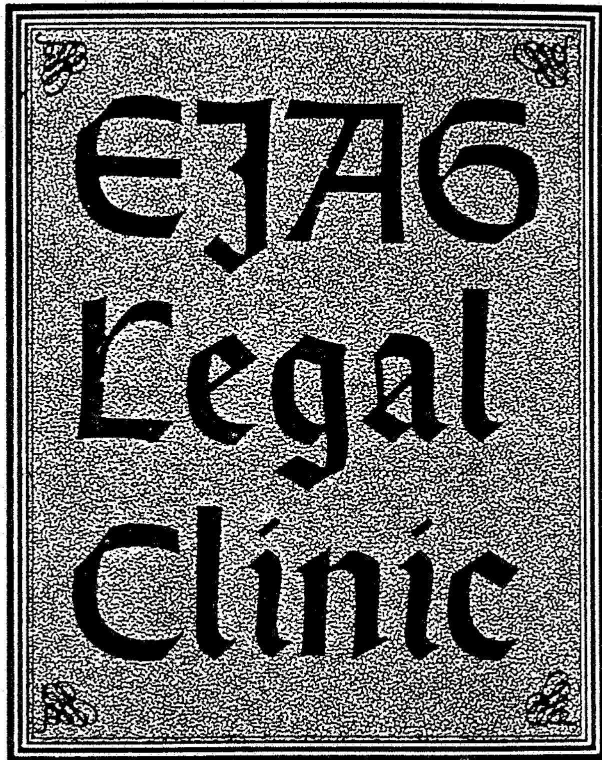


INCREASING THE RANGE OF POTENTIAL DEFENDANTS IN TRAFFIC ACCIDENT CASES

by LAWRENCE E. SAVELL

When one thinks of the typical automobile accident case, one has an image of a plaintiff (be he or she a driver or a pedestrian) suing an operator who has, through improper handling of a motor vehicle, caused the plaintiff to suffer injury. With a little more thought, one could imagine the scope of potentially liable parties expanding under the rubric of "products liability" to include a company that had produced a defective automobile whose faulty condition had caused the accident.

But how far can one go in his or her identification of potentially liable parties? What if, for example, the plaintiff (or defendant) believes that the accident could have been avoided if the municipality in which the accident took place had taken greater steps to protect the public through the use of road signs or traffic controls? What if the injured plaintiff had, at the time he or she was struck, been waiting at the side of a road for a tow truck that had somehow gotten lost? These precise questions have recently been raised by imaginative plaintiffs (and their attorneys) suing in New York and California state courts, and the reactions of these courts to such arguments have proven quite surprising.

MUNICIPAL LIABILITY

On July 20, 1978, Scott Lee Alexander was riding his motorcycle on Stewart Avenue, a winding road located in scenic Ithaca, New York [home of the author's undergraduate alma mater]. Suddenly, Mr. Alexander saw an approaching taxicab 10-15 feet down Edgecliff Place, a private road with an extremely steep incline to Stewart Avenue. These conditions, coupled with dense foliage on the roadside, provided drivers leaving Edgecliff with a limited line of sight. There was no stop sign or traffic control on Edgecliff. The cab, driven by defendant Frank D. Eldred and owned by defendant Terminal Taxi, Inc., without stopping, entered Stewart Avenue at a speed between 15 and 20 miles per hour and struck the plaintiff, throwing him 30 feet to the other side of the road and causing serious injuries to his right foot.

Alexander brought a lawsuit against Eldred and Terminal, and the City of Ithaca. At trial, an expert on highway safety stated unequivocally that there should have been a stop sign on Edgecliff.

Ithaca's Traffic Engineer, who was responsible for deciding whether traffic controls should be installed by the city, admitted that traffic counts had been conducted at the directly opposite intersection of Stewart and Thurston Avenues (where a stop sign had been installed) in 1960 and 1976, and that he had never seen the results of the latter study until after the 1978 accident. The engineer also stated that he never considered putting a stop sign on Edgecliff because he believed that the road, being a private street, was outside his and the City's jurisdiction.

The jury decided in Alexander's favor, finding him free of any contributory negligence, and awarding him $85,000. The jury found the City to have been 30 percent liable for the accident, with Terminal and Eldred 70 percent liable.

