

New York City Traffic Regulations As 'Some Evidence' of Negligence

It is well established that if a violation of a statute is established at trial, the jury will be charged that the offending party was negligent.¹ Thus, the non-offending party would be entitled to a directed verdict on the issue of negligence² in the case of a trial or summary judgment on a motion (proximate cause, of course, could still be an issue). In automobile cases, the statute generally violated would be a section of the New York State Vehicle and Traffic Law³ (hereinafter the VTL).

If the accident occurred within the five boroughs of the City of New York, an additional search must be made for any applicable sections of the New York City Department of Transportation Traffic Rules and Regulations,⁴ a more detailed and specific set of rules uniquely formatted to apply only to the city. While the regulations do not rise to the level of a statute, nonetheless, a violation of a regulation is considered "some evidence" of negligence and will be charged as such to the jury.⁵

The New York City Traffic Regulations run the gamut from basic prohibitions ("No person shall operate a vehicle in a manner that will endanger any person or property,"⁶ "No person shall sound the horn of a vehicle except when necessary to warn a person or animal of danger"⁷) to the enumeration of the 30-plus holidays on which street cleaning rules are suspended.⁸ It is important that the practitioner in any automobile case, be it plaintiff or defendant, scour the regulations to obtain a jury charge in her client's favor.

Pedestrian Accidents

A pedestrian in New York City may only cross a roadway at an intersection within a crosswalk.⁹ While a vehicle may proceed straight through or turn right or left on a green light, the driver must yield to pedestrians lawfully



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within the intersection.¹⁰ The critical question is the location of the pedestrian when a vehicle begins to turn.

In *Brito v. Manhattan & Bronx Surface Tr. Oper. Auth.*,¹¹ witnesses testified that the plaintiff was in the crosswalk after having been struck by a bus. Plaintiff sought to avail himself of New York City Traffic Regulation §30(a) (11 RCNY 4-03 [a][1][I]) which provides that

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a pedestrian must be "lawfully within the intersection" to have the right of way over vehicular traffic turning with a green light. While witnesses testified plaintiff was in the crosswalk after having been struck by the bus, the issue was where was he when the bus began to turn. Thus, a new trial was warranted since the defendant Transit Authority was unduly prejudiced from a charge of negligence which assumed the critical fact that the pedestrian was in the crosswalk and the regulation applied.

While pedestrians must cross with the light and in a crosswalk, operators are to yield to pedestrians in a crosswalk when no traffic signal is in place or it is not operating.¹² Notwithstanding any provision, an operator of a motor vehicle is charged with exercising due care to avoid colliding

with a pedestrian.¹³ In *Romeo v. DeGennaro*,¹⁴ a pedestrian was crossing the West Side Highway in violation of a regulation. While the court found the violation was evidence of negligence that violation alone was not sufficient to warrant summary judgment in favor of the defendant. Exactly how the accident occurred and, specifically, the driver's conduct were held to be questions of fact for the jury.

General Conduct

Any form of hitchhiking, soliciting rides,¹⁵ washing, polishing, cleaning or assisting in parking a car is expressly prohibited in New York City.¹⁶ Thus all forms of approaching a car with a squeegee in hand is unlawful. This also includes opening car doors, but excludes doormen of buildings.¹⁷

The basic rule in New York City is that the maximum speed limit is 30 miles an hour unless otherwise posted.¹⁸ U turns are expressly prohibited upon any street in a business district.¹⁹ The common practice of tailing a speeding ambulance or police vehicle is also taboo.²⁰ No operator shall follow any emergency vehicle traveling in response to an emergency call closer than 200 feet.

Parking

Parking, stopping and standing are common bases for litigation in New York City. Some little known regulations are vital to the defense of these cases. For example, a parking sign anywhere on a block is sufficient notice of a parking restriction for the entire block.²¹ The block is defined as "the area of a sidewalk between one intersection and the next." Thus, the "no sign" defense falls in most cases. No person shall park a vehicle at a broken meter for longer than one hour.²² Thus falls the "broken meter" defense.

Any form of "double parking" is expressly prohibited unless it involves a commercial vehicle in the act of delivering.²³ In some cases double parking is a violation of both the New

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Traffic

Continued from page 4

York Vehicle and Traffic Law (VTL §1202(a)(1)(a)) and the New York City Traffic Regulations 34 R.C.N.Y. §4-08(f).²⁴ This was the case in *Rios v. Washington*.²⁵ The plaintiff was unloading a double parked bus and was hit by a passing vehicle. As the parties did not dispute the bus was double parked, the bus owner and operator were found negligent as a matter of law. Justice Lucy Billings held that the double parking was not only evidence of negligence as a violation of a city traffic regulation, but as it was also a violation of the state statute, it was negligence per se.

