

## Outside Counsel

# Pattern Jury Instructions And Automobile Accidents

The New York Pattern Jury Instructions (PJI) contain a number of provisions related to motor vehicle accidents. The pertinent section of the PJI will define the duty of care that is required of the parties and will often incorporate the relevant section(s) of the New York State Vehicle and Traffic Law (VTL).<sup>1</sup> Given the breadth of scenarios covered by the PJI, there is likely to be a relevant charge in most automobile accident cases. Both plaintiff and defense counsel have a duty to scour the PJI in search of the proper provisions.

### Motorists and Pedestrians

The PJI contains three sections pertaining to accidents that involve automobiles and pedestrians. Section 2:75 applies when a pedestrian is struck by a vehicle while crossing a roadway or highway.<sup>2</sup> The section assigns a general duty of care and offers conditions under which each party shall be found negligent.

If either party violated VTL section 1151—which provides that a driver shall yield to a pedestrian in a crosswalk and a pedestrian shall not suddenly leave a curb and walk into the path of a vehicle—the jury must find that party negligent.<sup>3</sup> (A violation of a VTL Section, a statute, is negligence per se). Where the crossing pedestrian was not within a crosswalk, the jury must consider Section 1152 of the VTL (a pedestrian shall yield the right of way to all vehicles) and a different set of duties is imposed.<sup>4</sup>

PJI Section 2:76 offers the charge for collisions between automobiles and pedestrians walking along a roadway.<sup>5</sup> Section 2:76A provides a variation for instances where the injured party was a bicyclist.<sup>6</sup> In both scenarios, the jury must decide if the defendant driver violated Section 1146 of the VTL, according to which "...every driver of a vehicle shall exercise due care



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to avoid colliding with any bicyclist [or] pedestrian...upon any roadway and shall give warning by sounding the horn when necessary."<sup>7</sup>

PJI 2:76 also requires that pedestrians act in accordance with VTL 1156(b)—which provides the course of action a pedestrian must take when no sidewalk is provided<sup>8</sup> (A pedestrian "shall when practicable walk facing traffic and move as far away as possible from the

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roadway when traffic approaches"), but explicitly cautions that this section does not apply in the City of New York. PJI 2:76A sets forth the duties imposed on bicyclists by VTL 1234(a), (they must travel with traffic and not interfere with the flow of traffic) but also notes that Section 1234(a) does not apply in the City of New York.<sup>9</sup>

Under PJI 2:76 and 2:76A, the jury must impart negligence upon a bicyclist, pedestrian or motorist who fails to act with the requisite level of care or was in violation of an applicable statute at the time of the accident.

### Accidents Involving Motorists

The PJI contains a number of provisions relating to collisions involving multiple automobiles

which are broken down into sections based upon the nature and location of the accident.

PJI 2:77 outlines the duty generally imposed on motorists toward other motorists. This section calls for drivers to operate their automobiles with reasonable care, taking into account the road conditions, weather and other factors typically considered by drivers.<sup>10</sup> Where a statutory violation is in issue, the applicable section of the VTL must also be charged.

PJI 2:78 provides instructions for collisions at uncontrolled intersections and offers a few general duties (each driver is required to "look with due care" before entering the intersection and use reasonable care to avoid a collision) before calling attention to Section 1140 of the VTL.<sup>11</sup> Under Section 1140, if two vehicles approach an intersection at different times, the second vehicle shall yield the right of way to the vehicle that has already entered the intersection. But, "[w]hen two vehicles enter an intersection from different highways at approximately the same time the driver of the vehicle on the left shall yield the right of way to the vehicle on the right."<sup>12</sup>

PJI 2:79 pertains to collisions at intersections controlled by traffic signals or police officers.<sup>13</sup> This instruction cites Section 1110 of the VTL, according to which the driver of any vehicle must obey the instructions of any official traffic-control device.<sup>14</sup> A caveat to PJI 2:79 notes that turning right at a red light where a "No Turn on Red" sign is present is a violation of VTL 1111 and constitutes negligence as a matter of law.<sup>15</sup> Additionally, it is negligent as a matter of law to enter an intersection after making a "right on red" without yielding the right of way.<sup>16</sup>

PJI 2:79A applies where the plaintiff's injuries are the result of a collision with an authorized emergency vehicle. According to this instruction, "[d]rivers of emergency vehicles are allowed to disobey certain traffic laws under some circumstances, but they are liable for injuries caused if they act with reckless disregard for the safety of others."<sup>17</sup>

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# Accidents

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If a collision occurs at an intersection controlled by a stop or yield sign, PJI 2:80 applies and requires the jury to make a two-step analysis. First, they must consider Section 1172 of the VTL, which instructs drivers where they must stop when a stop sign is present.<sup>18</sup> If the driver failed to stop as required (at a clearly marked stop line or, if none, at a point where the driver has a view of approaching traffic), he is to be found negligent. If the driver did stop appropriately, the jury must consider section 1142(a) of the VTL. Section 1142(a) states that a driver, after having stopped, must yield the right of way to an approaching vehicle if a collision might occur if he proceeds.<sup>19</sup> The jury must impart negligence upon a driver who violated VTL 1142(a).

