

TLSS Partner Mark F. Wolfe Obtains Defense Verdict in Slip and Fall Case for Client Snow Removal Company

April 10, 2014

The plaintiff alleged that on February 13, 2009, she slipped and fell on ice in the parking lot of her apartment complex in Des Plaines, Illinois. She claimed that the defendant snow removal contractor negligently removed snow at the complex because it created snow piles that melted, refroze and caused the ice patch on which she slipped. She also brought suit against the homeowner's association for premises liability.

The plaintiff sustained a burst fracture in her back requiring surgical stabilization. The plaintiff then developed a serious infection at the site of the hardware inserted in her back requiring a second surgery. The settlement demand prior to trial was \$2 million.

At trial, the defense presented evidence that the contractor had not plowed at the complex in over two weeks prior to the fall because there had been no snowfall over two inches during that time. Furthermore, the snow removal contractor had no duty to remove ice by salting at the complex pursuant to its snow removal contract. The defense also presented a licensed professional and structural engineer in the state of Illinois as its expert witness. He had over 30 years of experience in structural engineering and aviation meteorology. The defense expert testified that the property was appropriately drained and that there were no holes or cracks where an unnatural accumulation of ice could occur. He established based on certified weather records that there were dramatic temperature changes in the two weeks leading up to the occurrence including several days with temperatures in the 40s, 50s, and 60s. He opined that any snow at the premises would have fully melted by the date of the occurrence. The plaintiff was not able to present any evidence creating a direct link between the alleged snow pile and the ice patch.

The trial began on April 3, 2014, in the Circuit Court of Cook County, Illinois. On April 9, 2014, the twelve-member jury returned a verdict in favor of both defendants after deliberating only 45 minutes.

- See more at: <http://www.traublieberman.com/news/2014/0410/4174/#sthash.5QWgzQz1.dpuf>

TLSS Partner Megan Bronk Wins Appeal Reversing NYS Supreme Court and Granting Summary Judgment in Favor of Insured Client in Case of HVAC Worker Who Fell From Ladder Sustaining Life Threatening Injuries

April 15, 2014

Plaintiff, an HVAC worker, fell from a ladder permanently affixed to the façade of the premises where he was injured and which was fabricated and installed by the insured. Plaintiff, who subsequently died from unrelated causes, asserted Labor Law §§200, 240(1) and 241(6) claims as well as a negligence claim against the owner and a negligence claim against the insured. The owner asserted third-party claims for common law indemnification and contribution against the insured.

New York State Supreme Court, Rockland County found an issue of fact as to whether or not the Plaintiff, who was at the premises to respond to a call that the air conditioning was not working, was engaged in an enumerated activity at the time of the accident or whether his activities were maintenance work. Supreme Court also dismissed the negligence and Labor Law §200 and 241(6) claims but held that there were issues of fact as to whether or not the insured was negligent, whether the ladder the insured fabricated and installed was defective and whether, if defective, the insured had launched an instrument of harm such that it owed a duty to the Plaintiff.

After oral argument, the New York State Appellate Division, Second Department issued its Decision and Order modifying and reversing the Supreme Court's order, holding that, as a matter of law, Plaintiff was not engaged in an enumerated activity at the time of the accident as Plaintiff was merely "checking out" the air conditioning and not repairing it at the time of the accident. Accordingly, the Appellate Division granted summary judgment dismissing the Labor Law §240 cause of action. The Appellate Division also reversed the Supreme Court insofar as it had denied our motion on behalf of the insured for summary judgment dismissing Plaintiffs' negligence claim holding that we had established that the insured did not owe a duty of care to the Plaintiff, a non-contracting third-party. As a result, the Appellate Division dismissed Plaintiff's Complaint against the insured. Further, given the dismissal of the Labor Law §240 claim against the owner, the owner had no liability to pass through to the insured on the third-party claims such that the third-party complaint against the insured was also dismissed.

- See more at: <http://www.traublieberman.com/news/2014/0415/4192/#sthash.HMAIVDQN.dpuf>

TLSS Associate Jennifer Netro시오 Recently Named a State Director for the Westchester Women’s Bar Association

The Westchester Women’s Bar Association “WWBA” is one of the largest chapters of the Women’s Bar Association of the State of New York “WBASNY” with over 600 members. The mission of the WWBA is to promote justice for all and advance the social, economic and legal status of women. WWBA provides excellent networking opportunities, support services and lectures. The WWBA also provides an influential statewide voice on legislative, judicial and public policy issues through WBASNY. See more at: <http://www.wwbany.org>

TLSS Partners Mark F. Wolfe and Natalie M. Limber Obtain \$765,000 Verdict in a Commercial Litigation Dispute

In *Polansky v. Harmer*, TLSS represented Michael Polansky in a lawsuit alleging multiple claims for breach of fiduciary duty, breach of contract and fraud. Polansky's relationship with defendant Harmer began in 2003 when Harmer began training standard bred race horses for Polansky. Harmer then approached Polansky about investing in Evolution Racing, LLC, a company that designs and sells racing bikes or "sulkies" used in standard bred race horsing. Polansky agreed and purchased a 50% ownership interest in Evolution Racing. Harmer agreed to serve as the managing member of the company. On behalf of Polansky, TLSS sought damages against Harmer for mismanagement of Evolution Racing and overcharging for horse training services. Trial began on March 24, 2014 before the Honorable John T. Elsner in the Circuit Court of DuPage County, Illinois. At trial, Harmer and his accountant claimed that company expenses for Evolution Racing were properly recorded. Harmer also claimed that Polansky's horse training bills contained legitimate charges for goods provided and services performed. At trial, TLSS presented evidence from a former Harmer employee who testified that Harmer used Evolution Racing credit cards for personal expenses, misappropriated company revenue and did not perform training services billed to Polansky. TLSS also presented expert forensic accounting testimony detailing for the jury Harmer's mismanagement of Evolution Racing assets. TLSS' expert also established that Harmer breached a contract with Polansky to make equal cash contributions to Evolution Racing in 2009. After a three day trial, a twelve-member jury returned a verdict in favor of Polansky on claims for breach of fiduciary duty, breach of contract and fraud. The jury awarded Polansky damages of \$765,000. - See more at: <http://www.traublieberman.com/news/2014/0410/4176/#sthash.IZ1nUBE6.dpuf>