MondayMonday

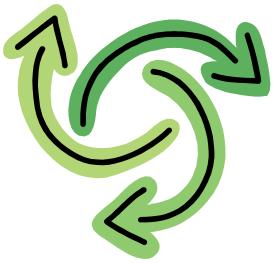
Three For The Road

March 10, 2014

There's nothing nice about schadenfreude and giving it a German name does not make it any more pleasant or intellectual. Nor does the fact that we all do it under the right circumstances excuse such conduct. The man who slips on the banana peel does not get to laugh and that means we shouldn't either.

Of course, this is not a perfect world, and the Three Stooges did not make a living playing in the "Comic Life of Mother Theresa." Because we are all born of the same human flesh, we will laugh when the King farts. It's just that simple.

So that is our excuse when we smiled this week at the story of not one, not two, but 18 lawyers from Sidley Austin and another firm representing AT&T. In a $40 million dollar patent infringement case, they had failed to read the electronic docket sheet or any of a federal district court's orders for 52 days. Amongst the flotsam and jetsam were orders denying AT&T's post-trial motions and the final judgment in the case — 52 days, while the time in which to file a notice of appeal is only 30 days. Gulp.



Sidley Austin. White-shoe, not Flatbush Law. Home of 1st year associates at $160K, with $10,000 bonuses. Black cars home at night; Muffins at depositions in the morning; litigation bags carried to court by native bearers; "My child is an Honor Student at Dalton" bumper stickers. Schadenfreude.

AT&T is appealing the refusal of the court to extend the time to appeal (these are the federal rules, of course.) But schadenfreude grows cold when we read how the judge chided counsel for "rely[ing[on the electronic and email notifications received from the [ECF] system," since they are not always complete. It is the "substance of the orders [that] carries validity under the law, not the electronic [filings]." There but for the grace of God, dear friends.

Feeling put upon this morning? Brighten up. Here are some plaintiff-friendly cases for a Monday morning.

In *Espinal v. NYH&HC*, 2014 NY Slip Op 01430 (2d Dep't 3/5/14), the HHC had its answer stricken for having failed to comply with plaintiff's post-deposition discovery demands and several court orders directing compliance. One of those requirements was to produce "a witness with knowledge of the facts." Consequently, the answer now stands stricken under CPLR 3126(3).

The infant plaintiff in *Delgado v. Murrray*, 2014 NY Slip Op 01416 (1st Dep't 3/4/14) suffered Erb's Palsy as a result of defendant's malpractice during his delivery. Though showing no difference in arm strength between right and left, there is a difference in arm length (3/4") which will continue to grow and may require future surgery. The 1st Dep't affirms $20K for past, but only half of the $600K the jury awarded for future pain and suffering (over 20 years.) Also affirmed was the verdict of $380K for future lost earnings over 38 years.

Unfortunately, in *Molina v. NYTCA*, 2014 NY Slip Op 01415 (1st Dep't 3/4/14), the court affirms an award of $600 past and reduces an award of $1.3MM for future pain and suffering (over 27 years) to $800K, for a slip and fall on subway stair debris, where defendants could not produce a cleaning schedule or anyone who had followed it. So, why "unfortunately?" Because, once again, the Appellate Division fails to specify any injuries in the decision, making it a private ruling and thus useless to most practitioners.