If an accident took place on a through highway, the court must charge PJI 2:80A in conjunction with PJI 2:80.<sup>20</sup> PJI 2:80A notes that a driver traveling on a through highway has the right to assume that vehicles on intersecting streets will stop when a stop sign is present. But, the driver is still required to use reasonable care and may not proceed recklessly into the intersection.<sup>21</sup>

The obligation of the driver on an intersecting highway to stop does not apply if the "stop sign is not in proper position and sufficiently legible to be seen by an ordinarily observant person."<sup>22</sup> Where the stop sign was missing or obscured, the court will charge PJI 2:80B and the jury must deter-

mine whether the driver knew or in the use of reasonable care should have known that the intersecting highway was a through highway.<sup>23</sup> If the jury answers this question affirmatively, the driver's failure to stop constitutes negligence. If the driver did not and could not have known that the intersecting highway was a through highway, VTL 1140—governing uncontrolled intersections—will apply.<sup>24</sup>

## Read End Collisions

If the plaintiff's stopped car was struck in the rear by a vehicle driven by the defendant, the court will charge PJI 2:82. The jury must find the defendant negligent unless the defendant has provided an adequate explanation that does not involve any negligence on his part.<sup>25</sup> Absent a sufficient non-negligent excuse, colliding with the rear of a stopped vehicle is negligence as a matter of law. Given the frequency of rear-end collisions and the multitude of explanations that defendants may offer, the PJI offers guidance. For instance, the comment to PJI 2:82 explains that "a non-negligent explanation for the accident exists when a stopping vehicle has itself been rear-ended and then propelled into the vehicle in front."<sup>26</sup>

Where the facts support a claim that the defendant was "tailgating," the court will charge PJI 2:82A in addition to PJI 2:82.<sup>27</sup> PJI 2:82A calls attention to VTL §1129(a), which states, "[t]he driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent..."<sup>28</sup> Failure to obey VTL §1129(a) constitutes

negligence. Where the evidence supports a claim that the defendant was "tailgating," it is error to refuse to charge the provisions of VTL §1129(a).<sup>29</sup>

Defendants charged under PJI 2:82 should be aware that "the sudden stop of the lead vehicle can constitute a sufficient explanation for a rear-end collision..."<sup>30</sup> Further, a driver who stops suddenly may be liable for the resulting accident. Section 1163(c) of the VTL provides, "[n]o person shall stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal. ... Such a signal must be given either by hand and arm or by signal light."<sup>31</sup>

Under PJI 2:83, a defendant's failure to give the appropriate signal before stopping should be considered by the jury in deciding whether the driver used reasonable care, but does not require a finding of negligence.

## Skidding, Car Leaving Road

Evidence that the defendant's car skidded or left the road should be taken into consideration by the jury when determining whether the defendant used reasonable care in driving.<sup>32</sup> (PJI Sections 2:84 and 2:85). A determination that the defendant's car did either permits, but does not require, a finding of negligence.

According to the pertinent sections of the PJI, the jury must consider the complete set of facts and circumstances existing at the time of the accident—e.g., defendant's speed, weather conditions, road conditions—and determine if the defendant's car left the road or skidded as a result of his failure

to use reasonable care. If the jury finds that the defendant did use the requisite level of care, the fact that the car left the road or skidded cannot be the basis of a finding of negligence.<sup>33</sup>

#### Falling Asleep at the Wheel

According to PJI 2:85A, if the jury finds that the defendant fell asleep while driving, they must presume that the defendant was negligent.<sup>34</sup> The defendant may overcome this presumption of negligence by presenting evidence of circumstances that excuse or explain his conduct, such as a sudden and unforeseen loss of consciousness.

The caveat to PJI 2:85A notes that this charge is appropriate for actions pending in the Second and Fourth Departments. These Departments reason that a presumption of negligence is appropriate given the difficulty a plaintiff would face in trying to ascertain the circumstances that caused the defendant to fall asleep.<sup>35</sup> Conversely, falling asleep at the wheel does not give rise to a presumption of negligence in the Third Department.<sup>36</sup> There, the burden is on the plaintiff to show that the defendant continued to drive despite having warning of the likelihood of falling asleep.<sup>37</sup>

#### Motorists and Passengers

PJI 2:86 covers accidents arising out of vehicle equipment failure. Where PJI 2:86 is charged, the jury will be informed that the defendant had a duty to use such care in the inspection, maintenance and repair of the vehicle that a reasonable prudent person would use under the circumstances.<sup>38</sup> This charge is

derived from the common law and is applicable to both the owner and the operator of a vehicle.

