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PRECEDENT-SETTING CASE RESULTS

- Bostany v. Trump, 127 A.D.3d 435 (Appellate Division, First Department, 2015). The Appellate Division vacated an award in favor of Trump for more than $2,000,000 in claimed attorneys' fees, allowable under his lease with a commercial tenant, in a case where Trump had also obtained a judgment for $400,000 against the tenant who had withheld rent. The tenant had not been evicted, actually or constructively, and was not entitled to withhold. The case involved water damage in the luxury office penthouse atop The Trump Building at 40 Wall Street. The tenant was also awarded $45,000 because Trump refused to fix the leak in the roof which caused the damage. As a result, the Appellate Division held that Trump was not the "prevailing party" and was not entitled to contractual attorneys' fees in spite of his judgment. The tenant had also argued that Trump was not entitled to attorneys' fees as an equitable matter because he had obtained interest on his entered judgment for withheld rent at an alleged criminally usurious rate in excess of 25% (excessive interest later stricken by the trial court), but the Appellate Division did not comment on this argument.
- Bostany v. Trump, 73 A.D.3d 479 (Appellate Division, First Department, 2010). The Appellate Division decided that Trump could be liable for water damage caused by an allegedly defective roof at 40 Wall Street, even though Trump did not own the building personally. This was because Trump represented to the public that he was in charge by naming the premises "The Trump Building," by signing the lease on behalf of the subsidiary which owned the building while sitting in his office at The Trump Tower, and by employing some of the persons responsible for maintaining the allegedly defective roof.
- Nonnon v. City of New York, 32 A.D.3d 91 (Appellate Division, First Department, 2006). In order to prove that persons developed cancer as a result of carcinogens in a New York City-owned landfill, it was not necessary to show that these persons each received doses of carcinogens sufficient to cause cancer, as previously had been the law. In this landmark case, the Appellate Division decided that it was sufficient for plaintiffs to demonstrate that cancer rates in general were higher in the areas close to the landfill, where the plaintiffs lived.
- Caldwell v. Cablevision, 20 N.Y.3d 365 (New York Court of Appeals, 2013). Experts are allowed to charge fees based upon their skill for their testimony, even though these fees bear little resemblance to the actual time which they devote to the testimony. However, if a witness is testifying simply as to the facts which he or she observed, the fee may not exceed the reasonable worth of the time spent measured by the general rate of pay in the marketplace. In this case, the Court of Appeals decided that, where a person with expert credentials testified only to facts, and performed no expert analysis, a fee of $10,000 for an hour of testimony was excessive, and the jury should have been told that the overpayment could have resulted in bias.
- Alami v. Volkswagen, 97 N.Y.2d 281 (New York Court of Appeals, 2002). A person generally may not recover damages for injuries which occur while he or she was engaged in a criminal act. In this landmark case, the driver of a car was intoxicated, and this constituted a crime. His intoxication caused the vehicle to collide with a pole. However, his injuries allegedly would not have been fatal if the vehicle had been equipped with a driver restraint system that was not defective. As a result, his widow was allowed to sue Volkswagen because of his death, notwithstanding his crime of driving while intoxicated.
- King v. Fox, 7 N.Y.3d 181, (New York Court of Appeals, 2006). A contract that is grossly unfair to one party may still be approved by that party if he or she does so with full knowledge of the facts and bargaining power equal to the opposing party. However, when the contract is between an attorney and client, this case decided that such approval (or ratification) can almost never prevent the client from avoiding a grossly unfair agreement.
- Morgan v. State (Siegel v. City), 90 N.Y.2d 471 (New York Court of Appeals, 1997). Persons who are injured by someone else's negligence while participating in athletic activities cannot obtain damages for their injuries if this negligence was part of the inherent risk of the sport in question. This is the doctrine of primary assumption of risk. In this landmark case, the Court of Appeals decided that the doctrine does not apply to negligence in maintaining the safety of the playing surface or other implements of the sport.
- Allstate Insurance Company v. Young, 265 A.D.2d 278 (Appellate Division, Second Department, 1999). The insurance company in this case denied coverage to its insured based upon amendments to its policy contained in new policy jackets and inserts. However, the insured claimed that he had never received the jackets and inserts. The insurance company had made a general mailing to all of the policy holders on its mailing list. However, without proof that the insurance company had specifically mailed the jackets and inserts to the insured in question, the insurance company could not disclaim coverage.
- Swiderska v. NYU, 10 N.Y.3d 792 (New York Court of Appeals, 2008). Under New York's Labor Law (§240), a worker may obtain damages from the owner of the premises where he or she is injured, without having to prove negligence, if the injury involved a fall from a non-trivial elevation. This law does not apply to workers involved in routine maintenance activities, such as cleaning. In this case, the Court of Appeals created an exception to the law, deciding that window cleaning work is not routine when it is being performed as part of a commercial cleaning operation.
- DaSilva v. Suozzi, English, Cianciulli & Peirez, P.C., 233 A.D.2d 172 (Appellate Division, First Department, 1996). The defendant law firms were held to be liable to the plaintiff for his damages where the plaintiff lost his real estate because the lawyers failed to file a timely lis pendens, and also lost his claim for damages because of a failure to include that claim in the complaint.
- Kushner v. King, 126 A.D.2d 466 (Appellate Division, First Department, 1987). The boxing promoter, Don King, agreed to pay a 60% commission to plaintiff and his business associate, Nick Rattenni, if they were able to sell King's promotional rights to a boxing match between Larry Holmes and Gerrie Coetzee. Rattenni sold those rights to another boxing promoter and King received a non-refundable deposit of $750,000. The Holmes-Coetzee fight was cancelled and the Appellate Division decided that plaintiff stated a good case for his commission because the deposit was received as part of the sale price for the "promotional rights," even though the fight never occurred.
- D'Amico v. Archdiocese of New York, 95 A.D.3d 601, Appellate Division, First Department, 2012). Property owners are not liable for injuries caused to pedestrians by "trivial defects" in their public sidewalks. However, the Appellate Division decided in this case, for the first time, that a half-inch defect was not clearly "trivial" because a New York City regulation states that this constitutes a "substantial defect," which the property owner is required to repair.

