 526 (2003). Which in turn are followed by the other appellate courts in *Goad v. Southern Electric International*, 304 AD2d 887 (3d Dep't 2003); *Piccione v. 1165 Park Avenue, Inc.*, 258 AD2d 357 (1st Dep't 1999); and *Acosta v. Banco Poular, et al.*, 308 AD2d 48 (1st Dep't 2003).

Where and when Labor Law § 240(1) applies is determined on a case-by-case basis. Establishing a defense against a claim under this statute requires fortitude and perseverance, as illustrated by the results we achieved in *Deoki*. New York's Labor Law claims present the client and counsel with numerous challenges. Therefore, it is essential that counsel and client work together to develop a comprehensive litigation strategy to ensure that all potential defenses are fully explored. While this result may not occur in every case, creativity and thorough investigation will dramatically increase the odds of successfully defending the claim.

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Transportation Equity Act of 2005 Held to Be Constitutional

By Jonathan A. Judd

New York Vehicle and Traffic Law § 388 renders motor vehicle owners vicariously liable for the negligence of individuals driving their vehicles with permission. Specifically, the law provides that every motor vehicle owner shall be "liable and responsible for death or injuries to persons or property resulting from negligence in the use or operation of such vehicle." This law has been held applicable to companies that rent and/or lease vehicles involved in accidents in New York, even where the vehicle was leased or rented outside the state or where an accident occurred outside of New York if the parties involved were New York residents.

On August 10, 2005, President George W. Bush signed into law the Transportation Equity Act, a bill which contained an amendment sponsored by U.S. Representative Sam Graves of Missouri. The Graves Amendment, which was codified by 49 U.S.C. § 30106, preempted all state laws imposing vicarious liability on companies leasing or renting automobiles, except where there is negligence or criminal wrongdoing on the part of the owner.

In *Graham v. Dunkley*, Justice Thomas Polizzi of the Supreme Court, Queens County, held that the Act was unconstitutional. In *Graham*, the plaintiff was injured in an automobile accident. One of the cars involved in the accident was owned by Nissan Infiniti, LT and leased to defendant Rayon S. Dunkley. In 2006, following the enactment of the Act, the plaintiff commenced a lawsuit against Dunkley, the driver of the offending vehicle, and against Nissan, the owner of the vehicle. In lieu of answering, Nissan moved to dismiss the complaint on the ground that the plaintiff's lawsuit was preempted by the Act. Justice Polizzi denied Nissan's motion, holding that "49 U.S.C. § 30106 is an unconstitutional exercise of congressional authority under the Commerce Clause of the United States Constitution, Article I, § 8."

Justice Polizzi reasoned that the Act improperly intruded into New York's constitutional right to pass laws for the general welfare of its citizens. The U.S. Constitution gives limited, enumerated powers to Congress to pass laws. Those powers that are not given to Congress are reserved to the states and the people under the 10th Amendment to the Constitution. Although Congress is given the power to regulate commerce under Article I, Section 8, of the Constitution, the courts in recent years have limited that power.

Addressing an appeal of Justice Polizzi's decision, the Appellate Division, Second Department, in a decision dated February 1, 2008, reversed Justice Polizzi's holding and concluded that the Act is constitutional. The Appellate Division noted that the Act aids in the regulation of the national market for leased and rented automobiles and that motor vehicles are "the quintessential instrumentalities of modern interstate commerce." The court also observed that the Act was constitutional as a regulation of an economic "class of activities" which, taken in the aggregate, substantially affect interstate commerce.

This decision is welcome news to motor vehicle leasing and rental companies, which, until the enactment of the Act, had spent millions of dollars defending claims based on the vicarious liability of renters. It is especially good news for many leasing or rental companies that may have recalculated their liability insurance coverage after the passage of the Graves Amendment.

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The new Transportation Equity Act contains the Graves Amendment, which preempts all state laws imposing vicarious liability on companies leasing or renting automobiles, except where there is negligence or criminal wrongdoing on the part of the owner.

