LAW OFFICES OF JONATHAN M. COOPER

Monthly Newsletter
February 2011
Volume 3
Issue 2

INSIDE THIS ISSUE

1 Why It's So Dangerous to Ignore a "Frivolous" Lawsuit

1 How a NY School Can Be Held Negligent – Even for Off-Premises Incidents

2 How One New York Company Lost Its Tortious Interference Claim – Even Though It Was Unopposed

3 Free Book! When You Don't Have a Written Agreement

4 Study Finds that Drivers of "Poor" Safety Rated Cars 3 Times More Likely to Die in Side-Impact Crash

CPSC Enacts New Flammability Rules for Carpets & Clothing

In a unanimous vote, the U.S. Consumer Product Safety Commission (CPSC) now requires manufacturers of carpets and rugs and clothing textiles to provide certificates that their products comply with published flammability standards for these products.

The news is not all good, though: the manufacturers are permitted to self-certify the results, and that they had a "reasonable testing program," making it doubtful that this statute will have an appreciable effect on assuring product safety. Therefore - and unfortunately - it seems that the most effective deterrent to putting unreasonably dangerous and flammable carpets or clothing textiles into the stream of commerce remains product liability lawsuits.

Why It's So Dangerous to Ignore a "Frivolous" Lawsuit

Unfortunately, a lot of people - way too many - seem to be under impression that if you've been sued, and you think that the lawsuit is frivolous, you can ignore it with impunity, bury your head in the sand, and it will go away.

That is a terrible mistake.

Under New York law, if you fail to answer timely a complaint (which are the papers that formally start the lawsuit), you will be deemed in default, which means you may lose the right to challenge the other side's version of the events that led to the lawsuit.

Fortunately, even if that occurs, all may not be lost; as long as the default judgment is less than one year old, you may apply to the court and ask that the default be opened (in legalese "vacated"), and that the case be determined on its merits. That said, it is not the simplest thing to vacate a default; you will need to show both of the following: (1) a reasonable excuse for your failure to respond in a timely fashion to the summons and complaint; and, (2) that you have a valid (or "meritorious") defense to the claim.

The bottom line is this: if you've been sued, don't ignore the lawsuit papers. Make sure that you respond in a timely way.

How a NY School Can Be Held Negligent – Even for Off-Premises Incidents

As noted in "How to Prove Your School Negligence Case Under New York Law," generally speaking, a school cannot be held liable in negligence for injuries that occur to its students off school grounds or outside school hours.

And the reason for this rule is logical; to hold otherwise would potentially create almost endless liability for schools and the municipalities that oversee them.

But there is a narrow - and important - exception to this rule: "***when the school releases a child without further supervision into a foreseeably hazardous setting it had a hand in creating***." *Ernest v. Red Creek Cent.*

Continued on page 3

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

"The plaintiff's inability to prove that the defendant intentionally procured the breach, and that but for the defendant's actions, the contract would have remained in force is often fatal to a tortious interference claim."

Law Offices of Jonathan M. Cooper

Long Island

483 Chestnut Street
Cedarhurst, NY 11516
516.791.5700

New York City

135 West 29th Street
Suite 801
New York, NY 10001
(By Appt. Only)

We Appreciate Your Referrals!

How One New York Company Lost Its Tortious Interference Claim – Even Though It was Unopposed

Back in August, I wrote about the Most Formidable Defense to a Tortious Interference Claim in New York: justification. In other words, as long as a defendant can show that they induced Company A to break their agreement with Company B for legitimate economic reasons, the tortious interference claim will likely fail.

But, as pointed out in *Omni Consulting Group, Inc. v. Marina Consulting Group,* a New York Federal Court decision from that was published in the January 19 edition of the New York Law Journal, there is another defense to a tortious interference claim that is perhaps more common, yet equally lethal:

The plaintiff's inability to prove that the defendant intentionally procured the breach of contract, and that but for the defendant's actions, the contract would not have been breached.

