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A Personal Note

This coming week, my mother is moving nearly halfway across the globe, to Israel.

My mother's motivation for this big change of scenery is several-fold: (1) a fresh start in the aftermath of my father's untimely passing; (2) being closer to her sister, my sister and their families; (3) helping care for my grandparents, who are in specialized care facilities in Israel; and, (4) returning to her ancestral homeland.

Admittedly, her move is bittersweet for my family and me. Please join me in wishing her good fortune and happiness in this new chapter of her life.

The Cost of Failing to Reduce Your Agreements to Writing

I have to believe that the executives at the plaintiff on-line news company are kicking themselves.

In [Al-Bawaba.com, Inc. v. Nstein Tech. Corp.](#), the plaintiff sought more than \$1 million in damages for the defendant software company's alleged [breach of contract](#) to provide software that would translate the news from English to Arabic. In this case, there were substantial negotiations over price and the manner and time in which the payments would be made for the software license. And although some of these e-mails went so far as to say "we have an agreement in principle," no further, formal contract was ever executed.

In dismissing plaintiff's case, the Court stated that "the record in this matter fully supports defendant's contention that the parties intended to execute a written agreement, foreclosing any argument that an enforceable oral agreement was ever reached, or even intended ... [P]laintiff's statement that before an agreement could be 'filed away in the company's filing cabinets, it has [sic] to be reviewed by a lawyer and signed' convincingly demonstrates that, as far as plaintiff was concerned, additional terms needed to be resolved and reduced to writing prior to entering an enforceable agreement." In legalese, this claim was barred by [New York's Statute of Frauds](#).

The worst part of it, from the plaintiff's perspective is this: they had a full 15-page contract in hand, *but never authorized their lawyers to finish reviewing it.*

Kids Can't Sue Their Foster Parents For Negligent Supervision, Court Says

Since 1974, when New York's highest court handed down its seminal decision in *Holodook v Spencer* (36 NY2d 35), the law in New York has been that a "child does not have a legally cognizable claim for damages against his parent for [negligent supervision](#)."

But what if the child was being supervised by a foster parent rather than his biological parent? In the 36 some-odd years since *Holodook*, that question was never decided by a New York appeals court - until now.

In [McCabe v. Dutchess County](#), a 16-month old infant plaintiff climbed out of

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By Resigning, Employees Did Not Forfeit Right to Earned Commissions, Court Holds

If an at-will employee resigns before they are paid their commissions, they forfeit their right to collect them, right? Absolutely not, held a New York County trial court.

In [*Nichols v. SG Partners, Inc.*](#), the plaintiffs were employed by defendant as placement professionals, earning both a base salary as well as a percentage of defendant's revenues generated for placements that the plaintiffs made, or commissions. After the plaintiffs found the working conditions "intolerable," they resigned, and requested that the defendant pay them for the commissions they had earned during their employment. Not surprisingly, the defendant ignored these requests.

Accordingly, the plaintiffs sued the defendants, contending that the defendants were liable for [breach of contract](#), breach of an implied covenant of good faith and fair dealing, unjust enrichment and violation of New York Labor Law ("Labor Law") §193. The defendant then promptly moved to dismiss the case, arguing, among other things, that since the plaintiffs did not have a written contract the plaintiffs' claims were barred under [New York's Statute of Frauds](#) (N.Y. Gen. Obl. Law §5-701).

In rejecting the defendant's argument, the Court cited a long litany of precedent for the proposition that "[B]ecause an at-will employment relationship may be freely terminated by either party at any time for any reason or even no reason, employment agreements of this type generally do not fall under the proscription of the Statute of Frauds."

Importantly, the Court also noted that if it is later found at trial that an employer willfully withheld the plaintiffs' wages, in derogation of Labor Law §198.1-a, "an additional amount as liquidated damages equal to twenty-five percent of the total amount of the wages found to be due" (*Rasmussen v. Yellow River, Inc.* 298 AD2d 322 [1st Dept 2002]; *Wolintetz v. Island Stationary Corp.*, 16 Misc 3d 1133 [NY Dist Ct 2007] (withholding of payment of commissions was a willful act of retaliation for the plaintiff's leaving the defendant's employ)).

The message to employers is unmistakably clear: if you wrongfully withhold earned wages or payments due to your former employees, you do so at your own peril.

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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

Kids Can't Sue Foster Parents for Negligent Supervision

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his crib and onto a dresser, and then fell from the dresser, sustaining serious personal injuries, including a fractured leg. The infant, through his court-appointed guardian, then sued his foster parents to recover damages for his personal injuries. (By way of background, the reason he was in foster care to begin with was because his biological mother had been found to have traces of cocaine in her blood at the time he was born.)

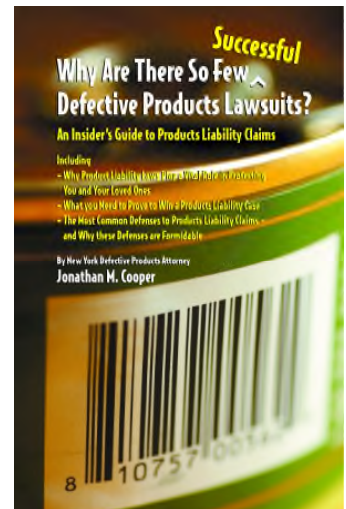
In reversing the trial court's decision that had allowed the infant's claim against his foster parents to stand, the Appellate Court cited the now-famous policy considerations outlined by the *Holodook* court for barring [negligent supervision](#) claims by children against their parents:

"We can conceive of few, if any, accidental injuries to children which could not have been prevented, or substantially mitigated, by keener parental guidance, broader foresight, closer protection and better example ... it would be the rare parent who could not conceivably be called to account in the courts for his conduct towards his child directly ...

"These same considerations apply to foster parents, who are responsible for the around-the-clock supervision of the day-to-day activities of children under their care for extended periods of time and are required to treat the children as members of their households."

Clearly, the emotions and policy decisions underlying this decision are complicated, and in this particular case, I think the Court reached the right result. But in the larger foster parent context, I don't believe either extreme is correct. In my view, a better rule would be to immunize foster parents from standard negligence claims, but to allow for liability in cases where their actions or inaction are egregious, or shock the conscience. I think this policy strikes a better balance between protecting the foster parents and the children.

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"In my view, a better rule would be to immunize foster parents from standard negligence claims, but to allow for liability in cases where their action or inaction shocks the conscience."

Struggling To Conceal Its Defective Designs, Toyota Gets Caught in Its Own Web of Lies

Toyota either has, or is about to learn, that the problem with going to desperate measures to conceal [design defects](#) with your product lines is that you can go too far, and then get caught in your own web of lies. As noted in a [New York Times editorial](#) that was published this past Friday, Toyota's claim that the federal safety agency had found no defects with their cars where the floor mat was compatible with the vehicle and properly secured was ***patently false***.

Now, Toyota has essentially been forced to issue a [product recall](#) of over 4 million vehicles, roughly 3 times the number of vehicles it sold in North America in the past year. And, looking forward, I imagine this is only a small part of Toyota's problem, because I don't see how anyone in their right mind would trust a representation from either Toyota or the government (which, in fact, did look the other way on some of these problems until they mushroomed) that these [defective designs](#), whether with regard to the sudden acceleration, the "sticky" gas pedals, or problematic driver-side mats had been remedied, and the cars were once

again safe to be driven. Stated differently, how can Toyota convince anyone to buy one of their products?

Graphic courtesy of CBS News



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