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RAWLE'S REPORTS

THE NATION'S OLDEST LAW OFFICE



NEW YORK

COMMERCIAL MOTOR VEHICLE

Summary Judgment for Trucking Company and Its Good Samaritan Driver

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Anthony D. Luis

The Bronx County Supreme Court in New York City recently issued an Order granting Rawle & Henderson LLP's motion for summary judgment and dismissed the complaints of three plaintiffs against our clients J.B. Hunt Transport, Inc. and its driver. The cross-claims of co-defendants were also dismissed.



Sylvia E. Lee

This action arose out of a three-vehicle accident September 28, 2013, on the westbound Brooklyn Queens Expressway ("BQE") in New York. The accident resulted in one death and serious injuries to three other people.

The J.B. Hunt driver was driving a tractor trailer owned by J.B. Hunt. They were brought into the lawsuit despite making no contact with any of the vehicles involved in the three-vehicle accident. The co-defendant driver of Vehicle #1 first struck and impacted Vehicle #2, a yellow taxi cab, and then also rear-ended Vehicle #3.

A plaintiff passenger of Vehicle #2 subsequently died the next day due to injuries stemming from this three-vehicle accident. The decedent's estate later made a wrongful death claim. The co-defendant driver of Vehicle #1 was arrested at the scene for driving while intoxicated and she ultimately pled guilty to vehicular manslaughter in criminal court.

Driver of Vehicle #1 admitted at her deposition that she was intoxicated at the time of the accident. At her deposition we were able to establish that she was driving at a very high rate of speed and she caused the accident when she changed lanes, making impact with the vehicle that was occupied by the decedent (Vehicle #2).

We moved for summary judgment seeking dismissal of the three Complaints against J.B. Hunt and its driver, as well as for dismissal of the co-defendants' cross-claims. We argued in our motion that the J.B. Hunt driver was merely a Good Samaritan who stopped his vehicle and called emergency services after witnessing this catastrophic multi-vehicle accident.

In support of our summary judgment motion, we pointed out that according to the police

report, the J.B. Hunt vehicle was not listed or mentioned in the report as being involved in the subject accident, and only identified our driver as a “witness.” Also, prior to making the motion, we deposed the responding police officer, who testified that the investigation found that there was no wrongdoing on the part of the J.B. Hunt driver. Furthermore it was established at the depositions of the plaintiffs and co-defendants that none of them saw the J.B. Hunt vehicle make any contact with the vehicles involved in the accident. During the deposition questioning, all of them, including plaintiffs, admitted that they found no fault on the part of the J.B. Hunt and its driver.

In granting summary judgment in favor of our clients J.B. Hunt and its driver, the Court found that our clients established their entitlement to summary judgment on the ground that no liability could be imposed against them for the occurrence of the accident. The Court was not persuaded by plaintiff’s opposition that the J.B. Hunt driver caused the accident by “driving slowly.” The Court found that this claim was not supported by any deposition testimony, and held that no questions of fact existed warranting a trial against our clients.

In rendering its decision, the Court found that our client driver established that he was operating and traveling his tractor trailer in the middle lane of the BQE and never made contact with any of the other vehicles. The court’s decision highlighted that none of the three drivers testified that the

J.B. Hunt tractor trailer made any contact with their vehicle.

The Court also noted that in the deposition of the police officer who responded to the accident, he testified that when he arrived at the scene he observed the tractor trailer was stopped at a far distance from the three vehicles involved in the collision, and that he did not observe any damage to the tractor trailer, in contrast to vehicles #1 and #2, which were totaled, and minor damage to vehicle #3.

Prior to the filing of any lawsuit, two weeks after the accident, the attorney for one of the plaintiffs conducted an inspection of our clients’ tractor trailer vehicle, which included an analysis of downloaded data from the tractor’s electronic control module (ECM). Rawle & Henderson LLP also retained an accident reconstruction expert to analyze the downloaded data.

Our accident reconstruction expert’s analysis of the tractor’s ECM indicated that there was no “hard braking” event on the date of accident; in addition to the fact that the tractor and the trailer had no damage whatsoever, the lack of a “hard brake event” was a very strong indication that the J.B. Hunt vehicle was not involved in the subject accident.

The early ECM data analysis by our accident reconstruction expert was critical to our defense during the discovery phase, setting the stage for our successful motion for summary judgment and eventual dismissal of the case.

