LAW OFFICES OF JONATHAN M. COOPER

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INSIDE THIS ISSUE

Recommended Reading

Admittedly, I haven't read this book yet; but I'm really excited to.

Appropriately titled "The 8th Habit: From Effectiveness to Greatness," it's Stephen Covey's sequel to his seminal work, "The 7 Habits of Highly Effective People." Although I only read The 7 Habits over the last several months, I am proud to say that his work has had a positive effect on my effectiveness – both at work and in my home life.

Once again, I do not gain any material benefit at all from recommending his work; I just believe he is a brilliant student of humanity.

Insurer's Lawyer: 'Plaintiff's Lawyer Had No Right To Believe Or Rely On What We Said'

Even if you think you've seen a lot (and maybe you have), every once in a while a case comes along whose facts throw you for a loop. And *Madar v. 1333 Realty, LLC* is precisely one of those cases.

In this case, the plaintiff settled his case with the defendant's insurance company based upon the insurer's attorney's affirmative representation that the defendant only carried $25,000 in liability insurance. Two years later, he discovered that the attorney had been mistaken; in fact, the defendant carried insurance for ten times that amount - $250,000.

So, you would guess, the insurance company and their counsel would own up to their mistake and agree to vacate the settlement agreement, right? I mean, after all, since the plaintiff's injuries were clearly worth more than $25,000, they would do the honorable thing, wouldn't they?

Nope. Not even close.

Their response was to oppose the plaintiff's application, and argue that the plaintiff had no right to rely on their counsel's representations; in other words, ***the insurance company's attorneys argued that the plaintiff was obligated to assume that the insurance company and their attorneys were either mistaken or lying***.

This new low is just breathtaking, isn't it?

Why the Whistleblower Protection Clause In An Employee Manual May Be Worthless

A New York trial court's recent decision to dismiss a breach of contract and wrongful termination claim by a bank employee in *Candela v. Banco Industrial de Venezuela C.A.*, serves a clear warning to at-will employees everywhere: know your rights and what you must do to protect them before you are fired. Conversely, the decision also serves as a strong reminder to small business owners: make sure that your employee manual is properly drafted – or else.

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We strongly encourage the readers of our monthly newsletter to provide feedback about issues they would like to see addressed in our future publications.

To do so, please contact us through our website, www.JonathanCooperLaw.com or via e-mail at jmcooper@jmcooperlaw.com

"Since the defendants couldn't prove that the plaintiff disobeyed a specific instruction to use an available safety device that they had provided, or their instruction to avoid using a particular unsafe device, the defendants' claim failed."

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Why Disproving A Construction Site Accident Case Isn't So Simple

In *Cocoli v. Champion Construction Corp.*, a decision that was just reported on in the New York Law Journal, a construction site worker sued to recover damages for the serious personal injuries he sustained when he opted to use the ladder that was left by another tradesman at his worksite (the ladder he had been provided with was too short).

After he reached the top of the ladder, the ladder became unsteady, and ultimately toppled over, carrying the plaintiff with it. And after he hit the ground, the plaintiff noticed that the ladder lacked rubberized footings to keep the ladder from slipping, and that one of the ladder's legs was broken.

From the defendant's perspective, the question as to why the plaintiff didn't notice these problems before he fell - or before he climbed the ladder - was not only fair game, but, when considered in conjunction with the plaintiff's failure to use one of the other ladders that they had provided (which were apparently in fine working order), should have led to the dismissal of the plaintiff's case on the grounds that he was a "recalcitrant worker." The court didn't see it that way, however.

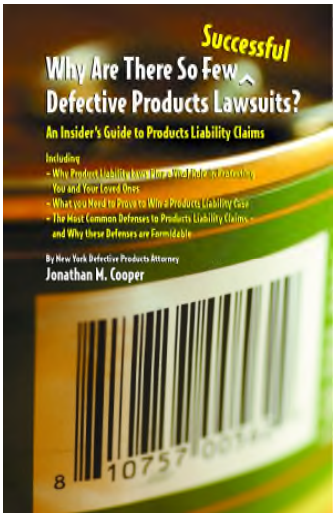
Citing §§200, 240 and 241 of the Labor Law, which require construction site owners and contractors at work sites to provide the workers with all the necessary safety devices to protect them from elevation-related risks, such as scaffolding and ladders (for more on this topic, see "*What A Plaintiff Must Prove to Win A Construction Site Accident Case*"), the Court noted that these same owners and contractors can be held strictly or absolutely liable if they fail to fulfill this duty.