The leading case on double-parking is the Court of Appeals decision in *Ferrer v. Harris*.²⁶ A four year old infant was struck as she attempted to cross the street between two parked cars on her way toward a double parked Mr. Soflee ice cream truck. The Court focused on the issue of proximate cause holding that the vehicle (the ice cream truck) had no right to be where it was at the time of the accident and that but for its position the accident would have not occurred.

In short, to say the least, the connection between the disobedience of the traffic regulation and the happening of the accident was logical and immediate enough to have permitted the jury to find that David's negligence was a substantial proximate cause of the event which produced the injury (Restatement, Torts 2d, §431).²⁷

In double parking situations, as in all negligence cases, the crucial link of proximate cause must always be established. Mere violation of a statute or regulation is not sufficient.

Ferrer is in contrast with *Murray v. Davis v. Rapid Armored Corp.*²⁸ where the question was whether the defendant's armored car vehicle was illegally double parked. It was held that this question must go to the jury thus precluding summary judgment.

Last, commercial vehicles, such as taxis or vans cannot park on residential streets any time between the hours of 9 p.m. and 5 a.m.²⁹

Second Impacts

Many auto accidents are the result of "second impacts." An original accident occurs or a car sustains a flat tire and, while vehicles are standing awaiting repairs, other cars crash into them. The New York City regulations are clear: a disabled vehicle must be pushed to the side of the road so that it obstructs traffic as little as possible and must be removed expeditiously.³⁰

In *Sigel v. Boedighleiner*,³¹ a two-vehicle accident occurred. The defendant's vehicles were stopped, blocking part of an intersection. The injured plaintiff's vehicle was struck by a third vehicle as plaintiff was attempting to get his vehicle around the blocked area. Plaintiff based liability on the defendants' failure to remove their vehicles pursuant to Section 4-08 of the city regulations and that this failure constituted the "proximate cause of the accident."

The court held that the defendants moved their vehicles as quickly as possible once the police and tow trucks arrived. Thus, the defendants did not stop, stand or park their vehicles in violation of the regulations. The action against the defendants whose cars were immobilized after the collision was dismissed.

In *Eliahan v. Rejour*,³² a vehicle operated by the defendant was sideswiped and swerved across a lane into a cement median divider. The vehicle stopped with its left fender against the divider and its body extending and blocking two lanes of moving traffic. Several

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other impacts by other vehicles followed, one involving the taxicab in which plaintiff was a passenger. The court held that in order for the defendant to avoid liability for failure to remove his vehicle from this dangerous place he had the burden of proving his vehicle was disabled and thus unable to move it before the second impact occurred.

Many "second impact" cases occur when vehicle owners are attempting to fix flat tires. This is expressly prohibited in two sections of the New York City Traffic Regulations. In Section 4-12(o)(2)³³ it states that no operator shall stop on roads enumerated in Section

407(d) (which comprises every major highway, expressway, parking and bridge in the city)³⁴ for the purpose of removing or replacing a flat tire. The regulation also provides that no changing of a flat tire is permitted unless the vehicle is completely off the roadway so that no part of the vehicle or person is exposed to passing vehicles. A second regulation³⁵ reiterates this prohibition for roadways of parks or parkways.

Conclusion

When handling an automobile case venued within the five bor-

oughs of New York City, the plaintiff and defense counsel must thoroughly review both the New York State Vehicle and Traffic Law and the New York City Traffic Regulations for relevant provisions. While the violation of the Vehicle and Traffic Law is negligence per se, a New York City Traffic Regulations violation will be some evidence of negligence. In some instances, this violation is enough to compel the jury to render a favorable verdict on the client's behalf.

1. *Martin v. Herzog*, 228 N.Y. 164, 126 N.E. 814 (1920).
2. N.Y. Pattern Jury Instr.—Civil 2:26.
3. Id.

4. New York City, N.Y. Rules, Tit. 34, Ch. 3.

5. N.Y. Pattern Jury Instr.—Civil 2:29 see also, *Elliot v. City of New York*, 95 N.Y.2d 730, N.E.2d 760 N.Y.S.2d 397 (2001).

6. 34 R.C.N.Y. §4-02 (c) (2004).

7. 34 R.C.N.Y. §4-12 (b) (2) (2004).

8. 34 R.C.N.Y. §4-08 (a) (7) (iii).

New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. In addition, if New Year's Day is independent Day or Christmas Day is officially observed on a day other than Jan. 1, July 4 or Dec. 25, respectively, Yom Kippur, Rosh Hashanah, Ash Wednesday, Holy Thursday, Good Friday, Ascension Thursday, Feast of the Assumption, Feast of All Saints, Feast of the Immaculate Conception, first two days of Succoth, Shemini Atzereth, Simchas Torah, Shavuot, Purim, Orthodox Holy Thursday, Orthodox Good Friday, first two and last two days of Passover, Idul-Pfir, Idul-Adah, Asian Lunar New Year, on all state and national holidays, on the following additional legal holidays: Martin Luther King, Jr.'s Birthday, Lincoln's Birthday, President's Day, Columbus Day—observed, Election Day, and Veteran's Day, and on such other days as announced by the Commissioner or his/her designee.

