

RAWLE'S REPORTS

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PENNSYLVANIA

PERSONAL INJURY

Mechanical Bull Rider's Lawsuit "Tossed" by Philadelphia Court

Plaintiff commenced a personal injury negligence action by filing a Complaint alleging she suffered multiple injuries to her face and jaw after being tossed from a mechanical bull she was riding at a local bar (hereinafter the "Bar"). Rawle & Henderson LLP's client, a radio station and its disc jockey ("DJ"), were accused of "encouraging" her to re-mount the mechanical bull by "promising" free drinks to the house if she successfully rode the bull during her second attempt.

Upon analyzing the legal basis of the Complaint against the radio station, it appeared that plaintiff's negligence claim against the radio station lacked a valid basis to proceed since the mechanical bull was owned and operated by the co-defendant Bar.

We filed Preliminary Objections to plaintiff's Complaint. The basis of the Preliminary Objections was the legal insufficiency of the Complaint in that it failed to assert a viable legal claim for recovery. Specifically, we asserted that plaintiff's Complaint failed to either identify any duty owed to plaintiff or allege how any duty caused plaintiff to be injured. In response, plaintiff filed an Amended Complaint.

In her Amended Complaint, plaintiff alleged that our client's DJ "encouraged" her to remount the mechanical bull and offered "free drinks" to the crowd if plaintiff successfully rode it after her first failed attempt. Plaintiff also asserted that the radio station failed to warn plaintiff of the dangers associated with the mechanical bull.

Plaintiff also claimed in her Amended Complaint that the DJ "was acting as an agent of the Bar and/or with the actual or apparent authority to offer free drinks to the crowd in order to entice plaintiff to attempt another ride."



Evan S. Eisner

We filed Preliminary Objections to Plaintiff's Amended Complaint for its failure to state a valid legal claim, again asserting the lack of any legal duty and legal causation.

The Court entered an Order sustaining our Preliminary Objections and dismissing Plaintiff's Amended Complaint without prejudice. The Court permitted plaintiff to file a Second Amended Complaint.

Plaintiff filed her Second Amended Complaint, making slight modifications to the language in her pleading. We filed Preliminary Objections to Plaintiff's Second Amended Complaint.

Once again, the Court entered an Order sustaining our Preliminary Objections without prejudice, though giving plaintiff permission to file a Third Amended Complaint.

Plaintiff then filed her Third Amended Complaint. Plaintiff attempted to bolster her characterization of the DJ as an "agent" of the Bar and his conduct as causing her injuries.

We filed Preliminary Objections, contending that Plaintiff's fourth attempt to plead a viable negligence cause of action failed again—simply because there is no viable cause of action. We argued that Plaintiff's negligence claim against the station could not stand, either under an "agency" theory or as the alleged "occupier" or "possessor" of the Bar. Moreover, under any theory, the alleged conduct could not be the "cause-in-fact," and the "legal, proximate cause" of her alleged injuries.

At its core, we argued that Plaintiff's claim was based on the conduct of the party who, in fact, operated and controlled the mechanical bull, the alleged or arguable "offending" condition, and who, legally, was responsible for operating and controlling the mechanical bull she voluntarily rode. We

also argued that the allegations against our client, even if true, amounted to no more than "cheerleading."

Though plaintiff attempted to characterize our DJ as an agent of the Bar, she pleaded that the Bar's employee "...maneuvered the mechanical bull or programmed" it so she would fall off and the Bar would not have to give free drinks. We also noted there were no facts pleaded that the DJ operated or controlled the mechanical bull, or controlled the actions of the Bar employee, who was, in the words of plaintiff, "...operat[ing] the mechanical bull... in such a fashion to ensure that the Plaintiff would not successfully ride." We candidly conceded that even if some agency relationship existed between the DJ and the Bar as plaintiff alleged, such relationship could have done nothing more than bind the Bar to provide the free drinks allegedly offered to the crowd by the DJ.