HRRV DECISIONS OF NOTE

Maintenance Worker Not Entitled to the Benefit of Labor Law Section 240(1) Because He Was Performing Routine Maintenance and Not a Repair

In *Parbhu Deoki v. Abner Properties Co., 2008 NYSlip Op 1297, 2008 N.Y. App. Div. LEXIS 1300 (2d Dep't 2008),* the Appellate Division, Second Department held that the plaintiff, a maintenance worker, was not entitled to the benefit of Labor Law section 240(1) because he was performing routine maintenance and not a repair when he sustained his injuries. At the time of the accident, the plaintiff was in the process of replacing the ballast within a fluorescent light fixture when he fell from the ladder he was using to reach the fixture.

During our representation of the defendant, we established with the assistance of the electrical engineer that during the normal course of the fixture use, the ballast required regular replacement and that the plaintiff routinely replaced ballasts as part of his job. As noted in the court's decision, the plaintiff's counsel attempted to argue that since the light fixture was not functioning, the plaintiff was actually engaged in a repair, thus entitling him to protection under Labor Law section 240(1).

This case underscores the importance of determining why a piece of equipment was not working and whether the part or parts that required replacement were items that would be included in the maintenance of the equipment.

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Dismissal of Complaint Based Upon Enforceable Waiver

In *Kim and Posth v. John Doe, Patriot Ford and Ford Motor Company*, Civil Court, Queens County, Index No. 301674 QTS 05 (February 22, 2008), Justice Leslie Purificacion, sitting in Civil Court, Queens County, granted summary judgment to Ford Motor Company where the plaintiffs sued Ford after they were injured in a car accident during a test drive of a new model Ford Expedition. The court ultimately determined that the plaintiffs, who signed a release of liability in connection with an event where a car salesman offered them test drives, were barred from asserting their negligence claims.

Prior to the accident on May 9, 2002, the plaintiffs signed a release of liability, which released Ford and its employees from any and all responsibilities or liability from injuries or damages resulting from the salesman's participation in the event in question. The release also stated that by signing the agreement, the participant understood and was aware that "the activities of the event(s) are very dangerous and involve the risk of serious injury and/or death and/or property damage." The agreement was signed by the plaintiffs, despite the fact that one of the plaintiffs admittedly did not read the agreement before signing it.

Plaintiffs contended that the waiver agreement was unenforceable due to the statutory obligations set forth in New York Vehicle and Traffic Law § 388 and because the language was allegedly too broad. The court disagreed and held that there is no language in Vehicle & Traffic Law § 388 that bars contractual waivers, which in some instances, are permissible and enforceable in the motor vehicle industry. The court further held that the language of the agreement, which released Ford for injuries sustained out of or related to the event(s), whether caused by the negligence of Ford or otherwise, was "clear, coherent, detailed, specific, and includes a waiver of negligence in five different paragraphs." Accordingly, the court ultimately determined that the waiver agreement was valid and acted as a binding release against all participants, including plaintiffs, and summary judgment was granted to Ford.

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HRRV DECISIONS OF NOTE

New York Appellate Court Affirms Dismissal of Negligent Security Case Based on Adequacy of Security

New York's Appellate Division, Second Department has affirmed the granting of summary judgment in *Logan v. 530 W. 28th Street, L.P.*, 849 N.Y.S. 2d 804, 2008 N.Y. App. Div. LEXIS 1117 (2d Dep't 2008), in which HRRV represented the defendant, a night club operator, which did business at Crobar.

The case involved a claim of negligent security based upon a patron-on-patron assault. The plaintiff alleged that he sustained serious injuries when assaulted by other patrons while he was at the defendant's nightclub; and that the defendant failed to provide adequate security. The defendant submitted evidence that there were twenty-three New York State licensed security guards on duty on the night in question, seven of whom were assigned to the room in which the plaintiff claims he was assaulted. The defendant also established that upon learning of the incident, security guards immediately responded and broke up the altercation. Although the plaintiff argued that he never observed security guards stationed in the room in which he was assaulted, he admitted to testifying that he was not paying attention as to the presence of security since he was too busy dancing.

Recognizing that a property owner has a duty to take only minimal precautions to protect visitors from foreseeable harm, including foreseeable criminal acts, the lower court, in granting summary judgment, did not address forseeability. Rather, the case was dismissed based upon the adequacy of the security provided.

In affirming the dismissal, the Appellate Division held that the defendant "established its prima facie entitlement to judgment as a matter of law by demonstrating that it satisfied its duty to take minimal security precautions against foreseeable criminal acts of third parties."

