LAW OFFICES OF JONATHAN M. COOPER

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Inside This Issue

Grace Under Pressure

In the course of my communal and professional capacities, I get to see people under some difficult circumstances, some of which are trying in the extreme.

Last week was one such circumstance. I had the privilege of taking my 10 year-old daughter to visit one of her good friends and classmates, who is at a rehab facility trying to recover from a very rare medical condition.

Despite the craziness of dealing with her own daughter's situation (as well as managing her other children at home and her job), the mother of this sweet girl spent over 20 minutes making sure that another young patient, whose parents weren't there, found the food he was looking for, and that he had a fork, knife, napkin and cup of his preferred drink.

While it certainly wasn't the purpose for the visit, I would gladly travel twice the 3.5 hours' drive for this kind of inspiration.

A Hot Coffee Burn Case in New York – And it's Not "Frivolous"

As hard as it may be to believe, there *is* such a thing as a legitimate personal injury/negligence claim that involves a plaintiff being burned by hot coffee; The mere fact that an incident involves hot coffee doesn't inherently mean that the claim is without merit, or "frivolous." By the same token, the mere fact that a child was awarded money under these circumstances doesn't in and of itself constitute concrete proof that our jury system is flawed.

Let me explain.

A number of months ago, a Staten Island court returned a $600,000 judgment in favor of a child who was injured at a social function when a 40-cup coffee urn that was placed precariously by the defendant catering hall, tipped over onto a child, causing the child to suffer severe second and third-degree burns to her pelvic area, and required her to spend 10 days in a special burn unit of a New York hospital. Unlike the infamous McDonald's hot coffee case, even the defendant in this case did not contend that the child had anything to do with the placement of the hot coffee. (Interestingly, the facts of this case are not that different than this case involving a burn from hot soup that we handled.)

And here's why this award has no bearing on our view of New York juries: Since the caterer's insurer failed to answer the complaint in a timely manner, the award was made by a referee - not a jury - following a hearing on damages.

How to Prove Your NY Negligence Case When You're Not Sure How it Happened

A recent - and sad - story out of Alabama, where a young child with cerebral palsy returned home crying in pain, leading the child's mother to discover that her son's leg had been broken during the school day, gives rise to the following important question:

What, if anything, can you do if your child is injured while at school or daycare, but no one witnesses how the injury occurred? Is there any way that your child can recover damages (including ongoing medical care that is necessitated by - and resulting from - the injury)?

Although in most circumstances (at least under New York law), the answer will

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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.JMCooperLaw.com or via e-mail at jmcooper@jmcooperlaw.com

"A corporate officer ... is not liable for a breach of contract unless it clearly appears that he or she intended to bind himself or herself personally."

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We Appreciate Your Referrals!

Why Corporate Officers Aren't Personally Liable for Guarantees in New York

Given the protections afforded by the corporate veil, creditors (i.e., those who are owed money under existing agreements) are often frustrated when their bills go unpaid, as they suspect (or know) that the other side to the contract can hide behind these protections.

But what if the agreement seems to hold the corporate officers of the debtor personally liable for the corporate debts? Under New York law, even that may not be enough to pierce the veil and allow you to pursue (successfully) the corporate officer(s) in their individual capacit(ies).

Here's why:

> "A corporate officer who executes a contract acting as an agent for a disclosed principal is not liable for a breach of the contract unless it clearly appears that he or she intended to bind himself or herself personally" (*Stamina Prods., Inc. v Zintec USA, Inc.*, 90 AD3d 1021, 1022). There must be "clear and explicit evidence of the agent's intention to substitute or superadd his personal liability for, or to, that of his principal'" (*Star Video Entertainment v J & I Video Distrib.*, 268 AD2d 423, 423-424, quoting *Savoy Record Co. v Cardinal Export Corp.*, 15 NY2d 1, 4; *see Yellow Book Sales & Distrib. Co., Inc. v Mantini*, 85 AD3d 1019, 1021)."

