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## PENNSYLVANIA

### “DANGER INVITES RESCUE”



**Gary N. Stewart**

It could not have been stated better: “[D]anger invites rescue.” (New York Court of Appeals Justice Benjamin Cardozo’s language in *Wagner v. International R. Co.*, 232 N.Y. 176, 133 N.E. 437 (1921)). In Pennsylvania and most other jurisdictions, a rescuer injured in the course and scope of preventing death or bodily injury to another is given favored status under the law and



**Michael T. Traxler**

may recover against the person or entity that caused the need for the rescue.

In a typical negligence action, plaintiff must prove that the conduct of the defendant was the proximate cause of plaintiff’s injuries. The *rescue doctrine* applies as an exception to the causal element. For instance, a paramedic injured while en route to the scene of an automobile accident can recover against the person who caused the initial accident (*Bole v. Erie Ins. Exchange*, 2009 Pa. Super. 38, 967 A.2d 1017(2009)). Yes, even if a person could not foresee that an emergency responder would be injured while driving to the scene of an accident, the person who caused the initial accident can be held responsible for the injury to the rescuer.

A plaintiff may recover under the *rescue doctrine* when:

- 1) the defendant’s negligence created the rescue situation;
- 2) the person requiring rescue was in imminent peril of death or serious bodily injury, or the rescuer reasonably believed that such peril existed; and
- 3) the actions of the rescuer were not negligent or not reckless (*Yurecka v. Zappala*, 472 F.3d 59 (3rd Cir. 2006)).

Often, defendants overlook presenting a vigorous defense to the first two elements of the *rescue doctrine*, choosing instead to focus on whether the plaintiff acted recklessly or negligently while performing the rescue. However, considering how a factfinder may be confused by the fact that there is no direct causal link between the rescuer’s injuries and the defendant’s actions, all three elements should be defended vigorously.

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A review of cases from jurisdictions across the country reveals that automobile accidents and home fires are the most common circumstances from which *rescue doctrine* cases arise. We recently defended a nine-day jury trial in the Lackawanna County Court of Common Pleas in Scranton, Pennsylvania where the *rescue doctrine* was at issue. The case involved a fireman who was injured while responding in a wilderness location after a boy was injured when he fell from a cliff during a February 2006 hike supervised by the head priest at the Catholic boarding school that the boy attended. During pre-trial motions, the attorney representing the fireman took the position that the priest and the Catholic boarding school should concede the first two elements of the *rescue doctrine* and should be wary of blaming the “hero” of negligence and/or recklessness.

It became clear during *voir dire* that the potential jurors were struggling to understand the concept that an emergency responder could file a lawsuit against a person and an entity which did not directly cause injury to the responder. Details learned from the jury selection process confirmed that a strong defense to all three elements of the *rescue doctrine* was warranted.

In doing so, as in any negligence case, the primary focus to disputing the first element was to present evidence that the priest’s actions were reasonable under the circumstances. Plaintiff’s negligence theory relied upon the jury believing that the priest failed to properly supervise the boy who was injured. It was argued that if the boy had been properly supervised, he never would have fallen from the cliff.

A “hiking expert” was retained to provide support to plaintiff’s theory of negligence. By researching the hiking expert’s background, the hiking rules from the association of which the expert was a past president were used to show the jury that the expert was applying a higher standard of care to the priest than that followed by her own hiking association. When the expert was asked to apply the rules

of the hiking association to the facts of the case, the expert was not able to opine that the priest would have been in violation of those rules. This allowed the defense to argue that under the expert’s own written rules, the priest acted as a reasonable person.

Testimony in support of the defense theory that the priest acted reasonably came from the injured boy, the boy’s mother, and another student present during the hike who happened to be an Eagle Scout. This involved a commitment by the carrier responsible for the defense to bring the boy and the Eagle Scout back to Pennsylvania from Texas and Alaska to provide trial testimony. Based upon their presentation to the jury and their accomplishments since leaving the Catholic boarding school, the impact that the priest and the school had on these young men was apparent. So while the plaintiff attempted to portray the priest as an irresponsible person, three strong witnesses were selected to provide evidence to the contrary.

Taking the earlier advice of plaintiff’s counsel, at trial, it was conceded by the defense that plaintiff was a hero. The efforts of the other responders who showed up *en masse* at trial in support of plaintiff were also acknowledged by the defense as being heroic. During the cross-examination of plaintiff and his fellow rescuers, the defense talked with them about how they were highly trained firemen and emergency medical technicians. Questions were asked about the numerous classes they had to attend to become certified emergency responders and the training that is involved to maintain those certifications. They became defense experts. This was the beginning of the defense to the second element of the rescue doctrine.

The injured boy was ultimately flown by helicopter to the nearest hospital with a pediatric trauma unit. Based upon this fact alone, plaintiff took the position that the second element could not be disputed as it was clear that the boy was in imminent peril of death or serious bodily

injury. However, during discovery depositions, plaintiff admitted that the boy's medical condition was stable before plaintiff sustained injury. The depositions of other emergency responders at the scene confirmed the boy's condition to be stable.

In defense of the testimony of the responders and plaintiff admitting that the boy was stable before plaintiff was injured, plaintiff argued that only a doctor could determine whether the boy was in imminent peril of death or serious bodily injury. However, it was argued by the defense that the testimony of plaintiff and his fellow rescuers established that they had knowledge and expertise that qualified them to provide opinions concerning the boy's medical condition.