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Dismissal of Action Against Adjacent Landowner Resulting from Trip and Fall in Sidewalk Tree Well

In *Rodriguez v. The City of New York et al.*, Supreme Court, Bronx County, Index No. 14547/05 (January 24, 2008), Justice Larry S. Schachner, sitting in Bronx County, granted summary judgment to a private landowner dismissing the plaintiff's complaint as to it.

Plaintiff was walking on the sidewalk in front of a general merchandise store when she stepped into a tree well, tripped and fell. The tree well in question was created during a large scale reconstruction project commissioned by the City of New York. The landowner argued that the tree well, which was uncovered and awaiting the planting of a tree, was created and maintained by the City and its contractor. In fact, the City and the contractor had retained ownership and control over the tree well even after the plaintiff's accident, as exhibited by the issuance of a repair order following the plaintiff's accident and the eventual backfilling of the tree well with asphalt to alleviate an acknowledged "tripping hazard."

The landowner relied upon the recently decided case of *Vucetovic v. Epsom Downs Inc.,* 2007 N.Y. Slip Op. 6577, 841 N.Y.S.2d 301 (1st Dep't 2007), in which the Appellate Division, First Department determined that tree wells, such as the one which allegedly caused the plaintiff's accident, are not part of the sidewalk for purposes of the Administrative Code of the City of New York § 7-210, which requires landowners to maintain abutting sidewalks in reasonably safe condition. The court in *Vucetovic* noted that the City's Department of Parks and Recreation had "exclusive jurisdiction" over the planting, care and cultivation of all trees along streets, including the tree wells themselves. The landowner argued that this responsibility was demonstrated by the fact that the contractor admittedly maintained the tree well to ensure that its soil was level with the abutting sidewalk and filled it in with asphalt once it was deemed a tripping hazard by the City's consulting engineer.

The court found *Vucetovic* to be dispositive and, holding that the tree well was the City's responsibility, dismissed all claims against the landowner.

Contact

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HRRV ON TRIAL

Limited Recovery for Fallen Carpenter's Injuries

Gareth Walsh v. Bowlmor Lanes, LLC, Strike Holdings, LLC, The Cobalt Group, LLC, 12 and University, LLC, and Benenson Investment Company

Supreme Court, New York County, Index No. 100137/2004

On March 19, 2001, plaintiff Gareth Walsh, a thirty-four-year-old carpenter, was working on a scaffold when it collapsed, causing him to fall. At the time of the accident, the plaintiff was erecting sheet rock in a stairwell at Bowlmor Lanes, a bowling alley located in Manhattan. The plaintiff claimed that he was standing on the ladder section of a six-foot-high Baker's scaffold, erected by his employer, that was placed on an unfinished staircase at the defendants' premises. The plaintiff claimed that he fell fifteen to twenty feet. Testimony solicited at his deposition, however, established that at the time of his fall, his feet were no more than three feet off the ground.

Summary judgment was granted on liability based on Labor Law § 240 (1).

The plaintiff alleged multiple injuries, including a head injury, resulting in a left hemisensory deficit, blurry vision of the left eye, a dislocated shoulder necessitating an arthroscopic procedure to stabilize the left shoulder, a herniation to his neck, aggravation of a degenerative condition to his lower back and an injury to his left knee necessitating an arthroscopic procedure. The plaintiff also underwent chiropractic and physical therapy treatment.

During trial, through the testimony of the defendants' expert doctors and through admission elicited from the plaintiff's experts, the defendants established that the plaintiff's complaints of pain could not be substantiated. Specifically, his claim of a head injury and blurry vision were easily attacked since the MRI of his head was found to be normal. Although the plaintiff's counsel attempted to explain away the head injury by arguing that it had resolved within a year, the plaintiff's neurologist, who had diagnosed the left hemisensory deficit as a result of the head injury, maintained at the time of trial, that the plaintiff continued to suffer from the condition.