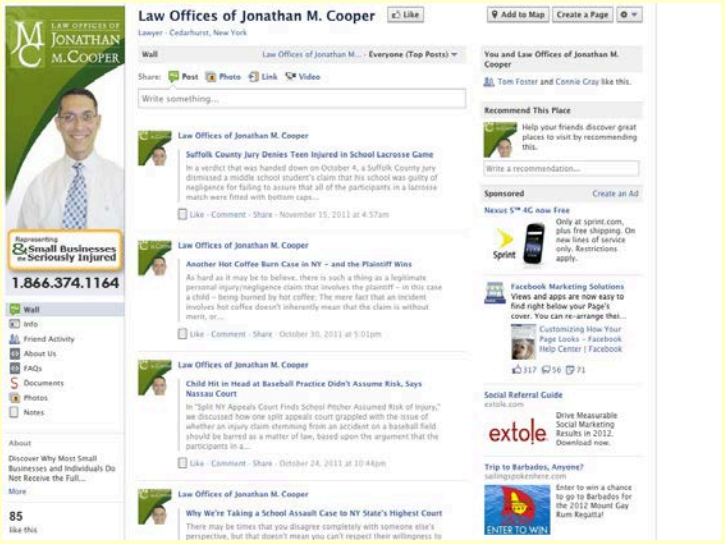
Following that premise, New York's Appellate Division, Second Department recently reversed a Nassau County trial court's holding in favor of a creditor allowing them to hold an officer of a corporate debtor individually liable for the corporate debt, and instead dismissed the claim. In fact, in this case, *Ho Sports, Inc. v. Meridian Sports, Inc.*, the appellate court went to the unusual step of re-opening an earlier decision for the specific purpose of holding insufficient to create a personal guarantee the clause in the agreement stating "[a]ny married person who signs this guaranty hereby expressly agrees that recourse may be had against that person's separate property for all of that person's obligations under this guarantee."

Charity Giveaway!

For every new "Like" we get on our firm's Facebook page, we will donate $1.00 to a local charity that provides food and clothing to families and individuals in need.

I know the people overseeing this charity, and **100% of the proceeds go to these needy families.**

The url to "Like" us is below:



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How to Prove Your NY Negligence Case When You're Not Sure How it Happened

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be no, nothing realistically can be done for this child to be fairly compensated, there is an exception to this general rule.

It's where the sole explanation for the accident is the school's negligence (or, in legal terms, "res ipsa loquitur").

As noted in "Another Way to Prove Your Negligence Case Under NY Law," New York's courts have laid down strict prerequisites before this doctrine can be applied:

- "the event must be of a kind which ordinarily does not occur in the absence of someone's negligence;
- it must be caused by an agency or instrumentality within the exclusive control of the defendant; and,
- it must not have been due to any voluntary action or contribution on the part of the plaintiff."

"When you're not sure how the accident occurred, there are rare circumstances where you can still recover under New York law."

In the case of very small or severely disabled children, this doctrine is more readily applicable than in other circumstances, because such children will more easily satisfy the first and third categories than the general populace. And the reason for this is straightforward: these classes of claimants will often be incapable of meaningfully contributing to the happening of an accident (such as a passenger in a car), and are the means for the accident will often be in the exclusive control of their caretaker(s). The toughest criteria to meet will then remain #1, which is proving that the accident is of a kind that would not normally occur unless someone was negligent.

***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.*

Safety 1st Recalls Over 900,000 Defective Child Safety Locks

After receiving over 200 reports that their child safety locks failed - miserably - in fulfilling their essential purpose (one important way that you can prove a defective products lawsuit under New York law) - to keep small children from getting into cabinets with hazardous household products, such as oven cleaner, dishwasher detergent and other household cleaning products (including some children who swallowed these products), Dorel Juvenile Group has voluntarily recalled roughly 900,000 of its Safety 1st Push 'N Snap cabinet locks.

Here's an interesting question: Why did it take over 200 complaints before these products were recalled?

Given the cost of this item - which ranges from $2 to $4, it should come as no surprise where this item was manufactured: That's right - overseas in China.

In any event, here's a picture of the packaging for these products:

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