On appeal, the Appellate Division (New York's middle level appeals court) upheld the jury's decision and award (the trial judge had attempted to reduce the amount to $55,000).

The city then appealed once again, this time to New York's highest court, the Court of Appeals. The City put forward three grounds in support of its view that the verdict against it should be set aside. The court, in its November 20 decision in Alexander v. Eldred, found none of the City's arguments persuasive.

SHOULD THE COURTS DECIDE?

The city first asserted that its decision whether to install a stop sign was not "justiciable" - - in other words, it was not a decision which the courts should or could properly assess. The Court noted that this argument relied on the principle that courts generally will not substitute their judgement for governmental decisions regarding the allocation of public resources. The Court acknowledged its opinion in the 1960 case of Weiss v. Foote, regarding the "clearance time" programmed into traffic lights to allow all cars to travel through an intersection before cross-traffic was given a green light to proceed, which →

stated that judgements which the legislature has placed in the hands of experts should not be passed on by inexpert juries. Nevertheless, the Weiss court did not grant an absolute immunity to municipalities, noting that "liability for injury arising out of the operation of a duly executed highway safety plan may only be predicated on proff that the plan either was evolved without adequate study or lacked reasonable basis."

In Alexander, the Court concluded that the plaintiff had presented sufficient evidence to establish both inadequate study and an unreasonable basis for the City's traffic plan regarding the intersection in question. The Court pointed to the evidence that the City's Traffic Engineer: (1) had never seen a traffic count for that intersection that was under 18 years old and did not review a more recent study until after the accident; (2) conceded that the conditions required one to stop on Edgecliff before proceeding onto Stewart and that the New York Manual of Uniform Traffic Control Devices required installation of a stop sign in such a situation; and (3) asserted that nothing was done on Edgecliff because he believed the City had no power to install a stop sign on a private road. According to the Court, the last point - - that the City did not consider the merits of installing a stop sign because it believed it could not erect one - - was most critical, because it was inaccurate as applied to roads such as Edgecliff which were open to public traffic. Thus, the Court noted, although not every misjudgement as to the status of the law will expose a municipality to liability, where, as here, the applicable law is clear and there was an "utter lack of any basis in law" for the City's omission, the City's behavior was unreasonable.

THE NOTICE REQUIREMENT

The Court also quickly rejected the City's second argument that under a local law it could not be responsible for injuries caused by the absence of a stop sign because no prior written notice of any deficiency was given. Unfortunately for the City, such prior-notice laws refer only to physical defects in streets and sidewalks such as holes and cracks, and not to the failure to maintain or erect traffic signs.

CAUSATION

Finally, the Court similarly found unpersuasive the City's third argument, that as a matter of law the lack of a stop sign was not a "proximate cause" of the accident [although Judge Jasen, the lone dissenter in the Court's 6-1 vote, disagreed]. The Court noted that prior decisions had held that a municipality may be excused from liability when its conduct in maintaining a road could not be the proximate cause of an accident. Nevertheless, the Court distinguished the present case from those prior situations on the grounds that in Alexander there was neither a clear line of vision of the approaching cross traffic nor was the City's asserted negligence totally independent of the accident. The evidence indicated that a properly placed stop sign could have prevented Eldred from proceeding before he had stopped to see traffic on Stewart Avenue. Moreover, the City had not presented sufficient evidence to show the drivers' prior familiarity with the intersection in question so as to supersede the negligence of the City in not posting adequate warnings.

Thus, given Alexander's proof and the Court's disposition of the City's grounds for appeal, the Court affirmed the ruling of the Appellate Division.

TOWING THE LINE

On September 20, 1980, Seth Bloomberg was a passenger in a car driven by David Camblin on the Golden State Freeway in California. When Camblin's car developed engine trouble, the driver pulled over onto the shoulder of the road. At approximately 1:30 a.m., Cablin placed a call at a nearby callbox →

which was answered by the California Highway Patrol and transferred to the Automobile Club of Southern California.

Camblin and Bloomberg, both age 16, then returned to the car to await the Auto Club's emergency assistance. Unfortunately, the Club's tow truck, which was dispatched at approximately 1:30 a.m., failed to locate the stalled car. At about 2:25 a.m., an apparently intoxicated driver [see February 1985 issue, page 21] crashed his car onto the stalled one, causing Bloomberg injuries which eventually proved fatal.