We also argued that our client could not be considered the "possessor" of the Bar, potentially triggering a legal duty, since, as pleaded, the co-defendant Bar owned and ran its bar (and bull) on the day in question.

Finally, we argued there was no proximate cause—both cause-in-fact, and legal cause. What allegedly caused plaintiff to fall and get hurt was the operation of the mechanical bull which Plaintiff claimed was "maneuvered" or "programmed" by the Bar to cause her to fall and not any alleged promise of "free drinks."

On May 24, 2017, the Court sustained our Preliminary Objections and finally dismissed the Third Amended Complaint with prejudice.

Victoria Sarlo v. Beasley Broadcasting of Philadelphia, et al., PCCP, October Term, 2016, No. 02028

Evan S. Eisner, Of Counsel to the firm in our Philadelphia office, focuses his practice on defending catastrophic loss claims, products liability claims, and commercial and toxic tort claims. He earned his B.A., cum laude, from Kenyon College, and his J.D. from the University of Pittsburgh School of Law. He is admitted to practice in Pennsylvania and California, as well as U.S. District Courts for the Eastern, Middle and Western Districts of Pennsylvania, the U.S. District Court for the Central District of California, the U.S. Court of Appeals for the Ninth Circuit and the U.S. Court of Appeals for the Third Circuit. Evan has been rated AV Preeminent by Martindale-Hubbell.

Evan can be reached directly at: (215) 575-4230 • eeisner@rawle.com

AMERICAN BOARD OF TRIAL ADVOCATES

John T. Donovan, a partner in our Philadelphia office, was elected to the **American Board of Trial Advocates (ABOTA)** in February 2018. Membership in ABOTA is by invitation only and is limited to experienced trial lawyers and judges dedicated to the preservation and promotion of the civil jury trial right provided by the Seventh Amendment. Since 1958, ABOTA has worked to uphold the jury system and to elevate the standards of integrity, civility and professionalism in the legal profession.



John T. Donovan

John concentrates his practice on premises liability, product liability, catastrophic injury, toxic tort and construction law matters. He is admitted to practice in the federal and state courts of Pennsylvania and New Jersey and the Third Circuit Court of Appeals. He has tried dozens of cases to verdict in both Pennsylvania and New Jersey. He has been designated Liability Catastrophic Injury Counsel (LCIC) for a major international insurance carrier for both Pennsylvania and New Jersey. He earned his B.A., cum laude, in 1989 from Lafayette College and received his J.D. in 1992 from the University of Pittsburgh, where he was elected class vice president.

He has taught law at Rutgers School of Law, Villanova School of Law and Temple School of Law. In addition, he volunteers on behalf of the Support Center for Child Advocates and chairs the Rawle & Henderson's Child Advocacy Practice Group. He was recognized by the Support Center as a Distinguished Advocate in 2017. John has been selected as a Pennsylvania Super Lawyer from 2010 to 2017.

John can be reached directly at: (215) 575-4254 • jdonovan@rawle.com

ABA TIPS

Zachary M. Rubinich, a partner in our Philadelphia office, will speak at the **2018 ABA Workers' Compensation Midwinter Conference**, which is co-sponsored by the Tort Trial & Insurance Practice Section and the Section of Labor and Employment Law of the American Bar Association. The Conference will be held March 1-3, 2018, in Nashville, Tennessee. Zach will be the Lead Moderator for the Panel entitled "*Ethics and Professionalism in Workers' Compensation: From Boardroom to Courtroom.*" A diverse panel composed of attorneys, insurance professionals and a workers' compensation judge will discuss the ABA Model Rules of Professional Ethics and how they apply to employers, employees, and their attorneys' relationship/representation of their interests in and out of litigation.