The plaintiff's claims of radiculopathy of the cervical and lumbar spine were belied by admissions made by the plaintiff's neurologist that the MRI films taken of the plaintiff's cervical and lumbar spine showed no evidence of nerve compression. In fact, the plaintiff, who was admitted to Lenox Hill Hospital in June 2007 for complaints of radiating pain and a dropped foot, was discharged the following day when the MRI of the lower back showed no evidence of nerve compression. His treating physician, an orthopedic surgeon, admitted that there was nothing to substantiate the plaintiff's complaints of pain, acknowledging that many of the plaintiff's complaints of pain were related to poor diet, lack of exercise and the pending lawsuit. Although the plaintiff had undergone surgery to his left shoulder and left knee, it was established that there was no evidence that he actually dislocated his shoulder from the fall, as the MRI of his left shoulder taken three months later had no evidence of bone bruising, inflammation or swelling in the area, which would still have been present had the plaintiff suffered a shoulder dislocation. Moreover, the evidence established that the plaintiff's knee problems had nothing to do with the accident and were consistent with the natural aging process.

The plaintiff claimed that he fell fifteen to twenty feet. Testimony solicited at his deposition, however, established that at the time of his fall, his feet were no more than three feet off the ground.

The parties stipulated that the plaintiff's past medical expenses totaled $40,000. At trial, plaintiff sought recovery of that amount and $850,000 for past and future pain and suffering.

The jury found that the plaintiff's damages totaled $60,000 (including his past medical expenses).

Contact

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HRRV ON TRIAL

Plaintiff Claims That Poorly Lit Area in Nightclub/Lounge Caused Fall; Jury Disagrees

Eva Marie Ward and Thomas Ward v. Aer Lounge, LLC

Supreme Court, New York County, Index No. 106205/05

On April 10, 2005, plaintiff Eva Marie Ward was attending a movie premiere party held at the Aer Lounge in New York City. She alleged that she fell while walking down a single step in the vicinity of the bar, because the step was without working safety lights and the area in which the step was located was poorly lit. Ward sued Aer Lounge LLC for negligence. Her husband, Thomas Ward, sued for loss of consortium.

The defendant presented evidence that rope lighting was installed along the entire length of the step; and that there was fiber optic lighting and spotlights on the ceilings and walls of the area in which the plaintiff fell.

Plaintiff was taken to the hospital by ambulance. She was treated for facial lacerations and discharged. She later complained of pelvic and hip pain and was diagnosed with a fractured pubic rami (pelvic bone). She testified that for a brief time after her fall, she used a walker and then a cane. She was treated by a physiatrist who opined that she had exacerbated a pre-existing arthritic condition in her right hip and recommended a hip replacement.

Defendant submitted evidence of the severity of plaintiff's arthritis prior to the fall and plaintiff's own physician testified that she would have required a hip replacement even if she had not fallen, but that the fall accelerated the need for the procedure.

Plaintiffs asked for a jury damages award of $350,000.

The jury found in favor of the defendant.

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DECISION OF INTEREST

New York Appellate Court Division Disregards Release and Reverses Summary Judgment Decision in Case Involving Spa/fitness Center Again

By Carla Varriale

New York's Appellate Division, First Department recently reversed an order granting summary judgment in favor of a spa and personal trainer and reinstated the plaintiff's complaint, citing to its prior holding that a release which included a covenant against commencing a suit for personal injuries sustained during a personal training session was void as against public policy.

In *Connolly v. Peninsula Group,* 2007 N.Y. App. Div. LEXIS 9097 (February 28, 2008), the Appellate Division, First Department held that although the language of the release was clear and unambiguous, it nonetheless violated New York's General Obligations Law § 5-326 ("section 5-326"). Although facilities which are places of instruction and training have previously been found to be outside the scope of section 5-326, the Appellate Division cited its prior decision in *Debell v. Wellbridge Club Management,* which reversed summary judgment on behalf of a spa because it deemed the "instruction," i.e., the personal training session, to have been ancillary to the recreational activities offered by the spa. In *Debell,* the Appellate Division noted, among other things, the spa's published advertisements wherein it represented itself as a "full-service beauty salon" providing "complete body and skin care treatments."

Debell v. Wellbridge Club Management was profiled in the Fall 2007 issue of HRRV's *Legal Insights,* which can be found at www.hrrvlaw.com/news_newsletter.php.