Under the third element, it is the actions of the rescuer that are scrutinized; however, the defense could not criticize a person who risked life and limb to save a child. Accordingly, in defending against the third element, the focus remained on the fact that plaintiff possessed the appropriate training to perform the heroic acts that he did that day. During cross-examination, plaintiff was confronted with methods, protocol and procedure common to wilderness rescues. Based upon

prior deposition testimony, plaintiff had no choice but to admit that he failed to follow several key safety measures which were argued to be a direct cause of his injury. In the end, the defense did not have to scrutinize plaintiff's actions considering plaintiff and his colleagues had the knowledge and expertise to do so.

The jury found in favor of the priest and the Catholic boarding school. While it was argued in pre-trial motions that the *rescue doctrine* did not apply to the facts of this case and that plaintiff was attempting to broaden the scope of the law that gives favored status to rescuers, the jury verdict was in keeping with case law establishing that the *rescue doctrine* applies only in special cases and is a narrow exception to the principles of causation (*Bole v. Erie Ins. Exchange*, 2009 Pa. Super. 38, 967 A.2d 1017, (2009); *Bell v. Irace*, 422 Pa. Super. 298, 304, 619 A.2d 365, 367 (1993)).

There is no dispute that first responders should be given favored status under the law. However, there are boundaries defined by established case law that affect when that favored status is applicable. Defending each and every one of those boundaries will help to prevent the danger associated with improper application of the *rescue doctrine*.

**Gary N. Stewart** is a partner in our Harrisburg, Pennsylvania office who concentrates his practice in the areas of commercial motor vehicle defense and general casualty litigation. He has defended cases in Pennsylvania, New Jersey, Connecticut, Rhode Island, Massachusetts and Vermont. Gary is admitted to practice in Pennsylvania, New Jersey, Massachusetts, Connecticut, Vermont and Rhode Island as well as before the U. S. District Courts for the Eastern, Middle and Western Districts of Pennsylvania, the District of New Jersey, the District of Massachusetts, the District of Rhode Island, the District of Connecticut and the U. S. Court of Appeals for the First and Third Circuits.

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**Michael T. Traxler** concentrates his practice in the areas of commercial motor vehicle and general casualty litigation. Mike is admitted to practice in Pennsylvania, the U.S. District Court for the Middle District of Pennsylvania and the U.S. Court of Appeals for the Third Circuit. He is a member of the Pennsylvania, Dauphin County and Cumberland County Bar Associations. He is also a past member of the Judicial Evaluation Commission for the Pennsylvania Bar Association.

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## ABA AWARD



**Peter J. Neeson**, a partner in the Philadelphia office, was honored at the American Bar Association Midyear Meeting in New Orleans. The ABA Tort Trial & Insurance Practice Section (TIPS) awarded Neeson its most prestigious honor, the James K. Carroll Award for outstanding leadership qualities and service to the Section. Among his many achievements, Neeson was the creator of the TIPS National Trial Academy, the premier trial program of its kind in the country, now in its twelfth year. Neeson is also the founder of the TIPS Leadership Academy, a leadership and diversity institute for young lawyers, now in its sixth year.

**Peter J. Neeson** Neeson, a practicing trial attorney for 34 years, is chair of Rawle & Henderson's Environmental Law and Toxic Tort section. He has been involved in the defense of numerous toxic tort matters in multi-district and class action cases in both state and federal courts, including formaldehyde, multiple chemical sensitivity, sick building, latex glove, benzene, underground storage tank, orthopedic bone screw, pharmaceutical and asbestos litigation including the defense of over 3,000 such cases against a major manufacturer. He has also participated in the defense of several generators in CERCLA superfund cases. Neeson has been the national coordinating counsel for a major insurance carrier in the FRT litigation and has had national coordinator responsibilities in the asbestos, latex glove and the PPA pharmaceutical drug litigations.

Neeson earned his B.S. in Aerospace Mechanical Engineering from the University of Notre Dame in 1970 and his J.D. from the University of Miami (*cum laude*) in 1978. He is admitted to practice in Pennsylvania and New York.

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## ABA TIPS BUSINESS SEMINAR



**Gary F. Seitz** was a presenter at a seminar on “**East-West Trade: Legal Requirements for Foreign Business and Investment**,” co-sponsored by the TIPS International Law Committee, ABA Rule of Law Initiative, Asia Council and Advisory Board, and China Council for the Promotion of International Trade, held in New York City. Gary's session was “*An Introduction to Basic U.S. Bankruptcy Issues*.” He gave an overview of the principles and policies behind court-supervised liquidation and reorganization of business debtors in the United States. Gary is a partner in our Philadelphia office and concentrates his practice in the areas of commercial bankruptcy, commercial litigation and admiralty and maritime law.

Gary graduated *magna cum laude* from Buena Vista University and from the University of Iowa College of Law. He obtained his Master's degree in Admiralty Law from Tulane University. Gary is admitted to practice in Delaware, Pennsylvania and New Jersey, the U.S. Court of Appeals for the Third and Fifth Circuits and the U.S. District Courts for the Eastern, Middle and Western Districts of Pennsylvania, the District of New Jersey and the District of Delaware.

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