Where the plaintiff was a passenger in the defendant's car, PJI 2:87 asks the jury to determine the comparative negligence of the passenger.<sup>39</sup> While a passenger is generally not responsible for the negligence of the driver, a passenger who failed to use reasonable care for his own safety is to be found negligent and the jury must consider whether this failure was a substantial factor in causing his injury. (A passenger who is aware that intoxication has deprived the driver of reasonable control of the automobile may be found to be negligent).

Comparative negligence is most commonly demonstrated where the passenger failed to wear a seat belt, thus PJI 2:87 contains a set of supplemental instructions specifically related to seatbelt use.<sup>40</sup>

#### Conclusion

When involved in litigation stemming from an automobile accident in New York, counsel for both the plaintiff and defense must be thoroughly versed in the applicable sections of the PJI. The PJI covers a wide range of scenarios, includes a number of examples and often points directly to the governing laws. Counsel should plumb the depth of PJI and be fully aware of the numerous duties it imposes on motorists and pedestrians in order to use this tool effectively at trial.

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1. Note that local law, ordinance, rule or regulation may supersede the VTL in which case the applicable provision

will be substituted for the VTL and the charge will be modified accordingly. (N.Y. Pattern Jury Instr.—Civil Introductory Statement).

2. N.Y. Pattern Jury Instr.—Civil 2:75.
3. See, New York Vehicle and Traffic Law (VTL) §1151.
4. *Fox v. Lyta*, 143 A.D.390, 532 N.Y.S.2d 432 (2d Dept. 1988).
5. See, VTL §1152.
6. See, N.Y. Pattern Jury Instr.—Civil 2:76.
7. See, N.Y. Pattern Jury Instr.—Civil 2:76A.
8. VTL §1146.
9. See, VTL §1156(b).
10. See, VTL §1234(a).
11. N.Y. Pattern Jury Instr.—Civil 2:77.
12. N.Y. Pattern Jury Instr.—Civil 2:78.
13. VTL §1140.
14. See, N.Y. Pattern Jury Instr.—Civil 2:79.
15. See, VTL §1110.
16. See, comment to N.Y. Pattern Jury Instr.—Civil 2:79 (citing *Packer v. Mirasola*, 256 A.D.2d 394, 681 N.Y.S.2d 559 (2d Dept. 1998)).
17. *Id.* (citing *Hellenbrecht v. Radeker*, 309 A.D.2d 834, 766 N.Y.S.2d 81 (2d Dept. 2003)).
18. N.Y. Pattern Jury Instr.—Civil 2:79A.
19. See, VTL §1172.
20. VTL §1142(a).
21. See, comment to N.Y. Pattern Jury Instr.—Civil 2:80A.
22. N.Y. Pattern Jury Instr.—Civil 2:80A.
23. VTL §1110(b).
24. N.Y. Pattern Jury Instr.—Civil 2:80B.
25. *Id.*; see, VTL §1140.
26. N.Y. Pattern Jury Instr.—Civil 2:82.
27. See, comment to N.Y. Pattern Jury Instr.—Civil 2:82 (quoting *Katz v. Masada II Car & Limo Service Inc.*, 43 A.D.3d 876, 841 N.Y.S.2d 370 (2d Dept. 2007)).
28. See, comment to N.Y. Pattern Jury Instr.—Civil 2:82.
29. VTL §1129(a).
30. See, comment to N.Y. Pattern Jury Instr.—Civil 2:82A.
31. *Klopchin v. Masri*, 45 A.D.3d 737, 846 N.Y.S.2d 311 (2d Dept. 2008).
32. VTL §1163(c).
33. N.Y. Pattern Jury Instr.—Civil 2:84, 2:85.
34. *Id.*
35. N.Y. Pattern Jury Instr.—Civil 2:85A.
36. See, *Spivak v. Heyward*, 248 A.D.2d 58, 679 N.Y.S.2d 156 (2d Dept. 1998); see also, *Kilburn v. Bush*, 223 A.D.2d 110, 646 N.Y.S.2d 429 (4th Dept. 1996).
37. See, *Barney v. Barney*, 205 A.D.2d 1017, 614 N.Y.S.2d 70 (3rd Dept. 1994).
38. *Id.*
39. N.Y. Pattern Jury Instr.—Civil 2:86.
40. N.Y. Pattern Jury Instr.—Civil 2:87.

