MondayMonday

Ya Gotta' Read Your Statutes

June 16, 2014

It is no secret that PI trial lawyers are not particularly fond of the ABA. It is perceived as a white-shoe, corporate/commercial organization that speaks nothing of value to the plaintiff's trial bar. As a Vice-Chair of the ABA's Tort Trial and Insurance Practice Section Appellate Advocacy Committee, we can tell you that this is not precisely true. However, actions such as the one taken by the ABA's Council of the Section of Legal Education last week make it very difficult for us to assure you that the ABA lives in the same world we do.

The Council voted to continue its ban on law students getting both pay and credits for externships, a position attacked by, among others, the ABA's own Law Student Division. With the cost of law school burgeoning out of control and the reality that law students both need and deserve to be paid for what they do, the Council's intransigence is nothing more than an antiquated paean to a lost world.

There is no good reason to bar both pay and credit for the same educational experience. Does this make sense? "Allowing students to be paid while simultaneously getting academic externship course credit

will necessarily undermine the academic focus of field placement experiences and will not likely expand the number or kind of placements available to students." (Soc. Of Am. Law Teachers) In other words, free labor is good for the system. Poppycock.

We worked for a lawyer while in law school. We learned from him how to be a lawyer. No mere professor ever taught us that. Receiving credit for the experience would have only recognized its value, not reduced it.

As boring as it might be, sometimes you just have to read the statute to know what you're doing. It also makes sense to read the statute before you prep your client for his EBT. Finally, in a word to the wise, appellate panels read statutes too.

Submitted for your approval on this point is *Derosario v. Gill*, 2014 Slip Op 04163 (2d Dep't 6/11/14). VTL 1142(a) provides that a driver who stops at a stop sign, but then proceeds forward and fails to yield the right-of-way to crossing traffic, "is negligent as a matter of law." In other words, a party who testifies, no matter how convincingly, that he stopped at the stop sign, counted to 5, and then proceeded cannot carry the day when the end result of that activity is colliding with another auto to whom the stopping driver owed the right-of-way. Stopping at a stop sign offers no absolution for after-occurring vehicular sins.

So why would one have his client testify to stopping at a stop sign without some additional testimony addressing the right of way? We don't know, but here that failure offers The Red Baron an easy kill. "[T]he defendant made a prima facie showing of entitlement to judgment as a matter of law by submitting evidence that he was not negligent and that the plaintiff's negligence in failing to properly observe and yield to cross traffic before proceeding into an intersection was the proximate cause of the accident." A driver with the right-of-way, "was entitled to assume the plaintiff would obey the traffic law requiring him to yield." Consequently, whether or not plaintiff stopped at the stop sign is not dispositive, "since the evidence established that he failed to yield even if he did stop." Of course, the driver with the right-of-way has a duty to use reasonable care to avoid hitting other vehicles, but, as you might have already guessed, "the plaintiff failed to raise a triable issue of fact as to whether the defendant was negligent." Bye, bye Snoopy.