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PRECEDENT-SETTING CASE RESULTS

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- Bryant v. New York City Housing Authority, 69 A.D.3d 488 (Appellate Division, First Department, 2010). In this case, the City of New York refused to produce relevant documents requested by the plaintiff over a two-year period. The Appellate Division decided that the proper remedy was to hold the city liable for damages without the necessity of a trial.
- Weiss v. Chrysler, 515 F.2d 449 (United States Court of Appeals, Second Circuit, 1975). A plaintiff does not have to present all of his/her evidence at the beginning of the trial (the case in chief). Evidence can be reserved for use in rebuttal after defendant presents its case, as long as that evidence was not necessary to constitute a strong enough case for the jury to consider (a prima facie case).
- Woolfalk v. New York City Housing Authority, 263 A.D.2d 355 (Appellate Division, First Department, 1999). Landlords who know that a child under the age of seven is living in their apartments are automatically charged with notice of any hazardous lead conditions existing in those apartments, whether or not they have actual notice of those conditions.
- DeSouza v. Dayton T. Brown, 288 A.D.2d 447 (Appellate Division, Second Department, 2001). Under the absolute liability provisions of the Labor Law (§240), there is no need to prove negligence on the part of the owner of the premises in order to recover damages for injuries caused by a worker's fall. In this case, the Appellate Division extended the law to cover a case where the worker's fall was caused by the actions of a co-worker.
- Perez v. Paramount Communications, 247 A.D.2d 264 (Appellate Division, First Department, 1998). The plaintiff in this case did not formally serve a summons and complaint on the defendant before the statute of limitations had expired. However, because that plaintiff had made a motion to add the defendant to an existing case before the statute had expired, and had attached a copy of the summons and complaint to those motion papers, the Appellate Division decided that the defendant could be sued.
- Cosban v. New York City Transit Authority, 227 A.D.2d 160 (Appellate Division, First Department, 1996). Under the absolute liability provisions of the Labor Law (§240), there is no need to prove negligence on the part of the owner of the premises, where a worker is injured by a fall. In this case, the Appellate Division decided that, where the worker was injured by a toppling crane, there was no need to show why the crane had toppled.
- Georges v. American Export Lines, Inc., 77 A.D.2d 26 (Appellate Division, First Department, 1980). Where maritime law applies, if a ship is unseaworthy and this causes injuries to a seaman, he may recover damages for those injuries. In this case, the Appellate Division decided that the ship in question was unseaworthy because a member of the crew had a vicious temperament and assaulted the plaintiff seaman.
- Rivera v. The Bronx Lebanon Hospital Center, 70 A.D.2d 794 (Appellate Division, First Department, 1979). Plaintiff's husband died following surgery as a result of the alleged negligence of the defendant surgeon, a private physician. The hospital argued that it could not be held liable for the negligence of a private physician, but the Appellate Division decided that, in this case, the deceased husband had nothing to do with selecting his surgeon, who was assigned to treat the husband by the hospital's chief of orthopedic service.
- Berk v. Schenck, 122 A.D.2d 823 (Appellate Division, Second Department, 1986). The plaintiff in this case sustained serious head injuries in a motor vehicle accident. The plaintiff had failed to secure his seatbelt at the time of impact. The trial court reduced plaintiff's damages by 95% because of the failure to secure his seatbelt, but the Appellate Division reversed and decided that, because plaintiff's head hit the side of the car, he would have been injured to the same extent if his seatbelt had been on.

