

THE DAILY RECORD

WESTERN NEW YORK'S SOURCE FOR LAW, REAL ESTATE, FINANCE AND GENERAL INTELLIGENCE SINCE 1908

ManagingRISK

Avoiding the unavoidable – the Emergency Doctrine

As the summer unfolds, many of us will be piling into our cars to enjoy the scenery around us. With increased traffic on the roads (and the invariable construction), however, accidents become more prevalent. When accidents do occur, one doctrine of law serves to insulate some drivers from fault. It is called the Emergency Doctrine.

The doctrine provides that: When an actor is faced with a sudden and unexpected circumstance that leaves little or no time for thought, deliberation or consideration, or causes the actor to be reasonably so disturbed that the actor must make a speedy decision without weighing alternative courses of conduct, the actor may not be negligent if the actions taken are reasonable in the emergency context, *Rivera v. New York City Transit Authority*, 77 NY2d 322 (NY 1991).

A glaring example — a baby stroller rolls from a sidewalk into the path of your car and you swerve to avoid it, thereby veering into an oncoming car. The law of the state insulates you from liability in these circumstances because of the sudden, unforeseen emergency.

Clearly, however, the cases decided under the emergency doctrine are never so clear-cut. Also, it applies to all conduct, not simply the act of driving. Creative attorneys have sought to insulate their clients from liability when confronted with a host of potential emergency situations.

In *Whiteside v. City of New York*, a New York City police officer stepped into a crowd to break up a fight. When one of the participants was injured, the court instructed that the jury was entitled to consider whether the officer was confronted with an emergency situation, 293 AD 2d 743 (2nd Dept, 2002).

In another interesting case, an obstetrician sought the benefit of the emergency doctrine when sued for medical malpractice.

The doctor claimed that during a delivery, he encountered an oxygen-deprived baby, constituting an “obstetrical emergency.” The court disagreed, stating that the physician is trained for precisely these types of deliveries, therefore, presenting no unanticipated emergency, *Amodeo v. Cumella*, 41 AD 3d 396 (2nd Dept, 2007).

Similarly, in *Stathis v. Mercy Medical Center*, a nurse received the benefit of the doctrine when a bassinet wheel broke, causing the cart to suddenly tip. The nurse attempted to stabilize it, but the infant in the cart fell to the ground and was injured. The court instructed the jury to consider whether the nurse was confronted with a sudden emergency and to judge her response accordingly, 287 AD 2d 614 (2nd Dept 2001).

By far, however, most emergency doctrine cases arise from vehicular accidents. In the clearest application of the doctrine, many courts have held that drivers should not be held responsible when another vehicle unexpectedly crosses into their path.

Often, it is necessary to establish through the use of expert accident reconstruction testimony that the cross-over is truly instantaneous, leaving little perception and response time, *Lopez v. Wook Ko Young*, 2012 WL 2017496 (2nd Dept 2012). Some commonly used accident reconstruction manuals place a typical braking response time at up to 2.5 seconds (“Traffic Accident Reconstruction,” Northwest University Traffic Institute, Vol. 2 [1986]).

In one other interesting case, however, the court held that a driver’s claim of a bird flying into her path was not a sufficient “qualifying emergency” to justify her head-on collision with an oncoming vehicle, *Kizis ex. rel. v. Nehring*, 27 AD 3d 1106 (4th Dept, 2006).



By **LOUIS B. CRISTO**

Daily Record
Columnist

Continued ...

THE DAILY RECORD

WESTERN NEW YORK'S SOURCE FOR LAW, REAL ESTATE, FINANCE AND GENERAL INTELLIGENCE SINCE 1908

Continued ...

Driver claims of unanticipated weather and road conditions such as white-outs and black ice have met with varying success. In some instances, the courts have expressed skepticism that slushy and slippery road conditions are, indeed, unanticipated, *Neidert v. Austin S. Edgar, Inc.*, (4th Dept, 1994). Recently, however, this office was successful in arguing that a defendant was entitled to demonstrate to a jury that slippery and icy road conditions were unanticipated, based on prevailing weather reports, *Dalton v. Lucas*, 2012 WL 2164476 (June 15).

It should be some solace to all of us on the roads of the state in this busy travel season that our courts do recognize that a driver's conduct must be judged in light of myriad situations that might suddenly confront us. The doctrine, as applied by the courts, however, does not excuse a simple lack of caution. Be careful out there.

Louis B. Cristo is president of Trevett, Crista, Salzer & Andolina, PC, a trial law firm in Rochester. He is a trial attorney whose practice includes the litigation of personal injury, product liability, commercial, environmental and insurance cases. Visit their website at www.trevettlaw.com.