Anthony D. Luis is a partner in our New York City office. He concentrates his practice on the defense of clients involving commercial motor vehicle litigation, medical malpractice, oral surgery and dental malpractice, architectural and engineering malpractice, construction litigation, workers’ compensation and commercial litigation. Anthony received his J.D. from Western New England University School of Law in Springfield, Massachusetts, in 1999. He earned a B.A. in Political Science and English in 1996 from State University of New York at Geneseo. Anthony served as an Assistant District Attorney in Queens as a prosecutor in the Homicide Investigation Unit, Domestic Violence Unit, and the Felony Trial Bureau, where he tried numerous cases to verdict including several jury trials. He is admitted to practice in New York and New Jersey, and before the United States District Courts for the Eastern and Southern Districts of New York and the U.S. District Court for the District of New Jersey. Anthony has been rated AV Preeminent.

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Sylvia E. Lee is an associate in our New York City office. She concentrates her practice in the defense of medical and dental professionals, hospitals, nursing homes, product liability, premises liability, toxic tort including asbestos litigation, auto liability, and commercial litigation. In addition, she has an extensive appellate law practice. Sylvia graduated with a B.S. degree from the State University of New York at Stony Brook. She then attended New York Law School and earned her Juris Doctorate degree. She is admitted to practice in New York and New Jersey, as well as the U.S. District Courts for the Southern District of New York and the U.S. District of New Jersey.

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PENNSYLVANIA

PRODUCT LIABILITY

Defense Verdict in Wheelchair Accident Case

On October 30, 2017, after just over 30 minutes of deliberations, a Lehigh County, Pennsylvania jury of 12 returned a unanimous verdict in favor of Rawle & Henderson LLP's client, Pride Mobility, following five days of trial in *Thomas and Rosenia Devine v. Pride Mobility Products*. **Brett Wolfson**, a partner in Rawle & Henderson's Philadelphia office, led the defense in this products liability action.

This case involved a claim that a power wheelchair designed and manufactured by Pride was defective and led to plaintiff Thomas Devine's injury. Pride Mobility designs and manufactures power wheelchairs that allow persons with disabilities to regain mobility.

Plaintiff alleged that a broken bolt discovered after the accident caused the wheelchair to tilt in the direction he claimed he was thrown, as he was descending a ramp from his home to his garage. The accident left plaintiff with a broken leg requiring surgery and permanent implantation of metal plates and 12 screws to support the broken bone.

Rawle & Henderson LLP's defense strategy focused on (1) extreme abuse of the chair, causing the subject bolt to break, (2) excessive height/incline of the ramp, (3) plaintiff riding his chair at an excessive speed, and (4) plaintiff not wearing the lap belt that was originally installed on the chair.

We executed the defenses through cross-examination of plaintiff and his wife, supported by testimony of experts in biomechanical engineering and metallurgy. Through laboratory testing, plaintiffs' expert as well as the defense metallurgist testified that the subject broken bolt met all ASTM hardness standards, in accordance with the stringent design specifications of Pride Mobility. Plaintiff offered no evidence or explanation how or why the bolt broke.

Brett's metallurgist expert testified that an extreme traumatic event was the only explanation as to how such a strong bolt could have broken. This included showing the jury photographs of a bent frame found beneath the seat of the chair, taken six months after the accident by a Pride Mobility

engineer. Neither plaintiff nor his wife provided any explanation as to how such damage occurred to the chair.

With respect to the ramp from which plaintiff fell, the user's manual specified that if the ramp was positioned as high as it was installed in plaintiff's home, it was intended to transport only unoccupied wheelchairs. Thus, plaintiff should not have been riding the wheelchair down the ramp at the time of his accident. Even if the ramp was at a lower height and angle, the manual required a "qualified assistant" to push the ramp user while seated in the wheelchair. All of this was to prevent exactly what occurred to plaintiff.

Plaintiff testified that when descending the ramp, he always operated the chair at its slowest possible setting, 0.1MPH. He also testified that, to keep from sliding out of the chair, he always tilted/reclined the seat before descending the ramp. During cross-examination, over the objection by plaintiff's counsel, we asked plaintiff to demonstrate this for the jury. This was the first step in discrediting plaintiff's rendition of the accident. Pride's engineer, at Brett's our direction, had an exemplar platform constructed in order to further demonstrate that plaintiff's version of the facts were impossible.