OTHER CASES OF NOTE

- Pollicina v. Misericordia Hospital Medical Center, 82 N.Y.2d 332 (New York Court of Appeals, 1993).
- Slotkin v. Citizens Casualty Co. of New York, 614 F.2d 301 (United States Court of Appeals, Second Circuit, 1979).
- Reed v. City of New York, 304 A.D.2d 1 (Appellate Division, First Department, 2003).
- Salazar v. City of New York, 302 A.D.2d 580 (Appellate Division, Second Department, 2003).
- Colicchio v. The Port Authority of New York and New Jersey, 246 A.D.2d 464 (Appellate Division, First Department, 1998).
- Hackworth v. WDW Development, Inc., 224 A.D.2d 265 (Appellate Division, First Department, 1996).
- Baume v. 212 E. 10th N.Y. Bar, Ltd., 222 A.D.2d 211 (Appellate Division, First Department, 1995).
- Makris v. Westchester Co., 208 A.D.2d 843 (Appellate Division, Second Department, 1994).
- Schwartz v. Cross Bay Excavators, Inc., 192 A.D.2d 593 (Appellate Division, Second Department, 1993).
- Widman v. Horwitz, 189 A.D.2d 812 (Appellate Division, Second Department, 1993).
- Elphage v. New York City Health & Hospitals Corporation, 185 A.D.2d 295 (Appellate Division, Second Department, 1992).
- Santangelo v. Raskin, 173 A.D.2d 458 (Appellate Division, Second Department, 1991).
- Ellinghusen v. Flushing Hospital & Medical Center, 143 A.D.2d 217 (Appellate Division, Second Department, 1988).
- Christopher v. St. Vincent's Hospital and Medical Center, 121 A.D.2d 303 (Appellate Division, First Department, 1986).
- Bucich v. City of New York, 111 A.D.2d 646 (Appellate Division, First Department, 1985).
- Felner v. Shapiro, 94 A.D.2d 317 (Appellate Division, First Department, 1983).
- Jalmsingh v. World Wide Marketers, Ltd., 81 A.D.2d 135 (Appellate Division, First Department, 1981).
- Bussanich v. United States Lines, Inc., 74 A.D.2d 510 (Appellate Division, First Department, 1980).
- Pereira v. A.D. Herman Construction Co., Inc., 74 A.D.2d 531 (Appellate Division, First Department, 1980).