Bloomberg's parents, Ronald and Barbara Bloomberg, sued, among others, the Auto Club, alleging that the Club's negligence had caused the death of their son. The trial court ruled that the plaintiffs failed to state a claim against the Club and dismissed the Club from the action because (1) the Club owed no duty of care to the boy and (2) even if it did, the criminal act of an intoxicated driver was a superseding, intervening cause cutting off the Club's liability as a matter of law.

The plaintiffs appealed this ruling to the California Second District Court of Appeal (intermediate level appeals court), which, in its unanimous November 13 opinion in Bloomberg v. Interinsurance Exchange of Auto. Club, reversed the lower court on both grounds.

DUTY OF CARE

The Court first found that the Club owed a duty of care to Seth. As the Court noted, although the question of duty must be decided on a case-by-case basis, the general rule is that everyone is required to use ordinary care to prevent causing injury to others. Moreover, prior decisions established the further rule that a defendant who enters upon an affirmative course of conduct affecting the interests of another is considered to have assumed a duty to act, and will consequently be liable for negligent acts or omissions because one who undertakes to do an act must do it with care.

Turning to the facts of the case, the Court observed that the Club's undertaking to send a tow truck clearly had affected Seth's interest. Seth and David had relied on the Club and had returned to their car to wait for the assistance. Had they not expected the Club to send help, they could have made other arrangements, such as calling their parents, a friend, or the police to drive them to safety. Thus, the Club had owed a duty of care to Seth.

CAUSATION

The Court concluded that the Club had contributed to Seth's risk of harm given the fact that he had relied on the Club for assistance and had consequently made no other arrangements for his rescue. As the Court noted in a prior case, "[a]nyone legally responsible for the victims of [an] accident being in their exposed position could [be] found to have contributed in a substantial way to the causation of the accident."

Nevertheless, the Club argued that even if a duty existed on the part of the Club, the actions of an intoxicated driver were a superseding, intervening cause of Seth's death. The Court rejected this argument as well.

Reviewing the applicable legal principles, the Court noted the rule that generally if the risk of injury might have been reasonably foreseeable, a defendant is liable. On the other hand, if an independent, intervening act occurs which is highly unusual or extraordinary, not reasonably likely to happen and therefore not foreseeable, it is considered a superseding cause and the defendant is not liable.

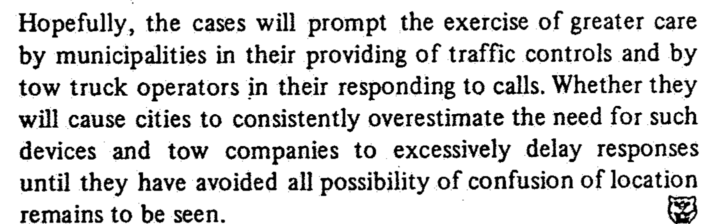
Turning once again to the facts of the present case, the Court concluded that the foreseeability of a drunk driver losing control of his vehicle and running into the disabled car was a question of fact, not law, and therefore one which could not be decided by the trial court in response to a motion to dismiss. The Court noted that "[a]mong the possible dangers awaiting stranded motorists is injury or death caused by other drivers. In particular, intoxicated drivers are to be expected late at night." Moreover, the Court observed, it is not uncommon" and "therefore foreseeable" for intoxicated or speeding drivers to lose control and crash into whatever may be alongside the road on which they travel.

LESSONS FROM THE CASES

The Alexander and Bloomberg cases illustrate that it pays for plaintiffs and their lawyers to thoughtfully and carefully consider which persons or entities to name in a traffic accident suit. In both cases, defendants in addition to the driver or owners of the vehicle which actually caused the injury (and which, incidentally, apparently had a "deeper pocket" than such driver or owner) were found to be potentially or actually liable.

The key obstacle to liability in both cases was the question of causation. Apparently, at least the two courts discussed here were willing to go far to find a cause-and-effect relationship.

Hopefully, the cases will prompt the exercise of greater care by municipalities in their providing of traffic controls and by tow truck operators in their responding to calls. Whether they will cause cities to consistently overestimate the need for such devices and tow companies to excessively delay responses until they have avoided all possibility of confusion of location remains to be seen.



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