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SCHEDULED PRESENTATIONS

- **Recent Developments in Insurer Bad Faith and Extra Contractual Liability**
  11th Annual North American Contingency Association Conference
  Steve Rosenfeld
  May 6–8, 2008
- **Is the Grass Greener in Green Construction?: The New Risks and Liabilities of Construction Defects in Green Building**
  2008 West Coast Casualty Construction Defect Conference
  Sean Dwyer
  May 8, 2008

- **Trial Techniques for Effective Litigation**
  Sean Dwyer
  June 24, 2008
- **The Ramifications of the New CMS Policy on Preventable Injuries**
  Strafford Publications
  Sean Dwyer
  July 15, 2008

HRRV IN THE PUBLIC EYE

Sean Dwyer Receives LEED AP Accreditation in Green Building—Among the First Attorneys in New York to Obtain Designation

Sean Dwyer, whose practice focuses on litigation, construction law and insurance coverage matters, has received the Leadership in Energy and Environmental Design® Accredited Professional (LEED AP) designation from the U.S. Green Building Council. Of more than 950,000 practicing attorneys in the United States, there are currently fewer than 50 registered lawyers nationwide who have received this certification, and Sean is one of just five accredited lawyers in New York and the first registered attorney in the Long Island area to earn LEED AP accreditation.

The LEED AP accreditation in green building is a prominent necessity for staying atop of the nation's growing market for environmentally sound and sustainable construction projects. Having an LEED Accredited Professional involved with a green building project is extremely beneficial because that professional represents the LEED rating system and helps guide the project to be within the LEED specifications from commencement to completion.

"Being one of a handful of attorneys in New York to have the LEED AP accreditation, I look forward to expanding HRRV's green building practice," said Sean. "Clients, such as contractors, architects and their insurers, are increasingly expecting their counsel to understand green building strategies, assist them through the LEED certification process from startup to final verification, as well as help them navigate projects through the complicated process of complying with local green building regulations and insurance requirements. I can think of no better way to achieve that objective than by becoming an LEED Accredited Professional."

Sean, who has been a frequent author and speaker on the topic of green building, can be reached in the firm's Mineola, New York, office at 516-620-1720 or sean.dwyer@hrrvlaw.com.

HRRV Attorneys Speak at Tri-State Camp Conference

On March 15, 2008, Steven Rosenfeld, Carla Varriale and Gregg Scharaga presented "Legal Issues in Camping: Protecting Your Camp, Protecting Your Campers" to an audience comprised mostly of camp owners, directors and executive staff at the 26th annual Tri-State Camp Conference in Atlantic City, New Jersey.

Gregg lectured on the importance of camp enrollment agreements that parents complete when enrolling their children in camps and the important language to be included in the agreements to protect camps in the event of camper injury. Steve spoke about the general parameters of negligence claims, the most common claims asserted against camps and the most important defenses to those claims, focusing mainly on assumption of risk. Carla addressed a camp's legal responsibility for the actions of its staff and campers concerning intentional and negligent conduct. Following the presentation, the attorneys entertained inquiries including hypothetical situations from the attendees.

During the four-day conference, nearly 4,000 attendees participated in more than 200 program sessions and explored the offerings of over 300 exhibitors.

HRRV IN THE PUBLIC EYE

Varriale Article Published in ABA's *Entertainment And Sports Lawyer*

That's the Ticket . . . What's Next for the Ticketing Industry After Ticketmaster v. RMG Techs., Inc., by Carla Varriale, will appear in the April 2008 issue of the ABA's *Entertainment and Sports Lawyer*. Carla, who is well known in sports law circles for her work defending professional and recreational sports teams and venues, was the moderator of a panel discussion on this topic at the November 2007 Billboard Touring Conference and Awards in New York, New York. The panel featured representatives from Ticketmaster, StubHub and Tickets.com.

Ritzert Quoted in Article on Kiosk Owner Liability

Gail Ritzert was recently quoted on the product liability implications of operating self-service kiosks in the February 19, 2008 issue of the online publication, *Self-Service*.

Judd Lectures on Conducting Effective Depositions

Jonathan Judd regularly lectures on "Taking and Defending Effective Depositions." He spoke on this topic at a March seminar in Manhattan.

Varriale and Warner Speak at Stadium Managers Conference

Carla Varriale and Jarett Warner spoke on "Venues and Premises Liability" at the 34th annual Stadium Managers Association Seminar. The conference was held from February 3–7, 2008, in San Diego, California.

HRRV's Northern Exposure

Havkins Rosenfeld Ritzert & Varriale, LLP has opened an office in White Plains, New York.

This office will enhance our ability to service our clients with interests north of New York City. We are in close proximity to the courts in Westchester, Putnam, Orange, Dutchess, Rockland and Sullivan counties.

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