Additionally, a lap belt originally installed on the chair was designed to keep plaintiff restrained and prevent him from falling out of the chair. Not only did plaintiff admit to failing to wear the lap belt, he also deliberately removed the lap belt from the chair shortly after he originally purchased the chair two years before the accident.

Ironically, at the time of trial, plaintiff was sitting in his newly purchased power chair, also designed and manufactured by Pride Mobility, the company that designed the wheelchair that plaintiff alleged was defective and caused his accident.



Brett A. Wolfson

Plaintiff sat through trial in his new chair, now wearing the chair's lap belt. Plaintiff testified on direct that he now wears the lap belt because his wife insists. When pressed on cross-examination, plaintiff conceded that his wife's insistence on him wearing the lap belt was "because she wanted him to be safe." His wife admitted on cross-examination that the belt would prevent him from sliding out of the chair if riding down the ramp at too fast a speed.

The jury concluded that plaintiff's accident was caused by his riding his power wheelchair too fast, without the seat tilted back, without wearing the lap belt, down a ramp that was too high and not intended for occupied wheelchairs.

Thomas and Rosenia Devine v. Pride Mobility Products Corporation and Mobility Unlimited, Inc., CCP Lehigh County, C.A. No. 2013-C-4299

Brett A. Wolfson is a partner in our Philadelphia office. He focuses his practice on catastrophic injury and/or death cases involving products, construction/industrial/workplace, commercial motor vehicle, medical professional and premises liability. He serves as a Judge Pro Tem for the Dispute Resolution Center of the Philadelphia Court of Common Pleas. Brett volunteers for the Philadelphia Support Center for Child Advocates. He is a major fund raiser for the National MS Society, for which he also serves on the New Jersey Government Relations Committee Advisory Committee. Brett earned his J.D. from Rutgers University School of Law and his B.A. in Philosophy from West Chester University. He has also served under two Philadelphia Common Pleas Court Judges, as a law clerk to the Honorable Joseph D. O'Keefe while he was Supervising Judge of the Complex Litigation Center and the Honorable Sandra Mazer Moss as a Team Leader for a major jury program. Brett is rated AV Preeminent by Martindale-Hubbell.

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PENNSYLVANIA BAR INSTITUTE

Tara Gill Nalencz, a partner in our Philadelphia office, spoke at a **Pennsylvania Bar Institute seminar** on evidentiary issues on December 5, 2017. Tara was a panelist for the CLE event "*Lights, Camera, Evidence!*", which examined problematic evidentiary issues by using a series of video vignettes based on a hypothetical case. She and other panelists discussed the real-life evidentiary problems presented in each vignette. The seminar was held at the CLE Conference Center in the Wanamaker Building in Philadelphia. The event was designed to refresh attendees on the rules of evidence and presented winning strategies for the courtroom. The panelists examined techniques for reacting more quickly to impermissible evidence and the advantages of foregoing certain objections. They discussed recent decisions affecting the admissibility of crucial points of evidence in Pennsylvania.



Tara Gill Nalencz

Tara concentrates her law practice on the defense of catastrophic loss matters. Her caseload regularly includes cases involving paraplegia, quadriplegia, traumatic brain injury, severe burns, death and multi-million dollar property damage. This complex trial practice includes high exposure cases involving a wide variety of industries and clients, including: construction, natural gas and oil, industrial machinery and equipment, electric arc furnaces and steelmaking, propane storage, pharmaceutical and medical devices, and property management. She is fluent in Spanish and her practice also includes international matters, such as defending hotel owners and operators in actions where the underlying accident took place outside the United States. Tara has developed strategies for the use of social media in litigation and has presented several times on related topics. She has also become skilled in e-Discovery in both the role of first level collection and review, as well project management. Tara obtained her law degree from the Temple University School of Law in 2004. She earned her Master of Arts degree in Spanish Literature in 2001 from Pennsylvania State University and her Bachelor of Arts degree in 1999 from Dickinson College. Before joining the firm, she served a two-year clerkship for the Honorable Annette M. Rizzo, Philadelphia Court of Common Pleas. She was also previously appointed to a one-year judicial clerkship for the Honorable Samuel D. Natal in Superior Court of New Jersey in Camden, New Jersey.

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