MondayMonday

That Which Is Easy Shall Become Difficult

July 15, 2013

Great artists know about the value of perspective. In order to see the true center of a thing, we have to change our position with respect to the thing itself. Whether it's getting above it or settling beneath it, perspective is the technique by which we achieve greater understanding.

Like most of you, we've been handling personal injury cases for quite a few years. In the realm of such things, we have come to call a laminectomy without fusion a "simple" laminectomy. No big deal. As one surgeon put it, on a scale of 10, a simple laminectomy is a 1.5.

Until it's yours. We sit (uncomfortably) recovering from such a "simple" laminectomy. It hurts. Take enough pain medication to make the pain go away and you're useless for work, unless you're the curator at the Woodstock museum. Take too little and walking to the toilet is like crossing the Kalahari. Your bowels react accordingly, either closing up as tight as a parson's purse or opening up like Niagara after the spring thaw.

Where are we going with this? We'll never minimize a client's back injuries ever again; never assume

that there's anything like "soft tissue" injury. In prepping witnesses for trial, we'll have them go over what a day is like when you can't stand up and brush your teeth without pain. Once, a few years ago during oral argument in the First Department, we saw one judge turn to another who had minimized a plaintiff's herniated disc, with a withering (and personal): "Do you have any idea how much that hurts?" Perspective. It makes for great art — and better law.

How hard can it be to understand the mechanism of a notice to admit under CPLR 3123((a)? You ask the defendant a question, he either admits or denies, and everyone goes home happy. So why is it that this (here's that word again) "simple" notice is so befuddling?

In Ramcharran v. New York Airport Servs., LLC , 2013 NY Slip Op 05195 (2d Dep't, July 10, 2013), the Second Department is faced with the most straightforward of fact patterns. Plaintiff was struck by defendant's vehicle in LaGuardia Airport. Plaintiff serves a notice to admit with one, single admission: "That on December 6, 2009, the motor vehicle owned and operated by the defendants was in contact with the plaintiff." How pure; how unfettered; how wrong.

In reversing Supreme Court's denial of a protective order under 3103(a), the Second Department reminds us that the purpose of the notice to admit is only to "'eliminate from the issues in litigation matters which wil not be in dispute at trial,'" not ultimate conclusions. "Here, the plaintiff's notice to admit improperly sought the defendant's admission concerning a matter that went to the heart of the controversy in this case." A notice to admit does not substitute for "'other disclosure devices, such s the taking of depositions before trial.'" So our first maxim of the practice of law remains inviolate: "That which is easy shall become difficult and that which is difficult shall become impossible."

MondayMonday Returns

We make no promises here, but you all have been so kind in remonstrating us for having failed to provide you with MondayMonday for the last year or so that, well, it's worked.

We're back for now and very up-to-date. You can find our blog at Monday-Monday.yourlawyer.com.