Zachary M. Rubinich

Zach focuses his practice on the defense of insurance carriers, self-insured entities and third-party administrators against workers' compensation claims in Pennsylvania. Based on his extensive experience, the Pennsylvania Bar Association Workers' Compensation Law Section has certified him as Specialist in the practice of workers' compensation law. Zach has handled all aspects of litigation before workers' compensation judges, the Workers' Compensation Appeal Board, the Commonwealth Court and the Pennsylvania Supreme Court. He routinely counsels employers, insurance carriers and third party administrators on claims management, workplace safety, return-to-work programs, employment practices and risk management. Zach has been appointed the Chair-Elect of the American Bar Association's Tort Trial and Insurance Practice (TIPS) Workers' Compensation and Employers' Liability Law Committee for 2018-2019. He is currently Vice-Chair of the ABA TIPS Workers' Compensation and Employers' Liability Law Committee for 2017-2018. He also served as Vice-Chair in 2015-2016 and 2016-2017. In addition, Zach has been appointed as Vice-Chair of the 2017-2018 American Bar Association Standing Committee for Diversity and Inclusion. Zach has been rated AV Preeminent by Martindale-Hubbell for the sixth consecutive year in 2018. He has been selected as a Pennsylvania Rising Star by Super Lawyers from 2010 to 2014.

Zach can be reached directly at: (215) 575-4340 • zrubinich@rawle.com

OF COUNSEL

Rawle & Henderson LLP is pleased to announce that **Sylvia E. Lee** has been named Of Counsel to the Firm.

Sylvia is an attorney in our **New York City** office. She concentrates her practice on the defense of medical and dental professionals, hospitals, nursing homes, product liability, premises liability, toxic tort including asbestos litigation, auto liability, and commercial litigation. In addition, Sylvia has an extensive appellate law practice. Sylvia graduated with a B.A. degree from the State University of New York at Stony Brook. She then attended New York Law School and earned her Juris Doctorate degree. She is admitted to practice in New York and New Jersey, as well as the U.S. District Courts for the Southern District of New York and the U.S. District of New Jersey.



Sylvia E. Lee

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GREATER NEW YORK DENTAL MEETING

Paul E. Blutman, the resident partner in Rawle & Henderson LLP's Long Island office, spoke at the **Greater New York Dental Meeting** on November 25, 2017, at the Jacob K. Javits Convention Center in New York City. He was a co-presenter along with Frederick W. Wetzel, D.D.S. in the session, "Risk Management," which provided a comprehensive overview of risk management for dental care providers. Blutman and Wetzel discussed cases illustrating risk areas in daily practice, recordkeeping, cyber issues and social media, New York's Dental Practice Act, peer review, district claims, ethics and claim frequency. They discussed methods of preventing malpractice claims, improving recordkeeping and understanding risk areas in clinical practice. In addition, Paul and Dr. Wetzel spoke on the same topic at the **New York County Dental Society** in New York City on January 26, 2018.



Paul E. Blutman

Paul concentrates his practice on the defense of medical and dental professionals, hospitals, nursing homes, products manufacturers' liability, premises liability, toxic torts, auto liability, and commercial and business litigation. He lectures to medical and dental professionals, hospitals, and corporations on liability issues. He earned both his J.D. and B.A. degrees from Hofstra University. He is a recipient of the Hofstra University School of Law Distinguished Alumni Award, OMSNIC Rising Star Award and the Hofstra Law Distinguished Faculty Award. He is admitted to practice in the courts of the State of New York, as well as the Federal Courts for the Southern and Eastern Districts of New York. He has been listed in *New York Magazine's* Leaders in the Law for metropolitan New York City in the fields of litigation and medical malpractice; he has been selected as a Legal Eagle in medical malpractice in Nassau and Suffolk Counties by *Long Island Pulse Magazine*. In addition, he was listed as a "Top Rated Lawyer" by the *New York Law Journal* in 2017. He has been rated AV Preeminent by Martindale-Hubbell for over 25 years.

Paul can be reached directly at: (516) 294-2001 • pblutman@rawle.com

Rawle's Reports is a monthly client newsletter of Rawle & Henderson LLP with recent case law updates. If you would like hard copies of past issues, or would like to request PDF copies from us, please email info@rawle.com. Past issues are also available and downloadable from our website, www.rawle.com.