FOCUS: INSURANCE LITIGATION

When an Accident is Just an Accident

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An accident is defined as "an unforeseen and unplanned event or circumstance" that occurs unintentionally and often results in injury.[1] "The term *accident* implies that nobody should be blamed, but the event may have been caused by unrecognized or unaddressed risk."[2] The happening of an accident alone, however, does not mean someone was negligent.

Many accident scenarios result in lawsuits as they present obvious issues of legal liability. The motor vehicle accident, for example, where Vehicle One runs a stop sign and T-bones Vehicle Two, calls into question the negligence of the driver of Vehicle One. The slip and fall on ice in a parking lot suggest that the premises owner may have been negligent. While these types of accidents may result in legal liability, there is a class of accidents that falls into the category of "everyday occurrences" that are simply not actionable.

New York Courts, including the Court of Appeals, have made it clear that the mere happening of an accident does not, in and of itself, establish liability of a defendant.[3] Those accidents which involve an accidental bump, trip, or some other unintentional contact (or maybe even non-contact) often fall within the class of cases for which liability does not attach. The Court of Appeals has long acknowledged that sometimes accidents "occur without anybody's fault amounting to negligence,...The law does not provide recovery for every accident. There is a large field of non-liability for injury."[4]

In order to establish liability, "[i]t is necessary to demonstrate both the existence of a legal duty and the breach of that duty, by an act or omission which falls well below the standard of care which may be expected of a reasonably prudent person in the same position."[5] In *Peralta v. La Placita Dominica Mkt. Corp.*, the plaintiff, a customer of the defendant's store, was injured when an employee stepped on his foot, causing him to fall.[6] The plaintiff in *Peralta* had taken a step to the right just prior to the employee stepping on his foot.

The Court in *Peralta* held: "The mere occurrence of an accident, standing alone, does not result in the imposition of liability. Stated otherwise, not every accident is compensable. In the usual case, it is the plaintiff's burden to demonstrate conduct which falls below the standard of care which one might reasonably expect from the hypothetical reasonably prudent person. This plaintiff has failed to do so."[7]

The *Peralata* Court noted:

> There are certain occurrences which one might consider sufficiently recurring as to be incidental to the usual routine of life in our society, and, while one might strive to avoid them, their occurrence is not necessarily actionable without some proof of negligence. A few examples come to mind—accidental bumping into another while walking or in a crowded airport or terminal; getting up from a table in a crowded restaurant and accidentally striking one with the back of the chair as one stood up; bumping into another customer with a shopping cart in a supermarket; accidentally stepping on the back of someone's foot while walking behind a person; or, as here, accidentally stepping on someone's foot as a person backed or turned into one's path.[8]

Kleiner v. Crystal Ball Group, Inc., adopted the *Peralta* Court's opinion. In *Kleiner*, the plaintiff, who was a guest at a wedding reception, was standing and speaking with another guest when the defendant Yanelis Rodriguez, an employee of the wedding venue, stepped backwards and bumped into the plaintiff, causing her to fall.[9]

The plaintiff in *Kleiner* commenced this action against Rodriguez and her employer, the defendant Crystal Ball Group, Inc., to recover damages for injuries she allegedly sustained as a result of the accident. The defendants moved for summary judgment dismissing the complaint. The Supreme Court granted the motion, and the plaintiff appealed.[10]

In *Kleiner*, the Second Department, relying on *Peralta, supra*, affirmed finding that the defendants established, *prima facie*, that the employee, Rodriguez, was not negligent in the happening of the accident as a matter of law and the plaintiff failed to raise a triable issue of fact.[11]

In *Weinstein v. Seawane Golf and Country Club, Inc.*, the plaintiff was at the defendants' premises, a country club, when the general manager of the club, who was standing next to a table with his back to the plaintiff, backed up and bumped into the plaintiff as she passed causing her to fall and sustain injuries.[12] Thereafter, the injured plaintiff, commenced a personal injury action against the defendants. The defendants moved for summary judgment dismissing the complaint, and the Supreme Court granted the motion. The plaintiffs appealed.[13]

The *Weinstein* Court affirmed finding: "Contrary to the plaintiffs' contentions, the defendants made a prima facie showing of entitlement to judgment as a matter of law by tendering evidence that [the general manager] was not negligent in the happening of the accident and that the defendants did not create a dangerous or defective condition in the placement of the table."[14] In opposition, the plaintiffs failed to raise a triable issue of fact.

In *Simmons v. The Stop & Shop Supermarket Company LLC*, the plaintiff claimed that she was tripped by a store employee as he bent down into the register lane in which she was walking. Video surveillance, however, showed the employee questionably bump the plaintiff as he encroached the lane next to his register where he was working.[15] The *Simmons* Court, after reviewing all the evidence including the enhanced video surveillance, concluded, "While it is not clear whether the Plaintiff and cashier ever even made physical contact, it is apparent that no negligence occurred here."[16]

There is a presumption that when a lawsuit is commenced arising out of an accident that someone is to blame. This is not always the case. Depending on the facts, and the evidence presented, there is a chance that no one is at fault and that the accident is just that: an accident.

Clearly, having witness testimony to corroborate the circumstances of the accident or having video surveillance showing the accident could support the argument that the accident is the type that falls within that "large field of non-liability for injury." If an accident on its face makes you scratch your head and ask, "Where's the negligence here?," there is a good chance it falls within the category of cases for which there is no recovery.

From a defense standpoint, time should be spent collecting evidence that supports your position. Locating, preserving, and authenticating video and even having video enhanced all go a long way to establishing that the accident is a common, everyday occurrence and not a negligent act. Locating witnesses who can confirm the circumstances surrounding the bump or trip event could bolster the argument that the accident was "incidental to the usual routine of life in our society, and, while one might strive to avoid them, their occurrence is not necessarily actionable without some proof of negligence."[17]

1. Accident, Merriam-Webster Dictionary (Revised Ed. 2022).
2. Wikipedia, the Free Encyclopedia, Accident, at http:// en.wikipedia.org/wiki/Accident (last visited Feb. 22, 2023).
3. *Lewis v. Metro. Transp. Auth.*, 64 N.Y.2d 670, 671(1984); *Scavelli v. Town of Carmel,* 131 A.D.3d 688, 690 (2d Dept. 2015).
4. *Naffky v. Yosovitz*, 268 N.Y.1d 118, 122(1935).
5. *Peralta v. La Placita Dominica Mkt. Corp.*, 170 Misc. 2d 340, 341, 656 (Sup Ct., Queens Co 1996).
6. *Id.* at 341.
7. *Id.* at 342.
8. *Id.* at 342-343.
9. *Kleiner v. Crystal Ball Group, Inc.*, 186 A.D.3d 588, 126 N.Y.S.3d 681 (2d Dept. 2020).
10. *Id.*
11. *Id.* at 589.
12. *Weinstein v. Seawane Golf and Country Club, Inc.*, 153 A.D.3d 582, 59 N.Y.S.3d 438 (2d Dept. 2017).
13. *Id.* at 582.
14. *Id.* at 582-583.
15. *Simmons v. Stop & Shop Supermarket Co. LLC.*, Sup. Ct., Dutchess Co., January 9, 2023, Davis, T., Index No. 53983/2019.
16. *Id.*
17. *Peralta*, 170 Misc. 2d at 342.

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