In dismissing the tortious interference claim, the *Omni* Court stated as follows:

> "[The third party with whom plaintiff had the contract] came up with the idea of breaking the Master Agreement on his own. He told [defendant], without any prompting, that he would "work things out" with plaintiff to allow for a direct relationship with [defendant].
>
> "The very fact that [the third party] had to tell [defendant] that he would "work things out" implies that [the third party] hesitated to hire [plaintiff]. [Defendant] thus never suggested or encouraged any contractual breaches; it merely took advantage of an idea that [the third party] carried forward on his own."

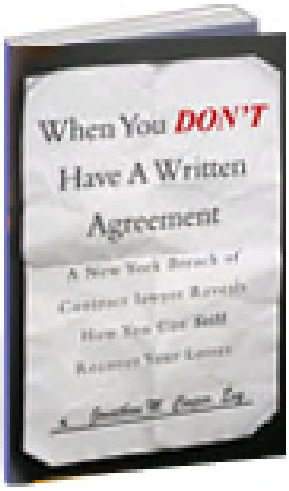
Somewhat ironically, as suggested in the title of this post, this claim was dismissed despite the fact that the defendant had defaulted, and not opposed the claim at trial.

That result should underscore some of the difficulty inherent in proving all of the necessary elements of a tortious interference claim under New York law.

When You Don't Have a Written Agreement –

(How You Can Still Recover Your Losses)

by Jonathan M. Cooper



This **FREE Book,** which explains how you can recover your losses if you've been wronged by someone else's breach of contract in New York, but you didn't memorialize all of the terms you meant to in your agreement, is available for download directly from:

www.BreachOfContractBook.com

How a NY School Can Be Held Negligent – Even for Off-Premises Incidents

cont'd from page 1

School Dist., 93 N.Y.2d 664, 717 N.E.2d 690, 695 N.Y.S.2d 531 (1999). In those cases, a school may still be held liable for accidents that occur outside the school's orbit of authority.

In *Ernest*, the nine-year-old infant-plaintiff was dismissed from his second grade class at Cuyler Elementary School, which was part of a larger school district. Like the other students at his school, he had to cross the county highway where the school was located highway in order to get home. But when he attempted to cross on that fateful day, he was hit by a truck and severely injured.

In reversing the trial and appellate courts' orders dismissing the negligent supervision claims against the school district which were based upon the fact that the accident occurred off of school grounds and after school hours, the Court of Appeals distinguished this case from the general rule, and held as follows:

> "*MacDonald* stands for the proposition that a school district's duty of care requires continued exercise of control and supervision in the event that release of the child poses a foreseeable risk of harm …
>
> "Here, [the infant-plaintiff] was not released to a safe spot but to a foreseeably hazardous setting partly of the School District's making. Thus, while a school has no duty to prevent injury to schoolchildren released in a safe and anticipated manner, the school breaches a duty when it releases a child without further supervision into a foreseeably hazardous setting it had a hand in creating."

"The school breaches a duty when it releases a child without further supervision into a foreseeably hazardous setting it had a hand in creating."

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.*

Study Finds that Drivers of "Poor" Safety-Rated Cars 3 Times More Likely to Die in Side-Impact Crash

In a study that was just released analyzing the dangers posed by side-impact crashes, the Insurance Institute for Highway Safety found that drivers of vehicles that received the consumer group's "Poor" rating would be 3 times more likely to die in a side-impact crash than drivers of cars that received one of the Institute's "Good" ratings.

As noted by the study, side-impact crashes tend to pose a far greater risk of serious injury or death because the sides of the vehicle have far less material to absorb crash energy - a factor that is particularly important in protecting the passengers in the vehicle. In that regard, while side air bags are helpful, they still cannot prevent the degree to which the other vehicle in the crash penetrates into the vehicle's passenger compartment.

This concern is especially apparent when an S.U.V. collides with a sedan, because the S.U.V.'s front bumper is high up on the sedan door, and thereby affecting the main body parts of the sedan passengers, such as their abdomens and chests.

The bottom line of this study is this: before purchasing or leasing a vehicle, choose one with a "Good" safety rating from the Institute.

LAW OFFICES OF JONATHAN M. COOPER
483 Chestnut Street Cedarhurst, New York 11516-2019

Phone:
516.791.5700

Fax:
516.791.8188

E-mail:
jcooper@JonathanCooperlaw.com