While the Court acknowledged that there are exceptions to this rule, such as where the plaintiff was a recalcitrant worker, since the defendants couldn't prove that the plaintiff disobeyed the defendants' specific instruction to use an available safety device that they had provided, nor could they prove that he had disregarded a specific instruction to avoid using a particular unsafe device, their defense failed.

Clearly, disproving a work site accident case isn't simple at all.

Why There Are So Few Successful Defective Products Lawsuits

by Jonathan M. Cooper



This **FREE eBook,** which explains the intricate world of defective products cases, and how the laws governing product safety play a vital role in protecting children and the general public from dangerous products is available to be downloaded directly from:

www.**ProductsLiabilityBook.**com

Why Whistleblower Protection Clauses May Be Worthless

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In this case, the plaintiff, a former assistant treasurer of the defendant bank, claimed that she was fired as a direct result of her attempts to expose suspicious irregularities with respect to several trade confirmations that had come to her attention. Although she acknowledged that she was an at-will (as opposed to a contract) employee (for more information on the limited rights of at-will employees under New York law, see "*Why Most Breach of Contract/Wrongful Termination Claims By At-Will Employees Are Doomed To Fail*"), she alleged that the defendant's own "Personnel Policies and Practices Manual promised to protect her from adverse action in connection with reporting suspicious activities," and that this promise gave rise to a contractual obligation to protect her from retaliatory termination.

According to the Court, there are two problems that prove fatal to her claim, however. First, the Manual only protected against retaliatory action those who file a Suspicious Activities Report (SAR) – which the plaintiff never did. Second, the Manual also contained an explicit disclaimer that allowed them to terminate any at-will employee.

The implication of this decision is two-fold:

1. If you are an employee, make sure you read carefully your employment manual before you undertake any actions that might affect your job. In other words, "know your employment manual"; and,
2. If you are an employer, make sure that your employment manual is appropriately drafted to protect your right to terminate at-will employees.

"If you are an employee, make sure you read your employment manual carefully before undertaking any actions that might affect your job; if you are an employer, make sure your employee manual is drafted to protect your right to terminate at-will employees."

***COMMUNICATION POLICY**: As a general rule, Mr. Cooper does not accept unscheduled phone calls. This policy affords Mr. Cooper the ability to pay closer and more focused attention to each case, resulting in more efficient and effective representation for his clients. Moreover, it avoids the endless and needless game of phone tag played by most businesses and law firms. To schedule a phone call or in-person appointment with Mr. Cooper, please call his office at 516.791.5700.*

CPSC Launches New Product Registration Initiative - But They Can - And Should - Do Better

On December 16, the U.S. Consumer Product Safety Commission (CPSC) unanimously approved a new product registration program that requires manufacturers of durable infant or toddler products to establish and maintain a registration card program for 18 product categories, including cribs, booster, folding and high chairs, changing tables, play yards, strollers, infant carriers and bathtubs.

More specifically, the manufacturers of these infant and children products must do the following: (1) provide a postage-paid consumer registration form with each product; (2) keep records of consumers who register their products with the manufacturer; and (3) permanently place the manufacturer's name and contact information, model name and number, and the date of manufacture on each such product. The rule also establishes requirements for registration through the internet.

Overall, I like the idea, and agree that this new rule will foster a higher rate of product registrations, and thereby increasing the overall effectiveness of our recall process.

But you know what would probably work even better? If the registration were electronically automated at the time of the product's purchase, such as when you're paying for the item while on the store's check-out line. And that would leave far less room for consumers to opt-out, and result in an exponentially higher rate of product registrations and reduce the manufacturer's expenses in printing and paying for the postage of all these children's products.

Don't you agree?

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