

May 2019

NY Attorney Wins Dismissal of \$1.5M Demand of Professional Athlete

Litchfield Cavo LLP's New York attorney **Dana M. Ricci** prevailed on a motion to dismiss a \$1.5 million demand in Queens County, New York. There appears to be no such precedent for a tort-based claim by a pedestrian where there is no impact with a vehicle. The matter involved our insured's client who was operating a vehicle after leaving a sports training facility.

The plaintiff claims that she was forced to abruptly step out of the way of our insured's client's vehicle to avoid being struck. In testimony, the plaintiff stated she heard the insured's vehicle approaching, that the vehicle was in the crosswalk area when it came to a stop, and that she was on a nearby curb when she decided to step back to get out of the way. The plaintiff testified that her step back caused her to fall to the ground left of where she was standing.

In alternative testimony, the defendant stated that he drove through the training facility parking lot following practice and made a left hand turn onto the roadway where plaintiff was crossing. Defendant stated he stopped his vehicle 10 feet away from the plaintiff to allow her to cross. He acknowledged that he stopped the vehicle at a 45 degree angle in the intersection and defendant observed plaintiff about 2-3 steps into the crosswalk when she took a step backwards and fell to the ground.

It is undisputed that plaintiff was never struck by the insured's vehicle. Though, with no prior conditions or injuries, there was no question the plaintiff sustained a fractured left hip due to her fall on the date of loss requiring a total hip replacement. Following the plaintiff's hip replacement surgery and rehabilitation, plaintiff suffered two dislocations of her hip. As a result, the plaintiff was advised by a physician that part of her original hip prosthesis needed to be replaced, and she later underwent subsequent revision surgery.

Litchfield Cavo's **New York attorney** motioned for summary judgment to dismiss all claims and found there is no precedent for a tort-based claim by a pedestrian where there is no impact with a vehicle. Based on our attorney's review of proximate cause cases involving vehicles, it was possible for a jury to conclude that a vehicle was the proximate cause even where there was no impact if the operation of the vehicle was so reckless as to have proximately caused the accident. Our attorneys stated that the evidence did not point to any recklessness. The court's decision in our favor may have considerable impact as this case may establish a new precedent in the state of New York regarding motor vehicle accident claims that do not include contact.

Litchfield Cavo's attorneys have extensive experience in the successful defense of tort claims, including the defense of claims involving motor vehicle accidents. Please contact our attorneys regarding matters of cases occurring in New York.