9. 34 R.C.N.Y. §4-04 (2) (2004).

10. 34 R.C.N.Y. §4-03 (a) (1) (2004).

11. *Brno v. Manhattan and Bronx Surface Transit Operating Authority*, 188 A.D.2d 253, 590 N.Y.S.2d 450 (1st Dept. 1992).

12. 34 R.C.N.Y. §4-04 (b) (2004).

13. 34 R.C.N.Y. §4-04 (d) (2004).

14. *Romeo v. DeCernaro*, 255 A.D.2d 208, 680 N.Y.S.2d 235 (1st Dept. 1998).

15. 34 R.C.N.Y. §4-04 (1) (e) (2004).

16. 34 R.C.N.Y. §4-04 (3) (2004).

17. 34 R.C.N.Y. §4-04 (4) (2004).

18. 34 R.C.N.Y. §4-06 (a) (2004).

19. 34 R.C.N.Y. §4-05 (b) (2004) also McKimney's Vehicle and Traffic Law §105 which defines a business district as "The territory contiguous to and including a highway when within any six hundred feet along such highway there are buildings in use for business or industrial purposes, including but not limited to hotels, banks or office buildings, railroad stations, and public buildings, which occupy at least three hundred feet of frontage on one side or three hundred feet collectively on both sides of the highway."

20. 34 R.C.N.Y. §4-07 (b) (2004).

21. 34 R.C.N.Y. §4-08 (a) (2004).

22. 34 R.C.N.Y. §4-08 (b) (3) (2004).

23. 34 R.C.N.Y. §4-08 (1) (1) (2004).

24. New York Vehicle and Traffic Law

(VTL) §1202 (a) (1) (a) prohibits double parking:

Except when necessary to avoid conflict with other traffic, or when in compliance with law or the directions of a police officer or official traffic-control device, no person shall: 1. Stop, stand or park a vehicle: a. On the roadway side of any vehicle stopped, standing or parked at the edge or curb of a street;

25. *Rios v. Washington*, 836 N.Y.S.2d 489 (Sup. Ct. Bronx County 2006).

26. *Ferrer v. Harris*, 55 N.Y.2d 285 (1982).

27. Id. at 293-294.

28. *Murray-Davis v. Rapid Armored Corp.*, 300 A.D.2d 96 (1st Dept. 2002).

29. New York Vehicle and Traffic Law (VTL) §4 R.C.N.Y. §4-08 (k) (2004).

30. 34 R.C.N.Y. §4-08 (g) (2004).

31. *Siegel v. Boedighleiner*, 294 A.D.2d 560, 743 N.Y.S.2d 137 (2d Dept. 2002).

32. *Eliahan v. Rejour*, 776 N.Y.S.2d 833 (2d Dept. 2004).

33. 34 R.C.N.Y. §4-12 (o) (2) (2004). The following roads are included: Belt Parkway System, Bronx River Parkway, Cross Island Parkway, Grand Central Parkway, Henry Hudson Parkway, Hutchinson River Parkway, Jackie Robinson Parkway, Lathrop Parkway, Mosholu Parkway Extension, Richmond Parkway, Shore Parkway, Southern Parkway, Brooklyn-Queens Expressway, Bruckner Expressway, Clearview Expressway, Cross Bronx Expressway and Extension, Franklin Delano Roosevelt Drive, Gowanus Expressway, Harlem River Drive, Long Island Expressway, Major Deegan Expressway, Martin Luther King Expressway, Miller Highway, Nassau Expressway, Northern Boulevard from Astoria Boulevard and Dinwars Boulevard, entrance to Linden Place Exit, Governor Thomas E. Dewey Thruway (New England Section), Prospect Expressway, Route 25A (Elevated Section) from 112th Place to 126th Street, Sheridan Expressway, Staten Island Expressway, Throgs Neck Expressway, Van Wyck Expressway, and Extension, West Shore Expressway, Whitestone Expressway, Brooklyn Bridge, Manhattan Bridge, Queensboro Bridge, Williamsburg Bridge, Alexander Hamilton Bridge, Eastern Boulevard (Bruckner Boulevard) Bridge, Hutchinson River Parkway Extension Bridge, Kosciuszko Bridge, Midtown Highway Bridge, Mill Basin Bridge, Third Avenue Bridge, Unimont Bridge, Manhattan and Bronx Unimont Bridge, Whitestone Expressway Bridge, Willis Avenue Bridge.

35. 34 R.C.N.Y. §4-14 (3) (2004).