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Recommended Reading

With the upcoming holidays, I thought I would take some liberty, and depart from the normal genres of reading that I recommend, and go with a children's book:

Written from a very thoughtful mother's perspective, "I Love You the Purplest" by Barbara M. Joesse is one of the best and most beautifully written books on sibling rivalry that I've ever seen.

What's remarkable about this book is the way that the mother manages to defuse the rivalry while encouraging and complimenting her children by showing a genuine appreciation for their unique, individual talents.

When Lawyers Try to Defend the Indefensible

In slamming defense attorneys for deliberately withholding critical information regarding a specific issue in a civil rights case, a federal judge from the Southern District of New York recently ordered the defendants and their attorneys **to pay the plaintiff's legal fees incurred over the past 1-½ years litigating that issue** (which had previously been rendered moot), stating:

"I think it plain that [defendants' counsel's] conduct cannot be excused. The able [attorney] who argued the case, and was not involved in the underlying facts, had the unenviable task of defending the indefensible ... [The defendants' attorneys'] rationalizations entirely disregard [their] professional obligation as officers of the Court to notify their adversaries and the Court that ... the focal point of the ongoing litigation, had been rescinded.

"I conclude without difficulty that [the defendants' attorneys'] conduct constitutes a quintessential example of 'neglect or reckless failure to perform [their] responsibility as an officer of the court' to notify opposing counsel and this Court of a material change in the underlying litigated facts."

From my vantage point, it is refreshing to see a judge take a tough stance against parties that play fast and loose with the rules and their ethical obligations.

When Just a Website Can Render You Subject to a NY Court's Jurisdiction

As I wrote nearly one year ago in "[E-mail Mistakes That Can Cost Your Small Business in Court](#)," **there is no such thing as an innocuous e-mail**. Not anymore.

In [Grimaldi v. Guinn](#), the plaintiff sued the Pennsylvania-based defendants for [breach of contract](#), [business fraud](#), and under New York's deceptive advertising statute, General Business Law § 349, because he handed over his vintage 1969 Camaro to the defendants to add a specialized manifold and carburetor assembly.

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

Judge Dismisses Worker's Accident Claim – and Disregards Jury's Verdict

Like it or not, you have to respect when a judge issues a courageous decision.

In [Osorio vv. Kenart Realty, Inc.](#), the apprentice-plaintiff sued for the [personal injuries](#) he sustained when the flammable glue he and his supervisor were using caught fire. Following a jury verdict that found the defendant property owner responsible (at least in part) for the [worksite accident](#), the Brooklyn trial judge did something that is quite rare: he granted the defendant's motion to set aside a jury verdict as contrary to the weight of the evidence, and dismissed the case.

In granting the motion, the Court held that the plaintiff did not prove that the defendant had created the dangerous or defective condition; nor, according to the Court, did the defendant supervise the plaintiff's work that led to the accident. The Court then summarized the legal basis for its decision as follows:

"Certainly, the defendants had a duty the maintain their premises in a safe condition, but they did not have the onus to guard against hazards inherent in the plaintiff's work nor hazards caused by a condition that plaintiff was engaged to repair nor hazards which were readily observed by plaintiff considering his age, intelligence, and experience ...

"This Court acknowledges that when there is an 'inherently dangerous' situation a defendant is precluded from asserting the independent contractor theory ... However, to maintain such a position the plaintiff must provide proof of the dangerous nature of the work and that the danger was foreseeable. Here, plaintiff did not shoulder his burden of proof."

What remains to be seen is whether the plaintiff's attorneys will appeal. My guess? They almost certainly will, if for no other reason than to try to save face with the client, who's got to be wondering how his lawyers won a trial only to have the case dismissed because they didn't marshal the proof necessary to sustain the victory.

"Like it or not, you have to respect when a judge issues a courageous decision."

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This publication is intended to educate small businesses and individuals about general litigation matters, as well as personal injury and defective product issues. It is not intended to be legal advice, and does not constitute an attorney-client relationship until we have a written agreement. To discuss your particular issues or case, please contact the Law Offices of Jonathan Cooper at 516.791.5700.

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

When Just a Website Can Render You Subject to NY Jurisdiction cont'd from page 1

Months later, his Camaro, which was valued at over \$100,000 beforehand, was returned to him in bags.

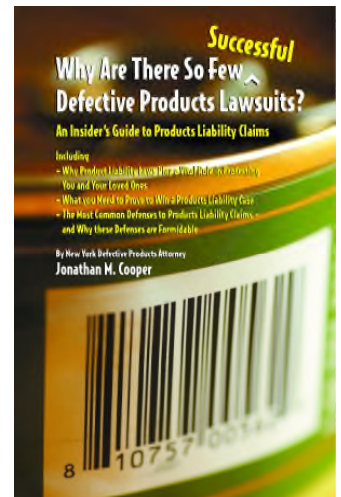
In response to the plaintiff's lawsuit, the defendants moved to dismiss on the grounds that the New York court lacked personal jurisdiction over them because they had no meaningful contacts with New York State. In affirming the trial court's denial of the defendants' motion, New York's Appellate Division, Second Department reiterated the standard for conferring jurisdiction on a foreign (i.e., non-New York-based) defendant based on contacts that were made via the internet:

"The purposeful creation of a continuing relationship has been a contributing factor in finding sufficient contacts to justify the exercise of long-arm jurisdiction ... If the foreign company maintains an informational Web site accessible to the general public but which cannot be used for purchasing services or goods, then most courts would find it unreasonable to assert personal jurisdiction over that company ...

"However, passive Web sites, when combined with other business activity, may provide a reasonable basis for the assertion of personal jurisdiction ... If a Web site provides information, permits access to e-mail communication, describes the goods or services offered, downloads a printed order form, or allows online sales with the use of a credit card, and sales are, in fact, made ... then the assertion of personal jurisdiction may be reasonable."

From the litany of cases from other jurisdictions cited by this opinion, it seems rather clear that this standard is equally applicable in other states as well. Therefore, when establishing your web presence and/or contacts with prospective clients or customers, it is critical that you remain cognizant of the jurisdictional implications of your communications.

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.



"When establishing your web presence, it is critical that you remain cognizant of the jurisdictional implications of your communications."

Shocker: Toyota's "Fixes" of Gas Pedal Defects Apparently Don't Work

Please pardon the sarcasm, but I just couldn't help myself.

On March 3, [MSNBC reported](#) that the NHTSA is still receiving numerous complaints from Toyota drivers that after having taken their Toyotas in to their dealerships for repair in response to the massive [defective product recall](#), their cars are still accelerating for no apparent reason.

Can anyone honestly say that they are surprised by this?

Unfortunately, it looks like my prediction in "[How Toyota's Efforts to Conceal Its Design Defects Became a Whole Web of Lies](#)" has come true: No one trusts Toyota when they say the problems are fixed, and more importantly, **NO ONE SHOULD.**

Stewart Stogel of Mt. Vernon, N.Y. speaks about the problems with his 2009 Toyota Camry while sitting in a parking lot in New Rochelle, N.Y. Wednesday, March 3, 2010. Stogel was preparing to take his Camry back to a Toyota dealership today after, he states, previous repairs to fix an acceleration problem have not solved the issue with his car. (AP Photo/Craig Ruttle)



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